



International
Labour
Organization



EDITED BY

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THE NEW WORLD OF WORK

CHALLENGES AND OPPORTUNITIES
FOR SOCIAL PARTNERS AND
LABOUR INSTITUTIONS



#employers

#workers

#governments

The New World of Work

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Challenges and Opportunities for Social Partners and
Labour Institutions

Edited by

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Foreword

The ILO marked its one-hundredth birthday in 2019 by adopting the Centenary Declaration for the Future of Work at the International Labour Conference. One of the major priorities identified in the Declaration was investment in the institutions of work, including in well-functioning and revitalized social dialogue. The ILO had the great privilege to host a round table in March 2020 aimed at identifying innovative ways to boost the roles of the social partners and social dialogue in the new world of work. Speakers included the EC Commissioner for Employment, Social Affairs, Skills and Labour Mobility along with illustrious ministers and state secretaries. As a foreword to this volume, we thought it appropriate to reproduce some salient excerpts (edited) of the policy statements made during this round table.

Following the opening reflections by European Commissioner Schmit, remarks by subsequent distinguished speakers addressed the following questions:

- How can we strengthen the role of social dialogue institutions?
- How can we strike a balance between government intervention through regulation and policymaking and leaving the necessary space for the social partners to play a role in shaping the labour market?
- What can governments do to strengthen social partners' trust and to promote their full involvement in the consultative and policy-making process?
- What are the issues and transformational trends for which social dialogue could play a determinant role in the future?

Nicolas Schmit, Commissioner for Employment, Social Affairs, Skills and Labour Mobility, European Commission

The ILO and the European Union share the same values. We share a social model that strongly integrates social dialogue, which promotes decent work and defends social justice. As the Commissioner in charge of employment and social rights, I am happy to announce the publication in January 2020 of a Communication laying out the Commission's priorities for the coming years in the social arena. It is the point of departure for a wide consultation process to prepare an action plan to implement this.

We are experiencing a time of great change. Not just because of the coronavirus, but also because of major changes in our economic systems as a result of climate change and high-speed technological transformation. We are continually asking ourselves what the impact of this technological change will be on the future of work.

The work carried out by the ILO in this regard is inspirational. The report prepared by the Global Commission on the Future of Work is rich in information, shedding light on this very complex situation. The report states: 'New forces are transforming the world of work. The transitions involved call for decisive action.' This is precisely what the

European Commission has decided to do, and is in fact our number one project. We want to organize the ecological transition in order to address climate change, and also to shape the digital transition towards greater justice and economic benefit. If we fail to do so, Europe will be left by the wayside and lose its position in the global economy.

We will succeed in this transition if our decisions are just, and do not lead to entire segments of the population feeling that they are being left out. We have this responsibility towards our planet, and a social responsibility to citizens, employees and entrepreneurs, not to mention future generations.

Every change represents enormous opportunities as well as risks. These changes must not be imposed on us, but must be negotiated, planned, organized over time and socially and economically sustainable.

Our obligation is to come together through social dialogue to try to understand the issues at hand and come up with a path forward. Europe must work together with member states, the regions and the social partners so that these transformations may generate a net gain for everyone.

One fundamental aspect of the transformation of the world of work is skills. The most profitable investment is in people, in human capital. We are launching a new skills agenda, because we believe that the future of Europe lies in the development of skills. Such investment is part of the European social model. In the next five to ten years we will have to reskill about half of the entire European workforce, more than 100 million people, in the absence of which inequalities, exclusion and injustice will increase.

This cannot be imposed top down. It is, first and foremost, in businesses, industries and at the level of the social partners that this will take shape, through more social dialogue, more collective bargaining and more social consultation.

There are of course grey areas where the employment status of workers is often unclear, in particular in the new digital and platform economy. We need a level playing field with rules, including social rules, aimed not to limit such platforms but to develop them. We need to reorganize our social protection systems in order to take full account of the evolution of this new economy. Workers must also have the right of association, including trade union representation. In the European context, coordinated rules to govern this digital economy are required.

In conclusion, we must constantly reinvent social dialogue. I have personally been inspired by Jacques Delors in the Commission, to whom we owe so much when it comes to social dialogue within European governance. Contrary to what many think today, Delors believed that the Commission should not do everything itself but leave much of the responsibility to the social partners, social dialogue and collective bargaining. I also believe wholeheartedly in collective bargaining and dialogue, which we now need more than ever. Respect for collective bargaining is an essential component of our European democratic models. To fail to reinforce this negotiating dynamic is to risk the future of our democracies.

If we can succeed in giving new impetus to social dialogue and restoring the value of compromise and the idea of a social contract, I believe we can once again be optimistic about the future of Europe.

Contributions Provided by Government Representatives

Croatia – Mr Aladrovic, Minister of Labour and Pensions

The shift away from traditional concepts of work is reflected not only in new forms of work but also in the need to redefine and adjust social security systems to these new trends. As regulators, we need to address these challenges with adequate policy measures that work for both the economy and our citizens. The task of the government is to create an enabling environment for business and development, good living and working standards, a quality social security framework, and so on.

Skills are the basis for competitiveness and employability, and are the joint responsibility of all stakeholders. We will therefore include social partners at both the national and EU levels in our discussions on skills and related issues.

Effective social dialogue requires social partners with the relevant capacities and organizational density. We must make an effort and provide mechanisms to build their capacity in this respect. New technologies, processes, forms of employment and an overall new world of work present challenges to the traditional model of collective bargaining and social dialogue.

The most important national-level institution for social dialogue in Croatia is the Economic and Social Council. I strongly believe that we will have to enlarge it in order to address future of work challenges. We should as well strengthen and institutionalize sectoral social dialogue, based on the best EU practices, which could also have a positive impact on problem-solving at the national level.

It is important also to enable the capacity-building of the social partners through the ESF Plus. The engagement of social partners at the EU and national level is vital for a successful design and implementation of economic and social policies, including those foreseen by the European Pillar of Social Rights.

Austria – Mrs Aschbacher, Minister of Labour, Family and Young People

In Austria, we have a long tradition of social partnership and social dialogue going back more than 70 years. It has been a central contributor to Austria's prosperity today and is the Austrian way for the future. In this spirit, the government programme for 2020–2024 foresees the active involvement of the social partners in full respect of their autonomy.

In order to modernize labour legislation, the Austrian government will initiate broad social dialogue on the future of work. The main aspects will be digitalization and the reconciliation of family and work, subjects of particular importance to me as the new Minister for Labour, Family and Young People.

Negotiations by sector allow a flexible reaction to economic and social conditions, such as productivity growth or rising living costs. The Collective Labour Relations Act provides for collective bargaining at enterprise level.

Collective bargaining on wages is the most important task of the social partners. It lies within the autonomous competences of employers' and workers' organizations. All employees of an employer governed by a collective agreement are covered by it, even if they are not union members. Thanks to this well-functioning system, Austria had collective bargaining coverage of 98 per cent as of 2017 (OECD). Austria opposes any initiatives, whether at European or international level, that might interfere with the autonomy of its social partners.

An effective labour market policy requires a joint approach between workers, employers and government representatives, as well as adequate consideration of regional disparities and characteristics. Accordingly, the social partners' involvement in labour market policy design in Austria is sustainable and extends across all three levels – federal, provincial and regional – of the public employment service.

Albania – Mrs Sorensen, Deputy Minister of Finance and the Economy

Albania shares some of the global challenges but we are struggling as well with the fundamentals of labour market institutions and economic reform at national level.

The Labour Code sets out the institutional and legal framework in Albania for tripartite social dialogue, collective bargaining and amicable resolution of collective disputes. The National Labour Council in Albania is a platform for mutual sharing of information and consultation and aims to foster dialogue to achieve lasting consensus on issues of labour market policy and legislation. We are currently expanding tripartite dialogue at the national and regional levels, including by establishing regional tripartite councils.

We are also enhancing technical discussions, as well as increasing the capacities of our social partners. The first major challenge in the Albanian labour market is to create more jobs; the second is to create *better* jobs, which is the reason why most people are leaving Albania. The third challenge concerns the impact of labour market legislation in migrant workers' destination countries on our own economies, a problem and a responsibility shared by us all. It is important that social partners are included in discussions, especially concerning the anticipation of skills needs and the orientation of future vocational education and training.

In Albania, we focus a lot on declining industries and on older workers that need to remain relevant in the labour market, and less on the future and our young people. Social dialogue has to be agile in a polarized labour market, and be able to respond to the needs of both high-skilled and low-skilled workers.

Bosnia and Herzegovina – Mrs Gudeljevic, Minister of Civil Affairs

Trade unions and employers' associations do not participate in social dialogue at the state level in an organized manner. Their expectations are addressed almost exclusively by sub-state government institutions.

Representatives of workers and employers do not show enough interest in establishing a common forum for social dialogue, and trade unions and employers' associations are fragmented and insufficiently organized.

The economic and social councils are currently functioning only at the level of the two entities, namely, the Federation of Bosnia and Herzegovina and Republika Srpska, and Brcko District. The Ministry of Civil Affairs recently launched an initiative to establish the Economic and Social Council of Bosnia and Herzegovina.

Although the state should leave the necessary space for social partners to play their role in shaping the labour market and working conditions through social dialogue, including collective bargaining, its own role is far from minor. The state is responsible for citizens' well-being and thus for the establishment and maintenance of social peace and economic prosperity.

Our general policy in this domain is oriented by the awareness that collective agreements bring greater stability to the labour market and directly affect social security, thus substituting to some extent for government intervention in the labour sphere.

Cyprus – Mr Malikkides, Permanent Secretary of the Ministry of Labour, Welfare and Social Insurance

Industrial relations systems in Europe are stronger where social dialogue and tripartite cooperation are prioritized. This was very evident in Cyprus in our response to the economic crisis of 2013, for example, which required bringing together the social partners in an effort to cope with a systemic threat and achieve common goals, building and regenerating lost trust.

We need to examine the internal factors influencing social partners' capacity to participate in social dialogue, such as insufficient financial resources, technical capacity, organizational and negotiation skills. These challenges will require social partner organizations, as well as public authorities, to move out of their comfort zone of established practices.

New channels of communication and formalizing new social dialogue structures and procedures can reverse stagnating and declining membership. New emerging players also need to be involved, such as workers engaged in new forms of work, as well as new employers.

Cyprus considers its voluntary system of industrial relations to serve this purpose well, based as it is on a collaborative social dialogue exercise.

In Cyprus, the system has never been based on regulatory or legal tools; rather, a tripartite 'gentlemen's agreement' from 1977 is still in force. The social partners have consistently shown a high level of respect. Tripartism remains the key method to achieve consensus between the social partners and government.

France – Ms Karvar, Delegate to the ILO Governing Body

In France, we have a system that, on one hand, is marked by a low level of union membership, but which confers substantial responsibility for the management of entitlements (social entitlements and social protection) on the social partners – trade union organizations and employers' associations – with a high level of coverage of collective agreements (although very low among SMEs).

However, the present system is undergoing major changes. In particular, based on discussions with employers' organizations and trade unions, there is a clear need to provide entitlements linked to individuals, regardless of their employment status. We are also discussing a possible decentralization of collective bargaining to bring it closer to employees, and the individualization of requests from workers and the diversification of the working world.

This decentralization of collective bargaining goes hand in hand with the legitimization of union organizations in private sector enterprises, which should be elected by the employees in order to ensure representativeness. A last and very important point is the promotion of enterprise-level agreements, to internalize flexibility by recognizing productivity, working hours and working conditions as subjects for collective bargaining.

We should address these questions globally, among the G7 labour ministers as well as international organizations of employers and workers, to reach agreement on an integrated approach to the transformation of work.

Lithuania – Ms Radisauskiene, Deputy Minister of Social Security and Labour

As young countries, the Baltic states should first of all focus on strengthening our social dialogue institutions.

In Lithuania we have a tripartite council. We are trying to introduce a new culture and new traditions to consult and involve social partners in policy-making, for example, regarding labour law and minimum wage setting, social insurance law and employment law. We should not change anything agreed in the tripartite council; the parliament has approved practically all amendments proposed by the council.

We need to strengthen the capacities of the Lithuanian social partners. Although we have quite a low trade union participation, we are trying to cover more and more of the population by collective agreements.

We regard the modern and digitalized world as a new opportunity. We have, though, to deal with the problem of platform workers, whose number is increasing. While it is hard to identify the employer of these persons, as the government, we are responsible for including them in our social insurance system.

The social partners, especially the trade unions, could also help us to reach people working as platform workers, and employers should be more transparent about who works for them. Adequate working conditions and social guarantees should be safeguarded.

Malta – Dr Falzon LLD, Minister of the Family, Children's Rights and Social Solidarity

The only thing that remains constant is change, and that maxim should even apply to our social dialogue systems.

There is an intimate correlation between our countries' economic situations and social dialogue. When we are doing well economically, the tendency is for dialogue with social partners to be good too. But when the economic environment gets tough, so does dialogue and communication.

A basic change which has greatly affected social dialogue and the social partners has been the shift towards more individualized work contracts. This brings us to other important issues, such as globalization, Bitcoin and artificial intelligence, which will also impact on social dialogue.

We need to talk about migration as well. We depend on foreign workers every year, without them we cannot sustain our economic growth, and that again affects dialogue. If we really want to be successful, we need to anticipate change.

Portugal – Mr Miguel Cabrita, State Secretary of the Ministry for Labour, Solidarity and Social Security

Social dialogue is key to national labour relations, is one of the preconditions for the European social model, and in fact also for the decent work agenda – for decent work and rights, good governance, social industrial change, economic growth and digital transformation. Governments must encourage social dialogue to tackle these strategic issues.

When you agree on certain principles and a diagnosis of the situation, you are better able to make dialogue productive. Governments should make available quality information for everyone. This helped to steer Portugal out of the 2008 crisis, through social dialogue based on shared knowledge.

Not only trade union density is important, but also their capacity to represent and be a voice for new groups of workers, young people, precarious workers, platform workers,

independent workers and migrants – groups that have not traditionally been insiders in society and the labour market. This is a challenge for the Portuguese trade union movement.

Governments should ensure that social dialogue has a high profile in the public sphere. Social dialogue must be open and flexible. It should not be a formal, rigid process but have the capacity to focus on the key issues at different levels. They include more traditional ones, such as labour laws, job creation, decent jobs, social security and social protection for different types of workers, but also new trends and new forms of work skills and vocational training, demographic change, reconciling family and work life, and of course climate change.

Governments should make careful use of extension mechanisms. While these can be useful especially when union density is low, when collective bargaining and social dialogue are strong enough it is always preferable not to use them, because they do not necessarily improve the health of social dialogue in the long run. Mechanisms to foster membership and density are crucial, for which governments should create incentives and improve information about the advantages, rules and mechanisms, including on how to become members. Concerning new enterprises, the question is how to associate them with employers' associations. Around 1.8 million people were covered by new collective bargaining in 2008, right before the crisis. From this historical peak, it declined to only 250 000 people in 2013. We have steadily been recovering since, and coverage is now between 900 000 and 1 million.

Sweden – Ms Grape, State Secretary of the Ministry of Employment

Regarding what governments can do in order to strengthen the social partners' trust in social dialogue institutions and to promote their full involvement, it is about ensuring three things: a balance of power, trust and space. First, a relative balance of power is a definite key to social dialogue that yields results in terms of job quality, fair working conditions, and adaptability to structural change in the economy and labour market. It is also about the government providing a somewhat level playing field for the partners.

Second, trust between the social partners, and also between the partners and the government, is fundamental, but it is hard to maintain even given goodwill on the part of the government. Every government has to take into account the interests of the electorate who brought it to power.

Thirdly, allowing significant space for the social partners has, in the case of Sweden, led to the development of strong bipartite social dialogue and collective agreements. The social partners are able to regulate the labour market to a considerable extent in Sweden. The partners thus have great influence, but also carry great responsibility. The Swedish bargaining system also leaves significant space for local agreements. In the wake of the financial crisis in 2009, this space was used actively to find solutions to manage a sharp downturn in the economy and avoid redundancies. With the spread of the coronavirus, the social partners at the local level will, I feel sure, use this space well, in the event of an economic downturn.

A new type of economy does not mean that old tools are outdated. The very flexible labour law in Sweden leaves a lot of room for the social partners to deviate from the law. This has proved very beneficial in terms of existing labour market governance, and in integrating new forms of work – such as platform work – into the collective bargaining

model. The trade unions in Sweden are now starting to sign agreements with companies in the platform economy, a phenomenon also observed in Denmark.

Contributions Provided by Social Partner Representatives at the National, European and International Levels

Slawomir Adamczyk, Independent and self-governing trade union 'Solidarność'

In order to be representative as trade unions, we need a large membership and the ability to conduct collective bargaining in the interest of as many employees as possible. Trade unions have long been attached to the idea of defending work stability in one place, on a permanent contract, with the same employer responsible for everything. Other types of work have been perceived as a harmful departure from this norm. But this is now changing. Everyone who performs paid work needs their rights to be protected and so trade unions have begun to implement strategies to reach atypical workers, including platform workers.

We are dealing here with new workers operating in a grey zone. They are not traditional employees, nor are they entrepreneurs. In Poland, two years ago, we amended the Trade Unions Bill so that the self-employed not only have the right to join trade unions, but also to collective bargaining.

It is difficult for trade unions to represent the self-employed. How can we represent them effectively if they do not have rights to collective bargaining? This is a very important question for the future, for the EU.

The second priority area for us is migrant workers. Poland has become the largest net receiver of workers from outside the EU. They largely occupy the lowest ranks of the income ladder, including platform work. Most such people working in Poland are working for the Uber Eats platform.

Another key issue is multinational corporations, which are a big player in industrial relations. They have a huge impact, especially in Central and Eastern Europe and the Balkans.

Barbara Owsiak, Deputy Director General of the Employers of Poland

I would not like to live in a world in which workers' interests are not properly represented. One important point is education, which we should look at from the ground up. When I look back at my education, I was never told about trade unions and social dialogue. I think that social dialogue is a pillar for building social capital; it is in the interest of each country that social dialogue works properly.

The government can hinder or foster social dialogue. I thus appeal to the governments of the member states to foster social dialogue and not to hinder it.

Annick Hellebuyck, Senior Adviser at the Labour and Social Security Competence Centre of the Federation of Belgian Employers (FEB)

Social dialogue is not an end in itself, but a wonderful means to come up together with ways to balance economic and social interests, as well as on societal and environmental issues. Social dialogue has to focus on qualitative outcomes, consolidating the competitiveness of our companies while also creating quality jobs. In this perspective, we should support the independence of the social partners and not support organizations

or individuals that are not representative. When we enter into an agreement, we expect the other signatories to respect it, as there are no rights without obligations.

We expect the public authorities to develop a clear legal framework, giving an extensive margin to representative social partners to use collective bargaining to regulate working conditions and wages. Social agreements have enormous importance because they yield results on the ground. Each organization must ensure that its mandate reflects the social and economic interest of its members. As the Belgium Employers' Association, our number one challenge is to obtain a mandate.

I would like to provide a few examples of good practice. First of all, the public authorities are able to extend collective agreements to all employers through extension clauses. Another example is when a government respects the outcomes of social agreements without changing them unilaterally. Finally, social partners can have the power to establish social security contributions that will apply to the entire sector. If legislators wish to change the rules of the game in collective bargaining, they should do this together with the social partners with a view to respecting fundamental ILO principles.

Oscar Ernerot, Swedish Trade Union Confederation

Why is it difficult for unions today to recruit members? There is structural change of course, but it is not only that blue-collar workers are being replaced by white-collar workers. The blue-collar labour market is much more fragmented, including precarious work, short-time working and other forms of employment that make it much more difficult to join a union.

Another issue is compliance with collective agreements. Even though we have an autonomous social partnership model, we still need institutions, labour courts and so forth, that are well developed and function effectively.

Turning to the future, it is important to see the value of collective agreements, for instance on the hot topic of refugees. The social partners in Sweden have negotiated a collective agreement called 'Fast-track'. Instead of having refugees sitting in camps, they can combine work with learning Swedish. This scheme has been quite successful.

Another positive outcome concerns the platform economy, with a collective agreement for transport workers, in which the social partners agreed on a better work environment and a sustainable business model for the long term.

Milos Nenezic, Serbian Association of Employers

The main problem we face is emigration: young people, especially qualified young people, are leaving Serbia. We need to improve the education system. For example, the Chamber of Commerce, together with social employers, the Minister of Labour and the Minister of Education, have set up a dual system. College or university students, even some in high school, can work during their studies, receiving 70 per cent of normal pay. They are matched with a mentor. We anticipate positive effects on jobs and even the prevention of emigration. The second relevant initiative launched by the Minister of Labour two years ago is a coordination team to prevent people leaving the country, helping to identify the qualifications they need. Finally, the Social and Economic Council has adopted a national strategy on industrialization that will also show the way in terms of qualifications and for the future of young people.

On digitalization, which seems widespread in service sectors, I would like to see more digitalization or robotization in such dangerous occupations as fire services or construction, to prevent people from risking their lives.

Jaan-Hendrik Toomel, Estonian Trade Union Confederation

How can common ground be found between the social partners? In our view, digitalization should give us better jobs, better working conditions, and, for employers, it should give us better productivity and improve competitiveness. In the context of platform work, we see a new kind of precariousness arising. It is also bad for competition for so-called traditional employers.

Why is digitalization happening? Is it only to put pressure on prices, pushing short-term goals to the limit, or does it provide some greater value? Regulation must acknowledge that digitalization and optimization are not tools to enable social dumping, for example, regarding platforms, which we have seen in the Baltic countries. We need perhaps first to re-examine some terms and concepts. For example, who is a worker and who is an entrepreneur? Which self-employment is bogus and which is not? Once we have a clear understanding of these questions, it should be easier to solve these problems or improve legislation or regulations.

These issues affect not only workers but also taxes, healthy competition between companies, and the quality and sustainability of the services provided.

Finally, how to keep up with the changes at play in the labour market? We need to properly train the workers who will be affected by changes like digitalization and automation, and to do it in good time, not when it is already too late.

Kris De Meester, Federation of Enterprises in Belgium (FEB)

Can the social partners find common ground? The answer is, yes, through the current negotiations on a European Framework Agreement on Digitalization in the World of Work.

We had some difficult days at the start, but we built the first layer based on trust, and were then able to move ahead with problems, opportunities and measures. For the first time in a European Framework Agreement, we are proposing implementation of the agreement by a joint process between employers and workers.

The second step involves mapping the situation at the enterprise level. We need a broad approach that goes beyond a focus only on robots or digital technology. We also need to look at the impacts of digital technology, tools, communications and AI on job content and working conditions, such as terms of employment, working hours, work–life balance and health and safety.

The next step in the process is identifying measures, implementing them, joint monitoring, and evaluation.

There are four topics that we ask our employers and workers to take into account in the process: first, skills; second, artificial intelligence, machine learning and how they interact with human resources; third, the sensitive topic of connecting and disconnecting; and finally, surveillance and the uses of digital technology.

This process-based approach is innovative.

Esther Lynch, Deputy General Secretary, European Trade Union Confederation (ETUC)
Social dialogue is Europe's great competitive advantage. Social dialogue means that we will be able to tackle all of the changes we are facing better, faster and with fewer downsides.

Through the autonomy of social dialogue we are able to work together. There is a strong impetus in this direction, for example, in relation to resources and the provision of support, for example, in effective labour courts, options for mediation, or indeed negotiations. Autonomy looks very different in Stockholm and in Dublin, and is experienced differently. We need to think about laws to enable trade unions to do their work and to sanction employers who do not respect the right to collective bargaining.

At the EU level, we are on the verge of a big and meaningful autonomous social partner agreement to deal with the major challenges of digitalization in a fair and ethical way, tackling everything from the right to disconnect to the human-in-control principle. The main stumbling block in this respect concerns what is meant by 'workers' representative'? For me, this will always and only be my union. While there is a role for outside experts, the people in the driving seat for social dialogue and collective bargaining have always to be the trade unions. In Europe, people are afraid for themselves and for their future. They see people employed on difficult and uncertain contracts. Social dialogue right now is not tackling this problem or delivering practical solutions. We need to face up to these real problems and we need the support of governments to be able to conclude collective agreements at the workplace, sectoral, national or European level. And we need a bargaining partner willing to come to the table with us.

We need a strategy of solidarity with candidate countries. Everywhere a given employer operates, they should respect the union. The EU could also do much more about public procurement rules, to encourage those employers who are ready to sit down with unions and implement good terms and conditions. Finally, we cannot have a system where large platforms are not paying taxes or even paying social security contributions on their workers. There are so many elephants in the room, and social dialogue is the best way to get the elephants to do the right thing.

Robert Plamer, Senior Advisor, Social Affairs Committee, BusinessEurope

It is really important to give space to the social partners at national level to discuss and prepare responses to the labour market challenges we are facing. We recognize the variety of national industrial relations systems and the different roles that our members play within those systems.

Sweden is one of the best examples of very strong social partnership but, unfortunately, this is not the case everywhere. This is something that needs to be built from the grassroots up and cannot be imposed from the European level.

As European social partners, we try to play a supportive role, especially regarding capacity-building of national organizations to be able to engage in these processes at both national and European levels. In the European Social Fund Committee, we work very well together seeking to influence the programming of the Social Fund's resources towards capacity-building support for national social partners.

A subgroup of our social dialogue committee is working on the implementation of social dialogue agreements and capacity-building, and has invested lot of time and energy negotiating the Framework Agreement on Digitalization. But it is at the national level

that our members need the capacity and resources to follow up on those agreements together with the trade unions. We are therefore working in a number of member states, predominantly in central and eastern Europe, to strengthen the social partners' capacity for social dialogue and the implementation of agreements.

Guillaume Afellat, Policy Adviser for Social Affairs, Centre of Employers and Enterprises Providing Public services (CEEP)

The European social partners have been involved in a number of initiatives at the European level including negotiations on digitalization and discussions on adaptation to the new economy, on skills, health and safety, limits to work–life balance and various other issues addressed in this volume.

On the issue of the environmental transition, the structured cooperation of social partners at the regional level is essential, because many decisions will be taken given the need to adapt in different sectors to the new challenges and to changing and disappearing jobs. This will be a monumental challenge faced very differently across countries and regions.

We do not want tripartite cooperation to devour the space for collective bargaining at the national level. President Juncker rightly declared: '*there is no tripartite social dialogue without bipartite social dialogue*'. He referred specifically to the European social partners, and our ability to negotiate autonomous framework agreements, but it is extremely relevant at the national level as well.

It is dangerous to confuse tripartite and bipartite dialogue, but also civil society and social partners. As structured organizations, the social partners have unique expertise, responsibilities and mandate. This distinguished them from the realm and abilities of civil society. Such confusion can sometimes be instrumentalized by national governments when seeking the input of civil society rather than social partners.

The minimum wage represents an opportunity to support and reinforce collective bargaining. This should be the direction of EU action: supporting an additional, reinforcing social dialogue and collective bargaining for the definition of minimum wages at different levels.

Danny Van Assche, Vice-President, European Employers' Organizations for Small and Medium-sized Enterprises (SME United)

Social partners and social dialogue have to prove their relevance, their efficiency, and their representativeness. This is a shared responsibility on both the employers' and the workers' sides.

This means, first, that we have to be able to conclude agreements based on listening to each other and finding common ground.

Second, we must show our representativeness, and our knowledge and understanding of the issues and interests of our members working in the real economy. We need to reach groups that are traditionally difficult to organize. SMEs constitute a very important group among these, because the majority of enterprises are SMEs and they employ approximately half of all workers in the European Union.

Certain EU countries, such as Belgium, have a very strong and representative SME organization which is an official partner in social dialogue. However, in others, the SME organization is not accepted as a partner in official social dialogue. Such a situation does not enhance the quality of social dialogue, because a self-employed

person or one who hires 5 or 15 or even 50 workers does not have the same interests as a multinational.

SME United has only quite recently been accepted as an official member of European social dialogue. We had to fight for our right to be at the negotiation table. SME organizations have a vital role to play in ensuring good and high quality social bargaining in Europe and in all European countries.

Matthias Thorns, Deputy Secretary General, International Organization of Employers (IOE)

Three main themes characterize our work at the international level. The first is taking a positive approach to the future of work: the positive impact on job creation, working conditions and flexibility. The future presents us with great opportunities that we must harness.

The second theme is skills. Some 60 per cent of girls and boys entering primary school today will end up in professions that do not exist yet. This shows how much the world of work is changing, and how our education system needs to be updated to ensure that school-leavers get into employment, that companies have the skills they need, and that countries have the potential for social and economic progress. Only through the full involvement of the social partners in the governance of education systems will it be possible to ensure that their outcomes are in line with labour market needs.

The final theme is the role of the social partners in the future of work. This transformation can never be managed without strong social partners. However, we have to reform in order to reach out beyond our core or traditional constituents. Social dialogue needs to be much more agile and become even more diverse when tackling the future of work, because employment relationships are becoming ever more diverse. There are many other instruments in addition to collective bargaining in the social dialogue toolbox. We have to look at what we want to achieve, and then determine which is the right format to use for social dialogue.

Owen Tudor, Deputy General Secretary, International Trade Union Confederation (ITUC)

When we talk about the future of work, we need to think of going forward to the past. In reality, there used to be a lot of individualized contracts until we decided to get rid of them. In the platform economy, for instance, Uber is actually the biggest multinational company in the world, employing 3 to 4 million people. These workers are difficult to protect because legal judgements vary from country to country. The more individualized workers' relations with employers become, the greater is the need for a framework to ensure fairness.

Since the millennium, the world has become three times richer in monetary terms. The real problem is the distribution of this wealth. This is one topic that the G20 has failed to address. However, we have succeeded in putting other issues such as jobs and inequality on the G20 agenda.

I would like to be optimistic about the opportunities offered by the future of work, not least the possibilities for digitalization to reduce the hours people have to spend at work. However, to ensure that this future of work is different from its past, we must have more effective social dialogue and a better working relationship between employers and unions.

I believe the subject we are treating to be very timely, and that we have together hit the right spot. The project process – the close involvement of the social partners and the extension beyond the EU to include the candidate countries – is also to be applauded.

With respect to representativeness, I would highlight the remarks by the Swedish State Secretary regarding the need for balance, trust and space. A further important message is the need to get out of our comfort zone.

The remark made by the Portuguese Minister about strengthening the reputation of the social partners by making them more relevant again was also an interesting observation, pointing to the big issue of capacity-building for social partners, and how we can go about it in terms of legal frameworks, public procurement, taxation issues, and so on.

Another important issue concerns the need for agility in order to reach out to new groups of participants in social dialogue, such as young people and platform workers.

Autonomous social dialogue very much depends on the national context and traditions, and no one size fits all. The ILO is a repository of good practices, and governments can provide good, stimulating regulation as a basis for social dialogue.

There remains the question of how best to go about it at the various levels. The extension of collective bargaining and derogation clauses seems to be one of the battlegrounds in the discussion.

Regarding digitalization, the Commissioner has made it clear that he is a techno-optimist. The new world of work is bringing both challenges and many opportunities, including for social dialogue and for the representativeness of the social partners. And new types of work do not necessarily mean that the old tools are no longer relevant.

What are the new issues for social dialogue? Clearly these include migration and the creation of decent work in particular in the countries of origin, taxation issues in the platform economy, as well as global supply chains and skills and lifelong learning.

Allow me to turn to the way forward. First of all, the cooperation with the European Commission is very important to us in the ILO, because Europe is leading by example. This project and the present volume are very good examples of us working together.

Implementation is a critical issue, whether at the global level, the G20, the European level or the ILO level. The fact that implementation of the Agenda 2030 is lagging behind sends a clear message that we need urgently to act together.

All contributions in this volume resonate with the three priorities of our centenary declaration: investing in people, investing in labour institutions, and looking for sustainable and inclusive growth, including policy coherence. And a core issue for the ILO concerns a just transition to green jobs.

Finally, I will close by quoting Commissioner Schmit: *‘Social dialogue is a prerequisite of social justice.’* That is one of the ILO’s founding principles from 1919. Without social justice, we cannot protect our democracy.

Heinz Koller
Assistant Director-General,
Regional Director for Europe
and Central Asia, ILO

1. Enhancing social partners' and social dialogue's roles and capacity in the new world of work: Overview

Youcef Ghellab and Daniel Vaughan-Whitehead

1. INTRODUCTION

The profound change sweeping through the world of work involves four major drivers: technological innovation, demographic shifts, climate change and globalization. It poses serious challenges, but also opens new opportunities for social dialogue and the role of the social partners, together with public authorities, in the governance of the world of work. While social dialogue institutions and mechanisms, including collective bargaining, have long been a feature of European Union (EU) countries, sometimes for decades, questions have been raised about the ability of social dialogue to rise to the new challenges and opportunities, and deliver sustainable socio-economic outcomes. These questions have been raised at a time when trade unions and employers' organizations are seeking to adapt to the massive transformations in the global organization of labour and production, and labour administrations, on their part, are struggling to cope with the challenge of enhancing labour market performance and workplace compliance.

The International Labour Organization's (ILO's) 'Centenary Declaration for the Future of Work' (ILO 2019) emphasized that social dialogue, including collective bargaining and tripartite cooperation, contributes to successful policy and decision-making in its member states. The Resolution adopted by the International Labour Conference (ILC) in June 2018 underlined that social dialogue and tripartism are essential for democracy and good governance (ILO 2018). Also, it stipulated that 'social dialogue plays an important role in shaping the future of work, taking into account particular trends of globalization, technology, demography and climate change' (ILO 2018).

Key policy statements and documents emanating from various EU institutions also stress the critical importance of social dialogue and the involvement of social partners in policy-making as an important governance tool (Eurofound 2019). For instance, the European Commission (EC) stated that:

an effective and well-functioning social dialogue should be fostered to promote welfare in the EU. This can only be achieved by promoting social partners' capacity, by respecting their autonomy and strengthening their role in the design and implementation of reforms and policies and by actively involving the social partners at all stages of policymaking and implementation in line with the European Pillar of Social Rights. (EC 2017, p. 59)

The EC also emphasizes that ‘Social dialogue is rooted in the history of the European continent, and this distinguishes the Union from most other regions of the world. Accordingly, in its various forms in the different Member States, social dialogue is a component of democratic government and also of economic and social modernization’ (see EC 2002, p. 6).

The Covid-19 pandemic, which has hit hard most countries around the world, including the EU, has further highlighted the critical role of social dialogue in helping governments and social partners to address complex situations (ILO 2020). In many European countries, bipartite and tripartite initiatives have been launched to contain the virus and to mitigate its social and economic effects on workers and enterprises, and to promote a safe return to work.

Against this backdrop the ILO and the EC decided to launch a new project aimed at analysing and documenting how the social partners in EU countries are endeavouring to adapt to these changes and what challenges they have been facing in this regard. The project seeks also to identify the many good practices of social dialogue that are emerging in various countries, as well as the action of public authorities aimed at enhancing the role of social dialogue, including collective bargaining, in tackling the new challenges and opportunities in the new world of work, while at the same time supporting the autonomy of the social partners.

This project builds on earlier collaboration between the ILO and the EC in the field of industrial relations and social dialogue,¹ and takes a longer-term perspective with a view to strengthening the social partners’ knowledge of long-term trends in the changing world of work, notably by facilitating mutual learning between them.

2. METHODOLOGY

The most original feature of this project is its participatory nature: the social partners at all levels (international, EU and national) have been involved at all stages in the design and implementation of its various activities. Figure 1.1 highlights the process that was followed for this project. To begin with it the social partners were extensively involved in the design and implementation of the project. In addition, there were nearly two years of work by a group of high-level researchers, complemented – finally – by a survey carried out by the ILO among national social partners to obtain their feedback on the current and potential role of national social dialogue institutions to address current and future challenges in the world of work. All the results were discussed in a final workshop that gave the social partners the opportunity to give feedback on experts’ reports, share good practices and exchange policy experiences.² The quotes in the Foreword to this volume present some of the inputs of by the various policy actors. This volume was then finalized to include the main highlights of these discussions.

2.1 Geographical Coverage

The social partners were asked, first, to help to define the geographical scope of the project. They decided that it should cover not only EU member states (its original purview), but also extend to all the EU candidate countries and potential countries.

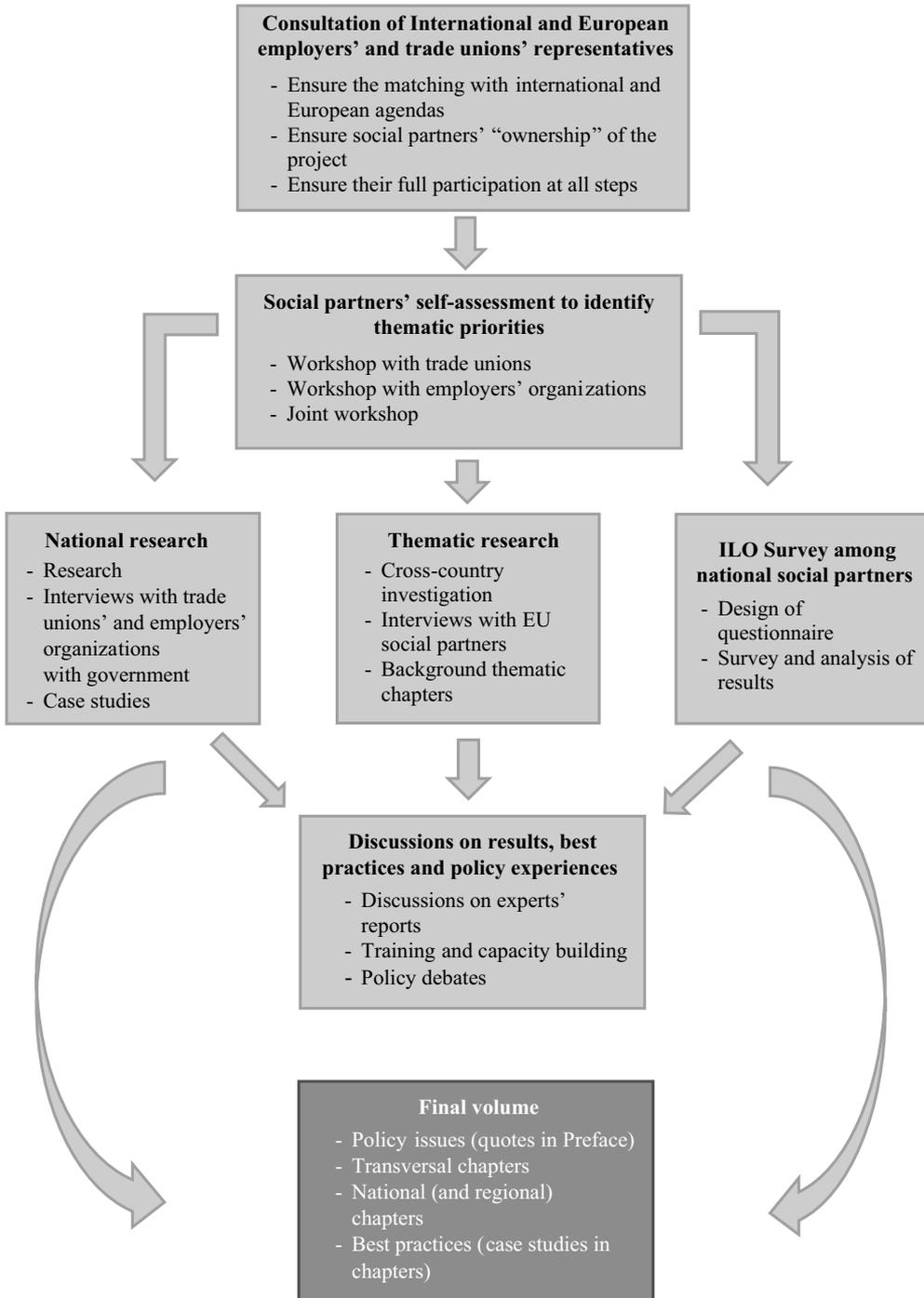


Figure 1.1 Project process and participation

The social partners in the latter have not yet had the opportunity to participate in the EU social dialogue, which represents a forum in which the social partners from current member states discuss the challenges they face in the world of work, notably through the discussion of items such as digitalization. At the request of both employers' and workers' groups, coverage was thus extended to 34 countries. In addition to the EU27 countries and the United Kingdom, we covered candidate countries such as Albania, Bosnia and Herzegovina, Montenegro, the Republic of North Macedonia, Serbia and Turkey.

This introductory chapter covers these 34 countries, synthesising the main project's results, while also presenting the results of the survey on social dialogue institutions carried out by the ILO among the social partners from these 34 countries. Also, a limited number of countries were selected for more in-depth national research, with country case studies and reports. These countries were selected on the basis of various criteria, such as location and their experience within the EU, with a geographical balance between established EU countries from the north (Ireland and Sweden), Centre (France and Germany) and the south (Italy, Spain and Greece) of Europe; relatively recent new EU member states from central and eastern Europe (the Baltics states, the Czech Republic, Poland and Romania); then countries from the Adriatic area (covered in the relevant chapter, with both EU member states, such as Croatia and Slovenia, and candidate countries, such as Albania, Bosnia and Herzegovina, Montenegro, the Republic of North Macedonia and Serbia); and, finally, Turkey as another South-East candidate country. Beyond the national reports, two chapters cover various countries from a specific geographical area: Chapter 16 on the Adriatic countries and Chapter 17 on the three Baltic states.

In addition to the national chapters, this volume also presents three cross-country transversal chapters that cover three main aspects of the new world of work that are important for social partners and social dialogue (see next section).

2.2 Main Topics under Focus

At the beginning of the project, the social partners proposed choosing the topics concerning the world of work that they believe pose the most challenges and would benefit most from the research component of the project. As a consequence, national workers' and employers' organizations themselves selected three joint topics at the outset. Significant research was then carried out in the thematic areas thus defined, and the comparative results – with real examples – are presented in the next three transversal chapters (2 to 4). These thematic background chapters are complemented with research and reports at national level (in 11 national chapters, 5 to 15) and also at regional level (with Chapter 16 on the Adriatic region and Chapter 17 on the Baltic states), with a similar structure around the same three topics, while also addressing other more country-specific trends and challenges. Beyond carrying out research, both national and thematic experts were asked to systematically collect social partners' views on the challenges, opportunities and perceived priorities moving forward. This was carried out in the form of interviews with leaders and experts from trade unions' and employers' organizations at national and sectoral level. National experts also interviewed government representatives, generally those in charge of social dialogue, to obtain their views on the challenges encountered in the world of work by social partners and social dialogue institutions. The views of all these actors are reported in the following chapters, sometimes in the form of direct quotes and statements.

3. THE MAIN CHALLENGES AND OPPORTUNITIES IDENTIFIED BY THE SOCIAL PARTNERS

A launch event was organized at the ILO in Geneva on 7–8 February 2019 to allow national employers' and workers' representatives from all the relevant European countries to discuss the challenges and opportunities at play in the changing world of work and select the topics on which they believe they should obtain more information, including concrete examples of good practice, to expand their knowledge base and strengthen their capacity to address them in the future. This event was organized in two rounds with, on the first day, two separate meetings of employers' and workers' organizations with the aim of preparing a list of topics. The two groups then joined together, on the second day, to present their topics and agree on what would be addressed in common during the course of the project, notably through the research work to be carried out by high-level experts.

The three topics selected by the social partners were as follows.

3.1 Topic 1: Strengthening the Social Partners' Representativeness and Increasing their Institutional Capacity to Shape Labour Markets through Social Dialogue and Consultative Processes

This topic was influenced by social partners' acknowledgement that strong and representative employers' and workers' organizations are key for the legitimacy and effectiveness of social dialogue. Social partners in many countries face challenges related to stagnating or declining membership and the need to be proactive to retain and recruit new members.

The chapters of this volume provide examples of various initiatives of the social partners to increase membership by reaching new members, including among categories that are traditionally difficult to organize. On the employers' side, attempts have been made, for example, to reach potential new members among small and medium-sized enterprises, where management are generally less keen to join an employers' organization. This example is developed in the chapter on Poland. On the trade unions' side, attempts have been made to organize workers employed in new types of activities, such as platform jobs in Italy and France.

BOX 1.1 SCOPE OF THE RESEARCH FOR TOPIC 1

This research is intended to gain an understanding of what policies and measures can help to enhance the social partners' representativeness and capacity to play a role at the national level. This includes, for instance, an analysis of the incentives or barriers for workers or companies to join trade unions or employers' organizations. Also relevant are initiatives taken by the social partners to reach out to new members, to offer new services and to maintain and continue to serve their membership in order to shape the future of work. This thematic research was to try to identify the conditions that may empower the social partners and help them to figure more prominently in labour markets and in the world of work. Issues of responsibility and trust may also be explored.

As noted in Chapter 3, the decline of union density has been particularly marked among young, low-skilled workers, those on short-term contracts and those who were foreign-born. In Sweden, for instance, and in order to counteract the reduction of youth membership, some trade union federations decided to launch information campaigns at school level, and to launch a campaign targeted principally at students and young academics, while others have opened membership to the self-employed and students. In Croatia and Slovenia, for example, both trade unions and employer organizations have implemented programmes to promote the attraction and retention of members by increasing the quality of services and by providing a number of new legal services. In France, the trade unions have also developed new forms of digital support and services, and online communities.

Similarly, in Italy the trade union confederations have been implementing strategies to increase membership, targeting categories such as young people, workers in atypical employment and migrants. These strategies include both organizational measures (creation of specific departments or committees) and policy initiatives intended to increase recruitment. Innovative services are now being provided in relation to unemployment and pensions, work-related grievances, tax obligations, occupational training, welfare and health measures, but also tourist or travel packages, supermarket discounts and special insurance packages.

For its part, the employers' organization Confindustria has adopted a strategy with greater emphasis on service provision, using marketing techniques and recruitment targets assigned to territorial structures in order to expand its membership in relation to small firms.

In Greece, the four representative national employers' organizations recognized the need to expand their membership by enlarging their membership services, including legal advice, training and group insurance schemes. The General Confederation of Greek Workers (GSEE) also acknowledges this need, especially in relation to young people.

In Poland, trade unions have resorted mainly to conventional recruitment methods, using activists to reach out to workers at workplaces. In France, workers' and employers' organizations have developed practical guides to help their members adapt to the new rules of representation at the workplace, especially social and economic committees.

In Ireland, several unions – including the largest union, the Services, Industrial, Professional and Technical Union (SIPTU) and the retail workers union, MANDATE, and Forsa, the public sector union – have established organizing departments to increase membership, including targeting particular groups, such as young people and immigrants, in specific sectors (for example, hotels).

In countries with low trade union and employer organization membership, such as the Baltic states (see Chapter 17 in this volume), the social partners have also implemented specific programmes. For instance, in Estonia the trade union confederation (EAKL) has developed an action plan to increase its membership using various means, such as analysis of jobs and sectors that are not yet unionized and specific actions targeting students in vocational schools. The Estonian Employers' Confederation (TKL) has successfully implemented a strategic plan intended to diversify its membership, with a special focus on information technology (IT) companies, both large and start-up, and firms that are representative of the new economy.

The membership and attractiveness of social partner organizations are also influenced by the overarching industrial relations environment and their capacity to shape labour market outcomes through social dialogue and consultation processes. Therefore, the project also analyses what opportunities social partners have to play an active role in the governance of the world of work, including through collective bargaining, consultations on social and labour policies, and participation in labour market institutions.

Chapter 2 reveals that such capacities of the social partners vary across EU member states. Also, it illustrates that national industrial relations systems (including predominant level of collective bargaining, coordination and articulation between levels, scope of agreements, and the respective role of the state/public authorities in regulating the labour market) affect the extent to which collective bargaining regulates working conditions. In Belgium, the support of the two sides of industry for a highly centralized and strongly coordinated multiple-employer bargaining regime explains the high collective bargaining coverage rate. Similarly, in Spain there is effective articulation between the various levels of collective bargaining, which also explains the resilience of the Spanish industrial relations system. The existence of extension mechanisms, according to Chapter 2, also may have played a role in maintaining a high union density and high employer affiliation rates in Belgium, as in the Scandinavian countries, which frequently apply extension mechanisms. This seems to have increased the social partners' impact on labour market regulations (see Chapter 3). Also, the extension mechanisms might lower the willingness of social partners to engage in autonomous social dialogue at local level and to sign collective agreements (see Topic 2). As highlighted in Chapter 2, only powerful employer organizations and trade unions with a large membership can guarantee social partner independence, and their capacity to regulate the terms and conditions of employment, and influence policies affecting the world of work. The high collective bargaining coverage in Italy and Spain are owed mainly to their willingness to conclude collective agreements at industry level.

The effective involvement of employers' and workers' organizations, together with government, in national tripartite social dialogue and high-level partnership and negotiations also represents an important tool that enables social partners to influence decision-making and policy formulation and implementation, thus enhancing their legitimacy, strength and representation structures at lower levels (Molina 2008); and even more so if the partnership and negotiations lead to national agreements or pacts that define macro-level guidelines and policy objectives, as well as directions for lower-level initiatives in relation to the governance of the world of work. As a recent example, in the context of the Covid-19 pandemic, national tripartite consultations and agreements set the stage for lower-level bipartite social dialogue and negotiations (sector and enterprise levels), for example, in the Czech Republic, Denmark, France and Italy (see Box 1.2).

However, tripartite social dialogue can be less effective if it is too formal and does not foster concrete negotiations and outcomes at lower levels. For instance, in many central and eastern European countries, tripartite social dialogue and bodies that often generated tripartite agreements and sometimes served as a basis of for collective agreements, concluded subsequently at the industry and company level (as in Hungary and, to some extent, in Romania) and have progressively become merely advisory and relegated to consultative processes with less impact on macro and labour market policies

BOX 1.2 ITALY

A tripartite 'Joint Protocol for the regulation of measures to combat and contain the spread of Covid-19 at the workplace' was signed on 14 March 2020 between the Government and the social partners. The Protocol is to be implemented in all companies and workplaces involving the participation of workers' representatives.

The Protocol contains 13 action points, including social safety nets, smart working arrangements and overall measures aimed at maintaining economic activity, while ensuring a safe working environment. It also calls upon the social partners to further specify these measures by industry/sector. Questions such as paid leave are to be the subject of collective bargaining. On this basis, on 24 March 2020, following trade union demands, Italy's banking sector employers and trade union associations signed a new collective agreement containing measures tailored to the needs of banks and their employees, such as on opening hours and customer appointments. Furthermore, several companies and trade unions have concluded agreements on a number of measures related to temporary closure of plants, suspension of production, and the like.

Source: ILO (2020) and TUAC, the latter accessed 1 June 2021 at <https://tuac.org/news/covid19-crisis-mapping-out-trade-union-and-social-partners-responses/>.

(Eurofound 2019). The chapters in this volume show that social partners in a number of central and eastern European countries and in the Adriatic region see the potential to improve the functioning of tripartite social dialogue bodies and consultation processes so that they could have a real impact, which would also lead to greater involvement of social partners in decision-making.

3.2 Topic 2: Supporting Social Partner Autonomy

This topic was motivated by the social partners' concerns that insufficient room was left for the development of autonomous social dialogue, notably owing to over-intervention by the state, including excessive legislative provisions. As explained by Bernd Waas in Chapter 3 of this volume, both international and European law contribute to protecting and guaranteeing the social partners' autonomy. The value of autonomous social dialogue between workers and employers and their respective organizations has been underlined by the Organisation for Economic Co-operation and Development (OECD 2019), according to which the quality of the working environment appears to be higher in industrial relations systems with powerful and autonomous social partners, associated with high collective bargaining coverage. Despite the challenges facing the social partners in many countries owing to the decline in membership and the undeniable difficulties facing collective bargaining, as documented in Chapter 2 and in most country reports in this volume, autonomous social dialogue and collective bargaining remain a flexible instrument that could play an important role in helping enterprises and workers adapt to the changing world of work (OECD 2019). While claiming their autonomy, however, the social partners agreed that government had an important role to play to provide the necessary framework and thus to stimulate autonomous social dialogue. However, as highlighted by many ministers in this volume's foreword, the government can either foster or hinder autonomous social dialogue, depending on the nature and focus of its intervention in industrial relations.

BOX 1.3 SCOPE OF THE RESEARCH FOR TOPIC 2

This research is to assess what 'space' is left or created by government, regulations and social dialogue institutions for the social partners to shape working conditions autonomously, including by bipartite social dialogue and collective bargaining at national, sectoral and company levels. Some social dialogue practices will be analysed, such as social dialogue institutions (for example, social and economic councils or specific bodies, for example, concerning OSH [occupational safety and health] or vocational training), tripartite agreements and other institutions (including extension mechanisms, derogation clauses), as well as their respective impacts on social partner autonomy.

This topic is very much related to the first topic in that increased room for autonomous social dialogue can help the social partners to expand the scope of their intervention, enhance their legitimacy and improve their attractiveness to potential new members.

The thematic chapter that covers this issue (Chapter 3) discusses the respective pros and cons of three types of mechanisms for further developing autonomous social dialogue. First, extension mechanisms³ (which allow extension of the benefits of an agreement to enterprises or workers that originally were not among those signing the agreement; and add the possibility of derogating by collective agreement from the law): while these mechanisms can help to extend the coverage of collective agreements and thus somehow compensate the possibly declining influence of trade union's presence in all individual sectors and enterprises, as we saw for topic 1, they do not incentivize those same organizations to increase their sphere of influence in order to be able to sign agreements at all levels. They may thus hamper recruitment of new members in the long run. There is also the argument that is put forward, for instance, in the chapters on Poland and France that *erga omnes* clauses do not encourage workers to join trade unions since they already benefit from collective agreements signed by the unions. The second mechanism is derogation clauses (which allow parties signing a lower-level agreement to agree on standards or conditions that may be less favourable than the original upper-level agreement): while negotiations on these derogation clauses may stimulate social dialogue and collective bargaining at the lower level, particularly to match local conditions, they may also be counterproductive because they undermine the upper-level autonomous agreement that was concluded by social partners in the first place and thus erode members' trust in these organizations and in their capacity to ensure the implementation of agreements they sign.

Finally, as explained by Waas in Chapter 3 in this volume, the tripartite institutions and agreements that exist in many European countries – involving the government, and national confederations of trade unions and employers' organizations – may also influence autonomous social dialogue in different ways. By providing a more general framework, they can, first, encourage decentralized negotiations and collective agreements to implement the framework. This can result in a type of virtuous relationship as national tripartite agreements could be complemented by sectoral, regional and enterprise collective agreements. The feedback from this decentralized social dialogue and negotiations can then provide useful elements for enriching and improving the national social dialogue processes and frameworks. Second, tripartite institutions and agreements can provide the social partners with an opportunity to participate in the decision-making process, and

thus influence national policies on, for instance, the labour market or social protection, pension reforms, skills policies and so on. This can then give them legitimacy for autonomous social dialogue at more decentralized levels. Also, it can further enhance the social partners' role and zones of influence, which can then be a driver for higher membership and help the social partners to become more representative at local level. In a number of countries, tripartite institutions have separate sub-bodies where bipartite social dialogue takes place and where the social partners agree, for instance, on joint recommendations or plans of action that they then bring to government's attention or enshrine in a collective agreement.

However, if tripartite mechanisms are unable to produce positive outcomes or allow the social partners to exercise real influence on public policies and reforms, they can have the opposite effect. That effect is the weakening of the social partners' capacity and legitimacy as regards autonomous social dialogue, while also generating a general disillusion among members who expect improvements in their daily working and living conditions as a consequence of the participation of the social partners in tripartite mechanisms.

As for extension mechanisms, tripartite institutions and agreements can lead the social partners to concentrate their resources to exert influence at the national level, while investing less in their capacity to engage in autonomous social dialogue at lower levels. Government interference in autonomous social dialogue can also play a role. The last financial and economic crisis saw multiple instances of this type of government interference, for instance, in Greece, Romania and Spain, with unilateral decisions by public authorities on the regulation of collective bargaining (for example, the renewal of collective agreements and decentralization of collective bargaining, notably in Greece but also in Romania) and on the reform of industrial relations systems in general. This can restrict social partner autonomy: in Greece, for example, there was a 75 per cent decline in collective bargaining coverage,⁴ while in Romania, the coverage fell from 100 per cent prior to 2011 to around 23 per cent in 2016 (chapter on Romania in this volume). As shown in the chapter on Poland, detailed regulations are often perceived by social partners, in particular employers, as a factor limiting collective bargaining. In Latvia, both the Confederation of Employers (DDK) and the Free Trade Unions Confederation of Latvia (LBAS) are keen to achieve more agreements in different sectors, a desire seemingly thwarted by the over-regulation of the labour market, according to the DDK. This is in contrast with the situation in Sweden where a significant space is left to social partners by the legislator, which led to the development of a strong bipartite social dialogue and a number of bipartite agreements.

Not all state interventions are counterproductive and restrict autonomous social dialogue. On the contrary, when these interventions are appropriate and timely they can boost collective bargaining, as shown by the Labour Ordinance No. 2017-1385 of 22 September 2017 on collective bargaining in 2017 in France, which opened up a new space for company agreements on, for instance, teleworking. Other examples are the change in the labour law on overtime in Latvia that enabled the social partners to sign the first collective agreement in the construction sector, and the law (No. 81/2018) on the regulation of teleworking in Romania, which helped to promote collective bargaining in relation to digitalization, as shown by the agreement on occupational training concluded by the social partners in the banking and insurance sector. One objective of the latter

agreement was to enhance employees' ability to use remote working and collaboration by means of digital tools (see the chapter on Romania, in this volume). In Germany, the government is planning to introduce an opening clause for the Working Time Law to allow the social partners to test innovative and flexible working time models to cope with the extensive changes triggered by digitalization. The example of Germany is interesting because the state has implemented a series of measures to counteract the decline of multi-employer bargaining (see the chapter on Germany in this volume). The government can also encourage autonomous social dialogue through the reflection of outcomes of bipartite agreements in legislation or other policy measures. For instance, in Belgium the government supported the implementation of the content of the 2017–18 inter-professional agreement intended to improve sustainable mobility (Eurofound 2019).

These three social dialogue mechanisms are thus not neutral in terms of social partners' capacity and legitimacy in developing autonomous social dialogue. This may explain why the social partners sometimes disagree on the direction and position to be taken on these mechanisms, for instance extension mechanisms. In this regard, we supplemented the thematic and country reports with a survey to collect social partners' opinions about the effectiveness and impact of national social dialogue institutions, including their capacity to stimulate autonomous social dialogue. The results are presented in the final section of this chapter.

3.3 Topic 3: The Role of the Social Partners in Relation to Digitalization

The social partners play an increasing role in addressing the potential employment effects (on both the level and structure of employment) brought about by the digital revolution and a possible substitution of labour by capital. This can take place, first, at the macroeconomic level, notably through tripartite social dialogue to discuss issues, such as the macroeconomic strategy, industrial policies, tax policies and pension reforms, skills policies, active labour market policies and so on, and then at the micro level, with the discussion of work reorganization and production processes – including restructuring and downsizing – at the firm level. In this respect, interesting initiatives have been launched by the social partners in Sweden and Germany to address the digital revolution, such as Industry 4.0 or digital agendas, followed by firm-level discussions and negotiations.

In the past few years, EU-level social dialogue has been rich, involving social partners in individual sectors making statements on the impact of digitalization on the economy, for instance, for insurance, banking or chemicals (see Table 4.3 in Chapter 4 for the whole list). At cross-industry level, digitalization was included as one of the six lines of work of the European Social Dialogue Work Programme 2019–2021. As a consequence, a European framework agreement on digitalization was concluded in March 2020 whose clauses are to be implemented at national level. No doubt this framework agreement will feed and stimulate the social partners to conclude more specific agreements at national, sectoral and firm level in individual countries.

Skills upgrading and reskilling through training for the digital economy is also a need that the social partners help to meet, for instance, by being involved in the policy discussions and decisions on the forms and funding of these training policies and programmes.

BOX 1.4 SCOPE OF THE RESEARCH FOR TOPIC 3

While there are many studies on the subject, there is little on the role of the social partners, especially against the background of new questions in response to new forms of digitalization. This thematic research focuses on the role of the social partners in addressing digitalization at company level. Examples of social dialogue practices will be presented in the areas of working time flexibility, work-life balance, upskilling, workers attraction or retention, job transition and working conditions (such as workers' well-being at work and health and safety, including psychosocial risks). It addresses aspects of the digital transformation and digital organization of work, as well as their impact on social dialogue. Online platforms are only one new form of work organization – for the time rather limited – that will also be investigated alongside other trends in work organization and digitalization.

They could then take up at a lower level, for instance, the sector of activity and the enterprise on training strategies for restructuring or mobility purposes. Here again, social partner initiatives and policies to foster digital skills and lifelong learning are reported in countries such as Germany, Latvia, Sweden and Denmark.

Another area that some social partners are working on is the growing diversity of forms of employment, including those facilitated by new digital technologies. The emergence of jobs delivering services through platforms, although still accounting for less than 5 per cent of total employment, is an important example as they often involve the splitting of production processes into simple tasks, for example in online services or urban transport or delivery that are carried out by various own-account workers. In some instances, platform workers may share some characteristics of employees and some of self-employed persons, so determining their employment status may not always be straightforward; this has implications for the extent to which they are covered by labour regulations and social protection systems.

The social partners are also reaching agreements addressing labour protection issues stemming from the emergence of these new forms of work that have made it possible to enlarge social protection coverage to workers in digital platforms, as well as to those in temporary employment and dependent self-employed, as we saw for different European countries in previous publications (Vaughan-Whitehead 2018, 2019).

The introduction of new technologies can help the social partners to reduce hazards and better manage OSH-related risks (for example, by using robots for hard and dangerous tasks). Also, new OSH risks that may be brought about by digital technologies, either because of workers' loss of control over the production process, as the speed and order of tasks are decided by digital devices, or owing to increasing anxiety brought on by the uncontrollable work pace and/or reduction of privacy, can also be addressed through social dialogue. The blurring of the division between work and private life and modalities of telework are issues addressed and discussed by social partners. While old health risks may disappear with the introduction of new technologies, new health risks may emerge, such as musculoskeletal disorders (for example, carpal tunnel or tendonitis), fatigue and eye strain owing to excessive or intensive exposure to display screens, or, as explained in Chapter 4 in this volume, new types of risks brought about by the interaction between humans and robots.

In relation to topics covered, collective agreements that deal with these issues generally include arrangements on telework, or the adoption of new technologies, as in Spain. In Italy, they often concern the occupational impact of digitalization on job destruction and employment shifts. For example, in the Italian postal sector in 2017, a national collective agreement on mobility made it possible to reduce the closure of post offices brought about by the reduction of domestic and international postal services and the shift from letters to digital mail. Other agreements concerned investments in Industry 4.0, the legal status of digital platform workers, individual and collective rights and protections and the effects of the new information and communication technologies (ICTs) on workers' privacy. Also of note are, for instance, innovative agreements at the territorial level in Italy signed by institutional trade unions, workers' autonomous collectives and the management of a few platform companies in the food industry. They cover minimum wages, working time and other working conditions. Sweden also offers a series of very interesting collective agreements in platform companies in diverse sectors, such as transport and education (see Chapter 4 and the chapter on Sweden in this volume). Interestingly, a number of collective agreements, for instance in Denmark but also in Portugal, are proposing training programmes to better prepare their labour force for digital transformation (again, see Chapter 4). Some collective agreements, for instance in Germany, have also addressed the issue of employee data protection.

We should emphasize that collective bargaining is not the only tool that social partners use to address digitalization. Both trade unions and employers' organizations are involved in various initiatives, for example, monitoring the introduction of new digital technologies and compliance with labour standards, extending their activities to sectors in the new economy, and participating in training schemes and in various committees and advisory groups at different levels of digital innovation. It is interesting to note that digitalization, and the use of IT platforms, represent important leverage for the social partners to extend their activities, increase their sphere of influence and reach new members.

Social partner roles and social dialogue on digitalization differ across European countries. This may also reflect a different level of exposure thus far, to robots for instance, as shown in Chapter 4 in this volume, with around 1300 robots per 10 000 workers in Germany and France, compared with only 200 in Poland and other countries. This degree of exposure itself reflects national economic structure: the automobile sector, for instance, is directly affected by robotization. Similarly, the lack of exposure to digitalization in the candidate and potential candidate countries explains why the actions and negotiations of their social partners continue to be focused on traditional issues such as wages and employment.

While providing useful examples of initiatives on the above-mentioned items, Chapter 4 also highlights issues that do not seem to have been dealt with very often. Surprisingly, the representation of new workers related to the digital revolution (freelancers, dependent self-employed and subcontracted workers) seems to be among those. It is interesting to see the format used thus far, with agreements on these issues predominantly at enterprise level, while sectoral bargaining has been used only sparsely.

Collective agreements on digitalization – for instance, in Spain – also seem to prevail in large, multinational corporations operating in highly competitive global sectors, and are rare among small and medium-sized companies.

In summary, it seems that the social partners are facing a challenge covering these newly emerging issues, sometimes owing to lack of time or of technical capacity within their organizations. In Germany, for instance, it became apparent from the interviews that ‘digitalization is exacerbating the overload of works councils’ (Chapter 4, s. 3.2.2, in this volume). On the employers’ side, we should highlight the low propensity of new digital firms to join traditional employers’ associations (see Chapter 4).

The timing seems also to be relevant: Chapter 4 insists that, to date, social dialogue at national level has mainly discussed the consequences of technical change *ex post*, instead of trying to develop anticipatory measures.

3.4 Other Topics Reported by National Employers or Trade Union Organizations

The interviews with national employers and trade union organizations also helped to identify other issues on which the social partners are increasingly active. Labour migration is a topic of increasing interest among the social partners. Trade unions in countries such as Spain and Ireland have launched campaigns to improve immigrants’ working conditions.

In Poland, labour migration is a concern for both employers’ and workers’ organizations, though for different reasons. Both social partners would like the state to create a space for social dialogue and consultation on this important issue for Polish society and the economy. Current challenges include the protection of migrant workers against abuses (the main concern of trade unions) and labour shortages (the main concern of employers’ organizations). In Sweden, the social partners took up the issue of the integration of migrant workers and concluded an agreement on this issue.

A number of chapters in this volume – for instance, that on Turkey – also mention the development of global supply chains, that is, which social partners would need more knowledge and a greater capacity to integrate the relevant workers and employers at the different stages of the supply chains in their activities and social dialogue.

3.5 The Need for a Comprehensive Social Partners’ Strategy

We must emphasize that while the three topics have their own logic and contents, they are very much interrelated in many respects. For instance, the social partners’ capacity to attract new members and increase their membership and representativeness (Topic 1) will clearly depend on their success in reaching concrete and effective outcomes through social dialogue, consultative processes and collective bargaining, which boost their legitimacy (Topic 2). The reverse is also true: opportunities to play a stronger role in the governance of the world of work and in shaping labour markets, including on topics such as anticipating, accompanying and monitoring the trends and effects of digitalization (Topic 3), migration, the rapid development of global supply chains, opportunities and challenges brought about by the growing variety of work arrangements increase the capacity of the social partners, and help them retain and attract new members.

4. THE ROLE PLAYED BY NATIONAL SOCIAL DIALOGUE INSTITUTIONS: SURVEY RESULTS

In the interviews carried out within the framework of this project, the social partners often emphasized the role of national social dialogue institutions as platforms for policy concertation on issues of national relevance. They thus provide an important framework for further bipartite social dialogue and collective bargaining rounds at lower levels, namely, the sector, region or enterprise.

To complement the experts’ thematic and national reports, we carried out a survey among the national social partners in selected European countries to collect their views on the role and impact of national social dialogue institutions, and their capacity to enable them to respond to the current and future challenges and opportunities brought about by a changing world of work.

The survey targeted the representative employers’ and workers’ organizations in the 27 EU countries plus candidate and potential candidate countries, making 34 countries in total. We received 41 answers to this questionnaire from both employers’ and trade union organizations (22 trade unions and 19 employers). The information collected is interesting. First, it helped us to better understand the complex landscape of these social dialogue institutions, which are generally tripartite in nature and take the form of a tripartite council, committee or board (this format was confirmed by 85 per cent of respondents), and specialized committees, such as on vocational training, wage setting and health and safety issues (reported by 86 per cent of respondents) (see Figure 1.2).

In a number of countries, there are also social dialogue institutions that are more bipartite in nature, omitting the government (reported by 39 per cent of respondents). While the social dialogue institutions are generally composed of the three main sides (the

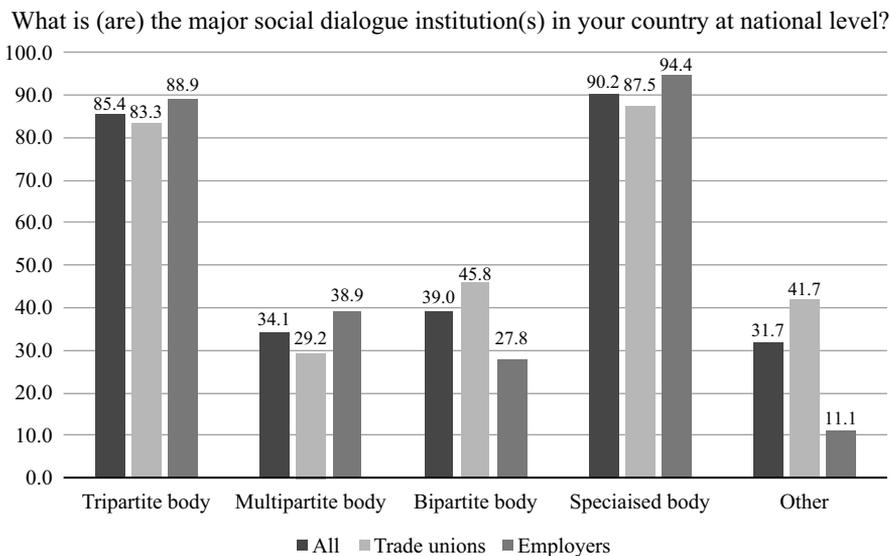


Figure 1.2 Major social dialogue institutions

government, trade unions and employer organizations), they have also been extended in some instances to other organizations, for instance, those from civil society (reported by 36 per cent of respondents). The feedback from trade unions and employers was similar, because they both selected tripartite bodies and specialized committees as the prevailing institutions of social dialogue at national level, with the slight difference that a higher percentage of employers reported tripartite and multipartite bodies, while a higher percentage of unions reported bipartite social dialogue, as did other institutions, such as the social security management committee in Belgium, the Medical Insurance Council in France, the Work-related Accidents Fund in Greece, sectoral committees in Poland, ILO councils (as in Sweden or Hungary) or social and economic councils (Luxembourg, Italy and others).

We then asked respondents to report how much they felt that these institutions allowed them to be involved and exert influence on a number of issues. Figure 1.3 summarizes the results, and highlights their feeling that these institutions mainly helped them to be fully or largely influential (58 per cent in total) in areas such as social dialogue and collective bargaining. Other topics include social protection (unemployment, social security and pensions) and health and safety issues (47 per cent reporting a large or full influence), thanks to a number of specialized tripartite committees on these issues. Wages are another traditional area in which tripartite institutions help social partners to make themselves heard (43 per cent rated this influence as substantial), and in particular the adjustment of the statutory minimum wage. More recently, the social partners have increasingly been involved in labour market policies and regulations, over which 43 per cent of respondents declared that they have a big influence, with 40 per cent claiming a big influence over skills development and training programmes.

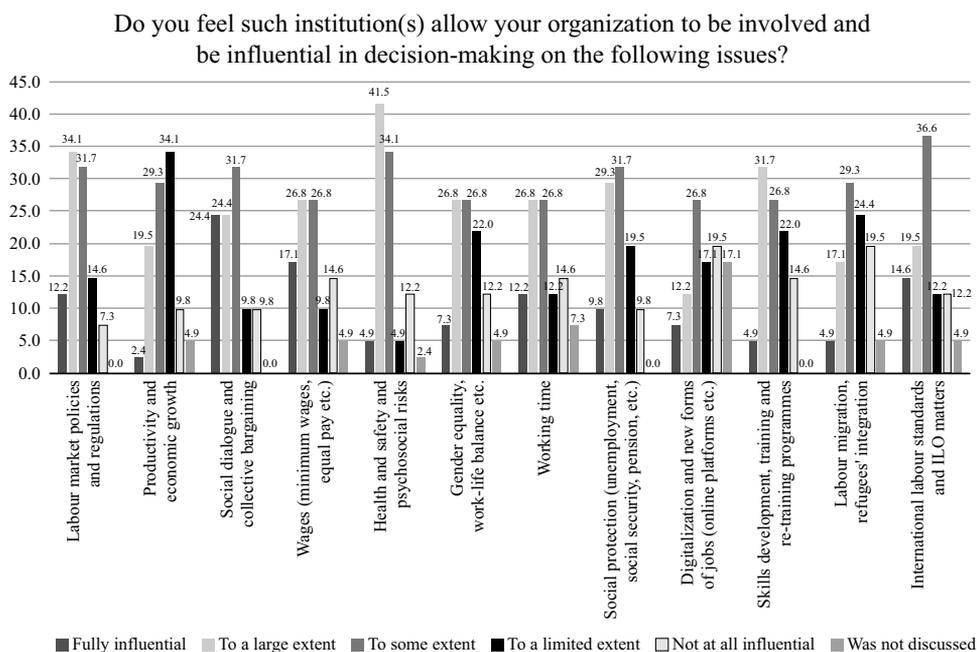


Figure 1.3 Issues on which social partners report having most influence

The influence of these social dialogue institutions was also rated as important by at least 40 per cent of respondents in areas such as gender equality and work–life balance, as well as working time.

Social partners have different perceptions of the areas in which this social dialogue allows them to obtain more influence: for employers' organizations, it is mainly in the areas of productivity and economic growth, skills development and also gender equality, while trade unions look more favourably on national social dialogue institutions to cover issues related to health and safety, wages and collective bargaining. They both reported that these social dialogue institutions enable them to influence labour market policies and regulations, as well as social protection.

Surprisingly, these institutions were felt to be less effective in the areas presented in this volume as posing challenges to the social partners. As an example, only 20 per cent of respondents felt that these social dialogue institutions were allowed to play a substantial role in decision-making on digitalization, while 40 per cent responded that social dialogue was not at all (or only to a very limited extent) influential in respect of digitalization. An additional 20 per cent of respondents also reported that this topic has never been addressed by social dialogue institutions. Perhaps in some countries there is no integrated discussion on digitalization itself but instead on specific policy areas in which digitalization may then be addressed.

Similarly, only 25 per cent reported that they were significantly involved in labour migration issues, while more than 45 per cent reported no, or only limited, influence on this topic. Less than 20 per cent felt influential on issues such as productivity and economic growth, an issue repeatedly put forward by employers' organizations. On the contrary, 50 per cent reported that they were not influential on this topic.

Another way to evaluate the effectiveness of social dialogue institutions is to look at their possible outcomes. In this respect, there were mixed results (Figure 1.4). On the one hand, a majority of respondents (nearly 70 per cent) reported that the main outcome for them was to obtain shared information, or to be part of a discussion and to have their views heard (66 per cent), but without much influence on decision-making. On the other hand, nearly 50 per cent of respondents reported that these social dialogue institutions were giving them the opportunity to influence legislation (new or amended) and policies. For nearly half of them, it was also a way to reach a consensus through the conclusion of agreements (36 per cent) or the drafting of joint recommendations, opinions or reports (for 37 per cent). Also, the influence of social dialogue institutions was evaluated as much lower in respect of ensuring the joint monitoring of these agreements (only 29 per cent), and of less value for bringing about training of members or developing the organization's internal expertise and technical capacity.

Slight differences were observed between employers' and workers' representatives. A higher percentage among trade unions reported that social dialogue enabled them to obtain or share information or to have their views heard (75 per cent among trade unions compared with 55 per cent among employers); trade unions also reported the ability to negotiate agreements (37 per cent among trade unions and 27 per cent among employers). Conversely, a higher percentage of employers (50 per cent compared with 45 per cent among trade unions) reported that it frequently enabled them to influence new or amended legislation.

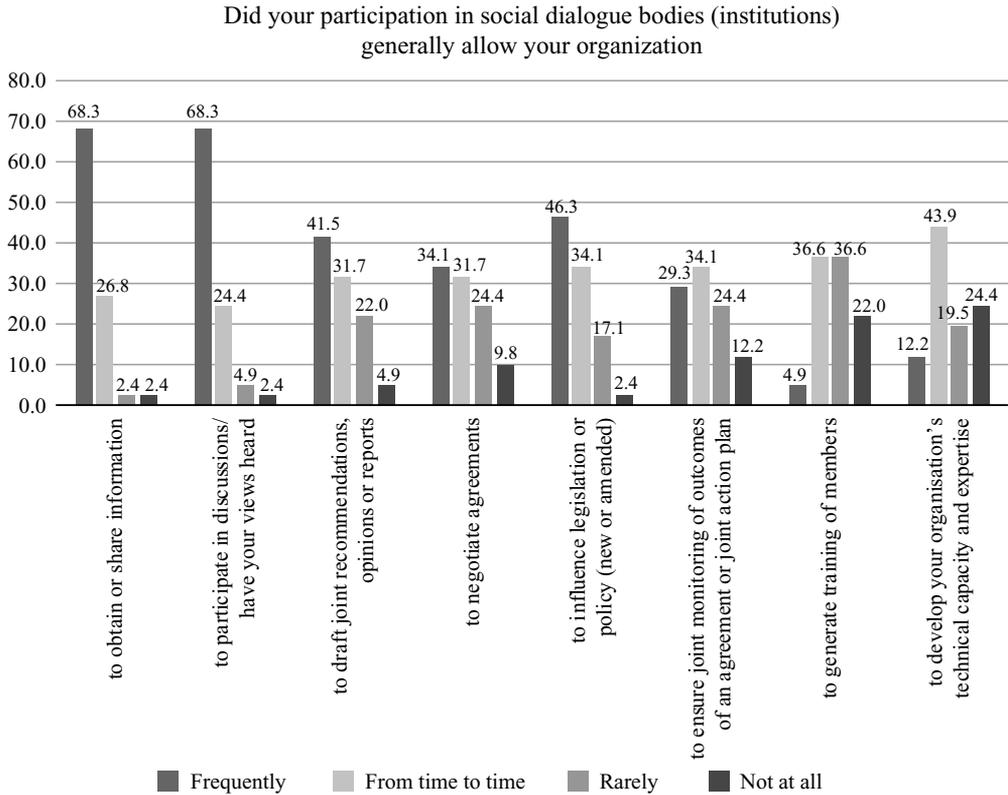


Figure 1.4 Outcomes from national social dialogue

It was also revealing to ask social partner organizations what benefits their organizations derive from their participation in social dialogue institutions (Figure 1.5). The main benefit they reported was to increase their legitimacy, together with their public profile (reported by 40 per cent). Thirty-seven per cent reported that one main benefit was to 'raise new and emerging issues', thus confirming the potential role to be played by these institutions in addressing the newly emerging challenges and opportunities in the world of work. Only 23 per cent reported that it helped to solve concrete issues. The results were also mitigated as regards the stimulation of autonomous social dialogue between employers and trade unions (a large influence was reported by only 22 per cent of respondents) and for the conclusion of collective agreements at lower level, sectoral, regional or enterprise (reported by only 20 per cent).

When questioned about the benefits for their own organization, trade unions were found to benefit more in terms of legitimacy, while national social dialogue seems to be more beneficial to employers than to trade unions in increasing their membership, albeit with considerable variance by country. A significant percentage among both types of organization (nearly 70 per cent) reported that social dialogue helped them to solve real issues. Trade unions were more convinced than employers of the capacity of social dialogue to address new issues (48 per cent of employers and 87 per cent of trade unions) or

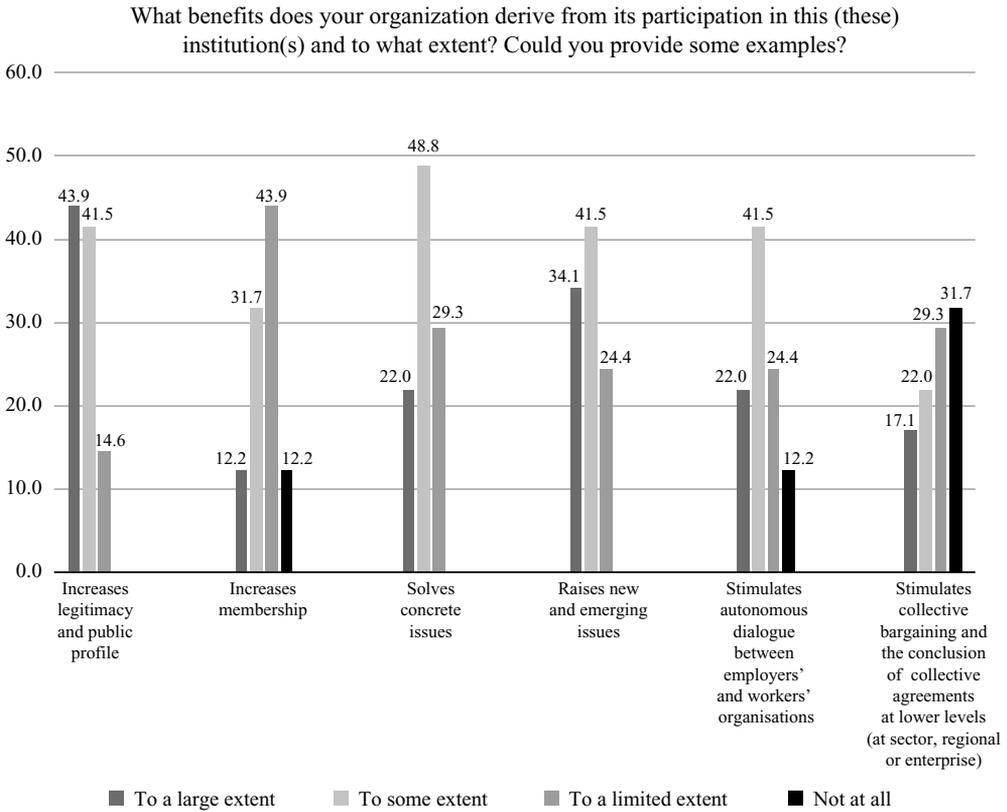


Figure 1.5 Organizational benefits for social partners

to stimulate autonomous social dialogue (75 per cent of trade unions compared with 50 per cent of employers' organizations) and collective agreements at lower level (46 per cent compared with 33 per cent).

This would suggest a need to strengthen the effectiveness of national social dialogue institutions to encourage autonomous social dialogue and would confirm the need for the government to stimulate autonomous social dialogue, as concluded in section 3.2.

This requires some changes in the way social dialogue institutions operate. Through our survey, we tried to obtain inputs from the social partners about the evolution of social dialogue institutions over the past few years and about the direction they believe these institutions should be taking.

First, it is interesting, and hopefully the sign of some dynamic movement, to observe that 37 per cent of respondents reported that their participation in these organizations has increased over the past two years, compared with 45 per cent who reported no change, and only 17 per cent who reported that their participation had decreased (Figure 1.6).

However, this outcome of increased, unchanged or decreased participation was the result of a voluntary decision for only 28 per cent of respondents, while it was owing to the government's action for 54 per cent of them (Figure 1.7). This means that the

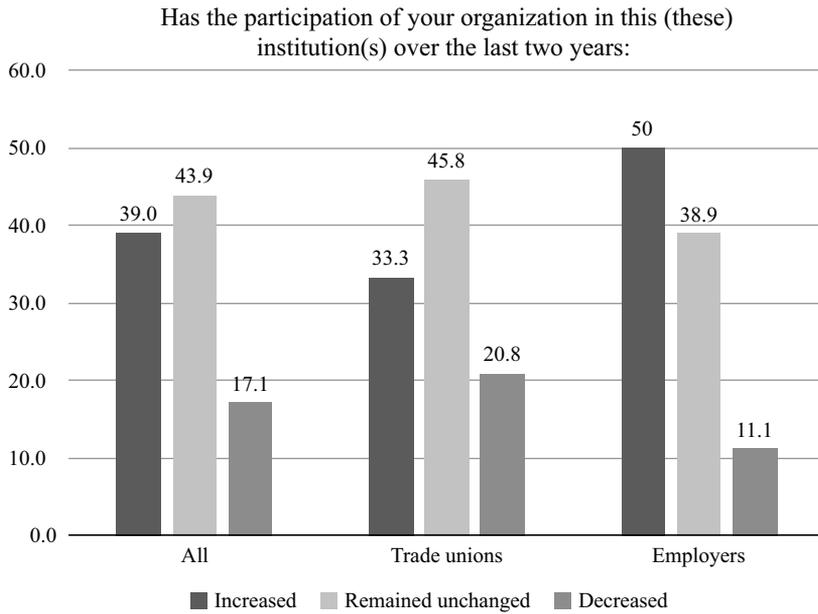


Figure 1.6 Trends in social partners' participation in national social dialogue institutions

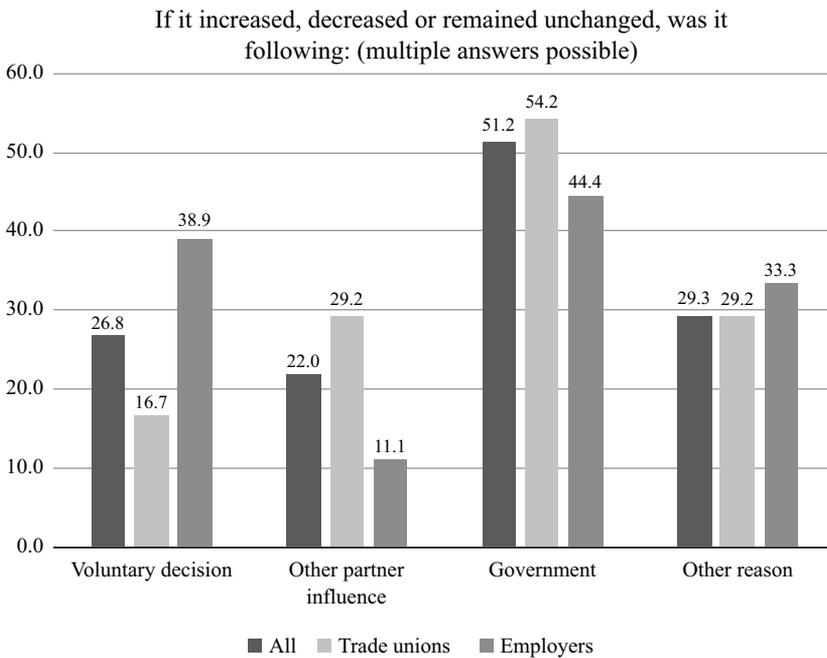


Figure 1.7 Reasons behind social partner participation trends

government could play a positive role if it fostered increased social partner participation in these institutions (as seems the case for a majority of countries). Conversely, it could play a more restrictive role if it decided to reduce social partner influence and participation in these social dialogue institutions.

The employers reported that they had increased their participation in these social dialogue institutions more than trade unions had (50 per cent of employers' organizations reported an increase compared with 33 per cent of trade unions), while more trade unions reported that they had not changed or had even decreased their participation (21 per cent of trade union organizations compared with 11 per cent of employers' organizations).

The reasons behind these changes are also revealing. For 39 per cent of employers this type of change was a voluntary decision, but was so for only 17 per cent of trade unions. Around 29 per cent of trade unions reported that their decision to participate in national social dialogue institutions had been influenced by the other partner's behaviour (11 per cent of employers' organizations) and 54 per cent reported that this decision was influenced by government behaviour, a feeling also echoed by 44 per cent of employers. The attitude of the government towards social partners' involvement in national social dialogue institutions is thus a key aspect that we further address in this volume.

When asked about how well adapted they believed these social dialogue institutions were to current and emerging issues in the world of work, the results were mixed (Figure 1.8). While 22 per cent of social partners believed all current national social

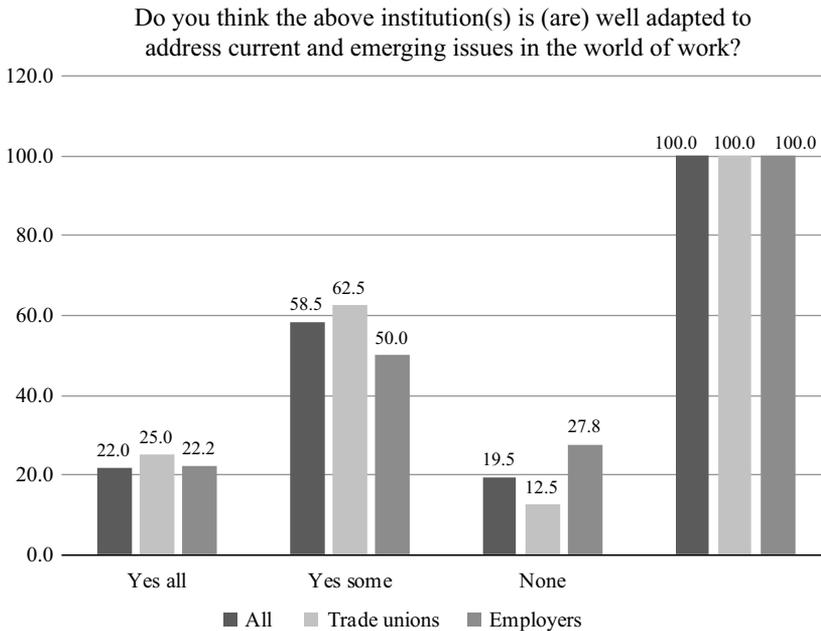


Figure 1.8 National social dialogue institutions' ability to address emerging issues in the world of work

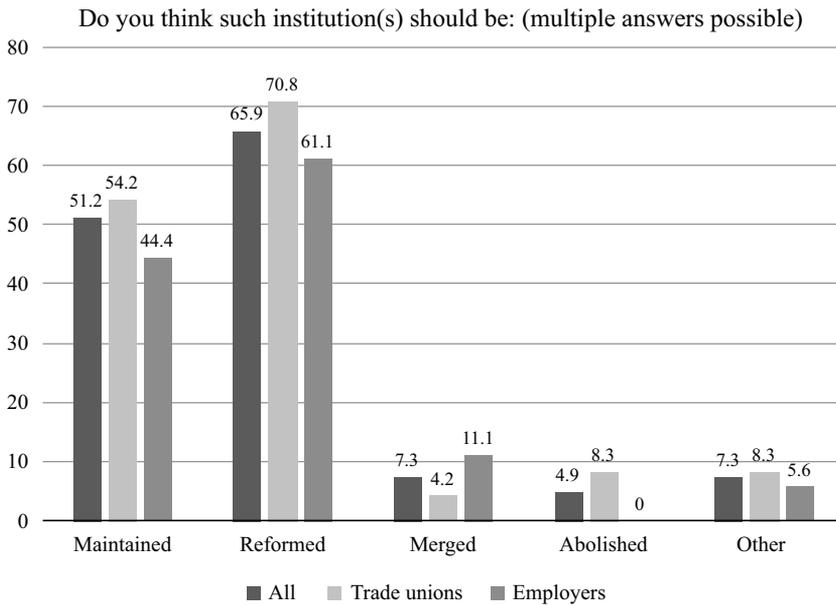


Figure 1.9 Social partner views about the possible evolution of national social dialogue institutions

dialogue institutions were well adapted, 59 per cent reported that just some of them were adapted to address such challenges in the world of work, with nearly 20 per cent reporting that none of them were up to this task, with a higher percentage among employers (more than 25 per cent of them compared with 12 per cent of trade unions). On the positive side, more than 75 per cent of both trade unions and employers believe that all or some of these institutions are adapted and fit for purpose in the context of the future of work.

While a majority (64 per cent) believe that such national social dialogue institutions should be maintained (Figure 1.9), more than 70 per cent also believe that they should be reformed, a percentage this time higher on the trade unions' side (71 per cent compared with 61 per cent among employers). Less than 5 per cent reported that these institutions should be abolished. Participants agreed that there was a need for a general evaluation of all these social dialogue bodies and how they function.

The respondents also indicated what the priorities should be for improving these institutions (Figure 1.10): in their technical capacity (66 per cent), in their mandate and scope of competences (62 per cent), in their method of functioning (61 per cent) and in their funding (reported by 54 per cent). Nearly half of the respondents also expressed the need to discuss the current composition of such institutions. Differences were observed between the social partners: priority areas to be reformed for employers include the 'technical capacity' of these institutions (61 per cent of employers), and their 'mode of functioning' (56 per cent), while the unions highlighted the 'mandate' of these organizations' (54 per cent of them; they generally believe these mandates should be extended), their 'technical capacity' (as employers), but also their funding (33 per cent

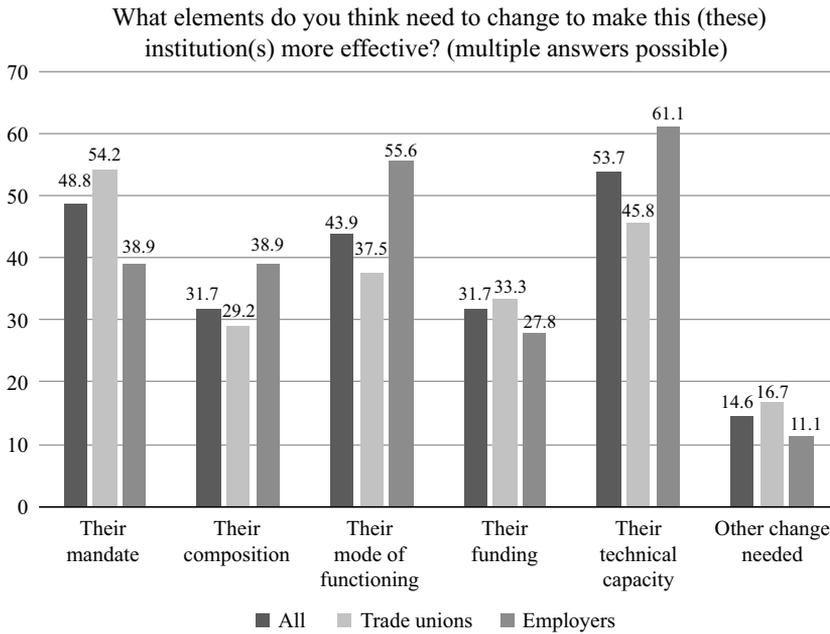


Figure 1.10 Directions in which national social dialogue institutions should be evolving

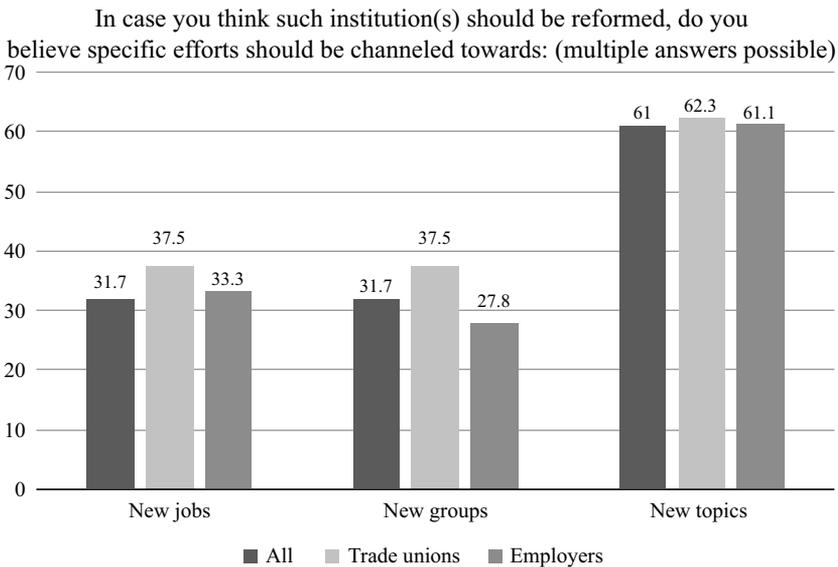


Figure 1.11 Possible directions of reform of national social dialogue institutions

of trade unions compared with 28 per cent of employers selected this category). Around one-third of respondents, both employers and workers' representatives (39 per cent and 29 per cent respectively), agreed on the need to reform the 'composition' of these institutions.

A clear majority of both trade union and employer organizations (60 per cent on both sides) agreed on the need to enlarge the range of topics addressed by these social dialogue institutions, notably to include new issues in the world of work, but also issues related to the country's general situation (climate change, demography, enterprise sustainability and macroeconomic policy) (Figure 1.11). Although this was not covered in the survey, these institutions can also play an important role in addressing the effects of the Covid-19 pandemic, which has hit European countries hard. Nearly one-third of respondents (31 per cent) also reported the need to have these institutions better cover new types of jobs and enterprises; another 31 per cent highlighted the need to have the concerns of new groups better represented in these institutions, such as young people, the disabled, the self-employed, migrants and others.

5. POLICY CONSIDERATIONS

In this introductory chapter we have presented some of the comparative inputs provided by individual thematic and national chapters concerning how to enhance the social partners' role in the new world of work. The experts' analyses, based on systematic interviews with representatives of national employers' and workers' organizations, as well as the government (generally the Ministry of Labour), often agree on the challenges and opportunities faced by social dialogue and the social partners in the changing world of work. The three items originally selected by the social partners turned out to be at the core of their current priorities. First, strengthening representativeness and increasing their membership, and within the same process, extending their sphere of influence in respect of labour market regulation and other working conditions-related issues. There were various answers to these challenges, depending on the relevant industrial relations system. Similar initiatives have been attempted by employers' and workers' organizations, as reported by the experts in this volume. Trade unions in a number of countries have put new mechanisms in place to reach new workers, such as the self-employed, those in new forms of employment and workers involved in platform services, but also migrant workers and, more systematically, young workers, with a series of activities at school or university level. On the employers' side, attempts have been made to recruit new members from small and medium-sized enterprises, including start-ups, and employers in the rapidly growing sectors of the economy, for example, IT and new technologies. Both employers' and trade unions' organizations have tried to improve the quality of their services and extend them to new areas, including through digital services.

Second, the social partners confirmed the need for sufficient space for autonomous social dialogue, and in this volume a series of mechanisms are studied in detail, such as extension mechanisms, derogation clauses and tripartite institutions and agreements. The idea is to better identify the extent to which, and how, they contribute to stimulating social dialogue and collective bargaining at different levels. In this respect, the role of governments is also studied, to better understand how they could promote autonomous

social dialogue and collective bargaining, through the creation of an enabling legal and institutional framework, without interfering with social partner autonomy. As shown, one possibility would be to transpose in the legislation or other policy measure contents of bipartite agreements concluded by the social partners – without changing these contents. To stimulate autonomous social dialogue, governments should refrain from over-regulation (which was reported as a problem in some of the countries covered in this volume) and should give the social partners space to find solutions.

Also, in complex situations, such as the current Covid-19 pandemic, the social partners, as actors in the real economy, can come together and formulate proposals to governments for measures to be taken to protect workers' jobs and income, and to promote business sustainability, as shown, for instance, in Denmark, France, Germany, Spain, and other countries (ILO 2020).

Third, digitalization is already on the policy agenda of several employers' organizations and trade unions, and several examples of social partners' initiatives – some innovative – are provided in this volume. Also, the representation of new groups of workers related to the digital revolution (freelancers, dependent self-employed and sub-contracted workers) remains a topical issue. Employers' organizations and trade unions both report that small and medium-sized enterprises, which may have less capacity to adopt technological innovations and engage in social dialogue, also require special focus. Moreover, organizations in countries that have been less exposed to the technological revolution could not progress much on that front, being driven entirely by traditional concerns such as wages and working conditions. In the countries in which the social partners are involved in these issues, their activity is sometimes in the wake of, not in anticipation of, technological change.

In a number of countries the social partners reported other issues which they are trying to focus on, such as migration, as well as tackling problems associated with the 'brain drain', how migration policy can help to meet skills gaps, and how to ensure decent wages and working conditions for migrant workers. The increasing flow of European and international trade through supply chains also means that more knowledge and monitoring of working conditions of these chains is needed, from the lead firm to suppliers and subcontractors.

The survey carried out among national social partners and presented in this chapter is in line with results presented in this volume. In particular, they confirm the mixed feedback received by the social partners about their national social dialogue institutions and, more generally, about the role played by governments in encouraging autonomous social dialogue and enhancing their participation in decision-making.

On the one hand, it is encouraging to see that a majority of national trade unions and employers' organizations favour keeping those existing institutions. On the other hand, an even larger percentage indicated that they should be reformed, for example, as regards their technical capacities, mandate and scope, their method of functioning and their funding. In relation to scope, we saw that social dialogue bodies do not provide many opportunities for the social partners to influence important aspects of the future of work: digitalization and its impact on new work arrangements, productivity and growth, but also climate change and demographics. This is confirmed by a number of chapters in this volume, which also emphasize that some of those tripartite institutions were often only consultative and provide employers' and workers' organizations few opportunities

to exercise real influence on decision-making. Our survey revealed that they rarely lead to strong outputs, such as the signature of an agreement, or to jointly defined recommendations or action plans. Even more rarely do they lead to a joint follow-up or joint implementation of work programmes or action plans. The survey also revealed that there was a need for these social dialogue institutions to be inclusive and reflect the interests and concerns of all groups of workers and employers in the labour market.

Undoubtedly, the credibility of social dialogue actors and tripartite institutions will depend on how they adjust to the new face of the world of work, and formulate adequate and innovative responses to the rapid and deep transformations currently unfolding. We hope that this research and following debates will give them ideas and inputs to address these issues and put them on their policy and operational agendas.

NOTES

1. Previous projects carried out by the ILO in cooperation with the EC led to the following publications: *Europe's Disappearing Middle Class? Evidence from the World of Work* (Vaughan-Whitehead 2016); *Reducing Inequalities in Europe – How Industrial Relations and Labour Policies Can Close the Gap* (Vaughan-Whitehead 2018); *Towards Convergence in Europe – Institutions, Labour and Industrial Relations* (Vaughan-Whitehead 2019).
2. Conference 'Enhancing social partners' and social dialogue's roles and capacity in the new world of work' organized by the ILO in cooperation with the EC, 5–6 March 2020, Brussels.
3. See Hayter and Visser (2018) for further details on the various types of extension mechanisms and their impact.
4. See Papadakis and Ghellab (2014) for further details.

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2. Strengthening the representativeness of the social partners and their institutional capacity to shape labour markets through social dialogue

Dominique Anxo

1. INTRODUCTION

From the European, institutional and historical perspectives, in this chapter we, first, analyse the development of social partner representativeness during the past three decades, and the measures undertaken by public authorities and social partners to reinforce representativeness and enhance the legitimacy and effectiveness of social dialogue. Second, we assess the social partners' capacity autonomously to shape terms of employment and working conditions, and to influence public policies. Social partner representativeness and their capacity to shape the world of work vary significantly across the European Union (EU) member states and are related to the specific features of the national industrial relations system. We therefore start this chapter by identifying the main features and transformations of industrial relations systems and social dialogue during the past 30 years in Europe.

Special focus is put on the respective roles of the state or public authorities and the social partners in regulating the labour market and the dominant types of collective bargaining systems (centralized or decentralized, sectoral, cross-industry, industrial or company level, scope of agreements, collective bargaining coverage, and tripartite consultation mechanisms). The aim is also to identify the main trends in industrial relations systems and social dialogue in Europe since 2000 and the extent to which we can see some convergence or divergence in those systems. We are also concerned with the development of the power relationships between the state and the social partners in the regulation of the labour market and the world of work.

Analysis of the institutional and legal framework surrounding and characterizing national industrial relations systems and its development over time will enable us to identify the obstacles hindering the development of constructive and effective social dialogue based on powerful, representative and autonomous social partners able to play an essential role in shaping working and living conditions. In our analysis of the relationship between industrial relations systems and social dialogue, special emphasis is put on extension mechanisms, derogation possibilities, tripartite agreements and their respective impacts on social partners' roles.

According to recent empirical evidence (see OECD 2019; Vaughan-Whitehead 2018), employment performance and job quality are positively correlated with a specific type of industrial relations system, characterized by powerful and independent social partners playing a crucial role in the development of labour market norms or standards and the shaping of working and living conditions. Centralized and coordinated two-tier, multi-employer, collective bargaining systems that leave room for self-regulated and organized decentralization and are characterized by high collective bargaining coverage and high union density, together with balanced bargaining power between the two sides of industry, not only seems to favour earnings equality and social cohesion, but also to deliver better outcomes for employment, economic and productivity growth. As also shown by the Organisation for Economic Co-operation and Development (OECD 2019), the quality of the working environment appears to be higher in industrial relations systems with powerful and autonomous social partners and with, on average, a high coverage rate of collective agreements. Therefore, social partner governance of the labour market not only seems to better conciliate economic efficiency and social justice, but is even better adapted to providing an effective and fair response to the challenges of globalization, demographic and technological changes.

Even though social dialogue in Europe still plays a crucial role in shaping the terms and conditions of employment, its development during the past three decades shows a tendency towards an overall decline in union density, a decrease in employers' affiliation rates in some EU member states and a decline in collective bargaining coverage. That is, in recent decades there has been increasing evidence of a waning of the social partners' capacity to regulate the labour market and an increase in unilateral state intervention, with labour market deregulation leaving more scope for market forces and/or unilateral decision-making by employers on pay and working conditions. Against this background, another aim of this chapter is to identify how social partners and governments in Europe have addressed and responded to these trends, and to examine national strategies and policies launched in order to counteract the weakening of social partners' labour market governance.

This chapter is structured as follows. After a description of the main features and development of industrial relations systems in Europe (section 2), we discuss in section 3 the institutional prerequisites of developed and efficient social dialogue in Europe. Section 4 presents some proposals or strategies adopted by social partners and governments to strengthen their representativeness and understand the weakening of their ability to regulate the terms and conditions of employment and shape the world of work. The aim of section 4, therefore, is to identify measures aimed at revitalizing social dialogue and labour market governance based on encompassing collective agreements, negotiated compromises, consultations, democratic participation of workers in policy-making and constructive social dialogue in general. The final section provides some concluding remarks.

2. MAIN FEATURES AND DEVELOPMENTS OF INDUSTRIAL RELATIONS SYSTEMS IN EUROPE AND THEIR IMPACT ON SOCIAL DIALOGUE

2.1 Industrial Relations Systems in Europe: Despite Some Common Trends, Still Wide Diversity in a Small Space

Despite some common trends during the past three decades, namely, a general decline in union density and a tendency towards weakening, decentralization and fragmentation of collective bargaining, the industrial relations landscape in Europe remains diverse and no obvious patterns of convergence towards a specific model seem to be emerging. In order to provide an overarching view of the development of industrial relations in Europe and to explore the main causes of transformation, we cluster them in broad categories, according to their institutional settings. Along the lines developed by Crouch (2017), Müller et al. (2019), OECD (2019), Visser (2011, 2012, 2019a) and Vandaele (2019b), we group the various national industrial relations systems along four dimensions:

1. Representativeness of the social partners¹ (union and employer density) and their capacity autonomously to regulate the labour market and to shape the world of work. The distinctive role of public authorities, social partners and market forces in developing labour market norms and regulations, that is, the predominant types of labour market governance – market-based, state-regulated or regulated through collective agreements.
2. The main features of the collective bargaining system, in particular the predominant bargaining regime (single- or multi-employer bargaining) and the level at which collective agreements are negotiated (national or cross-sectoral and industry or firm level), that is, the extent of centralization of the bargaining system, but also the existence, or not, of a statutory or administrative extension mechanism, *erga omnes* rules,² the possibility of derogations or opting-out which affect the coverage rate of collective agreements.
3. The extent of coordination between and within social partner organizations and the articulation between the various bargaining levels.
4. The type of labour relations: the relative bargaining power of the two sides of industry, the frequency of labour disputes and conflicts in the labour market (predominately consensual versus conflictual labour relations), the level of trust between social partners, and the quality of social dialogue, in particular the relationship between public authorities and social partners (government attitudes toward the social partners).

The clustering of EU countries relies mainly on the industrial relations literature (see Crouch 2017; Müller et al. 2019; Vandaele 2019b; Visser 2011, 2012, 2019a). The data used for grouping the various industrial relations systems in broad categories come mainly from a survey conducted in 2018 by the OECD (see OECD 2019) on the main institutional characteristic of industrial relations system in OECD countries and various indicators regarding union employer density and collective bargaining coverage, based on the Database on Institutional Characteristics of Trade Unions, Wage Setting, State

Intervention and Social Pacts (ICTWSS) of the Amsterdam Institute for Advanced Labour Studies of the University of Amsterdam (see Visser 2019b).

Table 2.1 displays the country clusters according to the four industrial relations dimensions.

As shown in Table 2.1, five broad groups of countries can be distinguished between the traditional two polar cases represented by Nordic and Eastern European countries. The Nordic countries' industrial relations systems are characterized by multi-employer bargaining, industry as the main level at which collective agreements are concluded (although organized decentralization makes it possible to adapt the content of sectoral collective agreement to local conditions), a high degree of coordination, high union and employer density and high collective bargaining coverage. The Eastern European countries are characterized by single employer bargaining, with collective agreements concluded predominantly at the company level, low coordination, low union density and relatively lower employer affiliation rates, as well as low collective bargaining coverage. Most Southern European countries are characterized by centralized, but weakly coordinated multi-employer collective agreements, concluded predominantly at the industry level with frequent resort to administrative extension mechanisms and limited possibility of derogation from industry-level collective agreements. Union density is relatively low, but employer affiliation relatively high. These countries are also characterized by frequent state intervention in labour market regulation.

Our main objective is not just to describe the major developments and transformations of industrial relations systems in recent decades in Europe, but also to analyse the relationship between the type of system, as described previously, and current trends. Have some industrial relations systems shown more stability and resilience? Is the tendency towards the decentralization of collective bargaining more significant in systems that are already more decentralized and less coordinated? That is, during the past three decades have the prevailing trends of a decline in union density, the weakening of collective bargaining and the increasing role of unilateral state intervention in the labour market been more pronounced in some industrial relations systems, or have some of them been more resilient in the face of market forces (globalization and increased competition) or unilateral state regulation or intervention, or technological change (digitalization)? Are we seeing any convergence towards a specific model of industrial relations in Europe or is the industrial relations landscape, its diversity and heterogeneity, still the same despite common trends?

Analysis of the development of industrial relations systems in Europe also allows us to identify whether the social partners and public authorities are aware of the nature of the problems characterizing their industrial relations systems, and the degree of their political will to strengthen social dialogue. Hence, this analysis makes it possible to identify the policy responses and strategies, if any, implemented by public authorities and social partners to strengthen the representativeness of the two sides of industry, as well as to enhance social partners' capacity to shape the labour market in order to meet the major challenges confronting modern economies (globalization, demographic, technological and environmental changes).

The current heterogeneity of industrial relations in Europe, in particular regarding the extent of social partner representativeness and their role in regulating the employment relationship and working conditions, imply that the need for institutional reforms and

Table 2.1 *Collective bargaining systems and clustering of countries*

	Dominant bargaining regimes	Predominant level at which collective agreement are concluded	Degree of centralization or decentralization	Extent of coordination	Trade union density (%)	Employer density (%)	Collective bargaining coverage rate (%)
<i>A. Nordic and Ghent system countries</i>							
Finland	MEB	Industry	Organized decentralization	High	60-70	60-70	80-90
Denmark	MEB	Industry	Organized decentralization	High	50-60	60-70	80-90
Sweden	MEB	Industry	Organized decentralization	High	60-70	80-90	More than 90
Belgium	MEB	Industry	Organized decentralization	High	50-60	70-80	90
<i>B. Eastern European Countries</i>							
Estonia	SEB	Company	Decentralized	No	< 5	20-30	15-20
Lithuania	SEB	Company	Decentralized	No	5-10	15-20	5-10
Latvia	SEB	Company	Decentralized	No	5-10	40-45	10-15
Poland	SEB	Company	Decentralized	No	5-10	5-10	15-20
Hungary	SEB	Company	Decentralized	No	5-10	15-20	20-30
Czech Republic	SEB	Company	Decentralized	No	10-15	40-45	25-30
Bulgaria	Mixed	Industry or company	Partially decentralized	No	10-15	25-30	20-25
Romania	Mixed	Industry or company	Disorganized decentralization	No	15-20	10-15	20-25
<i>C. English-speaking liberal market oriented and company bargaining level countries</i>							
United Kingdom	Mixed	Company	Partially decentralized	No	10-20	30-40	20-30
Ireland	Mixed	Company	Organized decentralization	No	20-30	60-70	40-50
Malta	Mixed	Industry or company	Partially decentralized	No	40-45	55-60	45-50

<i>D. Southern European countries</i>									
Spain	MEB	Industry	Disorganized decentralization	Low	10–20	70–80	70–80		
Portugal	MEB	Industry	Disorganized decentralization	Low	10–20	60–70	60–70		
Italy	MEB	Industry	Organized decentralization	Low	20–30	60–70	80–90		
France	MEB	Industry	Organized decentralization	Low	5–10	70–75	90 or more		
Slovenia	MEB	Industry	Organized decentralization	No	10–20	50–60	60–70		
Croatia	Mixed	Industry or company	Partially decentralized		15–20	50–55	45–50		
Cyprus	Mixed	Industry or company	Disorganized decentralization		40–45	60–65	40–45		
Greece	SEB	Company	Disorganized decentralization	No	10–20	50–60	40–50		
<i>E. Northern and Central European countries</i>									
Germany	MEB	Industry	Organized decentralized	High	10–20	60–70	50–60		
Netherlands	MEB	Industry	Organized decentralized	High	10–20	80–90	80–90		
Austria	MEB	Industry	Organized decentralized	High	20–30	90 or more	90 or more		
Luxembourg	Mixed	Industry or company	Partially decentralized	No	20–30	80–90	50–60		
<i>F. Other countries</i>									
Turkey	Mixed	Company	Decentralized	No	Less than 5	–	5–10		

Note: MEB – multi-employer bargaining; SEB – single employer bargaining.

Source: Müller et al. (2019), OECD (2019), Vandaele (2019b), Visser (2019b) and author's calculations.

strategies for promoting social dialogue and strengthening social partners' capability to shape the labour market will differ significantly among EU member states.

2.2 Main Development in Industrial Relations in Europe: A Weakening of Social Partners' Labour Market Governance?

Since 2000, there has been a declining trend in EU trade union membership. Total union membership in 2000 was around 44 million and it had fallen to around 40 million by 2017 (see Vandaele 2019b; Visser 2019b).³ Large cross-country differences in union membership development can also be noted: the fall in membership has been particularly pronounced in Eastern Europe but much less marked in the Nordic countries. In a limited number of member states, membership has been stable (Spain) or has increased slightly, as in France and, more significantly, in Belgium, Luxembourg and Italy.

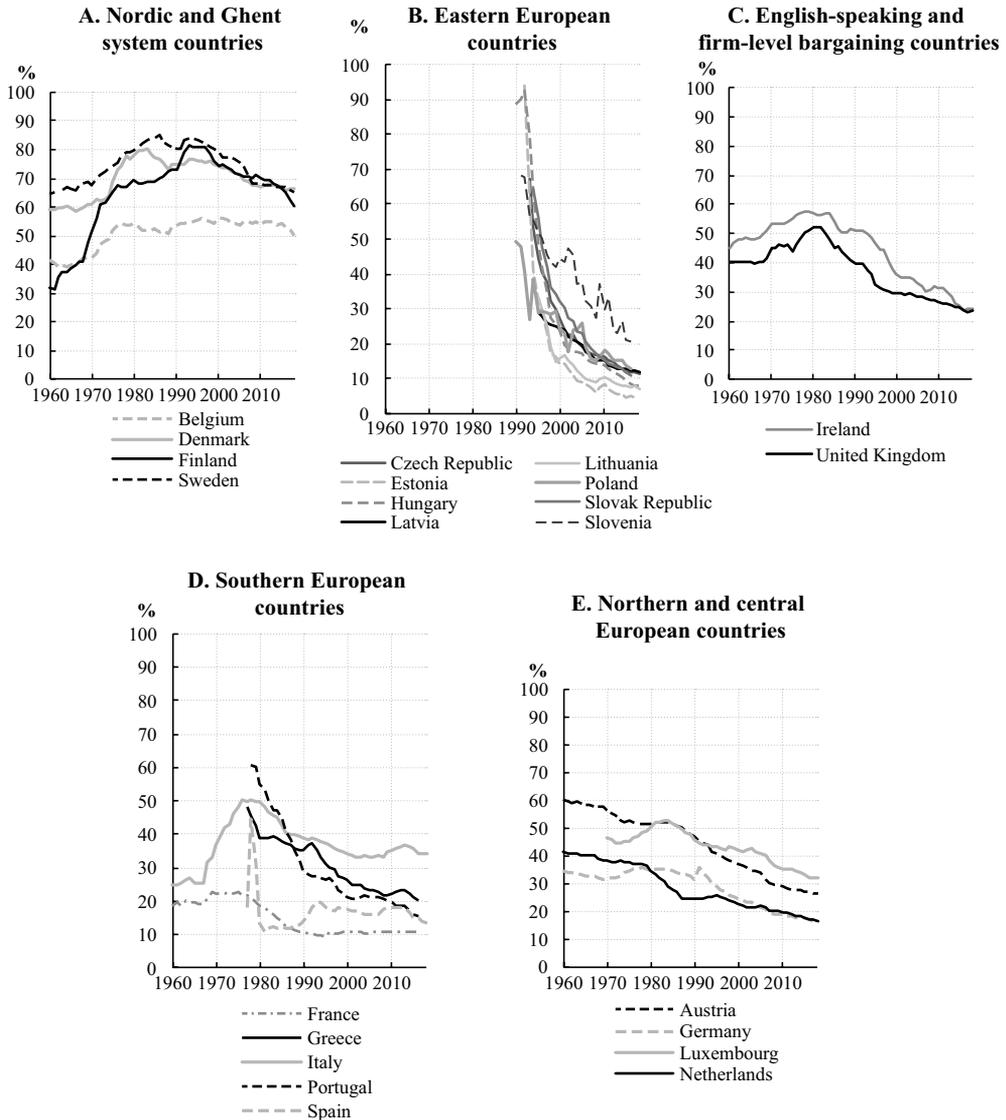
Looking at the development of union density in the EU as a whole we see generally the same tendencies. The overall rate of union density went from around 26 per cent in 2000 to 21 per cent in 2017. As shown by the OECD (2019), the fall in union density can hardly be ascribed only to demographic changes affecting the age composition of the labour force or to the employment structure (for example, the decline of employment in manufacturing or the public sector owing to deregulation, privatization and/or budget consolidation and the growth of private services) or the growth of small and medium-sized enterprises, which are less willing to permit unionization or become members of employer federations. Furthermore, recent empirical evidence for OECD countries (OECD 2019), does not seem to confirm that the decline in union density is linked to a declining propensity to unionize across generations, but instead testifies to a transformation of the world of work (increased duality in the labour market owing to the increase of marginal part-time, short-term contracts, solo and/or bogus self-employment, temporary agency jobs and platform work). For example, in the EU young people's trust in trade unions is on average higher than among adults (see Figure 2A.9 in the Appendix to this chapter).

Looking at the collective bargaining coverage rate for the EU as a whole, around 45 per cent of workers were covered by a collective agreement in 2017 (representing around 115 million workers) concluded at the national, industry or company level. This indicates the central role of collective bargaining in the regulation of pay and working conditions in the EU (see Visser 2019b). Declining union density in Europe has been accompanied by a reduction in the share of workers covered by collective agreements, but as this decline in coverage rates has varied across EU member states.

It is interesting to note (see Figure 2A.7 in the Appendix) that, despite these common trends, countries' rankings regarding union density and coverage rates has remained almost unchanged. The distance between countries with high coverage rates and union density and countries with low density and coverage rates remains the same, implying some stability in the industrial relations landscape in Europe and some form of path dependency.

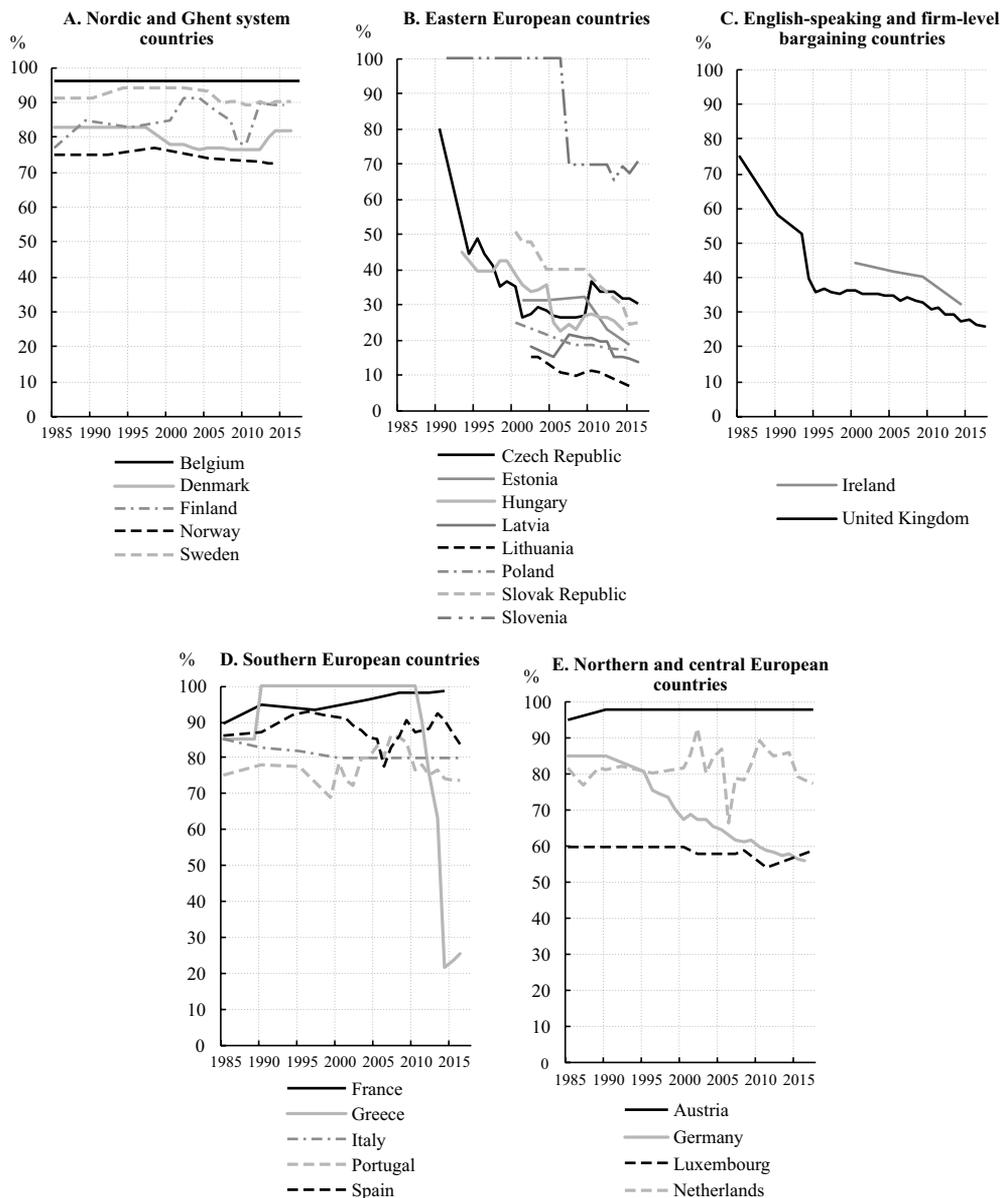
Also, during the past three decades we have seen a trend towards a decentralization⁴ of collective bargaining at lower levels, involving a shift from multi-employer to single-employer bargaining regimes, but again with substantial variation across EU member states (Müller et al. 2019; Visser 2016).

The global trends described here, however, mask large differences among EU member states and our group of countries, as well as between the various causes explaining the decline of union density and collective bargaining coverage and the trend towards collective bargaining decentralization. Figures 2.1 and 2.2 show the long-term development of



Source: OECD (2019) and Visser (2019b) ICTWSS database on trade union density.

Figure 2.1 Trends in union density by group of countries, in percentage of dependent employees



Source: OECD (2019) and Visser (2019b) ICTWSS database on trade union density.

Figure 2.2 Trends in bargaining coverage rates by group of countries, as a percentage of employees with the right to bargain

union density and collective bargaining coverage in our five groups of countries classified in accordance with the main characteristics of their industrial relations systems.

As shown by Figure 2.1 (see also Figure 2A.2 in the Appendix) the decline in union density and collective bargaining coverage (see Figure 2.2 and Figure 2A.6 in the Appendix) has been particularly marked in Eastern Europe. In contrast to other EU member states, collective bargaining was absent during the state socialist era. As mentioned by Müller et al. (2019, p. 625), there were attempts to build up collective bargaining systems in the early 1990s:

The perceived imperative of EU membership in central and eastern European countries after 1990 was associated with attempts to establish collective bargaining systems. Although the rhetoric accompanying these processes focused on systems based on industrial bargaining, the results tended to rely on company bargaining and, compared with western Europe, relatively low bargaining coverage. ... While the pursuit of neoliberal policy agendas certainly limited the development of industrial bargaining in central and eastern European countries, employers' reluctance to engage in such bargaining and/or to establish viable employers' associations compounded their effects.

Almost all EU member states have experienced a decline in union density. Some exceptions are worth noting, such as Belgium and Italy, which have had relatively stable union density at a relatively high level, and in France and Spain, albeit at a much lower level of union density. As further shown by Figure 2.1, the timing of this decline differs considerably across countries. While the reduction of union density started at the end of the 1960s in Northern and Central Europe (with the exception of Germany, where the decline coincided with reunification), and around the mid-1980s in English-speaking and Southern European Countries, the Nordic countries managed to maintain a high and growing union density until the late 1990s. The diversity in the timing and magnitude of the fall in union density indicates that the development and transformation of industrial relations systems at the country level depends essentially on specific political and historical factors. There are many causes of the decline in union density and no single story explains it. To illustrate this, the decline in union density in the United Kingdom is related to Margaret Thatcher's neoliberal policy reforms in the early 1980s, which severely reduced trade unions' scope of action, dismantled tripartite institutions, and favoured market solutions and unilateral employer decisions on the terms and condition of employment. Similarly, but more recently, the intervention of the European Commission, European Central Bank and International Monetary Fund (IMF) 'Troika' – which considered multi-employer collective bargaining and trade unions as institutional rigidities hindering market-driven economic adjustment processes – in countries such as Greece, Ireland and Portugal, explains the tendency towards collective bargaining decentralization and the pronounced decline in collective bargaining rates. Similarly, but on the positive side, we may also explain the persistence of high union density and high bargaining coverage in the Nordic countries (and to some extent in Italy and Austria) in relation to the mutual support of both sides of industry for the prevailing coordinated and centralized multi-employer bargaining systems. They consider these systems to be fair, flexible and efficient instruments for regulating the labour market, and better adapted to cope with a global economic crisis and the challenges linked to globalization and technological change. As already mentioned and noted by the OECD (2019), the fall in union density can hardly

be attributed to an overall decline in the propensity to join the union or solely to changes in the demographic composition of the labour force or common structural factors (such as modifications of the employment structure). It appears that the changes in the world of work – in particular, the growth of atypical forms of employment such as temporary agency work, fixed-term contracts, zero-hour contracts, marginal part-time, bogus self-employment and new forms of employment, such as platform and crowd work – may have contributed to the decline of union density, particularly among workers with a limited attachment to workplaces, thereby reducing workers' opportunities to join a union and unions' opportunities to recruit them.

The development of collective bargaining (see Figure 2.2, and Figure 2A.6 in the Appendix) has been less dramatic, showing some stability over time, with the exception of Eastern European countries. The latter have experienced a sharp decline in both union density and coverage (falls ranging between around 5 percentage points in Latvia and almost 80 percentage points in Romania between 2000 and 2017; see Figure 2A.6 in the Appendix). Also worth mentioning is the decrease in collective bargaining coverage in the English-speaking countries and in Germany since the mid-1990s, and the dramatic fall in Greece (almost 75 percentage points between 2000 and 2017; see Figure 2A.6 in the Appendix). The decline of bargaining coverage in the United Kingdom is related to the decentralization of collective bargaining, first to intermediate level (1987–93), then to the company level. In Germany, the decrease in collective bargaining coverage coincides with the introduction in the early 1990s of the first hardship agreement and restructuring clauses and German reunification, while the dramatic fall in Greece is related to the 2011 reform, involving radical decentralization of wage bargaining. Although Greece has experienced a dramatic transformation in its industrial relations system during the past ten years, from a relatively centralized multi-employer system towards a decentralized system, the development in Germany, with a decline in both union density and coverage rate, can be characterized as a transition from a Nordic system of social partnership towards a hybrid system of social partner or state governance of the labour market, as illustrated by the recent introduction of a statutory minimum wage.

The resilience of a system of labour market governance based on collective agreements, as indicated by the relative stability of employer density and the associated high coverage of collective agreement in most western European member states, contrasts with the almost ubiquitous fall in union density. This development indicates a shift, in resources and bargaining power between the two sides of industry, in favour of employers. There are strong reasons to think that part of the growing wage inequality and increasing share in gross domestic product (GDP) enjoyed by capital owners in many countries is related to this development.⁵

It should also be noted that the overall decline in union density and the tendency to decentralization of collective bargaining at the company or workplace since 2000 has also coincided with a weakening of tripartite concertation and social dialogue, and a decline in the ability of tripartite bodies to affect the labour market and the regulation of employment relations. This weakening has been particularly marked in Eastern Europe, where tripartite social dialogue, which in some cases generated general agreements on the terms and conditions of employment, has been relegated to a mainly consultative process (see Müller et al. 2019).

3. INSTITUTIONAL PREREQUISITES FOR A DEVELOPED, CONSTRUCTIVE AND EFFECTIVE SOCIAL DIALOGUE

The capacity of the social partners to shape the labour market and to respond to the major challenges of modern societies are closely linked to the institutional configuration and architecture of their industrial relations systems. This capacity appears to be stronger in countries with well-established industrial relations systems, characterized by autonomous, powerful and all-encompassing employer and employee organizations, strong consultative mechanisms, and centralized and coordinated multi-employer bargaining systems, playing a key role in the regulation of employment relationships, working conditions and pay (see OECD 2019; Vaughan-Whitehead 2018). High membership and density of workers' and employers' organizations not only guarantees representativeness, legitimacy, autonomy vis-à-vis the public authority and their long-term sustainability (regarding, among other things, their financial and power resources, as well as their mobilization capacity), but it also conditions their ability to produce societal and labour market norms to regulate employment relationships, working conditions and wage formation. In effect, the higher the union density and companies' rate of affiliation to employer organizations, the higher the scope and coverage rate of collective agreements. The main features of the collective bargaining system, in particular the predominant bargaining level at which collective agreements are negotiated, will also affect social partners' ability to regulate the labour market. Compared with decentralized industrial relations systems, more centralized and coordinated collective bargaining systems, at the industry or sectoral level, involve a larger share of workers and companies, and therefore lead to higher collective bargaining coverage rates. Industrial relations systems characterized by high trade union density and employers' affiliation rates and multiple-employer bargaining display higher collective bargaining coverage, as in the Nordic countries, despite the absence of legal extension mechanisms. As stressed by Müller et al. (2019), however, in multi-employer bargaining systems, employers' affiliation rates seem to be more important than union density, and in several EU countries collective agreement coverage far exceeds union density (see Figure 2A.6 in the Appendix to this chapter). Over the past three decades, bargaining coverage, as a rule, has proved to be much more stable than union density. In multi-employer bargaining systems, the determining role of employers' affiliation rates as regards collective bargaining coverage can be attributed to, usually, agreement terms and conditions that apply to all workers, even those who are not unionized. A large discrepancy between union and employer density, however, affects trade union bargaining power and the outcome of collective bargaining.⁶ A continuous decline in union density also raises the problem of trade unions' legitimacy and representativeness.

In several EU member states, labour laws reinforce the influence and bargaining power of union representatives at the company or organization level, stipulating that employers may not prevent trade union representatives from performing their duties and that the employer must provide premises at the workplace for union activities. Furthermore, these laws often specify that union representatives must not be subjected to worse working conditions or terms of employment as a consequence of their appointment. High trade union representation at company level appears to be an effective vehicle for recruiting and retaining union members and counteracting the decline in union density. It also increases

the visibility of trade union actions at the company level. A strong union presence at the firm level is also a good instrument for developing strategies at sectoral level in accordance with employees' aspirations, as well as closer relations between decision-makers and the rank and file. A high union density and union presence at the company level also ensures that the terms of agreements are respected. Another institutional feature that may reinforce social dialogue and codetermination in working life is the provision of seats for trade union representatives on governing or supervisory boards.

The existence of *de jure* or *de facto* extension mechanisms, extending collective agreements beyond the signatory parties through *erga omnes* clauses or administrative extension reinforces the role of collective agreement in regulating the labour market (see Table 2A.1 in the Appendix). These extension mechanisms are used more frequently in multi-employer bargaining regimes with low union density and/or low employers' affiliation rates, such as in France, and allow these countries to display a high coverage rate. If it is true that *erga omnes* clauses may reduce workers' incentive to join a union (free-rider problem) and may lower union incentives to recruit new members and promote an industrial relations system with low union density, then *erga omnes* clauses ensure equal treatment of workers (fairness), reduce transaction costs and strengthen social partner governance of the labour market.⁷ Administrative extension mechanisms, by which collective agreements are extended to a whole sector/industry – in particular to firms not affiliated to the signatory employer organizations (see Table 2A.2 in the Appendix⁸) – also reinforce the role of collective bargaining in shaping the world of work. However, as with trade union density, these systems may disincentivize companies from joining an employer organization and discourage employer organizations from developing their membership.⁹

As shown by previous developments, the social partners' capacity to shape the labour market, but also to respond to the challenges facing modern economies, depends strongly on their strength and autonomy, as well as their capacity to conclude multi-employer collective agreements covering a large share of workers and companies. A high collective bargaining coverage rate is strongly dependent on union and employer density. Even though administrative or statutory extension mechanisms may compensate for low union density and/or low employer affiliation rates, and increase the scope of collective bargaining for shaping the world of work, high collective bargaining coverage on powerful employer organizations and trade unions with a large base not only guarantees the social partners' independence and autonomy, but also their capacity to regulate the terms and conditions of employment and work. In this context industrial relations in the Nordic countries remains the ideal type of a system based on powerful and autonomous social partners, playing a decisive role in regulating working and employment conditions.

Social partners' institutional capacity to shape labour market regulation and public policies is not restricted to bipartite negotiations between the two sides of industry and the conclusion of collective agreements at various levels. In many EU member states, tripartite social dialogue and tripartite bodies play an important role in designing economic, labour market and social policies, and in wage setting (for example, the fixing of statutory minimum wages).¹⁰ Even though social partner participation in policy-making, particularly labour market and social policies, is relatively frequent in Europe, the degree and quality of involvement varies notably across EU member states (see Table 2A.3 in the Appendix and section 4 of this chapter), depending on the type of industrial relations

system and the effectiveness of the practices applied, as well as the social partners' assessment of the depth and intensity of engagement (Eurofound 2019b). There are strong reasons to think that the social partners' impact on the formation of employment and social policy via tripartite concertation depends on their organizational strength, namely, their representativeness and mobilization capacity. Labour market governance based on strong and autonomous social partners not only may impede unilateral state regulation or intervention in the labour market, but it may also exercise a strong influence on the outcome of tripartite social dialogue regarding, among other things, the formation of labour law and the design of economic and social policy.

In western Europe, tripartite concertation and social dialogue showed themselves to be efficient instruments for overcoming the 2008 Great Recession (see Anxo 2017; Freyssinet 2010; Guardiancich and Molina 2017). As illustrated by these studies, countries with well-established bipartite labour market governance and social dialogue, as well as countries combining tripartite consultation and collective bargaining, have successfully achieved balanced compromises (for example, social pacts) in severe economic situations calling for rapid responses, which may explain their more rapid economic recovery.

As stressed by Waas, however, while tripartism

may be appropriate for the settlement of issues that are broader in scope, such as the formulation of legislation or economic and social policy, it is also acknowledged that Convention No. 98 tends essentially to promote the bipartite negotiation of terms and conditions of employment, namely between employers and employers' organizations, on the one hand, and workers' organizations, on the other. (Waas 2020, p. 58)

As also noted by Waas (2020), tripartite arrangements may reflect the weakness of bipartite social dialogue and curtail social partners' capacity to regulate the terms and conditions of employment independently.

Last but not least, in some EU member states, such as the Nordic countries, most provisions of labour market legislation (regarding working time, employment protection and so on) may be wholly or partly amended by collective agreements at the industry or even the company level. This possibility to deviate from statutory provisions is an institutional feature that strengthens social partners' capacity to affect and shape the labour market.

4. STATE AND SOCIAL PARTNERS STRATEGIES AND INITIATIVES TO INCREASE THEIR CAPACITY TO SHAPE THE LABOUR MARKET THROUGH SOCIAL DIALOGUE

In many countries the social partners face challenges related to stagnating or declining membership and the need to be proactive to retain and recruit new members. The main objective of this section is to identify the strategies, if any, of social partners and public authorities to strengthen social partner representativeness, counteract declining collective bargaining coverage and reinforce their capacity to shape the labour market, as well as to respond to the main challenges confronting modern societies. This section also describes how tripartite social dialogue at the national level has developed since 2000 and some initiatives that have been launched to reinforce the role of tripartite bodies in shaping and

designing labour market and social policies. The diversity of industrial relations systems in Europe, in particular regarding social partner representativeness and their role in regulating employment relations and working conditions, implies that the need for institutional reforms and strategies for promoting social dialogue and strengthening social partners' ability to shape the labour market will differ significantly among EU member states and our country clusters. While there is a large and recent comparative literature on the development and causes of transformation of industrial relations systems in modern society (see Müller et al. 2019; OECD 2019; Vandaele 2019b), very few studies are available on social partners' strategies to counteract their declining capacity to regulate the labour market and the terms and conditions of employment.

The identification of policy measures and/or strategies used by social partners and public authorities is therefore based mainly on the various country chapters produced within the framework of the EU-ILO project 'Enhancing social partners' and social dialogue roles and capacity in the new world of work'. The following regions and countries were included in this project: the Adriatic and Baltic regions, France, Germany, the Czech Republic, Greece, Ireland, Italy, Poland, Romania, Spain, Sweden and Turkey. In order to identify and describe these strategies, we use the same clustering of countries as previously.

4.1 Nordic Countries and Ghent Countries

This group of countries can be considered the ideal-type of an industrial relations system based on strong and autonomous social partners, enjoying substantial autonomy vis-à-vis the public authorities and playing an essential role in determining the norms and mechanisms for regulating the labour market, as well as the employment relationship. The Nordic countries can also be characterized as representativeness regimes based on self-regulated, social-partner mutual recognition with little state regulation on representativeness (Eurofound 2019a). The multi-employer, two-tier coordinated system of collective bargaining and relative balance of power between the two sides of industry creates a favourable institutional environment for the emergence of negotiated compromises, aimed at balancing flexibility and security, efficiency and social justice. As the archetypal bipartite agreement-based model of labour market regulation, however, these countries also have a long tradition of tripartite concertation and consultations, with tripartite social dialogue as a key element in public, employment and social policies. The social partners are usually represented on, or consulted by, parliamentary and government committees responsible for drawing up employment, educational, training and social policies. In this way, the social partners exert significant influence on the contents of labour market legislation and the design of social policies.

Despite the robustness and resilience of their industrial relations institutional set-up, the Nordic countries have experienced a significant decline in union membership and union density since the year 2000. This decline between 2000 and 2017 was particularly marked in Denmark and Sweden (around 20 percentage points, see Figure 2A.2 in the Appendix to this chapter) and, albeit to a lesser extent, in Finland (around 13 percentage points). The fall in union density has been particularly significant among manual or blue-collar workers, low-paid, low-skilled workers, people on fixed-term contracts, young people and foreign-born people. Despite the significant drop in union density, the Nordic countries still display the highest union density among EU member states

(over 50 per cent). In contrast with the development of union membership and density, employer's density remained stable (Denmark) or even increased during the period (Finland and Sweden) (see Figure 2A.3 and 2A.4 in the Appendix). It is interesting to note that the share of employees working in a company that is a member of an employer organization (employer density in the private sector) was, in 2017, higher than union density in Sweden and Finland. Collective bargaining coverage is among the highest in the EU (see Figure 2A.5 in the Appendix) and has increased in Finland and Denmark, but slightly decreased in Sweden (see Figure 2A.6 in the Appendix). It should also be stressed that the high collective agreement coverage rate in Sweden and Denmark is not related to the existence of statutory extension mechanisms, but to the high union and employer density. As stressed in Anxo (2020), it is important, in order to explain the decline of union membership and union density, to distinguish between long-term factors related principally to major changes in employment and occupational structure from short-term factors linked to specific policy measures. In particular, while it is true that the long-term reduction of employment in manufacturing industry owing to restructuring and rationalization, and the decline of employment in the public sector owing to fiscal consolidation measures, waves of deregulation and privatization initiated during the 1990s, explain part of the long-term decline of membership and union density in the Nordic countries, changes in the world of work and specific policy changes also explain this decline. The increase duality in the Nordic labour market, coupled with the rise in short-term contracts, the increasing use of temporary agencies and the growth of self-employment have also contributed to the decline of union density in these countries.

Policy changes have also strongly contributed to the weakening of trade union membership in the Nordic countries, in particular the various reforms of unemployment benefit systems. Denmark, Finland and Sweden still have voluntary unemployment systems, administered by trade unions (the Ghent system), which is often used to explain the high union membership and density in these countries. Part of the membership decline in the Nordic countries is related to policy measures aimed at undermining the Ghent system and weakening trade union membership and density. The various reforms of unemployment insurance systems have resulted in a notable reduction in their generosity. As noted by Vandaele (2019b), in Denmark, so-named 'yellow' unions, which typically do not participate in collective bargaining or industrial action, have poached members from traditional unions by setting up their own unemployment funds. The same is true for Finland, where a policy reform encouraging the creation of independent unemployment funds explained the fall of union membership. Sweden also exhibits a negative Ghent effect owing to measures initiated by the market-liberal, right-wing government in the early 2000s, which explains the acceleration of the decline in union density there since 2005 (see Anxo 2020; Kjellberg 2015, 2019). The financing of unemployment insurance was modified: contributions to the various unemployment funds administered by the trade unions were dramatically increased and differentiated according to the unemployment level in the sector or industry concerned. That is, a system of experience-rating was introduced, and individual unemployment insurance contributions increased or decreased depending on whether unemployment grows or declines in an industry. This reform entailed a large rise in individual monthly contributions: in some instances, unemployment insurance fees tripled. The consequence was both a large decrease in union membership and a dramatic decline in the number of dependent employees covered by the unemployment

insurance system. The main objectives of the market-liberal, right-wing government with these reforms were to put pressure on job seekers and indirectly to influence the outcome of wage bargaining by weakening trade union bargaining power, thereby suppressing wages. The 2008 financial crisis adversely affected in particular blue-collar workers and sectors exposed to international competition. Against this background, the reform of unemployment insurance financing had a stronger impact on union density among LO (the national union of trade unions) members (blue-collar workers), in particular in low-skilled and low-paid sectors, such as hotels and restaurants and retail, with high labour turnover and a large proportion of short-term contracts, but also on manufacturing industry. As noted by Anxo (2020) and Kjellberg (2015, 2019), a significant part of the recent decline in union density in Sweden can be ascribed to this legislative amendment.

In early 2014, the centre-right coalition government again changed the rules on unemployment insurance financing, restoring individual monthly unemployment insurance fees to their 2006 level. Against this backdrop, the number of unemployment insurance members has again started to increase in recent years, by almost 55 000, but is still below its 2006 level. More recently, the Social Democratic–Green coalition government, which took office in September 2014, increased the unemployment insurance income replacement rate. These measures did not stop the decline of union density among blue-collar workers. The measures launched in 2014 and 2016, however, helped temporarily to stabilize union density among white-collar workers (see Anxo 2020; Kjellberg 2019).

Faced by the significant decline in union membership and density, Nordic trade unions have developed various strategies to reverse this negative trend. The decline in union density has been particularly marked among young, low-skilled workers, people on short-term contracts and the foreign-born. In this context, trade unions have prioritized the recruitment of new members among these vulnerable groups and are trying to reach individuals with a weaker attachment to the labour market. Overall, the trade unions in Nordic countries have also prioritized activities in workplaces. As shown in Rasmussen et al. (2016), Danish trade unions have successfully increased membership among migrant workers, especially in the fish-processing industry and in construction. The Danish strategy for organizing foreign workers has been to build trust with migrant workers and show the benefits of joining a union in relation to wages and working conditions. In companies lacking collective agreements in those two sectors, the Danish trade unions have also engaged in some form of social dialogue with employers in order to secure collective agreements.

In Sweden, the strategy of LO, the confederation of blue-collar workers, has been to recruit new members at the workplace level and to try to staunch the exit of union members. Measures have been taken to support workplace union representatives in this task. In order to counteract falling membership among young people, at the end of 2018 a number of LO federations decided to launch an information campaign in schools. Among white-collar unions, TCO launched the large-scale information campaigns ‘Membership Value’ and ‘Union Transformation’, targeted principally at students and young academics. In order to broaden their recruitment base, some federations within the confederations TCO and Saco (academic and professionals), have opened membership to the self-employed and students. In recent years, several white-collar unions have also introduced supplementary income compensation schemes, restricted to union members, in the event of unemployment or sickness, to counteract the increase in unemployment insurance fees and the worsening of unemployment benefits (relating to duration and income replacement). While Saco’s

membership has increased significantly during the past decade, the efforts of LO and TCO have not yet resulted in significant improvements in membership and union density.

As far as Belgium is concerned, the stability and robustness of its industrial relations system, characterized by relatively high and stable union density, is surely related to the safeguarding of its quasi-Ghent system of relatively generous unemployment insurance. People's relatively high trust in trade unions (see Figure 2A.8 in the Appendix), relatively high mutual trust among the social partners and the support of the two sides of industry for a highly centralized¹¹ and strongly coordinated multiple-employer bargaining regime, with a high coverage rate, explain its resilience. Similar to the Nordic countries, the high collective bargaining coverage is linked to the high union density and high employer affiliation rates (75 per cent in 2017; see Figure 2A.3 in the Appendix), as well as the application of *erga omnes* rules and the frequent or generally automatic use of extension. It should be noted that despite the use of *erga omnes* rules and extension mechanisms, union density remains high in this group of countries. The free-rider problem associated with extension rules has been offset by the relatively high trust of workers towards trade unions, and the overall support of citizens and public authorities for a system of labour market regulation based on a centralised and coordinated multi-employer bargaining system, as well as by the wide range of services and benefits provided by unions to their members.

4.2 Eastern European Countries

These countries, similarly to the English-speaking countries, exemplify the highly decentralized single-employer bargaining regime, with low union density and low employer affiliation rates. Since the early 1990s, Eastern European countries have experienced a continuous decline in union density and collective bargaining coverage. In many countries in the region, tripartite social dialogue and bodies previously often produced tripartite agreements and sometimes served as a basis for industry and company agreements have, in the past couple of decades, become merely advisory and relegated to consultative status, with little impact on policy-making.

Based on the evidence provided by the country chapters, in what follows we describe some measures taken by the social partners to strengthen their autonomy and representativeness. According to Guardiancich (2020), efforts have been made in Croatia and Slovenia to promote the retention and attraction of members of trade unions and employer organizations. As they rely solely on membership fees, employer associations and unions need to be proactive and provide satisfactory services. The unions provide their members with a number of legal services, so retention and attraction measures are standard practice, as are endeavours to improve the quality of service, but to date union efforts have been unable to halt the continuous decline of union density.

In the Baltic states, Masso et al. (2020) report some trade union initiatives in Estonia to counteract the low and declining union density (at less than 5 per cent the lowest in the EU; see Figure 2A.1 in the Appendix). The Estonian trade union confederation EAKL has developed an action plan to increase membership, including activities at the company level (dialogue with employees, information days and other events), trade union activities (development of a plan to recruit members, introduction of motivation system targeted at representatives and activists, producing an overview of jobs and sectors that are not unionized, providing information to all members, publicizing trade union success stories

and launching information campaigns in vocational schools). At the confederation level, some measures have been undertaken to support, advise and train union representatives, and to organize campaigns. Another goal is to increase trade union organizing capacity.

On the employers' side, membership of the Estonian employer confederation TKL has been increasing, even though employers' affiliation rates remain among the lowest in the EU (see Figure 2A.3 in the Appendix) and the proportion of employees working for companies affiliated to TKL has declined (see Figure 2A.4 in the Appendix). During the past decade, TKL's strategic plan has been to broaden, diversify and increase its membership and include all important economic sectors, especially larger enterprises, with a special focus on IT companies, representatives of the new economy and enterprises that have grown from start-ups (see Masso et al. 2020). Also noted in the Baltic chapter are positive developments regarding tripartite social dialogue, with stronger involvement of the social partners in the design of labour market regulations. The Estonian Government has contributed to improving social partner involvement by establishing the Economic Development Committee and restoring tripartite meetings with the social partners (Eurofound 2019b). According to Estonian employer and trade union representatives, bipartite social dialogue has also been more cooperative and consensual in recent years.

According to Veverková (2020), the main problem faced by social dialogue in the Czech Republic concerns the long-term decline in trade union membership. While the membership of employers' associations remains relatively stable, the unions continue to record declining membership and union density (a decline of 16 percentage points between 2000 and 2017; see Figure 2A.2 in the Appendix). While over the past few years, some trade unions have managed to stabilize their memberships – compensating membership losses by recruiting new members – some unions have seen an absolute increase in membership. If the unions fail to halt the decline in membership over the long term, they will have reducing capacity for collective bargaining. Bargaining coverage has been declining since the turn of the twenty-first century and it is not expected that this trend will change in the near future. According to Veverková (2020), employers' unwillingness to conclude collective agreements at the sectoral level indicates few prospects for change.

According to Eurofound (2019b), the social partners in Bulgaria have experienced a slight improvement in their involvement in the design and implementation of reforms. This perception comes mainly from the mediation of the Ministry of Labour and Social Policy in negotiations on a new minimum wage-setting mechanism. The social partners' involvement in the design and implementation of employment, social and economic policies and reforms through tripartite concertation also improved in Latvia in 2018, according to Eurofound (2019b). Various strategies and institutional settings (informing, regular meetings and working groups) are being pursued in which social partners have full rights as participants.

4.3 Southern European Countries

While most EU member states have seen a long-term decline in union density, in Italy union density has remained stable at a relatively high level. The same is true for France and Spain, but at much lower levels (see Figures 2A.1 and 2A.2 in the Appendix). Owing to relatively frequent use of the administrative extension mechanism and *erga omnes* clauses, collective bargaining coverage has also remained high and stable in France and

Spain. The high collective bargaining coverage in Italy is not owing to the use of statutory extension, but to the relatively high union and employer association density and their willingness to conclude collective agreements at industry level. As in Spain, the relatively centralized collective bargaining regimes can be explained partly by the support of employer organizations. Collective agreements at the industry level provide an equal base for all companies and help to reduce unfair competition and social dumping.

According to Bordogna (2020), Italy's beneficial performance as regards the development of union membership and the stability of union density is a consequence, partly, of the notable organizational capacity of the three largest confederations in adapting to the deep transformations of the Italian production system – especially the shrinking of the traditional manufacturing sectors – and in reacting to the adverse pressures of the recent financial and economic crisis. It is also a consequence of trade union efforts to explicitly address the issue of recruiting new members –pursued almost systematically at confederal, sectoral and territorial levels – and of attracting new members beyond the traditional areas of representation.

As noted by Bordogna (2020), Italian trade unions have been able, by means of organizational campaigns, to replace workers who are retiring or exiting with new members, such as young people or precarious workers, who are often less inclined to join unions for cultural or structural reasons. Similarly, in employers' associations there were efforts to tackle the high turnover of companies, especially small firms, during the economic crisis, and to enlarge the area of representation by trying to reach previously neglected sectors or types of companies. As Bordogna stresses, the strategies to strengthen social partner representativeness in Italy have also involved 'actions to improve their internal democracy and their ability to reflect or interpret the interests of rank-and-file members through more effective channels of communication and, in general, better mechanisms of internal governance' (Bordogna 2020, p. 6).

The increase in union membership and the stability of union density in Italy is also related to trade unions' ability to provide workers and citizens generally with individual services. As Bordogna notes:

Despite the absence of a formal Ghent system, like in Belgium and the Nordic countries, the Italian trade unions are important actors in the provision of a high variety of individual services to workers and citizens at large, sometimes as intermediators between them and the state. Services are concerned with employment relations, unemployment and pension procedures, work-related grievances, tax duties, professional training, welfare and health measures, but also tourist or travel packages, supermarket discounts, special insurance packages and so on ... In some cases, benefiting from these goods and services is conditional on being a union member; in other cases, they are open to all citizens, but at a lower cost for union members, providing in both cases an incentive to unionize. (Bordogna 2020, p. 17)

According to Erhel (2020), the low union density in France, particularly among young people, which compromises trade union autonomy and legitimacy, has led French trade unions to develop new forms of support and services for their members through digital services and online communities, as well as attempts to reach and recruit new members, such as those on short-term contracts and digital platform workers. Developing new services (such as health insurance or holidays and leisure activities) also appears an option to maintain or develop unionization (especially in small firms), as well as among

workers with weak attachments to the labour market. Services can also be directly related to job search or career. Some trade unions offer help in writing résumés or preparing for interviews, as well as career guidance. Other proposals concerning incentive mechanisms including measures such as the *chèque syndical* (trade union voucher) to finance unions.

Even though collective bargaining in France is still characterized by multi-employer bargaining at the industry level, recent reforms have given more importance to company-level bargaining. The unions have also come up with proposals to revitalize social dialogue at industry and national level by creating a specific institution for inter-sectoral social dialogue. Administrative extension plays an important role in the French industrial relations system, and helps to maintain a very high level of collective agreement coverage (almost 100 per cent; see Figures 2A.5 and 2A.6 in the Appendix). Although the recent legislative changes initiated by the French Government maintain the extension process, it has been under pressure since the 2017 Labour Ordinances, which created an expert commission to provide advice on extension in some cases and, more generally, made changes to sectoral competences. As noted by Erhel, the ‘extension process, which is rather consensual among employers and organizations and unions, seems to be under pressure, which creates some uncertainty for the future evolution of coverage’ (Erhel 2020, p. 25).

As Molina (2020) stresses, the main strengths of the Spanish industrial relations system include its institutionalization and the strong consensus and support among the most representative social partners. Another important feature of the Spanish system is the peak bipartite cross-sectoral agreements on employment and collective bargaining. The *erga omnes* clauses and administrative extension, trade union workplace elections and self-regulated articulation between the various levels of collective bargaining explain the robustness and resilience of the Spanish industrial relations system. As in France, however, over the past decade Spain has experienced stronger state interference and unilateral decision-making by the public authorities regarding the regulation of collective bargaining and the terms and conditions of employment. This implies a weakening of the autonomy of social partners and social dialogue. A second challenge facing the Spanish industrial relations system is its low trade union density, the growing fragmentation of the trade union landscape and citizens’ declining trust in workers’ organizations, especially after the 2008 Great Recession, which affected the recruitment of new members and, over time, has eroded trade union legitimacy. This calls into question the future stability of the Spanish industrial relations system. The unions thus consider it crucial to enlarge the membership base and increase union density. This would not only enhance the legitimacy of social dialogue, but also strengthen union power resources. The trade unions have developed strategies to attract young workers and are also focusing on occupations or activities with a predominantly young workforce, such as the platform economy. As Molina notes, two main strategies adopted by Spanish trade unions concern organizational change and the need to reach hard-to-organize groups:

The first, aimed at strengthening the connection between the union and society, promotes a modernization of structures, working procedures, communication strategies and services offered to new types of workers and specific groups, paying particular attention to young people. The objective would be to make the union visible and emphasize its role in defending workers’ interests in collective bargaining.

The second strategy, based on worries about lost influence and negative attitudes towards unions in a hostile economic and ideological context, is aimed at reinforcing the traditional union working class identity and, at the same time, at ensuring unions' social influence in the institutional arena. (Molina 2020, p 21)

Even though membership is not considered a problem for employer organizations, issues are emerging in relation to determining representativeness, especially for new employer organizations (see Molina 2020).

In Greece, union and employer density have declined significantly since 2000, but the most notable development has been the dramatic fall in the collective bargaining rate, by 75 percentage points between 2000 and 2017, related to the 2011 legislative amendments implementing the radical decentralization of wage bargaining. Since 2010, Greece has experienced a dramatic transformation of its industrial relations system, from a relatively centralized multi-employer system towards a decentralized single-employer bargaining regime. As noted by Nicolitsas (2020), the Greek trade unions acknowledge the need to broaden their membership, focusing particularly on the recruitment of young people. Their main strategy has been to enrich member services (including legal advice, training and group insurance schemes).

As regards recent tripartite agreements aimed at strengthening social partners' capacity to shape the world of work, employers in Portugal supported the recovery of bargaining coverage by signing the tripartite agreement of January 2017, which included a commitment to refrain from any unilateral demands to terminate agreements for a period of 18 months. According to Eurofound (2019b), more recently the social partners in Portugal report an improvement of their participation in tripartite negotiations, reflected in the discussions on the 2018 tripartite agreement on 'Combating precarious work and labour market segmentation and promoting greater dynamism in collective bargaining'. This agreement, signed in June 2018, made significant progress, compared with the 2017 tripartite agreement, in relation to the range of measures included and the level of commitment.

4.4 English-speaking Countries

Industrial relations in the United Kingdom and Ireland are characterized by the archetypal single-employer and decentralized bargaining regime in the private sector. Both union density and collective bargaining coverage have been in steady decline since the mid-1980s and there is no sign of a trend reversal.

As emphasized by O'Connell (in Chapter 9 of this volume), the dramatic economic crisis experienced in Ireland in the wake of the 2008 global financial crisis brought the era of 'Social Partnership',¹² which dominated industrial relations in Ireland between 1987 and 2009, to an end. Since then, Ireland has experienced a dualization of its industrial relations system. While in the public sector collective bargaining eventually resumed between the state, as employer, and the public sector unions, in the private sector collective bargaining has been decentralized to sector and firm level. In order to counteract the decline of union density, individual trade unions have sought to respond to this with membership campaigns, focusing in particular on low unionized sectors and targeting particular groups, such as young workers and immigrants.

4.5 Northern and Central European Countries

Few studies have been conducted to analyse the measures undertaken to strengthen social partner representativeness in northern and central Europe. Further studies are very much needed.

In all the northern and central European countries, union density has declined during the past three decades (see Figure 2.2). Since 2000, this decline has been particularly pronounced in Austria, Germany and Luxembourg (see Figure 2A.2 in the Appendix), with a more limited fall in the Netherlands (around 9 percentage points).

While collective bargaining coverage has remained stable in Austria, Luxembourg and the Netherlands, it has declined significantly in Germany (by almost 12 percentage points between 2000 and 2017). The decline of both union density and bargaining coverage in Germany explains why German trade unions pressed for the introduction of a statutory minimum wage in 2015, having for many years been opposed to it. Employer association density has also been decreasing since reunification; German employer organizations represent an ever smaller fraction of employees and firms (see Figure 2.A4 in the Appendix; also Walwei et al. 2020).

As noted by Müller and Schulten (2019), the dramatic rise in low-paid jobs and in-work poverty in Germany has led social partners and policy-makers to take the common view that the neoliberal attempt to transform collective bargaining has probably gone too far and that something needs to be done to increase bargaining coverage. The debate between trade unions, employers and policy-makers about the revitalization of collective bargaining has focused on three different approaches:

The first, which can be called ‘revitalization from below’, focuses on strengthening trade union presence and power at company level in order to force employers into collective bargaining. The second, which can be called ‘revitalization from above’, is concerned with strengthening political support for collective bargaining. The third, which is mainly promoted by the employers, can be called ‘revitalization through flexibilization’ and focuses particularly on making collective bargaining more attractive to companies. (Müller and Schulten 2019, p. 260)

As emphasized by Müller and Schulten (2019), the success of the first strategy depends largely on unions’ organizational strength at company level and their ability to mobilize their power resources. In order to be successful, however, this requires massive financial and personnel resources. The increase in bargaining coverage, in particular in private services, with low union density, cannot rely solely on building union power at company level, but requires other forms of political support. The mobilization of political support for collective bargaining is the objective of the second approach, ‘revitalization from above’. As stressed by Müller and Schulten (2019, p. 260):

Compared with other EU countries, state support for collective bargaining has been more restricted and more or less limited to ensuring the principle of bargaining autonomy. This changed to a certain extent in 2014 with the adoption of the Act on the Strengthening of Bargaining Autonomy, which included the introduction of a statutory minimum wage and less restrictive rules on the extension of collective agreements.

Other proposals have also been advanced to increase bargaining coverage. For example, the introduction of special clauses in public procurement that condition the award of

public contract to companies covered by a collective agreement. Another interesting proposal was the introduction of tax relief for companies covered by collective agreements. As also stressed by Müller and Schulten (2019), these developments illustrate a change in German unions' view of the role of the state in the direction of more active intervention in order to counteract the decline of multi-employer bargaining. Employers, however, are still more reluctant to accept an increase in state interference in collective bargaining, holding state intervention to be a limitation of their autonomy. For employers, the best way to increase bargaining coverage is to make collective agreements more flexible. Employers are therefore more in favour of a 'revitalization through flexibilization' – implying, among other things, more frequent use of opening clauses – but the trade unions remain opposed.

5. CONCLUSION

Several recent empirical studies show that centralized and coordinated two-tier multi-employer collective bargaining systems – which leave room for self-regulated and organized decentralization and are characterized by high collective bargaining coverage and union density, as well as balanced bargaining power between the two sides of industry – not only seem to favour earnings equality and social cohesion, but also to deliver better outcomes for employment, economic and productivity growth (see OECD 2018, 2019). Governance of the labour market by the social partners, as in the Nordic countries, seems not only to better reconcile economic efficiency and social justice, but also to be better adapted to provide an effective and fair response to the challenges linked to globalization, demographic and technological change (see Anxo 2018, 2019, 2020; Eklund 2012). In this context, strengthening the social partners' representativeness and autonomy, and their institutional capacity to shape the labour market, should be prioritized.

Even though collective bargaining and social dialogue in Europe still play a crucial role in shaping the terms and conditions of employment, as testified by the around 115 million employees covered by collective bargaining, developments during the past three decades have led to an overall decline in union density and bargaining coverage, as well as a marked tendency towards decentralization and fragmentation. That is, in recent decades there has been a tendency towards a weakening of social partners' capacity to regulate the labour market and an increase in state intervention, with labour market deregulation leaving more scope to market forces. Tripartite social dialogue and concertation remain an important component of industrial relations systems in a majority of EU member states, but over the past ten years or so, particularly in some central and eastern European countries (Hungary, Lithuania, Poland and Romania), there has been a tendency to water down the regulatory role of tripartite social dialogue institutions. During the 2008 Great Recession, in some EU member states, tripartite social dialogue or concertation helped to overcome the crisis. Some attempts have also been made to revitalize tripartite social dialogue through its re-institutionalization, as in Portugal, Latvia, Estonia and Bulgaria, but these initiatives have remained limited.

The social partners in Europe have responded to these negative tendencies by developing strategies to counteract the decline in union membership and the decrease in collective bargaining coverage. From the unions' side, these initiatives have taken the form

of broadening their membership base to strengthen their power resources and to secure their autonomy by attracting and recruiting new members, beyond the traditional areas of representation. Examples include newly arrived migrants, people on short-term contracts, solo and/or bogus self-employed, and digital platform workers. The second most common union strategy has been to extend and improve services provided to members (such as legal advice, training, group insurance schemes, support and services for members through digital services and online communities and, in some instances, supplementary income compensation schemes restricted to union members in the event of unemployment or sickness). In countries with low employer density, some attempts have also been made by employer organizations to broaden, diversify and attract new membership by providing better services.

These initiatives have not been able to counter the impact of policies in many member states that have accelerated the tendency to decentralization of collective bargaining and have contributed to a reduction in collective bargaining rates. Furthermore, in several EU member states we have seen a weakening of tripartite social dialogue and an increase in unilateral state intervention in the labour market, reducing social partners' autonomy and their capacity to regulate the terms and conditions of employment. Except for Germany, with its recent strategy of a 'revitalization from above', few government policy initiatives have been undertaken to strengthen social partner representativeness and increase their institutional capacity to shape the labour market through social dialogue.

If the policy objective of the EU and its member states is to move towards industrial relations systems characterized by powerful and autonomous social partners playing a crucial role in the development of labour market norms, there is a long way to go. This applies in particular to member states that have highly decentralized and uncoordinated bargaining systems, such as the single-employer bargaining regimes prevalent in the majority of central and eastern European countries. Uncertainty therefore continues to overshadow the political and institutional conditions needed for convergence towards an industrial relations regime favouring labour market governance based on autonomous and strong social partners and constructive social dialogue.

NOTES

1. As implicit indicator of social partner representativeness we use trade union and employer density, as well as social partners' ability to conclude collective agreements (measured by collective agreement coverage). Representativeness criteria differ across EU member states. According to Eurofound (2019a), two core principles structure representativeness systems: mutual recognition, that is, representativeness is determined by self-regulation of the social partners on the basis largely of informal criteria or legal requirements: representativeness is determined by state regulations that refer to a set of formal criteria, such as thresholds in relation to membership, organizational capacity, outcomes of workplace elections and territorial coverage. Most member states feature a combination of these two principles, applying a mix of formal and informal criteria.
2. Here we distinguish between statutory extension mechanisms, in accordance with which collective agreements are extended to a whole sector or industry beyond the signatory parties, in particular to firms not affiliated to the signatory employer organizations, and *erga omnes* rules implying that the concluded collective agreements apply even to employees who are not members of the signatory trade unions.
3. As stressed by Vandaele (2019b) the above-mentioned decline in trade union density should be interpreted with caution as, for some EU countries, data are missing for some years. Restricting the analysis only to European countries with data for the whole period (20 countries), Vandaele (2019b, p. 10) shows that trade

union membership fell from 40.2 million in 2000 to 36.1 million in 2017, an annual average decrease of 0.7 per cent for the whole period.

4. Following Müller et al. (2019, p. 627) we define decentralization 'as the devolution of bargaining competences and regulatory capacity to lower levels. This can involve shifts from cross-industry to industry or company level, or, as is more often the case, from industry-level to company level bargaining'.
5. As shown by Figures 2A.10a and 2A.10b in the Appendix to this chapter there is a strong negative correlation between the share of low-paid workers (less than 60 per cent of the median hourly wage), union density (Figure 2A.10a) and collective bargaining coverage (Figure 2A.10a).
6. In addition to union density, other factors might affect trade union bargaining power and the outcome of collective bargaining, such as union mobilization capacity, the economic situation (periods of economic crisis versus expansion) and/or the labour market situation (high unemployment versus labour shortages).
7. According to ILO employers' representatives, extension rules regarding collective agreements may also interfere with the right to collective bargaining, as well as the right to organize. In general, the position of ILO employer organizations (see IOE 2008) is that the right to collective bargaining should also imply the freedom not to enter into collective bargaining.
8. As shown by Table 2A.2 in the Appendix, in some EU members states administrative extension mechanisms are linked to formal representativeness criteria, such as minimum thresholds in workplace elections and/or level of union density.
9. Alternatively, it could be argued that extension mechanisms might give companies an incentive to join employer organizations in order to have a say in the bargaining process.
10. In some Eastern European countries, namely, Bulgaria, Croatia (until 2008), Estonia, Hungary (until 2011), Poland, Romania (until 2011) and Slovakia, minimum wages were or still are negotiated in a tripartite body at national level (see Müller et al. 2019).
11. As described by Vandaele (2019a, p. 5):

Bargaining is highly centralised as the wage norm reinforces this characteristic: setting the norm is part of biannual negotiations between the social partners to conclude an interprofessional agreement at the cross-industry level, which provides a framework for bargaining at the industry and company levels. Fourth, the interlinked hierarchical bargaining levels and corporatist mechanisms, such as the extension of collective agreements, underpin strong bargaining coordination, which is also 'artificially' stimulated by the wage norm.

12. As noted by O'Connell (2020, p. 5):

[D]uring the era of Social Partnership (1987–2009), wage bargaining was highly centralized. National agreements set benchmarks to be followed voluntarily across the economy and non-unionized firms tended to shadow the national benchmarks. In contrast with earlier attempts at centralized bargaining, under Social Partnership a high degree of control was exercised with limited scope for bargaining at local or company level during these two decades.

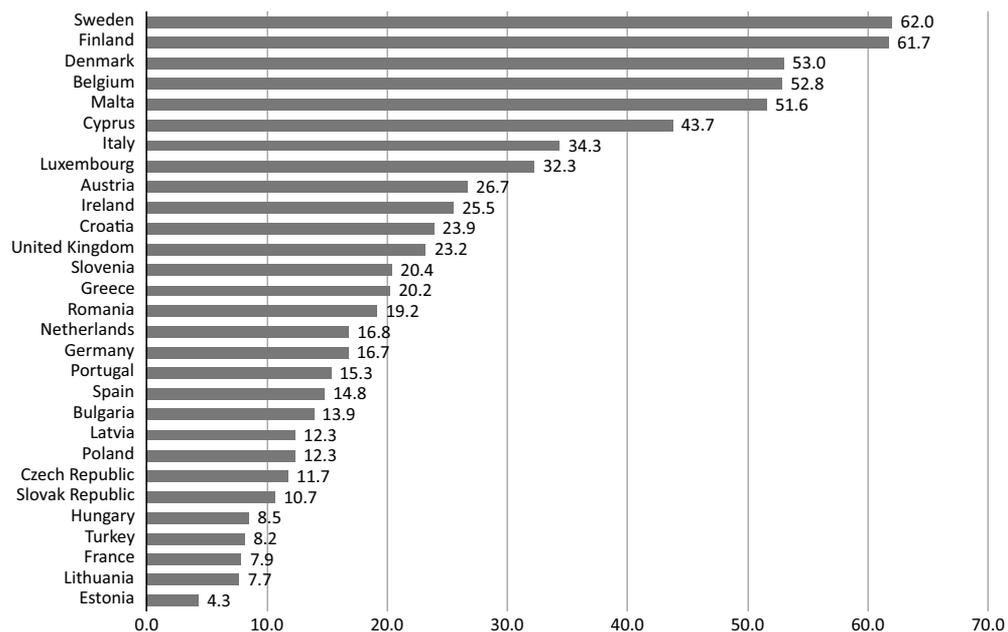
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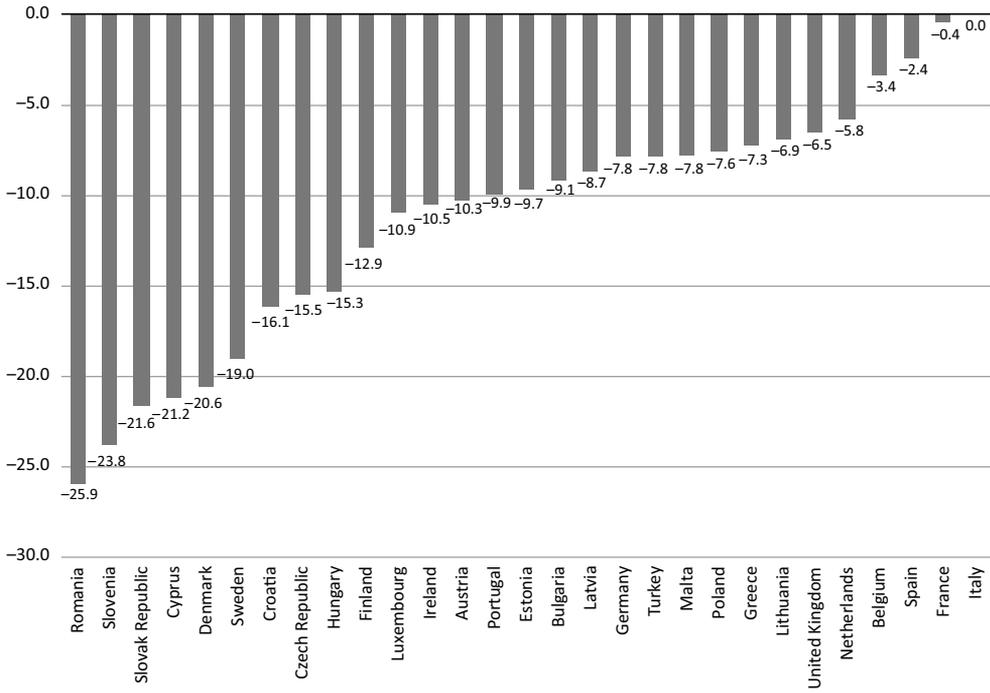
APPENDIX



Note: Latest year available: for all countries 2017 except Cyprus (2016), Greece (2016), Poland (2016), Romania (2016) Slovak republic (2016) and Slovenia (2016).

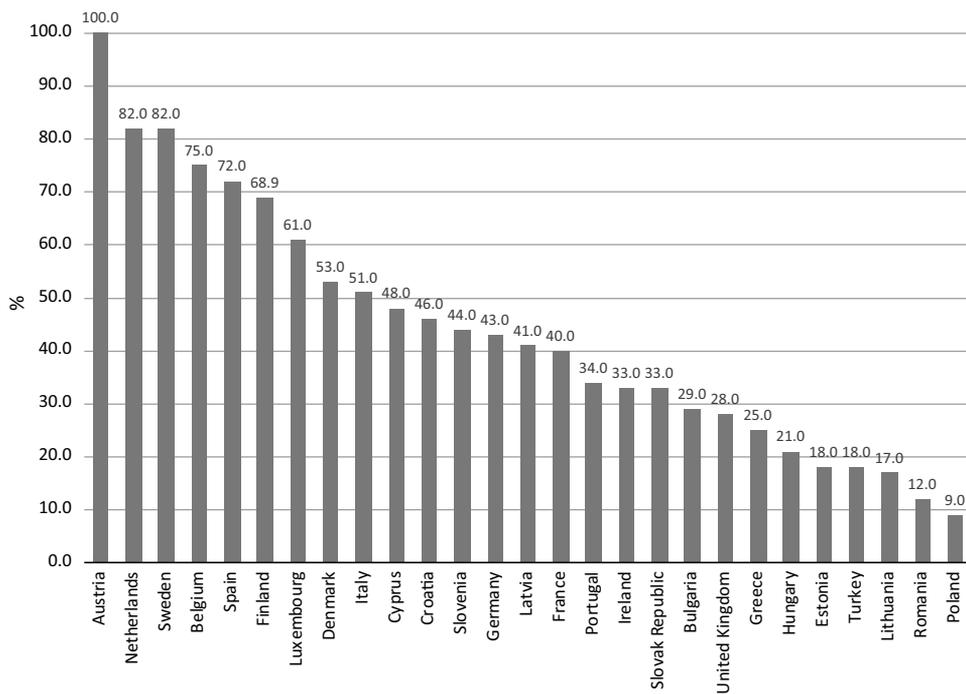
Source: Visser (2019b) and author's calculations.

Figure 2A.1 Trade union density in the EU and Turkey, share of employees member of a trade union, 2017 (percentage)



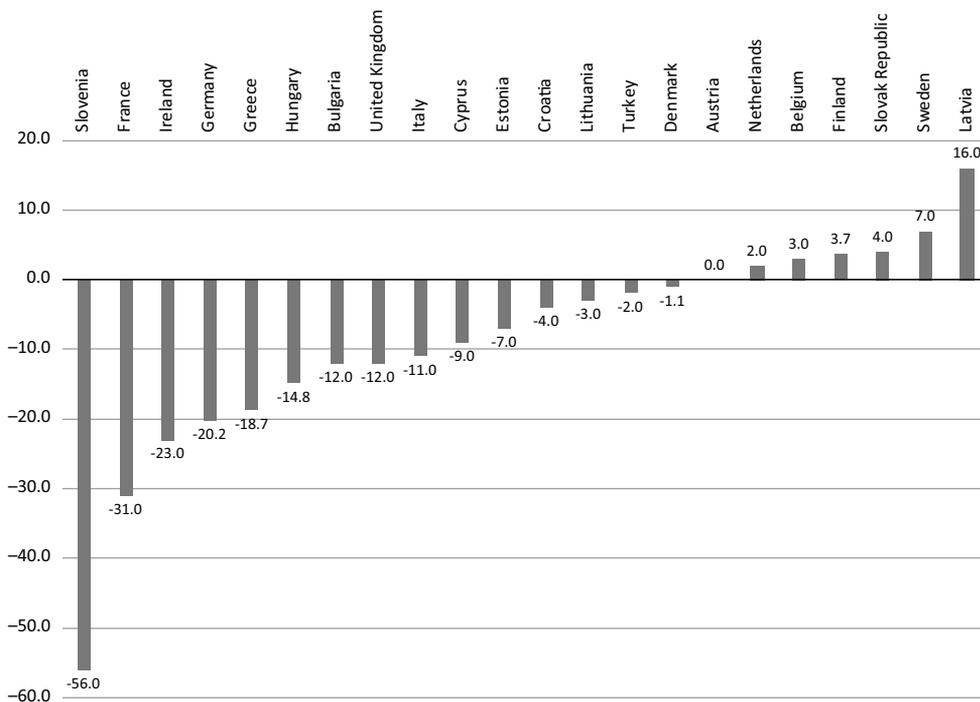
Source: Visser (2019b); author's calculations.

Figure 2A.2 Variation in union density between 2000 and 2017 (percentage points)



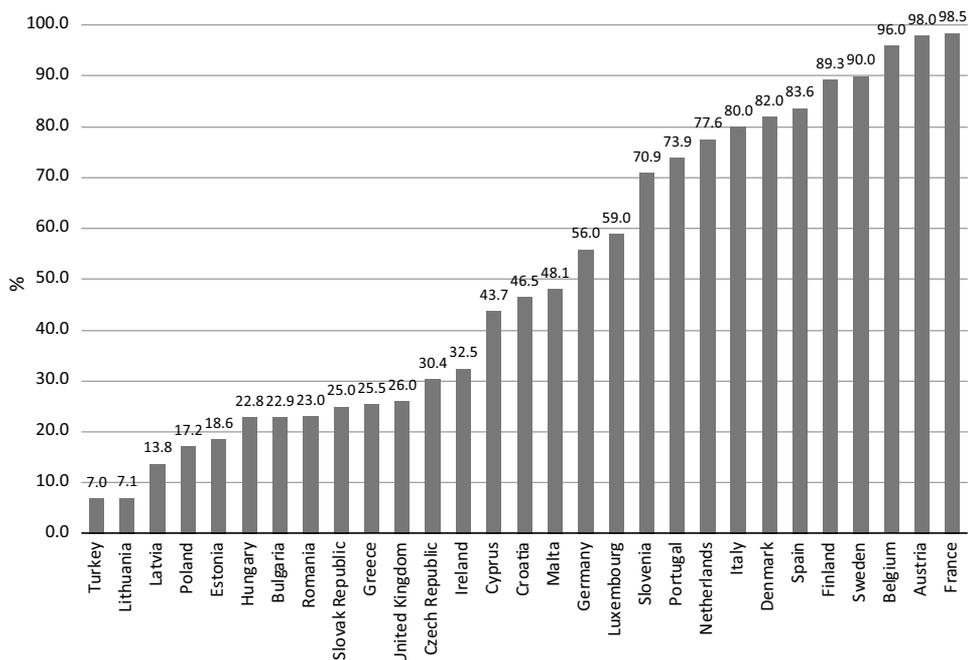
Source: Visser (2019b); author's calculations.

Figure 2A.3 *Employers' organization density in the private sector: share of workers employed in companies affiliated to an employer association, 2017 (percentage)*



Source: Visser (2019b); author's calculations.

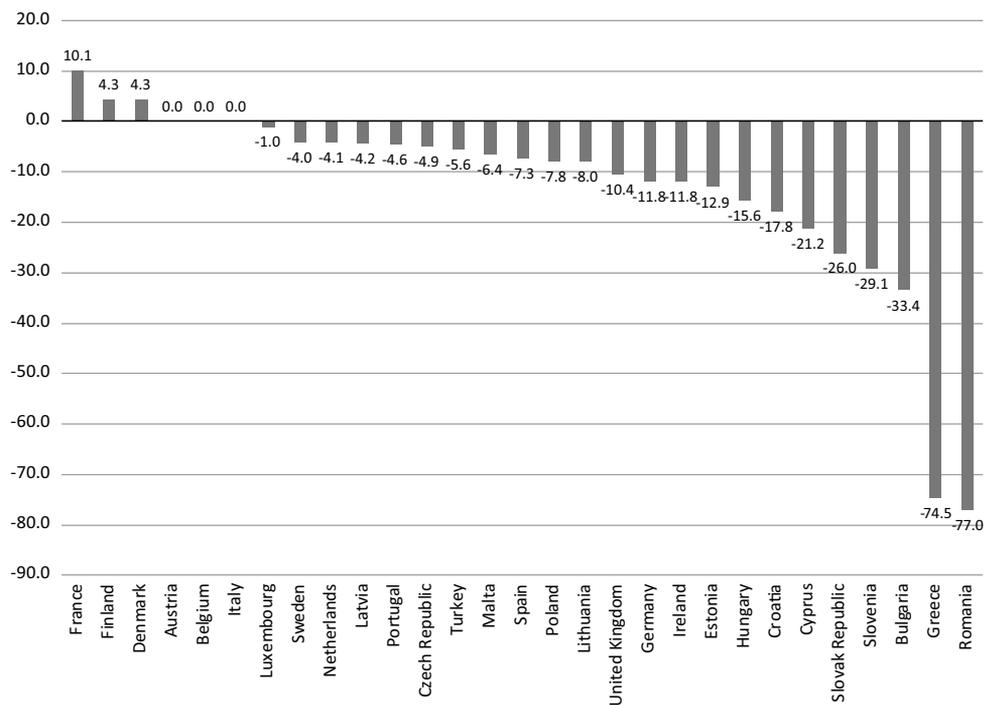
Figure 2A.4 Variation in employer density between 2000 and 2017 (percentage points)



Note: Latest year available: 2017 for Austria Croatia, Germany, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Spain and the UK; 2016 for Belgium, Bulgaria, Cyprus, Czech Republic Denmark, Finland, Greece Italy, Malta, Portugal, Slovenia, Sweden; 2015 for France Estonia, Poland and the Slovak Republic; 2014 for Latvia.

Source: Visser (2019b) and author's calculations.

Figure 2A.5 Collective bargaining coverage in the EU and Turkey: share of workers covered by collective agreements, 2017 (or latest year available) (percentage)



Source: Visser (2019b); author's calculations.

Figure 2A.6 Variation in collective bargaining coverage rate, 2000 and 2017 (percentage points)

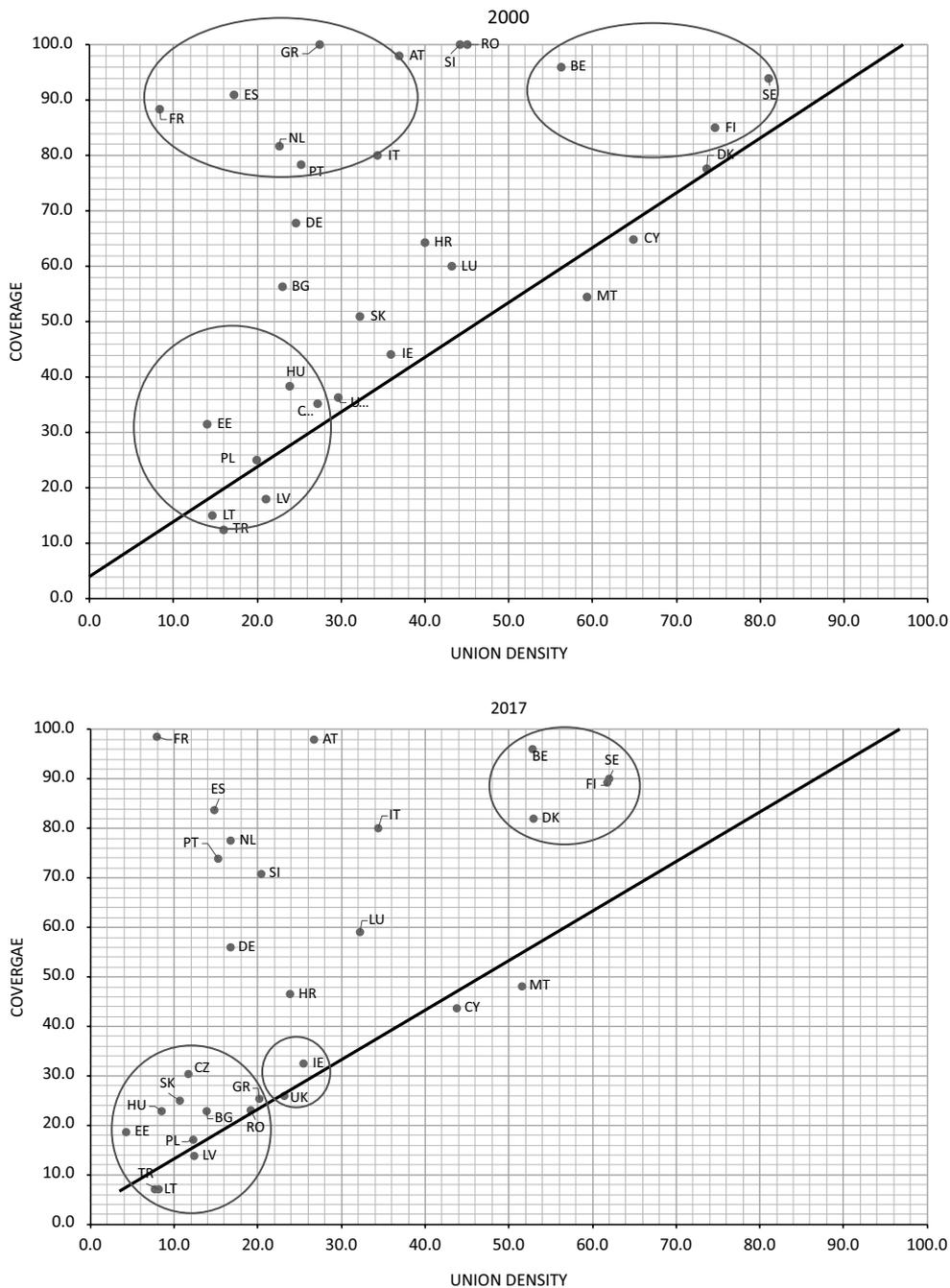
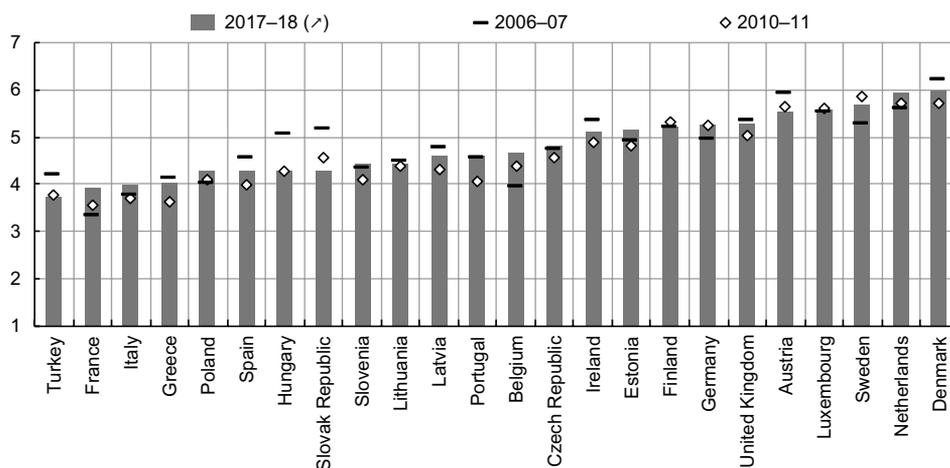
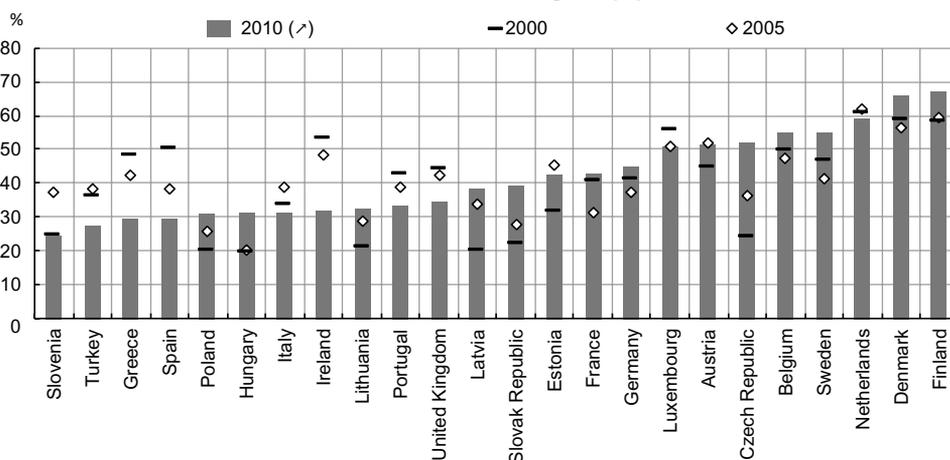


Figure 2A.7 Union density and collective bargaining coverage in the EU, 2000 and 2017

A. Co-operation in labour-employer relations as assessed by senior executives



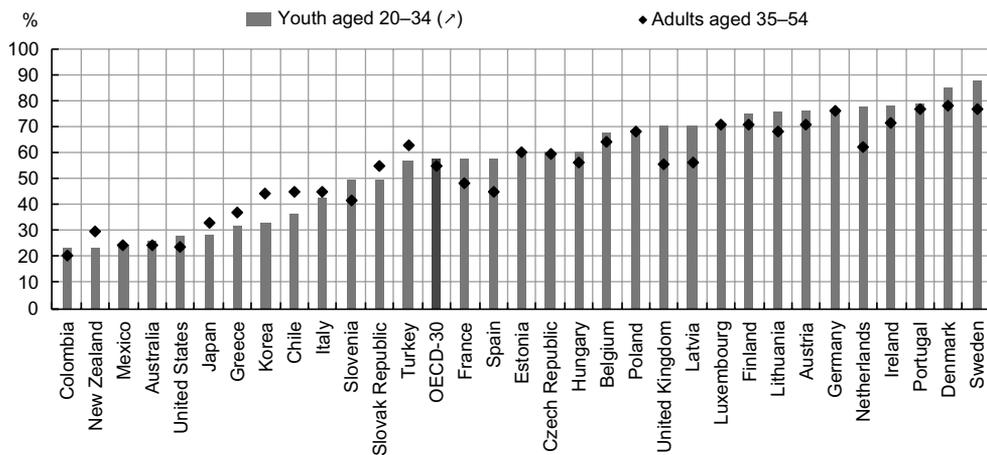
B. Trust in trade unions among total population



Notes: Statistics shown in panel A refer to the average weighted national score based on a scale from one ('generally confrontational') to seven ('generally co-operative') to the following question: 'In your country, how would you characterize labour-employer relations?' In panel B, the statistics refer to the share of persons tending to trust trade unions for the European countries.

Source: OECD (2019), Global Competitive Index Historical Database and Eurobarometer.

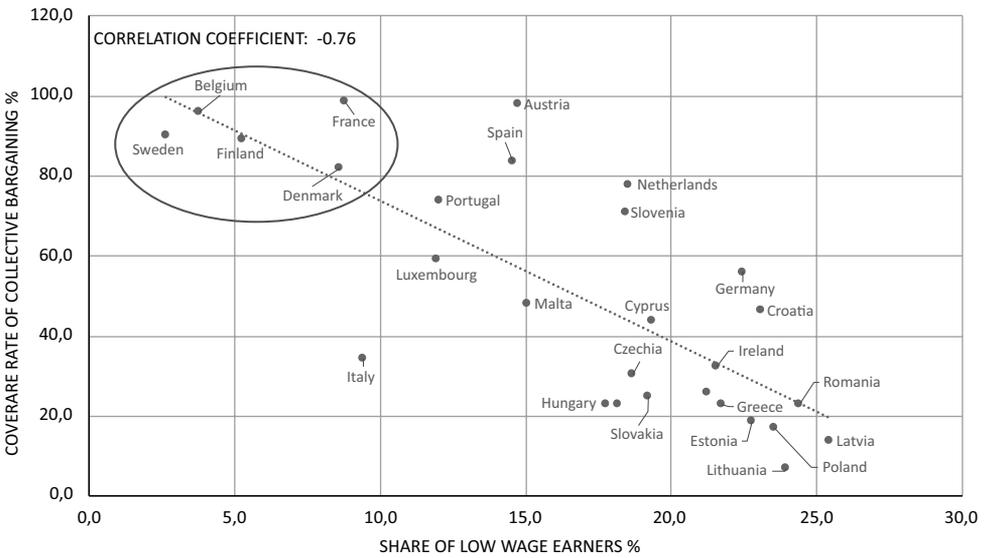
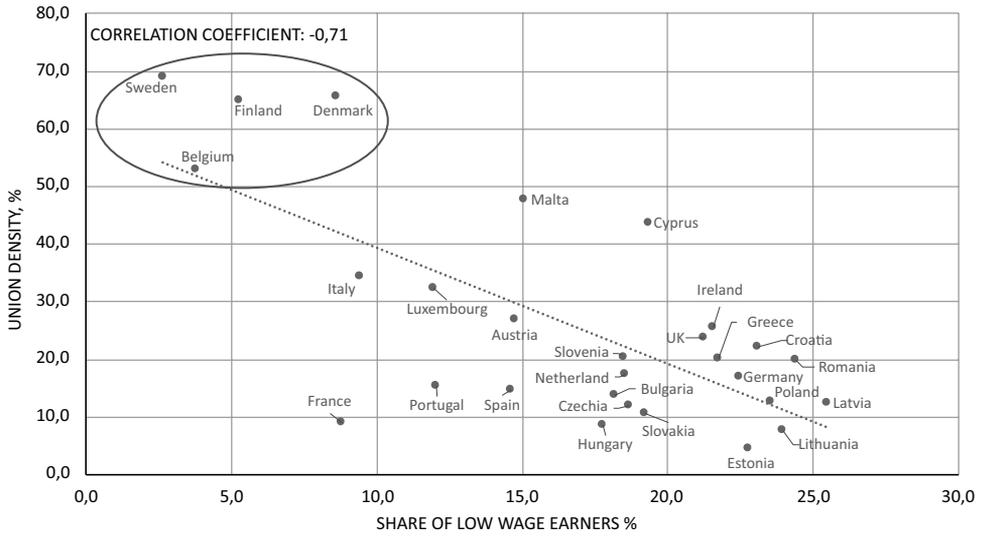
Figure 2A.8 Quality of labour relations



Note: Question: ‘Could you please tell me for trade unions, whether the term brings to mind something very positive, fairly positive, fairly negative or very negative?’

Source: OECD (2019), calculation based on Eurobarometer, 89.1, March 2018.

Figure 2A.9 Trust in trade unions, young people (20–34 years old) and adults (35–54 years old)



Source: Eurostat (2016), Visser (2019b) and author's calculations.

Figure 2A.10 Share of low-paid workers and union density (2A.10a) and coverage rate of collective bargaining (2A.10b)

Table 2A.1 List of EU countries with *de jure* and/or *de facto* erga omnes clauses at the industry level

Group of countries	<i>Nordic and Ghent system countries</i>
	Belgium
	Denmark
	Finland
	Sweden
	<i>Southern countries</i>
	France
	Italy
	Spain
	Slovenia
	<i>Northern and central European countries</i>
	Austria
	Luxembourg
	The Netherlands
	<i>Eastern European countries</i>
	Estonia
	Latvia
	Lithuania
	Czech Republic
	Slovak Republic
	Hungary
<i>English-speaking countries</i>	
Ireland	

Note: *Erga omnes*: agreements cover all workers at the company, not only members of signatory unions. This is fixed either by law (*de jure*) or is a standard practice (*de facto*).

Source: Müller et al. (2019); OECD (2019, policy questionnaires).

Table 2A.2 Administrative extensions (or functional equivalent) mechanisms in place in EU countries, 2018, and criteria

Country	Criteria	Frequency of use
Belgium	Bargaining parties must be representative	Frequent
Finland	50% bargaining coverage Agreement must be concluded by representative bargaining parties	Frequent
France	Agreement must be valid for the whole of Finland	Frequent
	Representative trade union (30% at last workplace elections) Agreement not opposed by a trade union having received more than 50% of the votes; nor by industrial employers' association representing more than 50% of the employees of affiliated companies	
Luxembourg	National Conciliation Office must support extension	Frequent

Table 2A.2 (continued)

Country	Criteria	Frequency of use
Netherlands	Employers' organization must cover at least 60% of employees Extension must not conflict with general interest	Frequent
Slovenia	At least one representative trade union and employers' association must sign agreement Employers covered by agreement must cover more than 50% of employees	Frequent
Spain	Signatory parties must represent at least 50% of employees	Frequent
Bulgaria	Bargaining parties need to be representative	Limited
Croatia	Agreement must be signed by most representative trade union and employers' association Agreement must be in public interest	Limited
Czechia	Signatory must be most representative trade union and employers' association	Limited
Germany	Agreement needs to be in public interest	Limited
Ireland	Court must take into consideration implications for competitiveness and employment levels	Limited
Portugal	Extension must fulfil the principle of equal pay for equal work	Limited
Slovakia	Agreement needs to be representative; i.e. trade unions need to be established in at least 30% of employers affiliated to the signatory employers' association	Limited
Austria	Bargaining coverage of at least 50%	Rare
Estonia	Most representative organization in the industry must have signed the agreement	Rare
Greece	Employers affiliated to the signatory employers' association must employ at least 51% of employees in the industry	Rare
Latvia	Signatory employers' association must represent at least 50% of employees and generate at least 50% of the turnover in the industry	Rare
Lithuania	Bargaining parties have to specify motives for extension	Rare
Poland	Extension must satisfy 'vital social interest'	Rare
Romania	Signatory employers' association must represent at least 50% of employees	Rare

Note: Extension mechanisms do not exist in Denmark, Greece (until September 2018), Ireland, Poland, Sweden, and the United Kingdom.

Source: Müller et al. (2019); OECD (2019, policy questionnaires); Visser (2019b).

Table 2A.3 Assessment of social partner contributions to national employment, social and economic policies and reforms

Extent of involvement	Frequent and meaningful	Formal, not meaningful
Full involvement	Belgium, Bulgaria (employer organization), Denmark, Finland, France, Luxembourg, Malta, Slovakia	Estonia
Partial	Austria,* Belgium (trade union), Croatia (employer organization), Cyprus, Czechia, Germany, Ireland, Latvia, Lithuania, Netherlands, Portugal, Slovenia, Sweden, United Kingdom (trade union)	Greece, Hungary, Italy, Poland, Romania, Spain (trade union)

Notes:

* Assessment made related to the period before 2018.

Social partner organizations in some member states did not answer this question or did not answer clearly.

Employer organization: opinion given by employer organization; trade union: opinion given by trade union.

Source: Eurofound (2019b).

3. Supporting the autonomous role of the social partners

Bernd Waas

1. INTRODUCTION

The purpose of this study is to answer two main questions, in accordance with the mandate given by the social partners: first, to clarify whether the existing rules and practices in the European Union (EU) member states allow the social partners sufficient space to shape working conditions;¹ second, to clarify whether the existing rules and practices provide sufficient support to the social partners in the performance of their tasks or, more generally, to assess the impact of these rules and practices on their capacity to carry out their tasks.

To answer these questions, we proceed as follows. First, the legal framework within which these questions are to be answered is sketched out. This framework consists of provisions of international law, EU law and the constitutions of the EU member states (section 2). Second, the concept of ‘autonomy of the social partners’ is briefly explained. In particular, the question of how it differs from the principle of private autonomy, which dominates private law, is clarified. We also explain why the autonomy of the social partners cannot be easily assigned either to self-determination or to heteronomy, respectively (section 3). Then the fundamental relationship between the autonomy of the social partners and the state is discussed (section 4). The discussion then turns to the autonomy of the social partners and the space that they enjoy independently to shape working conditions. The criteria by which this area can be (meaningfully) determined is discussed, together with what the state must take into account when restricting social partner autonomy (section 5). This is followed by a closer examination of various social dialogue mechanisms, namely, possibilities to derogate from statutory law, declarations that an agreement is generally binding, and tripartite arrangements or institutions, that may play a role in all this and, most importantly, a discussion of their effects on social partner autonomy (section 6). The focus on these mechanisms is explained by this chapter not being about possible means to strengthen or support the social partners, but about strengthening or supporting their (jointly exercised) autonomy. A short summary concludes (section 7).

Before embarking on a discussion of the issues just raised, a clarification would seem necessary, since collective bargaining systems in the member states often differ fundamentally.² Some of these differences are legal: the legitimacy of collective agreements is based mainly on voluntary membership of the association concerned, but sometimes compulsory membership is also a factor in the application of collective agreements.³ In Austria, the role of the chambers, whose work is based on compulsory

membership, is explicitly recognized in the Constitution.⁴ In some collective bargaining systems, the collective agreement is not even binding between the parties; in others, it has the same material effect as a law.⁵ In some countries, collective bargaining takes place largely at company level, in line with the legal framework. In other countries, such as (again) Austria,⁶ the ability of individual employers to conclude collective agreements is severely restricted. The relationship between collective agreements also varies from country to country, both between agreements concluded at different levels and between agreements at the same level. Finally, to take just this one example, there are countries in which collective agreements between the social partners compete with collective agreements between other parties; in other countries this is not the case. In Portugal, for instance, Article 56 of the Constitution is regarded as establishing a 'monopoly of trade unions'.⁷ In Croatia, works councils also have the right to negotiate agreements with the employer, although important matters are reserved for collective bargaining.⁸ In Lithuania, works councils were deprived only a few years ago of the right to conclude collective agreements.⁹ In addition to these legal differences, there are far-reaching factual differences: the degree of organization varies greatly on the part of both the trade unions¹⁰ and the employers' associations.¹¹ In particular, employers' inclination to join associations is much less pronounced in some countries than in others.¹² For some countries it is reported that there are hardly any employers' associations (left) with which the unions could enter into collective bargaining.¹³ Occasionally, a 'general aversion to collective bargaining' on the part of employers is noted.¹⁴ In some countries there are relatively many trade unions; in others there are very few. In some countries sectoral trade unions predominate, in others company trade unions. There are also considerable differences in the number of unions representing only members of individual professions or occupational groups. In many countries, collective agreements are largely concluded at company level,¹⁵ while in others there are mainly association agreements. In some countries, there are collective agreements at all levels, but closer examination shows that collective agreements at association level are largely devoid of content, as in the Czech Republic.¹⁶ Sometimes, it is a criticism that collective agreements often have a declaratory character.¹⁷ In some countries, there is more coordination between the different levels of negotiation, in others less.¹⁸ Many of these differences are related to historical circumstances. In particular, it should not be forgotten that the collective bargaining systems in the younger EU member states had to be rebuilt from nothing after the collapse of communism.¹⁹

Against the background of these manifold differences, it makes sense to discuss the relevant questions – the autonomy of the social partners and its limits, the relationship of this autonomy to the state, and the possibilities of the state supporting the autonomy of the social partners – only on an abstract level. Accordingly, from the outset there is no claim to provide a description of the problems for each EU member state, nor to formulate corresponding recommendations for action. Instead, the aim of this chapter is to develop the problem situation in an abstract way in order to be able to indicate general solutions.

2. LEGAL GUARANTEES OF THE AUTONOMY OF THE SOCIAL PARTNERS

Any assessment of whether the social partners have sufficient room for fixing and shaping working conditions must be guided by the legal guarantees of the autonomy of the social partners. In relation to legal policy, it might be impossible to agree on what space is optimal for the social partners and, therefore, robust answers can be obtained only on the basis of the standards laid down in law rather than what may be deemed desirable.

As far as legal guarantees of social partner autonomy are concerned, three levels must be distinguished: first, the international level (the International Labour Organization, ILO);²⁰ second, the level of EU law; and third, the level of the member states.

2.1 International Labour Organization²¹

Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, collective bargaining is a fundamental right accepted by member states as part of their membership of the ILO, and which they have an obligation to respect, promote and implement in good faith.

In addition, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) is important. Its principal objective 'is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution'.²² Even more importantly, collective bargaining forms the subject of the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), which, similar to Convention No. 87, is one of the fundamental conventions. Central to Convention No. 98 is its Article 4, which reads: 'Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.'

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has described the regulatory content of the provision as follows:

Under the terms of Article 4 of the Convention, collective bargaining must be free and voluntary and must respect the principle of the autonomy of the parties. However, the public authorities are under the obligation to ensure its promotion. Interventions by the authorities which have the effect of cancelling or modifying the content of collective agreements freely concluded by the social partners would therefore be contrary to the principle of free and voluntary negotiation. The detailed regulation of negotiations by law would also infringe the autonomy of the parties.²³ On the other hand, machinery to support bargaining, such as information, conciliation, mediation or voluntary arbitration, is admissible.²⁴

2.2 European Union

At the level of European law, too, social partner autonomy is guaranteed. Here, the Charter of Fundamental Rights of the European Union (CFEU) is of primary importance, although it has only a limited scope of application: According to Article 51(1)

CFEU, 'the provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the member states only when they are implementing Union law'.

Article 28 CFEU states: 'Workers and employers, or their respective organizations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.'

Article 28 CFEU is based on Article 6 of the European Social Charter (ESC) and on the Community Charter of the Fundamental Social Rights of Workers (items 12 to 14).²⁵ It ensures a liberal system of collective bargaining and industrial action and thus is an essential element of freedom of association. Under Article 28, employees and employers should be able to regulate employment relationships themselves (within the framework of the law). It must be noted that the fundamental right is guaranteed by means of express wording only 'in accordance with Community law and national laws and practices'. This means that further concretization of the right to collective bargaining and collective action is carried out by EU law²⁶ and national legislation and practices, with wide discretionary powers.

In addition, it should be borne in mind that the EU has very limited legislative competences in the area concerned. According to section 153(5) of the Treaty on the Functioning of the European Union (TFEU), there is no competence as far as 'pay, the right of association, the right to strike or the right to impose lock-outs' are concerned.²⁷ Against this background, there are some authors who completely deny Article 28 an independent meaning and regard Article 28 as being 'symbolic' in nature.²⁸ In any event, it is out of the question that the member states still have considerable room for manoeuvre in shaping the autonomy of the social partners: Article 28 grants the social partners the right to '(regulated) self-regulation'²⁹ within the legal framework laid down by European and member state law.

As regards the possibility of restricting fundamental rights, Article 52 CFEU must be observed. Under Article 52(1) sentence 2 CFEU, the principle of proportionality applies, according to which 'limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others'. This means, first, that limitations must actually correspond to or serve the objective pursued, so the restriction must be appropriate. It means, second, that there must be no other equally suitable but less stressful means available. Finally, it means that the disadvantages caused must be proportionate to the objectives pursued. In all of this, it should be noted that the principle of proportionality leaves the national lawmaker considerable discretionary power, as is apparent from the reference to EU law and national laws and practices, which enables member states to arrive at different concretizations of freedom of association. Article 52(1) CFEU must also be observed as regards restrictions on social partner autonomy. It is occasionally assumed that in the application of Article 52(1) the limits of the right to collective bargaining (and collective measures) in Article 11(2) of the European Charter of Human Rights (ECHR)³⁰ can be invoked (at least in such a way that Article 28 CFEU is interpreted in light of the justification requirements of Article 11(2)).³¹ In view of the relatively minor significance of Article 28 CFEU, however, this question is not being discussed further.

2.3 Member States

In most member states, freedom of association is guaranteed by the Constitution.³² This applies, for instance, in the Czech Republic,³³ Estonia,³⁴ Finland,³⁵ France,³⁶ Germany³⁷ and Greece.³⁸ In some of these Constitutions, collective agreements and/or collective bargaining are mentioned explicitly,³⁹ while in others the courts interpret the relevant provisions to this effect.⁴⁰ The Irish Constitution recognizes the right to form an association, including a trade union, but does not contain a legal right to collective bargaining.⁴¹ Interestingly, some Constitutions do not mention collective bargaining, but explicitly refer to the right to strike.⁴² In some countries, freedom of association is derived from international instruments only. An example is Austria, where Article 11 of the European Convention of Human Rights is applied.⁴³

For the purposes of this chapter, the important question is under which conditions the (constitutionally guaranteed) autonomy of the social partners can be restricted. This question cannot be answered in general, as it depends on the circumstances in each member state. As far as, for example, Germany, is concerned, the constitutional guarantee of freedom of association is not subject to an explicit right of the legislator to limit it. This does not mean, however, that freedom of association is not subject to any state intervention. For the protection of other interests with constitutional status, restrictions are possible, whereby the principle of proportionality must always be observed.⁴⁴

3. THE 'AUTONOMY OF THE SOCIAL PARTNERS'

3.1 The General Concept of Autonomy

Autonomy refers to the state of self-determination, independence (sovereignty), self-administration or freedom of decision or action. Its opposite is heteronomy.⁴⁵ Max Weber developed the following definition: 'Autonomy means, by contrast to heteronomy, that the order of the association is set not by outsiders, but by members of the association by virtue of their quality (regardless of how this order is otherwise achieved)'.⁴⁶

3.2 Special Features of the Autonomy of the Social Partners

3.2.1 Autonomy of the social partners and private autonomy compared

Civil law is governed by the principle of private autonomy, which is the power of the individual to make, within the framework of the legal system, legally binding regulations independently. Private autonomy thus allows the possibility of arriving at legal transactions according to one's own will. It entitles the individual to establish, abolish or shape rights and duties. That is, private autonomy means that 'free and equal citizens can claim to determine, without state interference, paternalism or even coercion among themselves, how their opposing interests are to be adequately balanced from their point of view'.⁴⁷ Expressions of private autonomy are freedom of contract, freedom of association, freedom of property and freedom to make a will.

For its part, freedom of contract has two essential characteristics: freedom of conclusion and freedom of content and design. Freedom of conclusion refers to the right to decide freely with whom and whether a contract is concluded at all. Freedom of content and design, includes the right to freely decide on the content of a contract.

The public interest A closer look at private autonomy can help to determine more precisely what is meant by the ‘autonomous role of social partners’ and what the peculiarities of this specific autonomy are: While private autonomy is an elementary means for the ‘free development of the personality’ of each individual,⁴⁸ who as homo oeconomicus should be able to shape their legal relationships according to their own will and responsibility, the autonomy of the social partners is from the outset geared to a specific purpose, namely to bring about fair and appropriate working conditions.⁴⁹ Moreover, this social purpose is in the public interest,⁵⁰ which is why, for example, the German Federal Constitutional Court has stated that it is in the general/public interest to assign to the social partners the task of ‘organising and pacifying working life in association with their respective social counterpart’.⁵¹

The contractual mechanism It should also be noted that the contractual mechanism is used differently in the field of the autonomy of the social partners than in the context of private autonomy. While the contractual freedom undoubtedly includes the right not to conclude a contract with a certain person, this negative freedom of conclusion exists only to a limited extent as regards contracts with the social partner. This can be illustrated using the example of German law again. There, it is specified that a person may avoid their declaration of intent if they have been induced to make it unlawfully by duress (or deceit).⁵² The legal interest protected by this provision is obviously private autonomy. Anyone who has been compelled to make a declaration of intent should be able to challenge it precisely because a declaration of intent brought about by coercion cannot be regarded as an expression of free self-determination in legal transactions. In the area of the autonomy of the social partners, however, the situation is completely different: here the possibility of exerting pressure on the other side is not only permissible, but even guaranteed as freedom of association also covers industrial action aimed at bringing about the conclusion of collective agreements.

Concurring agreements There is at least one other important difference between private autonomy and social partner autonomy. This becomes clear when we take a closer look at the former and, in particular, at freedom of contract as a significant manifestation of it. Freedom of contract refers to the power to conclude contracts that can be freely determined in principle with regard to both the contractual partner and the content of the contract. In contrast, the autonomy of the social partners, certainly when normative effect is attached to the contracts concluded by them, is the right to conclude contracts which have legal consequences that go beyond the contractual partners (employer, employers’ association and trade union). The most significant effects of collective agreements do not occur in the relationship between the contracting parties, but vis-à-vis the parties to the employment contract. This raises a question concerning social partner autonomy that, from the outset, does not arise in the context of private autonomy (or freedom of contract), namely, that of clarifying, if necessary, the powers of the

social partners to fix working conditions by regulating the relationship between collective agreements concluded at different levels (company, sector and nationwide) and/or regulating the relationship between collective agreements concluded at the same level by competing trade unions.

3.2.2 An autonomy between self-determination and heteronomy

As regards autonomy of the social partners, an additional problem arises which is that it is not easy to judge whether agreements between the social partners are completely autonomous or whether they must be regarded as being at least partially heteronomous.⁵³ This becomes particularly clear when we take the perspective of those who, as employers or employees, are bound by collective agreements concluded by the social partners. In that instance, we must decide whether the effect of the collective agreement originates entirely from an autonomous decision in relation to self-determination (for example, because the employer has decided to join an employers' association or the employee has decided to join a trade union) or whether that effect ultimately occurs on the basis of state legislation, or at least on the basis of norm-setting derived from or recognized by the state. This problem is not addressed further here. It is sufficient to ensure at this time that the autonomy of the social partners has some special features that preclude from the outset simply equating it with the private autonomy which characterizes civil law.

4. AUTONOMY OF THE SOCIAL PARTNERS AND THE STATE

4.1 Autonomy of the Social Partners: Pre-existing, Based on Private Autonomy or Delegated by the State?

Autonomy of the social partners means that they are free to regulate working conditions by entering into collective agreements. The effect of these agreements may vary from one country to another. However, there is always the question of the relationship between social partner autonomy (and their power to conclude collective agreements), on the one hand, and state legislation, on the other. This question is of a theoretical nature and is not discussed further within a study that aims primarily at insights useful for the social partners. However, the problem cannot be completely ignored either. Instead, it can be briefly illustrated, again by using the example of German law.⁵⁴

In Germany, various theories have been advocated in legal literature and jurisprudence that aim to explain the (normative or law-equivalent) effect collective agreements have in that country. Initially, collective agreements were widely seen as ordinary contracts, but that view is incompatible with their character of (also) containing norms. In contrast, the earlier case law – namely, that of the Federal Labour Court on the binding of the parties to collective agreements to fundamental rights – was based on the thesis of the state delegating its power to legislate for employers' and employees' associations. This delegation theory, which is also widely accepted in legal doctrine, reflects the idea that the state has transferred its legislative power to the social partners and that it is then exercised by the parties to the collective agreement in their own name similar to a state power. According to the delegation theory, the norm-setting takes place 'from top to bottom', that is, through the transfer of state competences.⁵⁵ The autonomy theory takes a completely

different view. According to that theory and in contrast to a merely delegated standard setting, the normative effect of collective agreements is based on the original standard-setting authority of the employers' and employees' associations. According to this view, the autonomy of the social partners is collectively exercised private autonomy. The Federal Labour Court has taken this up in numerous judgments.⁵⁶ This view determines, in particular, the position of the court as regards the importance of fundamental rights for collective bargaining. In this respect, the court assumes that the validity of the provisions of collective agreements is based on the membership of employers (in employers' associations) and employees (in unions), who in the exercise of their fundamental rights submit to existing and future collective bargaining agreements. In contrast, the Federal Constitutional Court is closer to the idea of state-recognized legislative power of the parties to collective agreements.⁵⁷ In this view, collective agreements are rules for the content of the employment contracts that are covered by them. These rules are justified by the consent of the parties to the collective bargaining agreement and are binding in accordance with statutory law. This view of the power to set norms as recognized by the Constitution and shaped by the ordinary law also has supporters in the legal literature.

As already mentioned, the theories that are advocated to explain the relationship between collective bargaining autonomy and the state are not discussed in further detail here. All the more so because these theories might ultimately not be verifiable at all. However, this discussion was about something completely different from the start, namely, to show that the relationship between autonomous legislation of the social partners and the state raises fundamental questions that can be answered very differently depending on the position taken in principle.

4.2 Autonomy of the Social Partners: Establishing a Legal Framework

It is hard to deny that a constitutional guarantee of freedom of association, regardless of its concrete scope, depends on further specification and substantiation by state legislation.

4.2.1 International law

At the level of international law, the existence of two aspects can be demonstrated: the guarantee of the autonomy of the social partners and the need to provide an appropriate legal framework.

The autonomy of the social partners is guaranteed in general, but specifically their autonomy in the conduct of collective bargaining is protected here. The principal objective of Convention No. 87 is 'to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution'.⁵⁸ Legislative intervention can be used, in particular, 'to establish a legislative framework for collective bargaining, leaving it to the parties to determine together the arrangements governing their relations and agreements'. All of these legislative interventions have to be interpreted, however,

in light of Article 8 of the Convention, under the terms of which, while organizations are bound, in the exercise of these rights, to respect the law, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention.⁵⁹

As regards Convention No. 98, in particular, the ‘principle of the independence and autonomy of the parties and of free and voluntary bargaining’, forms one of the ‘principal elements’.⁶⁰ Also, Article 3 of the Convention No. 98 makes it clear that a framework may be needed to make collective bargaining effective: ‘Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles’. In most cases, this framework may require action by the legislator, although the answer to individual regulatory questions is often left to the social partners themselves. However, where the legislator takes action, it is always called upon to take due account of the views of the social partners.⁶¹ Among the means that are proposed by the Collective Bargaining Recommendation, 1981 (No. 163), are: ‘facilitating the establishment and growth, on a voluntary basis, of free, independent and representative employers’ and worker’ organizations’; ‘establishing procedures for the recognition of the most representative organizations’; and ‘ensuring that collective bargaining is possible at any level whatsoever’.

In this respect, the CEACR has stated the following:

Whatever the type of machinery used, the Committee is of the view that its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement under the best possible conditions.⁶²

What is needed then in light of Article 4 of Convention No. 98 is by no means the imposition of compulsory collective bargaining, but the provision of a collective bargaining framework within which free and voluntary collective bargaining can take place.⁶³

4.2.2 EU law

Article 28 CFEU grants social partners the right to ‘(regulated) self-regulation’.⁶⁴ Article 28 CFEU itself does not contain any specific provisions on the conditions under which the exercise of the corresponding rights is protected. As regards the relevant levels of collective bargaining, this is particularly clear because Article 28 mentions only that these must be ‘appropriate’. Also, since the EU has only very limited competences in the area concerned, the extent of the guarantee depends essentially on its substantiation in the legal systems of the member states. Accordingly, the member states are ‘entitled – but also obliged – to determine the subject matter, scope and binding effects of collective agreements’.⁶⁵

All this is of importance in the present context because interventions by the lawmaker always raise the question of whether they restrict the scope of social partner autonomy or, on the contrary, unfold it in the first place. In this respect, the autonomy of the social partners is no different from private autonomy. The latter, too, needs to be shaped in such a way that the legislator first has to ‘bring it to life’ by providing a suitable legal framework (think, for example, of rules on legal capacity).⁶⁶

4.2.3 Member states

Finally, as regards the (constitutional) situation in the member states, it varies from country to country. As far as the legal situation in Germany is concerned, the Federal Constitutional Court stated the following in 1991:

freedom of association requires from the outset a legal form. This not only consists in the creation of the legal institutions and sets of norms which are necessary in order to be able to exercise the freedoms guaranteed by fundamental rights. The significance and multiplicity of the interests touched by the activities of coalitions, particularly in the area of the economic and social order, make rather diverse legal regulations necessary which can also draw barriers to freedom of association; all the more so as the object of the guarantee is related to changing economic and social conditions which, more than in the case of other freedom rights, must leave the possibility for modifications and further developments.⁶⁷

The court thus recognizes what could be termed a comprehensive design or concretization mandate of the legislature. This mandate obliges the legislator to create the functional as well as the organizational prerequisites for trade unions and employers' associations to have sufficient scope for action and thus to place these on a sustainable and functional basis within the framework of the general legal system.⁶⁸ Whether a similar obligation is explicitly recognized in other legal systems is another question.⁶⁹ However, that is not the issue. The only important factor in this context is that exercising freedom of association always requires a basic legal framework that only the state legislator can create.⁷⁰ Also, what has already been written regarding European law applies here too: legislative measures aimed at the establishment of this type of framework do not restrict the autonomy of the social partners, but – on the contrary – bring it to fruition in the first place.

4.3 Autonomy of the Social Partners and State Legislation: Fundamental Freedom versus Power to Legislate

Irrespective of how the autonomy of the social partners is explained (or justified) in detail, it is evident that it forms (an essential) part of the freedom of association, which is for its part a fundamental right in all EU member states. This, however, leads to a significant insight as far as the relationship between the autonomy of the social partners and the state (or state legislation) is concerned: the autonomy of the social partners and the task of the state face each other in a relationship between freedom and competence. To the extent that they compete with each other, it is not a problem of delimiting mutual, (identical) competences, but a problem of protecting and (legitimately) limiting social freedom.

5. THE AUTONOMY OF THE SOCIAL PARTNERS: WHAT SPACE TO SHAPE WORKING CONDITIONS INDEPENDENTLY?

The extent to which the social partners enjoy autonomy varies from one member state to another. Article 28 CFEU refers to a large extent to the law of the member states, so that further substantiation of the right is left to them.

5.1 Criteria for Determining the Space Left to the Social Partners

From the outset, however, the question of which criteria can be considered abstractly when fixing the limits of the social partners' autonomy promises greater benefits than the

answer to the question of how the boundaries of the autonomy area are drawn in detail in the member states.⁷¹

In this respect, we think first about the state determining the subject areas which are open to autonomous legislation by the social partners. In relation to Germany, for instance, these would then be the ‘working and economic conditions’ referred to in the constitutional guarantee of freedom of association.⁷²

Secondly, there may also be barriers to autonomous regulation by the social partners in relation to content. It should be borne in mind, in particular, that the state may leave specific matters to the social partners for their own regulation in principle, but also sets specific requirements that the regulation must then satisfy.

Thirdly, and finally, it could be asked what limits exist for autonomous norm-setting in personal terms. This question initially seems almost superfluous, because we might think that from the outset it can only be a question of regulations concerning employers and employees. That the question is completely justified, however, is shown by the legal reality that the social partners often arrive at regulations that do not concern employees alone, but also (specific) self-employed persons. This became particularly clear with a decision of the European Court of Justice, which was based on a case from the Netherlands.⁷³ However, the decision has not brought full clarity to the question of the extent to which the prohibition of cartels under Article 101 TFEU precludes collective agreements for self-employed persons. That is, we could say that the references to the self-employed persons covered by the collective agreement in the reasons given by the Court are a mixture of two sharply defined concepts. On the one hand, the persons who are in a comparable situation to employees owing to economic dependence and, on the other hand, the persons whose true legal quality – the status of employee – is obscured by the contract (bogus self-employed). If the court had aimed its remarks at the latter persons, then it must be assumed that collective agreements in favour of economically dependent self-employed persons are (still) inadmissible under antitrust law. If the court had had the first-mentioned persons in mind, it could be said that the ban on cartels had been softened. The question is not to be further examined in this chapter, as in the present context it only seems significant to note that the personal scope of application must not be forgotten when addressing the question of the scope of social partner autonomy. This question is all the more important since the number of solo self-employed seems to be rising in most countries – not least in the wake of the expansion of the platform economy.⁷⁴

It should be noted here that the autonomy of the social partners can be defined by asking three questions: what can or may the social partners regulate? What barriers do they encounter in their regulations in terms of content? For which groups of persons can or may they make regulations? Only the first and second question are discussed here.

5.2 Limiting the Autonomy of the Social Partners

5.2.1 The subjects for autonomous norm-setting

The first question to be answered is what restrictions the state has to observe if it wants to withdraw certain subjects of regulation from the norm-setting of the social partners. However, there is obviously no universal answer to this question because the areas of autonomy opened up to the social partners are, as seen above, to a large extent shaped by member state law. As the scope for state intervention varies from one country

to another, more than that the state needs to justify its actions, which stands up to the requirements of the (constitutional) legal guarantee of freedom of association, cannot be said.

International law International law does little to elucidate the problem. This also applies if observations made by the standard monitoring bodies are taken into consideration. Not much more than occasional enumerations of possible subjects of negotiation can be inferred from these. For instance, the Committee on Freedom of Association has held the following:

The Committee ... recalls that matters which might be subject to collective bargaining include the type of agreement to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of the collective agreement, the granting of trade union facilities, including access to the workplace beyond what is provided for in legislation, etc.; these matters should not be excluded from the scope of collective bargaining by law, or as in this case, by financial disincentives and considerable penalties applicable in case of non-implementation of the Code and Guidelines. It further recalls that it is for the parties concerned to decide on the subjects for negotiation ...⁷⁵

Even less coherent are the standards which the legislator may have to follow if it wishes to adopt regulations in the area of working conditions. All that can be said in this respect is that the social partners must retain their own room for manoeuvre. For example, the CEACR holds that ‘public servants not engaged in the administration of the State should be able to negotiate collectively their wage conditions and that mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect’. The Committee acknowledges that ‘the special characteristics of the public service ... require some flexibility, particularly in view of the need for the state budget to be approved by parliament’. Accordingly, it considers certain legislative restrictions of the autonomy of the social partners to be compatible with the Convention, ‘provided that they leave a *significant role* to collective bargaining’.⁷⁶

EU law As far as Article 28 CFEU is concerned, there is no exclusive power of the social partners as regards fixing terms and conditions of employment. There is not even a priority power of the social partners in that the organs of the EU would have to refrain from regulation if collective agreements are in place. One reason for this is that action by the social partners from the outset cannot guarantee harmonization of social standards. Another reason is that Articles 151 ff. TFEU, despite recognizing and promoting social dialogue, do not indicate that collective bargaining takes precedence.⁷⁷

Member states The position in the member states differs from one country to the other. Accordingly, no generally valid observations can be made. It is at least possible, however, to point to a standard that may not be legally binding in a member state, but which could nevertheless provide a guideline.⁷⁸ This is the principle of proportionality, which can be found in the Constitutions of some member states (see, for instance, Article 31(3) of the Polish Constitution) and – at the level of EU law – is explicitly addressed in Article 52 CFEU.⁷⁹ This principle is illustrated here by using the example of German law.

In Germany, the principle of proportionality stems from public law. Originally, it was developed in police law and only found its way into constitutional law with the adoption in 1949 of the Basic Law (*Grundgesetz*), the German Constitution. In the jurisdiction of the Federal Constitutional Court, it has then become the decisive test for the control of state action. The principle of proportionality is based on the idea that state measures must not be without boundaries, that they must instead be justified by a clearly defined purpose and that they must also be measured against this purpose in their scope and extent. The principle of proportionality is thus intended to ensure that state measures are in principle limited, so that the citizen is not at the mercy of state sovereignty.⁸⁰

Application of the principle of proportionality requires a three-stage examination. This examination is preceded, on the one hand, by elaborating the (objective) purpose underlying the measure and, on the other, by examining whether this purpose is legally legitimate and thus permissible. The examination based on the standard of the principle of proportionality is then based on three elements: suitability, necessity and appropriateness. A means is suitable if the intended purpose can at least be promoted with its help (fitness). The remedy is necessary if no other equally suitable but less stressful remedy is available (choice of the mildest remedy). The remedy is appropriate if the burden on the individual is not disproportionate to the purpose pursued and the benefits sought for the public. In this respect, we often regard proportionality in the narrower sense, which usually takes centre stage. In this regard, it is necessary to weigh up the consequences for the person concerned, on one hand, and the conflicting public interests, on the other. For both sides, it must first be determined abstractly which interests are affected and how these are to be legally assessed. Then the intensity of the concern as well as the benefit to the public good must be determined by the measure in question. Only then does the actual weighing take place, in which it must be asked whether, taking all these premises into account, the desired result is still in proportion to the burdens on the citizen. The limit of what is reasonable must not be exceeded under any circumstances.

The principle also applies as far as the relationship between the autonomy of the social partners and state legislation is concerned. In the regulatory areas entrusted to collective bargaining, the legislature may fix working conditions only if it has a factual reason to do so and if the intended regulation is appropriate, necessary and, in its effect, restricting collective bargaining autonomy, proportionate in the narrower sense. Moreover, it must be noted that not every public interest justifies the restriction of collective bargaining autonomy. The proportionality test requires a careful examination of which regulatory options are to be withdrawn from the bargaining parties and for what purpose.

In summary, in Germany, the state is understood to be obliged to leave a sufficiently large field of working conditions to the social partners. Although the Federal Constitutional Court's case law repeatedly refers to a 'norm-setting prerogative' of the social partners,⁸¹ this is not to be understood as referring to a taboo zone (for example in the areas of pay and working hours). What is required instead is for the autonomy of the social partners not to be dried up by working conditions fixed by the state.⁸²

5.2.2 Statutory restrictions regarding content

It is also conceivable that the legislator leaves some subjects of regulation to the social partners to regulate independently, but also fixes content-related requirements that the regulations adopted by the social partners must then satisfy.

Possibilities for derogation are relevant here, that is, the possibility opened up to the social partners to ‘set aside’ certain statutory provisions.⁸³ These derogation possibilities are often limited in respect of content, for example, by the legislator defining a corridor within which the social partners may take action. They may, for instance, be able to derogate from the legal provisions on working time, but the derogations must remain within well-defined boundaries. We explore this in more detail in the next section. Here we merely note that these derogation possibilities may be an expression of a soft approach to social partner autonomy. In Germany, for example, there is agreement that derogation possibilities can even be required by the principle of proportionality (which applies there), so that the lawmaker must always ask itself whether these derogation possibilities should not be chosen as a milder restriction of collective bargaining autonomy compared with provisions that the social partners are prevented from setting aside.⁸⁴

6. IMPACT OF SOCIAL DIALOGUE MECHANISMS ON SOCIAL PARTNER AUTONOMY

In this section, three mechanisms are examined in respect of their impact on the autonomy of the social partners: possibilities to derogate from statutory law, declarations that an agreement is generally binding,⁸⁵ and tripartite arrangements or institutions.

6.1 Derogation Possibilities

A restrained approach to social partner autonomy might involve the state creating legal regulations in the field of working conditions, but allowing them to be set aside by the social partners (to a limited extent).

6.1.1 Derogation possibilities in member states

The possibility of derogating from the law by collective agreement (and possibly only by that means) exists in many EU member states. When restricting the possibility of derogation to collective agreements (simultaneously preventing derogation from statutory law on the basis of a mere individual agreement),⁸⁶ two aspects are likely to be at the fore: on the one hand, that the parties to the collective agreement are often closer to the subject of regulation than the legislator is and can also react more quickly (and more flexibly); on the other hand, that the parties to the collective agreement, in view of their typical bargaining power, offer a greater guarantee that the regulations they have adopted adequately balance the interests involved.⁸⁷

However, the prevalence of legislation providing for derogations on the basis of collective agreements (also to the detriment of employees) varies widely between member states. Belgium might be an example of a member state in which this possibility hardly exists.⁸⁸ Accordingly, it has been noted that the scope for the social partners is considerably restricted by the many relevant legal provisions in this country.⁸⁹ In Bulgaria, the Labour Code explicitly provides that ‘the collective agreement shall regulate issues of the labour and social security relations of employees which are not regulated by mandatory provisions of the law’⁹⁰ and that ‘the collective agreement shall not contain clauses which are more unfavourable to the employees than the provisions of the law or of collective

agreement, which is binding upon the employer'.⁹¹ In Croatia, too, the social partners' room to manoeuvre is, in principle, limited to fixing conditions that are more favourable for the employees. Section 7 of the Labour Code explicitly states that 'the employer, the employee and the employees' council, as well as trade unions and employers' associations may stipulate working conditions that are more favourable for the employees than conditions prescribed by this Act',⁹² while 'the employer, employers' associations and trade unions may stipulate in a collective agreement less favourable conditions than those prescribed by this Act only if they are expressly authorized to do so by this or another law'.⁹³ In Romania, too, collective bargaining is, in principle, limited to setting terms and conditions more favourable for employees than the provisions of the law.⁹⁴ The position seems to be similar in Slovenia, where it is already evident from the Constitution that the state must ensure that workers are adequately protected.⁹⁵ In Slovenia, the favourability principle is described as being 'fundamental to labour law'.⁹⁶ In Greece, Article 22(2) of the Constitution is understood to enshrine that the law fixes minimum levels of protection for employees and leaves to collective agreements (1) the regulation of such conditions in a way more favourable to the employees, (2) the extension of the provisions of the law to employees who are not covered by them, and (3) the regulation of working conditions that are not regulated by the law.⁹⁷ In Poland, various and detailed statutory provisions exist. Against this background, it is sometimes noted that the extensive legal regulation narrows the scope for collective bargaining.⁹⁸ According to Article 9 section 2 of the Labour Code 'the provisions of collective labour agreements and collective agreements, as well as of regulations and statutes, may not disadvantage employees more than the provisions of the Labour Code and other laws and subordinate legislation'.⁹⁹ More recently, however, the lawmaker has allowed the social partners also to lower conditions of employment.¹⁰⁰

Cyprus forms a special case in many respects. The general rule is that collective agreements between trade unions and employers are not binding on them.¹⁰¹ Moreover, collective agreements have no binding effect, unless they are incorporated in individual employment contracts.¹⁰² As one author has observed, however, 'collective bargaining, based on the principle of tripartite cooperation, has traditionally played a major role in regulating industrial relations in the country. At the same time, legislation has largely constituted a secondary tool for regulation'.¹⁰³ Denmark is a special case, too, because, although most statutory provisions are non-derogable,¹⁰⁴ there is very little statutory law from the outset.¹⁰⁵ Finally, Ireland also forms a special case. Collective agreements do not, as a general rule, constitute a source of employment rights and obligations since, under the common law doctrine of privity of contract, a contract is only binding on parties who are privy (parties to) the agreement and a trade union under the existing case law cannot be regarded as an employees' agent.¹⁰⁶

In Finland, derogation from statutes is possible through a union-level collective agreement. Note, however, that agreements concluded by a national labour organization (union) on behalf of its members and generally binding collective agreements take precedence over these union-level agreements.¹⁰⁷

In Germany, derogation possibilities are widely regarded as a softer form of state regulation. These possibilities exist, in particular, in the areas of working time, dismissal protection (periods of notice), temporary agency work and fixed-term contracts.¹⁰⁸ In the Netherlands, a few statutory provisions allow for derogation.¹⁰⁹ Some of these provisions allow derogations *in peius* only by way of collective agreements with the unions

(termed the three-quarter mandatory law). Others allow derogations *in peius* also if it is with the approval of the works council (termed the five-eighths or two-thirds mandatory law).¹¹⁰ In Spain, collective agreements must respect the mandatory provisions of the law, but can set aside some provisions of statutory law. Among the areas in which collective agreements can derogate from the law are working time, distribution of working time and time schedules; shift work or any method of organizing work in shifts; pay structure and amount; working system and work performance.¹¹¹ In the wake of more recent reforms, the number of derogatory collective agreements has increased considerably.¹¹²

Several collective bargaining systems have undergone changes as regards opportunities to incorporate *in peius* derogations via collective agreements.¹¹³ Notably, the possibility of derogations *in peius* has been either introduced or enlarged. This has affected the protective function of collective agreements and emphasized the role of the state as a regulator intervening in the regulatory collective bargaining framework. In France, labour law as a heteronomous source of law plays such an important role that some authors call for greater space for autonomy.¹¹⁴ As regards the relationship between statutory law and collective agreements, two principles apply: first, that a collective agreement must not violate public policy and public order; and, second, that a collective agreement may fix conditions that are more favourable for employees.¹¹⁵ Note, however, that more recently it has become possible for a collective agreement to derogate from legal provisions even when it is not more favourable, although this possibility of 'derogatory agreements' is limited to the matters enumerated by law: working hours, procedure of economic dismissals, actors in the enterprise bargaining. These derogatory agreements may be concluded either at the industry level or at the enterprise level, and more recent legislation has enlarged the possibility of these agreements at the enterprise level.¹¹⁶

In Italy, collective agreements can, in principle, modify the law only *in melius* and not *in peius*.¹¹⁷ Exceptions apply, however, in both directions:

The legislator has sometimes authorized collective agreements to derogate *in peius* ... to imperative norms, or better to deregulate totally or partially some areas of labour law considered to be too rigid; the task has been given to collective agreements, and not performed directly by the law itself, because the social parties could be usefully involved in it and decide more appropriately according to their evaluations and the circumstances ...¹¹⁸

An example is Act 148/2011 (Article 8), which allows for derogations regarding, among other things, working time, with the relevant collective agreements having binding effects for all employees concerned. In this regard it has been observed that 'the norm is the clearest case of legal support to the extensions of the effects of collective agreements and also to their derogatory powers' and that it 'has been criticized for giving these collective agreements too sweeping power, amounting to subverting the traditional supremacy of the law'.¹¹⁹ In Portugal, the position seems to be similar. There, the principle was long applied that collective agreements could deviate from the law only insofar as they were more favourable for workers. It was only later that the Labour Code allowed collective agreements to set aside statutory provisions on a wide range of issues even if not more favourable.¹²⁰

In Hungary, the most recent labour law reform introduced far-reaching derogation possibilities. The legislator's aim was to strengthen the role of collective agreements as a contractual source of labour law. Under the old law a collective agreement could

derogate from statutory law only on condition that it offers more favourable terms for the employees. It has been observed that under this regime ‘it was not possible to establish the regulatory function of the collective agreement – employers were not willing and trade unions not capable of concluding a collective agreement’.¹²¹ The new Labour Code has introduced the following distinction: employees’ fundamental rights and important interests are regulated by norms of *ius cogens*; other rights and duties arising from the employment relationship are regulated by norms of *ius dispositivum*. The lawmaker specified cases of the above-mentioned types of derogation in every part of the law.¹²² A number of observers are critical of the reform.¹²³

6.1.2 Derogation possibilities: pros and cons

Derogation possibilities may be in the interest of a desirable flexibilization of legal provisions, while also exploiting the knowledge and proximity of the parties to collective bargaining. The advantages for employers are evident, but derogation possibilities can also be useful from a trade union viewpoint. If the institutional framework is right, these possibilities can open up space for a differentiated policy that also takes account of the interests of members.¹²⁴

Nevertheless, these regulations are not without problems. One problem is that statutory law always provides one of the social partners with fall-back security: if there is no agreement between the social partners, the regulation which is laid down by law applies. Accordingly, collective bargaining becomes arduous for the social partner who wants to change the statutory status quo. Also, under these conditions there is a danger that trade unions will use their position to wring compensation deals from employers. Moreover, derogation possibilities threaten to disrupt the freedom to bargain collectively, especially of the trade unions. If there is a particular legal regulation in favour of the employees, which is also put at the disposal of the social partners, then the trade union might feel almost obliged to defend the corresponding standard (although the item is possibly not part of its priorities). If the union does deviate from the existing dispositive regulation, then it will need to be explained particularly carefully to its members.

There is another problem with derogation possibilities. This applies, in particular, if the legislator allows the collective bargaining parties to dispose of statutory provisions on a wide range of issues. If this were to occur, it would then be up to the trade unions to oppose the employer’s requests to deviate from the law to the detriment of the employees, and to defend the legal standard of protection. Whether they succeed in doing so, however, depends solely on the balance of power between the social partners at the level at which the collective agreement is concluded.¹²⁵ The problem can be illustrated by the observations made some time ago by the CEACR concerning the legal situation in Brazil, where the legislator had made relatively far-reaching use of derogation possibilities in a comprehensive reform of labour law:

The Committee recalls ... that, although isolated legislative provisions concerning specific aspects of working conditions could, in limited circumstances and for specific reasons, provide that they may be set aside through collective bargaining, a provision establishing that provisions of the labour legislation in general may be replaced through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining, as set out in the Convention. ... The Committee once again recalls in this regard that the general objective of Conventions Nos 98 and 154 and the Labour Relations (Public Service) Convention, 1978

(No. 151), is to promote collective bargaining with a view to agreeing on terms and conditions of employment that are more favourable than those already established by law ...¹²⁶ and that the definition of collective bargaining as a process intended to improve the protection of workers provided for by law is recognized in the preparatory work for Convention No. 154, an instrument which has the objective, as set out in its preambular paragraphs, of contributing to the achievement of the objectives of Convention No. 98.¹²⁷

One year later, the CEACR noted that:

the Committee observes that, even though it is limited by a significant number of exceptions, the possibility to set aside protective legislative provisions through collective bargaining ... remains particularly broad. Emphasizing that Article 4 of the Convention, in the same way as Conventions Nos 151 and 154 ... have the general objective of promoting collective bargaining as a means of reaching agreement on more favourable terms and conditions of work than those envisaged in the legislation,¹²⁸ the Committee recalls that it considers that the introduction of a general possibility of derogating through collective bargaining the protection established for workers in the legislation would in practice have a strong dissuasive effect on the exercise of the right to collective bargaining and could contribute to undermining its legitimacy in the long term. In the present case, the Committee considers that the extent of the derogations ... which can be made by a sectoral collective agreement, as well as by an agreement at the company level, may affect the purpose and attractiveness of collective bargaining in the country, or at the very least to significantly modify its perception by the actors concerned and accordingly compromise its promotion and exercise.¹²⁹

Two issues deserve to be noted. First, from the viewpoint of the CEACR, the assessment of collective bargaining law depends first and foremost on the extent to which the legislator uses it: while the more occasional use of this option is unlikely to raise any concerns, it leads to massive concerns if the legislator makes use of it almost across the board. On the other hand, from the CEACR's point of view, it also depends on who is granted the possibility of deviating from statutory law. In particular, it leads to reservations if it is possible to deviate from statutory law on the basis of company collective agreements. In this respect, the concerns might be owing to it being more likely at the level of the company than at the sectoral level that the trade union is not on an equal footing with the employer.¹³⁰

In summary, the results of an assessment of derogation possibilities are mixed. In some respects, there is not only nothing wrong with the derogation possibilities, but they can even be positive. However, there are also dangers involved: the social partners' agenda can be disturbed as a consequence, the negotiating balance can shift and the general standard of protection under labour law can decline.

The question remains whether derogation possibilities can be used to strengthen the autonomy of the social partners. Statutory provisions that can be deviated from under collective agreements may, from the lawmaker's perspective, favourably influence employers' propensity to participate in autonomous norm-setting.¹³¹ This applies anyway if, first, the employer can hope for regulations which from their viewpoint are more favourable than the statutory regulations, that is, which open up a flexibilization potential that otherwise would not exist; and second, if the possibilities for deviation from statutory law are exclusive and thus really only open to the participants in autonomous norm-setting by the social partners. In this situation, however, the question arises as to whether it is justified to provide for derogation possibilities with the sole aim of strengthening the

employers' associations, or whether demand must not be made of the state that there be sufficient substantive grounds for this type of arrangement.

6.2 Extension Mechanisms

The general effect of a declaration of general applicability is that the underlying collective agreement with it also covers third parties (not previously bound). Since these third parties are thus subject to the collective agreement without or even against their will, the declaration of general applicability is usually dependent on the parties to the relevant collective agreement having a certain representativeness. The requirements vary from one member state to another. At times, the existing rules are also viewed critically as being too generous.¹³² However, the problem is not further discussed here since it is the question of protecting (or supporting) the autonomy of the social partners, and not of protecting the private autonomy of third parties (their negative freedom of association), which is of sole interest.

6.2.1 International law

The Collective Agreements Recommendation, 1951 (No. 91), indicates that,

where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement.¹³³

National laws or regulations may make the extension of the collective agreement subject to the following, among other, conditions:

(a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.¹³⁴

The CEACR considers that the extension of collective agreements is not contrary to the principle of voluntary collective bargaining and is not in violation of Convention No. 98.¹³⁵

6.2.2 EU law

As regards EU law, it should be noted from the outset that Directives sometimes expressly provide for the possibility of implementation by the social partners, which can be successful only if collective agreements have comprehensive coverage.¹³⁶ An example is Directive 2002/14/EC, Article 5, which expressly provides for the arrangements for informing and consulting employees to be governed by agreement between the social partners. As the decisions of the Court of Justice of the European Union (CJEU) in the cases of *Andersen and Holst* make clear, the EU legislator evidently accepts an outsider effect.

In Andersen, the CJEU stated:

Where the category of persons who may be covered by a collective agreement – as, in particular, in the case of an agreement which has been declared to be of general application – can be completely independent of whether or not those persons are members of a union which is a party to that agreement, the fact that a person is not a member of such a union does not in itself deprive that person of the legal protection conferred by the agreement in question.¹³⁷

In this context, the term ‘cooperative regulation’ is sometimes used.¹³⁸ That is, state (or supranational) actors and autonomous associations cooperate in legislating. The outcome is regulation between state (or supranational) and autonomous legislation.

6.2.3 Member states

In most member states legal mechanisms exist for declaring collective agreements generally binding.¹³⁹ Their effects depend from the outset on whether and under what conditions collective agreements are effective *erga omnes*.¹⁴⁰ An exception to the widespread use of extension mechanisms in the member states is Cyprus, where collective bargaining is mostly decentralized and collective agreements are as a general rule not legally binding.¹⁴¹ If they are binding, however, they also have binding effect on non-union members.¹⁴² The same applies in Malta.¹⁴³ In Denmark, there is no procedure for declaring collective agreements generally binding. Occasionally, however, provisions of collective agreements are adopted by the legislator and expressly laid down in law.¹⁴⁴ In Sweden, too, there is no statutory mechanism of extension of collective agreements to cover an entire industry.¹⁴⁵ In Ireland, no overall mechanisms exist for declaring collective agreements generally binding.¹⁴⁶ However, trade unions exert their influence by concluding national social partnership agreements. Some of these are codified to make them binding on individual employers. This comes close to a declaration of general applicability.¹⁴⁷ Finally, in the United Kingdom there is no extension mechanism.

Mechanisms for declaring collective agreements generally binding exist in most member states, but caution is required. In Belgium, for instance, only collective agreements concluded in a joint body (National Labour Council, joint committee or sub-committee) can be extended or rendered generally binding. However, as all employers and employees who fall within the scope of jurisdiction of a joint body are covered by the individual normative stipulations, a declaration of generally binding means that collective agreements rendered binding by Royal Decree move upwards in the hierarchical order of legal sources.¹⁴⁸ In Romania, the possibility of declaring collective agreements generally binding was enshrined in the law relatively late. Note, however, that at the same time the principle was abolished according to which higher-level agreements were generally applicable from the outset.¹⁴⁹ Sometimes the possibility of making collective agreements generally binding is limited to particular agreements. For instance, in Slovenia, only collective agreements concluded at the national level and agreements at the branch level concluded by a representative trade union or, cumulatively, by representative unions can be declared generally binding.¹⁵⁰ In Finland, employers who are bound by an agreement must also observe its terms in employment relationships with those of their employees who are not themselves bound by the agreement (as they do not belong to any association bound by the agreement), but who perform work covered by the agreement. Nevertheless, declarations of collective agreements as generally binding play an important role in law and practice.

If a national collective agreement can be regarded as general in the field concerned, its terms shall be applied as minimum conditions by all relevant employers.¹⁵¹ In Latvia, if members of an employers' organization or an association of employers' organizations employ more than 50 per cent of the employees in a given sector, a general agreement entered into between them and a trade union or an association of trade unions is binding on all employers of the relevant sector and applies to all employees employed by the employers. As regards these employers and employees, the general agreement comes into effect on the day of its publication in the official newspaper, after a joint application of the parties.¹⁵² In Spain, collective agreements are extended by law to all the workers affected, regardless of whether they are unionized or not.¹⁵³

Existing extension mechanisms differ in respect of procedural requirements, as well as substantive issues. In Bulgaria, industry and sectoral collective agreements can be declared universally binding if this is the common will of the parties.¹⁵⁴ The same applies in the Czech Republic¹⁵⁵ and Slovakia, where higher-level collective agreements can be declared generally binding (such a declaration at the request of one of the parties requires additional criteria to be fulfilled).¹⁵⁶ In Hungary, sectoral agreements (which are rare in practice) can be declared generally binding at the joint request of the parties.¹⁵⁷ A joint request is, in principle, also needed in Poland.¹⁵⁸ In Austria, a collective agreement (concluded by an association with voluntary membership) can be made generally binding at the request of one of the parties to it.¹⁵⁹ In Croatia, where company-level bargaining prevails,¹⁶⁰ a declaration of general applicability may be made at the request of one of the parties, whereby the existence of a public interest in said declaration – the central requirement – is determined by a tripartite body.¹⁶¹ Also, in the Netherlands, the declaration of general applicability does not require that the application is made by all parties, although in practice that is usually the case.¹⁶² In Greece, a declaration as generally binding can be triggered by any competent trade union, even if it is not the most representative and did not participate in the conclusion of the collective agreement.¹⁶³ In France, all representative unions and employers' organizations must have negotiated the agreement, but not all of them need to have signed it for its possible extension by the Minister of Labour, although at least one of each must have done so.¹⁶⁴ In Luxembourg, collective agreements that have been extended through a declaration of general obligation by the competent Ministry apply to all companies in a given sector, industry, occupation or type of activity. Both trade unions and employers' associations can request the extension.¹⁶⁵

As regards substance, it should be noted that national systems differ according to the power of the authority to make substantial changes to the rules of the collective agreement that is to be declared generally binding. In Austria, for example, it is not possible to amend the contents of a collective agreement that has been declared universally binding.¹⁶⁶ In addition, the period of validity of the generally binding collective agreement is limited to the duration of the underlying agreement.¹⁶⁷ Note, however, that the declaration of general applicability may be limited to parts of the collective agreement.¹⁶⁸ In Croatia, the law explicitly states that the declaration of general applicability ends with the termination of the underlying collective agreement.¹⁶⁹ The same applies in the Netherlands. In addition, there is a statutory maximum duration of two years.¹⁷⁰ Moreover, some collective bargaining provisions are already excluded from a declaration of general applicability by virtue of law.¹⁷¹ It is also worth noting in the Dutch legal

situation that the competent minister can exempt specific companies from the generally binding declaration, a possibility previously used to a considerable extent (and, in the opinion of many, also abused).¹⁷² The Netherlands is also interesting from a practical point of view because collective agreements are declared generally binding almost automatically and the majority of employers seems to have a positive attitude towards this.¹⁷³

In France, the law provides that, for the possibility of enlargement or extension to exist, an industry-wide collective agreement must contain a given substantial minimum of provisions. The law does not establish the exact content of these provisions but only provides that they must relate to particular subjects, which are increasingly numerous and cover collective relations rather than individual relations.¹⁷⁴ The competent Minister may further decide to exclude some provisions of the collective agreement from extension, either because they are unlawful and against public order or because they do not suit the branch of the economy to which they would apply if the agreement was extended.¹⁷⁵ Moreover, instances of enlargement may occur. For example, the competent Minister may proceed to the enlargement of an agreement if in a given area, for a given branch of activity, either there are no unions able to conclude an agreement, or if although they exist, they are persistently unable to reach one. The Minister may also enlarge a collective agreement already extended in the same branch of activity to a different territorial area in which economic circumstances are similar. Moreover, the Minister may enlarge to an occupational sector a collective agreement already extended into another occupational sector if the sector concerned is similar.¹⁷⁶

6.2.4 Extension mechanisms: pros and cons

The question that has to be answered in all this is, do these mechanisms help to strengthen collective bargaining autonomy or do they perhaps do the opposite? This issue is discussed using the example of German law. Germany is particularly interesting in this respect as an amendment was adopted in 2014 as part of a legislative package that, according to the lawmaker, aimed at strengthening collective bargaining.

Under German law, members of the parties to a collective agreement and the employer who is himself or herself a party thereto are bound by the agreement. The latter refers to an employer who personally concludes an agreement. These agreements are relatively rare, however, as the bulk of collective agreements are concluded in Germany by associations and at sectoral level. As regards these association-level collective agreements, section 3(1) of the Act on Collective Agreements states that employers and employees are bound by them only if they belong to the employers' association or trade union that concluded the relevant agreement.

Section 5 of the Act on Collective Agreements contains the basic provision dealing with declaring collective agreements generally binding. According to this provision, for decades the rule applied that collective agreements could be declared generally binding only if, first, the employers bound by the agreement employed not less than 50 per cent of the employees coming within its area of application and if, second, the declaration that the agreement is generally binding appeared to be in the public interest. This changed with the enactment of the Act to Strengthen Collective Bargaining in 2014. This Act not only introduced a nationwide statutory minimum wage, but also made it easier to declare a collective agreement generally binding. In its official justification for the new law, the government stated:

The partners to collective bargaining are not in a position anymore to ensure that reasonable wages are paid across the board. In the area of simple activities, in particular, fragmentation of labour relations – such as the dissolution of traditional industry boundaries – and the increasing international mobility of workers – has damaged the assertiveness of collective representatives. In branches that are characterized by a low degree of trade union membership, this has led to collective agreements fixing wages that are not sufficient for a single adult working full-time to sustain his economic existence without state help.¹⁷⁷

In order to remedy this, the law now states that the Ministry can declare a collective agreement generally binding only on condition that that this is in the ‘public interest’. This interest is deemed to exist if either the collective agreement concerned has ‘major significance for the content of working conditions within its area of application’, or if ensuring the effectiveness of collective norm-setting against the consequences of an ‘undesirable economic development’ requires a declaration of a collective agreement as generally binding.¹⁷⁸

There is controversy in Germany as to whether the new law on declarations of collective agreements as generally binding really strengthens the autonomy of the social partners. While some – in accordance with the legislator – affirm it, others firmly deny it, and some even speak of the reform as a ‘law to weaken collective bargaining’.¹⁷⁹ This controversial issue has significance far beyond Germany, as we have to ask in general what effects it has on social partner autonomy if the state creates the conditions for a simplified declaration of general applicability of collective agreements. The examination of this issue should start with the declaration as generally binding having the direct effect of broadening the legal effects of the collective agreement on which it is based. Since this occurs only as a consequence of state intervention, we construe this as a strengthening of the collective agreement by the state. As the generally binding declaration of a collective agreement does not extend the autonomy of the social partners (as regards subject matter, personnel or content), it is not possible to refer to a strengthening of social partner autonomy in this respect.

If making it easier for declarations to be declared generally binding has the effect of strengthening social partner autonomy, it must therefore be an indirect effect. This type of effect could be seen in particular in that the declaration of general applicability may influence the willingness of employers and employees to participate in autonomous norm-setting. The reason for the decline in the autonomy of the social partners in Germany (and in many other countries) lies in the degree of organization on the trade union side, but also on the employer side has declined noticeably in recent decades. However, there is no distinct picture. For example, it can be argued that the declaration of a collective agreement as generally binding tends to have a negative effect on employees’ willingness to join a union. We might ask, in particular, why employees should join (and pay union dues) when they are already protected by the state. Conversely, it can be argued that, on the employers’ side the willingness to join the relevant association increases because employers become subject to a collective agreement without any action on their part, but are only given some (potential) influence over its content if they join the association that concluded the agreement.¹⁸⁰ However, the effects of facilitating the declaration of an agreement as generally binding can also be discussed controversially at a fundamental level. For some, the autonomy of the social partners is strengthened because the state orientates itself towards existing collective agreements. Others see

a weakening of social partner autonomy because the state seeks to influence a private autonomous decision to join an employers' association or union by declaring a collective agreement generally applicable. The underlying view is that this inevitably implies a weakening of social partner autonomy since they depend on the legitimising effect of a (truly) voluntary membership.¹⁸¹

While all this is highly controversial and/or speculative, at least the extension of a collective agreement protects employers who are already bound by the agreement from having to compete with companies that are not bound by it. Whether this protection of employers against undercutting competition is the purpose of the generally binding declaration (or a mere side-effect) can be left open.¹⁸² It is inevitably a consequence of such a declaration (even if its only purpose may be to protect employees who have not previously benefited from the agreement). Against this background, it will hardly be possible to deny that the declaration of general applicability has a stabilizing effect on the collective agreement system to the extent that it deprives employers bound by an agreement of an incentive to leave the employers' association. It cannot therefore be said that facilitating the declaration of general applicability strengthens social partner autonomy. It can be asserted, however, that it supports their autonomy (at least in the medium term).¹⁸³

The following consideration also argues in favour of permitting the generally binding declaration of collective agreements under simplified conditions. If collective agreements lose their shaping force owing to a decline of membership in trade unions and employers' associations, then the state can have the task of ensuring sufficient protection for employees, which can no longer be achieved by collective agreement. In this situation, the state may make use of labour legislation. However, the means of declaring an existing collective agreement generally binding can also be considered. This might even be preferable. Not only does the state remain closer to the ideas of the social partners, but the rules contained in a collective agreement may also be better adapted to the situation in a particular sector or industry, as would be the case with general state legislation. Alternatively, if an increasing number of collective agreements are declared generally binding, a parallel and potentially competing regulatory system could emerge that could eventually restrict the social partners' own regulatory leeway. That is, the declaration of an agreement as generally binding deprives other collective parties of regulatory leeway at least in so far as some minimum working conditions are then already in place. In this respect, there is sporadic discussion in Germany that state intervention could pose a 'toxic danger' to the autonomy of the social partners.¹⁸⁴

6.3 Tripartite Agreements and Institutions

6.3.1 International law

The ILO is a tripartite organization. Nonetheless, it takes a critical stance as far as the involvement of state institutions in collective bargaining is concerned. Although it is acknowledged that tripartism, which includes the public authorities, may be appropriate for settling issues that are broader in scope, such as the formulation of legislation or economic and social policy, it is also acknowledged that Convention No. 98 'tends essentially to promote the bipartite negotiation of terms and conditions of employment,

namely between employers and employers' organizations, on the one hand, and workers' organizations, on the other'. In the view of the CEACR, the

presence of the government may also be justified if the general collective agreement is limited to fixing the rate of the minimum wage, although the negotiation of other terms and conditions of employment must be undertaken in a bipartite context and the parties must enjoy full autonomy in this respect in order to ensure that the content of the agreements so concluded is not dependent on the policy choices of successive governments.¹⁸⁵

The relationship between collective bargaining, on the one hand, and the statutory minimum wage, on the other, is also interesting in this respect. Article 2(2) of the Minimum Wage Fixing Convention, 1970 (No. 131) explicitly provides that, subject to compliance with the binding nature of minimum wages, 'the freedom of collective bargaining shall be fully respected'. Moreover, Paragraph 6 lit. (e) of the Minimum Wage Fixing Recommendation, 1970 (No. 135) explicitly indicates that minimum wages may be fixed by giving the force of law to provisions of collective agreements.¹⁸⁶ Finally, it is explicitly stated in the Preamble of the Recommendation that 'minimum wage fixing should in no way operate to the prejudice of the exercise and growth of free collective bargaining as a means of fixing wages higher than the minimum'.

6.3.2 EU law

In the EU, there is pronounced tripartism. According to Article 154(2) TFEU, 'before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action'. Even more importantly, Article 155 TFEU involves the social partners in a procedure which eventually results in national or supranational law.¹⁸⁷

Note that the General Court recently interpreted Article 155 TFEU in a restrictive manner on the basis of, among other things, a 'teleological interpretation'.¹⁸⁸ In this regard, the Court stated that:

The social partners' autonomy, recognised in Article 152 TFEU, means that during the stage of negotiating and concluding an agreement, which exclusively involves the social partners ..., the latter may engage in dialogue and act freely without receiving any order or instruction from whomsoever and, in particular, not from the member states or the institutions. It follows that the institutions, and in particular the Commission, must refrain from any conduct aimed at directly influencing the course of the negotiations or imposing the principle or content of an agreement on the social partners. On the other hand, once the social partners have freely negotiated and concluded an agreement and the signatory parties have jointly requested the implementation of that agreement at EU level, the Commission once again has a right to act and resumes control of the procedure.¹⁸⁹ ... it must be recalled that Article 155 TFEU merely involves the social partners in the process of the adoption of certain non-legislative acts without according them any decision-making power. The social partners are authorised only to conclude an agreement then request the Commission to submit to the Council a proposal for the implementation of that agreement at EU level. By contrast, the social partners are not themselves accorded the power of adopting acts that produce binding legal effects as regards third parties, or even of directly submitting a proposal for a decision implementing an agreement to the Council. Consequently, the objective of promoting the role of the social partners and the dialogue between them, respecting their autonomy, does not mean that the institutions, namely the Commission and then the Council, are bound to give effect to a joint request presented by the signatory parties to an agreement seeking the implementation of that agreement at EU level.¹⁹⁰

6.3.3 Member states

Tripartite arrangements and/or institutions exist in many member states. For instance, in Belgium, the Council of the National Labour Council, which is composed of 26 members equally divided between the employers' associations and the trade unions, gives advice to the legislature as well as to the executive. In Croatia, the Economic and Social Council, a tripartite body, plays an important role by i. a. providing opinions on draft legislation in the area of labour and social security and encouraging alternative means of dispute resolution in collective labour disputes.¹⁹¹ The Council provides opinions to the minister responsible for labour regarding any issues in the conclusion and application of collective agreements, as well as assessments of the possible impact of the extension of a collective agreement.¹⁹² Tripartite institutions also exist in the Czech Republic (Council for Economic and Social Agreement),¹⁹³ Denmark (National Labour Council),¹⁹⁴ Finland (Labour Council),¹⁹⁵ France (National Collective Bargaining Commission),¹⁹⁶ Greece (Supreme Council of Labour),¹⁹⁷ the Netherlands (Foundation of Labour and Social and Economic Council),¹⁹⁸ Poland (Social Dialogue Council),¹⁹⁹ Portugal (Economic and Social Council),²⁰⁰ Romania (Tripartite National Council for Social Dialogue),²⁰¹ Slovakia (Economic and Social Council of the Slovak Republic)²⁰² and Slovenia (Economic and Social Council of the Republic Slovenia).²⁰³ In Poland, general agreements are a special type of collective accord concluded by the most representative social partners mainly on socio-economic issues of key importance for the country. These accords are political agreements, but have indirect legal effects. The accords are usually concluded with the participation of the government.²⁰⁴ In Italy, the Constitutional reform of 2016 tried to abolish the National Council for Economics and Labour, but it was rejected by a popular referendum. In Hungary, the National Economic and Social Council is no longer a tripartite body after the most recent reform.²⁰⁵

In Bulgaria, too, trade unions and employer organizations play an active role in establishing labour policy through tripartite cooperation (tripartism) and social dialogue.²⁰⁶ This is explicitly acknowledged in Article 3 of the Labour Code.²⁰⁷ Tripartite cooperation concerns regulation of employment relationships (conclusion of employment contracts, remuneration, working time, rest and leave, healthy and safe working conditions, the workers' and employees' professional qualification and so on).²⁰⁸ Four types of bodies exist: the National Council for Tripartite Cooperation; sectoral and branch councils for tripartite cooperation (which discuss the specific issues of the employment and social security relationships as well as living standards issues that concern working conditions, and so on); district councils for tripartite cooperation; and municipal councils for tripartite cooperation.²⁰⁹ In Cyprus, also, tripartite institutions play an important role. This applies, in particular, to the national level, although in practice the sectoral level also seems to be affected.²¹⁰ Cooperation between the government and the social partners is so strong that there is sometimes mention of a 'Cypriot corporatist model'.²¹¹

In Malta, the Employment Relations Board can make recommendations to the minister regarding any national minimum conditions of employment, for eventual inclusion in a national standard order. Moreover, the board can make recommendations to the minister regarding any sectoral conditions of employment, for eventual inclusion in a sectoral regulation order. Finally, it can advise the minister on any matter relating to the conditions of employment or on any matter referred to the board by the minister.²¹² To some

extent, the board is also used as a substitute for the (barely existing) collective bargaining at sectoral level. In this respect, it has been noted that:

in contrast with most other European countries, where sectoral bargaining takes place on a large scale, in Malta the Board effectively provides a rare forum which under some situations resembles a form of sectoral bargaining, although it has proven itself to be more effective as a tool of tripartite social dialogue than a sectoral bargaining platform.²¹³

In Lithuania, under an agreement signed by the government, trade unions and employers' organizations, the latter two pledge not to initiate collective disputes or other actions on issues on which the government executes its obligations as specified in the tripartite agreements. The parties also agreed, by 1 December each year, to enter into an annual tripartite agreement on minimum wage (salary), a non-taxable minimum and other urgent economic, social and labour issues, to develop the tripartite partnership structure and to establish committees at the Tripartite Council.²¹⁴

In Ireland, tripartite arrangements historically played an important role. As one observer wrote, the 'trade unions achieved significant influence through their participation in these corporatist tripartite agreements with government and employers' organizations in which wage agreements are traded for tax, social welfare and employment law concessions'.²¹⁵ However, the importance has diminished, not least because agreements reached within this framework might not bind individual employees and employers owing to the doctrine of privity of contract.²¹⁶

In some member states, tripartite arrangements or institutions also play a role in collective bargaining. An example is again Belgium, where the National Labour Council has the competence to conclude collective labour agreements, and does so frequently. Collective agreements must be supported by organizations that represent at least 90 per cent of the employers and at least 90 per cent of the employees. Collective agreements concluded in the National Labour Council may be either agreements covering the entire country and different branches of activity, or agreements covering a particular branch, where, for that branch, no joint committee exists or no longer functions.²¹⁷

6.3.4 Tripartite arrangements and institutions: pros and cons

In several EU member states, (bilateral) agreements between the social partners exist alongside (tripartite) agreements in which the state is also involved. In some countries, tripartite agreements are firmly anchored institutionally.

There can be a great deal to be recommended for these tripartite arrangements. For example, it may be that in some areas the social partners lack the power independently to fix working conditions, so that tripartite agreements may be preferred to a situation in which there are no regulations whatsoever on working conditions involving the social partners. If social partner autonomy is weak, tripartite arrangements can have a compensatory, perhaps even a substituting effect.²¹⁸ It appears that the social partners in some countries are increasingly relying on state legislation, although the collective agreements they conclude also have legal effect.²¹⁹

However, this should not hide that tripartite agreements involving the state cannot be considered part of the autonomy of the social partners. This applies initially because the arrangements made by those involved are not based solely on the will of the social partners. This also applies as, in negotiations involving a third party, there is always a danger

that the will of the other parties will be distorted. It is evident that this danger is particularly great when the third party is the state. Finally, remember that tripartite agreements may have effects on genuine social partner agreements by, for example, leading to indirect state influence on collective bargaining policy, and possibly even to a *de facto* restriction of the social partners' scope for action. Against this background, it is possible for tripartite agreements to have negative effects on (genuine) collective bargaining.

7. CONCLUSIONS

The autonomy of the social partners is guaranteed at the international level, the level of EU law and the level of national law. The relevant guarantees differ considerably. Accordingly, the power to restrict the autonomy of the social partners by law varies. However, states enjoy a wide margin of discretion when shaping the boundaries of autonomy.

Social partner autonomy is true autonomy in that it refers to a state of self-determination, independence (sovereignty) and self-administration. There are, however, significant differences between the autonomy of the social partners, on the one hand, and private autonomy (and, especially, freedom of contract) on the other. In particular, freedom not to conclude a contract with another is restricted within the framework of the autonomy of the social partners. Moreover, subjecting employers and employees to collective agreements concluded by the social partners always contains an element of heteronomy. The best way to describe the situation is that the collective agreement is somewhere between self-determination (autonomy) and external determination (heteronomy).

As far as the relationship between social partner autonomy and the state is concerned, views differ: for example, that the state recognizes this autonomy, that it has conferred autonomy on the social partners, or that autonomy is ultimately based on the free choice of the employers and employees involved. The role of the state is to provide an appropriate legal framework within which the social partners exercise their autonomy. Freedom of association can only be exercised effectively if the state provides a minimum set of rules. These measures do not restrict the autonomy of the social partners; on the contrary, they bring it to fruition in the first place.

Irrespective of that, state legislation and social partner autonomy are related on the basis of competence and freedom: if the state legislator regulates working conditions, it does so in the exercise of a legislative competence, whereas the social partners exercise a fundamental right when fixing working conditions.

In abstract terms, the autonomy of the social partners can be defined using topical, personal and substantive criteria. The question then has to be asked: what subjects of regulation are open to the social partners, for which groups of persons can they regulate and what options do they have? As far as the scope of autonomy is concerned, whether and to what extent the state can allocate or withdraw specific subjects to or from the social partners depends on the respective constitutional guarantee of freedom of association. In some member states, the principle of proportionality must be observed on this basis, which could also provide orientation in states in which it does not apply. The principle of proportionality is based on the idea that state measures (including legislation) must not be without boundaries, that they must instead be justified by a clearly defined purpose,

and that they must also be measured against this purpose in their scope and extent. As regards the regulatory options open to the social partners, remember, in particular, that the state may allow the social partners to derogate from statutory provisions, but this will sometimes be subject to compliance with specific requirements. That is, these possibilities for derogation are often limited, for example by the lawmaker defining a corridor within which the social partners can act.

With regard to the relationship between the autonomy of the social partners and the state, three mechanisms of social dialogue merit particular interest: derogation powers, extension mechanisms and tripartite arrangements. The power to deviate from statutory provisions by means of collective agreements can be an expression of careful handling of the autonomy of the social partners, but can also have negative effects on the freedom of collective bargaining. One of the drawbacks is that in these circumstances, statutory law always provides one of the social partners with fall-back security: if no agreement is reached, then the regulation applies which is laid down by law. Accordingly, collective bargaining becomes arduous for the social partner who wants to change the statutory status quo. The use of these provisions for the sole purpose of strengthening willingness to join associations appears problematic if there are no reasons for it. Declarations of collective agreements as generally binding, initially only strengthen the agreement, not the autonomy of the social partners. These declarations can influence the willingness of employers and employees to participate in the autonomous setting of standards. However, the corresponding effects for employers and employees are probably different. Moreover, much will depend on whether only short- and medium-term effects are taken into account or whether possible long-term effects are also considered. Also, the declaration of being generally binding by the state may be preferable to state legislation. There is, however, a risk of eventually arriving at a parallel and potentially competing system to the ruling-making system based on social partner autonomy. Tripartite agreements are positive in many respects. If social partnership does not work and the social partners do not reach collective agreements, it could be considered that tripartite agreements are still better than no agreements at all. However, tripartite agreements do not belong to the real sphere of social partner autonomy and can, even, have negative effects. Tripartite agreements are not based on the will of the social partners alone. Moreover, there is always a risk that the state will influence the will of one of the two social partners (or both). Finally, there is the danger that these agreements will force the social partners' collective bargaining policy in a particular direction or even restrict their room for manoeuvre.

NOTES

1. The question implies that what is at issue here is the content and limits of the social partners' power to determine working conditions. However, the social partners also cooperate in many other ways (which do not pose legal problems) and this should not go unmentioned.
2. Cf. also Chapter 2 in this volume.
3. This is the case, in particular, in Austria. See Melzer-Azondanloo, in F. Hendrickx (ed.) (various dates), *International Encyclopaedia for Labour Law and Industrial Relations*, n. 625.
4. See Article 120a(2) of Austria's Constitution.
5. See also Liukunnen, in U. Liukunnen (ed.), (2019), *Collective Bargaining in Labour Law Regimes – A Global Perspective*, p. 1, (14).

6. See Melzer-Azondanloo, in Hendrickx (various dates), n. 685.
7. See Gomes and Carvalho, in Hendrickx (various dates), n. 313.
8. Cf. Bagić, in T. Müller, K. Vandaele and J. Waddington (eds) (2019), *Collective Bargaining in Europe – Towards an Endgame*, vol. 1, p. 93 (98).
9. Cf. Blažienė, in Müller et al. (2019), vol. 2, p. 381 (387).
10. Cf. Chapter 2, Figures 2A.1 and 2A.2 in this volume. The relative strength of trade unions in some countries might be influenced in part by legal factors, such as that they often have other responsibilities. See, for instance, Jonker-Hoffrén, in Müller et al. (2019), vol. 1, p. 197 (206), noting that Finnish trade unions manage unemployment funds. As regards Sweden, see Chapter 2, section 4.1 in this volume.
11. Cf. Chapter 2, Figures 2A.3 and 2A.4 in this volume.
12. Cf., for instance, Jacobs, in Hendrickx (various dates), n. 266, noting that ‘the phenomenon of falling membership of employers’ organizations in Germany is not matched in the Netherlands’.
13. Cf., for instance, Kirov, in Müller et al. (2019), vol. 1, p. 77 (81).
14. See Kallaste in Müller et al. (2019), vol. 1, p. 171 (183) regarding Estonia.
15. Cf., for instance, Hajdú, in Hendrickx (various dates), n. 1147, noting that this is ‘despite considerable efforts by both unions and previous governments to encourage industry level bargaining’. Cf. also Zammit et al., in Hendrickx (various dates), n. 1038 ff., regarding Malta.
16. Cf. Pichrt and Štefko, in Hendrickx (various dates), n. 687.
17. See also Borbély and Neumann, in Müller et al. (2019), vol. 2, p. 295 (300), as regards the situation in Hungary: ‘It is a general problem that a large proportion of collective agreements simply copy and paste regulations from the Labour Code’.
18. As regards the former, see for instance, Glassner and Hofmann, in Müller et al. (2019), vol. 1, p. 33 (41).
19. Again, we must not forget that there were often significant precursors. As regards, for instance, Croatia, see Grgurev, in Hendrickx (various dates), n. 172.
20. Provisions of regional international law is not be taken into account here.
21. In order to illustrate the content of international law, this chapter also refers to various statements by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA), which form important elements of the ILO monitoring mechanism. With regard to the first-mentioned committee, in order to avoid misunderstandings, it is worth recalling the mandate of the committee, which the committee itself describes as follows:

The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee’s work based on its impartiality, experience and expertise. The Committee’s technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers’ and workers’ organizations. This has been reflected in the incorporation of the Committee’s opinions and recommendations in national legislation, international instruments and court decisions. (CEACR, 2019, ‘Report of the Committee of Experts on the Application of Conventions and Recommendations’, ILO, Geneva, para. 32).

With regard to the latter committee, it should also be noted that its decisions are taken on a case-by-case basis, which is why it is always advisable, ‘to read for details of the case, including the context of its conclusions and recommendations’. See also CFA (2018), *Compilation of Decisions of the Committee on Freedom of Association*, 6th edn, Geneva: ILO, ‘Introduction’, para. 9.

22. See ‘General Survey of the Committee of Experts on the Application of Conventions and Recommendations on the Fundamental Conventions’, 2012, ILO, Geneva, para. 55.
23. See *ibid.*, para. 200.
24. See *ibid.*
25. See Explanation to Article 28.
26. In this respect, the Court of Justice of the European Union (CJEU) has stressed that collective bargaining autonomy can only be exercised in accordance with EU law; see CJEU of 3 September 2011 – C-447/09 (Prigge).
27. As regards the predecessor norm, the following was stated:

the meaning and purpose of Article 137(5) EC is primarily to protect the social partners’ autonomy in collective bargaining from being restricted, as evidenced not least by the close association between

pay and the other matters excluded from the Community's powers: the right of association, the right to strike and the right to impose lock-outs, which are particularly important in relation to fixing pay and, accordingly, are referred to 'in the same breath' as pay in Article 137(5) EC. (Opinion of Advocate General *Kokott* delivered on 9 January 2008 Case C 268/06 Impact, para. 172)

See also CJEU of 10 June 2010 in Joined Cases C 395/08 and C 396/08, *INPS v. Tiziana Bruno*, Massimo Pettini (C-395/08), and *INPS v. Daniela Lotti*, Clara Matteucci (C 396/08), para. 36: 'fixing the level of pay falls within the contractual freedom of the social partners at a national level and within the relevant competence of Member States'.

28. See Barnard, 'Article 28 the right of collective bargaining and action', in S. Peers, T. Hervey, J. Kenner and A. Ward (eds) (2014), *The EU Charter of Fundamental Rights*, p. 794. See also Dorsemont and Rocca, 'Article 28', in F. Dorsemont, K. Lörcher, S. Clauwaert, and M. Schmitt (eds) (2019), *The Charter of Fundamental Rights of the European Union and the Employment Relation*, p. 465 (502). Cf. also C. Schubert (2013), 'Collective agreements within the limits of Europe: collective autonomy as part of the European economic system', *European Labour Law Journal*, 4 (3), p. 146.
29. See Köchle, in M. Holoubek and G. Lienbacher (eds) (2014), *Charta der Grundrechte der Europäischen Union*, Art. 28 GRC, n. 15.
30. Article 11 (2) ECHR:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

31. Cf. Schubert, in M. Franzen, I. Gallner and H. Oetker (eds) (2018), *Kommentar zum europäischen Arbeitsrecht*, 2nd edn, Art. 28 GRC, n. 57.
32. Cf. <https://fra.europa.eu/en/chartopedia/article/28-right-collective-bargaining-and-action> (accessed 27 July 2021).
33. Article 27(1) of the Constitution.
34. Article 29 of the Constitution.
35. Section 13 of the Constitution.
36. Sections 6–8 of the Preamble to the Constitution. The Preamble has 'constitutional value'. See Mazuyer, in Liukunnen (2019), p. 251 (254).
37. Article 9(3) of the Constitution.
38. Article 22(2) of the Constitution: 'General working conditions shall be determined by law, supplemented by collective labour agreements concluded through free negotiations and, in case of the failure of such, by rules determined by arbitration'. Cf. in this regard Papadimitriou, in Liukunnen (2019), p. 311 (312): 'Même si la Constitution reconnaît ainsi les pouvoirs réglementaires de l'Etat dans le domaine des relations de travail, étant en droit d'établir des niveaux de protection minimale, l'autonomie collective, reconnue de façon solennelle, met un terme à son omnipotence. Ces relations doivent pouvoir être réglées librement par les représentants des intérêts collectifs, sans ingérence du pouvoir d'Etat. L'Etat devra ainsi limiter ses pouvoirs de réglementation devant le développement des compétences respectives des représentants collectifs' ('Even if the Constitution thus recognizes the regulatory powers of the State in the field of labour relations, being entitled to establish minimum levels of protection, collective autonomy, solemnly recognized, puts an end to its omnipotence. These relations must be freely regulated by the representatives of collective interests, without interference from the state power. The state must therefore limit its regulatory powers in view of the development of the respective competences of the collective representatives').
39. See, for instance, Belgium (Article 23 of the Constitution), Cyprus (Article 26 of the Constitution), Italy (Article 39 of the Constitution), Spain (Article 37(1) of the Constitution) and Poland (Article 59(2) of the Constitution). As regards Spain, it was the Constitutional Court which elevated the right to bargain collectively to a 'quasi-fundamental right'. See Chacartegui, in Liukunnen (2019), p. 529 (530) with reference to the jurisprudence of the Court. As regards Poland, the provision can be read together with Article 20 of the Constitution which forms the basis for the development of all forms of social dialogue, including collective bargaining. See Pisarczyk and Skupień, in Liukunnen (2019), p. 417 (418).
40. This applies, for example, to the legal situation in Slovenia. See Peček, in Liukunnen (2019), p. 501 (506) with reference to the jurisprudence of the Constitutional Court.
41. Cf. Maccarrone et al. in Müller et al. (2019), vol. 2. p. 315 (321).
42. See, for instance, Article 50 of the Constitution of the Republic of Bulgaria, Article 29 of the Constitution of the Republic of Estonia or Article 61 of the Constitution of the Republic of Croatia.

43. See Article 11(1) of the Convention: 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.'
44. Cf. Federal Constitutional Court of 11 July 2017 – BvR 1571/15, 1 BvR 1588/15, 1 BvR 2883/15, 1 BvR 1043/16, 1 BvR 1477/16, note 143: 'The right to form associations to safeguard and improve working and economic conditions is granted unconditionally. It is not a special case of the general right to freedom of association and thus not subject to the limitations of Art. 9(2) GG. However, this does not preclude the legislature from setting any rules at all within the scope of protection of this fundamental right. Legal provisions that cause an impairment of Art. 9(3) GG can be justified if they protect fundamental rights of third parties or other rights of constitutional rank and the common good'.
45. <https://de.wikipedia.org/wiki/Autonomie> (accessed 27 July 2021).
46. M. Weber (1921), *Wirtschaft und Gesellschaft*, pt 1, ch. 1, s. 12.
47. Di Fabio, in T. Maunz and G. Dürig (eds) (2019), *Grundgesetz-Kommentar*, 88th edn, Art. 2 GG, n. 101.
48. Cf. also R. Bradley Kar (2016), 'Contract as empowerment', *Chicago Law Review*, **82** (March), p. 759.
49. Cf. also D.P. Weber (2013), 'Restricting the freedom of contract – a fundamental prohibition', *Yale Human Rights and Development Journal*, **16**, p. 102 ff.: '[T]he general right of one individual to obligate himself and to receive another's obligation in return is a fundamental, though not unlimited right. History has shown that the ability to contract, to order one's affairs and to obtain contractually guaranteed payments in exchange for services or goods is fundamental to the ability of any individual to succeed in a market economy'.
50. See also section B of the Industrial Relations Code of Cyprus where it is explicitly stated that the partners should bear in mind the 'public interest' in their negotiations.
51. See, for instance, Federal Constitutional Court of 6 May 1964 – 1 BvR 79/62.
52. See section 123(1) of the German Civil Code: 'A person who has been induced to make a declaration of intent by deceit or unlawfully by duress may avoid his declaration'.
53. As regards German law, see, for instance, Jacobs, in H. Wiedemann (ed.) (2019), *Tarifvertragsgesetz*, 8th edn, Introduction, nn. 17 ff. (with further references).
54. Cf. also Thüsing, in Wiedemann (2019), s. 1 TVG Inhalt und Form des Tarifvertrags, nn. 31 ff. (with further references).
55. Cf. with regard to Austria, Melzer-Azondanloo, in Hendrickx (various dates), n. 658:

Collective agreements are not intended to regulate only the relationship of its parties, but above all, the elements of the individual employment relationships covered by it. As this concerns the legal relationships of persons who are not party to the collective agreements themselves (creation of 'objective law'), the conclusion of collective agreements needs specific legal empowerment.

56. See, for instance, Federal Labour Court of 15 April 2015 – 4 AZR 796/13.
57. See, for instance, Federal Constitutional Court of 27 February 1973 – 2 BvL 27/69. More recently, however, the Court referred to a 'collectivized private autonomy'; see Federal Constitutional Court of 11 July 2017 – 1 BvR 1571/15, 1 BvR 1588/15, 1 BvR 2883/15, 1 BvR 1043/16, 1 BvR 1477/16, para. 147.
58. General Survey (op cit. in note 22), para. 55.
59. Ibid.
60. Ibid., para. 167.
61. See General Survey (op cit. in note 22), p. 169 ff.:

Various methods of application can therefore be envisaged and, while certain States give preference to legislative measures, others are content with satisfactory application in practice, or through case law. Most of the provisions relating to the right to organize and to collective bargaining are contained in labour legislation and in instruments regulating industrial relations at the national level. However, while the fundamental principles underlying these Conventions are set out in many constitutions, other means of application are determined directly by collective agreements concluded between employers' and workers' organizations at the different levels. In general, the Committee encourages the use of methods of application for Conventions Nos 87 and 98 which have their origins in tripartism, social dialogue and full and frank consultations between the social partners. This is particularly important in relation to legislation setting out the rights protected by these instruments with a view to ensuring that the parties concerned are committed to the principles and, accordingly, that the measures adopted are sustainable over time.

62. Ibid., para. 242.
63. Cf. in this regard, for instance, also Observation (CEACR) – adopted 2016, published 106th ILC session (2017) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – China – Hong Kong Special Administrative Region.

64. See Köchle, in Holoubek and Lienbacher (2014), Art. 28 GRC, n. 15. As she further notes, Article 28 'enshrines an essential aspect of the separation of state and society' and at the same time 'aims to ensure the existence of fair 'bargaining powers' in this process of self-regulation of employment relationships' (ibid., n. 16).
65. See ibid., Art. 28 GRC, n. 38.
66. That is, according to the German Constitutional Court: 'Private autonomy is necessarily limited and requires legal form. Private law systems therefore consist of a differentiated system of coordinated regulations and means of organisation, which must be integrated into the constitutional order', see Federal Constitutional Court of 9 September 1993 – 1 BvR 567/89 a. o. (II. 2a).
67. Federal Constitutional Court of 26 June 1991 – 1 BvR 779/85.
68. Cf. in this regard the interesting discussion of the legal situation in Macao by Wei and Rafael, in Liukunnen (2019), p. 399 (403) where there is a lack of this type of legal framework.
69. The legal situation in Italy is remarkable, where Art. 39(2) of the Constitution explicitly refers to 'provisions of the law', which, however, have never been enacted. See Magnani, in Liukunnen (2019), p. 357 (358). See, in this regard, Treu, in Hendrickx (various dates), n. 5478:

The lack of any legal provision for collective bargaining has become a major characteristic of Italian industrial relations, as the pressure to implement Article 39 of the Constitution has declined. While originally it stemmed rather from a number of inertia factors, or from mainly tactical motives, it has come with the passage of time to be recognised by the trade unions, and to a large extent by management and the public authorities, as the most suitable means of promoting effective bargaining and improved relations between social partners.

70. This even applies in countries such as Italy. Though there is no systematic legal regime in this country, there is still the basic decision that collective agreements are part of ordinary contract law. Moreover, the Constitution affirms the right of trade unions to enter into collective agreements. Existing gaps were filled on the basis of autonomous regulation by the biggest federations of employers and employees; see Magnani, Italy, in Liukunnen (2019), p. 357 (357). As regards the younger member states, some observers have recognized the key role of the state. See, with regard to Latvia, Täre, in Hendrickx (various dates), n. 184: 'In Latvia after regaining independence in the 1990, the state has played a very important role in setting the framework for industrial relations and social dialogue.'
71. Since the aim of this study is to fill out the concept of 'autonomy' in material terms, all questions relating to the 'procedural autonomy' of the social partners, that is, what procedural rules apply to their negotiations, are not discussed. However, note that the relevant legal requirements appear to be very detailed in some countries; cf., for instance, the description of the law in Slovakia, by Barancová and Olšovská, in Hendrickx (various dates), n. 460 ff., 514.
72. Article 9(3) sentence 1 of the Constitution: 'The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession'.
73. CJEU of 4 December 2014 – *FNV Kunsten Informatie en Media v Staat der Nederlanden* (Case C-413/13). This case concerned a collective agreement for musicians representing members of an orchestra. This collective agreement laid down minimum wages and other working conditions not only for temporary musicians employed under an employment contract, but also for temporary musicians who worked under a service agreement (and thus could not be regarded as employees). The Dutch competition authority took the view that a collective bargaining provision laying down minimum remuneration for self-employed musicians fell within the scope of the European prohibition on cartels (Article 101 TFEU).
74. Cf. in this regard, for instance, Lianos et al. (2019), 'Re-thinking the competition law/labour law interaction: promoting a fairer labour market', *European Labour Law Journal*, **10** (3), p. 291.
75. 386th Report, Case No. 3237, para. 203. See also Compilation of decisions of the Committee on Freedom of Association, 6th ed. 2018, para. 1291 with further references.
76. General Survey (op cit. in note 22), para. 219 (emphasis added).
77. Cf. C. Schubert (2013), 'Collective agreements within the limits of Europe: collective autonomy as part of the European economic system', *European Labour Law Journal*, **4** (3), p. 146.
78. See also Ł. Pisarczyk (2019), 'The crisis of the collective bargaining system in Poland', *International Journal of Comparative Labour Law*, p. 77: 'it is important to eliminate those regulations that are not necessary to safeguard other freedoms or values and that constitute an obstacle to the development of collective bargaining'.
79. Cf. also, with regard to Greece, Papadimitriou, in Liukunnen (2019), p. 311 (313) with further references:

le législateur peut interdire la négociation dans certaines matières ou imposer certaines limites à une telle négociation. Mais une telle interdiction doit correspondre à des circonstances qualifiées de 'gravité

exceptionnelle' comme une crise financière et économique grave. Les tribunaux grecs ont été plusieurs fois appelés à s'exprimer sur la conformité à la Constitution de telles mesures restrictives. Ils se prononcent tant sur la conformité des mesures à la protection de l'intérêt général que sur le respect du principe de proportionnalité. Il faut pourtant reconnaître que les tribunaux grecs se montrent plutôt hésitants quant au contrôle de l'activité législative conduisant à des limitations de l'autonomie collective.

(The legislator may prohibit negotiation in certain matters or impose certain limits on such negotiation. But such a prohibition must correspond to circumstances of 'exceptional gravity' such as a serious financial and economic crisis. The Greek courts have been called upon several times to rule on the conformity of such restrictive measures with the Constitution. They rule both on the conformity of the measures with the protection of the general interest and on the respect of the principle of proportionality. However, it must be acknowledged that the Greek courts are rather hesitant to review legislative activity leading to limitations of collective autonomy.)

80. See G. Lübke-Wolff (2018), 'The principle of proportionality in the case-law of the German Federal Constitutional Court', *Human Rights Law Journal*, 34 (1–6), p. 12; cf. also N. Petersen (2018), *Proportionality and Judicial Activism: Fundamental Rights Adjudication in Canada, Germany and South Africa*. See also a discussion of the proportionality principle in Canadian law by McEvoy, in Liukunnen (2019), p. 121 (134).
81. See, for instance, Federal Constitutional Court of 24 May 1977 – 2 BvL 11/74.
82. Cf. Löwisch and Rieble, in M. Löwisch and V. Rieble (2017), *Tarifvertragsgesetz*, 4th edn, Grundlagen, n. 209.
83. In this context, it is exclusively a matter of deviation from the law by collective agreements. A completely different issue is the deviation from the collective agreement by other regulations (and the consequent decentralization of collective bargaining); cf. M. Keune (2011), 'Decentralising wage-setting in times of crisis? The regulation of wage-related derogation clauses in seven European countries', *European Labour Law Journal*, 2 (1), p. 86.
84. See, for instance, Rieble, in Löwisch and Rieble (2017), Grundlagen, n. 200: 'In the context of proportionality, it must always be asked whether the legislator should not have to choose legal provisions that can be set aside by collective agreements as a less restrictive means of restricting collective bargaining autonomy'.
85. That a collective agreement has been made generally binding by the state means that it now extends to employment relationships which were not covered by it.
86. Cf. S.J. Schwab (2014), 'The union as broker of employment rights', in C.L. Estlund, and M.L. Wachter (eds), *Research Handbook on the Economics of Labor and Employment Law* p. 248.
87. See, as regards Austria, Melzer-Azondanloo, in Hendrickx (various dates), n. 677:

The reason for introducing 'split effect' was that collective agreement regulations can be adjusted to changing conditions more easily and quickly than statutes, and that the parties to a collective agreement will be better informed on certain problems than is the legislature. On the other hand, the bargaining power of the parties to a collective agreement is more balanced than that of the parties to an individual employment contract – provisions in a collective agreement can be more trusted than those in an employment contract to offer a fair solution for a certain problem.

88. See Blanpain, in Hendrickx (various dates), n. 58: 'Belgian labour law can, in general, be regarded as having an "imperative" nature. This means that parties cannot deviate from the law either by individual or collective agreement, except when the law sets only minimum standards which can be improved upon'. See also Kéfer, in Liukunnen (2019), p. 65 (75).
89. Blanpain, in Hendrickx (various dates), n. 114:

With so much social and labour legislation, there is, of course, less room for collective bargaining, and the process of private bargaining must take into account the existing legal rules. While in fact these are mostly protective minimum standards that can be improved upon by collective bargaining, nonetheless collective bargaining does not have the same coverage as it might if there were fewer legal restrictions.

See also, however, note 956 stating that 'in theory, the social partners in Belgium enjoy a quasi-total autonomy in the fixing of wages and working conditions in the broadest sense of the phrase'.

90. Section 50(1) of the Labour Code.
91. Section 50(5) of the Labour Code. See also Mrachkov, in Hendrickx (various dates), n. 578:

The law does not allow collective labour contracts to include clauses which are less favourable than those of the minimum standards as provided for in the legal provisions. Parties cannot contract below

the level of minimum standards. They may improve on them, i.e. agree to more favourable working conditions. This is the basic social meaning and significance of a collective labour contract for the workers and in the interest of trade unions. This also explains the reticent position which employers sometimes have towards collective bargaining, because for them more favourable working conditions means higher production costs and more costs for the allowance of manpower. Nevertheless, if a collective labour contract contains working conditions less favourable than the provided minimum legal standard, the respective stipulations in the collective labour contract shall be null and void because of the conflict with the imperative legal provisions. Such stipulations have no legal effect; consequently, no rights can be derived from them, nor can they give rise to any obligations. Instead of these stipulations, the minimum legal standards established by the relative imperative legal provisions will be applied.

92. Section 7(1) of the Labour Code.
93. Section 7(2) of the Labour Code. See also Grgurev, in Hendrickx (various dates), nn. 24 and 30.
94. Cf. Dimitriu, in Hendrickx (various dates), n. 95.
95. See Article 66 of the Constitution: 'The state shall create opportunities for employment and work, and shall ensure the protection of both by law'. See also Vodovnik et al., in Hendrickx (various dates), n. 45.
96. See Stanojević and Poje, in Müller et al. (2019), vol. 3. p. 545 (547).
97. Cf. Douka and Koniaris, in Hendrickx (various dates), n. 1229.
98. Cf. Mitrus and Hajn, in Hendrickx (various dates), n. 52:

The detailed character of the statutory regulations naturally limits the scope of negotiations between employers and unions. The role of the state in the domains of labour law and industrial relations is, therefore, vital and diverse. First, the state acts as the legislator establishing labour law regulations. Second, it is a participant in the tripartite dialogue with the social partners. Third, state institutions act as an employer in the public sector. The significant participation of the state in the economy is one of important factors shaping industrial relations in Poland.

There is a similar assessment regarding the law in the Czech Republic. See Pichrt and Štefko, in Hendrickx (various dates), n. 687.

99. Cf. Mitrus and Hajn, in Hendrickx (various dates), n. 88.
100. Cf. Pisarczyk (2019), p. 73.
101. Cf. Emilianides and Ioannou, in Hendrickx (various dates), n. 110.
102. Cf. *ibid.*, n. 610.
103. Cf. *ibid.*, n. 587.
104. Cf. regarding the few exceptions Munkholm and Schjøler, in Liukunnen (2019), p. 225 (235).
105. Cf. Hasselbalch, in Hendrickx (various dates), nn. 55, 70 and 129.
106. Cf. Costello, in Hendrickx (various dates), n. 20 (with reference to *Goulding Chemicals Ltd v. Bolger*, [1977] IR 211).
107. Cf. Suviranta and Paanetoja, in Hendrickx (various dates), n. 93.
108. Cf. Linsenmaier, in R. Müller-Glöge, U. Preis, I. Schmidt, M. Franzen, I. Gallner and T. Kania (eds) (2020), *Erfurter Kommentar zum Arbeitsrecht*, 20th edn, Munich: C.H. Beck, Art. 9 GG n. 89a.
109. Cf. Jacobs, in Hendrickx (various dates), n. 312 noting that 'there is no relevant demarcation between the rules set out in collective agreements and those set out in law' and that 'there is no general dogmatic line to be drawn'.
110. Cf. *ibid.*, n. 34. An example is Article 7:672(2) of the Civil Code which regulates periods of notice in case of dismissal. According to paragraph 5 of this Article, 'the period referred to in paragraph 2 can only be shortened by collective agreement or by arrangement by or on behalf of an authorized administrative body'.
111. See Chacartegui, in Liukunnen (2019), p. 529 (533).
112. See also *ibid.*, p. 529 (542); M.C. Rodriguez-Pinero Royo (2019), 'Collective bargaining in the renewed Spanish labour law: a new tool for economic policy?', *Oñati Socio-Legal Series*, 9 (1), p. 7.
113. See also Liukunnen, in Liukunnen (2019), p. 1 (16).
114. Cf. Rojot et al., in Hendrickx (various dates), n. 69:

In the matter of labour law, as in many other parts of French law, the heteronomous sources have traditionally played the main role. This is a little less true now. In recent decades, many authors and observers have, more or less explicitly, stressed the importance of the autonomous sources and very often yearned for their development. Indeed, the autonomous sources seem to be more appropriate to harmonious social relations. However, reality is more complex. First, heteronomous and autonomous sources do not truly compete but, rather, articulate themselves. Secondly, the heteronomous sources are the most important and this situation is accepted even by the employers.

115. Cf. *ibid.*, n. 757.
116. Cf. *ibid.*, n. 762 ff. (with specific reference to the Fillon Act of 4 May 2004, the Act of 20 August 2008 and the El Khomry Act of 8 August 2016 and, more recently, the Act of 8 August 2016) adding that in the most recent legislation, 'there are contrary examples, in which the collective agreement can be less favourable than the contracts of employment and nevertheless impose itself upon them' (fn. 453). See also note 748 with reference to the judgment of the Constitutional Court of 29 April 2004 where the Court denied that the principle of favourability was anchored in constitutional law. See, finally, Mazuyer, in Liukunnen (2019), p. 251 (257).
117. See: Liukunnen, in Liukunnen (2019), p. 1 (16): 'In Italy, non-derogability *in peius* is considered an essential feature of collective agreements. A collective agreement, as well as an individual employment contract, may improve, but cannot worsen, conditions for workers provided by legislation. This is considered to derive from the nature of labour law, which seeks to protect workers.'
118. Cf. Treu, in Hendrickx (various dates), n. 505.
119. Cf. *ibid.* See also Magnani, in Liukunnen (2019), p. 357 (361, 367).
120. Cf. Gomes and Carvalho, in Hendrickx (various dates), n. 15: adding that

it seems that the collective regulation instruments and particularly the collective agreements became, as a result, the most important source of labour law since they could, as a rule, deviate from the law, unless the legal rules stated otherwise, and they could establish a less favourable or a more favourable treatment for the employees.

121. Cf. Hajdú, in Hendrickx (various dates), n. 246.
122. Cf. *ibid.*, n. 247.
123. See, for instance, Kun, in Liukunnen (2019), p. 333 (336) with further references:

This brand new regulatory concept significantly enlarges the role and influence of employers (employer interest representations) and trade unions on the labour market, while it simultaneously increases their responsibility and reduces the regulative functions of state regulation. According to the legislator, this 'minimalist' regulatory concept may contribute most effectively to creating a mutual interest in the conclusion of collective agreements, to the wider application of collective agreements and to the enhancement of their scope and coverage. Collective autonomy is largely based on the theoretical equilibrium of the parties concluding the collective agreement. In the current context (the extension of the regulatory role of collective bargaining), it would have been logical to put some emphasis on the reinforcement of the position of the bargaining partners, especially that of trade unions. However, the contrary is happening in the new Code, as the rights and operational conditions of trade unions are cut back to a considerable extent.

See also Borbély and Neumann, in Müller et al. (2019), vol. 2. p. 295 (300) criticizing contradictory approaches in the new legislation.

124. See also M.W. Finkin (2020), 'Union dispossession of labour protection: a paradox, in two legal systems', in *International Journal of Comparative Labour Law and Industrial Relations*, 36 (1), p. 1 who, however, adds the warning 'that considerable care must be taken when such license is legislated lest discrete or insular groups be dispossessed of a valuable right in a process that advantages employee coalitions that exclude them, or the union as an institution, at their expense'.
125. In this respect, the concerns expressed about the recent reform of collective bargaining law in Hungary also seem relevant. See Kun, in Liukunnen (2019), p. 333 (336).
126. The CEACR refers in this context to the 2013 General Survey on collective bargaining in the public service, para. 298.
127. Observation (CEACR) – adopted 2017, published 107th ILC session (2018) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Brazil.
128. See in this regard also General Survey (op cit. in note 22), para 198:

The Committee emphasizes that the overall aim of this ... is, however, the promotion of good-faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The agreements so concluded must be respected and must be able to establish conditions of work more favourable than those envisaged in law: indeed, if this were not so, there would be no reason for engaging in collective bargaining.

See also General Survey of the Committee of Experts on the Application of Conventions and Recommendations concerning labour relations and collective bargaining in the public service, 2013, para. 298: 'The Committee emphasizes that the overall aim of Conventions Nos 98, 151 and 154 is to

promote collective bargaining aimed at reaching agreement on terms and conditions of employment that are more favourable than those already established (although concession bargaining has become more frequent, especially in light of the global economic crisis).

129. Observation (CEACR) – adopted 2018, published 108th ILC session (2019) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Brazil. It should be noted that the case (and its evaluation by CEACR) gave rise to a highly controversial discussion in the CAS; see Individual Case (CAS) – Discussion: 2018, Publication: 107th ILC session (2018) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Brazil.
130. Cf. in this regard the position in Slovenia where deviations from the law by collective agreements concluded at the company level are permitted in two cases only. See Peček, in Liukunnen (2019), p. 501 (518) with references also to the academic discussion.
131. Cf. in this regard, for instance, Müller and Schulten, in Müller et al. (2019), vol. 2, p. 239 (260).
132. See, for instance, as regards the legal provisions in Portugal, Gomes and Carvalho, in Hendrickx (various dates), n. 458: ‘The minister can choose the collective agreement to be extended even if the parties of that agreement represent an insignificant portion of the workers and/or employers concerned. Needless to say such a possibility is a direct threat to the freedom of employers and workers not to be affiliated’.
133. Para. 5(1) of the Recommendation.
134. Para. 5(1) of the Recommendation.
135. General Survey (op cit. in note 22), para. 245.
136. This should be distinguished from the situation where a Directive allows the social partners to derogate from its provisions to a certain extent. An example of this is Article 17(2) of the Working Time Directive 2003/88.
137. CJEU, 18 December 2008, Case C 306/07 (*Ruben Andersen*), note 34. See also CJEU of 11 February 2010, Case C 405/08 (*Holst*), where the Court referred to the former decision.
138. See Franzen, in Franzen et al. (2018), art. 155, AUEV, n. 3.
139. See in Müller et al. (2019), vol. 4, app. A3 Extension mechanisms in Europe.
140. See in this regard, for instance, C. Schubert and L. Schmitt (2019), ‘Collective working conditions for everyone?! – Collective provisions with erga omnes effect and statutory extension of collective agreements from a German law perspective’, *European Labour Law Journal*, **10** (1), p. 3.
141. Cf. Emilianides and Ioannou, in Hendrickx (various dates), n. 577.
142. Cf. *ibid.*, n. 613 noting that, in practice, often the effect of collective agreements is extended to outsiders: ‘in practice an employer may be prevented from acting contrary to the terms of the collective agreement even with regard to employees not covered by such agreements, since in such a case the trade unions may consider that the different treatment might undermine its bargaining power.’
143. Cf. Zammit et al., in Hendrickx (various dates), n. 1028.
144. Cf. Hasselbalch, in Hendrickx (various dates), nn. 62 and 817.
145. Müller et al. (2019), vol. 4, app. A3 Extension mechanisms in Europe.
146. The option to extend agreements is limited to those sectors covered by sectoral employment orders or by employment regulation orders.
147. Costello, in Hendrickx (various dates), n. 24.
148. Blanpain, in Hendrickx (various dates), n. 973. See also *ibid.*, n. 974:

The binding effect given to collective agreements concluded in joint bodies in general, and in the case of extension by Royal Decree in particular, has as a consequence that collective bargaining becomes a process with a law-making function. Rules and norms are laid down which are generally binding and which thus become the law in the branch of activity, or in the whole private sector if the agreement is concluded in the National Labour Council. This law-making process performs many functions: it sets minimum standards, so protecting employers who would observe such standards against unfair competition from employers who would not; and it ensures minimum wages and conditions for those workers who would not otherwise be in a position to force their employer to pay higher wages and provide better conditions. The law-making effect of collective bargaining in Belgium gives tremendous power to the social partners. They can, as it were, levy taxes on a branch of activity and make all the employers pay additional social security contributions They can also make all employers, whether or not they are members of the employers’ association, contribute towards the payment of a benefit reserved for trade union members only.

149. Cf. Dimitriu, in Hendrickx (various dates), n. 641.
150. Cf. Vodovnik et al., in Hendrickx (various dates), n. 519. See also Peček, in Liukunnen (2019), p. 501 (513).
151. Cf. Suviranta and Paanetoja, in Hendrickx (various dates), nn. 83 and 85.
152. Cf. Täre, in Hendrickx (various dates), n. 208.

153. Müller et al. (2019), vol. 4, app. A3 Extension mechanisms in Europe.

154. See Article 51b (3) of the Labour Code:

(1) The collective agreements by industries and branches shall be concluded between the respective representative organizations of employees and of employers on the basis of an agreement between their national organizations, which shall set forth general provisions in respect of the scope and the procedural framework of the industry and branch level agreements. (2) The representative organizations of the employees shall prepare and submit a common draft to the representative organizations of the employers. (3) Where the collective agreement on industry or branch level has been concluded between all representative organizations of the employees and of the employers in the industry or the branch, the Minister of Labour and Social Policy may, upon their joint request, extend the application of the agreement or of individual clauses thereof to all enterprises of that industry or branch.

155. Cf. Pichrt and Štefko, in Hendrickx (various dates), nn. 696 ff. (with criticism of the material requirements of declarations of collective agreements as generally binding); see also Chapter 5 in this volume.

156. Cf. Barancová and Olšovská, in Hendrickx (various dates), n. 471.

157. Cf. Hajdú, in Hendrickx (various dates), nn. 157 and 1192 ff.

158. Cf. Mitrus and Hajn, in Hendrickx (various dates), n. 707. See also Pisarczyk and Skupień, in Liukunnen (2019), p. 417 (424).

159. Cf. Melzer-Azondanloo, in Hendrickx (various dates), nn. 743 and 745.

160. See Smokvina and Laleta, in Liukunnen (2019), p. 183 (197).

161. Cf. Grgurev, in Hendrickx (various dates), n. 184.

162. Cf. Jacobs, in Hendrickx (various dates), n. 315.

163. Douka and Koniaris, in Hendrickx (various dates), n. 1285.

164. Cf. Rojot et al., in Hendrickx (various dates), n. 851.

165. Cf. Thomas et al., in Müller et al. (2019), vol. 2, p. 403 (408).

166. Cf. Melzer-Azondanloo, in Hendrickx (various dates), n. 744: ‘The state has no influence on the contents of the charter as such, because the Board only extends the scope of application of an already existing collective agreement. Therefore, charters are sometimes referred to as the “partly-autonomous” creation of (collective labour) law.’

167. Cf. *ibid.*, n. 746.

168. Section 18 (2) of the Labour Constitution Act: ‘The application for the declaration of a collective agreement on the statutes may relate to all or individual provisions of the collective agreement which are legally binding for the employment relationships subject to it, but individual provisions may not be dissolved from a direct legal and factual context’.

169. Cf. Grgurev, in Hendrickx (various dates), n. 184.

170. Cf. Jacobs, in Hendrickx (various dates), n. 316.

171. See section 2(5) of the Act on declaring the provisions of collective agreements to be generally binding and non-binding.

172. Cf. Jacobs, in Hendrickx (various dates), n. 316.

173. Cf. *ibid.*, n. 318.

174. Cf. Rojot et al., in Hendrickx (various dates), n. 855. See also Erhel, p. 169 (188 ff.).

175. Cf. Rojot et al., in Hendrickx (various dates), n. 861.

176. Cf. *ibid.*, n. 868.

177. Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur Stärkung der Tarifautonomie (Tarifautonomiestärkungsgesetz), German Parliament Printed Matter 18/1558 of 28 May 2015.

178. It may be of interest to note that the Federal Constitutional Court recently denied a claim by the social partners for a collective agreement concluded by them to be declared generally binding by the state. In the view of the Court, such a claim against the state does not arise from the fundamental right of freedom of association. The Court acknowledged that freedom of association protects the right of the collective bargaining parties to conclude collective agreements which aim from the outset to bind non-members as well. However, in the opinion of the Court, this does not mean that there is any entitlement to have them declared to be generally binding. The Court argued that the state cannot arbitrarily leave its norm-setting power to non-governmental bodies and cannot hand over citizens without restrictions to the norm-setting power of actors who are not democratically or by virtue of membership legitimised towards them. See Federal Constitutional Court of 10 January 2020 – 1 BvR 4/17.

179. See G. Forst (2015), ‘Die Allgemeinverbindlicherklärung von Tarifverträgen nach dem sogenannten Tarifautonomiestärkungsgesetz’, *Recht der Arbeit*, p. 25. Cf. also E. Brameshuber and V. Zwinger (2018), ‘Collectively agreed (minimum) labour conditions as “protection boosters”’, *International Journal of*

Comparative Labour Law, 34 (January), p. 82; A. Perulli and T. Treu (eds) (2019), *The Role of the State and Industrial Relations*, p. 28.

180. Cf. U. Preis and A.P. (2017), *Das neue Recht der Allgemeinverbindlicherklärung im Tarifautonomies tärkungsgesetz*, p. 17). See also, with regard to the Netherlands, Been and Keune, in Müller et al. (2019), vol. 2. p. 445 (449):

The very existence of the extension mechanism, however, might well be an important reason why the membership rate of employers' associations is high to begin with. If the collective agreement will apply to your company anyway, you better become a member and have a chance to influence what is in it. From time to time the extension mechanism is questioned by one or other political party, but for the time being most of the political parties, employers' organizations and unions agree with the present practice.

181. Cf. Löwisch and Rieble, in Löwisch and Rieble (2017), s. 5 TVG Allgemeinverbindlichkeit, n. 34.
 182. Cf., for instance, *ibid.*, n. 33 (with further references).
 183. The long-term effects may look different.
 184. See K. Beppler (2014), *Gutachten B zum 70. Deutschen Juristentag*, Munich: C.H. Beck, B 111. With regard to Portugal, for instance, it may be interesting to note that some observers also indicate the dangers for the collective bargaining system that can arise if declarations of general applicability are handled too generously. See cf. Gomes and Carvalho, in Hendrickx (various dates), n. 456: 'The Code specifically foresees ... the possibility of an administrative regulation ... extending the scope of a collective agreement. ... Although traditionally possible in the Portuguese system, this administrative regulation undermines the collective autonomy of trade unions and employers organizations'.
 185. See General Survey (op cit. in note 22), para. 214.
 186. Cf. General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), para. 288.
 187. Cf. also Jaspers, 'Collective bargaining in EU law', in T. Jaspers, F. Pennings and S. Peters (eds) (2019), *European Labour Law*, pp. 249 ff.
 188. General Court of 24 October 2019 – Case T-310/18 (European Federation of Public Service Unions, EPSU).
 189. *Ibid.*, paras 86 ff.
 190. *Ibid.*, paras 89 ff.
 191. Cf. Grgurev, in Hendrickx (various dates), n. 88.
 192. Cf. Blanpain, in Hendrickx (various dates), n. 160.
 193. Cf. Pichrt and Štefko, in Hendrickx (various dates), n. 233; see also Chapter 5 in this volume.
 194. Cf. Hasselbalch, in Hendrickx (various dates), n. 713.
 195. Cf. Suviranta and Paanetoja, in Hendrickx (various dates), n.59.
 196. Cf. Rojot et al., in Hendrickx (various dates), n. 859.
 197. Cf. Douka and Koniaris, in Hendrickx (various dates), n. 226. See also Chapter 8 in this volume.
 198. Cf. Jacobs, in Hendrickx (various dates), nn. 281 ff.
 199. Cf. Mitrus and Hajn, in Hendrickx (various dates), nn. 609 ff. See also Chapter 11 in this volume.
 200. Cf. Gomes and Carvalho, in Hendrickx (various dates), n. 316.
 201. Cf. Dimitriou, in Hendrickx (various dates), nn. 52 and 603 ff.; Volonciu, 379 (386 ff.).
 202. Cf. Barancová and Olšovská, in Hendrickx (various dates), n. 80.
 203. Cf. Vodovnik et al., in Hendrickx (various dates), nn. 68 ff.
 204. Cf. Mitrus and Hajn, in Hendrickx (various dates), n. 79.
 205. Cf. Hajdú, in Hendrickx (various dates), n. 1142.
 206. Cf. Mrachkov, in Hendrickx (various dates), n. 92.
 207. The provision reads as follows:

(1) The State shall carry out the regulation of labour and directly related relations, insurance relations, as well as living standard issues, in cooperation and after consultations with the employees' and the employers' representative organizations. The scope of living standards issues, subject to consultations, shall be determined by act of the Council of Ministers upon proposal of the National Council for Tripartite Partnership. (2) Partnership and consultations shall prevail in the course of the approval of normative acts about the relations and issues pointed out in Para 1. (3) On issues in the scope of Para. 1, agreements may be signed between the representative organizations of the workers and the employees and employers for adoption of normative acts, where: 1. the agreement has been signed upon their request after consideration of the state; 2. the state has proposed signing of the agreement. (4) The fulfilment of the agreements under Para. 3 shall be performed by the state.

208. Cf. Mrachkov, in Hendrickx (various dates), n. 569.
 209. Cf. *ibid.*, n. 571.
 210. Cf. Emilianides and Ioannou, in Hendrickx (various dates), n. 586:

It should be noted, however, that sectoral social dialogue differs somewhat from social dialogue at the national level, as social dialogue at the sectoral level should properly be more of a bilateral dialogue. However, in practice, sectoral social dialogue often ends up being discussed at a national level in the tripartite bodies.

211. See *ibid.*, n. 580.
 212. Cf. Zammit et al., in Hendrickx (various dates), n. 82. As for the Malta Council for economic and social development cf. nn. 1087 ff.
 213. Cf. Zammit et al., in Hendrickx (various dates), n. 86.
 214. Cf. Nekrosius and Andriuskeviciute, in Hendrickx (various dates), n. 252.
 215. Cf. Costello, in Hendrickx (various dates), n. 24. Cf. also O'Connell, 259 (259 ff.).
 216. Cf. Costello, in Hendrickx (various dates), n. 24: 'The same privity of contract problem which applies in the case of ordinary collective agreements is a difficulty here as well. Neither individual employers nor employees are privy to the agreement, and may not, therefore, be legally bound by, or legally rely on, the agreement.'
 217. Cf. Blanpain, in Hendrickx (various dates), n. 914.
 218. Cf., for instance, with regard to Latvia, Täre, in Hendrickx (various dates), n. 194: (current model 'well structured', 'with already rooted traditions' and 'appropriate').
 219. Cf. Kahancová et al., in Müller et al. (2019), vol. 3, p. 525 (526): 'Trade unions and employers' associations in general believe that legislative solutions are more likely to be enforced than regulations implemented via collective bargaining, despite the binding character of collective agreements.'

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4. Digitalization and social dialogue: Challenges, opportunities and responses*

Rafael Muñoz de Bustillo Llorente

1. INTRODUCTION

In the past few decades, the world of work has been affected by many different vectors of change. These have called into question the standard employment relationship, understood as full-time, open-ended employment. Among these changes, very different in their nature, intensity and effects, we might mention the demise of full employment as an economic policy objective, labour market deregulation in a quest for more efficient labour markets – which (allegedly) would bring about lower unemployment – globalization and the growth of a worldwide labour market, and the new technological revolution related to the ubiquitous use of information and communication technology (ICT) and the digital revolution.

The purpose of this chapter is to review the extent to which the digitalization of the economy is transforming the world of work, as well as the role, now and in the future, of social dialogue in helping to improve the governance of these changes, minimizing their negative impact on labour markets and incentivizing their positive effects. In this regard, it is important to acknowledge from the start that the social partners themselves face a major challenge when addressing these changes, not least because, it can be argued (Vaughan-Whitehead 2018, 2019; Müller et al. 2019), one of the casualties, whether intended or unintended, of the above-mentioned changes has been the weakening of social dialogue itself, especially above company level, and the labour and employee institutions responsible for it (see Chapter 2 in this volume).

With that aim, after briefly presenting the main technological changes related to what we generally denominate in these pages as ‘the Digital Revolution’, in section 2 we review the actual or expected impact of such changes and the potential role that social dialogue could play in addressing them. Against this background, section 3 analyses the level of awareness and concerns of the social partners regarding the implications of these changes. That section also reviews the extent to which issues related to the Digital Revolution are being taken into consideration in social dialogue at different levels (European, national, sectoral or firm). With that aim, we undertake a short and selected journey around a sample of European Union (EU) member states, highlighting their experiences in this area. Section 4 sees a change of perspective and reflects on how some of the innovations that form part of the Digital Revolution could be used to revamp collective action by the social partners in a type of ‘Trade Union or Employee Organization 4.0’. To conclude, section 5 presents the main findings of the analysis.

According to Eurofound (2018a), the Digital Revolution is affecting work and employment along three different vectors of change: (1) automation, (2) the development of sensors and devices that allow the transformation of production processes into digital information and vice versa (scanners and three-dimensional printers, for example) and (3) coordination by platforms. Fernández-Macias, author of the above-mentioned report, covers all of this with the neologism 'digitization'.

Of these three vectors of change, the first is an old acquaintance of political economy, as the debate on the implications for employment of introducing machinery has been going on at least since the third edition of Ricardo's *Principles of Political Economy and Taxation* in 1821 (Ricardo 1821 [2015]). This interest is renewed every time a new wave of technical change leads to further automation of work, as is nowadays occurring with the Digital Revolution. In this regard, it is argued, the new technology, by substituting labour for capital, will reduce the labour input needed to produce a unit of output (the labour/output ratio), making it more difficult to achieve full employment.

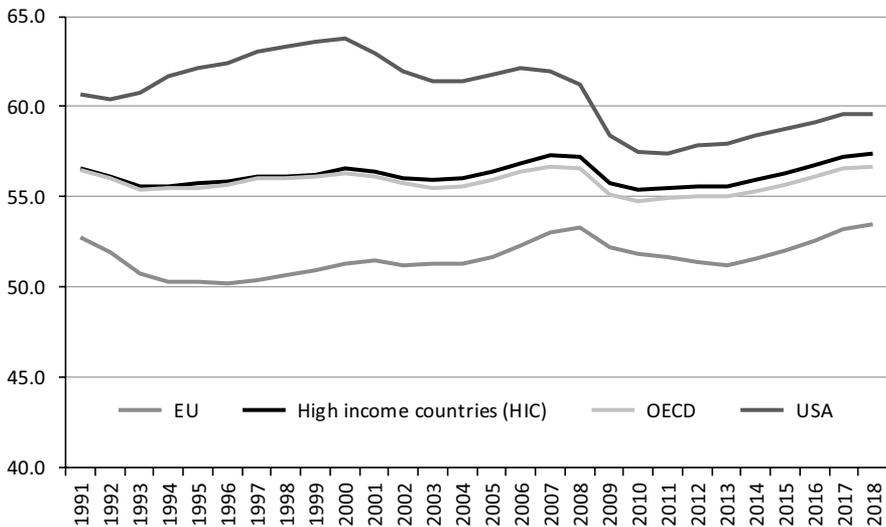
The second vector of change is certainly more novel, as the Internet of things may make it possible to transform whole production processes into digital processes, contributing to the automation of production to unprecedented levels, as well as reaching sectors of economic activity hitherto protected from it. The labour market implications of these two drivers, automation and digitization, would be further exacerbated by the development of machine learning and artificial intelligence (AI) that may change the way humans interfaces in the production of many goods and services.

The third vector of change is related to the possibilities generated by the new digital technologies to develop a new model of the firm, the platform, which maximizes the coordination potential of computerization and algorithms in order to act as pure intermediary between the clients of a given good or service and the workers producing it. According to Coase's theory of the firm (Coase 1937), the existence of firms in competitive markets is explained by high transaction costs related to market exchange between suppliers at the different stages of production of a given good or service, which make it advisable, and cheaper, to produce it under the umbrella of an organization (the firm) that uses planning to allocate resources internally and the market to relate to customers. In this respect, the existence of vertically integrated firms in a given market would imply the presence of high transaction costs as, in its absence, firms would be substituted by a myriad of workers-cum-firms taking care of the different stages of production of the good or service and selling it in the market to other producers further up the production process. If we accept this line of reasoning – which won its author a Nobel Memorial Prize for Economics – the new technologies, by greatly reducing transaction costs in many markets, would allow the development of new business models, with important implications for working conditions. Section 2 briefly reviews the potential impact on labour markets and social dialogue of these drivers of change.

2. THE POTENTIAL EFFECTS OF DIGITALIZATION ON LABOUR MARKETS AND THE ROLE OF SOCIAL DIALOGUE

2.1 Digitalization and Employment

Probably the first public concern regarding the economic implications of the Digital Revolution is its potential impact on employment. If the new digital technologies, empowered by machine learning and AI, increase the rate of substitution of labour by capital, whether robots or computers, the economy might not have sufficient capacity to create jobs at the pace needed to absorb those destroyed by the new digital capital. From a macroeconomic perspective, the increase in productivity related to the introduction of new technologies will result in lower employment levels only if the rate of growth of productivity is higher than the combined effect of the increase in demand (gross domestic product growth) and the reduction in working time. Despite the long-standing fears of technological unemployment (Keynes 1930 [2010]) associated with the different waves of technical change (Mokyr et al. 2015), in the long run the combination of economic growth and reductions in working time (with varying importance at different stages) has made it possible to reconcile technological change and employment growth. This is also valid for the recent past, when the introduction of digital technologies has been compatible with growing or stable employment rates, even in a context of economic crisis and sluggish growth. As can be seen in Figure 4.1, in 2018, employment to population ratios in the Organisation for Economic Co-operation and Development (OECD), the group of high income countries (HIC), the EU and the United States were similar to those a



Source: World Development Indicators.

Figure 4.1 Employment to population ratio, 15+, total, 1991–2018 (percentage)

quarter of a century ago, namely, around 60 per cent in the United States and 54 per cent in the EU.

Nevertheless, many technologists and technological gurus (such as Brynjolfsson and McAfee 2014) argue that this time it is different owing to the sheer ubiquity of application of the new technologies – in the past they were limited mainly to agriculture and manufacturing – and their unprecedented potential impact on productivity.¹ In this regard, in the past decade, different researchers have produced estimates about the probability of job replacement by machines in the medium term. As we can see in Table 4.1, these estimates vary widely, even wildly, from 9 per cent of jobs, according to the analysis of Arntz et al. (2016) for the OECD, to nearly half of all jobs, 47 per cent, according to the pioneering estimates of Frey and Osborne (2013 [2017]).

Without going into detail in analysing the previously mentioned estimates and the reasons behind their differences,² two elements need to be highlighted. The first is that risk of automation is not the same as employment lost, since there is a long distance between the possibility of automating a task and doing so. Jobs are bundles of tasks, and the automation of one task should not be equated with the automation of the job. Indeed, when the analysis is made in relation to tasks, not occupations, the results obtained move towards the lower range of the estimates. The second element is that even when entire jobs (or occupations) are substituted by machines, this does not mean that

Table 4.1 Estimates of jobs at risk owing to the Digital Revolution

Authors	Criteria	Results
Frey and Osborne (2013 [2017])	Probability of the occupation being replaced by machines $\geq 70\%$	USA: 47% of jobs highly susceptible to substitution
Bowles (2014)	Frey and Osborne methodology. Probability of the occupation being replaced by machines $\geq 70\%$	EU = 54% at 'high risk' of substitution, ranging from 47% in Sweden to 62% in Romania
Arntz et al. (2016)	Probability of the job being replaced by machines $\geq 70\%$	USA: 9% of jobs at risk of substitution OECD: 9% (ranging from 6% in Korea to 12% in Germany)
Nedelkoska and Quintini (2018)	Probability of the job being replaced by machines $\geq 70\%$	USA: 10% of jobs at risk of substitution OECD: 14% (ranging from 6% in Norway to 33% in Slovakia)
McKinsey Global Institute (2017)	Thresholds for the technical automation potential of individual occupations	Threshold of 70%: 26% of occupations Threshold of 30%: 60% of occupations
COE (Employment Advisory Council) (2017)	Automation index based on the characteristics of work described by employees ≥ 0.7	10% of French jobs at high risk
Dengler and Matthes (2018)	Occupations where the proportion of substitutable tasks $\geq 70\%$	15% of all German workers are at high risk

Source: Bowles (2014); Dengler and Matthes (2018); Valenduc and Vendramin (2019, p. 7).

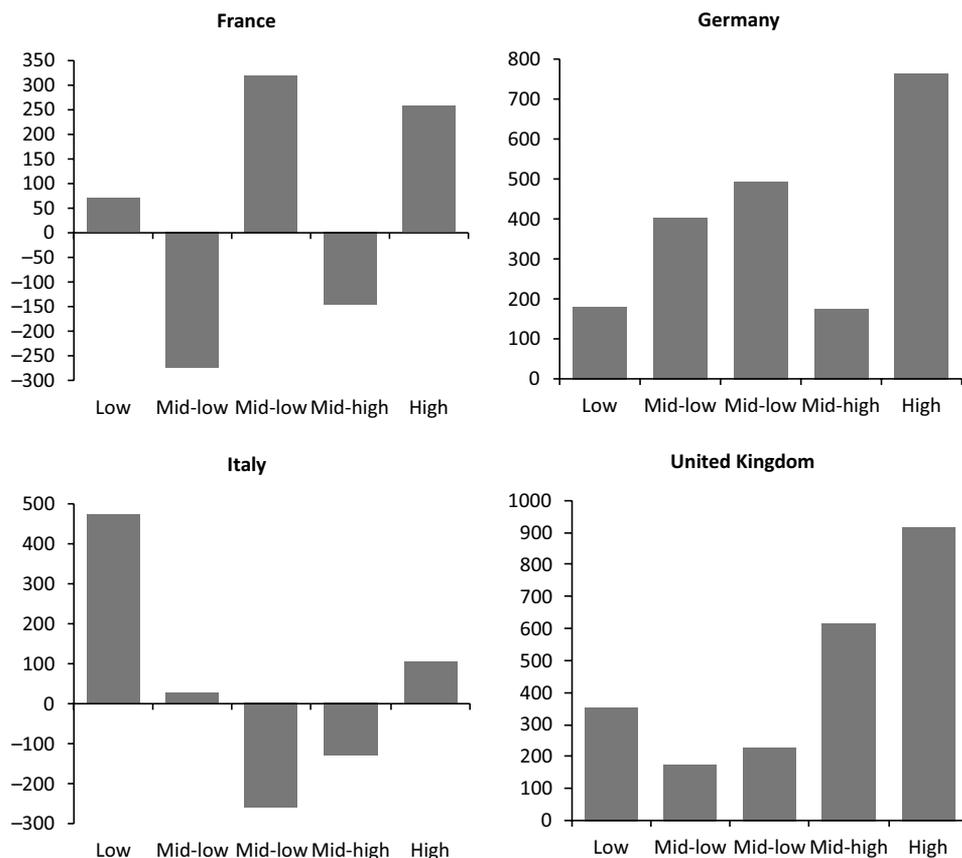
there would necessarily be an equivalent decrease in total employment, as there are different compensation mechanisms – in many cases related to technological innovation itself – that work the other way, generating employment. For example, workers at risk are flexible and adjust, performing new tasks that complement the new technology; production of the new machinery requires labour; the increase in productivity derived from the introduction of new technology might lead to increases in competitiveness, demand and employment, and so on (Arntz et al. 2019).

While the overall impact of these conflicting effects of technological change can be neutral, or even positive, there is nothing automatic about them, so the fear of technological unemployment remains a possible future scenario. Also, even if such a negative scenario does not materialize, the different national economies would face a churning of jobs, and of labour demand, with decreasing demand for specific types of jobs or tasks, and increasing demand for others, a question that we address in the next section.

2.2 Changes in Employment Structure

The Digital Revolution, as for previous waves of innovation, is, to borrow from Schumpeter (1942 [2003], p. 83), ‘a process of creative destruction’, leading to the growth of some sectors of activity and jobs within them, and the reduction or disappearance of other (now old) sectors and jobs. Two different hypotheses have been developed regarding the shape of that process of creative destruction in the realm of employment. According to the first, known as skill-biased technical (or technological) change (Levy and Murnane 1992), digital technologies mainly substitute low-skilled jobs, while complementing high-skilled jobs, leading to an upgrading of the employment structure. Alternatively, the routine-biased technological change hypothesis considers that new technologies mainly affect jobs composed of routine tasks, both manual and non-manual. These perspectives have implications in relation to the types of jobs destroyed as the new technologies are introduced into production systems. In the first instance the adoption of new digital capital would lead to an upgrading of the employment structure (concentration of the destruction of employment in low-wage jobs and employment creation in high-wage, high-skilled jobs). In contrast, according to skill-biased hypothesis, the destruction of jobs would be concentrated in the middle range of the employment structure, where routine jobs are found, as both ends are characterized by tasks less routine intensive – manual at the lower end and intellectual at the upper end – leading to a polarization of the employment structure as employment growths at both ends of the wage distribution.

Thus far, the empirical analysis has not been able to offer a clear answer regarding the dominant pattern of employment change. Although some researchers argue that routine-biased technological change can be found pervasively across all high-income countries (Goos and Manning 2007; Goos et al. 2009, 2014) others (Fernandez Macias 2012; Fernandez Macias et al. 2012; Eurofound 2015; Oesch and Piccitto 2019) argue, more persuasively in my opinion, that different countries follow different patterns of structural employment change, often depending on circumstances (for example, polarization during recessions and upgrading during recovery). As stated in a recent joint report of Eurofound and the European Commission Joint Research Centre (2019, p. 55), ‘the dominant pattern of recent occupational change in Europe ... is one of upgrading with some



Source: European Jobs Monitor (<https://www.eurofound.europa.eu/data/european-jobs-monitor>, accessed 4 March 2020).

Figure 4.2 Employment shifts by job-wage quintile, France, Germany, Italy, United Kingdom, 2011–16

polarization. ... But behind this dominant pattern, there have been significant variations in the patterns at national level'. This diversity is evidenced in Figure 4.2, which reproduces the evolution of employment, ranked from the lower quantile of jobs in the wage distribution to the top quantile, from 2011 to 2016, in the United Kingdom, France, Italy and Germany. These countries show different employment growth patterns, from asymmetrical polarization in Italy (growth at both ends, but much more intense at the lower end), to upgrading in Germany and, with lower intensity, in the United Kingdom, and with France showing a distinctive pattern of difficult classification.

This debate about the future structure of employment, whether upgrading, polarization or something else, has important implications for the future of work and social dialogue. The first of these is that the strength and representativeness of the social partners can differ across different types of jobs and sectors of activity (manufacturing, for example); the second is that the existence of a pattern of destruction and creation

of jobs in different parts of the wage distribution (that is, also in different parts of the distribution of jobs according to educational requirements) will make the transition of redundant workers from one part of the labour structure to another more difficult, especially if, as the two hypotheses claim, the upper tail is always one of the growing areas of employment. In section 2.3 this issue is discussed specifically.

2.3 New Skills and Skills Obsolescence

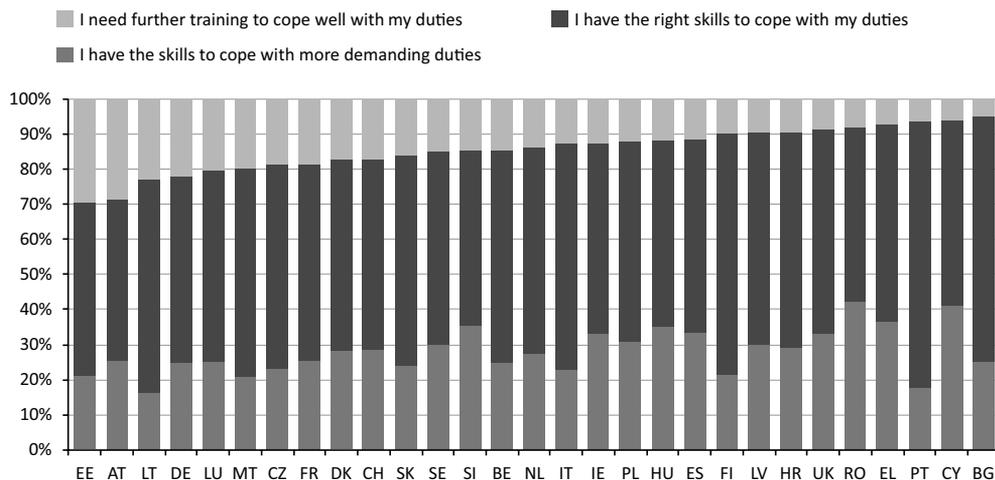
A context of rapidly changing production technologies, with swift transformations of whole sectors and jobs, will undoubtedly affect the skills and type of education demanded by employers. However, the uncertainty generated by the lack of knowledge as regards the type of skills that the digital technologies of the future will demand makes it difficult to determine how to prepare the labour force for the coming changes. As stated in a background report prepared for the 2016 OECD ministerial meeting on the digital economy, ‘while there is awareness that the skills profile of citizens and workers will be very different than in the past, the skills of the future are difficult to identify with certainty due to fast technological changes’ (OECD 2016, p. 4).

Against this general background of uncertainty, there is agreement that the new technologies will increase demand in science, technology, engineering and mathematics (STEM) subjects. Currently, this area shows an obvious gender bias, with only 12 per cent of total female graduates (ISCED 5–6) graduating in mathematics, science and technology compared with 37 per cent of male graduates (Eurostat 2012, Tertiary education graduates).

If we look at the situation in 2015 (Figure 4.3), most EU workers (57 per cent) consider that their training fits their duties well, while 28 per cent believe that they could cope with more demanding duties. Nevertheless, that leaves 14 per cent of workers who consider that they need further training to cope with their obligations; therefore there is a lot of room for improvement. Although these figures are similar to the 2010 results, there has been a small decrease in the percentage of ‘over-skilled’ workers (4 percentage points higher in 2010), which could be related, among other things, to the increase in demand for skills during the period (as well as to the improvement in matching between worker’s skills and skills demands owing to the reduction of unemployment rates).

When it comes to anticipating what type of skills will be needed in the future, the previously mentioned uncertainty about demand makes it advisable to invest in general skills that would facilitate accelerating training in specific skills when new needs emerge. As we know from human capital theory, firms might be reluctant to finance general training (easily mobile), making it a relevant issue for social dialogue at different levels. Also, the information available on skills shortages in OECD countries (Skills for Jobs OECD database) indicates the importance of shortages in basic skills (both content and process)³ compared with technical skills,⁴ which are slightly in surplus in the EU.

Furthermore, training (understood in a general sense, including lifelong learning and adaptive skills) for the digital economy is a field of interest for the social partners: for firms, as training might reduce bottlenecks and wage increases in some areas, fostering productivity and competitiveness; and for trade unions, as training might reduce the risk of unemployment, facilitate transitions between jobs and reduce the risk of a growing digital divide for workers at the margins of the digital economy. According to Eurostat,



Source: European Working Condition Survey 2015.

Figure 4.3 Workers according to their assessment of the discrepancy between their skills and their duties

in 2017, 17 per cent of EU the labour force had no digital skills or no Internet use, with important differences between countries, ranging from 3–5 per cent in Denmark, the Netherlands and Sweden to 36–37 per cent in Bulgaria and Romania.⁵

To conclude this section, it is worth referring to the estimates of the share of employment in occupations at high risk of automation, which would need a substantial training effort to facilitate transition to occupations at lower risk of automation. According to the OECD's *Skill Outlook 2019* (OECD 2019a) the simple average of employment at risk with significant training needs to recycle ranges from 0.9 per cent (lower bound) to 3.2 per cent (upper bound). There are marked differences between countries: Belgium and Norway, for example, have very low percentages of employment at risk with high retraining needs (less than 2 per cent in the upper bound), while others, such as Slovenia or the Czech Republic, have an upper bound estimate of almost 6 per cent (OECD 2019a, p. 108). To put these numbers in context, in the EU28, according to Eurostat's *Adult Education Survey* in 2016, slightly over half of the working population participated the previous year in formal and informal education and training (with a high of 74 per cent in the Netherlands and a low of 8 per cent in Romania). As regards economic resources needed to confront such increases in training needs, the OECD analysis sets the direct cost in terms of gross domestic product (GDP), for the EU19 countries analysed, as between 0.12 per cent for Belgium and 0.48 per cent for Italy.⁶

2.4 New/Revival of Old Types of Labour Relations

One of the stylized facts of the labour market in the twenty-first century in high-income countries is the increasing importance of non-standard employment relations (NSERs), taking the open-ended full-time contract as the standard employment relationship.

In 2018, 14 per cent of EU28 employees were temporary workers, and more than 20 per cent in the Netherlands, Portugal, Poland and Spain. The same year, the part-time employment rate in the EU, this time in relation to total employment, reached 19.2 per cent (22.5 per cent in the EU15), with higher rates in Sweden, Belgium, the United Kingdom, Denmark, Germany, Austria and the Netherlands. Finally, close to 10 per cent of workers are own-account workers (self-employed persons without employees), with as many as 21.5 per cent in Greece and 14.9 per cent in Italy.

Different non-standard forms of employment have different implications. Temporary employment can be considered a problem when it becomes a permanent feature of the labour market, with a large proportion of workers going, involuntarily, from one temporary job to another. Part-time employment is especially negative when part-time workers do so involuntarily because they have been unable to find a full-time job. In 2018, around 25 per cent of all part-time employment was involuntary, with rates reaching 65.7 per cent in Italy and 56 per cent in Spain. Finally, regarding own-account workers, two questions have gathered most of the attention devoted to the topic. The first is their vulnerability in a context in which social protection has been developed largely on the basis of dependent employment. The second is the possibility, difficult to trace in Labour Force Survey (LFS) statistics, that in the past few years the growth of own-account workers is the result of the transformation of standard dependent employment relations into an apparent mercantile firm–firm (own-account worker) relationship that releases the hiring firm from its obligations in terms of labour and social security regulations. A recent report of the European Political Strategy Centre (2019, p. 4), summarizes neatly the different sides of these new forms of work:

Non-standard work can offer benefits such as enabling a wider range of workers to enter the job market; facilitating the accommodation of family or personal obligations or activities; or enabling companies to restructure their activities or improve their performance. However, while initially considered a stepping stone towards the regular labour market, there is mounting evidence that suggests people are being trapped in atypical employment contracts.

This trend predates the Digital Revolution and is related to the labour market deregulation wave of the 1990s. For example, in Spain it can be traced back to 1984, in a context of massive unemployment, and was justified by the government as a policy to improve employment growth. However, some of the characteristics of the new digital technologies could make these types of employment relations especially attractive, and viable, for firms.

The development of a new business model, the platform, based on, among other things, the use of huge amounts of information in real time and the algorithms and computing capacity to manage them at low cost, makes it possible to split production processes into simple tasks that can be carried out by individual workers all around the world. Although there are many different types of platforms⁷ and, thus far, their impact on the labour market is far from significant – according to Pesole et al. (2018) around 2 per cent of the adult population in the EU⁸ – there is a lively debate, both public and legal, about the employment status most platforms confer on the workers who perform the jobs coordinated by them, above all whether such employment should be considered dependent employment or not. Following one or the other path has implications in relation to the labour regulations applied, as well as platform

workers' access to social protection, as in most EU countries the self-employed are less protected by labour regulations, have access to lower social protection and have to finance all of it (in contrast with employees). Alternatively, the self-employed might enjoy benefits in relation to flexibility of working time, autonomy or taxation, but these advantages only materialize for true own-account workers, and not for the bogus self-employed.

The issue of non-standard employment relations and their use by the new digital firms can be conflictual, as employees' organizations usually defend these new forms of work and employment as a way to increase the flexibility of labour and reduce costs: 'Companies' adaptability to change is a key factor in their competitiveness. Successful companies are those that restructure their activities quickly in response to market conditions. Flexible contracts and flexible working time arrangements play an important role in this respect' (BusinessEurope 2017, p. 4). In contrast, trade unions focus on the deterioration of working conditions often related to these forms of employment. As stated by the European Trade Union Confederation (ETUC) in its Resolution 'A fairer labour market for Europe: an ETUC vision' of 26–27 March 2019, 'Employment rates have continued to rise incrementally but too often at a cost of poor quality and precarious forms of work which, as well as being detrimental themselves, also prohibit access to social protection and pension entitlements when they end.' In the EUTC definition of quality of work, work security via standard employment and access to social protection comes in at second place, after good wages, in a list of six items.⁹

2.5 Changing Health and Safety Risks

Digital technologies and automation reduce some of the occupational safety and health risks related to moving heavy loads or performing strenuous and dangerous tasks, thanks to the full substitution of labour for capital in these areas (EU-OSHA 2018, p. 89) or to the development of new supporting instruments, such as drones, wearable robots, including exoskeletons, with potential use across a range of industries to prevent chronic injuries and support workers. Drones for instance are increasingly used for recreational, public and industrial purposes, not just military. Drones have the potential to prevent construction-related injury and death, toxic chemical exposures, electrical hazards, or traumatic injury from vehicle and equipment collisions. Improvements in this area should not be dismissed as unimportant in services societies, as in 2015, 32 per cent of EU workers had jobs that involved carrying or moving heavy loads at least a quarter of the time (European Working Conditions Survey 2015, Eurofound). ICT also facilitates teleworking, which can improve, under some circumstances, work–life balance. In 2018, according to the European Union Labour Force Survey (EU-LFS), almost 9 per cent of EU employees teleworked sometimes, compared with 5.6 per cent in 2002, with countries such as Sweden showing much higher rates (26 per cent) and growth (in 2002 only 3.3 per cent of employees teleworked occasionally).

However, digital technologies are also the source of new occupational safety and health-related risks, owing to, for example, the following:

1. The reduction of workers' control of the production process, as the speed and order of tasks are decided by new digital devices.

2. The development of new tools for monitoring (and rewarding) workers might contribute to increasing levels of anxiety and work pace and a reduction of privacy: ‘psychosocial and organizational factors that will become increasingly more important because ICT-ETs can drive changes in the types of work available; the pace of work; how, where and when it is done; and how it is managed and overseen’ (EU-OSHA 2018, p. 6).
3. The blurring of the work–private life divide, with new demands to be available 24 hours a day, seven days a week (24/7) as permanent reachability is interpreted as permanent availability. The debate on the right to disconnect, which has now been incorporated in French legislation, reflects the importance of this risk.
4. While new technologies help to reduce old health risks, they contribute to the development of new risks. To name only a few: the use of display screen equipment (DSE) can contribute to musculoskeletal disorders (such as such as carpal tunnel or tendonitis) and fatigue and eye strain; the use of body-worn assistive devices (exoskeletons), while reducing physical stress in some local body areas, might lead to higher levels of stress in other body regions (EU-OSHA 2019).
5. Finally, as a recent report for the Dutch Ministry of Social Affairs and Employment (TNO 2018) shows, cohabitation with robots poses new occupational safety and health (OSH) risks of at least three kinds: robot–human collision risks as machine learning can lead to unpredictable robot behaviour; security risks as robots’ Internet links can affect the integrity of software programming, leading to safety vulnerabilities, and environmental risks owing to sensor degradation and unexpected human actions in unstructured environments.

A recent report on the OSH implications of the digital transformation in the European chemicals sector (Kramer et al. 2019), exemplifies these different vectors of change. While 50 per cent of the affected workers see a slight to strong decrease of hazardous tasks, 70 per cent consider that there is a risk of increasing levels of psychological stress, especially in large firms. Around 42 per cent of the affected workers consider that there will be no major overall change in the general health of the workforce.

2.6 The Role of Social Dialogue

After reviewing the different potential impacts of the Digital Revolution on the labour market, in this sub-section which is an introduction to the following section dealing with the social partners’ response to such challenges, we present a brief speculative account of the potential role of social dialogue, at different levels, in dealing with these changes.

Table 4.2 presents the labour market implications of the Digital Revolution, together with a tentative sketch of the role of social dialogue in addressing these challenges. The first of the effects, the possible negative impact on total labour demand owing to the acceleration of the substitution of labour for capital, is probably an area for social dialogue at the highest level, as the tools to deal with this type of situation, should it occur, would be largely of a macroeconomic nature and related to expansionary policies of demand management and working time reduction. Nevertheless, there is also room for social dialogue at the level of the firm regarding the reduction of the implications of downsizing, through early retirement. For example, in September 2019 the Spanish ICT

Table 4.2 Potential role of social dialogue in addressing the labour market challenges of the Digital Revolution

Potential impact	Possible policy tools	
	Higher than firm level	Firm level
Change in total employment demand	Social dialogue at the highest level (national/EU) => Social pacts	Early retirement
	Effective demand management and social policies	Reduction in working hours
Change in employment structure	Reduction in working hours	Training and lifelong learning policies
	Training and recycling programmes	Early retirement
New skills and skills obsolescence	Social dialogue at the highest level (national/EU) => Social pacts (for example, wage complements)	Training and lifelong learning policies
	Training and recycling programmes	Training and lifelong learning policies
New/revival of old types of labour relations	Social dialogue at the highest level (national/EU/global)	Firm level collective bargaining (for example, limits to new forms of labour contracts)
	Sectoral collective bargaining	Develop collective bargaining in new business models
	Develop collective bargaining in new business models	Firm level collective bargaining
New health and safety issues	Social dialogue at the highest level (national/EU/global)	Firm level collective bargaining
	Sectoral collective bargaining	

company Telefonica announced its intention to reduce its labour force by a fifth (around 5000 workers), along the same lines as the previous 2016 plan involving the individual suspension of employment that affected another 6000 workers. This reduction in employment, part of a firm collective agreement, is partially driven by the change from analogue to digital technologies (together with the increase in competition in the sector, which was once a monopoly).

Social dialogue at the firm level and at sectoral or national levels has an important role to play in reducing the potential negative impact of changes of the employment structure owing to technical change. In this instance, the development of new skills and the recycling of employees would facilitate the transition of displaced workers from low-labour demand to high-labour demand sectors of activity. Training has been a traditional area for social dialogue, and in many countries social partners play an institutional role in the design of training policies. As stated in a joint document of the European Social Partners¹⁰ (German Economic Institute 2018, p. 3), ‘Social dialogue and collective agreements, in particular at the sectoral level, play an important role in the governance of training systems and in creating training opportunities and improving the relevance and provision of employee training’.

As regards the growth of non-standard employment relations, both firm-level and sectoral collective bargaining can be used to discuss the recourse to these forms of employment (including plans for their transformation into standard employment relations if

considered convenient). However, discussions at a higher level will also probably be needed in order to elucidate whether new forms of employment relations are needed (such as economically dependent self-employment developed in some countries, such as Spain or Italy). Collective bargaining, or other types of social dialogue, could also be extended to the new business model – the platform – which is currently characterized by low participation in employers' associations and low affiliation rates. In this regard, the ILO Global Commission on the Future of Work recommends 'the development of an international governance system for digital labour platforms that sets and requires platforms (and their clients) to respect certain minimum rights and protections' (ILO 2019, p. 44).

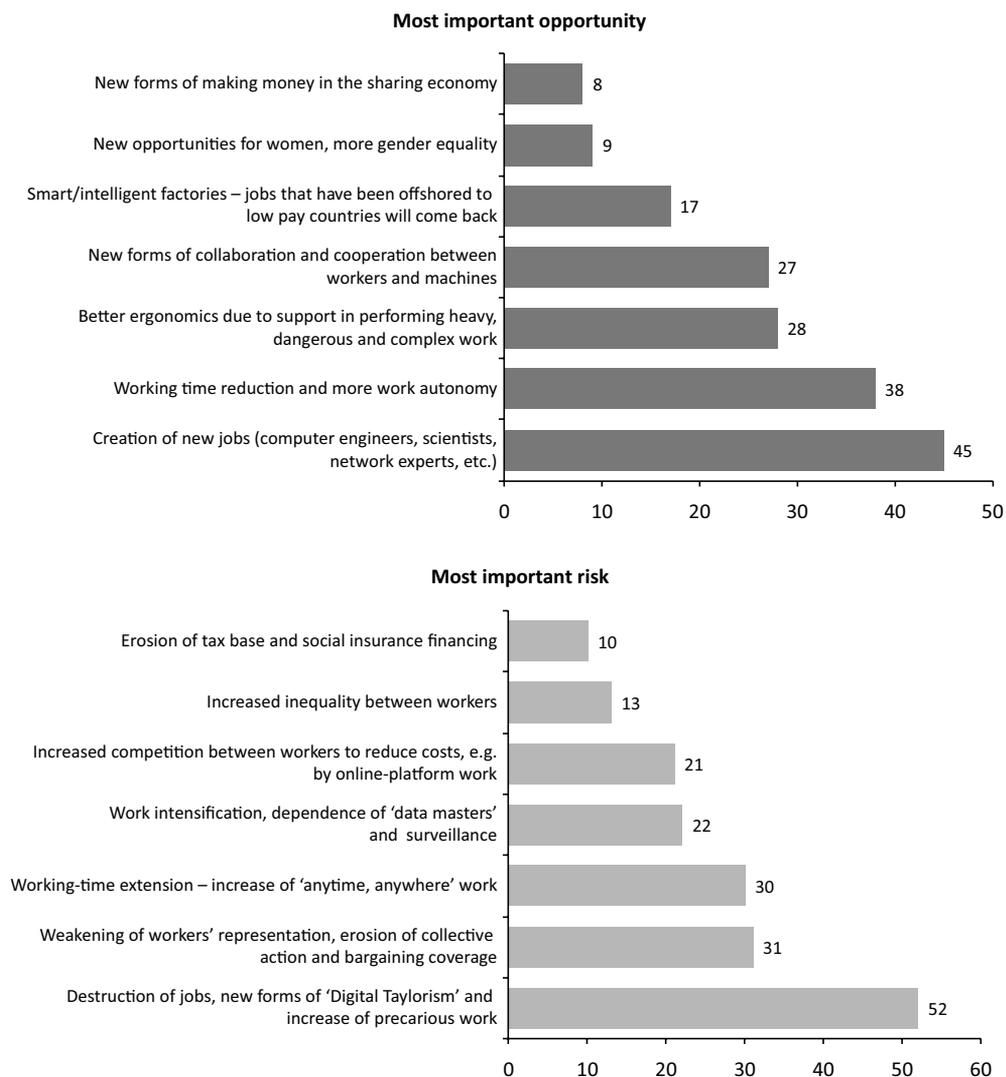
Finally, social dialogue at both national and lower levels, together with OSH regulation at EU and national levels, looks like a suitable arena for discussing new OSH issues and prevention (Eurofound 2012; Jain and Leka 2012).

3. RESPONSE OF THE SOCIAL PARTNERS

After reviewing the potential implications of the Digital Revolution for labour markets and labour relations, in this section we analyse how the social partners of EU member states are dealing with these challenges. With that aim, we first study the social partners' awareness of the challenges ahead and their main concerns. Against that background, the following section reviews the extent to which social dialogue at the EU and national levels addresses different aspects of the Digital Revolution, and how they deal with them.

3.1 Level of Awareness and Concern across EU Member States

The recent European Trade Union Institute (ETUI) survey of digitalization¹¹ is a useful starting point for identifying the level of concern and involvement of EU trade unions regarding the labour market implications of the Digital Revolution. At this stage, two elements of the survey can shed light on the concerns and level of involvement of trade unions regarding the Digital Revolution and its management. In relation to the first issue, the survey respondents considered that the Digital Revolution entails both opportunities and risks. Among the opportunities (Figure 4.4a) those who were interviewed highlighted the creation of new STEM-related jobs, working time reductions, more work autonomy, better ergonomics and new forms of collaboration between workers and machines. Among the risks (Figure 4.4b), the destruction of jobs was rated most important, at 52 per cent, well above the other risks mentioned, namely, the weakening of workers' representation and erosion of collective bargaining (31 per cent) and extension of working hours (30 per cent). In this regard, it is interesting to note how, in the opinion of those surveyed, the Digital Revolution can have both positive and negative impacts on employment: it can be a new source of jobs but also a cause of the destruction of jobs, while there is a promise of working-time reduction but also the risk of boundless work demands. The same applies to autonomy as, according to the workers, new technologies offer both the possibility of increasing autonomy and the risk of higher dependence. This is important as it implies that the net result could be dependent on the measures taken



Source: ETUC (2018, pp. 1–14).

Figure 4.4 Risk and opportunity related to the Digital Revolution (first two most important) (percentage)

by the social partners, among others, to guide the Digital Revolution in one direction or another.

Turning to the second question, the involvement of trade unions in initiatives related to the Digital Revolution, such as Industry 4.0 or digital agendas, whether public or at the level of the employers, more than half of respondents considered the trade union role as important in only two countries, Sweden and Germany. In Spain, Denmark, the Czech Republic and Belgium, respondents considered that trade unions were only one among

many of the stakeholders consulted. At the other end of the spectrum, in France and Italy the feeling was that trade unions were not involved at all. This country distribution is also found when asking about the role of trade unions in initiatives and policies fostering digital skills and lifelong learning: only in Sweden, Germany and Denmark did more than half consider that trade unions were involved in these initiatives. In Italy and France the percentage of those who considered that trade unions play an important role in this area was below 20 per cent (ETUC 2018, p. 17).

Unfortunately, there is no equivalent survey information on the position of employees regarding the awareness and concerns of EU employers. As regards concerns, and focusing on those items related to the labour market, a 2015 BusinessEurope policy paper shows that firms and workers share some of the above-mentioned concerns.

There are also opportunities for workers, such as more autonomy and flexibility in work organization, more possibilities to balance work and private life, more learning opportunities, as well as access to more potential work opportunities. Some existing jobs and areas of activity will evolve; some jobs will disappear, but new activities will appear, leading to overall employment gains. (BusinessEurope 2015, p. 5)

In this context of rapid change, the key challenge from the firms' side is 'to adapt EU and national skills policies to better meet the rapidly evolving labour market needs generated by the digital economy' (BusinessEurope 2015, p. 5), as well as to facilitate the 'increased work flexibility required by digital industries', considered to be 'essential' (BusinessEurope 2015, p. 9). In a different area, but also with employment implications, BusinessEurope (2014, pp. 3, 15) shows concern for the need to create a level playing-field in taxes and regulation so that both traditional and digital firms are treated equally.

From a different perspective, but also related to the firm side, the CEC European Managers 2018 survey,¹² addressed to European managers, also sheds light on the concerns of the managers of European firms regarding digital transformation. According to the survey, slightly over a quarter of respondents consulted with workers' representatives in order to implement digital technologies, while around 50 per cent provided training with that aim. The survey also covers the drivers behind the introduction of digital technologies, with increasing competition at the top (60 per cent) and staff cuts at the bottom (20 per cent), although managers consider that they have been less successful in the former than in the latter. Finally, the introduction of digital technologies had a positive impact on some aspects of working conditions, such as training or the introduction of flexible work, but also contributed to the deterioration of others, such as stress, work-life balance or information overload. As regards the ethical implications of digital technologies, almost half the managers surveyed showed concern about the implications for privacy of digital technologies, followed by transparency and labour rights (23 per cent).

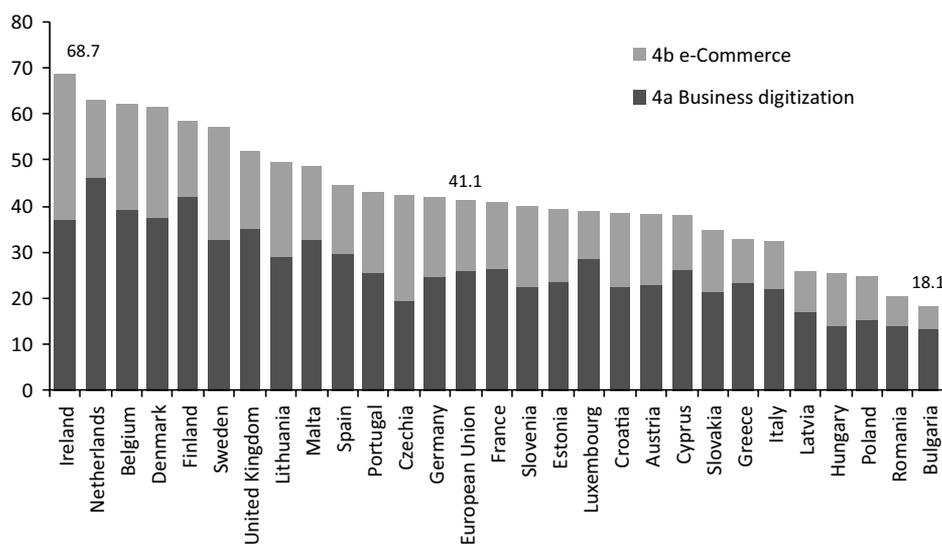
3.2 The Presence of Issues Related to Digitalization in Social Dialogue at Different Levels

This section explores the extent to which firms' and worker organizations' concerns about the future of work and employment have been translated into actions through social dialogue. We first review the experiences of social dialogue in this field at EU level and then at the level of the member states.

Before starting, it is important to highlight, once again, the huge diversity of EU member states as regards both their level of economic development and their economic structure and introduction of digital technologies. To give an example of these differences, Figure 4.5 reproduces two of the sub-indexes of the Digital Economy and Society Index (DESI) of the European Commission (2018a): the Business Digitalization Index and the E-Commerce Index that form the Integration of Digital Technology dimension.¹³ Although this index only touches on some of the items related to digitalization, such as the importance of e-commerce for SMEs and the use of social media, e-invoices or cloud solutions, the results, in relation to the incidence of digital technologies in national firms, are revealing, with the country with the highest value, Ireland (68.7), registering a value almost four times higher than the value registered by the country with the poorest result, Bulgaria (18.15).

Other complementary information, such as the use of robots, buttresses this conclusion. According to the World Industrial Robots Survey (International Federation of Robotics 2017), in 2016, there were around 1300 robots per 10 000 workers in Germany or France, while in Poland there were only around 200 per 10 000 workers (International Federation of Robotics 2017).

This diversity of penetration of the Digital Revolution, partly explained, in the case of robots, by countries' economic structure – most robots are used in the automobile sector – would explain how concerns about digitalization among the social partners, as well as the actions taken to manage it, vary nationally. This diversity permeates public opinion; for example, in relation to the labour market impact of digital technologies. In this regard, according to Eurobarometer (2017), while 90 per cent of people in Spain and Portugal agree (totally, or tend to agree) that robots and AI steal people's jobs, in



Source: EC, Digital Scoreboard.

Figure 4.5 Integration of digital technology by sub-dimension, EU, 2019

the Scandinavian countries the percentage is around 53–60 per cent (the EU average is 72 per cent).

As consequence, the importance of the issues related to the management of the Digital Revolution for social partners and social dialogue differ substantially across EU member states (and industries).

3.2.1 Social dialogue at EU level

As Table 4.3 shows, in the past decade the social partners have produced a variety of statements on digitization's impact on the economy, both at the level of specific sectors, such as chemicals, pulp and paper or banking, and at cross-industry level. As regards the latter, in March 2016 the ETUC, BusinessEurope, CEEP and UEAPME¹⁴ produced a 'Statement of the European Social Partners on digitalization' that stresses how job creation in the context of the digitalization of the economy 'will depend on how successfully

Table 4.3 Documents on digitalization and new technologies adopted by the European social partners, 2010–19

Sector	Title	Date
Insurance	Follow-up statement on the social effects of digitalization	15/02/2019
Banking	Joint declaration on the impact of digitalization on employment	30/11/2018
Pulp and paper	Social partner resolution addressing the ongoing digitalization in the European pulp and paper sector and its potential impact on industry and employment	06/07/2018
Commerce	European agreement on guidelines on teleworking and ICT-mobile workers	25/05/2018
Metal	The impact of digitalization on the world of work in the metal, engineering and technology-based industries	08/12/2016
Chemicals	Joint position on social and employment aspects of digitalization	22/11/2016
Insurance	Joint declaration on the social effects of digitalization by the European social partners in the insurance sector	12/10/2016
Cross-industry	Statement of the European social partners on digitalization	16/03/2016
Local and regional government	Joint declaration on the opportunities and challenges of digitalization in local and regional administration	11/12/2015
Telecommunications	Joint UNI Europa and ETNO declaration on future ICT skills needs	28/11/2014
Postal services	Joint declaration on matching skills and jobs in the European postal sector	21/11/2014
Commerce	Common contribution of the social partners in commerce to some flagship initiatives of 'EU 2020: a European strategy for a smart, sustainable and inclusive growth'	04/08/2010

Note: Uni Europa – the European Service Workers Unions; ETNO – European Telecommunication Network Operators' Association.

Source: 2010–17, European Commission (2018a, p. 155); 2018–19, Social dialogue text database, DG EMPL, accessed 16 March 2020 at <https://ec.europa.eu/social/main.jsp?langId=en&catId=521>.

European enterprises adapt to technological developments, and on the extent to which the EU will be able to create a favourable policy and regulatory environment to safeguard the interests of enterprises and working people at the same time'.¹⁵ It calls on public authorities and social partners at various levels 'to assess how best to adapt skills policies, labour market regulations and institutions, as well as work organization and information, consultation and participation procedures, in order to derive maximum benefits for all from the digital transformation'.¹⁶ The European Social Dialogue Work Programme 2019–2021 (BusinessEurope et al. 2019) includes digitalization as one of the six work lines aimed at improving knowledge, given that 'many aspects of the ongoing digitalization process are not yet clear or understood'. The aim is to negotiate an autonomous framework agreement on digitalization (European Social Dialogue Work Program 2019–2021).

Although there are some earlier examples of bipartite statements from the social partners dealing with digitalization, from 2016 onwards various sectors produced their own texts regarding the impact of digitalization on their economic activities. In 2016, for example, the insurance sector, in the 'Joint declaration on the social effects of digitalisation' (AMICE et al. 2016), presented what they termed the 'Principles of the social design of digitalisation', focusing on, among others things:

1. The convenience of using existing labour and social law as a (good) basis for the digitalized working world.
2. The recognition of training as the key element in successfully addressing the challenges that lie ahead, as digitalization requires 'new skills and competences on the part of both employers and employees' (AMICE et al. 2016, p. 3).
3. New issues regarding work–life balance will arise as digitalization influences customer behaviour (24/7 availability). Attention should be paid to preventing 'counterproductive forms of work-related stress due to digital availability', while at the same time addressing the 'growing phenomenon of performing work/services outside business hours' (AMICE et al. 2016, p. 4).
4. In order to deal in a social way with digital restructuring, 'companies should consider doing their utmost to avoid, reduce and mitigate redundancies' (AMICE et al. 2016, p. 4).
5. Digitalization also poses challenges to employee representatives, which should be tackled with an open mind.

Three years later, the signatories, in a follow up to the 2016 declaration, emphasized training, especially for workers whose function is likely to disappear, in order to initiate, if necessary, 'individual qualification programmes and guidance' (AMICE et al. 2019, p. 1). Attention is also paid to the 'absolutely imperative that the social partners monitor working time limits in a modern way and in line with applicable legislation and collective agreements', as the increase in autonomy of employees regarding when and how long to work, although positive for job quality, might increase psychosocial risks, such as burnout, if not adequately managed (AMICE et al. 2019, p. 2).

It is interesting that, regardless of the sector of activity, most of the statements mentioned in Table 4.3 share the same concerns: new training needs and work–life balance,

for example, highlighting the convenience of dealing with such issues in the context of social dialogue at different levels. According to the statement of the banking sector of 2018: ‘social dialogue is key in order to shape the digital transformation of the banking sector’ (EBF-BCESA and Uni Europa 2018, p. 3).

There are other examples of agreements of different types between the social partners at European level on other issues related to the digital transformation of the economy. To name one, in May 2018 Uni-Europa, the European service workers union, and Euro Commerce, representing national federations and companies in the retail, wholesale and international trade sector from 31 European countries, signed a European Agreement on Guidelines on Teleworking and ICT-Mobile Work (T/ICTM) in Commerce, aimed at updating the pioneering agreement on the same subject of 2001, to be used as guidelines for introducing and implementing T/ICTM. This agreement stresses the importance of guaranteeing that social contacts with the workplace and fellow workers is not lost, and the need to ensure that the introduction of T/ICTM is transparent, respecting existing information and consultation procedures.

Interestingly, a G7 Social Tripartite Declaration was adopted in June 2019. In reference to the Future of Work, the G7 members and international social partners (International Trade Union Confederation, International Trade Union Confederation, Trade Union Advisory Committee of the OECD, and Business at OECD) recognized the need to work together

towards the adoption of effective strategies and appropriate policy responses to promote enabling environments for job creation and decent work, economic and sustainable growth as well as equal opportunities and reduced inequalities ... To that end, we will work to achieve effective responses to shape the future of work we want, improve the functioning of labour markets, with a specific emphasis on tripartism and social dialogue. (G7 Social Ministers’ Meeting 2019, p. 2)

3.2.2 Social dialogue regarding digitalization at country level

Regardless of the existence of social dialogue at EU level, which can provide the context for more specific agreements at national and subnational levels and at firm level, most social partner actions in relation to digitalization have taken place at member-state level. This is owing to the huge diversity of employment regulations and labour market characteristics in the member states, their ‘employment regimes’ (Gallie 2007).

The social partners have been involved in many different national initiatives (15 according to the European Platform of National Initiatives on Digitizing European Industry; European Commission 2018b) aimed at contributing to the digitalization of European industry – including Germany’s Industrie 4.0, Spain’s Industria Conectada 4.0 and the Dutch and Swedish Smart Industry¹⁷ – although these forums go beyond the traditional social dialogue and involve many other stakeholders besides employers’ organizations and trade unions.

Turning to the traditional arena of social dialogue, Table 4.4 presents digitalization issues that have been addressed in various ways (in the context of trade unions, through information and consultation or at sectoral or firm-level collective agreements), according to the ETUC 2018 survey.

Note that, first, many of the topics mentioned have not been addressed by trade unions. The high percentage of negative answers regarding the representation of new

Table 4.4 Topics addressed within your workers' representation body or organization

	% of overall response*				
	No	Yes, within union organization	Yes, information and consultation	Yes, company agreement	Yes, sectoral collective agreement
Business strategy					
Change in the business model/strategy of the company/sector owing to digitalization	21	26	34	10	2
Outsourcing and offshoring of work/tasks to online platforms	40	16	22	8	1
New technologies					
Introduction of new digital technologies, e.g. automation, robots, digital devices such as handhelds, tablets, data glasses, smart gloves, etc.	24	19	32	15	2
Changes in work organization and work processes linked to the application of digital technologies	20	21	37	14	2
Working time					
Work-life balance or working time issues related to digitalization	30	21	21	11	4
Training and qualification					
Telework and ICT mobile work	28	15	21	22	5
Right to disconnect	41	19	15	8	2
Changes in occupational profiles and qualification	28	18	28	8	3
Further training and acquisition of new skills through digitalization of production or service	29	19	29	8	3

Table 4.4 (continued)

		% of overall response*				
		No	Yes, within union organization	Yes, information and consultation	Yes, company agreement	Yes, sectoral collective agreement
Data protection	Introduction of technologies to monitor performance and behaviour	32	14	23	17	1
	Protection of personal data, e.g. gathered in the context of ICT work, automation processes, etc.	23	19	23	19	2
Health and safety	Health and safety, stress, psychosocial risks, e.g. related to ICT-based mobile work, digital devices and tools	26	21	28	11	5
Representation of new types of workers in the digital economy	Competences of employee interest representations to address and represent the interests of 'peripheral' workers, e.g. freelancers, dependent self-employed, subcontract workers, etc.	43	23	12	4	1

Note: * Share of respondents indicating 'don't know' (6–17 per cent) is not included.

Source: ETUC (2018, p. 23).

workers related to the Digital Revolution (freelancers, dependent self-employed and subcontracted workers) is especially striking. Second, information and consultation, a less intensive form of social dialogue, is the mechanism most widely used to deal with these issues. As highlighted by ETUC (2018), this is a particular cause for concern as the survey sample is likely to be biased towards large companies, in which workers' representation still exists. The second most widely used mechanism for dealing with these issues is the firm-level collective agreement, mentioned by 12 per cent of respondents. The percentage is larger (over one-third) regarding changes in organization resulting from the introduction of new (including digital) technologies, followed by training and health and safety issues (in nearly 30 per cent of cases). Working time issues have been addressed in around 20 per cent of cases. In contrast, only 2.5 per cent of respondents mention sectoral collective agreements as the mechanism used to address these issues. This reliance on firm-level agreements is logical, as decisions about the introduction of new technology are taken at that level. According to the EMP 2018 survey, however, both firms and sectors are affected by the same issues, so bargaining at sectoral level could make sense, too.

In order to illustrate in greater detail the coordinates of the debate and the type of agreements reached by social dialogue at country level, we next review some country experiences using different sources of information, among them the results of an ongoing cross-country project (2018–20) Diresoc, financed by the European Commission (EC), focused on digitalization and social dialogue. In view of the ongoing nature of the Digital Revolution, it is beyond the scope of this chapter to present a complete analysis of the role of social dialogue in the process of introduction of these new technologies and organization-related changes. Instead we give a general idea of what is being achieved across different sectors and EU countries.

The right of French workers to disconnect addressed by the El Khomri Act, named after the Minister of Labour at the time, is a good example of the interplay between regulation and social dialogue in dealing with new challenges to working conditions posed by the Digital Revolution. Among the many aspects of labour relations covered by the law, most aimed to deregulate the French labour market, 'Loi no. 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels' ('Law no. 2016-1088 of 8 August 2016 relating to work, the modernization of social dialogue and the securing of professional careers') included an article (Article 55) introducing the 'right to disconnect' from work calls and emails during non-working hours. Nevertheless, the specific regulation of this right was left to the social partners, with the provision that if no agreement was reached, the firm could unilaterally implement its rules. This initiative has been followed by many other countries (such as Italy and Spain) and territories (such as New York City). In Spain, the procedure followed is different, being included in the Protection of Personal Data and Guarantee of Digital Rights Act.¹⁸ This law also addresses the right to intimacy and use of digital devices at work, recognizing the right of workers' representatives to participate in the development of regulations on the use of digital control devices.

Continuing with the French case, Teissier (2018, p. 37) argued that the usual tools and practices of social dialogue are still valid: 'if you need to cut jobs, you'll have to discuss a social plan or whatever, digitalization or not', although the new challenges 'might justify

the setting up of new areas, tools and processes, i.e. to “enrich social dialogue”, some of which are already running (such as the sectoral skills and employment observatory or the Employment and Expertise Plans, GPEC).

In Spain, technical change and digitalization has a small presence in collective agreements. According to the Statistics on Collective Agreements, in 2016 only a small number of collective agreements had clauses on Digital Revolution issues. For example, in 2016, only 3 per cent of collective agreements (2.42 per cent of employees covered by collective agreements) included agreements on telework, while only 2.9 per cent (4 per cent of the relevant employees) dealt with the adoption of new technologies. In both instances, these issues are dealt with mainly in collective agreements at the firm level. From a temporal perspective, it is interesting to note that the share of collective agreements dealing with such issues has decreased since the Great Recession, from a maximum of 8.5 per cent in 2008 to 4 per cent in 2016.¹⁹ According Rocha and de la Fuente (2018), the meagre – almost irrelevant, in their opinion – role of tripartite social dialogue in digitalization is explained by the stalemate that emerged during the long and deep economic crisis of 2009–13 and by the government’s preference for public consultation instead of the traditional social dialogue when dealing with the Digital Revolution. The political paralysis produced by three general elections from 2015 to 2019 also explains the lack of advance of social dialogue at tripartite level, the weak spot of the nascent process of digitalization in Spain, according to the main Spanish trade union CC.OO. (Fundación 1º de Mayo/CC.OO Industria 2018). In the few cases in which social dialogue deals with issues related to the Digital Revolution, Rocha and De la Fuente (2018) observe that digitalization is often brought to the bargaining table *ex post*, in order to deal with the consequences of technical change, and not *ex ante*, developing anticipatory measures. Moreover, in a landscape dominated by micro firms, with very few medium-sized and large companies, Spain suffers from a relatively low level of innovation (according to the European Innovation Scoreboard, Spain is in the group of moderate innovation countries, along with Italy, Cyprus or Portugal). The authors highlight how the emerging collective agreements addressing digitalization belong mainly to multinational corporations operating in highly competitive global sectors. Nevertheless, things seem to be moving, albeit slowly. One example is the 2018 national agreement of the hospitality industry, signed by the two main Spanish trade unions, which explicitly includes delivery of food and drinks, including those coordinated through digital platforms (Rocha 2019).

In Italy, there are also important differences between sectors, owing to the existence of strong territorial and socio-economic dualisms. According to Leonardi and Di Nunzio (2018), the main concerns among social partners regarding the Digital Revolution, in line with the results of Table 4.4, are the occupational impact in relation to job destruction and employment shifts, investments in Industry 4.0, the legal status of platform digital workers, individual and collective rights and protections, and the effects of the new ICT on workers’ privacy. The existing system of industrial relations (strong social partner representativeness and intensive social dialogue) has been fundamental in coping with digital-related restructuring, especially in sectors with effective communication channels and high affiliation rates, such as banking or the postal system. Nevertheless, as in Spain, the response has been mainly reactive and *ex post*, not proactive and *ex ante*, looking at mitigating the structural impact of digitalization in both sectors. In banking,

which is highly exposed to digitalization (automated teller machines and Internet banking), but also highly unionized, technological redundancies have been dealt with by early retirement schemes, while the last National Sectoral Collective Agreement introduced training rights for workers (albeit a meagre 24 hours over three years). Postal services (which have been strongly affected by the Digital Revolution through, for example, the substitution of regular mail by e-mail) also offers a good example of the role played by social dialogue in digital transformation. According to EC data, between 2004 and 2011, in Italy, letter mail decreased by 28 per cent, while from 2012 to 2017 domestic postal traffic, letter mail and parcel services decreased by 34.5 per cent.²⁰ The 2017 national agreement aimed, among other things, at ‘joint management between the social partners of the social consequences of the implementation of the reorganization and/or restructuring and/or transformation processes that have effects on working conditions, including collective mobility’. The agreement included the creation of a Post Group Committee (trade union and company) to study technological innovation with a potential impact on business and competitiveness (Article 5). In this regard, the trade union played an important role in reducing the closure of postal offices from 500 to 200 (Leonardi and Di Nunzio 2018).

Italy is also among the first countries in which a territorial collective agreement was signed by institutional trade unions, workers’ autonomous collectives and the management of a platform firm, the food-delivery company Snam-MyMenu, setting a fixed hourly rate in line with the sector’s minimum wage, compensation for overtime, holidays, bad weather and bicycle maintenance compensation (Aloisi 2019, p. 2). In May 2019, another food delivery firm, Laconsegna, signed a collective agreement with Filt Cgil, Fit Cisl and Uiltrasporti, which included the consideration of riders as employees covered by the collective agreement of the logistics sector. Furthermore, a works council was created, the first in Italy at a platform firm (Daugareilh et al. 2019, p. 72).

Sweden should be especially well prepared to deal with the impact of the Digital Revolution owing to its well-established system of collective bargaining and high (if decreasing) affiliation rates. According to Anxo (2019, p. 399), ‘the Swedish model of industrial relations relies on powerful, independent and all-encompassing employer’s and workers’ organizations’, which should facilitate a smooth transition for workers affected by the digital transformation (OECD 2018, p. 15). According to Bergström and Ismail (2019), LO, the Swedish trade union confederation, has traditionally favoured technical and structural change as a way to guarantee the high productivity that will allow good working conditions. In this regard, digitalization is not considered new, but business as usual. Conflict between the social partners arises from the implications of technical change in the era of digitalization. While trade unions focus on the growth of new forms of non-standard and precarious employment, employers argue that digitalization provides a rationale for changes in labour regulation. In contrast, both parties agree on the need to improve and reform the Swedish education system in order to better adapt to the new needs and further develop lifelong learning (Bergström and Ismail 2019).

Sweden also offers interesting examples of the extension of collective agreements to the platform economy. An example is the agreement signed by Bzzt (a platform of personal transport by tuk tuk), which allows Bzzt drivers – hired on marginal part time contract – to be covered by the Taxi agreement (Swedish Transport Workers’ Union).

Another example is the agreement signed between Instajobs (a platform for student work) and Unionen, by which Instajobs workers are covered by the collective agreement for temporary agency workers. The same option has been followed by Gigstr (low-skilled gigs) (Jesnes et al. 2019). In this regard, an economist working at Unionen (Söderqvist 2017) proposed a platform institution aimed at creating digital standards for the platform economy. Standards would be agreed in negotiations between platform firms, trade unions and the relevant government agencies, and would serve as guidelines for platform firms.

The use of existing collective agreement provisions in discussions on algorithm-based management practices or ethical aspects of the implementation of occupational safety-related tracking devices is an example of the versatility of Swedish social dialogue for addressing the challenges of digitalization (Söderqvist and Bernhardt 2019).

In 2012 Portugal adopted a Digital Agenda, which has subsequently been updated through various initiatives, including:

1. *Estratégia TIC 2020*, aimed at the digital transformation of public administration.
2. INCoDe.2030, an integrated public policy initiative aimed at improving digital competences, including *AI Portugal 2030*, aimed at scaling up ‘public and private investments’ to allow ‘state-of-the-art AI applications into the market so that the economy and the public sector can use the foreseeable benefits of AI’ (INCoDe.2030 2019, p. 17); and
3. *Indústria 4.0*, the Portuguese strategy to develop industry in the digital domain.

According to the available information, there has been no direct social partner involvement in the design or follow up of these programmes (Gasparri and Tassinari 2017). As regards *Indústria 4.0*, the Portuguese trade union Fiequimetal, the metalworkers’ federation of the largest confederation, *Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional (CGTP-IN)*, has criticized the lack of union involvement (Gasparri and Tassinari 2017).

As regards Digital Revolution issues in collective bargaining, Rego’s (2018) analysis, based on the collective bargaining reports of the *Centro de Relações Laborais*, identified ten collective agreements between 2016 and 2018 that included some type of technological topics, such as the promotion of training to facilitate technological adaptation. Furthermore, the potential implications of the Digital Revolution are not considered in the 2018 tripartite agreement ‘*Combater a precariedade e reduzir a segmentação laboral e promover um maior dinamismo da negociação coletiva*’ (‘Fighting precariousness and reducing labour segmentation and fostering more active collective bargaining’) signed on June 2018, which includes only references to the need to ‘modernize and dematerialize’, creating a web portal as the default mechanism of communication with citizens and firms for the *Autoridade para as Condições de Trabalho* (Labour Inspectorate).

In the United Kingdom, the Trades Union Congress laments, in a 2015 paper (TUC 2017), the current low levels of government and business investment that might jeopardize the future United Kingdom role in the coming digital economy and demanding a strategy of worker consultation (at both national and workplace levels) to shape the future of digitalization. Also highlighted in the document are the need to overhaul investment in training:

All workers should have access to a mid-life training review to assess their skills, and despite their chequered history, government will need to reintroduce individual learning accounts to give everyone a personalized budget for training [and to] ensure that if the productivity benefits from new technology do show up, the rewards are fairly shared. (TUC 2017, p. 7)²¹

However, the relatively low rate of collective agreement coverage, 26 per cent of employees and 14.7 per cent²² of private sector employees in 2018, implies that in the private sector by far the most common way of fixing pay and working conditions is unilateral management decision (even if filtered by the labour market situation). In the public sector, pay is usually set through nationally negotiated collective agreement. The affiliation rate in the public sector is 52.5 per cent compared with 13.2 per cent in the private sector.

A good example of the marginal role played by social dialogue in implementation of the Digital Revolution is the 2017 'UK Digital Strategy',²³ in which, to the best of our knowledge, there is no reference to the role of the social partners. Although social dialogue has been successful in areas such as the establishment of the Low Pay Commission and the Women and Work Commission or in the improvement of training by firms (Broughton 2008), it does not seem that the road to a digital economy in the United Kingdom is going to be guided by social dialogue.

As in other countries, trade unions and employers' associations, in this case the GMB union and the Confederation of British Industry (CBI), maintain conflicting views regarding some of the effects of digitalization. While a GMB report indicated the poor working conditions of many precarious workers, the CBI described the United Kingdom's flexible labour market as an invaluable asset (Evans 2017).

Paradoxically, considering the low coverage of collective agreements in the private sector, in February 2019 the United Kingdom joined Italy and Denmark in the avant-garde of platform worker bargaining with the signing of an agreement by Hermes, a courier company, with the GMB. The agreement included holiday pay and minimum wages and provided union recognition for gig workers. It is important to note that this agreement came after Hermes courier workers won the right to be considered 'workers' at an employment tribunal.²⁴

In Germany, the publication in 2015 by the Federal Ministry of Labour and Social Affairs of the green paper 'Working 4.0: thinking further about work', produced a debate among the social partners in different position papers. For example, Gesamtmetall (the employers' association for metal and electrical engineering) did not consider it necessary to increase data protection and codetermination rights, while the BDA (Confederation of Employers' Associations) emphasized the need to ensure that the new technology is not accompanied by more bureaucracy. In contrast, the DGB (Confederation of German Trade Unions) argued in favour of setting new rules for the new types of employment relations that could flourish with the new digital economy, such as platform work (Eurofound, 2017). In the White Paper, 'Arbeit 4.0', published the following year, the Ministry argued in favour of drafting a new law (Working Time Choice Act, *Wahlarbeitszeitgesetz*), which would combine greater choice for workers in relation to working time and location, with a conditional possibility to derogate certain provisions of the Working Time Act (*Arbeitszeitgesetz*) on the basis of a collective agreement between the social partners with implementation at firm level. The

acknowledgement that the Digital Revolution will go beyond Industry 4.0, together with the potential profound implications of new employment relations, for example, related to platforms, make it advisable, according to the report, to strengthen collective bargaining in the services and care sectors, a process that could ‘eventually lead to a generally binding collective agreement for the social sector’ (Federal Ministry of Labour and Social Affairs 2017, pp. 10–11).²⁵ Other issues covered by the report are increasing employee data protection and studying whether new forms of employment related to crowd working might need regulation, taking ‘the long-standing, tried-and-tested regulations for home workers’ (Federal Ministry of Labour and Social Affairs 2017, p. 12) as a model.

Looking at the practice of social dialogue in relation to digitalization, it is worth mentioning two conclusions reached by Mühge (2018) after studying this issue in tourism, finance, postal service/logistics and industry. The first conclusion is that the impact of digitalization and the role played by social dialogue in the different sectors are diverse (high in finance and logistics, and low in tourism). The second is that, also with sectoral differences, ‘an increase in the importance of employee participation is observed’ (Mühge 2018, p. 23). This increase, nevertheless, has led to a growing tension between increasing demands and insufficient resources among works councils, as well as a lack of support: ‘It is the unanimous opinion of interviewees and experts that digitalization is exacerbating the burden on works councils’ (Mühge 2018, p. 23).²⁶

In Finland, in a context in which public opinion is relatively optimistic about the future implications of the Digital Revolution (Pulkka 2019), labour market organizations, including the Central Organization of Finnish Trade Unions (SA), the Confederation of Finnish industries (EKK) and the Office for the Government as Employer (VTML), in 2019 agreed on joint principles concerning digitalization and AI. The endorsed document, ‘Digitalising Finland is an opportunity: a big leap forward in employee wellbeing and in labour productivity’, emphasizes the importance of broadening workers’ skill sets in order to make it easier to adapt to changes of occupation in a context of employer–employee collaboration: ‘It is desirable that management and employees together see what future work skills are needed and that workplaces together seek ways to acquire these skills.’²⁷

The programme²⁸ of the newly elected coalition government (five parties) of 2019 includes, in its labour market section, the objective (objective 3) of ‘stability and trust in the labour market through collective bargaining’. This objective considers measures such as:

1. studying the need for changes in legislation from the perspective of the transformation of work (entrepreneurs and self-employed, the sharing and platform economy, new forms of commissioning work and cooperatives), including the amendment of the Employment Contract Act, if necessary, to prevent employment from arising under the guise of other contractual relationships;
2. anticipation of structural change, especially due to technological advances and climate change; and
3. development of a multiannual national development programme for work and wellbeing at work to accelerate the renewal of modes of operation and the use of new technology.

The high affiliation rates and collective agreement coverage, as well as its level of insertion in the digital economy makes Denmark another interesting country as regards how the Digital Revolution is affecting the world of work. In 2017, the Danish government established the Disruption Council. It is headed by the prime minister and comprises seven ministers and 29 members, including chief executive officers (CEOs), social partners, academics and others, and its mandate is to discuss ‘the best course for Denmark to navigate into the future’ (Danish Government 2019, p. 6). Among its concerns regarding labour market policies, the Disruption Council highlights:

1. the need to strengthen the Danish adult and continuing training system and lifelong learning;
2. the need to monitor developments in the area of platform work to ensure that the government and social partners find the proper solutions within the framework of the Danish model (see below); and
3. the risk of greater social division. This risk, so far, has been confronted by the government by entering into a tripartite agreement with the social partners (2017) on an improved and more flexible adult and continuing training system, the simplification of employment rules and the creation of a new unemployment benefit system for self-employed persons and atypical workers, harmonizing, to a great extent, the rules governing them with those governing regular employees.

In this context of intense social dialogue, Denmark is credited with the first collective agreement between a platform company, Hilfr (which provides cleaning services for around 1700 customers across Denmark), and (via the Confederation of Danish Industry) the largest Danish trade union, 3F. Under the agreement, there is a minimum wage of 141 kroner (about €19 in August 2018), workers are entitled to contributions to pensions, holiday pay and sickness benefits (Eurofound 2019). The importance of this agreement, according to Tina Møller Madsen, leader of 3F Services and chief negotiator with Hilfr, is that ‘with this collective agreement we are bridging the “Danish labour market model” and new digital platforms; by doing so we are offering initial answers to one of the major issues of our time: how to reap the benefits of new technology without undermining labour rights and proper working conditions’.²⁹ A novel feature of this collective agreement is that it introduces a new category of workers, the Super Hilfrs, the default option for those workers who meet certain conditions (100 hours of work).

A casual review of Danish collective agreements shows that the implications of technological change are not unusual items in collective agreements. For example, agreements for the meat industry, between the Danish Food and Allied Workers’ Union, NNF, and the Confederation of Danish Industry, DI, include various technological agreements and a general agreement by which the ‘parties agree to work towards ensuring that the current employees will be used for the operation of new technology. In support of this, the provision on systematic training planning of the training protocol may be applied’.³⁰

As we can see in Table 4.5, which collects examples of intervention of social partners dealing with the effects of the digital revolution at different levels of social dialogue, the overview of country cases conducted in these pages shows that the social partners are both aware of the potential, and uncertain, implications of the Digital Revolution

Table 4.5 Examples of social dialogue at different levels dealing with new technologies and the digital revolution in six European countries

Country	Level			
	National	Sectoral	Regional	Enterprise
Belgium	National Collective Agreement on protection of employee's private lives No. 81 (2002) protects private lives of employees with respect to controls on electronic online communications data	Finance sector: Protocol on 'talent mobility': Pathways for workers whose jobs may be under threat due to digital transformation. Those who commit to a pathway will benefit from the help of coaches, who have been trained on the problems affecting the sector, as well as a 'Talent Mobility' digital platform		
Denmark	2017 tripartite agreement on improved and more flexible adult and continuing training system	Agreements for the meat industry on specific technological agreements and a general agreement on the use by employees of new technology in exchange of systematic training		Collective agreement at the platform cleaning services company Hilfr on minimum wage, contributions to pensions savings, holiday pay and sickness benefits of platform workers
Finland	2019 agreement on joint principles of digitalization and AI, aimed at broadening workers' skills to changes in occupation etc.			

Italy

2017 National agreement in the postal sector to reduce employment reduction through mobility etc.
Agreement in the sector of Logistics
Electric power sector: Individual right to training, which amounts to 28 hours per employee over three years

Territorial CA signed by institutional trade unions, workers' autonomous collectives and the management of a platform firm, the food-delivery company Sgnam-MyMenu

Laconsegna CA which includes the consideration of riders as employees covered by the collective agreement of the logistics sector
Lamborghini: Commitment to establish a bilateral commission with the purpose of negotiating the issue of 'Big Data availability', which consists of assessing to whom the data produced by the company's IT systems will be available – the workers or the company only.

Portugal

Inclusion of clauses regarding training for better adaptation to digital transformation and professional retraining (*Reconversão profissional*) in different firms e.g.: 'Acordo de empresa entre a Cáima – Indústria de Celulose, SA e FIEQUIMETAL e outros' or 'Acordo de empresa entre a Portway – Handling de Portugal, SA e o Sindicato Democrático dos Trabalhadores dos Aeroportos e Aviação – SINDAV'

Table 4.5 (continued)

Country	Level			
	National	Sectoral	Regional	Enterprise
Spain		XIX Collective Agreement of the chemical industry (2018–2020) regarding the assessment of occupational risk related to the introduction of new technologies, <i>ex ante</i> information when the introduction of new technologies is expected to produce substantial changes in working conditions or a technical training	Collective agreement for HORECA of the province of Segovia (2018–2021) including right of information regarding the introduction of new technology: “The introduction of new technologies should not lead to the reduction of employment” (art. 33). With that aim training or reallocation of the worker should be provided	Different CAs dealing with training for Industry 4.0 (XIX Collective Agreement of Seat SA, 2016–2020); right to disconnect (IX Framework Agreement of Repsol Group, 2017–2019; Philips Ibérica, 2018–2020; AXA 2017–2020), telework (AXA 2017–2020); right to information on new technologies (Renault Spain, 2017–20); etc.
Sweden	Tripartite industrial dialogue on digitalization (2016), restructuring and matching (2017) or new technologies (2018), concerned with general strategies, in the form of exchanges of opinions			Agreement signed by Bzzt (a platform of personal transport by tuk tuk), which allows Bzzt drivers to be covered by the Taxi agreement (Swedish Transport Workers’ Union). Other examples are Instajobs (platform for student work), Gigstr (low-skilled gigs)

Source: Based on references cited in the chapter, EurWork (Eurofound) and Planet Labor.

and, albeit unevenly among countries, have taken them into account in their daily work. As mentioned in the minutes of a TUAC (the trade union advisory committee to the OECD) meeting held in Paris on Digitalization and the Digital Economy (OECD 2017b), trade union activities regarding digitalization include: the use of collective agreements to monitor the introduction of new digital technologies; monitoring compliance with labour standards in the context of rapid changes in the world of work; extending their activities to new groups of workers such as self-employed and platform workers; participating in training schemes to facilitate stability of employment in a world of rapid change of jobs and tasks within and between firms; and participating in advisory groups on digital innovation at different levels.

These activities are carried out using the standard tools of social dialogue, but also new digital tools. In section 4 we reflect on how these new digital tools are changing the way trade unions work.

3.2.3 A note on artificial intelligence and social dialogue

Although we are very far from a fully developed AI (Craglia et al. 2018; Fjelland 2020), owing to the gargantuan potential of AI to change the future of work (among other ways by pushing further out the frontier of automation and through the development of new forms of surveillance at work) the social partners are starting to discuss what the appropriate approach could be to the management of AI in production systems.

For example, a July 2020 ETUC ‘Resolution on the European strategies on artificial intelligence and data’ stresses the need to ‘remain active in the societal debate on AI to make it compatible with the objectives of social Europe, decent work and social progress’ (ETUC 2020, p. 3). In this, the ETUC considers that because the availability of large quantities of data is the backbone of the application of AI to production, the EU’s current General Data Protection Regulation (GDPR) does not adequately protect workers from the downsides of AI technologies, such as work-related stress and excessive pressure from intensive work schedules defined by AI. Among other things (such as the need to ensure data governance and the security of data storage and access), the ETUC argues for free access to the source code of AI systems before they are implemented in the workplace in order to be able to test the compliance of algorithms ‘with the rule of law and fundamental rights’ (ETUC 2020, p. 3).

These demands coincide with the OECD’s Recommendation of the Council on Artificial Intelligence (OECD 2019b), specifically with its item 1.3 on transparency and explainability, which stresses the importance of making ‘stakeholders aware of their interactions with AI systems, including in the workplace’, enabling ‘those adversely affected by an AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision’. As with other technological innovations related to the Digital Revolution, the OECD also recommends steps to build human capacity and prepare for the labour market transformation in different ways, ‘including through social dialogue, to ensure a fair transition for workers as AI is deployed, such as through training programmes throughout working life, support for those affected by displacement, and access to new opportunities in the labour market’ (OECD 2019b, item 2.5).

The position of BusinessEurope regarding AI is summarized in a position paper adopted in July 2019 (BusinessEurope 2019). The paper highlights the need to have a coherent legal

framework and a robust infrastructure, as well as ‘a highly educated and entrepreneurial workforce’. Regarding the impact of AI on employment, the document adopts a fairly optimistic perspective in which AI is considered a tool to ‘assist our workforce rather than entirely replace it, enabling the human element of work to be improved’ (BusinessEurope 2019, item 9). BusinessEurope also suggests a cost sharing approach to re-skilling and upskilling, in which the EU would sponsor and support the required training programmes, while their coordination would remain the ‘sole task of the Social Partners’ (BusinessEurope 2019, item 41), ensuring a good match between supply and demand.

A paper by UNI Europa ICTS (2019, p. 4), the European trade union federation representing telecom workers, also emphasizes the crucial role of social dialogue in the management of AI: ‘Without social dialogue, we cannot build the best strategy for AI’. This paper is especially relevant for the purpose of this review as it presents the concerns and guidelines for collective bargaining in three areas related to AI: data collection and management, skills and training, and a fair and just transition. Focusing on the former for the sake of brevity, the union includes the following among its guidelines for negotiating workers’ role in data management: (1) justification and prior consultation before the introduction of any method for managing worker-generated data; (2) information about data control and access (subject to workers’ consent); (3) the right to decide what happens to data collected by the employer (digital legacy); (4) redistribution of benefits derived from the use of the data collected when used, sold or licensed to a third party; (5) transparency in the use of personal data; (6) traceability; (7) risk assessment of the implications of adopting AI by the firm in terms of personal rights, working conditions or other social consequences; and (8) evaluation of AI, based on predefined criteria (UNI Europa ICTS 2019, p. 9).

This set of recommendations regarding worker representatives’ involvement in AI deployment is in line with the principle of human agency and oversight underlined by the High-Level Expert Group on AI (2019, p. 15), according to which ‘AI systems should support human autonomy and decision-making’, and the ‘Human-in-command’ approach to AI, advocated by the European Economic and Social Committee’s (2017) opinion on artificial intelligence, by which machines must remain machines and people must retain control over these machines at all times.

4. CHALLENGES AND OPPORTUNITIES OF THE NEW DIGITAL TECHNOLOGIES FOR TRADE UNIONS AND EMPLOYERS’ ORGANIZATIONS: NEW TOOLS FOR NEW TIMES

Together with the transformations of the world of work reviewed in section 2 of this chapter, the Digital Revolution is also affecting the way the social partners, especially trade unions, perform their mission and relate to their constituencies, as the composition of the labour force changes and new ways of doing and communicating things develop. This section focuses not on the labour market and labour relations impact of digitalization, but on its effects on the social partners themselves. This includes the extent to which the Digital Revolution will have, or is already having, an impact on the way the social partners themselves work.

Following Ward and Lusoni (2002), the ICT and Digital Revolution could lead to three different scenarios regarding trade unions. The first would be a future of erosion owing to: (1) the growth of sectors or types of employment with traditionally lower affiliation rates, (2) the development of an individualistic culture, inclined toward individual bargaining of working conditions, and (3) an inability to adopt new technologies and social media in their daily work, and benefit from what Bennett and Segerber (2012) call ‘connective action’, along with traditional collective action.

The second scenario is modernization, as new ICT technologies could contribute to updating trade union bureaucracy, allowing the development of online custom-made services and professional assistance (Diamond and Freeman 2002), better targeting and recruiting of members, and a modernization of the trade unions’ public image.

The third scenario would be the democratization of trade unions, as new digital technologies allow the use of new tools for members’ participation in decisions and debates, in what Diamond and Freeman (2002) term cyber-democracy, opening up trade unions to a wider audience.

Interestingly, there is very little literature on this issue in relation to employers’ associations. This is also applies to many other social dialogue issues. What literature there is on the future of social dialogue on the company side briefly touches on the unwillingness of new digital firms to join traditional employers’ associations. According to a recent report (Kilhoffer et al. 2017, p. 31), ‘none of the evidence surveyed indicates that platforms are organizing into employer associations or being incorporated into existing employer associations’. According to Kiess (2019), Germany-based platforms do not seem to be particularly interested in entering into traditional industrial relations. This should come as no surprise, as platforms do not consider themselves to be employers.³¹

The three scenarios reviewed above have items in common, namely, the need to adopt new ways of mobilizing workers, to reach areas of employment now on the fringes of trade unions, such as temporary employees and younger workers,³² to incorporate the communication possibilities offered by social media, and to benefit from big data, as digital companies do, to improve their services and reach.

In this regard, Pasquier and Wood (2018) argue that trade unions can use the new tools supplied by the Digital Revolution to reach out to new groups of workers and develop new forms of action. For example, social media can amplify traditional offline collective action (the cyber-dispute hypothesis of Diamond and Freeman 2002). The World Wide Web, and social media in general, is becoming an important space for industrial disputes, enhancing the legitimacy of campaigns by highlighting workers’ personal testimonies, connecting the movement with activist networks and supporting the emergence of new forms of collective action. The potentialities of digital technologies to connect to workers outside traditional workplaces is also highlighted by the ILO (2019, p. 59).

The Internet can also be used to develop new virtual spaces, where workers can discuss issues in a bottom-up manner, Worknets, and informal real-time social dialogue, Social Digilogue, to use the European Commission’s neologism (2019, p. 40).

Other interesting avenues for the future are the use of the information that trade unions have on affiliates and firms to do a type of predictive unionism (Maxwell 2018). Based on data-mining of members, firms and other sources, trade unions could offer tailored information about fair wages to their members (controlling for characteristics), underpayment, and so on. A pioneering example of this predictive unionism is the work

of Fredrik Söderqvist, a trade union researcher in Unionen, a Swedish trade union with nearly 650 000 members (10 per cent of Sweden's working-age population) who is working on an algorithm based on the gargantuan individual and aggregate data available to the trade union to extract patterns to improve bargaining outcomes.

Trade unions are also opening up to new working environments, such as platforms and solo self-employment. In some instances, as exemplified by the Spanish UGT, the first step is to research the working conditions of platform workers (UGT 2019). According to the UGT, union involvement in the area was a response to the numerous queries regarding platform work made to a digital platform (www.turespuestasindical.es, accessed 8 March 2020) developed in 2017 as a tool for contacting platform workers and supplying legal advice. The other main Spanish trade union, CC.OO, is also involved in the fight for recognition of platform workers at firms such as Deliveroo and Glovo as employees, instead of own-account workers. It has developed another webpage, <https://precaritywar.es/> as a communication and complaints tool.

Other strategies include the legal backing offered by some trade unions to platform workers, notably riders, in their legal disputes (for example, the IWGB and Deliveroo riders), the integration of groups of platform workers in trade unions, as in the Netherlands or the United Kingdom, or cooperation between trade unions worldwide to promote good practices in platform work (Rocha 2019).

One important example of this last strategy is the Fair Crowd Work joint project of IG Metall (the German Metalworkers' Union), the Austrian Chamber of Labour, the Austrian Trade Union Confederation and the Swedish white-collar union Unionen, in association with research and development partners Encountering Tech and M&L Communication Marketing. Fair Crowd Work gathers information, based on surveys of workers, about crowd work, app-based work and other platform-based work, from the perspective of workers and unions. The information is then used to generate ratings of the working conditions of different online labour platforms.³³

This strategy can be accompanied by the development of a code of conduct for crowd-sourcing platforms, as the Ombudsman for German Crowdsourcing Platforms established in 2017 with eight European crowdsourcing platforms, the German Crowdsourcing Association (Deutscher Crowdsourcing Verband) and the German Metalworkers' Union (IG Metall), tasked with resolving disputes between crowdworkers, clients and crowd-sourcing platforms, as well as with overseeing enforcement of the Crowdsourcing Code of Conduct adopted by the platforms. These moves could eventually end up in the establishment of works councils, as occurred with the Foodora riders in Vienna.³⁴ The Austrian social partners have also agreed the first collective agreement for bicycle couriers, including workers working for traditional companies and platforms, but excluding those working as independent contractors.³⁵

5. CONCLUSIONS

Our review of the challenges to social dialogue posed by the Digital Revolution, and social partners' response to them, leaves many uncertainties but has also established some facts. Starting with the former, and always from a positive perspective – it is vital to know what we do not know – our review of the implications of the Digital Revolution

for labour and the labour market, in section 2, indicates many potential impacts of digitalization on work, in different directions, which could lead to totally different scenarios concerning the future of labour.

Regardless of the numerous prophecies of the end of work, there seems to be a growing consensus among the social partners that the new digital technologies, at least in the short and medium terms, will have more impact on the type of employment generated than on its level. This highlights the importance of providing workers with the skills they need to adapt to the new labour demands. As with other issues, the existing consensus regarding the importance of training, upskilling and recycling throughout working life starts to unravel when it comes to deciding who should pay for these growing training needs: firms, the public sector or employees. This issue is especially thorny when, owing to the uncertainty surrounding technical change, the most efficient form of training may well be the improvement of general skills and competences, not firm-specific training.

The growth of non-standard employment is another potential impact of the Digital Revolution. However, it is important to acknowledge that non-standard employment relations were already increasing, although the reduction of transaction costs related to cheap access to growing amounts of data and processing make this type of employment viable in new areas of economic activity. The social partners' acknowledgement of the social and economic implications of these new forms of jobs has led, once again, to a variety of positions: the need to adapt to the new realities of work, on the firms' side, expanding the traditional forms of social protection to the new groups of workers, versus the need to enforce current labour legislation in order to eliminate the loopholes that favour the growth of non-standard relations, on the trade unions' side.

Finally, new technologies will contribute to the reduction of some health and safety risks but will also generate new risks that will have to be addressed by governments and social partners. The new challenge will be more closely related to psychosocial risks than to physical risks. The current health and economic crisis caused to the Covid-19 pandemic has highlighted a number of vulnerabilities among some categories of workers, in particular gig workers.

Social dialogue has a say in the management of all these changes, albeit at different levels. In some instances, such as growing technical unemployment, tripartite social dialogue at national or even European level would be the proper avenue. In others, such as training, health and safety or new employment relations, social dialogue at national level (both sectoral and firm levels) seems more appropriate.

This social dialogue will require capable and knowledgeable social partners, hence the imperative of changing the trend of falling affiliation rates faced by trade unions in many countries. In relation to this, the Digital Revolution and its ubiquitous social media could act as a potential agent of change for trade unions, opening up new channels of communication with workers who, owing to the temporary nature of their employment or the digital nature of their work, are now more isolated from fellow workers than in the past. The new participation tools facilitated by the digital technologies could also contribute to the democratization of trade unions and enhancing their representativeness.³⁶

The contingent and casual review of their activities carried out by social partners in relation to the implications of the Digital Revolution for the world of work shows both their concerns and their involvement in addressing many of the previously mentioned

challenges. The intensity of approaches differs across the EU member states, as does the level of penetration of the Digital Revolution in their societies. The implications of the new technologies for training and employment levels, together with working time, data protection and health and safety issues, exist at different levels of bargaining, from statements and agreements at EU level to firm-level or sectoral agreements. Again, for trade unions used to dealing with new technologies, in sectors such as manufacturing or banking, this is business as usual, although in many countries, reactive measures ('what do we do now?') tend to have priority compared with proactive measures.

Making use of the informal clustering of EU member states by union and employment density and CA coverage rate proposed in Chapter 2 of this volume, it is in the clusters formed by (1) countries in which union and employment density and high coverage rates go hand in hand (mainly the Nordic countries plus Belgium) and (2) countries with low union density but relatively high employer density and coverage rate (for example, Austria, France, Germany, Spain and Italy) where we can find more issues related to the Digital Revolution at different levels of social dialogue. By contrast, social dialogue around issues related to the Digital Revolution is less common in the other two clusters (the Baltic countries, Central and Eastern countries, the United Kingdom, Ireland and Greece) and Portugal and Slovenia.

We are also witnessing moves in different areas aimed at reproducing something akin to firm or worker bargaining among groups, such as own-account workers and platform workers, which so far have lacked any mechanism of workers' representation. It is too early to know whether these moves will end up replicating the traditional form of works council and collective agreement, or whether new forms of bargaining and representation will be developed.

The Covid-19 pandemic, and the measures taken in response to it, have substantial and diverse implications for the digital economy. On one hand, measures such as social distancing and lockdown have given an unexpected boost to teleworking, one of the pioneering forms of work organization made possible by computers and the Internet. Home working increased enormously across the EU almost from one week to the next. Suddenly, all activities that could be performed that way were shifted from offices, schools or universities, to students' and employees' homes. It is too early to obtain a clear picture of the implications for productivity and working conditions³⁷ of this gargantuan shift. It is also too early to assess the extent to which this shift will produce a permanent change in what previously had been a very unequal and uneven resort to teleworking across EU member states (in the country with the highest share of workers usually working from home, Finland, only 14 per cent of workers were usually teleworking, compared with an EU average of 6 per cent),³⁸ but this natural experiment has shown the feasibility of increasing telework. According to a recent survey conducted by Eurofound (2020), 37 per cent of EU workers have begun to switch to telework because of the pandemic, and almost 60 per cent in Finland.

However, it must be acknowledged that telework is not the panacea that many once thought. Not only are there problems with broadband, hardware and software capacity, as well as training, but also a large proportion of jobs are not suitable for telework. Furthermore, telework viability varies considerably, depending on each country's economic structure. For example, a recent estimate for the United States by Dingel and Neiman (2020) sets at 34 per cent the share of jobs that could plausibly be performed at

home. According to the sectoral classification carried out by Fana et al. (2020) regarding the impact of the Covid lockdown measures, 25 per cent of jobs in the EU are in sectors that partly or entirely operate via telework, with larger shares in countries such as Luxemburg and Sweden. These differences partly explain the asymmetrical economic impact of the Covid-19 crisis in the EU.

The Covid-19 crisis has also highlighted the low (often non-existent) level of social protection for gig workers. According to FairWork (2020), around half of all workers in the gig economy worldwide have lost their employment because the platforms they work for have suspended activities, while for the rest their incomes have fallen to around one-third of previous earnings.³⁹ Moreover, even workers in sectors unaffected (or enjoying an increase in demand) by the lockdown, such as food, parcel and grocery deliveries, have experienced increases in their exposure to risk from contagion. The platforms have not always responded adequately to this, for example, in the provision of personal protective equipment.

NOTES

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1. It is important to highlight that this technological enthusiasm does not fit well with the relatively slow rate of introduction of new technologies by firms, and the correlative increase in productivity. According to a recent World Economic Forum report: ‘While several pioneering companies and early adopters praise technology’s positive impact, adoption remains slow and limited across all industry sectors. More than 70% of industrial companies are still either at the start of the journey or unable to go beyond the pilot stage ... stuck in “pilot purgatory”’ (WEF 2018, p. 4).
2. For a comparative analysis of the different estimates see ADB (2018), Arntz et al. (2019) or Valenduc and Vendramin (2019).
3. The OECD classification includes basic content skills – reading comprehension, active listening, writing, speaking, mathematics skills and science – and basics process skills – critical thinking, active learning, learning strategies and monitoring.
4. Operations analysis, technology design, equipment selection, installation, programming, operation monitoring, operation and control, equipment maintenance, troubleshooting, repairing, and quality control analysis.
5. Eurostat, ‘Digital skills of the EU labour force, 2017’ (percentage of individuals, by skills level) (isoc_sk_dskl_i, accessed 28 June 2021).
6. The overall cost, defined as the sum of the direct cost (cost of providing training) and indirect cost (earnings forgone during training, assuming that workers do not work during training) would be considerably higher (ranging from 0.38 per cent to 1.56 per cent in the Slovak Republic), except in the case of unemployed workers, when the indirect cost would be zero (OECD 2019a, p. 114).
7. Eurofound (2018b) has identified ten types of platform work according to the scale of tasks, the type of service provision (online or locally delivered), the level of skills required, the client–worker matching process and the system of work allocation.
8. Defined as those who earn 50 per cent or more of their income via platforms and/or work more than 20 hours a week via platforms.
9. See ETUC Resolution, ‘Defining quality work: an ETUC action plan for more and better jobs’, adopted 13–14 December 2017 by the ETUC Executive Committee.
10. BusinessEurope, the European Centre of Employers and Enterprises (CEEP), the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME) and ETUC.
11. The ETUC online survey on Fair Digitalisation and Workers Participation was run in 2017/18 and obtained more than 1,500 responses from trade unionists and company level workers’ representatives from more than 30 European countries, including from EWCs and SE works councils in more than 220 transnational companies (ETUC 2018).

12. The CEC European Managers survey 2018 is a non-representative survey of 1400 affiliated and non-affiliated managers within the framework of the European Managers Panel.
13. The Business Digitisation Index includes the following variables (as a percentage of firms using): (a) electronic information sharing, (b) radio frequency identification (RFID), (c) social media, (d) e-invoices and (e) cloud solutions. The e-commerce index includes the following variables (as a percentage of SMEs): (a) selling online, (b) e-commerce turnover as a percentage of total turnover of SMEs, and (c) selling online cross-border. The Business Digitisation Index captures the dimension Integration of Digital Technology, while the E-Commerce Index accounts for the other 40 per cent. Together with these two sub-dimensions, the DESI includes four other dimensions: connectivity – broadband market developments in the EU; human capital – digital inclusion and skills; use of internet services by citizens, and digital public services.
14. Since 2018, SMEunited (UEAPME) has been the association of crafts and SMEs in Europe, with around 70 member organizations from over 30 European countries, CEEP is the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest, and can be considered the public sector counterpart of BusinessEurope, the main European-level social partner organisation, representing private employers of all sizes through its national member federations. The ETUC, the European Trade Union Confederation, is recognized by the EU as the only representative cross-sectoral trade union organization at European level.
15. 'Tripartite Social Summit – 16 March 2016, statement of the European Social Partners on digitalisation', p. 1, accessed 1 July 2021 at https://www.businesseurope.eu/sites/buseur/files/media/position_papers/social/2016-03-16_tss_-_statement_on_digitalisation.pdf.
16. Ibid.
17. See Vogel (2017) for an account of the Czech Republic, Denmark, Germany, Italy and Spain.
18. Ley Orgánica 3/2018 de 5 de diciembre de Protección de datos personales y garantía de los derechos digitales, art. 88, Right to digital disconnection in the labour context, to be developed by collective bargaining.
19. Author's analysis from *Estadística de Convenios Colectivos*, several years.
20. European Commission, 'Historical postal data from 2004 until 2011', GROWTH Internal Market, Industry, Entrepreneurship and SMEs, Postal Services.
21. Other issues covered include consideration of a policy of working time reductions should technological unemployment happen, bringing forward an increase in the state pension age to 68, and the need to keep watch on other aspects of new technology, such as the rise in surveillance at work or working conditions in platform companies.
22. 'Trade union membership statistics', 2018, Department for Business, Energy & Industrial Strategy, UK Government.
23. An overarching document setting out 'how we will build on our success to date to develop a world-leading digital economy that works for everyone' (<https://www.gov.uk/government/publications/uk-digital-strategy>, accessed 30 May 2021).
24. 'Hermes to offer gig economy drivers better rights under union deal', *Guardian*, 4 February 2019.
25. The report makes a strong defence of social dialogue:

To achieve new flexibility compromises, we should examine further incentives and instruments to support social partnership, collective bargaining coverage and the establishment of works councils. Rather than simply seeking to slow the erosion of collective bargaining coverage and staff representation, which has been evident over recent decades, we should endeavour to reverse this trend. (Federal Ministry of Labour and Social Affairs 2017, p. 13)

26. For more examples of firm-level collective agreements regarding digitalization see section 5 of Chapter 5 in this volume.
27. Accessed 26 July 2021 at <https://www.sak.fi/sites/default/files/attachments/central-labour-market-organisations-joint-principles-of-digitalisation-and-ai.pdf>.
28. Inclusive and competent Finland – a socially, economically and ecologically sustainable society (accessed 1 July 2021 at <https://julkaisut.valtioneuvosto.fi/handle/10024/161845>).
29. 'World's first collective agreement between platform company and trade union in Denmark', Thursday 20 September 2018, UNI Europa global union.
30. Extract from pp. 71–2. Similar agreements can be found in many other collective agreements in different sectors, such as banking: 'Where the introduction of new technology leads to job losses, the Group must always endeavour to offer the affected employees another job. The joint consultation committee must in general discuss education and training, as well as deployment, retraining or other employment for employees affected by the changes' (Collective agreement for the Danske Bank Group, 1 April 2014–31 March 2017, pp. 118–19).

31. On the other side, traditional firms tend to consider platforms to be competitors, and not always fair competitors, owing to their ability to avoid the non-labour wage costs and other costs that they must face. There is no evidence of established employer associations inviting platforms to join them (Kilhoffer et al. 2017).
32. For the OECD, the affiliation rate of temporary employees is 9 per cent, less than half the affiliation rate of employees with open-ended contracts. Young employees (aged 15–24) have an affiliation rate of 7 per cent, compared with 22 per cent of workers aged 22–64 (OECD 2017a). Nevertheless, according to the OECD (2019), these differences are largely explained by the characteristics of employment (for example, employment in a sector with lower trade union presence and non-standard employment relations), and not by a lower trust in trade unions or different values among younger people (OECD 2019, box 5.1).
33. The 95-question survey covers eight different areas: (1) basic demographics (for example, age, location and gender), (2) general experiences as a platform worker, including hours worked per week, and history of crowd working, (3) pay and non-payment, (4) communication with clients, platform operators and other workers, (5) reviews, ratings, and evaluation of workers and clients, (6) experiences with platform technology (for example, ease of use and reliability of app or website), (7) quality, character, and availability of tasks and (8) general likes and dislikes with respect to their work (Platform Review Information, <http://faircrowd.work/platform-reviews>, accessed 22 March 2020).
34. Supported by the Austrian transport and services union Vida, bicycle couriers working for the platform food delivery service Foodora in Vienna founded a works council in April 2017.
35. Together with the standard clauses in relation to wages and working time, the agreement includes an extra payment of €0.14 per kilometre for workers using their own bicycles and equipment (Eurofound, ‘Platform economy repository, initiatives’, accessed 26 July 2021 at <https://www.eurofound.europa.eu/es/data/platform-economy/initiatives>).
36. According to G. Kelly, in the *Financial Times*: ‘No one really knows exactly what an enterprising 21st-century unionism could look like. But it is a safe bet that it would need to be low cost and as digitally savvy as the other services on which young workers rely in other parts of their lives’ (‘Trade unions – adapt to the modern world or die’, *Financial Times*, 1 June 2017).
37. For example, according to Eurofound (2020) a significant share of teleworkers, 27 per cent, report working in their free time. Furthermore, this full immersion in telework has also shown that initial hopes that it could foster a better work–life balance have been dashed, as 22 per cent of persons living with children under 12 report difficulties in concentrating on their jobs, compared with less than 5 per cent in households with no children.
38. If we look at the share of workers who sometimes work from home the percentage rises to 31 per cent (in the case of Sweden), with an EU average of 11 per cent (Eurostat, EU-LFS 2019).
39. For example, US drivers working for platforms such as Uber and Lyft have reported a 65 per cent drop in their incomes.

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5. Enhancing the social partners and social dialogue in the new world of work in the Czech Republic

Soňa Veverková

1. INTRODUCTION

In this chapter we discuss social dialogue in the Czech Republic and its potential role in the new world of work. We present the views of Czech social partners on representativeness, autonomy, digitalization and the new world of work, as well as other topical issues that are currently being intensively addressed, such as eliminating inequalities concerning wages and working hours, and labour shortages.

While autonomy is not a current topic for the Czech social partners, representativeness and digitalization are more relevant. The question of representativeness is serious on the trade union side. Although over the past few years some trade unions have managed to stabilize their membership bases, the long-term decline in membership means that trade unions have less capacity for collective bargaining. Digitalization is a controversial topic: in general, both sides support this process, but the trade unions point out the potential risks and emphasize the need to regulate the process. The employers believe that digitalization will help to solve some of the problems they currently face, principally the severe labour shortage. Two other major issues are eliminating inequalities concerning wages and working hours, and labour shortages. The first, by its nature, is of more concern to trade unionists, but in some respects the employers also have something to say about it: they support wage increases in sectors such as education, social services and health care, among others. Also, shortening working hours without a decrease in wages is not a problem for many employers, as the second case study in this chapter shows. Labour shortages are closely interconnected with the issues of digitalization and labour immigration, to which both social partners strongly prefer digitalization.

Although the social partners have not always been in agreement on the issues under discussion, they generally adopt a consensual and non-confrontational behavioural style, and are ready to compromise. This is shown by the first case study.

2. INSTITUTIONAL FRAMEWORK FOR SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN THE CZECH REPUBLIC

2.1 Main Legislation

The legislative process forming the legal framework for independent social dialogue and collective bargaining commenced as part of the revolutionary socio-economic changes at the start of the 1990s. The Czech Republic has no specific comprehensive legislation covering trade unions, employers' organizations and collective bargaining; instead, the legal relationship between these parties is provided for in a number of separate pieces of legislation. The basic legal provisions concerning industrial relations in respect of both trade unions and employers are contained in Act No. 23/1991 Coll., the Charter of Fundamental Rights and Freedoms,¹ which provides for freedom of coalition and the right to associate and form unions. From 1990 to 2013, the establishment and existence of trade union organizations and associations was provided for in Act No. 83/1990 Coll., on the association of citizens. Since 1 January 2014, this subject area has been covered by the new Civil Code (Act No. 89/2012 Coll., the Civil Code²).

Other important legislation with regard to industrial relations includes Act No. 262/2006 Coll., the Labour Code,³ which provides the legal basis for negotiating collective agreements at the company and higher levels, and Act No. 2/1991 Coll., on collective bargaining,⁴ which regulates the collective bargaining process at the company and higher levels, as well as the settlement of collective disputes and the extension of higher-level collective agreements.

2.2 Collective Bargaining System

Tripartite level

In the Czech Republic, the Council of Economic and Social Agreement of the Czech Republic (Rada hospodářské a sociální dohody České republiky, RHSD) acts as the tripartite forum at national level; it is the country's main social dialogue institution. The task of the RHSD is strictly consultative. The aim of the tripartite organization is to reach agreement via a mutually respected form of dialogue in fundamental areas of economic and social development, and to maintain social consensus as a prerequisite for positive development of the economy, as well as the standard of living. Tripartite negotiations enable the government to keep continuous track of the views of trade unions and employer organizations, and they ensure that the social partners can present their views and obtain information from their partners at the tripartite level. Proof of the success of the tripartite organization's activities is provided – and internationally acknowledged – by the long-term maintenance of social consensus, which has been highly important for economic stability and development in the Czech Republic (Veverková 2012). In the European context, the structure and organization of the Czech tripartite organization is standard in all respects (Vácha 2012).

The top negotiating body of the tripartite organization is the Plenary Meeting, where the government delegation is represented by eight members, employer organizations by seven representatives – namely, from the Confederation of Industry of the Czech

Republic (Svaz průmyslu a dopravy České republiky, SP ČR) and the Confederation of Employer and Entrepreneur Associations of the Czech Republic (Konfederace zaměstnavatelských a podnikatelských svazů České republiky, KZPS ČR) – and union confederations also by seven members – namely, from the Czech-Moravian Confederation of Trade Unions (Českomoravská konfederace odborových svazů, ČMKOS) and the Association of Autonomous Trade Unions of the Czech Republic (Asociace samostatných odborů České republiky, ASO ČR). Criteria for participation are set out in the Statutes of the Council of Economic and Social Agreement of the Czech Republic⁵ (see section 3 in this chapter for details). The conclusions of the tripartite meeting are approved by all participants. If consensus is not reached and common conclusions are not accepted, the delegations' differing opinions on the issues at hand are published.

The matters on which the RHSD comments are defined by its Statutes: economic policy, labour relations, collective bargaining and employment, social issues, public service wages and salaries, public administration, safety at work, development of human resources and education, and the Czech Republic's position within the EU. From a European perspective, the Czech Republic is one of the countries in which tripartite concertation covers a wide array of activities.

There are also 13 regional tripartite bodies which deal with similar areas to those dealt with by the national body, as defined by their statutes.

Collective bargaining

Collective bargaining in the Czech Republic occurs at the company and the sectoral (or cross-sectoral) level. The company level is the most common. There is no collective bargaining at the national level. It is possible to conclude both higher-level collective agreements and company-level collective agreements. Both higher-level and company-level collective agreements are legally binding. Higher-level agreements serve as a framework or guide for the determination of company-level agreements; that is, higher-level agreements set out minimum standards with regard to wages and working time, which are subsequently adhered to in company-level agreements; company-level collective agreements can set out higher standards, but not lower. Company-level agreements cover all the employees at the workplace, no matter whether they are members of the trade union organization or not.

No register of company-level collective agreements (CLCAs) is maintained in the Czech Republic, however, higher-level collective agreements are monitored by the Ministry of Labour and Social Affairs (Ministerstvo práce a sociálních věcí České republiky, MPSV). Table 5.1 shows the number of higher-level collective agreements concluded in the period 2008 to 2018. Data on company-level collective agreements are not available, except for ČMKOS members, however, according to the social partners, the number of CLCAs concluded decreases every year.

It is evident from Tables 5.1 and 5.2 that the number of higher-level collective agreements concluded has remained largely unchanged. Higher-level collective agreements are usually concluded for a period of one year, although there is a growing tendency for the validity period to cover longer periods of time. Company-level collective agreements are usually concluded for a period of one year.

Table 5.1 Number of higher-level collective agreements concluded during 2008–18, Czech Republic

	Number of higher-level collective agreements	Number of higher-level collective agreements extended	Number of company-level collective agreements concluded by ČMKOS members
2008	25	4	3155
2009	25	4	3082
2010	22	5	4812
2011	22	5	4904
2012	24	4	4680
2013	24	6	4739
2014	24	4	3966
2015	21	4	3910
2016	23	4	3849
2017	19	6	3767
2018	22	5	3770

Note: Data on CLCAs is for ČMKOS members only.

Source: Data on HLCAs, Ministry of Labour and Social Affairs of the Czech Republic (MPSV); data on CLCAs, ČMKOS.

Table 5.2 Collective bargaining coverage, Czech Republic, 2012–18 (percentage)

	2012	2013	2014	2015	2016	2017	2018
HLCA coverage	15.8	15.2	13.7	n.a.	n.a.	n.a.	n.a.
CLCA coverage	33.9	33.2	31.3	31.6	30.4	31.2	31.5
Collective bargaining coverage (ČSÚ)	47.62	46.97	47.15	46.02	45.73	45.04	44.47

Note: ČMKOS data for ČMKOS members only. No information is available on the number of employees covered by higher-level collective agreements for 2015 and the following years (ČMKOS was unable to obtain these data from individual member trade union associations).

Source: Data on higher-level and company-level collective agreement coverage by ČMKOS. Data on collective bargaining coverage by Czech Statistical Office (Český statistický úřad, ČSÚ), based on Structure of Earnings Survey.

Extension mechanisms

A legal provision concerning mandatory extension is available, but is rarely invoked and applied regularly only in some sectors (construction, textiles and leather, transport and porcelain). The extension of a binding higher-level collective agreement to another employer is possible under conditions set out in Act No. 2/1991 Coll., on collective bargaining. The MPSV possesses the relevant powers to ensure that agreements are extended based on a proposal put forward by both parties to the agreement, provided that the conditions set out in legislation are met. No voluntary extension mechanisms exist.

Industrial action

Czech law recognizes only two types of industrial action: strike and lockouts. In addition to these two types defined in Act No. 2/1991 Coll., on collective bargaining, in practice a strike alert is often used.

The right to strike, as a fundamental human right, is guaranteed in Act No. 2/1993 Coll. Charter of Fundamental Rights and Freedoms, which forms part of the Constitution of the Czech Republic. Article 27 (section IV) of the Charter states that the right to strike is guaranteed in accordance with the conditions laid down by law; this right is not held by judges, members of the armed forces and members of security forces. The legality of a strike is also limited by Act No. 2/1991 Coll., on collective bargaining which only covers strikes related to collective bargaining. Therefore, strikes can be divided into:

1. Strikes related to Act No. 2/1991 Coll., on collective bargaining – these strikes, their requirements and their procedure are precisely regulated by law. A strike, as understood by the Act is a legal instrument to settle collective disputes concerning the negotiation and conclusion of a collective agreement. A dispute on a change to an agreement already in force is also considered a collective dispute if the possibility and extent of changes has been agreed in a collective agreement.
2. Strikes outside the scope of Act No. 2/1991 Coll., on collective bargaining – there is no law in the legal code to implement the previously mentioned Article 27, concerning strikes other than strikes addressed in Act No. 2/1991 Coll., on collective bargaining. However, this does not mean that all types of strikes other than those addressed by the above-mentioned Act are prohibited – the court decides whether a particular strike is legal or not.

The definition of a lockout is a partial or complete stoppage of work by an employer, where the employer may, as a final solution for resolving a dispute about the conclusion of a collective agreement, declare a lockout. Lockouts have never been realized in the Czech Republic.

Strikes are relatively rare in the Czech Republic. Strike alerts are used more often, but this type of industrial action is not defined by law.

2.3 Main Actors (Trade Unions and Employers' Associations)

Trade unions and workers' representatives

Trade unions play the most significant role by far in relation to employee representation, not only in terms of competency, but also owing to their presence in the workplace and functions with regard to social dialogue, particularly collective bargaining. Only trade unions are entitled to represent employees when it comes to general labour relations, collective bargaining aimed at concluding collective agreements, and tripartite negotiations conducted in the context of a tripartite body.

Employees may also be represented by works councils (*rada zaměstnanců*) and representatives for occupational safety and health protection (*zástupce pro oblast bezpečnosti a ochrany zdraví při práci*), but these bodies do not enjoy legal recognition and are entitled to act merely as mediators between employers and employees by enhancing consultation and the flow of information within a company. No national register of works councils or

representatives for occupational safety and health protection exists; however, they would appear to be extremely rare.

Main trade union confederations and federations

There are three main trade union confederations in the Czech Republic (Table 5.3): the Czech-Moravian Confederation of Trade Unions (Českomoravská konfederace odborových svazů, ČMKOS, founded in 1993), the Association of Independent Trade Unions of the Czech Republic (Asociace samostatných odborů České republiky, ASO ČR, founded in 1995) and the Confederation of Arts and Culture (Konfederace umění a kultury, KUK, founded in 1996). These three trade unions represent around 79 per cent of trade union members in the Czech Republic (Kroupa et al. 2019). ČMKOS and ASO ČR are also members of the tripartite body.

From 2011 to 2018, the membership of the two biggest union confederations experienced a marked decrease: ČMKOS lost 28 per cent of its members and ASO ČR as much as 45 per cent (Kroupa et al. 2019).

KUK stands out among these trade union confederations. It has maintained its federative form (included two Slovak trade unions) and covers many self-employed.

Employers' associations

Employers' interests are represented in national-level social dialogue in the Czech Republic by the two largest employer confederations, the Confederation of Industry of the Czech Republic (Svaz průmyslu a dopravy České republiky, SP ČR) and the Confederation of Employer and Entrepreneur Associations of the Czech Republic (Konfederace zaměstnavatelských a podnikatelských svazů České republiky, KZPS ČR), which are both members of the tripartite body.

Membership of these employers' organizations is voluntary and members are required to pay membership fees.

Table 5.3 *Main trade union confederations and federations and their members, Czech Republic, 2001–18*

	2001	2011	2013	2014	2015	2016	2017	2018
ČMKOS	900 000	407 000	366 741	333 309	286 768	297 762	295 555	292 525
ASO ČR	200 000	150 000	107 000	95 000	80 000	78 000	n. a.	85 000
KUK	90 000	35 482	32 158	32 095	31 549	30 825	30 214	29 715

Note: Years 2001 and 2011 for comparison.

Source: ČMKOS, ASO ČR and KUK.

3. STRENGTHENING THE REPRESENTATIVENESS OF SOCIAL PARTNERS AND INCREASING THEIR INSTITUTIONAL CAPACITY TO SHAPE LABOUR MARKETS THROUGH SOCIAL DIALOGUE AND CONSULTATIVE PROCESSES

Czech law does not lay down any representativeness criteria for either trade unions or employer organizations, with the following exceptions:

1. at the company level at which a trade union is entitled to operate and has the right to associate only if it has at least three members who are in an employment relationship with the company;⁶
2. in connection with the possibility of participating in Council of Economic and Social Agreement (RHSD) negotiations (see below); or
3. in connection with the extension of higher-level collective agreements, which is, however, applied only rarely (requests to extend higher-level agreements must be made by the largest trade union or the largest employers' association in the sector to which the agreement is supposed to be extended⁷).

Since legislation does not impose any further requirements concerning social partner representativeness, they are not compelled to be representative; moreover, the topic of representativeness has not arisen in the public debate.⁸ The exception concerns a plurality of trade unions at the workplace when it comes to the procedure for concluding company-level collective agreements. The current solution in these cases, as set out in the Labour Code,⁹ as amended, stipulates that if there is more than one trade union operating in a company, the employer must negotiate the collective agreement with all of them, regardless of the number of members the trade union has in the workplace. The trade unions are required to deal with the outcomes considering all employees jointly and in concert, unless agreed otherwise between the employer and the unions. However, this situation can lead to a number of complications: in certain sectors in which several trade unions are traditionally active in the workplace (health care, railways and air transport), it is not uncommon for one of the trade unions to obstruct the collective bargaining process for a considerable time. Cases have even been recorded of the company management establishing a trade union itself with the sole intention of obstructing collective bargaining (Léko, 2016). Therefore, ČMKOS initiated the introduction of an amendment to the Labour Code which aimed to revert to the situation that prevailed prior to 2008, which allowed the employer, where agreement could not be reached among the trade unions, to conclude a collective agreement with the trade union organization with the most members (the majority principle). The Constitutional Court (Ústavní soud České republiky), however, annulled this legislative change in 2008.¹⁰ However, even the previous legislation, which was introduced by the Labour Code in 2007 and was valid until the issuance of the aforementioned Constitutional Court judgment, was criticized in view of concerns that the largest unions in the company were able to pursue collective bargaining by blocking the process until the employer negotiated a collective agreement with them only. In effect, the trade union with the largest number of members overall, even though it had only a minority of union members in the company in question, could conclude a collective

agreement without reference to the other union organizations. To date, however, the legislation as confirmed by the Constitutional Court ruling is still valid; that is, the employer must negotiate a collective agreement with all the trade union organizations active at the workplace.

Conversely, the representativeness of members of the RHSD is not the subject of public debate, even though at least one organization no longer meets the representativeness criteria as set out in the RHSD statutes, whose annexes¹¹ precisely define the rules under which employee and employer organizations may participate in RHSD meetings. Representativeness criteria were first numerically defined in May 1995: the employer side was required to represent a total workforce of at least 500 000 employees and the trade union side at least 300 000 members. This regulation was criticized immediately by the smaller trade union confederations, who felt discriminated against. Further changes were introduced with the adoption of new Statutes in 1997 and again in September 2000.

The participation of KUK, which was agreed during the establishment of the RHSD, even though it does not meet the representativeness criteria, gradually became a historical anachronism (Hála 2002). However, changes to the Statutes of September 2000 introduced the condition that the trade union entity must associate at least 150 000 trade union members (still valid today). This change subsequently enabled the ASO ČR to become a member of the RHSD in place of the KUK. According to a KUK representative, the reason for this change was not only the application of the numerical representativeness criterion, but rather a more complicated problem in terms of relations with ČMKOS: KUK members often express interests in conflict with those of the ČMKOS.¹² The KUK's position as a national trade union confederation has deteriorated considerably since leaving the tripartite body, although it remains a legislative commentary organization and is contacted both formally and informally by public institutions on sector-related matters.

In this context, it should be noted that the ASO ČR, which became a member of the RHSD owing to the amendment of Annex 2 of the Statutes in 2000 and thus replaced the KUK ČR, ceased to meet the representativeness criteria in 2012 (owing to a gradual decline in its membership). It remains a member of the tripartite body, however, as no one has challenged it, nor have there been any other candidates for RHSD membership. Although the KUK could theoretically re-apply for RHSD membership, its president explained that is not being considered, given that the confederation no longer has the capacity to participate in tripartite negotiations (Húska 2019).

Czech legislation does not set out any other regulations regarding social partner representativeness. However, the long-term decline in union membership (employers do not face a similar problem; their membership base has remained stable over the long term – see Table 5.4) may present the unions with complications in the future. If workers are not interested in trade union membership, it is not possible to conduct sophisticated social dialogue. Although both the ČMKOS and the ASO ČR have seen an increase in new members since around 2015 and confirm a growing interest¹³ that at least compensates for departing members,¹⁴ it is still too early to assess whether this represents a long-term trend and whether it will be sufficient to arrest the overall decrease in union membership. However, the trade unions do not consider the number of members to be the only influencing factor; they also stress, in particular, the capacity to act (Vejvodová 2019a). Moreover, the qualitative development of trade unions is an important factor, which is

Table 5.4 Trade union and employer organization density, the Czech Republic, 2012–18 (active employees, percentage)

	2012	2013	2014	2015	2016	2017	2018
Trade union density	14.8	13.6	12.8	12.0	12.0	11.7	11.5
Employer organization density	57	61	64	63	61	61	60

Note: Author's calculation based on data from ASO ČR, ČMKOS, KUK, KZPS ČR, SP ČR.

associated with a gradual change in style. Since 2010, the unions have promoted a professional approach in relation to a number of aspects of their work, including marketing and high-quality self-presentation, accompanied by a non-confrontational, consensual negotiation style (Vejvodová 2019a).

Trade union membership for the self-employed

In connection with their decreasing membership, there is occasionally a public debate on whether unions might also enhance their representation of the self-employed, a group of people who, since they are not employees, do not enjoy the protection of the Labour Code and usually do not have the financial or personnel capacity to become members of employers' associations. Czech legislation does not limit trade union membership to employees. The KUK, in particular, has extensive experience with trade union membership of the self-employed; this group even predominates in some of its member unions (Horváthová 2019). The problem with this arrangement, however, is that the self-employed cannot collectively negotiate the price of their work because they are entrepreneurs not employees, and any agreement on prices violates competition legislation (Horváthová 2019; Húska 2019). Thus, while the self-employed can be members of trade unions and membership provides undoubted benefits – in particular, concerning enhanced awareness of, for example, new legislation in the relevant sector and the potential to influence it – the law does not allow them to conduct collective bargaining. Nevertheless, the self-employed cannot be expected to compensate for declining employee membership.

Anonymous trade union membership

A new phenomenon that has emerged involves anonymous trade union membership in 'groupings of members' (*seskupení členů*). This could well motivate workers whose employers are opposed to trade unions to establish a union in their workplace. In 2013, the Czech Metalworkers' Federation (OS KOVO¹⁵), the largest member of the ČMKOS, introduced the concept of anonymous membership, the aim of which was to increase the level of interest in the union among specific groups of employees and to enable the creation of trade unions at companies where the management is opposed to them. According to the newly amended Articles of Association of the OS KOVO,¹⁶ groupings of members, which are not institutionally established in legislation and are not legal persons, are empowered to represent employees' interests in companies where there is no trade union representation. Despite the legal anomaly, however, the existence of these groupings is allowed via the OS KOVO's Articles of Association. The groupings must consist of at least three employees who are in an employment relationship with the employer (the same

legislative requirement as when establishing a basic trade union organization at the workplace). The grouping contacts the OS KOVO regional office which, in turn, appoints a professional trade unionist who negotiates with the employer. If they prefer, the members are entitled to remain anonymous. According to the OS KOVO, this approach enjoys a number of benefits that even trade unionists who do not need to remain anonymous might take advantage of: the establishment of a grouping of members is administratively simpler than setting up a standard trade union, and a professional trade unionist negotiates with the employer, which puts fewer demands on normal employee union representatives in relation to knowledge of legislation and collective bargaining.

Employers are generally against the establishment of such groupings. The Korean company Daechang Seat, refused to acknowledge this grouping of members as a trade union and filed a lawsuit against the OS KOVO, alleging that the grouping does not meet the legal requirements covering the operation of a trade union. In February 2018, however, the Supreme Court of the Czech Republic (Nejvyšší soud České republiky) ruled that the grouping of members enjoyed the same status as a public trade union and that the employer must accept this form of association and treat it in the same way as a regular trade union, including with regard to collective bargaining.¹⁷ According to the OS KOVO, groupings of members are active in 70 companies and involve 3000 persons.

However, it is necessary to distinguish this phenomenon from virtual or 'secret' trade unions, which have emerged over the past two years (Vejvodová 2019b). These trade union organizations are not based on company premises but on the Internet. They also recruit members through websites and social networks, often offering a financial incentive to new members. Although the Labour Code requires a minimum of three employees in an employment relationship with the employer for the formation of a trade union organization, it is not mandatory to state the members' names. The trade union then informs the employer that a trade union has been established in the company and that it was formed by three of the company's employees; no proof is required.¹⁸ Employers assert that these trade unions exploit the unions' right, by law, of access to information that is not normally publicly disclosed by the employer and use it for industrial espionage purposes or to disrupt social peace for competitive purposes. One characteristic feature of these virtual trade unions is that they do not enter into collective bargaining with the employer (Vejvodová 2019b). However, many employers are reluctant to disclose their experiences with virtual trade unions because they fear being accused of refusing to respect the compulsory requirement to cooperate with trade unions. While no data are available on this phenomenon, the SP ČR is working with its members on this issue, and a number of employers are considering taking virtual trade unions to court.

4. SUPPORTING THE AUTONOMOUS ROLE OF THE SOCIAL PARTNERS

According to trade union and employer representatives, in the Czech Republic there is no need to address the issue of social partner autonomy. The social dialogue system was established in the 1990s and has not been subjected to any significant changes; both trade union and employer representatives consider that the system is functional and effective (Drbalová 2019; Samek 2019).

As far as the financing of social dialogue is concerned, in addition to membership fees collected from trade union members and employers who are members of an employers' association, the state also contributes to the financing of social dialogue. In addition, a technical amendment to the Labour Code, effective from 2005, extended its scope to include state support for social dialogue. It consisted of a new provision containing an explicit regulation under which the state meets the costs of social dialogue conducted by the social partners at national and regional levels under the conditions (and in the amount) agreed annually by the RHSD.¹⁹ Based on the methodological procedure for the disbursement of funding for the support of social dialogue adopted by the RHSD, the social partners represented in the RHSD submit proposals for projects, specifying the required funds and the purpose of their use. Following discussion and approval by the RHSD, the agreed funding is paid out by the MPSV.

At corporate level, trade union operations are regulated by the Labour Code. The employer is obliged to create conditions at its own expense for the activities of employee representatives, in particular to provide them with adequate facilities according to their operational capacity and to cover the necessary maintenance, technical and material costs.²⁰

Social partner autonomy is also reflected in their ability to implement autonomous European framework agreements. However, in the Czech Republic the basic provisions of negotiated agreements are usually implemented through generally binding legal regulations (especially the Labour Code); this approach is also generally applied by the social partners. Nevertheless, the ČMKOS is striving to have the basic provisions of such European framework agreements enshrined in legislation (especially in the Labour Code). However, this can occur only incrementally since such provisions must be part of the legislative process, involving a number of parties whose interests often differ considerably. The social partners agree that the priority interest is the use of collective agreements for this purpose, whether they are company- or higher-level agreements (ČMKOS 2019a). However, this has not been successful over the long term owing to the low employee coverage of both types of agreement, which makes it impossible to extend the obligations arising from autonomous agreements to all, or at least the majority of, employees. Another reason is the lack of interest among the social partners, especially at the company level, in implementing the provisions of autonomous framework agreements in their company- or higher-level collective agreements. Although the ČMKOS annually calls on its member associations to devote more attention to the implementation of framework agreements, the results are still poor: in 2019, more detailed conditions concerning the elimination of work-related stress were implemented in only 0.3 per cent of CLCAs, while conditions (procedures) concerning harassment and violence in the workplace have been implemented in just 1.4 per cent of these agreements (Trexima 2019).

5. SOCIAL PARTNERS AND DIGITALIZATION

The topic of digitalization²¹ is being approached by the public authorities in the Czech Republic with a relatively high degree of intensity. Individual government departments are well aware that the challenges and impacts of digitalization not only concern the production sector, but also that it is necessary to focus on the changes that digitalization is

bringing about across the board. Action in this area is essential in the interests of maintaining social peace in the future, as well as ensuring long-term, stable, and harmoniously sustainable growth across the economy (Šulc 2017a).

Digitalization and its various impacts on society are being addressed as part of the Society 4.0 agenda.²² The coordinator of the digitalization agenda is the Office of the Government of the Czech Republic (Úřad vlády České republiky), which is striving to connect the various activities of individual ministries in this area. The Alliance Society Platform 4.0 (Aliance Společnost 4.0) has been created to provide a platform for cooperation between the state authorities, economic and social partners and academia. While the Alliance is a government initiative, the aim is to include all the relevant stakeholders in order to exploit the mutual synergies and potential of the Fourth Industrial Revolution and thereby increase the competitiveness of the Czech economy and bring about positive social change. The 'Action Plan for Society 4.0' ('Akční plán pro Společnost 4.0') document, which summarizes the direction of government policy and key measures to support the development of the digital market in the Czech Republic, forms the umbrella document for the Alliance Platform. The government is preparing specific grant schemes to provide financial support for research and development projects based on the approved concept.

The government consults the social partners on a regular basis concerning strategy documents on digitalization (Drbalová 2019; Samek 2019). The largest social partners even have their own specialists on the development of the digital economy (for example, the SP ČR and the ČMKOS). The trade unions, in particular, see their role as identifying future trends in the composition of professions in the digital economy. According to union representatives, employees need to be prepared for the coming changes and enabled to adapt or increase their chances of new employment if they lose their current jobs. The trade unions also regard discussions with employers as essential, with a view to anticipating human resource (HR) strategies at company level (Kyzlinková et al. 2017), including changes to the education system (see section 6 in this chapter).

In addition, the trade unions believe that presently, despite the various forecasts and analyses, it is not possible to fully anticipate the effects of digitalization, such as when exactly and to what extent it will affect our lives (Kyzlinková et al. 2018). However, this unpredictability, according to Samek (2019), is serving to diversify the trade unions' approach beyond the creation of strategies and action plans. Samek further believes that the trade unions should 'observe, analyse and then solve'. As an example, Samek (2019) cites platform work and Uber: initially Uber was considered to form part of the shared economy, with drivers offering free capacity in their cars; however, over time, this form of earnings became a standard business model that bypassed tax legislation and provided unfair competition to established (and regulated) taxi services. Moreover, it developed into a form of precarious employment owing to the non-standard working conditions. Hence, many countries have introduced substantial regulations in relation to this business and employment model. While these changes cannot be foreseen accurately, the trade unions believe that it is necessary to react to these developments and to introduce appropriate legislative limits for these forms of employment (business activities).

In general, the social partners are aware of the importance of digitalization and the changes that it will bring about. While both sides support this process, the trade unions, in particular, note the potential risks that digitalization entails, especially job losses,

potential precarious employment and social inequalities, and emphasize the need to regulate the process (ČMKOS 2017; Kyzlinková et al. 2018). The employers believe that digitalization will help to solve some of the problems they currently face (for details see section 5 in this chapter), principally the severe labour shortage that would be eliminated by robotization (especially concerning night work and physically demanding work), while the trade unions identify the potential for transforming the Czech economy, which they believe is still based on the cheap-labour model, into a high-technology economy, thus solving the biggest problems they currently face, namely, low wages and low labour productivity.

A further, and already visible, consequence of digitalization (information and communication technology, ICT, development) concerns new (flexible) forms of employment. This includes ICT mobile work, platform work, job sharing and employee sharing. In general, employers welcome the increased flexibility in the labour market because it provides them with the opportunity to better adapt to the volume of orders and to work more efficiently with the workforce, thus enabling the more efficient allocation of work tasks.

Trade unions' attitude to the new forms of employment is significantly less optimistic. They perceive this issue ambivalently. While they are aware of the potentially positive aspects of certain new forms of employment for the workforce and the labour market (positive flexibility that allows for the harmonization of work and private life, the employment of hard-to-employ groups in the labour market, new job opportunities – see, for example, ČMKOS 2017), they see their role as pointing out the various negative aspects and determining ways to prevent the negative consequences associated with changes in forms of work organization. Increased labour market flexibility results in both opportunities and threats for employees, depending on the business cycle and the stage employees have reached in their lives. In the ascending phase of the business cycle and the consequent shortage of labour, employees wield bargaining power and are in a good position to insist on their demands. In economic downturns, however, the same working conditions may become disadvantageous if forced upon the employee by the employer (for example, involuntarily working from home if, for example, the employer wishes to save on the costs of renting office space). Moreover, trade unions are also concerned about the growing number of self-employed who do not pay social insurance contributions, that is, digital precariousness (ČMKOS 2017).

The various trade union confederations are also aware that the changes that are likely to result from the nature and organization of the digital economy will force them to both restructure and change their communications with, and approach to, current and potential members. The traditional sectoral organization model will be abandoned and standard employment patterns are likely to be replaced by more flexible and unstable forms of employment that will not provide the appropriate conditions for the joint organizational approach. Also, the conditions governing collective bargaining and collective agreements will need to change. The ASO's president, Bohumír Dufek, has referred to these agreements as new generation collective agreements, which will have to take into account ongoing labour market changes and ensure that employees are better able to adapt. That is, collective agreements will have to consider, for example, opportunities for further training and skill enhancement (Kyzlinková et al. 2018).

5.1 Work Outside the Employer's Workplace

The most frequently discussed new form of employment in the Czech Republic is work outside the employer's workplace (ICT mobile work and home office). Working outside the workplace imposes considerable demands on employers and employees. It offers employees greater flexibility and increased opportunities to better reconcile their work and private lives. For many employers, the main motivation for introducing this form of employment is to save costs (office space and energy), but large companies often provide this option as an employee benefit (Kyzlinková et al. 2018). However, the trade unions tend to insist that working outside the workplace is not an employee benefit. They claim, for example, that it is a slippery slope to the employer requiring employees to be on-call and to perform work tasks whenever required instead of respecting normal working hours (Holanová 2016). The unions also draw attention to the cost-shifting aspect, as, for example, energy and IT costs – among others – are passed on to the employee. In their view, the employer should be expected to contribute towards such costs.²³

Also, working outside the employer's workplace requires the employer to address the legal and safety aspects of alternative forms of employment.²⁴ A discussion is currently under way in the Czech Republic concerning, particularly, health and safety at work issues of working outside the workplace. Current legislation does not adequately address this. As regards health and safety, while the Labour Code does not allow any exemption from the employer's obligations to the employee, given the nature of home or mobile working, it is objectively impossible for the employer to fully comply with all the obligations imposed by legislation. There are two particularly problematic aspects:

1. The employer's limited control over the employee since they cannot enter the place of work, which may be the employee's residence, without the consent of the employee (or other entity), which is a serious problem with regard to compliance with occupational health and safety regulations.
2. Potential claims for damages by employees working outside the workplace, particularly in respect of work injuries: it is difficult to prove whether the injury occurred at work or not. Legislative attempts to change the situation have, to date, been unsuccessful.²⁵

5.2 The Shared Economy

Another topic currently under discussion in the Czech Republic is the shared economy and the employment opportunities it generates (often referred to as platform-based working, crowd-working or digital freelancing). In mid-2017, eight companies operating in the shared economy founded the Czech Shared Economy Association (Česká asociace sdílené ekonomiky, ČASE), which actively cooperates with the various strategic players in the labour market. In 2018, ČASE and other experts participated in the compilation of an important development document of the Chamber of Commerce of the Czech Republic (Hospodářská komora České republiky, HK ČR), titled 'Recommendations for the development of the shared economy' ('Doporučení pro rozvoj sdílené ekonomiky'). This document contains 50 recommendations on how to approach regulation

of the shared economy. Three main areas were identified that should be subject to regulation: entrepreneurship, tax and other deductions, and consumer protection. The most important point was the need for an unambiguous definition of income from occasional gainful employment and business activities by introducing a financial limit.²⁶

In addition, the government presented the first detailed analysis of the shared economy and its potential regulation in 2017, and continues to take a close interest in this topic. The 'Analysis of the shared economy and digital platforms' ('Analýza sdílené ekonomiky a digitálních platform') released by the European Affairs Section of the Office of the Government of Czech Republic (Sekce pro evropské záležitosti Úřadu vlády ČR 2017) analyses three approaches to regulating the shared economy: (1) maintaining the status quo, (2) partial changes in legislation and (3) comprehensive anchoring of the shared economy and related earnings in legislation. It highlights the advantages and disadvantages of each approach.

In general, the social partners are against regulatory approaches that would lead to the banning of new market mechanisms related to the shared economy, and would prefer to see partial changes to the regulatory environment. Economists and analysts from finance and consulting companies tend to share the view that fair and equal conditions and an environment that favours fair competition need to be established. However, these conditions cannot be achieved through the restrictive regulation of the shared economy, but via a certain loosening of regulation in other (standard) branches of the economy (Tůma 2016; Vyoral 2017). Restrictions will only lead to the transfer of these services outside the welfare system and the control of the state. Thus, employers tend to agree with those who suggest that 'the state should treat the matter delicately through dialogue with those involved in the provision of services in the shared economy' (Tůma 2016). Also, in the current legal environment it is essential that legislation be interpreted uniformly by all institutions.

The trade unions are concerned primarily about those employees who perform platform-based work for remuneration that barely meets minimum wage levels, especially given the time costs of searching for, and securing, fragmented work assignments and wage reduction pressure in the global labour market. A study commissioned by ČMKOS (Šulc 2017b) notes that the trade unions, which have consistently fought against the Švarc system phenomenon, are now being faced with the 'turbo Švarc system',²⁷ that is, second-generation Taylorism. The unions stress that this new branch of the national economy is not subject to traditional regulation – for example, labour legislation and tax and social and health insurance obligations – and that the legal protection of platform-based dependent work is needed to cope with numerous hazards that might result in future upheavals affecting the very core of employees' legal certainty (Šulc 2017b). Legal analysis (Boháč et al. 2017, p. 336) cites repeated instances of non-compliance or circumvention of financial regulations in a number of branches and platforms (in particular, non-compliance with tax obligations) and the disregarding of administrative regulations (it is common to conduct business without the appropriate trade licence). Moreover, from the labour law perspective, it is clear that employment regulations are being violated both by platforms themselves and by other entities that take advantage of the anonymity of platforms and their unwillingness to share data with the state authorities.

5.3 Availability of ICT Technologies and Competition

The KUK is currently monitoring a serious issue affecting part of its membership, namely trade unions representing workers in the art, culture and other creative sectors (cameramen, sound engineers, editors, translators and interpreters). With falling information technology (IT) fees and expanding IT connectivity, ICT technologies are now widely available to almost everyone, which has led to a substantial increase over the past ten years in amateur competition in a number of creative industries, the consequences of which are decreasing prices and decreasing production quality. The KUK has not yet determined the best approach to addressing these competition issues (Horváthová 2019; Húska 2019).

6. SOCIAL PARTNER ISSUES AT NATIONAL LEVEL

6.1 Eliminating Inequalities in the Labour Market

According to Samek (2019), the critical trade union role at present is the elimination of labour market inequalities. Inequalities of working conditions (wages, working hours and employee benefits) are linked to most of the negative phenomena evident in the Czech labour market, that is, economic migration, the brain drain and the grey economy. Currently, ČMKOS's most important policy efforts are directed towards ending the cheap labour economic model in the Czech Republic. The campaign to end the cheap labour model concerns two areas in particular in which, according to the trade unions, the differences between the Czech Republic and more developed European Union (EU) countries are most marked, namely, wage levels and working hours.

End of cheap labour

The 'End of Cheap Labour' campaign ('Konec levné práce') was launched by the ČMKOS in 2015. The aim of the campaign is to demonstrate that 'wage development in the Czech Republic is starting to become a serious economic problem' (ČMKOS 2015) and that the real convergence (wage convergence in particular) of the Czech economy towards those of more developed EU countries should proceed as quickly as possible. Only a major shift in economic policy could direct the Czech economy towards efficiency improvements, rapid growth and increased competitiveness (Fassmann and Ungerman 2015).

In 2014 – that is, prior to the launch of the 'End of Cheap Labour' campaign – median gross hourly earnings in the Czechia (the Czech Republic) were around one-third of those of the European median (Figure 5.1).

According to an analysis conducted by the trade unions (Fassmann and Ungerman 2015), this is the result of three main factors:

1. The approach adopted to the Czech Republic's economic transformation after 1989 and the 'transformation cushions', when the initial rate of the Czech crown was significantly undervalued in respect of the purchasing power parity in 1990, and Czech wages at the beginning of the transformation period (1991) – in exchange

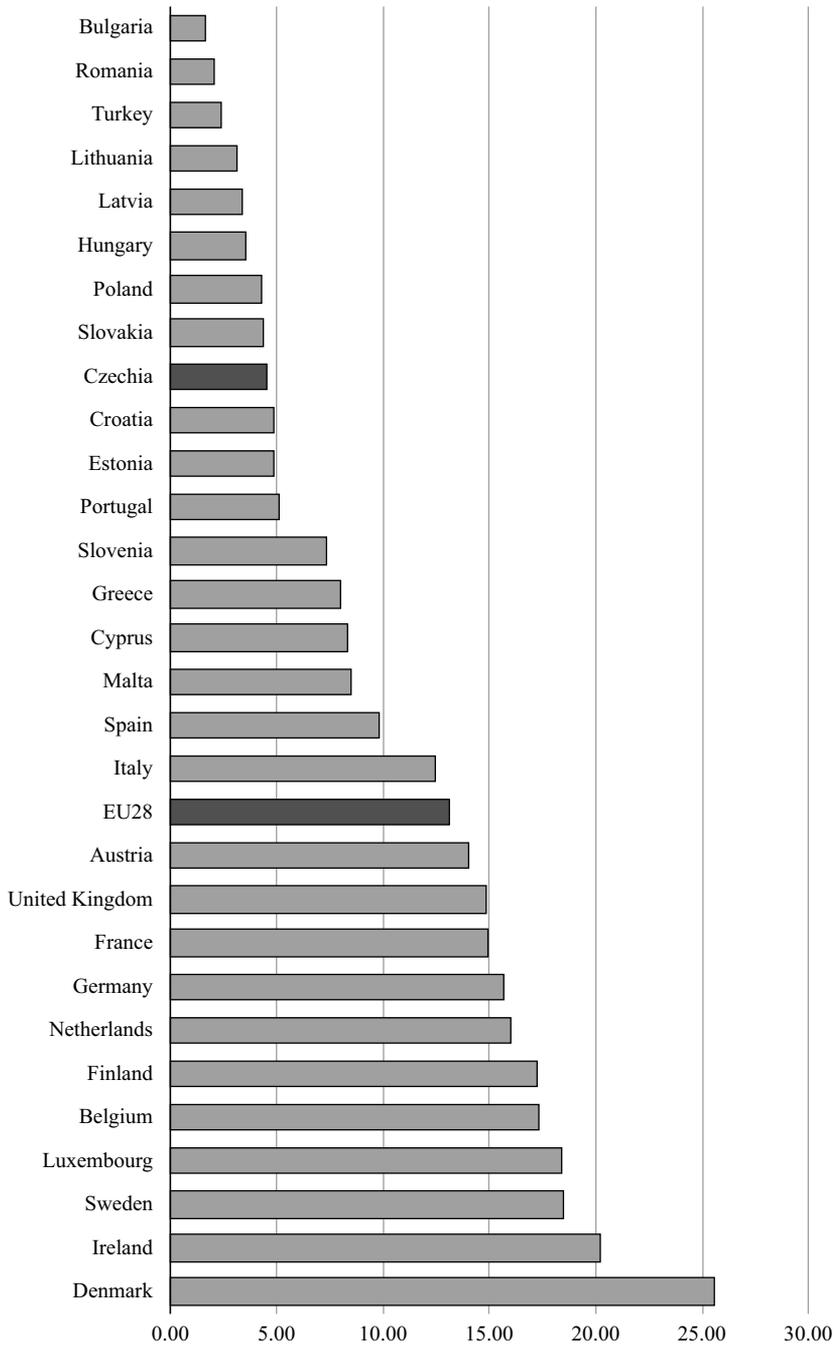


Figure 5.1 Median gross hourly earnings 2014 (€)

rate conversion terms – amounted to a fraction of those of Western countries (for example, a mere 10 per cent of the wage level in Germany). A further impact concerned the significant wage depreciation (labour costs) in the national currency below labour productivity levels. Price deregulation and inflation (56 per cent) led to a depreciation in savings and a decrease in real wages of 30 per cent.

2. The introduction of processes that deliberately distanced wage-setting mechanisms from practices applied in developed EU countries (a reduction in, or elimination of, collective bargaining; a significantly lower emphasis on tripartite dialogue at the national level; obstruction of the ratification of the European Social Charter and certain International Labour Organization (ILO) conventions; non-extension of higher-level collective agreements; and restriction of social dialogue at all levels) and a policy of lowering social standards (significant reductions in non-wage labour costs in the private sector, for example, reductions in the cost of corporate training, reductions in, or the abolition of, corporate social funds and cuts to social protection systems and employee legal protection, for example, the conditions governing dismissal, statutory limitation of working hours, safeguarding of collective bargaining and so on).
3. The restrictive economic policy long applied in the Czech Republic (with the exception of the eight-year period from 1998 to 2006).

Fassmann and Ungerma (2015) also present economic policy recommendations concerning how to remedy the situation based on strengthening the Czech currency and wage growth, which, they suggest, should increase more rapidly than in developed European countries in order to ensure convergence rather than further divergence.

The Fassmann and Ungerma (2015) analysis was adopted as the basis for ČMKOS's aforementioned 'End of Cheap Labour' campaign, which was supported from the outset by the second largest Czech trade union confederation, the ASO ČR, and the European Trade Union Confederation (ETUC). The campaign culminates every year in a meeting of trade unions at which the results of the campaign are presented and the objectives are set for the following year, particularly as regards wages. The ČMKOS issues recommendations for its members on an annual basis concerning increases in nominal wages, which the social partners subsequently negotiate in the form of collective agreements (either higher-level or company collective agreements). Table 5.5 illustrates how the recommended targets have changed. During 2010–14, when the Czech economy was struggling with the consequences of the global economic crisis, the ČMKOS did not issue any collective bargaining wage targets; indeed, it recommended that collective bargaining should respect the economic situation in the sector/company and, over the short term, even tolerate wage freezes if it helped to maintain employment levels in the company (ČMKOS 2010). However, in 2014, once it became clear that the Czech economy had emerged from the crisis, the ČMKOS began to issue recommendations on wage development.

Table 5.5 illustrates that both nominal and real wages have been increasing since 2014; in some years on average more than the unions demanded. However, no independent study has been conducted that analyses the extent to which wage growth in the Czech Republic has been influenced by trade union demands and the extent to which it is merely a consequence of economic growth, low unemployment rates and an acute labour shortage.

Table 5.5 Wages in the Czech Republic, 2008–20

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Gross minimum monthly wage in CZK (€)	8 000 (306)	8 000 (306)	8 000 (318)	8 000 (314)	8 000 (317)	8 500 (309)	8 500 (307)	9 200 (340)	9 900 (366)	11 000 (429)	12 200 (472)	13 350	14 600
Gross minimum monthly wage in CZK proposed by the trade unions	Not settled	10 200	11 500	13 500	13 700	15 000							
Gross minimum monthly wage in CZK proposed by employers	Not settled	9 700	10 600	11 800	12 900	14 050							
Gross nominal monthly wage in CZK (€)	22 592 (865)	23 344 (895)	23 864 (941)	24 455 (958)	25 067 (994)	25 035 (910)	25 768 (932)	26 591 (984)	27 764 (1 027)	29 638 (1 156)	31 686 (1 227)	33 697	–
Average gross nominal wages (y/y, %)	7.8	3.3	2.2	2.5	2.5	–0.1	2.9	3.2	4.4	6.8	7.5	n. a.	–
Average real wages (y/y, %)	1.4	2.3	0.7	0.6	–0.8	–1.5	2.5	2.9	3.7	4.2	5.3	n. a.	–
ČMKOS nominal wage increase recommendation (y/y, %)	8.0	7.5	Not settled	5.0	5.0	5.0–5.5	8–10	7–9	6–7				

Source: Czech Statistical Office, ČMKOS nominal wage increase recommendation by ČMKOS, social partners' proposals of minimum wages: ČMKOS and SP ČR.

Employers disagree with the trade union demands regarding wage growth (Čížek 2015), considering them unrealistic. They base this on the low level of labour productivity (Trexima 2016a; Petříček 2018). While labour productivity in the Czech Republic is indeed lower than in most developed EU countries (see Figure 5.2), the trade unions argue that this is not because Czech employees are less efficient, but because of the Czech economic model, orientated towards the production of goods with low added value (assembly plant production, *montovna* in Czech). This model was established in the 1990s when the Czech economy, which was in transition, was unable to compete with Western European countries. Moreover, the inclusion of the Czech Republic in global value chains as a producer of low value-added goods severely restricted corresponding growth in wages (Bittner et al. 2018). Thus, the solution is to re-orientate the Czech economy towards the production of higher added-value products (Kovanda 2018).

While employers agree that the re-orientation of the economy towards higher added value production is necessary, they also stress the importance of automation and robotization, which would free up lower-paid unskilled workers so that they could be trained to perform skilled, and thus more highly paid, work (Petříček 2018).

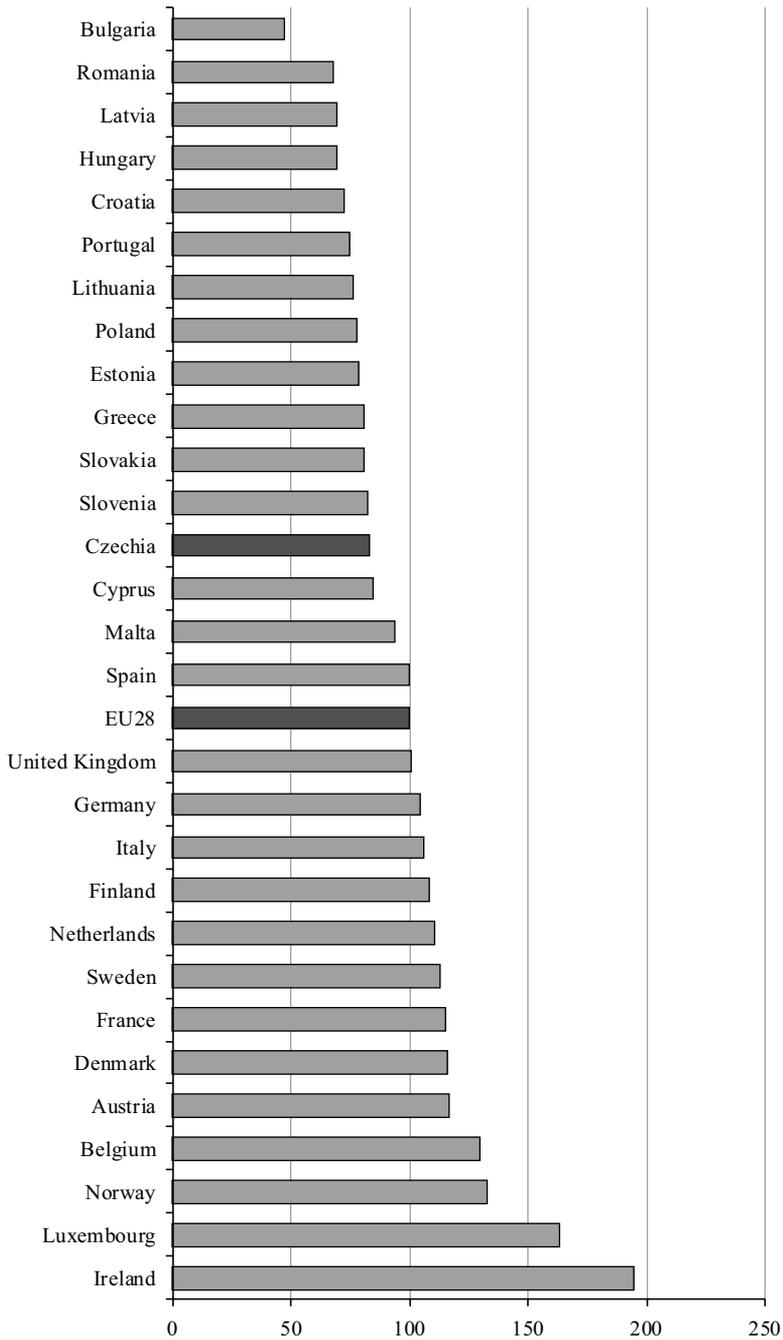
Minimum wage

The 'End of Cheap Labour' campaign also includes trade union demands concerning increases in the minimum wage. The minimum wage is set in the Czech Republic by government legislative decree. Although the government discusses the minimum wage with social partners at the RHSD, it alone decides on the amount, according to the prevailing economic situation. Employers agree in principle with increases in the minimum wage (Trexima 2016b; KZPS 2019); however, they demand that it be increased systematically, instead of sporadically as has been the case to date. According to the employers, minimum wage increases should be both transparent and predictable which, they argue, is not possible under the current minimum wage determination system.

While both the government and the social partners agree that the minimum wage should, ideally, depend on the average wage, to date they have been unable to agree on the ratio between the average wage and the minimum wage.

Reduction in working hours

In 2017, the ČMKOS added a new demand to the 'End of Cheap Labour' campaign, namely, shorter working hours without corresponding wage reductions. According to the trade unions, the ideal working time is 37.5 hours per week (instead of the current 40 hours stipulated by the Labour Code) and holiday entitlement should be five weeks per year (currently five weeks under the Labour Code). The trade unions argue that Czech employees work more hours in their lifetimes than do those in more developed EU countries (Fassmann et al. 2018). The trade unions demand that this aim be achieved initially via collective bargaining, with its incorporation in legislation following in the medium term (4–5 years). They argue that 77.3 per cent of company collective agreements, which set out uniform working hours throughout the respective companies, already include a weekly working time of 37.5 hours per week (Trexima 2018). The same applies to holiday entitlement: in 2018, this was extended by one week (to five weeks) in 76.7 per cent of company agreements and by two weeks (to six weeks) in 2.4 per cent of company



Note: EU28 = 100 per cent.

Figure 5.2 Labour productivity per person employed and hours worked in 2018 (percentage)

agreements (Trexima 2018). Thus, the trade unions argue that because such provisions have already been introduced in most companies 'they will hurt no one' (ČMKOS 2019b).

Employers are strongly opposed to reductions in working hours (without corresponding wage decreases) at a time when the labour market is facing a severe labour shortage (ČT24 2018; Svoboda 2018; BusinessInfo.cz 2019). However, they admit that the increases in labour productivity and changes in work organization that will accompany digitalization will allow for reductions in working hours in the future without having to decrease wages (BusinessInfo.cz 2019).

6.2 Labour Shortages

Labour shortages currently present a major problem for employers (for example, Dlouhý 2019; Drbalová 2019). This issue was first identified in 2014 and was accompanied by concerns that such shortages might negatively affect the growth of the Czech economy (for example, Beneš 2018). After consulting with employers, in November 2015 the Czech government approved the 'Special procedures for highly-qualified employees from Ukraine' project, the aim of which was to simplify the administrative process relating to the immigration of Ukrainian specialists. However, this project was not sufficient to cover the needs of employers who found themselves faced increasingly with a serious lack of low-skilled workers (Praks 2018). This situation was addressed several times at meetings of the tripartite body and, at the request of employers, the project was extended to include lower-skilled workers not only from Ukraine but also from Serbia and non-European countries, such as India, Mongolia and the Philippines. Moreover, the quotas governing foreign workers were increased (see Figure 5.3).

The trade unions do not consider importing labour from abroad to be a good solution to the labour shortage, and note that foreign workers are arriving from countries in which wage levels are lower than in the Czech Republic and therefore they are willing to work for lower wages than are Czech employees. They opine that employers are abusing the situation and that, instead of motivating potential employees with higher wages, they are simplifying workplace processes to make it possible to recruit employees from poorer EU and non-EU countries and thus avoid increasing wages.²⁸

The concerns of the unions in this respect are confirmed by data obtained from the Czech Statistical Office (Český statistický úřad, ČSÚ). Figure 5.4 illustrates that, since 2015, of the foreign workers in the Czech Republic, Ukrainian, Polish and Bulgarian workers receive particularly lower wages.

In September 2019, this project for importing workers from abroad was re-classified in the form of three programmes: the Qualified Employee Programme (Program kvalifikovaný zaměstnanec), the Highly-Qualified Employee Programme (Program vysoce kvalifikovaný zaměstnanec) and the Key and Scientific Personnel Programme (Program klíčový a vědecký personál), all of which are geared towards skilled and qualified workers.

Reforms in the education system as a long-term solution to labour shortages

While the social partners failed to agree on the solution to the labour shortage issue through importing labour, both sides stress that this is only a short-term solution. Both social partners agree that the long-term solution to the labour shortage lies exclusively in reform of the education system (Dlouhý 2019, Drbalová 2019; Martínek and

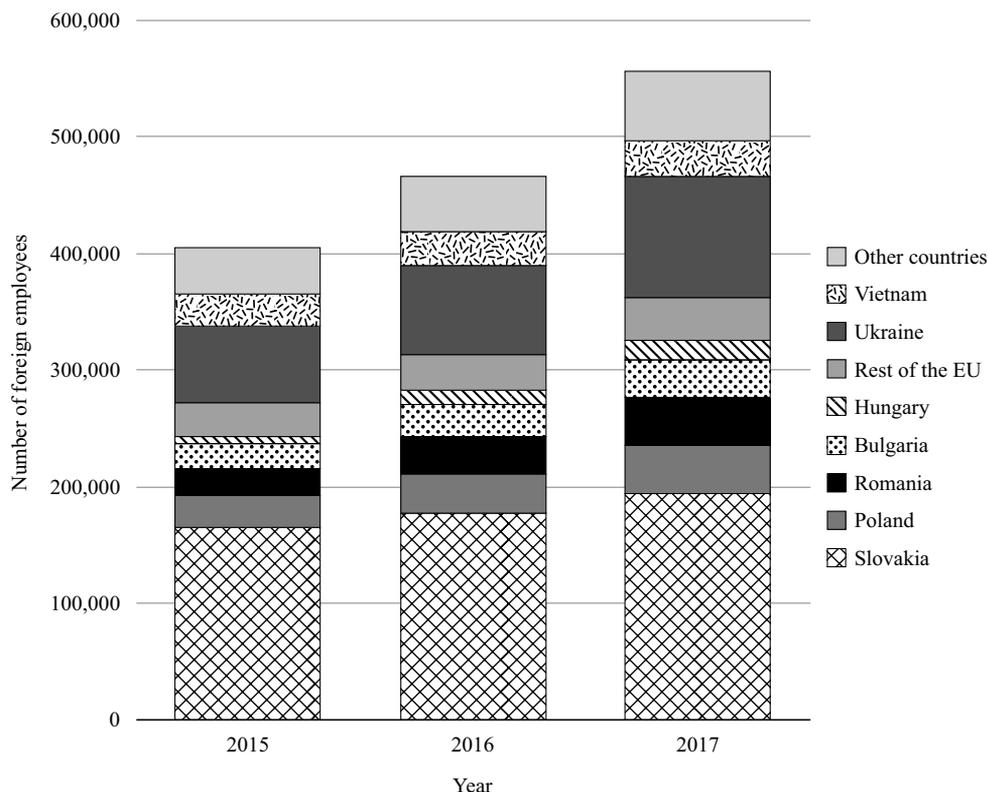


Figure 5.3 *Employment of foreigners by citizenship in the period 2015–17 (at 31 December for each year)*

Vejdovová 2019), which, they stress, should respond more flexibly to the demands of the new world of work. Education is discussed frequently at tripartite meetings. The social partners stress the importance of lifelong learning and retraining, which will help workers who lose their jobs as a result of digitalization to secure new positions. The SP ČR is demanding that internal company retraining should be financed from Active Employment Policy resources,²⁹ so that employers are able to immediately retrain their employees according to their requirements (SP ČR 2019). The social partners also support dual education, that is, cooperation between vocational schools and companies that allows students to gain experience during their studies and employers to train their own employees (Martínek and Vejdovová 2019; SP ČR 2019).

The importance of education for the social partners is reflected by the National Agreement on Human Resources Development (Národní dohoda v oblasti rozvoje lidských zdrojů),³⁰ signed by the social partners and the government during the period July to October 2015. The strategic objective of the National Agreement is to help to ensure sufficient numbers of people with the requisite skills (that is, with the relevant competences, well-prepared and in the necessary numbers and structure) in the labour market. Attaining this goal involves cooperation between employer and employee representatives,

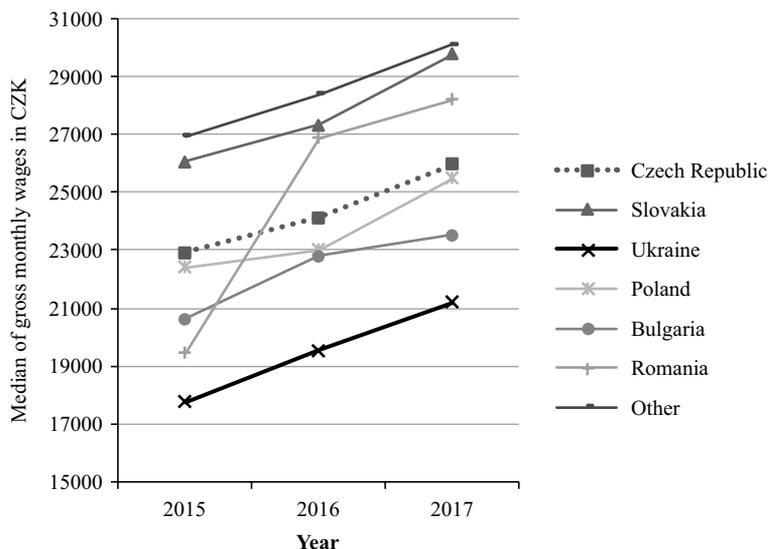


Figure 5.4 Median of gross monthly wages by citizenship, 2015–17 (in CZK)

state administration and local authorities and the relevant interest groups in the following areas: cooperation between educational institutions and companies; supporting interest in technical and handicraft subjects; the structure and optimization of the education network in its regional organization, while respecting the needs of high labour-demand sectors; and the quality of school/college leavers and the link between further education and the labour market. The National Agreement further specifies the objectives and responsibilities of the individual signatories.

Support for a strike called by the Czech-Moravian Trade Union of Workers in Education (Českomoravský odborový svaz pracovníků školství, ČMOS PŠ, a member of the ČMKOS) also demonstrated that education is a real priority for both social partners. The trade union declared a strike on 6 November 2019 following unsuccessful negotiations with the government on wage increases for teaching staff in 2020. A total of 1221 schools were closed, 2743 operated a restricted timetable and a further 3000 schools expressed support for the strikers.³¹ The government initially promised teachers that their salaries would be increased by a total of 15 per cent, 10 percentage points of which would be reflected in the tariff salary and 5 percentage points in extra remuneration decided by the headteacher. Subsequently, the government announced that the salaries of teachers would be increased by just 10 per cent, 8 percentage points of which would be reflected in tariff salaries and 2 percentage points in extra discretionary remuneration. The strike was supported by the ČMKOS and other trade union organizations, as well as employers; the SP ČR stated that the government must keep its promise and increase teachers' salaries as originally announced as education is crucial in averting the negative impacts of new technologies on employment. The Czech Republic therefore needs high-quality and motivated teachers (SP ČR 2019). However, the Minister of Education refused to comply with the demands of the strikers.

7. CASE STUDIES

7.1 Case Study 1: Gentleman's Agreement between the Government and the Social Partners on an Amendment to the Labour Code

Both trade unions and employer representatives consider the system of social dialogue in the Czech Republic to be functional and effective. A good example is the new 'gentleman's agreement' concluded between the government and the social partners on an amendment to the Labour Code. It is the first agreement of its kind to be concluded in the Czech Republic. Although it is not legally binding and the amendment to the Labour Code has yet to go through the standard legislative process, the signing of this agreement provides evidence of a functional social dialogue system and the social partners' willingness to compromise.

The amendment to the Labour Code was published by the Ministry of Labour and Social Affairs (Ministerstvo práce a sociálních věcí České republiky, MPSV) for the first time in the summer of 2018. A subsequent version, which omitted all the provisions on which the government and the social partners disagreed, was confirmed with the conclusion of a 'gentleman's agreement' on 14 October 2019 between representatives of the government coalition and the social partners that participate in the tripartite body. All the parties consented to support the draft amendment in its agreed form and not to promote or support any other changes and proposals without mutual agreement. The agreement is intended to prevent possible delays and the addition of further changes during the course of the amendment through the Chamber of Deputies of the Parliament of the Czech Republic (Poslanecká sněmovna Parlamentu České republiky), that is, the reasons why the amendment was not discussed and adopted during the previous parliamentary session.

The Labour Code affects us all on an everyday basis. Any change must have broad support and we must be very careful concerning any improvements we might suggest. Therefore, it is very important that we were able to reach an agreement with both the trade unions and the employers. This will be the first time that a conceptual amendment has been introduced into the Labour Code in eight years commented Jana Maláčová, Minister of Labour and Social Affairs (MPSV 2019).

'It is the first time in the history of social dialogue in the Czech Republic that we have signed such an agreement with our partners', commented Jaroslav Hanák, President of SP ČR, on the agreement between the social partners (ČTK 2019).

The main changes introduced by the amendment include legislation on shared work positions, the calculation of holiday entitlement, which will be based for the first time on the number of hours worked (and not days, as previously) and changes in the posting of workers abroad). A number of provisions, such as the formula to be applied for regular increases of the minimum wage, were removed from the draft amendment since the social partners were unable to reach agreement (for more about the minimum wage see section 5.1).

7.2 Case Study 2 Reduction in Working Hours without Wage Cuts³²

The latest topic that the ČMKOS is considering in its 'End of Cheap Labour' campaign is reducing working hours without corresponding wage cuts. The ČMKOS argues that Czech employees work longer hours than their counterparts in other European countries. Employer representatives do not agree to reducing working hours when they are being faced with acute labour shortages; nevertheless, they do not exclude it in the future, provided it is accompanied by increases in labour productivity.

However, the data indicate that reduced working hours have already been introduced in many Czech companies. A 2019 analysis of company-level agreements shows that working time arrangements are included in 91.7 per cent of them, 62.1 per cent of which set out uniform working hours for the whole of the organization and 29.6 per cent establish different working hours arrangements according to shift work regimes. Also, 76.9 per cent of company-level collective agreements that set out uniform working hours for the whole of the organization define a working time of 37.5 hours per week (Trexima 2019).

The reasons for reducing working hours vary according to the sector and individual companies. Many companies, principally those operating in heavy industry, have reduced working hours' regimes as a remnant of legislation from the 1980s (concerning, for example, working in carcinogenic environments). Although legislation has since changed and working conditions are no longer potentially dangerous owing to the development of new technologies, many companies have maintained reduced working hours and, moreover, have introduced it into single-shift operations, so that white-collar workers also work shorter hours. This applies, for example, to the Liberty Ostrava a.s. company which operates in the metallurgical sector and employs 6200 persons. The company-level collective agreement stipulates a working time of 37.5 hours per week for all employees except those working in the coking plant, whose working time is even shorter, at 34.25 hours (this working time regime applies to approximately 16 per cent of employees). The company has been working on reduced hours since the 1990s. Although the company has struggled with labour shortages in recent years, the management has never considered extending working hours to the length stipulated in the Labour Code (40 hours per week for single-shift work).

Similarly, the 1120 employees of AGC Flat Glass Czech a.s., a manufacturer of flat glass mainly for the construction and automotive industries, have a working time of 37.5 hours per week. The reduced working hours' regime was introduced in 2001 and applies to all the company's employees. According to the HR manager, the reduced working time constitutes a form of employee benefit. The introduction of reduced working hours was not a simple process and required extensive changes in terms of work organization; however, according to the HR manager, the changes were exclusively of a technical nature, that is, how to ensure the staffing of the various shifts in order to ensure continuous production. The company had to hire five new employees; however, this involved only a minimal increase in costs and, moreover, provided the HR manager with increased flexibility in relation to vacation and illness cover. At a time when it is difficult to find qualified workers in the labour market, it appears that this approach has reaped a number of benefits, for example, the company has a very low staff turnover rate (just 1.7 per cent in 2018) and currently has only two job vacancies.

Vašečocky.cz, an e-shop specializing in contact lenses and accessories, reduced working hours to seven hours per day also in the form of an employee benefit. Reduced working hours were introduced in the form of a trial operation in February 2019 and have applied to all 70 of the company's employees since April 2019. The managing director stated that the reduction in working hours had not resulted in any complications and that the company's employees managed to complete their usual workload in a shorter time simply as a result of the introduction of changes in work organization. The only exception was the IT department, where the volume of work performed decreased by around 3 per cent; however, the managing director considered this to be negligible. He further stated that the eight-hour working day is an anachronism, especially in professions that require long-term concentration (Hovorková 2019; Sovová 2019).

8. CONCLUSIONS

Social dialogue in the Czech Republic is considered both by the social partners themselves and the professional public to be stable and to have been relatively conservative over the long term compared with other EU countries. The social partners consider the legal framework, which was established in the 1990s and has not been subjected to any fundamental changes since that time, to be both functional and effective. Relationships between the social partners and with the government are considered good; although the social partners and the government have not always agreed on the issues under discussion, the social partners generally adopt a consensual and non-confrontational behavioural style and are ready to compromise. Recently, the economic situation, involving both exceptional economic growth and low unemployment, has enabled employers to meet trade union demands for wage increases.

Currently, the social partners are particularly interested in two fundamental issues: eliminating inequalities in the labour market and labour shortages. These issues are relevant to both sides. Eliminating inequalities is more of a trade union issue, while labour shortages are of more concern to employers. In some respects, however, the social partners have the same point of view. Employers also support wage increases in some sectors (education, health and social care), while the unions are interested in solving labour shortages, preferably by way of digitalization and higher productivity than by labour immigration. In 2015, ČMKOS, the largest Czech trade union confederation, began to address inequalities, initially in terms of wage growth, via the launch of its 'End of Cheap Labour' campaign aimed at the convergence of Czech wages with the European average. In 2017, the campaign was extended to include the issue of shorter working time without corresponding wage reductions. While employers, for the most part, favour wage growth, which is being facilitated by the favourable economic situation, the shortening of working time without wage cuts is totally unacceptable at a time of acute labour shortages. The unemployment rate in the Czech Republic stood at just 2.2 per cent in October 2019 and some employers have been experiencing a shortage of labour since 2015. The employers see the most effective short-term solution as the import of labour from abroad; however, the trade unions disagree, arguing that employers recruit foreign employees from countries where wages are lower than in the Czech Republic, instead of motivating the unemployed with the offer of higher wages. In this area, however, the social partners agree that

only the reform of the education system so that it responds better to the needs of the labour market will solve the issue of labour shortages.

According to the employers, digitalization and robotization will also help to ease labour shortages; thus, employers welcome this trend while emphasizing the need for large-scale investment. Although the trade unions indicate the potential negative effects of digitalization, they also see it as a way to raise the Czech economy from a model based on cheap labour, established in the 1990s, to a model based on modern technology, research and development. The trade unions draw attention to potential increases in unemployment in particular sectors and among particular groups of employees, and the expansion of precarious work. Moreover, they stress that the digitalization process must be regulated so that it does not pose a threat to the labour force. Against this background, the social partners agree on the need for education reform.

The main problem faced by social dialogue in the Czech Republic is the long-term decline in the trade union membership base. While the membership of employers' associations remains relatively stable, trade unions continue to record declining numbers of members. While over the past few years, some trade unions have managed to stabilize their membership bases – that is, losses in the number of members have been compensated for by the recruitment of new members, and some trade unions have even seen an absolute increase in the number of members – at this time it is difficult to predict whether this is a long-term trend or just a temporary fluctuation. If the unions fail to halt the decline in membership over the long term, they will have less and less capacity for collective bargaining.

The coverage rate of employees by higher-level collective agreements is low in the Czech Republic and it is not expected that this trend will change in the future. There are several reasons for this: employers' unwillingness to bargain collectively at the higher level, the absence of an employer partner and the misunderstanding of the importance of higher-level collective agreements as the minimum standard in the respective industry. Moreover, since many of these agreements often remain unchanged for several years, many employers consider them unnecessary (Hejduková 2007).

Although social dialogue in the Czech Republic has to face many challenges (falling trade union membership, low collective agreement coverage), there are also various positive developments, which are important for the role of social dialogue in the new world of work, especially a willingness to cooperate and compromise.

NOTES

1. Full text in English, accessed 11 October 2019 at https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/23_1991_EN.pdf.
2. Full text in English, accessed 11 October 2019 at <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>.
3. Full text in English, accessed 11 October 2019 at https://www.legislationline.org/download/id/6742/file/Czech_Republic_Labour_Code_2006_am2011_en.pdf.
4. Full text in English, accessed 11 October 2019 at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=21640.
5. Full version in English, accessed 11 October 2019 at https://www.tripartita.cz/wp-content/uploads/2017/02/statutes_rhds.pdf.
6. Act No. 262/2006 Coll., Labour Code, s. 286.
7. Act No. 2/1991 Coll., on collective bargaining, s. 7.

8. There are some exceptions: it is important to note that some trade union organizations are keen to influence the representativeness criteria in certain areas. For example, in respect of members of the Police of the Czech Republic organization (Policie České republiky), the representativeness criterion was set at 40 per cent membership until 2006; that is, a trade union was allowed to operate only if it represented at least 40 per cent of police personnel at a particular unit (workplace). This provision has since been abolished; however, representatives of the Independent Trade Union of the Police of the Czech Republic (Nezávislý odborový svaz Policie České republiky, NOSP ČR) favour reintroducing representativeness criteria, for example, at 20 per cent, given that currently anyone can establish a union and, subsequently, obstruct collective bargaining. Similarly, the subject of potential trade union membership for members of the armed forces is considered from time to time (Stratilík 2010; Ozbrojeneslozky.cz 2017).
9. Act No. 262/2006 Coll., Labour Code, s. 286.
10. See the Decision of the Constitutional Court of 12 March 2008 regarding a petition to annul certain provisions of Act No. 262/2006 Coll., the Labour Code, accessed 5 November 2019 at <https://www.zakonyprolidi.cz/cs/2008-116> (in Czech).
11. For the current version see the Statutes of the Council of Economic and Social Agreement of the Czech Republic, accessed 12 November 2019 at https://www.tripartita.cz/wp-content/uploads/2017/02/statutes_rhdsd.pdf.
12. For example, the KUK was not prepared to support an increase in the minimum wage without a corresponding increase in the financial resources of (particularly) municipal budgets, because without further strengthening the revenue side the continued existence of many cultural organizations would be directly threatened (Hála 2002). A further problem was that the KUK membership included a large number of self-employed persons whose interests often differ from those of employees (Húska 2019).
13. According to Samek (2019), interest in membership is growing because employees have become aware that only the trade unions can represent their interests in an effective and fully committed manner.
14. Although the ČMKOS (2019b) has reported an increase in new membership of 58 592 between 2015 and 2019, overall figures show that this has only served to compensate for the number of departing members (see section 2.3 in this chapter).
15. With 97 178 members in 2019. Source: OS KOVO.
16. See <https://www.oskovo.cz/os-kovo/stanovy-os-kovo> (accessed 3 November 2019, in Czech).
17. Full version accessed 10 November 2019 at <https://ppropo.mpsv.cz/JudikatNS21Cdo26222017> (in Czech).
18. Act No. 262/2003 Coll., the Labour Code in s. 316a says that the employer may not require from an employee information that does not directly relate to work performance and the basic labour relationship. The employer may not require in particular the information on trade union organization membership.
19. Section 320a of Act No. 262/2006 Coll., the Labour Code.
20. Section 277 of Act No. 262/2006 Coll., the Labour Code.
21. 'Digitalization' does not have a uniform definition, and different authors, including the various social partners, understand it differently. Since this chapter is not only about digitalization, we do not intend to discuss individual definitions and related concepts, such as automation and robotization. Instead, we consider the term 'digitalization' in the broadest sense, as the introduction and use of digital technologies in various areas of production and wider society.
22. In 2015, the Czech Republic began to comprehensively address the issues of digitalization and its impact on economic development, in particular the consequences for the industrial sector, such as changes in the labour market and education. As part of the Action Plan for the Development of the Digital Market approved by the government in August 2015, the then Minister of Industry and Trade, Jan Mládek, initiated the compilation of a comprehensive concept and strategy known as Industry 4.0. The strategy was supported by the government-approved National Industry Initiative 4.0 report (approved in August 2016) (Vogel 2017).
23. An amendment to the Labour Code introduced in 2016 provided that the employer should meet the costs of communication between the employee and the employer and other costs when performing work outside the workplace. However, even the trade unions considered this provision to be too strict and suggested that these costs should be settled via a flat rate payment (Holanová 2016).
24. For example, according to the findings of Trexima (2017), the approach of employers to homeworking varies considerably, ranging from the total absence of specific rules to comprehensive, detailed guidelines covering working time arrangements, homeworking costs, occupational health and safety and fire protection, the protection of the employer's data and other property, and issues surrounding responsibility.
25. Employers are currently advised to conclude a detailed written agreement with the employee that covers all aspects of working outside the employer's workplace or to compile an internal regulation that covers in detail the rules applying to working outside the workplace. However, this does not change situations in which the employee suffers an accident outside the workplace and seeks compensation; in the event of a dispute, the court will be required to decide whether or not it concerns an accident suffered at work. Some lawyers (for example, Dandová 2019) consider these concerns about work-related injuries to be

- exaggerated; they opine that in the past even risk-related work (seamstresses and glassmakers) was performed as homeworking, and no case has been recorded of the abuse of injuries sustained by employees in order to increase their earnings through claiming damages.
26. According to the HK ČR, the Act should distinguish between three categories of income: (1) occasional income – an annual income of up to CZK30 000 (or up to three times the minimum monthly wage), which would not require a trade licence or be subject to any other requirements, and which would not be taxed or subject to other deductions; (2) extra earnings – an annual income of up to twelve times the minimum monthly wage, for which it would be necessary to obtain a trade licence and for which a simplified income tax and social insurance collection regime would apply (if this income were subject to the payment of social insurance contributions at all), and this category would apply to persons who also have income from regular employment or have special social status (students, pensioners, persons on maternity or parental leave); and (3) business activities – an annual income of more than 12 times the minimum monthly wage, which would require a trade licence and that would be subject to tax and social and health insurance deductions; this category might also be entitled to the simplified tax regime as an alternative to the general (standard) tax collection regime (HK ČR 2018).
 27. Bogus self-employment. The Švarc system is a Czech term used for the work of individuals who are officially self-employed, but work under the authority and subordination of the ‘employer’, who hired them.
 28. ‘I’m really looking forward to going to Germany, Austria or Belgium to attend recruitment events, and they will all be very happy to work for Czech wages!’ stated Josef Středula, president of ČMKOS (Martínek and Vejvodová 2019, p. 19).
 29. Currently, only the retraining of unemployed persons registered at the Labour Office is covered by the Active Employment Policy; moreover, retraining courses must be accredited by the Ministry of Education, Youth and Sports of the Czech Republic (Ministerstvo školství, mládeže a tělovýchovy České republiky, MŠMT).
 30. The text of the agreement is available at: https://www.socialnidialog.cz/images/stories/Sektorove_dohody/Narodni_dohoda.pdf (accessed 8 December 2019, in Czech).
 31. ČMOS, <https://skolskeodbory.cz/dekujeme-vam-stavkou-nekoncime> (accessed 25 November 2019).
 32. The case study draws on the Reduction in Working Hours project case study, the results of which have not yet been published (for more information see <https://www.vupsv.cz/en/projects/?id=342>, accessed 25 November 2019).

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6. Reforms and new challenges for work and employment in France: Social dialogue under pressure

Christine Erhel

1. INTRODUCTION

French social dialogue institutions are well developed at their various levels, from the company to the sectoral and national. Social partners benefit from important rights and protections, and their contribution to the general interest is recognized through their participation in the administration of workers' rights, from social protection to training and employment tribunals. The state also continues to play a crucial role in French industrial relations, however: the government sets the minimum wage, important rights and regulations are determined by law, as are some compulsory matters for company-level bargaining, and the Ministry of Labour extends almost all sectoral agreements.

That system has performed well, and in particular seems to have prevented a rise in inequalities and poverty of the type characteristic of liberal market economies (Courtioux and Erhel 2018). It also helps to protect workers' rights in a context of accelerated technological change and digitalization, which are leading to job destruction for some routine occupations and far-reaching changes in the nature of work and working conditions (COE 2017). French social dialogue institutions have also been subject to many criticisms, however, from a number of viewpoints. From a market liberal standpoint, the lack of flexibility at the company level resulting from the centralized model can reduce firms' capacity to adapt to changing conditions and, therefore, be detrimental to their competitiveness and contribute to higher unemployment. In addition, within the framework of the insider–outsider model, some economists also consider that the French system protects insiders rather than offers opportunities to new labour market entrants, and therefore favours labour market dualism. Workers on flexible contracts (temporary contracts, temporary agency work and part-time jobs), as well as the self-employed (including those working for platforms) would be disadvantaged. Criticisms also focus on trade unions' lack of representativeness in a context of low membership rates and low confidence expressed by employees (or the public more generally) in numerous opinion surveys.

In a context of strikes and protests against projects to reform the pension system at the end of 2019, and following the *gilets jaunes* social movement that started in autumn 2018, protesting against petrol prices and environmental taxes, the social climate appears conflictual. The social partners are under pressure, both from public opinion (the movement of the *gilets jaunes* started through social networks and was not controlled nor influenced by the unions) and from the government. Pressure also comes from the reforms currently

being implemented, dealing with workers' representation at the company level and decentralization of collective bargaining, but also further training, unemployment insurance and pensions.

This chapter discusses the capacity of the social partners to define and influence labour market regulations in a new labour market context, as well as their autonomy at the sectoral and company level, taking into account the recent reforms of social dialogue and collective bargaining. At the micro level, it also analyses the situation of employee representatives and employees' perceptions, which is a crucial issue for trade union influence. Although institutionalized social dialogue processes and the role of the social partners are at the core of our analysis, we consider a broad definition of social dialogue, including informal forms of social dialogue, and the different levels at which social dialogue may take place: the national, regional and enterprise levels, and the inter-sectoral or sectoral dimensions.

Section 2 presents an overview of the institutions of social dialogue and discusses the issue of representativeness and the recent trends in the role of the different bargaining levels. Section 3 focuses on recent reforms and their effects to date on social partners' capacities and autonomy. Section 4 adopts a micro-level viewpoint to describe the actors of company-level social dialogue, and discuss employees' perceptions. Section 5 concludes by noting the main issues for the social partners. Two case studies address important issues for the French model. The first (section 6) concerns the extension of collective agreements, which plays a key role in equalizing employment and working conditions across sectors, and discusses its recent evolution and potential tensions for the future. The second (section 7) focuses on the way company collective agreements and bargaining processes deal with the issue of digitalization.

2. SOCIAL DIALOGUE IN FRANCE: REPRESENTATIVENESS OF SOCIAL PARTNERS AND DYNAMICS OF MULTI-LEVEL BARGAINING

Institutionalized social dialogue in France relies first on trade unions and employers' organizations, which discuss and bargain at several levels: national, inter-sectoral, regional or local, sectoral and firm levels. However, within firms, it also involves other elected actors, representing employees, who have a consultation and information role, but also, in some cases, a capacity to negotiate.¹

2.1 Social Partners in France and Representativeness Issues

In France in 2019 there are eight active trade unions at the national level (CFDT, CGT, FO, CFE-CGC, CFTC, FSU, SUD-Solidaires and UNSA),² five of which are considered representative at the national and inter-sectoral level (CFDT, CGT, FO, CFE-CGC and CFTC). On the employers' side, there are numerous employers' organizations, three of which are representative (CPME, MEDEF and U2P).³

Until 2008, and since the Second World War, the French industrial relations system was subject to the presumption of representativeness: representative trade unions were designated by the state, based on a number of criteria (political values, autonomy,

financial transparency, influence and number of members). For employers' organizations, representativeness resulted from mutual recognition between federations (Langevin 2019). The objective of recent policies has been to reinforce the social partners' legitimacy and, therefore, to assess their representativeness using objective criteria: elections for trade unions and membership for employers' organizations.

Since 2008, unions must achieve at least 10 per cent of the votes at company level and 8 per cent of votes at sectoral or national multi-sectoral level (in elections) to be considered representative. Elections were organized in 2013 and 2017, in which the five traditional unions maintained their position at the national level (see Table 6.1), but not in all sectors, whereas two smaller unions have been enabled to set up in some sectors, which promoted multiple union representation at the sectoral level. Workers' participation in these elections is substantial (41.6 per cent in 2017), although it has been decreasing since 2013. In the public sector, representativeness rules are different and UNSA, Solidaires and FSU are also representative, in addition to the five historical unions.

Concerning the employers' federations, an Act of 2014⁴ introduced a rule for measuring representativeness using membership data, which became effective in 2017: a federation is representative if it covers at least 8 per cent of companies or 8 per cent of employees. In practice, three employers' federations meet that criterion and were declared representative by the Ministry of Labour in June 2017 (Table 6.2).

The unionization rate is low in France: on average, it amounted to 10.8 per cent in 2016, which is among the lowest rates among Organisation for Economic Co-operation and Development (OECD) countries. However, despite some uncertainty about estimation,⁵ it appears to have been relatively stable since the early 1990s, after two phases of important decline (between 1950 and 1960, and between 1975 and 1990; see Figure 6.1).

Unionization is traditionally higher in the public sector (18.7 per cent in 2016), and especially in education and the police, than in the private sector (8.4 per cent).⁶

Table 6.1 Trade unions at the national level, France, 2017–18

	Votes private sector 2017 (%)	Votes public sector 2018 (%)	Aggregate level public and private sectors (% votes)
CFDT	26.4	19.0	24.0
CGT	24.8	21.8	23.9
FO	15.6	18.1	16.4
CFE-CGC	10.7	3.4	8.4
CFTC	9.5	2.9	7.4
UNSA	5.4	11.2	7.2
Solidaires	3.5	6.4	4.4
Others	4	17.2	8.3

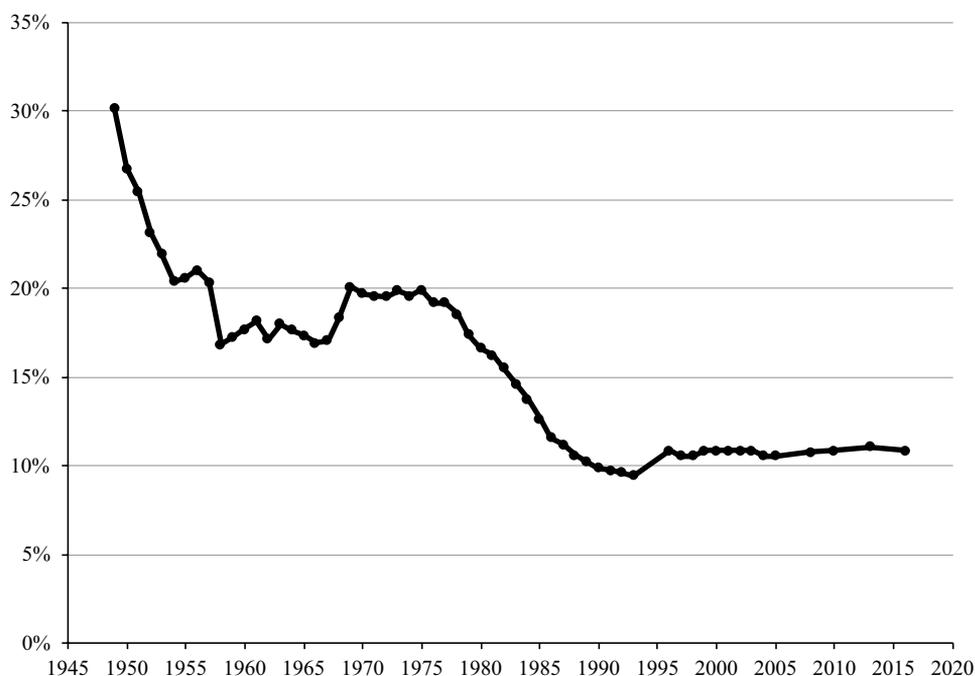
Note: First column comprises representative trade unions at the national level (over the 8 per cent threshold) in the private sector.

Source: Direction Générale du Travail, Gazier and Petit (2019), Direction générale de l'Administration et de la Fonction publique (DGAFP).

Table 6.2 *Employers' organizations at the national level, France, 2017 (percentage represented)*

	Firms	Employees
MEDEF	29.4	70.7
CPME	34.5	25.0
U2P	35.9	4.2

Source: Direction Générale du Travail, Gazier and Petit (2019).



Source: DARES, Pignoni (2016).

Figure 6.1 *Unionization rate: share of workers (aged 15 years and more) who are trade union members (percentage)*

Within the private sector, unionization rises with firm size, and appears to be higher in manufacturing and transport than in services. As regards individual characteristics, men are more likely than women to be member of a union (11.8 per cent compared with 9.8 per cent, respectively), and the unionization rate rises with age (from 3.6 per cent for younger workers, aged under 30, to 14.6 per cent for those aged over 50). Differences by occupation are limited, but the lowest rates are among manual workers (9.6 per cent, compared with 11 per cent for managers and professionals). Interestingly, union membership clearly relates to employment status, and to job stability: less than 2 per cent of temporary agency workers and temporary contract workers are unionized. These figures

(as well as union members' age profile) indicate a deficit in the protection of vulnerable workers, who are the main victims of atypical and unstable employment.

Union membership cannot be considered a good measure of union power in France, however, as collective agreements apply to non-members and sectoral agreements are generally extended to all firms and workers in the sector, which results in a very high coverage rate (over 95 per cent). Besides, unions (and employers' organizations) participate in defining and managing social and training policies (unemployment insurance, retirement, further training) and receive some public financing in exchange for this role.

2.2 At the Firm Level: Dual Employee Representation

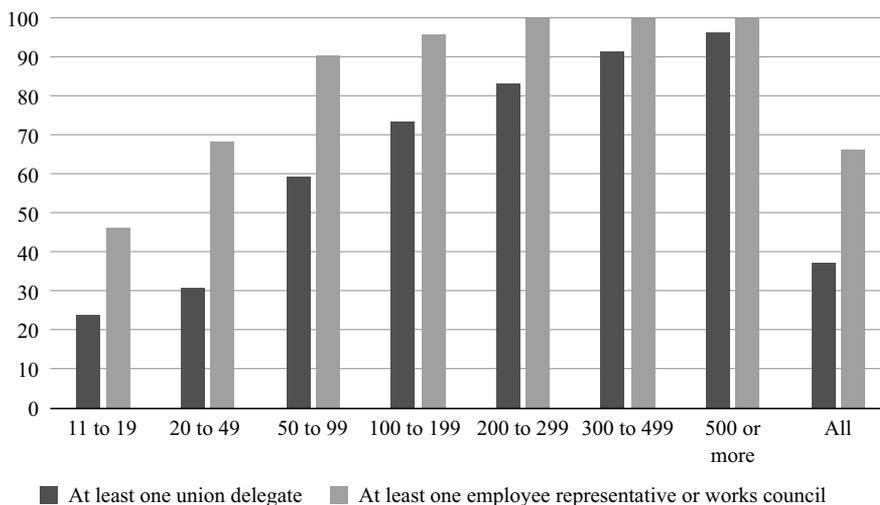
At the firm level, employee representation is dual: it involves both elected staff representatives and trade union delegates (appointed by trade unions⁷). Elected staff representatives have rights in relation to information and consultation, whereas union delegates are entitled to participate in firm-level collective bargaining. Since 2019, there has been a single institution for elected staff representatives, the social and economic committee (Comité Social et Economique, CSE), for all firms with more than 11 employees. That single committee replaces the three institutions that previously existed:⁸ worker delegates (*représentants du personnel*, compulsory for firms with more than 11 employees), works council (*comité d'entreprise*, CE, compulsory when over 50 employees), and health and safety committee (Comité d'Hygiène, de Sécurité et des Conditions de Travail, CHSCT, compulsory when over 50 employees). Employee representation based on these two types of representation has been growing over time. As a consequence, in 2017, 67 per cent of workplaces with more than 11 employees (and almost all workplaces with over 100 employees) had at least one type of employee representative, and 37 per cent at least one trade union delegate. This corresponds to 86 per cent of employees covered by at least one employee representative, and 64 per cent covered by at least one trade union delegate (Romans 2018).

This employee representation is clearly related to firm size, given the existence of legal thresholds by size (see Figure 6.2). Under 11 employees, firms do not have to organize elections and designate worker representatives, so that social dialogue remains mostly informal. Data by firm size (rather than workplace size, based on an ACEMO survey) show more clearly the low coverage of small and medium-sized firms: in 2012, 78 per cent of firms with between 10 and 19 employees had no employee representative, whereas this was so in only 5 per cent of firms with over 100 employees.

2.3 A Fairly Dynamic Multi-level Collective Bargaining System

Collective bargaining takes place at three main levels in France: national and inter-sectoral level, sectoral level and company level, but it may also be organized at the local level (for a given territory). Historically, below the national level, the sector has been the prevailing level, but company-level bargaining has been compulsory since 1982 (for firms over 50 employees with one union delegate), and has been constantly extended since then.

In this multi-level system, the law has to define the relationships between the different levels. The traditional model of French labour law (Code du travail) was based on two key principles: hierarchy between standards (legislation and regulation > agreements and



Source: DARES, REPNSE 2017, Romans (2018).

Figure 6.2 Coverage of firms by representative bodies of staff in 2017

national multi-sectoral agreements > sectoral agreements > company level agreements) and the favourability rule (core workplace guarantees/*ordre public social*) which implies that a lower-ranking rule can only take precedence over a higher-ranking rule if it is more beneficial to the employee. This model generally applied until 2016, although there was some evolution as early as 2004 and 2008 (for instance, concerning working time).

The Labour Act (2016)⁹ reformed the hierarchy between standards, establishing the pre-eminence of company agreements on the issues of working time and employment maintenance. In accordance with a previous inter-sectoral agreement of 2013,¹⁰ employment maintenance agreements take precedence even over individual labour contracts, including wages (the monthly wage is still guaranteed but flexible pay and premiums can be adjusted) and working time. If employees refuse to accept the new rules, they can be dismissed. In the face of trade union resistance and public opinion, however, the government finally laid down that a number of important topics constitute ‘fundamental issues’ in relation to which company agreements cannot undercut sectoral agreements: minimum wages, occupational classifications, private social protection, vocational training, gender equality and hard or dangerous working conditions (*pénibilité*).

The September 2017, ordinances slightly modified these rules. Sectoral agreements prevail for minimum wages, occupational classifications, vocational training, private social protection and gender equality, but also for job quality standards and labour contract conditions (part-time contracts and fixed-term contracts). For a few other topics (hard working conditions and disability) the relevant sector will decide whether sectoral agreements will prevail over firm-level agreements, but the general rule is in favour of the latter.

In order to develop collective bargaining in firms where there is no trade union delegate, the law has provided possibilities to sign an agreement with elected employee delegates or employees mandated by a union. In the absence of delegates, the agreement has to be

validated by a majority of workers, through a referendum. For firms of 50 employees or more, employers can bargain only with an employee mandated by a union. In small firms (fewer than 11 employees, or between 11 and 20 employees if there was no candidate in staff elections), the 2017 ordinances have also opened up the possibility for employers to submit an agreement directly to employees, through a referendum. This must be validated by two-thirds of employees.

In practice, bargaining activity is important at company and sectoral levels. A total of 1288 agreements were signed in 2018 at the sectoral level, slightly above the number in 2017 (1166). At the firm level, the number of agreements signed in 2018 was around 75 600, among which 51.7 per cent were signed by unions, 13 per cent by other staff representatives and 21 per cent were validated directly by employees. These company-level agreements mainly concern earnings (wage and non-wage) and working time, whereas sectoral agreements deal with wages, but also gender equality, training and apprenticeship (DGT 2019).

The situation with small firms is specific: social dialogue is mainly informal and is rarely transposed into an agreement. Even if it is difficult to obtain information on these informal processes, it seems that employee participation remains limited. A 2016 survey by the Ministry of Labour focused on social dialogue in firms with fewer than 10 employees, and showed that 80 per cent of them declared that they had taken decisions on wages, employment, working conditions or working time in 2016. Employees were collectively involved in these decisions in 31 per cent of these firms (Tall 2018).

In summary, the low unionization rate, as well as the large number of unions with few members, indicate the fragility of the French trade unions (in relation to funding and autonomy, but also the coverage of different types of workers, including the most precarious), but it does not fully represent the reality of unions' role and influence, as their presence at company level is important (through staff elections and union delegates), except in small firms. Recent reforms have tried to reinforce legal representativeness by relating it to the results of staff elections (and membership for employers' organizations), and to create incentives for more decentralized collective bargaining. They have also introduced mechanisms for concluding agreements without unions in small firms, which does not help to reinforce unions.

3. STRENGTHENING SOCIAL DIALOGUE AND CAPACITY TO ADAPT TO THE NEW WORLD OF WORK: AMBITIOUS REFORMS AND ACTORS' PERCEPTIONS

In this section, we analyse recent laws reforming social dialogue and collective bargaining, the ambition of which is to reinforce and modernize social dialogue to face the new challenges of the world of work, based on interviews and initial evaluation reports on the 2017 labour ordinances. We then provide some insights into their consequences.

3.1 The Ambitions of the Reforms: Strengthen Social Dialogue

The French industrial relations system entered a phase of reforms in 2008, with a change in the rules on trade union representativeness. Since then there have been several laws

Table 6.3 Main texts reforming social dialogue or policies in which social partners have direct involvement, 2008–20

2008	LOI no. 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail	New rules for unions' representativeness
2013	LOI no. 2013-504 du 14 juin 2013 relative à la sécurisation de l'emploi (based on an inter-sectoral agreement of 11 January 2013)	New rules for collective redundancy, employment maintenance agreements, individual training account and health insurance for all employees
2014	LOI no. 2014-288 du 5 mars 2014 relative à la formation professionnelle, à l'emploi et à la démocratie sociale	Personal training account (Compte Personnel de Formation) Reform of training financing New rules for employer organization representativeness
2015	'Rebsamen Law' LOI no. 2015-994 du 17 août 2015 relative au dialogue social et à l'emploi	Facultative integration of staff representation institutions New representation for very small firms
2016	'Loi Travail' LOI no. 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels	Collective bargaining decentralization Individual activity account Youth guarantee
2017	'Ordonnances travail' Ordonnance no. 2017-1386 du 22 septembre 2017 relative à la nouvelle organisation du dialogue social et économique dans l'entreprise et favorisant l'exercice et la valorisation des responsabilités syndicales	Collective bargaining decentralization Integration of employee representation in a single institution (<i>comité social et économique</i>) New rules for compensation in case of abusive lay offs
2018	LOI no. 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel	Further training reform (extension and reform of the individual account, new management of financing and training programmes)
2019	Unemployment insurance reform (decree)	Extension to self-employed and people who resigned (for employees) Bonus-malus for short-term contracts
2020 (planned)	Pension reform (Law, presented to the Parliament on 24 January 2020)	Universal pension regime

(or ordinances) changing the rules on collective bargaining and, more broadly, dialogue between labour and employers. Table 6.3 provides a list of these reforms with brief comments on their content. These reforms are generally aimed at improving the functioning of the French labour market by providing more flexibility at the company level

(in relation to both workforce adaptation – in case of an economic downturn, for hiring and firing – and collective agreements) and providing more efficient schemes for workers' security (better access to training, and wider unemployment insurance coverage). These are inspired by the flexicurity framework. Most of them (until 2015) were initially based on social dialogue at the national level, which often failed to reach an agreement. These reforms generally consider that social dialogue, if some flexibility is offered, contributes to firms' competitiveness and workers' motivation. More generally it should also increase their capacity to respond to new needs in a changing labour market (workforce adaptation, professional transitions and further training).

With regard to collective bargaining and social dialogue, these reforms include:

- decentralization of collective bargaining to the company level (although the sector retains its competence over important topics, such as occupational classifications and minimum wages, use of atypical labour contracts, gender equality);
- some new rules for union and employer organization representativeness (based on elections and membership) and clarification of their financing;
- a reduction in the number of sectors to clarify sectoral bargaining: the target was set at 200 sectors in the Labour Act 2016,¹¹ and President Macron has set a new goal of 50–100 in the medium term. The two criteria for sectoral restructuring are size (sectors should cover at least 5000 workers) and bargaining activity (sectors that have not concluded any agreement for the past ten years have to merge with other sectors);
- new rules for agreement validity at company level, based on the majority principle in firms with a trade union delegate, and on a referendum in other cases, with simplified rules for small firms;
- a change in the rules on employee representation at the company level: creation of the *comité social et économique* (social and economic committee, CSE) for firms with over 11 employees, replacing previous institutions for staff representation;
- new topics for bargaining: gender equality, tough working conditions, employment of the elderly, teleworking, internal and external flexibility – for instance, the introduction of a collective framework allowing the employer to end labour contracts of willing employees (that framework must be based on a collective agreement signed by trade unions which represent the majority of employees and is also subject to administrative control); and
- creation of an extension committee to examine (on request) opportunities to extend some sectoral agreements (workers' rights and equality, on the one hand, the free competition principle on the other).

In addition to these measures that directly concern social dialogue institutions and processes, many reforms also concerned policy areas in which the social partners play a direct management and administration role. This applies to further training, unemployment insurance and pensions. For further training, the institutional changes are important. The 2018 reform maintains the principle of a compulsory company contribution, but in 2021 this contribution will be collected by the national security administration instead of by specific funds managed by the social partners at the sectoral level (Organisme Paritaire Collecteur Agréé, OPCA). In addition to this centralization of financing, the

reform also creates a new national institution (France Compétences) that will monitor training institutions (prices and quality). The social partners remain involved at the sectoral level through operating entities (*opérateurs de compétence*, OPCO) which will be responsible for allocating funding to training in small and medium-sized firms, as well as to apprenticeship training (previously a regional competence). As far as pension reform is concerned, the ambition is to merge different regimes. Therefore, in addition to reforms in collective bargaining and social dialogue, the reforms also involve important changes in the role of the social partners in social and labour market policies.

3.2 What Impact and Perceptions of these Reforms?

This subsection is based on two sources: first, the initial results published by the Labour Ordinances committee, which focus on implementation of the latest reforms (2017); second, interviews with social partners and a government representative conducted for this International Labour Organization (ILO) project, in which they were asked about their general perceptions of the reforms over the past decade (see Box 6.1 about interviews).

The social partners on both the employer and the labour side are divided on the importance of the reforms: employers favour the decentralization of collective bargaining and firm-level flexibility, but also demand guarantees at the sectoral level (to avoid unfair competition); reformist trade unions (CFDT, CFTC and CFE-GC) promoted the principle of decentralization, while others defended the traditional hierarchy between national, sectoral and firm level (CGT and FO). These divisions still exist in the reactions to the reforms; however, some converging views also emerged from interviews.

First, the social partners complained about the timing of the reforms, which does not leave them the time to adapt to the new rules and to work on innovative agreements. In practice, a great deal of time is devoted to complying with new obligations and ensuring formal conformity, with no opportunity to work on the contents of the agreements. The implementation of the new CSE is particularly difficult, and actors will not be able to meet the schedule laid down by the ordinances (all CSEs should be elected by the end of 2019). On the employers' side, the complexity of the rules and the number of topics to be considered is also criticized: instead of the simplification of the Labour Code that they have been demanding for years, it imposes new constraints on firms (such as compulsory reporting on gender equality) and some uncertainty about legal interpretation (for instance, regarding sectoral and company competences).

Second, they refer to a failure of social dialogue at national level, which they attribute to the behaviour of the government. Indeed, according to the social partners, the initial ambition of developing social dialogue at the national level that was included in the Labour Act in 2007, has been contradicted by successive governments. Under President Hollande, there was some bargaining at national level and some laws followed national agreements, but the social partners consider that the overall contents of the reforms ran counter to their interests. Finally, the Labour Act of 2016 was implemented without any bargaining or formal consultation. Since the election of President Macron, national bargaining has been controlled by the government, which lays down precise guidelines and makes the ultimate decision, even if that contradicts the inter-sectoral agreement.

Two examples in particular were mentioned by interviewees. The first is the further training reform (in 2018), which saw the Ministry of Labour calling for a vast reform the day after the social partners had reached an agreement. The second example is the negotiation of unemployment insurance (in 2019) that failed because it was based on very strict guidelines. The more radical unions even take the view that recent governments have lost confidence in social dialogue, and have denied workers the right to contest reforms via protests (by repressing social protests in 2017 or 2020).

Third, the social partners fear a weakening of social dialogue at branch and company levels, contradicting the very aims of the reforms. At company level, the CSE reform may decrease resources for local unions, in relation to number of representatives and number of hours spent on consultation and negotiation. According to the interviewed union representatives, despite some good practices, many firms take a purely cost-orientated view of the reforms, and want to take the opportunity to cut the costs of employee representation. On the workers' side, the CSE does not appear particularly attractive because it involves many responsibilities and expenditure of resources to deal with a variety of issues.

A number of other factors have reduced union power more directly: for example, possibilities for concluding an agreement without the involvement of a trade union official have been substantially extended. At branch level, the content of current negotiations has been imposed by the ongoing reforms: for example, implementation of further training reform, and restructuring and fusion of sectors. The extension of agreements that was a cornerstone of the French industrial relations model and ensured a high coverage rate is also likely to be weakened. This is owing to a number of factors. The Ministry of Labour is trying to slow the extension process and to limit its scope (to take the example of minimum wages, see the case study about sectoral extension on section 6), and there is some uncertainty regarding the role of the new extension committee.

Looking more precisely at the implementation of the Labour Ordinances also shows some substantial difficulties, although impact evaluation will not be possible for a few years (France Stratégie 2018).

A survey of employers and union representatives¹² revealed that information on the reform was still scarce in June 2019, almost two years after the reform.

More broadly, the take-up of the reform does not seem very high. Most employers have no intention of changing their social dialogue practices in the short term (64 per cent for firms of fewer than 300 employees). Only 13 per cent see the ordinances as an opportunity to develop firm-level collective bargaining.

Finally, many issues have arisen concerning implementation of the new CSE as a body for representing workers. The transition process between the old institutions and the CSE is too slow, although it was accelerating at the end of 2019; according to the same survey, 36 per cent of firms overall are likely to be covered by the reforms by the end of 2019, but the proportions vary by size (77 per cent of firms with over 50 employees, but only 23 per cent of firms with between 11 and 50 employees).

Union representatives in firms report two main problems with implementing the CSE: a reduction in the number of representatives and delegation hours,¹³ and a lack of training for members of the new committee. A more detailed analysis based on firm case studies confirm a substantial number of difficulties (ORSEU 2019). First, as mentioned in our interviews, many firms consider the CSE to be an opportunity to cut

costs and therefore the negotiations focus on hours for elected representatives, administrative resources and travel costs, instead of on work methods and training. Second, the integration of all workers' representatives leads to centralization and reduces local worker representation, which used to be ensured by employee delegates. The risk is that the link with employees' local problems will be cut and employees feel that their concerns receive less attention than before. The ordinances have opened up the possibility of specific local representatives (Représentants de Proximité, RP), but this has to be organized by firm-level bargaining and is not compulsory. Third, health and working conditions issues must be covered by the CSE¹⁴ (instead of the dedicated CHSCT before the reform). This requires specific competences that not all employee representatives have. There is a danger that security and health issues will have more limited coverage, although the government has introduced compulsory health and safety training for all CSE members. Finally, the ordinances change the conditions offered to employee representatives and trade union delegates: there will be fewer of them, the number of mandates will be fewer (three, except for firms with fewer than 50 employees), and participation in the CSE is likely to be more demanding in relation to time (more topics to deal with). The consequences for people's willingness to take on these mandates are uncertain at this stage.

In contrast with this survey and with the social partner interviews, the government puts forward the development of a new impetus in social dialogue at the company level, around issues such as internal and external flexibility (collective agreements allowing employment adjustments by mutual agreement¹⁵ or internal adjustments – of wages or working hours – to maintain or increase employment¹⁶), and the conditions of social dialogue (delegation hours beyond the legal level, local representatives, and training for CSE members). At the sectoral level, the transfer of apprenticeship financing from regions to OPCOs is considered a success, as is dynamic bargaining on specific labour contracts.

BOX 6.1 SOURCES FOR THE PROJECT: INTERVIEWS AND LABOUR ORDINANCES EVALUATION COMMITTEE

Interviews were conducted in October 2019, with national representatives of a number of trade unions (CFDT, CFTC, CGT and FO) and two employers' organizations (CPME and MEDEF). The interviews included questions about perceptions of recent reforms (since 2008), and more precisely about the 2017 ordinances. They also asked interviewees about ways of improving social dialogue and strengthening the social partners, as well as their ongoing actions to support their members and attract new members, including a specific focus on digital platform workers. Interviews were also conducted with members of the administration, to clarify the goals of the reforms, and with some experts (one economist and one labour lawyer).

This information was complemented by presentations and observations of the debates in the ordinance evaluation committee, instituted in September 2017, which includes trade unions and employers' organization representatives, administrations, and academic experts (<https://www.strategie.gouv.fr/evaluation/evaluation-ordonnances-travail>, accessed 20 July 2021).

A representative of the government was also interviewed about the contents of the reforms and on social dialogue processes.

Although the reform is recent and cannot be properly evaluated yet, the interviews and first qualitative information gathered in 2019 show a gap between the ambitions of the reform and the perceptions of the social partners. While the government emphasizes new dynamics for social dialogue and more flexibility at firm and sector levels, the social partners feel weakened by the reform process and by the manner in which tripartite social dialogue has been conducted over recent years. Their capacity to participate in the definition of new rules facing changing labour market conditions seems limited by the prominent role of the state, and by ongoing institutional reforms at the sectoral and company levels.

4. A MICRO APPROACH TO SOCIAL DIALOGUE: REPRESENTATION, DISCRIMINATION AND UNION ATTRACTIVENESS

Beyond reforms, it is also important to go down to the micro level and to characterize the situation of employee representatives and union delegates, including the issue of discrimination, which has been at the fore in the recent academic and public debate. Another important issue at that level is the perception of the social partners, and more widely of social dialogue, among workers or the French public. All these factors contribute to trade union attractiveness and their capacity to face the new challenges in the world of work.

In this section, we use recent surveys to address these issues: in addition to ad hoc surveys, the REPOSE¹⁷ survey is an important source, organized every six years by the Ministry of Labour and dealing with social dialogue and employee representation at the workplace level. In addition to a relatively large sample (4000 different workplaces and 20 000 employees), the survey is particularly interesting owing to its structure, which includes three different questionnaires for each workplace: one for employers, one for employees and one for employee representatives.

4.1 Staff Representatives and Union Delegates at the Firm Level: A Portrait

According to the REPOSE survey, in 2017, 629,000 employees had at least one mandate as employee representative in French firms; 56 per cent of these representatives are union members and 15 per cent are union officials.¹⁸

Men are overrepresented among employee representatives, and especially among union officials: 72.9 per cent of union officials are men and only 27.2 per cent are women. Employee representatives tend to be older than employees in general, and tend to have a higher seniority (Table 6.4): 50 per cent of union officials and 37 per cent of employee representatives have been working in their firm for at least 17 years. However, this link between seniority and mandates is not systematic and about one-fifth of representatives have been working in the firm for less than eight years. Also, there is turnover among employee representatives, and 60 per cent of them stated they have had their mandate for four years or less, 24 per cent between five and nine years, and 16 per cent for 10 years or more. This indicates that representing workers, either as a union official or as an elected representative, tends to be temporary.

The survey asked employee representatives and other employees about their attitudes towards unions: union members were asked about the reasons for membership,

Table 6.4 Employee representatives by seniority, France, 2019 (%)

Less than one year	14.3
1–4 years	45.6
5–9 years	23.8
10 years or more	16.4

Source: REPONSE 2017, DARES, Pignoni (2019).

Table 6.5 Reasons for joining a union, France, 2019 (%)

	Union members without a mandate	Union members with a mandate (employee representatives)
<i>Personal relationships</i>	51.1	50.8
Contact with a trade union delegate	24.3	33.9
Invitation if a colleague	25.5	25.7
Family or friends' advice	14.9	8.1
<i>Following a problem</i>	27.6	22.0
With employer or hierarchy	25.8	23.0
Protection following a personal event	2.5	0.8
Problems in the firm: lay-offs, changes in management, worsened working conditions or social climate	1.8	1.8
<i>Conviction</i>	6.9	14.6
<i>During a conflict (strike, demonstration)</i>	11.1	9.7
<i>Other circumstances</i>	2.8	2.8
<i>Don't know</i>	0.6	0.1

Source: REPONSE 2017, DARES, Pignoni (2019).

and non-union members about their reasons for non-membership. The first item was to explain unionization in personal relationships (with union delegates and with other colleagues), and the second was about their experience of problems with the employer or the hierarchy (see Table 6.5). More rarely, attitudes result directly from personal convictions or from an episode of conflict (strike or demonstration). Not being a union member relates, first, to the conviction that there is no need to join a union to defend workers' rights within the firm (41 per cent of respondents) and, second, to the absence of a trade union in the firm (32 per cent of respondents).

Employee representatives have a mixed view of their role and the effectiveness of their actions: 80 per cent think that they do a good job taking workers' needs on board and 56 per cent think that trade unions are the best representatives for employees, but only 37 per cent declare that they are actually able to influence employers' decisions.

4.2 Discrimination against Union Members and Union Officials

Being an employee representative (either elected or appointed by a union) is likely to influence a person's circumstances in relation to wage and position. In general, the effect

can be positive if the employer has a positive perception of their role, but negative if labour representation tends to result in higher wages and lower profits.

In the French case, there is evidence of a negative impact of being a union official, but no real impact of being an elected employee representative (except if he or she is also a union member). Indeed, as in Table 6.6, non-unionized elected representatives are very close to the average of all employees in relation to past promotion or expected risk of losing their job, whereas the situation of union officials appears very distinct, with lower promotion (experienced or expected), higher perceived job insecurity and lower job satisfaction.

These data point to potential discrimination against unionized employee representatives and trade union officials in the French labour market. Although they benefit from specific protection against lay-offs, and although discrimination because of union membership violates the principle of freedom of association, the number of cases related to trade union discrimination in the courts has increased and several studies confirm the existence of diverse forms of discrimination.

A survey conducted by the Défenseur des Droits and the ILO in 2019 (Défenseur des Droits 2019), shows that the problem of discrimination is even wider, and concerns union members in general. Nearly half of union members declare they have experienced some discrimination because of their membership. Discrimination includes the absence of promotion or wage rises, or a decline in working conditions. Declared discrimination seems more frequent in the private than in the public sector. It grows with workers' degree of involvement in union activities, and seems especially important for trade union delegates.

According to the same survey, one-third of the active population thinks that the fear of a wage or career penalty is the first reason workers do not get involved in union activities, and 42 per cent believe that union membership represents a risk of employment or career progression.

Table 6.6 Perceptions of individual employment situation according to union membership and mandate, France, 2019 (%)

	Elected staff representatives – not union members	Elected staff representatives – union members	Trade union officials	All employees
Has been promoted during the past three years	27.5	22.4	15.1	26.5
High or very high risk of losing job in the next 12 months	12.9	19.0	21.9	12.3
High or very high chance of being promoted or getting a wage increase the next 12 months	13.2	8.7	8.6	13.0
Satisfied with work in general	79.9	68.8	60.2	77.2

Source: REPONSE 2017, DARES, Pignoni (2019).

Research studies have also investigated this issue, using data for 2004 and 2010 (Bourdieu and Breda 2016). They confirm the existence of a wage penalty for union members and for trade union officials. The wage penalty amounts to 3–4 per cent on average for union members, in comparison to non-members of the same age, gender and education level, and rises up to 10 per cent for trade union delegates directly engaged in collective bargaining at the firm level. According to Bourdieu and Breda (2016), such a penalty for trade union officials is a consequence of their specific situation in the firm: their role is to bargain on wages, employment and working conditions, therefore on the distribution of profits, which is very different from other employee representatives, who are engaged in general discussions about the firm's economic and social situation. They find evidence that the wage penalty does not apply to trade union officials who are not engaged in bargaining, and increases above 10 per cent when there is a situation of conflict or a strike at the firm. Therefore, discrimination against trade union officials seems to be an example of strategic discrimination on the part of employers.

Discrimination against union members and officials is likely to reduce unions' attractiveness and therefore their capacity to act autonomously to address important issues, whether traditional (such as wages) or emerging, such as new forms of work or the impact of digitalization on working conditions.

4.3 Perceptions of Social Partners and Social Dialogue

Confidence in the social partners and in the institutions of social dialogue matters for the capacity to deal with new issues. Although care must be taken with subjective indicators, there is evidence that French workers' perceptions of the social partners are mixed.

According to the 2017 REPONSE survey (Pignoni 2019), between 30 and 40 per cent of employees have a positive view of trade unions, such as 'trade unions are necessary for employee representation' and 'trade unions provide services to employees', but 32 per cent also agree with the idea that 'trade unions first serve their own interests' and 18 per cent that 'trade unions may be an obstacle to smooth enterprise functioning'.

Opinion surveys (such as BVA 2018 or Harris Interactive 2018) confirm limited confidence in trade unions, although interviewees acknowledge their historical role. Indeed, in the BVA survey only 49 per cent of workers declared confidence in unions when it comes to defending their interests. That proportion is higher among women (53 per cent), young people (59 per cent) and public sector employees (54 per cent). However, 78 per cent of employees consider that unions have contributed to social progress, and 73 per cent that high unionization rates, as in the Nordic countries, improve social dialogue.

The situation of employers' organizations in workers' perceptions seems worse: in the Harris Interactive survey, only 29 per cent of employees declared they have a good or rather good opinion of employers' organizations (compared with 45 per cent for trade unions). They are generally associated with words such as profit and market liberalism, although only 7 per cent of employees declare that they understand their role very well (and 38 per cent well). Looking at the future, only a minority of employees would like the social partners to have a bigger role: 18 per cent for employers' organizations and 36 per cent for trade unions.

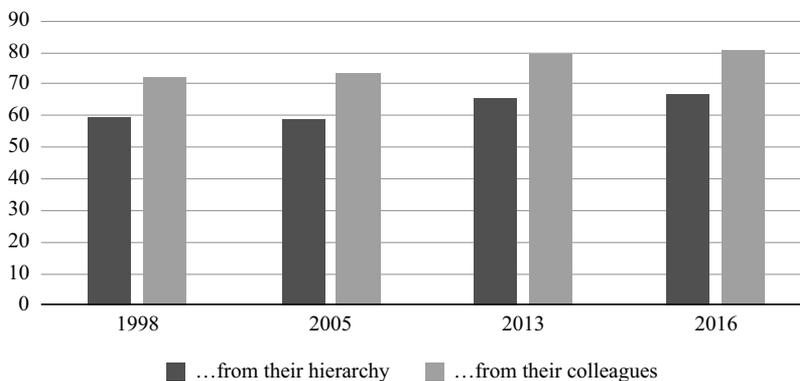
The low level of confidence in the social partners may be partly related to a lack of knowledge about their role (apart from their contribution to the general political debate,

which is conflictual in France), but it may also be related to a more general lack of confidence in the intermediary organizations of social and political democracy: confidence in political parties is only a third as high as confidence in trade unions, according to the Ipsos CEVIPOF (2018) ‘Social dialogue barometer’ (10 per cent confidence for political parties as against 35 per cent for trade unions). By contrast, French employees express high levels of confidence in their direct colleagues (80 per cent), in small and medium-sized firms (79 per cent), but also in social security (69 per cent) and employment tribunals (68 per cent). This may seem a paradox as the social partners are directly involved in the administration of these two institutions.

These results more generally are related to adverse perceptions of the quality of dialogue between employers and employees and social relations at the workplace. International surveys provide evidence that perceptions in France are particularly bad in comparison with other developed countries. France seems to be the country with the lowest quality relationships between employers and employees (Ferracci and Guyot 2015). According to the latest European Working Conditions Survey (2015),¹⁹ the level of fairness, cooperation and trust perceived by French employees is one of the lowest in Europe.

However, other surveys that include some more objective questions about the work context provide a more optimistic view. For instance, according to the French working conditions surveys, more than 80 per cent of employees declare that they can get some help from their colleagues (always or almost always) and 66 per cent that they can get some help from their managers hierarchy (Figure 6.3). However, the trend over time (since 1998) is positive for all indicators and all groups. In the same vein, according to the same survey, 78 per cent agree that their direct superiors pay attention to what they say, and two-thirds of employees consider that they also care about their health (Beque et al. 2019).

Therefore, everyday social relationships at work might be better than general indicators of trust or confidence tend to show. As far as the social partners are concerned, there is a clear need for better information about their role at the firm level, and the discrimination issue must be addressed as it represents a barrier to trade union participation.



Source: Dares-Drees-DGAFP-Insee, enquêtes Conditions de travail, Beque et al. (2019).

Figure 6.3 Proportion of employees who can get support for difficult tasks ...

5. FUTURE OF SOCIAL DIALOGUE IN A NEW ECONOMIC AND SOCIAL CONTEXT: DEBATES AND PERSPECTIVES

In the public debate and in our interviews, three main topics have emerged for the future of social dialogue. The first issue concerns how to strengthen the social partners and reinforce their legitimacy and autonomy in a new context of social dialogue in which the enterprise level has become more important. The second concerns the levels of social dialogue, especially the role of the national or sectoral level in the new context. The third issue relates to the heterogeneity and coverage of small firms, or new forms of work.

5.1 Increasing Membership through the Development of New Services?

Existing proposals in the French debate have focused on two main directions (see Ferracci and Guyot 2015 for a synthesis). The first is to raise union membership either by obligation, or by incentive mechanisms. Obligation is not part of the French tradition and would be contrary to the Constitution. Incentive mechanisms include measures such as the *chèque syndical* (trade union voucher), which would provide every employee with a voucher they can use to pay for their union membership. Incentives can also come from the development of new union services for their members. The second direction for reform is more indirect, and assumes that there is a link between the outcomes of collective bargaining and participation. According to this view, the participation of French employees is low because they know that the main outcomes on the French labour market result from legislation or from mechanisms controlled by the government (such as extension), not from social dialogue. One solution could be to link union membership and coverage by collective agreements or by unemployment insurance more directly, as is the case in some other countries. However, this solution runs counter to the French legal system. Also, the minimum wage, wage levels and trends are largely influenced by the government, and margins for adaptation at sector and firm levels are limited. This perspective would lead to the recommendation of more labour market deregulation as a way to promote autonomy of collective bargaining.

According to our interviews, trade unions do not share these views and do not wish to see a radical change in the institutions and functioning of collective bargaining. They are convinced that the social partners have a more general role to play, and contribute to general social interest. However, the low membership and the low participation of younger workers are matters of worry for unions as they compromise their autonomy and legitimacy, and urge them to develop new forms of support and services for their members. All interviews confirm this will to develop new forms of support for their members, especially through digital services and online communities, as well as attempts to reach new publics, such as digital platform workers. As these workers are generally far from traditional unions and do not work in a given location, this requires specific tools: an important goal is to achieve a work community, as mentioned by one interviewee. Developing new services (such as health insurance or holidays and leisure activities) also appears an option to maintain or develop unionization for employees (especially in small firms), as well as for platform workers. Services can also be directly related to job search or career: trade unions may also offer help in writing a résumé or preparing for an

important interview, or with some career guidance. Finally, all trade unions and employers' organizations have developed practical guides to help their members adapt to new rules at the firm level, for instance, in the implementation of the PSE.

5.2 Revitalizing the National Level to Deal with Important Topics in the New World of Work?

Recent reforms have given more importance to company-level collective bargaining. However, the French system of collective bargaining remains a multi-level system. The national level has functioned less well over recent years. In addition to the criticisms of government attitudes, both employers' organizations and trade unions consider it important to maintain the national level of bargaining. The employers also perceive this as a way of avoiding unfair competition between sectors. Some have suggested that the social partners should focus on specific topics to work on and bring to the fore in the public debate. Topics mentioned in the interviews included digitalization and the right to disconnect, new forms of employment, labour contracts, quality of working life, and the status of managers. One trade union also proposed the creation of a specific institution for inter-sectoral social dialogue, which would also include participation of associations and non-governmental organizations (NGOs), and therefore contribute to social democracy. That institution would itself choose the topics for dialogue, but could also react to demands from government. The social partners are also unanimous about the importance of the sectoral level and the need to maintain extension mechanisms, with some debate about the interpretation of sectoral competences (see case study in section 6). Finally, one trade union also stressed the importance of the local level for social dialogue and the need to elucidate rules for representativeness at that level.

5.3 Small Firms and New Forms of Work Need More Attention

The reforms have generally failed to develop social dialogue in small firms, and there are strong doubts about the effectiveness of the ordinances in achieving this goal. The use of referendums by employers will probably remain limited, as this would generally lead to a deterioration of the social climate, which is not what small businesses are looking for. However, it is very difficult for employees to engage in discussions and bargaining as they are not protected or trained for that purpose. The solution of employees mandated by unions seems interesting, but it has never been developed. In this context, solutions are not straightforward and the institutionalization of social dialogue in small firms does not seem likely. However, employees still need to be protected (which calls for maintaining extension at the sectoral level) and could be interested in services provided by trade unions (while employers could be interested in services offered by employers' organizations).

In relation to new forms of work (especially platform work), employers' organizations are generally in favour of some regulation to avoid competition with more traditional firms. Trade unions have taken the needs of these new publics on board and have started to develop specific services (see case study in section 7).

6. CASE STUDY 1: EXTENSION OF COLLECTIVE AGREEMENTS – A PROCESS UNDER PRESSURE DESPITE SOCIAL PARTNER SUPPORT?

Administrative extension plays an important role in the French industrial relations system, and contributes to the very high level of coverage by collective agreements (almost 100 per cent) and to wage dynamics (together with the legal minimum wage). Sectors are responsible for setting the level of minimum wages, that is, minimum wages for different occupational levels in the sector. Although the recent reforms have maintained the extension process, it seems to have been under pressure since the 2017 Labour Ordinances, which created an expert commission to provide advice on extension in some cases and, more generally, changed the competences of the sector. In this case study, we present the process and its outcomes, focusing on the recent debates and tensions around it. The case study is based on administrative reports on collective bargaining, providing information on extension and comments by social partners, and on interviews (see Box 6.1).

6.1 A Process Involving the Social Partners

Although the Ministry of Labour takes the final decision on extension, it is the result of a process that directly involves the social partners.

Extension is, first, conditional on the validity of the sectoral agreement, which must be signed by one or several trade unions representing at least 30 per cent of votes in the first round of employee elections. There is also a right for trade unions or employers' organizations to oppose extension.²⁰

The process is as follows:

- One or more trade unions that signed the collective agreement must ask for its extension.
- The corresponding agreement is examined by the administration to check its validity and legality.
- The National Committee for Collective Bargaining (Comité National de la Négociation Collective, CNNC, which includes social partner and administration representatives) is consulted and gives advice on extension.
- The Ministry of Labour extends (or not) the agreement and publishes it.

In addition to the issue of legality, the Ministry of Labour can refuse extension if it is contrary to the general interest or to the goals of the labour market and social policy. For the same reasons, it can also extend the agreement partially, with some exclusions. For instance, the Ministry of Labour refused to extend a 2006 agreement that enabled employers in some service activities to force employees to retire before the age of 65. This would have contradicted the general goals of employment policy and the desire of the government to increase employment rates among older workers.

In practice, there are two different procedures for extension: the standard procedure and the accelerated procedure for minimum wage agreements. Despite some variations, depending on sectoral bargaining (partly related to legal obligations), the number of

Table 6.7 Number of extended sectoral agreements per year, France, 2009–18

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Accelerated procedure	432	359	472	482	407	401	266	376	406	406
Standard procedure	644	636	598	579	441	498	543	524	481	645
Total	1076	995	1070	1061	848	899	809	900	887	1051

Source: DGT (2019).

extended agreements in 2018 was very close to its level in 2009, at around 1000 per year (Table 6.7). In 2018, 77 agreements were extended, with some exclusions (74 in 2017).

Although extension is almost general in the different sectors of the economy, a limited share of agreements (5 per cent) are not extended since the trade unions do not instigate it. Between 2014 and 2016, these cases belonged mainly to sectors in which coverage by employers' organizations is high, with generally bigger firms with better employment conditions. The sectors in which extension has an important impact (that is, those in which employer organization membership is low) include small firms, mostly in the service sector, employing more young people and women, and with less favourable employment conditions (Langevin 2018).

6.2 Debates around Extension and Recent Tensions

In the academic literature,²¹ as well as in social partners' discourse²² extension is recognized as a way of equalizing workers' employment conditions, but also of harmonizing the conditions of competition between firms in a given sector. It also enables firms that have limited means to devote to social dialogue (especially smaller firms) to benefit from interesting tools developed at the sectoral level. Nevertheless, extension may also create unfair competition if the employers signing the agreements do not take into account the situation of firms that are not affiliated to employers' organizations or if some particular firm categories (for instance, larger firms) have more bargaining power.

In this context, to avoid potential harm, France was subject to several recommendations by the OECD in 2017. These recommendations included: the introduction of more restrictive criteria for the validity of sectoral agreements, including conditions of the representativeness of employers' organizations; the creation of an independent expert committee that would evaluate the economic and social effects of extensions; the differentiation of collective agreements in accordance with firm characteristics to better adapt to the specific conditions of small firms, or to some regional characteristics; and opening up possibilities for opting out, even for firms belonging to organizations that signed the agreement. In the French debate, some mainstream labour economists have recommended going further and ceasing the extension procedure, which they consider has a negative impact on employment.²³ The option retained by the government was closer to that of the OECD, and the 2017 Labour Ordinances actually introduced obligations for sectoral agreements to include specific clauses for small firms, and created a new expert committee in charge of extension. The committee can be consulted at the request of the social partners or of the Ministry of Labour. Another critique by social partners is that

Table 6.8 Average time spent by the Ministry of Labour examining extension cases, France, 2011–18 (number of days)

	2011	2012	2013	2014	2015	2016	2017	2018
Wage agreements	59	81	73	90	106	69	86	179
Other agreements	165	184	180	152	158	153	166	201
Global	107	130	122	116	138	107	122	190

Source: DGT (2019).

the time taken by the Ministry of Labour to examine extensions rose by more than 50 per cent between 2017 and 2018 (Table 6.8).

What have been the consequences of these new rules for extension? At the time of writing, it is too early to provide a proper evaluation of this reform, but recent trends raise two important issues.

First, there is significant uncertainty around the new expert committee. Its broad composition²⁴ shows a will to achieve a balance between the principle of competition and workers' protection, but several trade unions have questioned the intentions of the government and see the committee as a way of reducing the extension rate (especially the CGT and the FO²⁵), or at least to slow down the process. Also, the government's choice to nominate an economist who has signed several texts asking for the end of sectoral extension has been perceived as a provocation by some trade unions, or as a sign that the government wants to weaken extension. The committee has been working on two main issues: the definition of potential criteria of extension, in respect of hierarchical wage agreements, and a practical case concerning the sector of cash transportation.

Second, the Labour Ordinances of 2017 have direct and indirect consequences on extension. They laid down that sectoral agreements should include clauses for small firms, which the administration has to check. Also, the Labour Ministry also needs to elucidate the competences of the sector, especially in respect of wages. According to the new architecture of social dialogue, hierarchical wages are defined at the sectoral level, but premiums and bonuses belong to firm-level bargaining. As a consequence, although the case of flexible bonuses is clear, there is some ambiguity concerning some fixed premiums that in practice belong to workers' regular incomes. Recent decisions (spring 2019) by the Ministry of Labour to exclude some extension clauses concerning these premiums has been interpreted by trade unions and employers at the sectoral level as expressing a restrictive view of sectoral competences.²⁶

Another criticism of the social partners is that the time taken by the Ministry to examine extensions rose by more than 50 per cent between 2017 and 2018. The labour administration justifies this by the need to implement the reform and to adapt the criteria, whereas trade unions see only delays that they consider detrimental to workers' rights (DGT 2019²⁷).

7. CASE STUDY 2: SOCIAL DIALOGUE IN THE DIGITAL ECONOMY: INNOVATIVE AGREEMENTS AND PERSPECTIVES FOR PLATFORM WORKERS

Two main issues related to digitalization and its consequences for workers exist in the French debate: how to promote innovation in the use of digital technologies, and how to include platform workers and new forms of work in social dialogue and social protection?

7.1 The Right to Disconnect and Collective Bargaining on Using New Technologies

Digitalization has many consequences for the content of work and employment relationships. It creates new opportunities (such as the possibility to work from home, and new forms of collaboration), but it also raises concerns in relation to working hours and frontiers between working life and private/family life. In France, both social partners and the government have raised the topic and the law has established a number of principles. More precisely, the Labour Act 2016 introduced the right to disconnect (*droit à la déconnexion*) to protect leisure and vacation time and work–life balance. In practice, collective bargaining to define the implementation of this right within the firm is compulsory for all firms that have a trade union official. In the absence of an agreement, the employer has to enforce the right by defining a charter that includes regulation tools, as well as training in the use of digital tools. In this context, some interesting agreements have been signed in large companies.

Orange was one of the first companies to propose a comprehensive view of the consequences of digital transformation in a specific agreement, signed by three representative trade unions (*accord transformation numérique*, digital transformation agreement, 27 September 2016).²⁸ The general view promoted by the agreement is that the consequences of digital transformation for activities, competences and work vary by occupation and skill, and according to human resource policies. It includes both risks (inequalities arising in connection with digital technologies, poorer work–life balance and use of personal data) and opportunities (new management and working methods, including more collaborative methods, and new organization of working spaces). The tools developed to face these transformations include:

- training to provide digital skills to all (digital academy on computer and smart-phone), digital skills self-assessment tool and specific training for managers;
- recommendations to respect the right to disconnect and time outside working time (use of emails, with managers and executives setting an example);
- measures for individual data protection; and
- internal prospective studies – analysis of existing uses of digital technologies and risks associated with excessive use, and a ‘work lab’ to identify new practices in work organization and work practices.

Several other agreements are mentioned in the reports on collective bargaining. The Airbus agreement (signed on 17 October 2018) stresses that management needs to set an example and recommends that the distinction between working hours and leisure

time must be respected. The Saint-Gobain agreement (17 May 2018) provides for a satisfaction survey to identify the impact of digital tools on employees. The agreement at Alstom Transport (17 May 2018) lays down a right for workers to report problematic uses of digital tools to their superiors (N+2) or to human resources, and notes that they can contact an employee representative on these issues.

The Labour Ordinances of 2017 followed up on the consequences of digitalization for work by facilitating teleworking. According to the reformed Labour Code, teleworking can be introduced without changes in an employee's labour contract, either if they explicitly agree or through a collective agreement (or a charter elaborated by the employer in the absence of an agreement). In practice, this has become an important topic for company-level bargaining: many agreements define quotas of teleworking days, or specific situations in which teleworking can be proposed to workers or extended (disability, or temporary personal difficulties, such as the sickness of a relative) (DGT 2019).

7.2 The Representation of Platform Workers

Platform workers have increasingly come to the fore among the concerns of the social partners. Following a first initiative by UNSA in 2015 to affiliate non-salaried drivers, all the representative unions are now involved in organizing platform workers. The CFDT has launched a 'union' platform providing services such as accounting, civil and professional insurance, complementary health insurance and legal advice (for a fee amounting to 1 per cent of a self-employed person's turnover). Several union initiatives focus on minimum tariffs (Chagny 2019).

In addition to the initiatives taken by individual trade unions to cover platform workers, a debate has emerged on ways to develop social dialogue for them. That debate has taken innovative forms, based on a participatory network, including actors of the collaborative economy and the digital world, the cooperative world, trade unionists, researchers, experts and other public actors. This network, named 'sharers and workers',²⁹ was launched in 2017 and more than 700 stakeholders have participated in sharers and workers days since 2016 to reflect collectively on the future of work and social relations (Chagny 2019).

Representation of platform workers is a key issue for developing social dialogue, but it is also very difficult to implement. According to the sharers and workers network (Chagny et al. 2017), one solution would be to develop representation at the sectoral or territorial level (for instance, *département* level). Elections could be organized, with workers voting for an organization rather than for a person – and representative unions would then nominate their representatives at the sectoral or local level. On the employer side, the issue of representativity is more difficult to solve and must be discussed further.

Debates also focus on complementary health insurance for these workers. Given the heterogeneity of statuses and situations (part-time with another job, students, or full-time workers) some flexibility is needed in the supply of complementary health insurance. Trade unions can play a role in providing these services, and sectors may also propose some health vouchers for occasional workers. In a broader perspective, health insurance could be linked to a personal activity account, which should include all individual rights.

Finally, it is important to notice that the legal context is still evolving on the issue of platform workers' status: in March 2020 the Supreme Court (Cour de Cassation) took the view that the relationship between Uber and its drivers involved subordination and therefore corresponded to a labour contract, not a service relationship. This decision will give more power to drivers as well as to the unions representing them to bargain on status issues.

8. CONCLUSIONS

Social dialogue in France has evolved over the past ten years, to include more flexibility at the company level and to deal with new issues, including digitalization. Some interesting outcomes might be mentioned, such as the development of agreements dealing with the right to disconnect, or teleworking. There are interesting efforts to include and represent platform workers, even though nothing has been transposed into law yet. At the national level, inter-sectoral agreements and related laws have addressed the consequences of the diffusion of new forms of employment: regulation of part-time work and temporary contracts, redefinition of training rights (on a more individual basis), and unemployment insurance.

However, although the social partners have participated in this process, the state has taken the lead on many issues and the space for autonomous social dialogue has shrunk. The trend towards more decentralized collective bargaining creates a number of opportunities to develop new bargaining dynamics at the firm level, and has led to the development of some innovative company-level agreements. However, the reduction in the number of employee representatives, as well as the introduction of new possibilities to conclude agreements without unions (in small firms) does not help to reinforce the social partners at the company level. The extension process, which tends to be consensual among employer organizations and unions, remains a cornerstone of French industrial relations, leading to a very high coverage rate, although it seems to be coming under pressure, giving rise to some uncertainty for the future evolution of coverage. Finally, despite some common criticisms of successive governments and reforms, the trade unions still appear divided, which tends to reduce both their bargaining power and their attractiveness.

In this context of significant challenges for the French social partners, the issue of the attractiveness of trade unions to workers (and their acceptability to employers), as well as their public perception, would appear to be a key issue for the future. In that respect, it is imperative that trade unions and employers' organizations, at both national and local or company levels, address the new questions arising in a changing work environment (technological change and transitions, working conditions in a digital environment, and new forms of employment). To that end, they should further develop training for their members, expertise and cooperation with civil society. Also, based on this diagnosis, attractiveness could be enhanced and higher membership achieved by developing new concrete services for workers and employers.

ABBREVIATIONS

ACEMO:	Activité et Conditions d'Emploi de la Main d'Oeuvre
CE:	Comité d'Entreprise
CFDT:	Confédération Française Démocratique du Travail
CFE-CGC:	Confédération Française de l'encadrement – Confédération Générale des Cadres
CFTC:	Confédération Française des Travailleurs Chrétiens
CGPME:	Confédération Générale des Petites et Moyennes Entreprises
CGT:	Confédération Générale du Travail
CHSCT:	Comité d'Hygiène, de Sécurité et des Conditions de Travail
CPF:	Compte Personnel de Formation
CPME:	Confédération des Petites et Moyennes Entreprises
CSE:	Comité Social et Economique
FO:	Force Ouvrière
MEDEF:	Mouvement Des Entreprises de France
OPCA:	Organisme Paritaire Collecteur Agréé
OPCO:	Opérateur de Compétences
REPONSE:	Relations professionnelles et négociations d'entreprise
RP:	Représentants de Proximité
Solidaires:	Union syndicale Solidaires
U2P:	Union des entreprises de proximité
UNAPL:	Union Nationale de Professions Libérales
UNSA:	Union Nationale des Syndicats Autonomes
UPA:	Union Professionnelle Artisanale

NOTES

1. For a synthetic presentation of institutions see Gazier and Petit (2019).
2. A list of abbreviations is provided at the end of the chapter.
3. CPME specializes in small and medium-sized businesses, and U2P in craft and small retail businesses.
4. See Table 6.3.
5. The figure is based on a working conditions survey and on the French module of EU-SILC. However, there has been some debate about this estimation, as it does not seem consistent with other sources (in particular, members registered by the unions themselves) and might overestimate the unionization rate. See Andolfatto and Labbé (2019).
6. All the figures in this paragraph are based on Pignoni (2016), and updated statistics published on the Ministry of Labour website (<https://dares.travail-emploi.gouv.fr/donnees/la-syndicalisation>, accessed 20 July 2021), using the French working conditions survey, in which there is a question about unions.
7. In firms with over 50 employees, the employer cannot oppose the appointment of trade union delegates.
8. The employer has been able to introduce this type of single institution in companies of 300 employees or more since 2015.
9. See Table 6.3.
10. Accord National Interprofessionnel sécurisation de l'emploi et des parcours professionnels, National Intersectoral Agreement on Employment Security and Careers, 11 January 2013.
11. Which should be realized in 2021.
12. See <https://www.strategie.gouv.fr/actualites/comite-devaluation-ordonnances-travail-reunion-pleniere-22-juin-2018> (accessed 20 July 2021).

13. Even if the ordinances set an equivalent number of hours (fewer representatives, but more hours for each representative). However, some large firms had extra hours (beyond that which was laid down in the law) and cut them.
14. A specific CSE commission will be devoted to these issues in bigger firms.
15. *Ruptures conventionnelles collectives* (conventional collective dismissals).
16. *Accords de performance collective* (collective performance agreements).
17. Relations professionnelles et négociations d'entreprise (Industrial relations and firm-level collective bargaining).
18. All figures in this paragraph and the next, unless another reference is provided, come from REPONSE 2017 (Pignoni 2019).
19. Accessed 20 July 2021 at <https://www.eurofound.europa.eu/data/european-working-conditions-survey>.
20. To exercise that right of opposition, the trade unions must represent at least 50 per cent of votes in staff elections at the sectoral level. Employers' organizations must also represent a majority of employers in the sector.
21. For a synthesis see Gazier and Petit (2019).
22. This was the case in the interviews conducted for the project, see section 3 in this chapter.
23. See <https://www.lesechos.fr/2017/06/halte-a-lextension-des-conventions-de-branche-174530> (20 July 2021), and Cahuc and Zylberberg (2017).
24. Five members comprising three economists (among them the Vice-President of the Competition Authority), one lawyer, one statistician member of the administration.
25. See their comments in the annual report on collective bargaining (DGT 2019).
26. Although it is formally in accordance to the law. Sources are interviews and Didry (2020).
27. See, for instance, the comments by the CGT. This was also mentioned by the members of trade unions interviewed for the project.
28. See also Jolly and Naboulet (2017).
29. See <https://www.sharersandworkers.net/> (accessed 20 July 2021).

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7. The German industrial relations system under pressure: Structure, trends and outcomes*

Ulrich Walwei, Lutz Bellmann and Christoph Bellmann

1. INTRODUCTION

Although the social partners in Germany disagree about many topics – earnings, working time and job protection, to mention just a few – they share the opinion that both cooperation between social partners and social dialogue have been a success story. On 15 November 1918 the Stinnes-Legien Agreement was signed by the representatives of 21 employers' associations and seven unions: working conditions were henceforth to be regulated by means of collective agreements, and workers' committees (as a precursor of works councils) were introduced. The Stinnes-Legien Agreement was a template for the German collective bargaining law (Tarifvertragsgesetz) enacted on 9 April 1949, earlier than the founding of the Federal Republic of Germany.

Despite this positive assessment Germany was later regarded as the 'sick man of Europe' (for example, by *The Economist* on 3 June 1999), and researchers such as Wolfgang Streeck (2009) have diagnosed an exhaustion of the institutions of the post-war German economy, an erosion or the demise of the German industrial relations system (Hassel 1999; Addison et al. 2016, 2017). Although there are more than semantic differences between 'exhaustion' and 'erosion' the diagnoses are based on the same view that the main components of the German industrial relations system – such as collective agreements at both the sectoral and the firm level, works councils, membership and density of trade unions and of employers' associations – have been weakening over the past 20–30 years (Oberfichtner and Schnabel 2017). Furthermore, Haipeter (2013) and Schroeder (2016) diagnose a fragmentation of a formerly more uniform industrial relations system.

In Germany these components of the industrial relations system influence not only issues such as earnings, working time and job protection, but have extended their influence over, for example, vocational training and social security systems to a much larger degree than in most other countries (Silvia 2013). To assess the functioning of the German industrial relations system, focusing on the interplay of the social partners, the government and the social security bodies, our study provides an overview of the current debate in Germany about (1) the weathering of a possible economic crisis on the labour market, (2) the development of non-standard forms of employment and (3) the search for new strategies in the area of structural change and digitalization. Our focus is on the

interplay of state-level regulations and the industrial relations system. Thus, both the government and the social partners aim to address these challenges.

Despite some notable differences, the economic debate in Germany recently shows similarities to the debate in 2008 before the Great Recession began. With regard to the strategies to combat the most severe consequences of the crisis for the labour market, employers' associations and unions agreed that conventional Keynesian deficit spending would need too much time to avoid mass layoffs if the decline in the demand for products and services is expected to be large and long-lasting.

An updated and adjusted regulation that enabled the German Federal Employment Agency (FEA) to pay short-time work allowances was the solution at hand during the Great Recession of 2008–09. The regulation on short-time working was temporarily amended to prolong the maximum duration of this work, to combine the allowance with further training and to incorporate temporary agency work. This adoption proved to be very effective in respect of the number of employees working short-time during 2008–09 and the number of jobs saved. Many firms are obliged to increase the amount of state-financed short-time work allowance paid on the basis of sectoral agreements.

However, short-time working was not the only factor that inhibited the rise of unemployment and the decline of employment. Other factors included government intervention to stabilize financial markets and activation measures, the use of within-firm flexibility, working-time accounts and, most importantly, the conclusion of company-level pacts for employment and competitiveness. Their origin can be traced back to the introduction of opening clauses or hardship clauses in sectoral collective agreements in the 1980s, which allow management and works councils to deviate consensually and with the permission of the employers' association and union in order to avoid the consequences of an imminent crisis. Therefore, often new and less corporatist forms of collective bargaining emerged in manufacturing and, but to a smaller extent, in the service sector.

Furthermore, the social partners have extended their bargaining about wages, working time and further training, for example, to negotiate measures to save jobs and increase company competitiveness. These company-level agreements were generalized on the sectoral level; for example, in many sectors the social partners concluded sectoral level agreements on further training.

Meeting the challenges of a recession is not the only motivation for social partners to seek new strategies in response to structural change. The increased necessity of flexible employment, work–life balance and the growth of the low-wage sector, as well as increasing digitalization are further reasons. The latter topic has recently gathered the most attention. Issues to be discussed in conjunction with the digitalization of products and services, the integration of work processes and associated changes in work organization include wages, employment, non-standard types of work, working time, mobile work, training and health. Social partners have already agreed on some strategies to deal with these issues on both the company and the sectoral levels. The respective legalization not only provides a background for these agreements but is updated on the initiative of both the government and the social partners.

The relationship between regulation at state level and collective agreements differs in the various fields: in the 1980s fixed-term contracts were facilitated by the federal government in line with EU regulations. The rise of temporary agency work was fostered by

the Hartz reforms in 2005, before collective agreements concerning payment issues were concluded. New legislation require equal payment of the temporary and core workforce. In a sector-level agreement this condition can be suspended.

In contrast, minimum wages were settled in sectoral collective agreements, starting in 1997, and generalized by the government. A generally binding minimum wage was introduced by the Federal government on 1 January 2015. Until 2017 it was possible to suspend the generally binding minimum wage if a collective agreement existed. The law on minimum pay for apprentices restores this.

The interplay of the social partners, the government and the FEA is influenced by the proportion of companies that are members of employers' associations and the proportion of employees belonging to a union. The crucial question arises of how the declining trend here can be stopped or even reversed. Unions are attempting to reach out and extend membership to various groups, such as young people, women and temporary employees. Employers' associations are trying to systematically organize additional firms and those opting not to be covered by sectoral agreements. Furthermore, both social partners agree that advantageous strategies should be developed to address the challenges of the new world of work, such as the realization of work–life balance and digitalization. These challenges would be met by the simple extension of collective agreements in core industries to the remaining, increasingly heterogeneous part of the German labour market.

This chapter is organized as follows. Section 2 provides an overview of the development of the major components of the German industrial relations system. Section 3 presents the driving forces behind the specific patterns in both productivity and employment development in Germany's very successful reaction to the Great Recession in 2008–09. Section 4 is devoted to changes in forms of employment and the particular role of the government, as well as social partners. In Section 5, the challenges of the structural change caused by digitalization are discussed, in particular recent initiatives by collective agreements as well as firm-level policies. Section 6 includes two case studies referring to digitalization focusing on training, as well as the issue of working from home. Section 7 concludes.

2. RECENT TRENDS IN GERMAN INDUSTRIAL RELATIONS

2.1 Union and Employers' Association Membership

In this section, we present empirical evidence on the development of union and employers' association membership, the incidence of collective agreements and works councils.

From the 1960s, in western Germany, union membership increased from less than 8 million to almost 10 million in the 1980s followed by a spike after reunification to 14 million, before declining again to below 8 million (Schnabel 2019). According to Schulten (2019a, 2019b) union density – the proportion of employees who are organized in a union – steadily declined from 29.2 per cent in 1995 to 16.7 in 2017. He notes that, surprisingly, against this background, according to Eurobarometer 2018, approximately 77 per cent of the German population has a positive opinion of unions. His international comparison shows that the proportion of employees organized in unions may be

determined by the generalization of collective agreements to economic sectors, firms and employees not covered by membership in employers' associations and/or unions, unemployment insurance systems run by unions and employer chambers. He mentions that the metalworkers' union (IG Metall) has increased the number of its members by systematically organizing additional firms. He argues that the government can foster sectoral collective agreements by giving firms some privileges. This claim is not only opposed by the employers' associations. From a legal perspective, a privilege may also contradict the freedom to form a coalition, which is part of the German constitution.

Membership data from employers' associations are available only for the employers' federation in the metal and electrical industries (Gesamtmetall). Membership has fallen from over 75 per cent in the 1970s and 1980s in western Germany to 60–70 per cent after reunification (Schnabel 2019). The fall has been much more pronounced in eastern Germany, where the proportion of firms represented by an employers' association has plummeted to around 20 per cent. A large proportion of the members of the metal employers' association opted not to be covered by sectoral agreements. This applies to more than 50 per cent of the firms, comprising 23 per cent of the employees (Schulten 2019a, 2019b). Using data from an online survey conducted on behalf of the Institute of the German Economy (Institut der Deutschen Wirtschaft, IW), in 2017, among 1546 firms in the metal and electrical industries, Schneider (2019) finds that 88 per cent of firms concluded a sectoral bargaining agreement owing to tradition and the obligation to refrain from strikes. In contrast, this motive is mentioned by only 35 per cent of firms concluding firm-level agreements. Firms with sectoral agreements are less often satisfied with wages for their employees performing basic tasks (32 per cent) and working-time regulations (34 per cent), compared with those with firm-level agreements. Smaller firms tend to leave collective agreements more often than larger firms do. Those leaving collective agreements point to high and inflexible growth of negotiated wages, as well as turnover-related problems.

2.2 Collective Agreements

Empirical evidence on the incidence of sectoral collective agreements is provided by the IAB Establishment Panel survey (Fischer et al. 2009; Ellguth et al. 2014). According to recent analyses by Ellguth and Kohaut (2019a) – see Figure 7.1 – the proportion of employees covered by sectoral agreements fell from 70 per cent (in 1996) to 49 per cent (in 2018) in western Germany, and from 48 per cent (in 1996) to 28 per cent (in 2018) in eastern Germany. The picture for the private sector looks even bleaker. The incidence fell from 56 per cent (in 1996) to 35 per cent (in 2018) in western Germany, and from 48 per cent (in 1996) to 28 per cent (in 2018) in eastern Germany. Analyses of the proportion of establishments covered by sectoral agreements reveal much lower values but the same trends.

Some observers argue that the generalization of collective agreements to economic sectors, firms and employees not covered owing to membership in employers' associations, as well as firm-level collective agreements, have counteracted the decline of the sectoral trend. This is not the reality. According to the data provided by the Federal Ministry of Social Affairs the number of sectoral agreements being generalized decreased from 632 in 1995 to 444 in 2016 (with some ups and downs in between).

Another argument is that firm-level collective agreements substitute for sectoral agreements. However, Table 7.1 reveals that, according to the IAB Establishment Panel survey,

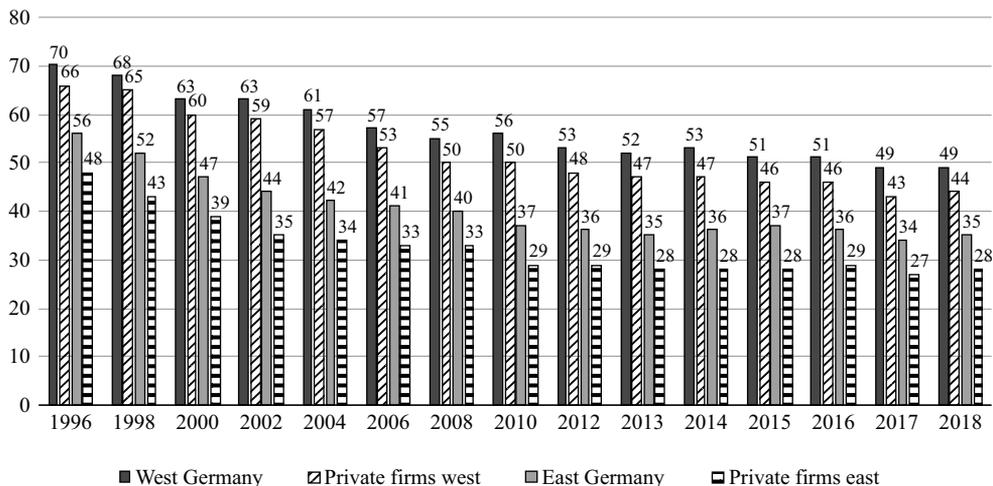


Figure 7.1 Sector-level collective agreements in Germany 1996–2018 (percentage of employees)

Table 7.1 Firm-level collective agreements, Germany, 1999–2018 (percentage of employees)

	Western Germany	Eastern Germany
1999	8	11
2001	8	12
2003	8	11
2005	8	11
2007	7	13
2009	9	13
2011	7	12
2013	8	12
2015	8	12
2017	8	11
2018	8	11

Source: Ellguth and Kohaut (2019a) based on weighted data from the IAB-Establishment Panel.

the proportion of employees covered by firm-level agreements has stagnated at around 8 per cent in western Germany and around 12 per cent in eastern Germany.

Table 7.2 demonstrates that the incidence of sectoral agreements differs according to size of establishment. Smaller establishments are less often bound to a sectoral agreement. Establishments with 50 employees or more are often covered by firm-level agreements. However, it is not only small and medium-sized establishments that often orientate themselves towards sectoral agreements. Interestingly, the differences between western and eastern Germany also persist among establishment size categories.

Table 7.2 *Collective agreements and establishment size, Germany, 2018 (percentage of establishments)*

Number of employees	Sectoral agreement		Firm-level agreement		No collective agreement at all			
	West	East	West	East	West	Orientation	East	Orientation
1–9	21	13	1	2	78	39	86	33
10–49	37	23	3	5	60	51	72	40
50–199	46	41	8	11	46	59	48	51
200–499	59	42	13	20	28	54	38	55
500+	67	54	13	22	20	53	24	48
Total	27	17	2	3	71	42	80	36

Source: Ellguth and Kohaut (2019a) based on weighted data from the IAB-Establishment Panel.

Note that the orientation of an establishment can have different meanings in practice. Oberfichtner and Schnabel (2017) show that orientation is as important in manufacturing as it is in the service sector, and it occurs in western Germany as often as in eastern Germany.

Works councils

Turning to the second pillar of the German industrial relations system, the works councils, Table 7.3 presents the development of the number of employees working in an establishment with a works council. The decline in western and eastern Germany has a similar magnitude, but at different levels. From the IAB Establishment Panel survey it can also be inferred that other plant-specific forms of employee representation, such as workforce spokespersons or round-tables, increased over time, particularly in eastern Germany and in manufacturing (Ertelt et al. 2017) (see Table 7.4).

2.3 Representation Gaps

To complete the analysis of the German industrial relations system, in Table 7.5 we present the interplay of binding collective agreements and the existence of works councils, as well as gaps in the representation of employees. Again the results are based on the IAB-Establishment Panel survey 2017. The proportion of employees in the core zone of the German industrial relations system, consisting of firms with both a works council and a sectoral agreement, amounts to 24 per cent in western Germany and 14 per cent in eastern Germany. Interestingly, in western German manufacturing this proportion is 41 per cent, but neither in the western German service sector (19 per cent) nor in the eastern German manufacturing sector (19 per cent) or the eastern German service sector (14 per cent) is such a figure reached. In contrast, 39 per cent of all employees in western Germany and 51 per cent of all employees in eastern Germany are employed in establishments without a collective agreement or a works council. Furthermore, 20 per cent of all employees in western Germany and 14 per cent in eastern Germany are employed in an establishment bound to a sectoral collective agreement but where no works council

Table 7.3 Works councils by firm size, Germany, 1993–2017 (percentage of employees)

	1–50 employees		51–500 employees		501 or more employees		Total	
	West	East	West	East	West	East	West	East
1993	12	–	74	–	95	–	51	–
1996	14	12	70	65	95	92	51	43
1998	12	11	69	63	95	93	50	40
2000	14	14	67	63	97	88	50	41
2001	13	14	68	63	97	90	50	41
2002	12	13	69	65	96	90	50	42
2003	11	12	67	64	94	89	48	40
2004	12	11	65	63	96	89	47	40
2005	12	12	64	61	92	90	47	40
2006	10	11	64	58	92	90	46	39
2007	10	12	63	58	92	89	46	39
2008	10	11	60	57	93	88	45	37
2009	10	13	61	55	92	91	45	38
2010	10	11	62	57	93	95	45	37
2011	10	11	61	57	92	92	44	36
2012	10	11	61	55	88	88	43	36
2013	9	10	59	53	91	90	43	35
2014	8	10	58	51	91	92	43	33
2015	9	9	56	52	89	87	42	33
2016	8	11	56	52	88	95	43	34
2017	9	11	53	48	85	90	40	33

Source: Ellguth (2018) based on weighted data from the IAB-Establishment Panel.

Table 7.4 Works councils and other forms of worker representation, Germany, 2004–15 (percentage of establishments covered, manufacturing and service sectors)

	Works councils		Other forms of worker representation	
	2004	2015	2004	2015
Germany	10.9	10.6	11.3	12.9
Western Germany	11.0	10.9	12.7	13.7
Eastern Germany	10.0	9.2	4.5	9.3
Manufacturing	9.2	9.2	9.5	12.5
Services	11.4	11.0	12.0	13.0
5–19 employees	4.6	4.6	9.9	11.6
20–99 employees	26.5	21.5	17.4	17.1
100–499 employees	69.3	62.0	12.3	15.8
500+ employees	92.6	87.6	12.7	17.5

Source: Ellguth and Kohaut (2019a) based on weighted data from the IAB-Establishment Panel.

exists. That means the institution responsible for monitoring the implementation of sectoral collective agreements is missing. Thus, Oberfichtner and Schnabel (2017) suggest that the German model currently resembles a Swiss cheese: solid from outside, but with many holes inside. The solid impression from the outside is based on, in 2017, 61 per cent of employees in western Germany and 49 per cent in eastern Germany still being represented by either a works council and/or a collective agreement. The proportion of employees covered by both collective bargaining and works councils has decreased substantially since the beginning of the 1990s in the private sector but not in the public sector.

Multivariate analyses by Oberfichtner and Schnabel (2017) reveal that establishments with both binding collective agreements and works councils are less likely in establishments managed by the owner, in single and foreign-owned establishments, in individually owned firms or partnerships, and in exporting establishments. Larger and older establishments exhibit higher coverage rates. Using a decomposition technique, Ellguth and Kohaut (2019b) demonstrate that the declining trend is owing to the increasing

Table 7.5 Collective agreements and works councils, Germany, 2017 (percentage of employees)

	Western Germany			Eastern Germany		
	Private	Manufacturing	Services	Private	Manufacturing	Services
Works council and sectoral collective agreement	24	41	19	14	19	14
Works council and firm-level collective agreement	7	12	5	8	11	9
Works council only	9	13	8	11	19	11
Sectoral collective agreement only	20	8	25	14	4	17
Firm-level collective agreement only	1	1	2	2	1	2
Neither collective agreement nor works council	39	26	42	51	46	46
Total	100	100	100	100	100	100
Employees in establishments with sectoral collective agreement	44	48	44	29	23	31
Employees in establishments with works council	40	66	31	33	49	35

Note: Only establishments with five or more employees.

Source: Ellguth (2018), based on weighted data from the IAB Establishment Panel.

importance of small and medium-sized establishments in the service sector. The falling rates of membership in unions and employers' associations also contribute to erosion (Hassel 1999; Addison et al. 2017). Furthermore, it is argued that a fall in efficiency can be observed owing to higher adjustment costs in times of social and economic change. The main argument is that works councils and collective bargaining match needs less than in earlier times (Streeck 2009). Employers' associations also note the increasing heterogeneity of firms, and argue that collective agreements are too complex and do not fit the specific needs of specific economic sectors.

3. SOCIAL PARTNERSHIP DURING THE GREAT RECESSION

3.1 Reasons for Germany's Job Miracle

The role of policies and institutions in Germany in mitigating the labour market effects of the 2008–09 financial and economic crisis can be studied by looking at the three largest European economies: France, Germany and the United Kingdom. Askenazy et al. (2016) reveal the role of hoarding skilled employees and the dramatic educational amelioration of the workforce, combined with labour market reforms and policy reactions to the recession. In addition, favourable circumstances, for example that the demand shock affected mainly the manufacturing sector, coupled with the ephemerality of the crisis, contributed to the specific circumstances of the German case (Möller 2010a, 2010b; Bellmann and Gerner 2011; Bellmann et al. 2012c; Ellguth et al. 2013; Bellmann et al. 2016b). Thus, compared with other European Union (EU) countries, Germany dealt surprisingly well with the severe decline in its gross domestic product (GDP) in 2008–09: while its growth rate fell by nearly 6 per cent (Eurostat 2014), the employment reaction was comparably mild. This helped to maintain and, even, increase private consumption after the crisis. Paul Krugman (2009) termed this phenomenon 'Germany's jobs miracle'. Furthermore, given the stable employment and low unemployment, GDP sprang back relatively quickly after the crisis. We assume that the German industrial relations system can be regarded as a decisive factor in relation to both output and employment: short-time work regulations, company-level pacts for employment and competitiveness, as well as working-time accounts had a significant impact. In addition, labour market reforms, such as the Hartz reforms, and favourable pre-crisis conditions contributed, although research has not yet reached a definite conclusion (Chih-Mei 2018).

Table 7.6 presents the reasons for Germany's favourable employment during and after the Great Recession (Möller 2010b). The growing scarcity of skilled workers, bailout packages and wage moderation can also be regarded as important.

The fall in GDP experienced in 2008–09 was driven mainly by the decline in exports of the automotive, chemical and machine engineering industries to Asia, the United States and the rest of Europe, while domestic services remained mostly unaffected. For the manufacturing sector, GDP fell by 18 per cent in 2009 (Rinne and Zimmermann 2013). Specific institutional settings in this sector were mentioned by Möller (2010a). The manufacturing sector belongs to the core zone of the German industrial relations system. In addition, highly productive and innovative exporting manufacturers were able to take

Table 7.6 Reasons for Germany's jobs miracle

Favourable conditions and high competitiveness of firms prior to the crisis:
– Wage and employment moderation before the crisis
– Pre-crisis upswing owing to labour market reforms (Hartz IV reforms)
– (Perceived) scarcity of skilled workers
– Competitive manufacturing sector was mainly affected
Government intervention:
– Bailout packages
Cooperation of firms, social partners, works councils and individual employees, making it possible to take advantage of internal company flexibility:
– Short-time working
– Working-time accounts
– Pacts for employment and competitiveness

Source: Bellmann et al. (2016b).

advantage of the rising demand from abroad before the crisis. After the crisis, Germany's exports immediately reached an all-time record in 2011 (Dustmann et al. 2014).

Using data from the Institute for Economic Research (Ifo)-Business Climate Index (Ifo-Geschäftsklimaindex), Bellmann et al. (2016b) demonstrate that business expectations plummeted towards the end of 2008, but quickly recovered at the beginning of 2009. Furthermore, German firms also saw the markets that suffered the aforementioned decline in exports as promising in future. Therefore, these firms strategically hoarded labour and even recruited skilled personnel (Klinger et al. 2011; Bellmann and Hübler 2014). Future labour supply shortages owing to demographic change are also regarded as one of the main future challenges for the German labour market (Caliendo and Hogenacker 2012). This is also relevant to the moderate job losses identified by, for example, Wolter et al. (2015) and Vogler-Ludwig et al. (2016) in conjunction with computerization and automation.

The *Economist's* view that Germany was the 'sick man of Europe' was justified owing to the high and increasing level of unemployment since the first oil crisis in the mid-1970s, the high financial burden owing to German reunification and an underdeveloped service sector (Walwei 2014a). In 2002, the government appointed an independent expert commission, led by Peter Hartz, then the personnel director of the VW group, to work out a blueprint for labour market reform. This included staff service agencies (Personal-Service-Agenturen), the tightening of conditions for job acceptance, the introduction of training vouchers, the deregulation of marginal jobs (mini- and midi-jobs) as well as temporary work agencies and an additional start-up subsidy (Ich-AG) and addressed changes in the organizational structure of the FEA.

The Hartz IV reforms are generally seen as the most controversial issue. They replaced the former unemployment benefits and social assistance with a single means-tested replacement scheme for needy unemployed jobseekers and their households, on a flat rate basis comparable with former social assistance. A more drastic change was the cutting of the maximum duration of benefit entitlement to 12 months for people aged under 58 years of age. For older unemployed the threshold was higher and changed thereafter.

Thus, for newly unemployed people the transfer level decreased, the incentive to find a job increased and the tax burden and social security contributions were reduced.

Even though the causal effects were questioned by some researchers, after the implementation of the Hartz IV reforms the unemployment rate decreased considerably. This development was not associated with rising wages, so the labour costs decreased because of the mentioned recovery in the productivity (Burda and Hunt 2011). Wage moderation occurred because the labour market reforms made employees more willing to accept lower-paid jobs (Caliendo and Hogenacker 2012). Thus, relatively low labour costs created favourable pre-crisis conditions.

After the bankruptcy of Lehman Brothers, the German Federal government intervened with a bailout package to stabilize the financial markets (Rettungspakt zur Stabilisierung der Finanzmärkte) aimed at preventing collapse of the economy by steadying the German banking system. This was supplemented by several schemes introduced to activate the German economy (Rinne and Zimmermann 2011). A well-known example was the scrappage (Abwrackprämie) programme, a government-subsidized allowance for car owners buying new cars in exchange for their old ones, compensating for the temporary lack of demand in the automotive industry, which was one of the three sectors hardest hit by the Great Recession.

International comparative analyses reveal the strictness of German employment legislation. Therefore, social partners, works councils, firms and individuals cooperated to exploit within-firm flexibilities to allow firms to hoard labour during the crisis. These flexibilities included short-time working, working-time accounts and company-level pacts for employment and profit-sharing (Bellmann et al. 2016b).

3.2 Short-time Working

Cyclical short-time working (*konjunkturelle Kurzarbeit*) was often used to overcome the significant unavoidable shortage of work with a good chance of returning to a normal workload (Bellmann et al. 2012b, 2016b; Brenke et al. 2013; Kroll and Schneider 2019). Short-time working compensation can be awarded to all employees covered by the social security system with a loss of 10 per cent or more of gross monthly income. The income loss is first compensated by the establishment, which recompenses 60–67 per cent of net income paid before the implementation of the short-time working scheme. After reducing working time, the establishment is then reimbursed by the FEA. In addition, most sector- and firm-level collective agreements contain provisions allowing firms to reduce working hours by as much as 20 per cent in order to avoid loss of employment (Bosch 2009) and, often, short-time allowances paid by the FEA are supplemented by allowances firms are obliged to pay on the basis of sectoral agreements. Either the employer or the works council is obliged to report the estimated shortage of work to the local employment agency and to prove the mentioned conditions of eligibility. The employers typically have to pay social security contributions for the number of working hours lost owing to work sharing.

During the Great Recession, however, temporary modifications applied, for example in training on the job. During labour shortages, the FEA covers as much as 100 per cent, under specific conditions. These generous offers contributed to the success of the programme. However, the social partners agree that it was difficult for the firm to organize

training courses. Therefore, they suggest that these opportunities can be used faster and could be prepared better. Unions criticize the higher work intensity. Employers' associations point out that often the combination of short-time working and further training was not easy to implement, because of the short duration of such working and the partial reduction of the workload.

Furthermore, in order to provide companies with planning security, short-time working compensation eligibility was extended to a maximum of 24 months in January 2009, but was again reduced after the crisis, to 12 months. Short-time working began to rise in the third quarter and reached its peak in June 2009, with more than 63 000 affected establishments and 1.4 million affected employees, resulting in overall costs for the FEA and the Federal government of €5 billion for the fiscal year of 2009 (Bellmann et al. 2012b). Short-time working helped with labour hoarding (Dietz et al. 2010) and avoided unemployment (Boeri and Bruecker 2011). Finally, it is worth noting that the existence of a works council not only eases firms' administrative burden in relation to reporting (expected) work losses, but avoids individual agreements with every single employee participating in short-time work, because employers do not have the right unilaterally to announce short-time work allowances.

Before firms apply for short-time working, they first have to use other options to reduce the number of employees, for example, by laying off employees with fixed-term contracts, temporary employees and depletion of overtime hours on working-time accounts. Although the proportion of establishments with working-time accounts increased significantly before the crisis, using the IAB-Establishment Panel survey, Bellmann and Gerner (2011) could not find evidence that establishments with working-time accounts made smaller employment adjustments.

In summary, the government considers the use of short-time working during the financial crisis as a success in order to compensate the temporary weakness in demand for products. However, regarding future structural change, for example, owing to digitalization or environmental protection, other programmes, such as further training for the unemployed as well as the employed, are required. Also, owing to a lack of appropriate programmes, the government has adopted the Qualification Opportunities Act (*Qualifizierungschancengesetz*) in order to facilitate more training within companies. In addition, labour market programmes addressing the unemployed currently focus increasingly on further training leading to professional certificates. Therefore, recent changes in the programme are not intended to reduce unemployment caused by financial and economic problems owing to potential impacts of digitalization.

3.3 Employment and Competitiveness Pacts

As collective bargaining arrangements became more flexible in Germany from the 1980s to allow management and works councils to deviate consensually and with the permission of the employers' association and union from sectoral agreements, company-level employment and competitiveness pacts could already be observed before the Great Recession. Thereby, social partners extended their bargaining on wages, working time and further training to include, for example, measures to save jobs and boost competitiveness (Bellmann et al. 2008, 2016b; Ellguth and Kohaut 2008; Bellmann 2014). Although research based on the 2009 Works Council Survey of the Economic and Social Research

Institute (Wirtschafts- und Sozialwissenschaftliches Institut, WSI) revealed that the establishments did not meet the negotiated pledges (Bogedan et al. 2011), an investigation for 2008–09 using the IAB Establishment Panel data demonstrated that the promises to secure jobs were kept (Bellmann and Gerner 2012a, 2012b). Social partners at the firm- and sectoral levels have to disclose business data during these negotiations.

Multivariate analyses showed the selectivity of the conclusion of company-level employment pacts among large establishments suffering poor profits and embedded in the German industrial relations system. Further investigations have demonstrated labour hoarding and positive employment effects in comparison to establishments in a similar situation but without a company-level pact for employment (Bellmann and Gerner 2012a). Therefore, the social partners are currently optimistic that firm-level agreements are useful for meeting the challenges of structural change in general and digitalization in particular.

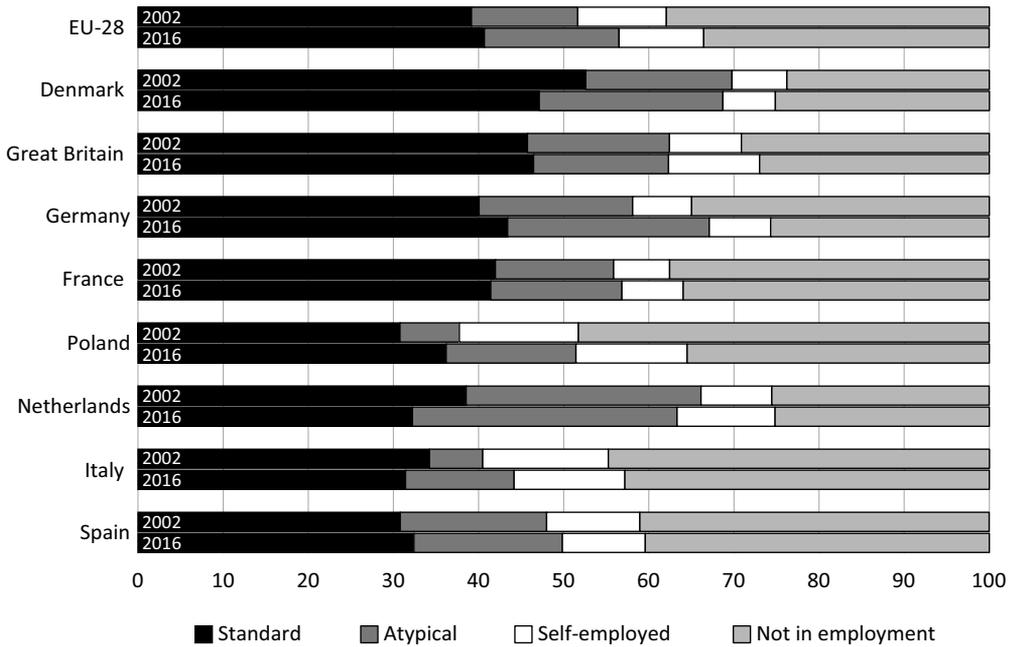
4. NON-STANDARD TYPES OF WORK

4.1 Definitions and Recent Development

Atypical forms of employment (or non-standard types of work) are one of the most controversial issues in the German public debate on labour market issues. There are few fields in which deregulating or re-regulating initiatives can be found more often. Employer organizations and trade unions assess the prevalence and development of employment forms very differently. Employer organizations regard non-standard work arrangements as an indispensable part of employment and labour market flexibility, and generally oppose far-reaching initiatives to restrict atypical employment. By contrast, trade unions demand re-regulating and restricting the use of non-standard work arrangements or at least equal treatment of non-standard and standard work as far as possible.

Two types of work arrangement need to be distinguished: standard and non-standard (Mückenberger 1985, 2010; Osterman 2000; Houseman and Osawa 2003). Standard work is usually considered to be working full-time in a permanent job. It offers broad access to social security and implies a clear assignment to an employer. Therefore, deviations from standard employment, such as fixed-term contracts or part-time employment, are classified as non-standard. Empirical findings show that, compared with standard workers, non-standard workers are, on average, at greater risk of losing their jobs, being in the low-wage sector and being excluded from (also fringe) benefits and firm-based training (Autor 2001; Jahn and Pozzoli 2011; Kalleberg 2011).

However, the classification has its limits. Some examples illustrate this. In particular periods, such as while in education or family work, part-time employment might be of particular interest for individuals since it offers them an opportunity to reconcile different activities (such as gainful work and family work) in a convenient manner. Furthermore, in particular circumstances, fixed-term contracts or temporary agency work can facilitate entry to the labour market and serve as a stepping stone to more stable employment (Boockmann and Hagen 2005; Jahn and Rosholm 2014). Therefore, non-standard employment should not generally be considered precarious work. Of particular importance in this context is whether a potentially precarious work arrangement is an occasional or a regular occurrence.



Notes:

Self-employed includes assisting family members.

* Type of employment is based on the main occupation.

Source: Authors' calculations based on the EU Labor Force Survey (Scientific Use File). © IAB.

Figure 7.2 Population aged 15–64 by labour force participation and type of employment,* Germany, 2002 and 2016

Figure 7.2 shows the prevalence of standard and atypical employment in the EU for the total population aged 15 to 64 years (Rhein and Walwei 2018). Regarding the whole of EU, the share of standard work did not change very much between 2002 and 2016, remaining close to 40 per cent. In addition, the data indicate an increase in atypical (dependent) employment by more than three percentage points in the EU since 2002. This increase has not been at the expense of standard work, but at the expense of persons currently not employed (unemployed plus inactive). A similar development might be notable for Germany, where shares of standard work and atypical work increased between 2002 and 2016. However, Figure 7.2 illustrates that in Germany the growth of atypical employment was stronger compared with the growth of standard work in that period. By contrast, in Denmark, the Netherlands and Italy, the share of atypical employment grew considerably, while the share of standard work decreased.

Specific forms of employment are used in companies to different degrees and are not equally distributed among workers. While the use of temporary agency work is above average in manufacturing, fixed-term contracts and all variants of part-time employment are disproportionately identifiable in the service sector. Part-time employment is a domain of female and older workers, and of people who have to reconcile education and

employment (Wanger 2015). By contrast, younger workers can be found more often in fixed-term contracts and temporary agency work. Workers in temporary jobs were more frequently jobless, job entrants or job returners before entering employment. Workers with no formal qualification are prevalent in all types of non-standard employment. Academics frequently start their career with a fixed-term contract. However, eventually, most will switch to an open-ended contract (Sperber and Walwei 2017).

The reasons for changes in the composition of work arrangements over time are manifold. Shift-share analyses suggest that trends towards more employment in services or a higher female labour force participation rate were not the main driver (Walwei 2014b). Changes within particular industries or demographic groups were of greater impact. This suggests that a mix of factors played a decisive role in the long-term trend. The mix not only consists of changes in firms' personnel policies, focusing more on flexibility, but also of changed preferences and workers' needs. Owing to their relative market power the parties involved may have different options in different segments of the labour market. In addition, institutions might have an impact in this context. It is important to note that Germany's regulations create noticeable incentives for the use of non-standard work arrangements. These incentives relate to employers' comparatively high social security contributions, the strict employment protection legislation, the strong activation of the unemployed since the implementation of the great labour market reforms between 2003 and 2005, and regulations favouring the male breadwinner model, for example, regarding the joint assessment of spouses within the system of German income tax.

4.2 State Regulations

Labour law concerning non-standard work since the mid-1980s has been characterized by deregulation for long periods. This trend went on at least for two decades and culminated in the labour market reforms from 2003 to 2005. Since then a tendency towards re-regulation noticeable. There is an interesting coincidence in this respect: whereas the deregulation until 2005 took place during a period of ongoing and increasing labour market problems, the re-regulation picked up speed when the labour market began to recover from 2005 onwards.

The strongest deregulation dynamics in the two decades from 1985 to 2005 were found in those non-standard working arrangements, which made it easier to circumvent dismissal protection. Whereas deregulation started with fixed-term contracts, the focus later shifted more to temporary agency work and marginal part-time employment (mini-jobs). Of the utmost importance for the legislation on fixed-term contracts was the Employment Promotion Act (*Beschäftigungsförderungsgesetz*), which in 1985 for the first time permitted fixed-term employment contracts without an objective reason for a duration of up to 18 months. In 1996, the maximum duration for fixed-term employment contracts without an objective reason was extended to 24 months. In 2001, the Employment Promotion Act was superseded by the Act on Part-Time and Fixed-Term Employment (*Teilzeit- und Befristungsgesetz*) with the aim of avoiding the use of consecutive fixed-term contracts without an objective reason when it was possible to do so. Since then it has been possible to extend a fixed-term contract without an objective reason up to three times within the maximum permissible duration. Also, a ban has been introduced on concluding fixed-term contracts with individuals who were previously employed by the firm.

The use of temporary agency workers by firms was also made steadily easier between 1985 and 2005, first by gradually raising the maximum assignment duration for an agency worker, from six to nine months in 1994, then to 12 months in 1997 and, finally, to 24 months in 2002. From January 2004, temporary work saw fundamental changes in connection with the Hartz reforms. Previous regulations, such as the extensive restrictions on the use of fixed-term contracts in temporary agency work, the bans on synchronizing the assignment of agency workers with their employment contract and on rehiring former agency workers and the restriction of temporary work assignments to two years, were revoked. At the same time, the equal status of agency workers and core workers was generally laid down in law, in favour of agency workers. However, scope was created for collective agreements to arrange divergent regulations, for example, concerning wage setting (Antoni and Jahn 2009).

The area of application of marginal part-time employment (mini-jobs) was also extended during the two decades up to 2005. This type of employment is tax-free for employees, although employers are obliged to pay flat rates for insurance and taxes. In 1996, the monthly wage limit was first raised from 390 DM to 590 DM. Although the limit was raised again in 1999 to 630 DM (later, €325), the previous exemption of second jobs from tax and social security contributions was cancelled. Since the implementation of the Hartz reforms in 2003, it has once again become irrelevant for fiscal and social law whether a mini-job is a person's main job or a second job. Furthermore, the reforms increased the monthly wage threshold level from €325 to €400. The previous restriction of weekly working hours to 15 was dropped without replacement. In addition, a midi-job zone first up to €800 (now, up to €1300) was introduced. Although midi-jobs are fully subject to income tax, the employees concerned pay lower social security contributions.

Following the labour market reforms, regulations on non-standard work were initially stable. For some years, however, a trend reversal has been noticeable. The most significant adjustments pertain to regulations on temporary (agency) work. There have also been slight changes in part-time employment. In addition, the current government has far-reaching plans to restrict fixed-term contracts (Hohendanner 2018).

The most important changes in the regulation of non-standard work arrangements since 2005 concern temporary agency work. Aspects that must be emphasized here include the ban on companies setting up their own agency and hiring out these agency workers within their own group of companies (*Konzernleihe*) in 2011 and the introduction of a sector-specific minimum wage in the same year. In 2012, collective agreements in the chemical industry and the metal and electrical industry for the first time allowed graduated wage supplements. The levels of these payments depend on the duration of the agency worker's assignment and are aimed at equal pay. A new regulation in place since April 2017 involves two even more far-reaching changes. First, when agency workers are hired out, collective agreements can no longer stipulate deviations from equal pay for an indefinite period. In general, nine months after the start of their assignment temporary agency workers must be put on an equal footing with other employees in the user firm. Second, the maximum duration of an agency worker's assignment has been restricted to 18 months again. Nevertheless, collective agreements can include opening clauses to prolong the assignment period of agency workers.

New regulations have come into force on contract work. The justification of illegal forms of contract work (pseudo-contract work) by retrospectively claiming that it was temporary agency work has been abolished. Works councils have obtained more rights with regard to collecting information on the number and working conditions of employees involved in contract work. Finally, the new regulations are also intended to increase legal certainty on the boundary between dependent employment and self-employment.

Other changes regarding non-standard work refer to part-time employment. In 2013, the level of the monthly wage threshold for marginal part-time employment (mini-jobs) was raised to €450. Since January 2019, part-time workers have been entitled to return to full-time work. This regulation refers to workers employed in companies with more than 45 employees. In addition, the government intends to significantly restrict fixed-term contracts. The current coalition agreement stipulates that the maximum period of fixed-term contracts without an objective reason should be restricted to 18 months, and no more than 2.5 per cent of the workforce of companies with more than 75 employees should be on fixed-term contracts without an objective reason.

Finally, the issue of equal treatment of workers in standard and non-standard forms of employment has to be addressed. Equal treatment was the guiding principle of the recent reform of temporary agency work in 2017. In Germany, dependent non-standard workers enjoy the same rights as dependent standard workers as far as labour law and basic social protection are concerned. A survey of non-standard forms of employment from 2014 confirms that compliance with the regulations is also observable in practice (Fischer et al. 2015). The results show that workers with part-time or fixed-term contracts do not report a lack of protection. However, this is not in general the case regarding marginal part-time employment (mini-jobs). The mentioned survey indicates that, for example, more than 40 per cent of workers with mini-jobs, according to their own statements, were excluded from paid sick leave and one-third from vacation leave. The main reason for the exclusions was a lack of information. The survey investigates that neither workers nor firms were fully aware that mini-jobs necessarily involve these types of protection. However, in addition, more adequate protection for marginal part-time workers can be achieved by strengthening compliance with the law and stronger enforcement of existing regulations, for example, by more frequent inspections.

4.3 Sectoral Bargaining

In general, sectoral bargaining aims at tailor-made solutions for particular industries. Therefore, the first question is, why do firms use the different forms of employment? Part-time employment allows more flexible use of personnel. In this way firms may also take into account specific preferences and needs of workers regarding working hours (Fischer et al. 2015). The main reasons for using temporary agency work are the rapid availability of workers and temporary demand for employment (Bellmann et al. 2012a). Fixed-term contracts are often utilized during periods of economic uncertainty, as well as to meet temporary demand (Fischer et al. 2015).

Sectoral bargaining covers atypical employment in only a rudimentary fashion. One possible reason for this is that non-standard workers are not well represented by trade unions. According to surveys, their rate of unionization is only half that of standard workers (Schlese 2015). Therefore, it is more difficult to pursue their interests properly. In

addition, concessions for non-standard workers are difficult to achieve because they may come at the expense of more unionized standard workers. Furthermore, it is much easier to organize the interests of more homogeneous groups, such as workers with standard contracts. Employer organizations are under little pressure to react on such demands as they are aware that atypical workers are not organized. Since the adoption of the Hartz reforms, trade unions have therefore concentrated on political lobbying. The main recent issues include temporary forms of employment and contract work (Keller 2018).

As regards temporary employment, the few provisions in collective agreements are often based on opening clauses, which are implemented in law. With regard to fixed-term contracts without an objective reason, collective agreements can potentially allow for more renewals and longer individual contracts than under labour law. The use of temporary agency work can be facilitated by collective wage agreements and longer assignment periods. For example, the current collective agreement in the metal industry allows an assignment period of temporary agency work of up to four years, which is much longer than the current legal obligation of 18 months. Benassi (2016, p. 618) argues in this context that ‘the collective agreements signed by the DGB unions for the agency sector set very low standards but made agency workers politically acceptable, making negotiations for works councils even more difficult’.

In contrast to fixed-term contracts or temporary agency work, part-time employment has been addressed more often in collective agreements and over a number of years. The WSI-Tarifarchiv (an archive of collective agreements) shows that almost one-third of all documented collective agreements include explicit regulations on part-time work (Bispinck 2016; Seifert 2019). They deal with entitlements, minimum working hours, maximum working days and transitions from part-time to full-time employment (and vice versa). Employees can request part-time working. However, employers can refuse if special circumstances preclude practical implementation; for example, if part-time working is not compatible with operating procedures. Some collective agreements mention that, if an individual has caring responsibilities, firms are generally obliged to allow part-time working (for example, in industries such as iron and steel or printing). Collective agreements may also include regulations on minimum daily working hours as well as a maximum number of working days a week. Both regulations aim at preventing very low daily hours (for example, in chemical, metal, retail and banking jobs). Other collective agreements aim to increase opportunities for part-time workers who are interested in working more hours or even full-time. If full-time jobs are available in a company, part-time workers should be preferred candidates (for example, in the public sector) or at least need to be specifically informed about available vacancies (for example, in banks, metals and chemicals industries).

4.4 Firm-level Policies

Firm-level policies on work-related issues must necessarily be even more specific than sectoral bargaining. They deal with the particular interests of a certain company and its employees. The contents of firm-level agreements arranged between management and the works council indicate the kind of issues generally dealt with. Figure 7.3 shows that non-standard work is not often the subject of firm-level agreements in firms with works councils. Slightly more than a quarter of firm-level arrangements in 2017 dealt with

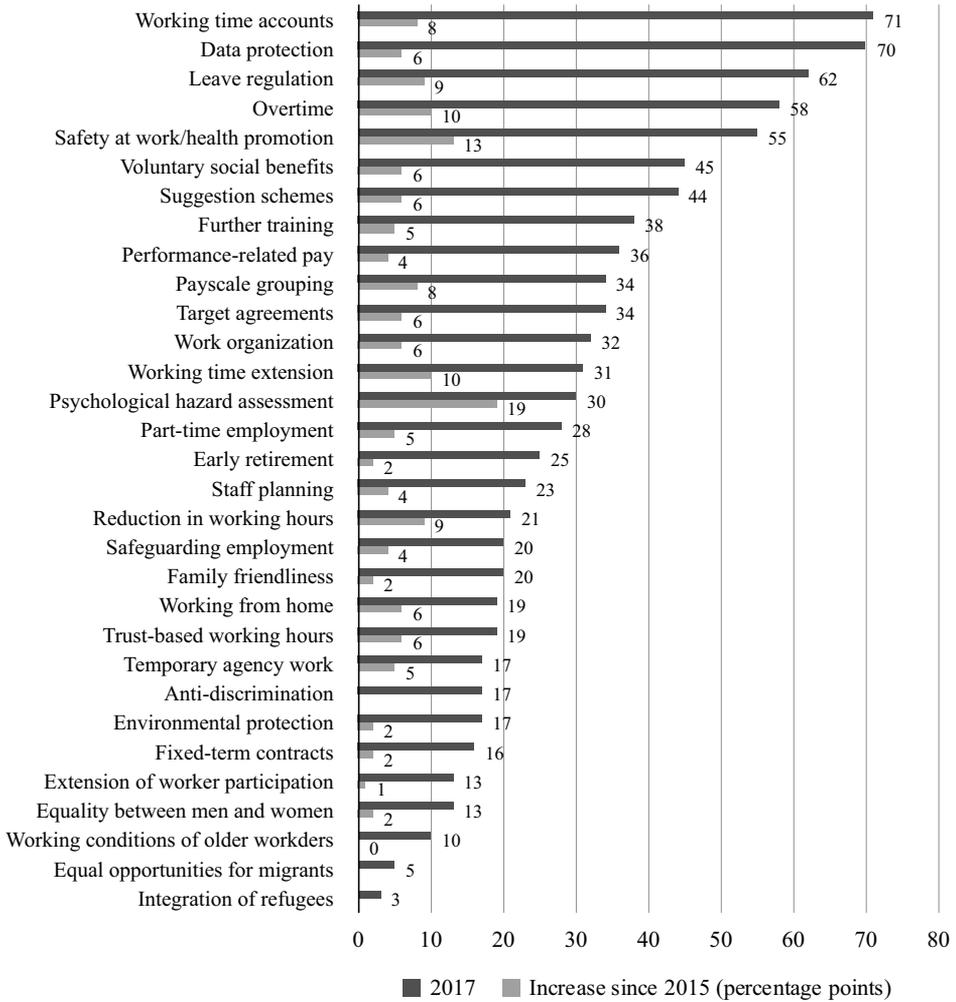


Figure 7.3 Topics of firm-level agreements, 2015 and 2017

part-time employment (28 per cent) and one-sixth of them included provisions on either temporary agency work (17 per cent) or fixed-term contracts (16 per cent). Compared with 2015 the corresponding shares went up: part-time employment by 5 per cent, fixed-term contracts by 2 per cent and temporary agency work by 2 per cent. One reason for the low incidence of non-standard work regulations in firm-level agreements might be that workers in atypical employment are not only less unionized but also underrepresented in works councils (Baumann and Brehmer 2016).

In the recent past, labour market research has investigated several relationships between the existence of works councils and the distribution of employment forms. There are findings that indicate that works councils have the potential to restrict the use of fixed-term contracts and temporary agency work (Ellguth and Kohaut 2011).

Works councils are rare in temporary work agencies (Bellmann et al. 2009). Whereas part-time employment covered by social security can be found more often in firms with a works council, mini-jobs are underrepresented. One characteristic of marginal part-time employment is that it is used mainly in firms neither covered by collective agreements nor with a works council; that is, firms in the ‘white spaces of social dialogue’ (Eichhorst and Tobsch 2017, p. 68; Addison et al. 2019).

The general task of works councils is to monitor the implementation of work-related policies, as well as firms’ compliance with state regulation and collective bargaining. Temporary agency work and contract work have been the most important issues in recent years. However, there are major challenges for worker representatives in this respect. This is mainly because works councils face a dilemma. Although in general they oppose temporary agency work, they also (have to) accept it as part of the management’s strategy. Another problem here is that the short assignment periods of most temporary agency workers potentially prevent effective representation of their interests in user firms. Nevertheless, works councils have some options. For example, they can demand compliance regarding equal pay and equal treatment. Works councils also have the option of reaching agreement with management on how temporary agency workers are recruited. In recent years, contract work as well as bogus self-employment have drawn increasing attention. Both types of employment can be used to circumvent firm-level agreements and the codetermination rights of works councils. Currently, the union strategy is to raise works councils’ awareness of this matter. This is because the new law requires works councils to be informed regarding the number and working conditions of employees involved in contract work.

In conclusion, for non-standard types of work, state regulations are of the utmost importance. For various reasons, especially a low degree of unionized atypical workers and substantial disagreements in this respect between social partners, neither sectoral bargaining nor firm-level policies deal with non-standard work to a large extent. Instead, social partners focus mainly on lobbying and tend to take a pragmatic attitude. Assuming that non-standard forms of employment have always existed and will also exist in the foreseeable future, social dialogue at sectoral level, as well as at firm-level, could focus even more on labour market transitions from atypical employment to standard work (International Labour Office 2015). Social partners could particularly address this issue by closing the company training gap between standard and non-standard workers (Bellmann et al. 2013).

5. DIGITALIZATION

5.1 Development and Potential Impacts on the Labour Market

In developed countries, technological change is a constant phenomenon. In the post-war years, technological change was always an important issue of social dialogue. However, similar to the 1960s when automation took place, digitalization may also cause tremendous disruption and is expected to be a major challenge for the society as well as the social partners.

Digitalization is now one of the main drivers of technological change. One reason for this is the use of digital logic circuits, and its derived technologies, including the

computer, the smartphone and the Internet. Digital technologies affect the computerization of production, service delivery and, even, the private sphere. Brynjolfsson and McAfee (2011) have identified accelerating technological innovation in the area of digital technology, which is no longer confined to routine manufacturing tasks, but may spread to numerous other routine tasks, particularly in companies operating in banking and insurance. Advances in areas such as machine learning, artificial intelligence, mobile robotics and big data will further facilitate computerization of the economy (Frey and Osborne 2013). Connectivity is achieving completely new dimensions. Electronic devices and microprocessors not only connect people with each other, but also machines with workers and machines with other machines. Digital technologies are therefore having a wide range of impacts on employment and work.

A first issue is how far digital technologies may influence current job profiles. Previous studies suggest that it is important how far occupations are dominated by routine and repetitive tasks (Autor et al. 2003). Recent research for Germany has tried to calculate the potential for substitution by digital technologies (Dengler and Matthes 2018). This indicates how far digital technologies are already able to replace tasks still performed by workers. However, how far substitution really does take place largely depends on the diffusion of digital technologies and their particular profitability at firm level. The calculated potential for substitution suggests that, in contrast to despite previous waves of technological change, probably all skill levels will be affected. Nevertheless, the relative risk of potential automation is highest among low- and middle-skilled jobs. Substitution potential is by far the highest in production. In other segments, such as different types of service occupations, the potential for substitution is lower, but still significant. Dengler and Matthes (2018) calculate that about one-quarter of employment relationships covered by social security in 2016 were related to jobs in which 70 per cent of tasks might be substituted by computers in future.

Studies focusing only on the probability of computerization and automation affecting certain occupations have limitations. They concentrate only on possible job losses and neglect other impacts of technological change, such as reshaping existing jobs or, even, job creation through innovation and productivity gains. Macroeconomic scenarios take into account these compensatory impacts. Studies in Germany have not identified significant job losses (Wolter et al. 2015; Vogler-Ludwig et al. 2016). However, the results indicate increased turnover and considerable additional shifts between different segments of the labour market, such as industries, skills and occupations. A recent forecast commissioned by the German Ministry of Labour and Social Affairs (BMAS) shows that overall structural change, including impacts of digitalization, may lead to a situation in Germany in which the composition of employment will differ substantially from how it is today because more than 3 million jobs will either come into existence or disappear (Zika et al. 2019). Occupations in areas such as information technology or teaching, relying on creative skills, tend to become more important, whereas jobs in manufacturing (for example, machine- and facility-controlling and maintenance of machinery) or service administration involving a high level of routine non-manual tasks are more likely to shrink. In general, the already ongoing structural change towards a service and knowledge-based economy will be accelerated by digital technologies.

The emergence of digitalization may also influence work-related issues. Employers and employees may confront one another with new demands for flexibility. For workers,

digital technologies may offer new options for reconciling private life and employment. In a digital world, employers will be much more concerned with workers' availability. The main reason is that the Internet and its various applications remove spatial and systematic barriers to working. This means that digitalization may create a potential conflict of interests between the two sides of the market, particularly regarding distinctions between working time and leisure time.

Mobile work, especially from home, is of particular interest. This work is now based mainly on the latest information and communication technology (ICT). The availability of mobile work or working from home depends on the characteristics of the particular job. In jobs dominated by manual tasks and by a high frequency of face-to-face contacts, ICT-based mobile work will scarcely be feasible. In contrast, many other jobs will not require a permanent presence at the workplace. Recent evidence for Germany shows that new types of home-office working affect white-collar workers more than blue-collar workers, women more than men and management more than employees (Grunau et al. 2019). To date, however, there is no indication in Germany that ICT-based home-office working has increased rapidly. Workers report that working from home supports the reconciliation of employment and private life, but that it also may lead to a blurring of boundaries between leisure and working time.

Digital technologies may also alter work in another way. This is mainly owing to the assumption that the emergence of these new technologies tends to lower transaction costs and enables firms to substitute workers more easily. This reduces the opportunity costs of hierarchical organization and external flexibility. Smart platforms can be used either for internal allocation, outsourcing or virtual markets. The latter is known as online or platform work (crowd employment). Platforms enable single persons and firms to provide specific services or particular products (Green and Barnes 2013; Saxton et al. 2013). The principle behind crowd working is that people work on individual tasks for a certain customer in a way similar to a self-employed freelancer.

Examples of tasks often commissioned through crowd working are web content and software development, database building and cleaning, classifying web pages, transcribing scanned documents and audio clips, classifying and tagging images, reviewing documents, checking websites for specific content, validating search results, and designing logos and drafting slogans for the advertising industry. (Eurofound 2015, p. 107)

The examples suggest that platform work is heterogeneous and not suitable for all types of jobs, but at least for some tasks of any job (Kittur et al. 2013). The use of platforms can have many advantages for firms (Linnhoff-Popien et al. 2015). Potential contractors can be found relatively quickly via intelligent platforms, which make available a selection of contractors in respect of quality. This helps to reduce employment costs and tidy up organizational processes within companies. Nevertheless, it is still a new phenomenon. To date, the spread of platform work seems to have been comparatively slow, affecting less than 1 per cent of total employment in Germany (Bonin and Rinne 2017). The few surveys carried out in Germany indicate that platform work is, in most cases, carried out by individuals not as their sole source of income, but mainly as a side job (Leimeister et al. 2015; Serfling 2018). In addition, these surveys suggest that platform workers have a range of preferences: some of those interviewed would prefer standard employment, if available, but others favour the autonomy that this type of employment provides

(Leimeister et al. 2015). The autonomy of platform workers can be characterized as follows: they are free to decide at any time when, where and to what extent they want to work.

Digitalization is a new phenomenon in relation to regulation and (collective) agreements between firms and unions. To date, neither state-level regulations, sectoral bargaining, nor firm level policies have incorporated this issue to a substantial extent. There are various reasons for this observation. The debate on Industry 4.0 started only in 2013 and it took time to move the topic into the spotlight of public and political interest. Even now, the uncertainties about the speed of diffusion and concrete impacts of digitalization are substantial. Significant differences in these respects between industries, companies, groups of workers and regions can be expected and will require adequate solutions for the parties involved. Nevertheless, we can observe the first approaches in legislation and, in particular, at company level. Given significant changes in the economy, social partnership and social dialogue will be in high demand in the foreseeable future. The recent debate also shows that trade unions and employers have conflicting interests regarding regulatory issues. While unions intend to either maintain labour market protection (for example, regarding working hours) or, even, extend regulations (for example, concerning online work), employer organizations are demanding more up-to-date labour market regulation.

5.2 State Regulations

The spread of digital technologies has so far had a fairly limited impact on labour market regulations and programmes. Labour law has not reacted at all to the increased use of digital technologies and its possible employment implications. However, the current coalition agreement includes an opening clause for the Working Time Act (*Arbeitszeitgesetz*). This would allow social partners to put innovative and flexible working time models to the test. Based on this experimental clause, firm-level agreements may then be used to adapt work schedules to the needs of the parties. This could, for example, involve implementation of more flexible working hours.

Regarding working-time issues, there is controversy between employer organizations and trade unions. Employer organizations demand more flexible regulations, while maintaining the volume of labour, and oppose far-reaching legal demands (for example, in respect of life working-time accounts or working from home). They in particular criticize the rigid maximum length of the working day (10 hours, not including breaks) and propose instead a maximum of weekly working hours. They also criticize daily statutory rest periods (11 hours) as these may restrict the opportunities made available to them by modern communications. The trade unions, however, vigorously oppose these proposals. On the one hand, they argue that the current working-time regulations are already flexible and serve as a means to ensure workers' health and safety. They further argue in favour of more sector-specific solutions instead of general legal changes. On the other hand, they propose a right for workers to work from home, aiming to strengthen their self-determination. In addition, the metal union (IG Metall) argues that workers should have more choice as to their working hours, offering them more time sovereignty. The current government seeks to strengthen workers' rights, for example, by offering them more opportunities to reconcile gainful work with family or care work. The Minister for

Employment recently even proposed a right for employees to work from home. However, it is not clear whether this can be realized and in what circumstances.

In contrast to labour law, labour market programmes have already taken digitalization into account. A new initiative addresses possible changes in job requirements induced by the increased use of digital technologies. Since the beginning of 2019, the Qualification Opportunities Law (Qualifizierungschancengesetz) has improved employers' capacity to train their employees. The previous regulation, which was in place until 2018, restricted grants to small and medium-sized companies, on the one hand, and to low-skilled as well as older workers, on the other. The new regulation removes those restrictions. Now all companies and workers can, potentially, be given assistance. The funding includes grants for wages as well as for training costs. The grants are more generous for small companies, however. Successful participants receive a certificate. In firms with more than 2500 employees the employer and the works council have to agree on the existence of skill needs for these measures to be implemented. In recent political debate, the government and the trade unions have proposed extending the grant if a specific proportion of workers in a company are likely to be affected by structural change.

5.3 Tripartite Consultations and Discussions

An important part of government activities in the recent past have consisted of consultations with social partners and other organizations. Of the utmost importance in this respect was the development of the 'Weißbuch Arbeiten 4.0' ('White Book Work 4.0'). The German Ministry of Labour and Social Affairs first started with a Green Book addressing relevant questions in the context of digitalization and its implications for work (Bundesministerium für Arbeit und Soziales 2015). Already this part of the process involved the social partners to a large extent, but also various associations, companies and the academic community. The White Book process itself involves various elements. It consists of a broad public dialogue and an expert dialogue and initiated academic studies on the issue of digitalization and work. Part of the public dialogue were, for example, 175 rounds of discussion on digitalization all over the country. The centre of the expert dialogue was the establishment of a consultancy circle consisting of high-level and influential representatives from companies, works councils and academia. The main outcome of the White Book was that it formulates recommendations regarding particular areas of action in the field of the government, social dialogue and companies. Such recommendations cover various issues, such as the employability of workers, the management of working hours, working conditions in service industries, health and safety issues, employee data protection, worker participation, social protection of self-employed and challenges for the welfare state (Bundesministerium für Arbeit und Soziales 2016).

Since the beginning of the current legislative term in 2017, the German Ministry of Labour has continued to focus its activities on the implications of digitalization for work. It founded a completely new subdivision organized as an internal think tank aimed at identifying challenges and submitting proposals regarding digitalization. In addition, the Ministry of Labour set up a Council for the World of Work (Rat der Arbeitswelt) in 2020. It consists of high-level representatives from companies, works councils and academia. Some of these were proposed by the social partners. The council will particularly deal with drivers of the world of work, including digitalization, and focus on its potential

implications for companies. It plans to establish a digital platform offering current data indicating changes in the world of work. In addition, the council will produce yearly reports on selected and highly relevant topics on work-related issues. The main outcome of all of these consultation activities is that they had already sensitized the public, as well as decision-makers, regarding the potential impacts of digitalization on work.

5.4 Sectoral Bargaining

As in the area of state-level regulations, so too at sectoral level bargaining about labour market related issues, and digitalization is still in its infancy. There is a concern, particularly among the unions, that ongoing digitalization may endanger decent work. For both social partners there are opportunities and challenges. Some collective agreements have already addressed specific issues. For example, the insurance sector has implemented new regulations on further training in digital technologies. The metal and electrical industry (Metall- und Elektroindustrie) has included regulations on mobile work in their collective agreement.

Comprehensive examples include collective agreements from 2018 and 2019 drawn up by the employer organization of the chemical and pharmaceutical sector (Bundesarbeitgeberverband, BAVC) and the corresponding trade union (Industriegewerkschaft Bergbau, Chemie und Energie, IG BCE). They reached agreement on the 'Roadmap Work 4.0', within the framework of which they started negotiations on various topics in order to modernize working conditions in the industry. The topics include work volume, sovereignty of working time, mobile working and training programmes, as well as working-time models orientated towards employees' current life phase. They also introduced the 'Toolbox Work 4.0' to support individual firms in areas such as the flexible location of work and flexible working-time schedules, digital skills and data protection, as well as decent and healthy working conditions. The most recent agreement even includes a qualification offensive, addressing the impacts of digital change in the chemical industry.

The trade unions, particularly IG Metall, are striving for more protection of online workers. From the perspective of the unions, online workers are dependent contractors. They should not only be granted more rights to deal with platforms, but also social security (Weber 2018).

Experiences of the employees themselves, the employers and the social partners demonstrate that digitalization is also associated with further development of abilities and competences (Bellmann 2017). This assessment has led to a significant increase in the number of employees participating in firm-level training schemes, from 18 per cent in 2001 to 35 per cent in 2017. The number of establishments conducting these schemes has also risen, from 36 per cent in 2001 to 53 per cent in 2017 (Müller et al. 2018).

The transformation of firms, caused mainly by new products and processes, increases the importance of further training and requalification. In this respect, the social partners are focusing on different issues. The unions are calling for additional funding of these measures based on a qualification needs analysis. The employers' associations argue that the accent should be on small and medium-sized companies. They warn about possible deadweight effects. In addition, they propose that the government should focus on improving the general and vocational schooling system. Furthermore, employer

organizations are in favour of reforming short-time work allowances. Firms, not the state, should be responsible for managing the process of economic transformation. In cases of insolvency and economic difficulties state-financed measures are generally seen as necessary.

5.5 Firm-level Agreements

Most of the activities affected by work-related digitalization can be observed at firm level (Baumann et al. 2018). The topic is still not well established and firms' circumstances can differ a great deal. Maschke et al. (2018) analysed firm-level agreements and identified areas in which they address the labour-related consequences of new digital technologies. Typical areas of interest and activity include:

- increased codetermination regarding digital investment and innovations;
- restructuring, rationalization and employment pacts;
- web-based communication and its impact on work compression;
- new forms of work organization, such as swarm organization, lean concepts and agile work;
- work not bound by time or space;
- self-determined work and life; and
- qualification, training and lifelong learning.

Recently, a great deal of attention has been drawn by negotiations between the employer organization of mobility and transport services (Arbeitgeber- und Wirtschaftsverband der Mobilitäts- und Verkehrsdienstleister e.V., Agv MoVe) and the railroad and transport workers' union (Eisenbahn- und Verkehrsgewerkschaft, EVG). Both parties identified issues related to the future of work, particularly digitalization. This exchange led to a firm-level agreement between the railroad and transport worker union (EVG) and the major German Railway Company (Deutsche Bahn, DB) in December 2018. It has several elements. First, they have arranged model projects in order to test new personnel policies under digitalization. In addition, they described procedures of collaboration between the management and works councils to deal with the introduction of digital technologies, as well as changes in job profiles and work requirements. One important topic of the particular firm-level agreement is mobile work. It particularly strengthens self-determination. Three issues are important in this context: first, workers have a formal right to work from home if their job is suitable; second, working from home needs to be seen generally as regular paid work; and, third, working from home does not necessarily mean that workers need to be accessible at all times.

The following two case studies represent different industries and different firm sizes. They show in more detail the potential opportunities and challenges of digitalization and its work-related issues. The first case study covers a car producer (Audi AG), and refers to the issue of new skills and focuses on initial and further vocational training. The second focuses on the banking sector (PSD Bank) and presents a new firm-level agreement on mobile working from home.

The case study of Audi AG provides an example of the embeddedness of firm-level activities as regards qualifications, training and lifelong learning in the respective

legislation and social dialogue. The ecological and digital transformation is going to lead to job losses. An impressive medium-range strategic reorientation combines a job guarantee with massive investments in vocational training and education.

6. CASE STUDIES

6.1 Case Study Audi AG: ‘Digitalization and Vocational Training’

Industry background

The German car industry belongs to the core of the manufacturing industry. For many years the sector has been under pressure because of the ecological and digital transformation. The electrification and the powertrain in automobiles (e-mobility) poses considerable challenges to enterprises: projections forecast a negative impact on skilled workers, specialists and experts, albeit with a time delay (Mönning et al. 2018).

Recently, transformation costs, the fine imposed because of elevated levels of emissions and the reduced personnel because of e-mobility led to the announcement of job cuts by the larger automobile producers Audi and Daimler, as well as BMW’s intention to discontinue the employment of temporary agency workers.

Audi AG

The car producer is located in Germany and in other countries all over the world. The number of employees in Germany (worldwide) was 61 497 (91 477) in 2018. In recent weeks a cut was announced in the number of jobs by 9500 by 2025, but also the creation of 2000 jobs focused on electric mobility and other new technologies as part of a firm-level agreement which seeks to improve competitiveness by new investments.

Initial vocational training

The car producer and the social partners agree that initial vocational training can be regarded as the basis but that further training has gained in importance. Recently, training regulations were revised. The focus is now on ‘additional competences’ or competences with a clear professional reference. The social partners stress that these training regulations leave scope for variation and technical changes at the firm level.

The company has kept the number of apprentices very stable in recent times and set this as a target in firm-level agreements with the works council. Marketing measures have helped to fill apprenticeship vacancies. However, some apprenticeship places, which seem to be less attractive, were difficult to fill. ‘Additional competences’ have gained in importance, but compliance with the obligatory curriculum is still required. Social partners are involved in the process of drafting regulations for initial vocational education and training. Furthermore, the Chambers of Industry and Commerce are in charge of federal tasks in the fields of initial and further vocational education and training.

Increasing modern and innovative forms of digital learning enrich analogue forms and partially substitute them. Mobile learning (m-learn) is a project which offers learning units on a tablet. Apprentices could produce ‘learning nuggets’ by themselves and make them available to their colleagues. As needs assessments show, vocational training needs to meet the demands of both the firm and the employees.

The transformation of Audi AG is in line with its strategic reorientation. The strategic objectives are broken down into sub-goals. A comparison of required and actual competences is necessary during the development of competences for transformation. According to the strategy, at least five years can be guaranteed for appropriate qualifications within the transformation process. At the same time, more extensive qualification needs are released by a central committee with a focus on the strategic orientation. Recently, the company and the works councils concluded a firm-level agreement on jobs cuts in conjunction with a job guarantee until 2029. An extensive re-teaching programme is necessary for many employees. The transformation towards a digital mobility company will result in a shortage of certain skills. The company seeks to fill the vacant jobs by retraining employees currently working in the production of combustion engines. Both the company and the works council wish to address the topics of the future together with the existing, experienced workforce. In order to achieve this goal, forward-looking qualifications concepts in different areas such as e-mobility and software, and new models of cooperation are being developed. The right to obtain qualifications is explicitly fixed in the firm-level agreement signed by the company and the works council. If these agreements were not concluded, Audi AG would face difficulties finding adequately qualified personnel and the employees would not have access to a high-level initial training and education programme.

Further vocational training

The number of participants in further training courses has developed in line with the (increasing) number of employees. The further training budget has been increased by 25 per cent each year over the past five years in order to cope with transformation. This is causing a change from initial vocational training and education, as well as job enrichment towards requalification. In conjunction with this process, increasing more experienced employees are affected, whose jobs are likely to be enriched and/or changed by digitalization. Again, the social partners and the Chambers of Industry and Crafts are involved.

Audi's project 'Further Training 4.0' (2015–17) has created new standards for learning firms, digital contents, hardware and software requirements. Classroom and digital learning forms are combined as blended learning and pooled in a training ecosystem. Although there are differences with regard to the accessibility of different groups of employees, digital forms have advantages if it is intended to reach a large number of employees. The importance of skills advancement and personnel development is undiminished (with a variety of pathways and job opportunities, including master, technician or academic education). Technical skills and interdisciplinary skills are in demand. Further training measures usually consist of different modules. The relationship between these training contents has not changed, but they are more interconnected. The transformation of Audi AG into a digital car company has dramatically increased the needed skills, although it is worth noting that old skills are still required. Known trends from the related academic literature corroborate the experience of the company's representative: more digitalization, more demand for collaborative and self-regulated learning just in time and place.

The case study of Audi AG provides an example of the embeddedness of the firm-level activities in the area of qualification, training and lifelong learning into the respective

legislation and the social dialogue. The ecological and digital transformation is going to be associated with a loss of jobs. An impressive medium-range strategic reorientation combines a job guarantee with massive investments into vocational training and education.

6.2 Case Study PSD Bank Nürnberg: ‘Digitalization and Working from Home’

Industry background

In 2018, the banking sector consisted of roughly 1800 banks. Total assets of all banks amounted to €7.83 trillion. In all banks and credit institutions at central and local level, 530 400 people were regularly employed (excluding fund management). In addition, 19 500 apprentices were part of vocational training. During the past decade, the number of jobs in the banking sector went down significantly. In 2008, they still had 599 200 employees and 29 200 apprentices (Burkert 2019). Short-term as well as long-term projections suggest a further decline of employment in the financial sector (Bauer et al. 2019; Zika et al. 2019). However, there are hints that, owing to previous structural change, job cuts will probably slow down (Burkert 2019).

In recent years, the economic conditions for the banking sector have been difficult and the situation has not improved. The main reason for the difficult situation is the decline in interest margins. At the same time, banks are strongly affected by structural change. Business processes in the financial sector are undergoing digitalization. Banks offer increased self-service via cash points and online banking. Digitalization within the banking sector has major implications. First, the use of these technologies limits the need for branches. Against this background, it is no surprise that the number of branches has decreased in recent years. Second, the availability of digital technologies may make it possible to reduce routine tasks and to increase job requirements, while boosting demand for the corresponding qualifications. It can already be observed that the share of those with higher qualifications in the banking sector has increased over time (Burkert 2019). Third, digitalization may generate new types of work, such as working from home, in the banking sector. Fourth, the ongoing downward trend in employment, as well as foreseeable structural shifts within it, are a main challenge for social dialogue.

PSD Bank Nürnberg

PSD Bank Nürnberg is a cooperative bank and is located in a German metropolitan area. It consists of a large headquarter and few local branches. As a direct bank, they offer various services, such as loans, construction loans, money management, old-age provision and insurance. Services are offered in different ways, such as personal consultation, telephone help and video help lines. Recent developments indicate that the use of telephone helplines is decreasing. Although video helplines are provided, they are not frequently used. Still of great importance is personal counselling, especially for complex issues such as loans or financial investment. Construction loans or mortgages, in particular, are seen by customers as a once in a lifetime decision and therefore they prefer personal advice for them. PSD Bank Nürnberg is a member of an employer association, and binding collective agreements are in effect. It also has a works council.

Employment and working hours

Currently, PSD Bank Nürnberg has approximately 250 employees of whom around 5 per cent are apprentices. Almost two-thirds of the employees are women, nearly one-third are older than 50 years and around a quarter are working part-time. In contrast to the employment development of the industry as a whole, the bank's staff has increased in recent years. For the near future, PSD Bank Nürnberg expects no significant changes in the employment level. In the recent past the bank experienced recruitment problems in specific areas, such as clerical work, and expect ongoing difficulties filling vacancies in the future. Regarding their personnel requirements, the company is focused not only on formal skills, but also to a large extent on their employees' mind-sets. PSD Bank Nürnberg has a distinct value-orientation and expects its employees to share these values. In order to foster value-orientation, managers receive comprehensive support regarding executive functions and personnel management.

PSD Bank Nürnberg has established flexitime accounts. Working hours are recorded between 6:30 a.m. and 7:30 p.m. Opening hours are between 8.00 a.m. and 6.30 p.m. Although there is no longer a defined core time for employees, executives have to secure the operational readiness of customer-orientated units. In general, teams have autonomy in arranging individual working hour schedules, depending on their functions, and allowing for internal communication. In practice, there are differences between the working-time schedules of workers who regularly deal with clients and those of workers who are responsible for internal services, such as auditing, controlling, personnel and marketing. The flexitime account can accumulate up to 20 hours a month. These accumulated hours can be used for free time either by taking a day off or, even, some hours off. In specific circumstances, even paid overtime can be granted if the monthly balance on the account exceeds 20 hours, urgent work needs to be done and the works council has approved it. In order to satisfy workers' individual preferences, PSD Bank Nürnberg has more than 50 different part-time models in relation to the length and position of working hours during the working week. New, more general working-time models were also tested. Recently, after consultations with the works council a four-day week comprising 10 hours a day instead of the usual five-day-week comprising 8 hours a day was introduced in customer service. The experiment failed because work became much too dense for the affected employees. However, PSD Bank Nürnberg is still willing to test other working-time models which lead to a better compromise between the interests of workers and of corporate management.

Change of strategy towards work not bound by space

In order to increase employer branding in a tough labour market with increasing skill shortages it was a priority of PSD Bank Nürnberg to strengthen non-monetary aspects of their employer orientation. One element in this context is to offer more opportunities for employees to work from home. The opportunities have existed since 2016, but only on an individual basis. At the moment, the share of employees working from home is estimated at about 5 per cent. In general, the employees involved work regularly from home at least one day or several hours a week. To date, the majority of employees working from home have been non-executives. In most instances, PSD Bank Nürnberg's intention was to support the reconciliation of work and family life. In specific cases, also a

long commuting time combined with family responsibilities was an issue. Optimizing the limited office space was another reason to become more flexible regarding the location of work. This can easily be realized in the bank because offices are in general paperless. There are clear indications that creating more opportunities to work from home has contributed to a higher work volume in individual cases.

Corporate management and the works council recently concluded a firm-level agreement addressing the issue of working from home. The main aim of the agreement was to make working from home potentially accessible for all workers in the bank. However, it focuses on mobile work instead of telework. This is because telework implies various and, in part, expensive preconditions (for example, regarding the required workplace equipment at home). The specific nature of the regulation is that it is based on reciprocity. Both the team leader and the employee have to agree on mobile work. Individual job characteristics as well as mutual trust are important factors in deciding whether such an arrangement is feasible. Mobile working is now based on a written agreement. Employees can work up to two days from home, depending on individual circumstances. The arrangements do not have to specify days of the week. In theory, days may even vary weekly. As in the office, working time at home will be recorded through registration/deregistration at the individual personal computer. This secures the existing flexitime arrangement, which was a strong demand by the works council. Therefore, hours worked at home beyond the flexitime frame will not automatically be registered. As a first step in the introductory phase, managers and team leaders will be given instruction in how they can make use of the new option.

Expectations of corporate management

The management believes that mobile work has enormous potential. Specific groups of workers are likely to be particularly keen, such as executives, parents, employees who are involved in project work or employees with permanent or temporary health problems. They estimate that after an introductory phase, up to 35 per cent of employees may make use of the new opportunity. Probably, non-executives will still make up the majority of mobile workers and most will regularly work from home. The management also bears in mind that, for several reasons, not all employees might be interested in working from home. They are also aware that mobile work requires a high level of discipline. The management will seriously take into account the particular wishes of employees. Honesty and sincerity are seen as important principles. Nevertheless, the management intends to avoid objective inequalities. In general, the management expects that the availability of mobile work may have a positive impact on recruitment, workers' long-term loyalty and the development of employer branding. The management is also aware that competitors have comparable arrangements. Increasing competitiveness in the labour market may therefore be another future advantage of the new firm-level agreement. In general, the management sees this development as still in its infancy.

Viewpoint of the works council

The works council of PSD Bank Nürnberg also intensively discussed the firm-level agreement on working from home and finally approved it. It was important for them that flexitime arrangements for employees not working from home could remain in place and that possible alternatives, namely trust-based working time, were neither

proposed nor even introduced. Also from their point of view the advantages of the new firm-level agreement are striking: nobody should be forced to work from home and nobody should be generally excluded from this new option. In addition, it was important for the works council that the recording of working hours remain under the new regime.

Conclusion

The introduction of mobile work at PSD Bank Nürnberg can be regarded as a good example of how it is possible to use attractive opportunities created by digitalization. The agreement fulfils the idea of a fair and, at the same time, active social dialogue because the bank's works council was not only informed but also involved in developing the new arrangement. The innovative firm-level agreement relying on reciprocity further illustrates the pragmatic attitude to social dialogue in German companies. In this respect, it illustrates how both parties with potentially heterogeneous interests can achieve advantages in the new world of work.

7. CONCLUSIONS

In Germany, as in many other countries, the social partners are under pressure. Membership of trade unions and employers' associations has been declining since German reunification, so that they tend to represent a smaller fraction of employees and firms. Meaningful tripartite social dialogue is thus also endangered. Furthermore, the coverage rate in relation to the generalization of sectoral agreements, which is possible under certain conditions, has not compensated for the decline of sectoral agreements or firm-level collective arrangements. The gaps in employees' firm-level representation have become even wider owing to the higher proportion of employees who are also working in firms without a works council, an institution responsible for monitoring the implementation of sectoral collective agreements. This occurs especially in small and medium-sized companies and firms in the service sector. Currently, we are unable to show clear empirical evidence that firms' orientation towards sectoral agreements is doing much to mitigate the representation gaps.

Both the social partners and the government face considerable challenges. First, they need to cope with the consequences of the current economic recession and the associated weakening of the labour market. Unemployment, after falling for a number of years, is now stagnating and employment growth has slipped significantly (Bauer et al. 2019). Owing to the spreading of the Coronavirus and its far-reaching implications, not only for the German economy, the labour market will additionally be put under massive pressure (Weber et al. 2020). Secondly, the social partners need to find new strategies in the context of ongoing and accelerated structural change, particularly owing to digitalization. Thirdly, because of skill and, in some regions, even labour shortages, the social partners are facing the issue of quality of employment to a greater extent, particularly the use of non-standard forms of employment. Our analysis has focused on the interplay of state-level regulations and the industrial relations system.

Turning to the issue of managing the consequences of the economic crisis we demonstrated that during the Great Recession 2008–009 the re-regulation of short-time

working allowances was the decisive solution. This instrument relies on the cooperation of works councils; in addition, the social partners often agreed in sectoral agreements that employers would supplement the short-time allowances paid by the FEA. However, in the interviews we conducted, the social partners raised some concerns about the possible combination of short-time allowances and further training in times of slack product markets. Nevertheless, by concluding company-level pacts for employment and competitiveness, the social partners have extended their bargaining on wages, working time and further training, and may also negotiate about employment and investment, with the prospect of increasing the company's future competitiveness. The German industrial relations system has changed since the end of the 1990s (Carlin and Soskice 2009; Dustmann et al. 2014).

There is controversy not only between the social partners but also in the public debate concerning the prevalence and development of different employment forms. Even though both employers and employees are interested – for different reasons – in flexible forms of employment, during the past three decades we have witnessed waves of state-level deregulation as well as re-regulation of part-time, fixed-term and temporary employment, to mention the most important atypical forms. For various reasons, in particular the low level of unionized atypical workers, neither sectoral bargaining nor firm-level agreements deal with non-standard types of work to a significant extent. Instead, the social partners focus mainly on lobbying and tend to take a pragmatic approach. Regarding the important issue of equal treatment of workers, however, both sectoral and firm-level agreements still have potential.

The extensive changes that digitalization brings can be regarded as a major challenge for social partners. The current government is still planning to introduce an opening clause for the Working Time Law to allow social partners to test innovative and flexible working-time models. Since the beginning of 2019 the Qualification Opportunities Law has improved the opportunities for employers to train their employees. To date, however, we have not seen a strong increase in the use of this programme. As regards working-time issues, employers' associations demand more flexible regulations (for example, the maximum length of the working day), want to maintain labour volume and oppose far-reaching legal demands (for example, working from home). The unions strongly oppose this, indicating the current flexibility of working time regulations. In addition, they believe that employees should have a right to work from home. Even though dealing with the labour market issues that digitalization gives rise to at the sectoral level is still in its infancy, some agreements are already being concluded on working time and further training. Most of these activities are taking place at the firm level. Our two case studies therefore considered these issues. If the social partners are successful in developing solutions – tailored to the firm's and employees' specific requirements – to the increased need for flexibility and digitalization, they will provide clear evidence of the benefits of social dialogue. However, at the moment our analyses reveal a bundle of different strategies in different economic sectors and firms which could lead to more generally applicable solutions.

In summary, our examination has shown that the social partners have been more successful in combating short-term and urgent problems caused by economic crisis than in coping with the medium-term challenges caused by structural change and issues of decent work, such as changes in forms of employment. Furthermore, successful

interplay between the government and the social partners in the face of these medium-term challenges (alliances for the future of work) may, as a welcome side effect, revive the social dialogue and is likely to improve the image of the social partners considerably. It may also lead to increasing membership and higher coverage rates in the long term.

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8. Striking the right balance between autonomy and assumption of responsibility: A way forward for social dialogue in Greece*

Daphne Nicolitsas

1. INTRODUCTION

The world of work is changing rapidly. The certainty of dependent employment for life in the production of tangible goods is a thing of the past in a world in which employment relationships are taking new forms, individuals change jobs frequently and the service economy is taking over. In this new reality, which is expected to continue evolving, relationships between employers and employees do not remain static. There is still a need for dialogue between the social partners, and, given the challenges that continue to arise, this is now more essential than ever. Hence it is important that the conditions for effective dialogue between the social partners are put in place. The representativeness of the social partners, their autonomy from the government in shaping working conditions and mutual trust are important factors in realizing this outcome (ILO 2013).

Collective bargaining free from government influence has been a tradition for three decades in Greece. Despite this, there is no culture of sincere and wide-ranging social dialogue; collective bargaining instead takes the form of a series of concessions from the parties' starting positions, without a vision and a long-term strategy for the working relationship. Moreover, social dialogue should include a wider range of issues, such as digitalization and new forms of work, than those typically included in collective agreements. A long history of mistrust between the social partners could partly explain why social dialogue has not gained more popularity in Greece. In addition, the social partners are occasionally expected to shape policy guidelines, although the latter is a government responsibility. This has been the experience in the past decade, when Greece has been asked to undertake measures to improve its competitiveness in exchange for financial support from official creditors. Governments wishing to distance themselves from accepting the lending conditions shifted the responsibility to the social partners, expecting them to take a firm stance on them. Together with the other challenges the economy now faces following a decade-long recession, the challenge of digitalization looms large, as the economy currently lags behind in this.

The national social partners (employers' associations and unions) and the chair of the National Economic and Social Committee, the main body for tripartite dialogue, all appear to acknowledge the need to enhance the effectiveness of social dialogue. This

effectiveness appears to vary by level – national, sectoral or regional and at levels below the national – and by firm size.

The organizing framework for this chapter is the level at which dialogue takes place (national or below) and the recent financial crisis. Section 2 presents the future work challenges facing Greece, including the need for digitalization. While these are generally the same as those faced by other developed nations, there are a number of idiosyncratic factors, related both to structural features existing before the crisis and to the legacy of the crisis. Section 3 turns to the role of the social partners at national level, with a focus on their representativeness and degree of autonomy. The same issues, but for lower levels of dialogue, are presented in section 4. Section 5 deals with the issue of digitalization and the extent to which social partners have been involved in shaping the institutional framework for the digital organization of work. Section 6 presents an instance in which social dialogue appeared to take place, combating undeclared work. Section 7 concludes.

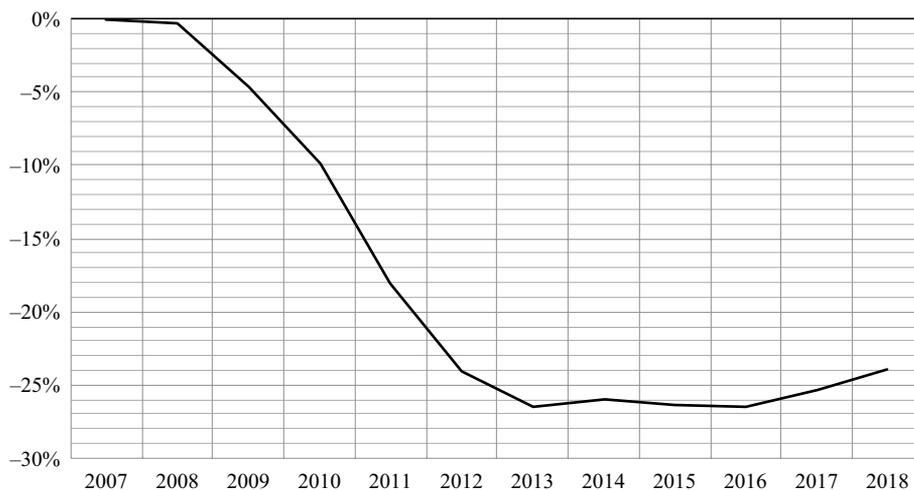
The chapter is based on the relevant literature, evidence on industrial relations developments and interviews with a number of key individuals on the topic. More specifically, I held discussions with representatives of the main social partners, the president of the Greek Economic and Social Council (OKE), the president of a bipartite body on health and safety matters, a representative of a sectoral employers' association and a senior International Labour Organization (ILO) specialist on tripartism who has also served as the ILO senior liaison officer for Cyprus and Greece.

2. WORK CHALLENGES MOVING AHEAD

Following an unprecedented decline in real gross domestic product (GDP), both by national and international standards, Greece is now trying to jump-start its economy. The task is Herculean, as the causes of the crisis have not been fully resolved and new challenges have emerged, not least the deep recession expected for 2020 as a result of the Covid-19 pandemic. The economy experienced a cumulative loss of GDP in the order of 24 per cent between 2007 and 2018 (Figure 8.1) and had a huge 17 per cent unemployment rate in mid-2019 (Figure 8.2), including a high percentage of long-term unemployed (71 per cent in the second quarter of 2019). Furthermore, the country continues to be heavily indebted (180.2 per cent of GDP in the second quarter of 2019) and thus has limited room for fiscal expansion.

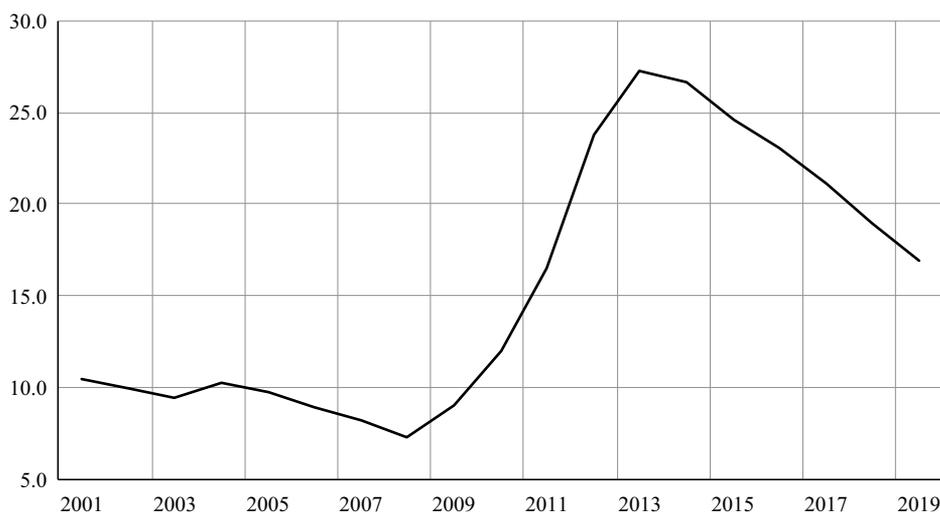
An important shortcoming of the Greek economy, even prior to the crisis, is its relatively low productivity (Figure 8.3). More specifically, in 2005, nominal GDP per hour of work in Greece stood at around 77 per cent of the 28 European Union countries' (EU28) average. In 2018 this was only 64 per cent.

Low productivity is attributable to, among other things, the composition of economic activity, the organization of work (one factor being, for example, the large share of self-employed, see Figure 8.4), the small size of firms, the low skill level of the workforce – as evidenced by the results of the Programme for the International Assessment of Adult Competencies (PIAAC) (Figure 8.5) – and the percentage of individuals with low basic digital skills (Figure 8.6). Low productivity also reflects poor management practices (see, for example, Bloom et al. 2012) and, especially since the onset of the economic downturn in 2010, limited investment in physical capital. Prior to 2009, investment as a percentage



Source: Eurostat, National Accounts (accessed 18 October 2019, <https://ec.europa.eu/eurostat/web/national-accounts/data/database>).

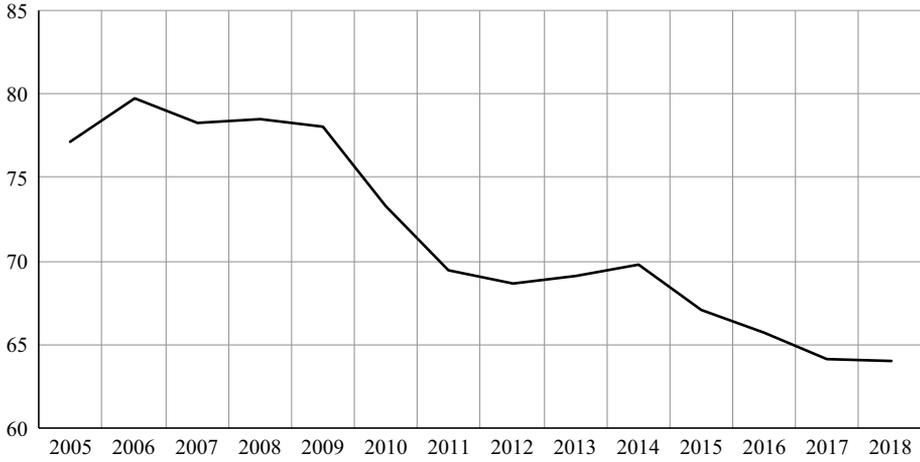
Figure 8.1 Cumulative loss in GDP (in constant prices) starting 2007



Source: ELSTAT, LFS (accessed 13 December 2019 at <https://www.statistics.gr/en/statistics/-/publication/SJO01/->).

Figure 8.2 Unemployment rate, 2nd quarter of each year (percentage)

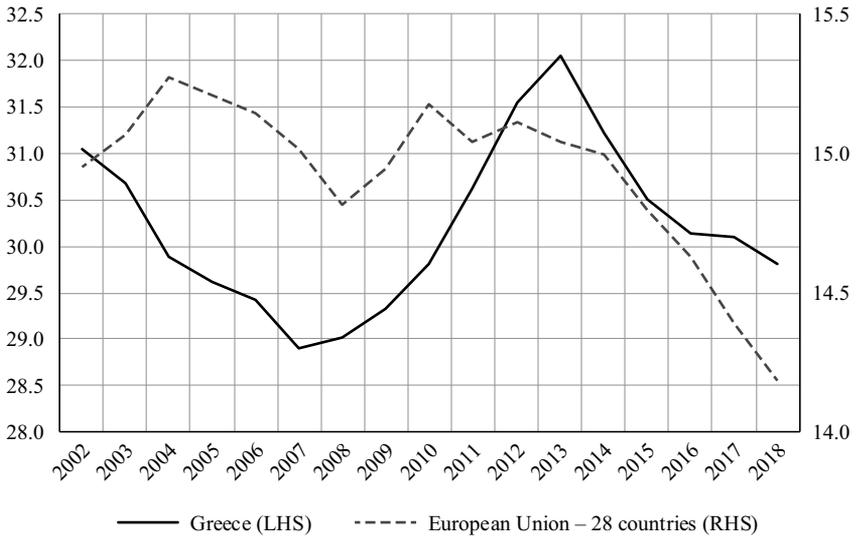
of GDP stood higher than the EU average, but this was mainly investment in housing (Bank of Greece 2007; ILO 2014). Post-2009 fixed capital expenditure declined rapidly, and for six years (2012–17) was around half the share it is in the EU28 or the Euro Area (Figure 8.7).



Note: EU28 = 100.

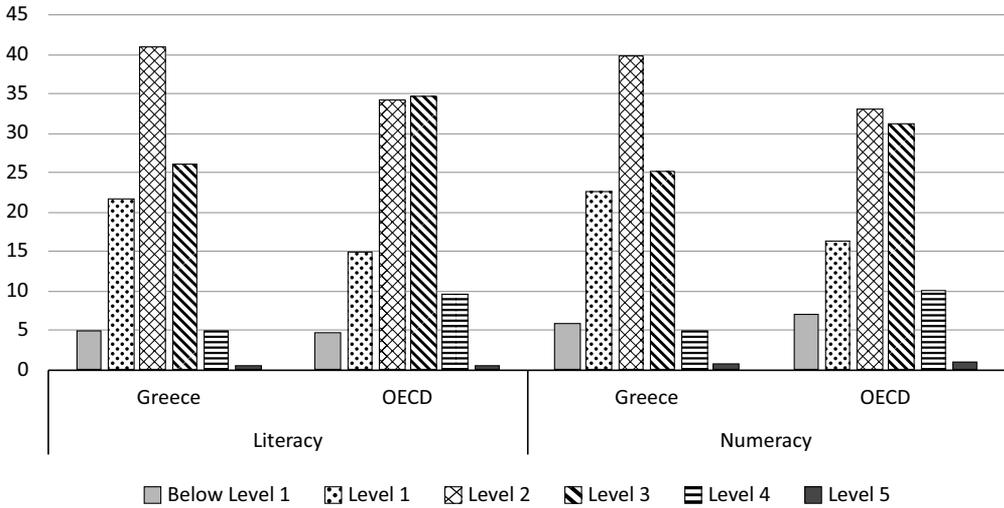
Source: Eurostat (accessed 12 December 2019 at https://ec.europa.eu/eurostat/databrowser/view/namq_10_lp_ulc/default/table?lang=en).

Figure 8.3 Nominal GDP per hour worked as a percentage of the EU28, 2005–18



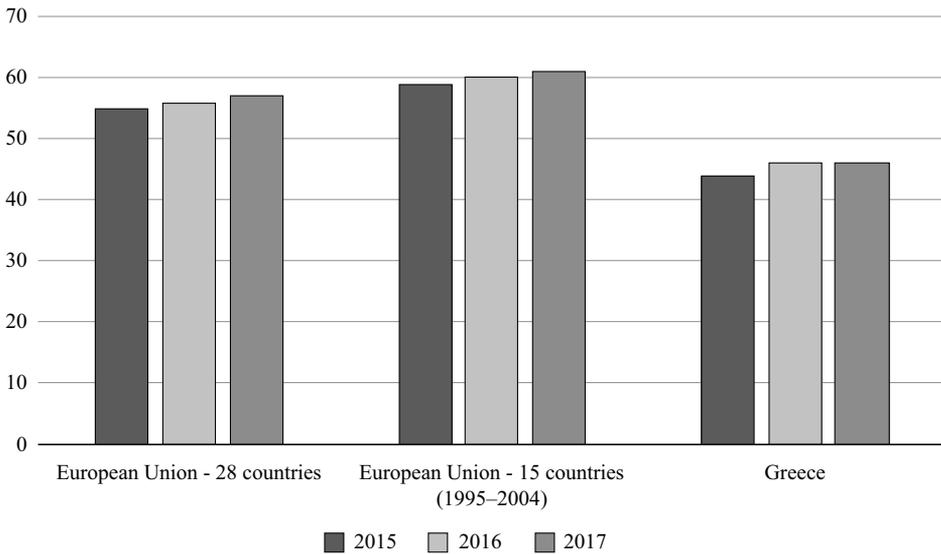
Source: Eurostat (accessed 13 December 2019 at https://ec.europa.eu/eurostat/databrowser/view/lfsq_esgan2/default/table?lang=en).

Figure 8.4 Percentage of self-employed in Greece and the EU28



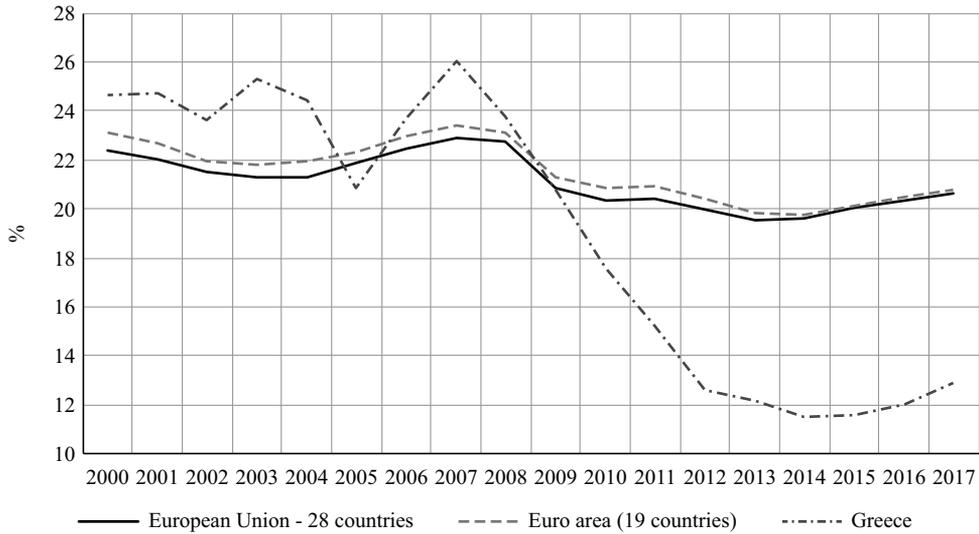
Source: Organisation for Economic Co-operation and Development (OECD), PIACC database.

Figure 8.5 Percentage of individuals with each of five competence levels in literacy and numeracy, Greece and the OECD



Source: Eurostat (accessed 12 December 2019 at https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_sk_dskl_i&lang=en).

Figure 8.6 Percentage of individuals with basic or above basic overall digital skills



Source: Eurostat (accessed 14 December 2019).

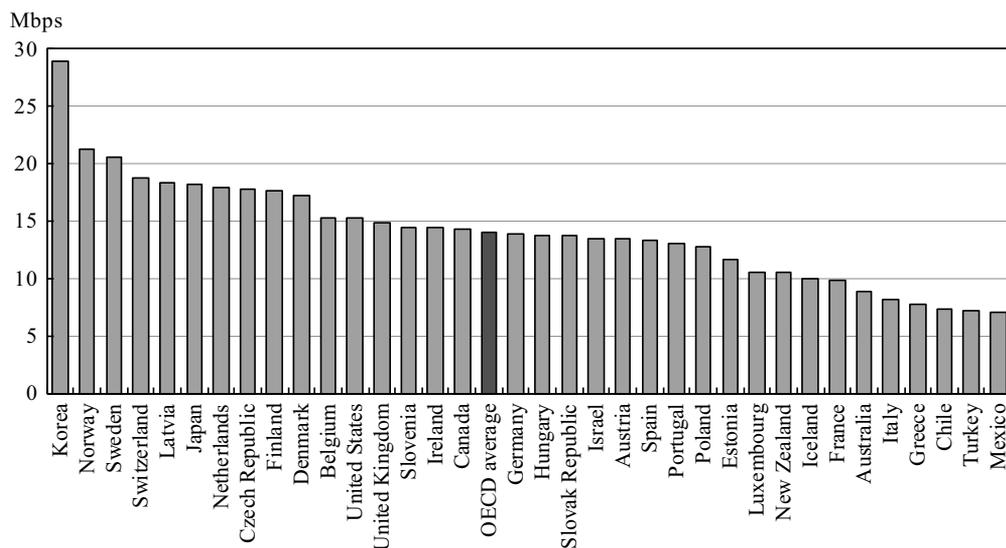
Figure 8.7 Total investment as a percentage of GDP

The inadequate digitalization of the Greek economy is evident from the Internet speed. Figure 8.8, with data from the OECD *Digital Economy Outlook 2017*, suggests that the average internet speed in Greece is lower than the OECD average (OECD 2017).

At these speeds it is unlikely that substantial digitalization can be accommodated. According to a number of indices constructed by the Hellenic Federation of Enterprises (SEV 2019), it seems that businesses are not digitally prepared. However, according to McKinsey estimates (McKinsey Global Institute 2017), around 20 per cent of jobs in Greece will be replaced by machines in the period from 2016 to 2030. A recent European Central Bank (ECB) survey among leading Euro Area companies suggests that the effect of digitalization on employment will depend on skill level (Elding and Morris 2018). While on balance the companies surveyed expect only a small negative impact on employment, they emphasized the need for retraining and the reassignment of workers to new tasks. Therefore, the importance of training in preparing for the future cannot be overstated.

In the future, the main challenge to the Greek economy is the creation of highly productive jobs in the face of:

- globalization, which intensifies market competition for goods and services;
- automation, which leads to the replacement of low-skilled jobs;
- new forms of work organization that permit working across borders (gig economy, sharing economy);
- demographic challenges that could result in skill shortages and fiscal pressures. These challenges are especially pronounced in Greece. According to Eurostat data, at the beginning of 2018 Italy and Greece had the highest share of individuals aged 65 or older in the total population (22.6 per cent and 21.8 per cent, respectively),



Note: Mbps = megabits per second.

Source: Akamai (2016). Israel Disclaimer: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Figure 8.8 Akamai's average speed, quarter 1, 2016

while between 2008 and 2018, the median age of the population increased by four years;¹

- the uncertainty regarding economic activity following the Covid-19 pandemic;
- the need to ensure adequate and well-paid jobs in sectors critical for the pandemic (such as health care, food production distribution and protective services); and
- environmental challenges that might, among other things, lead to a reallocation of labour across sectors.

This provides us with a succinct picture of the main challenges faced by the social partners at present. As the OECD argues, the future of work will depend to a large extent on countries' policy decisions and institutions (OECD 2019). Social dialogue is an important institution in this respect.

3. THE ROLE OF SOCIAL PARTNERS AT NATIONAL LEVEL: BEFORE THE CRISIS, DURING THE CRISIS AND TODAY

3.1 Collective Bargaining

In Greece, national-level collective bargaining has a long tradition. Currently, there are five national social partners on the employers' side: the Hellenic Federation of Enterprises (SEV), the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE), the Hellenic Confederation of Commerce and Entrepreneurship (ESEE), the Greek Tourism Confederation (SETE) and the Federation of Industries of Greece (SBE). The first three have been established for a long time (over four decades), while the last two are recent additions. The SETE was recognized as a social partner in 2013, while the SBE was ratified as a social partner only in 2018. On the employees' side there is a single union for private sector employees, the General Confederation of Greek Employees (GSEE).²

The SEV is the leading (and oldest) business federation in Greece. It started life in 1907 with 200 members from large-scale industry and crafts. For several decades the SEV represented mainly industrialists. Over time, however, it has widened its net to cover firms across the business spectrum (including energy, transport, processing, the medical industry, the metal industry, food, banking, technology, the chemical industry, services and wholesale). It represents over 400 large and medium-sized enterprises, 50 sectoral and regional associations, as well as over 3500 indirect members (through these associations). Members of SEV account for about 50 per cent of business activity in Greece, 46 per cent of total turnover, 41 per cent of corporate profits and represent 10 per cent of private sector employees insured by the Unified Social Security Fund (EFKA). The SEV has been an institutionalized social partner from as early as the 1970s, participating in social dialogue and representing its members in collective bargaining at both national and sectoral levels.

In the first years of the crisis, SEV membership declined but since 2014–15 membership has increased substantially (60–70 per cent) as mainly large and medium-sized businesses joined. Several changes in the SEV's statute (for example, reduction in membership fees, and ex officio participation of regional associations in the board of directors) helped to increase the membership.

The GSEVEE was founded in 1919 and currently represents 78 federations (49 local, 28 sectoral and one of pensioners) and 1100 constituent unions with 140 000 members (entrepreneurs). The members of GSEVEE are self-employed, micro-enterprises (enterprises with fewer than ten employees and turnover of up to €2 million), small enterprises (enterprises with 49 or fewer employees and turnover of up to €10 million) and medium-sized enterprises (with fewer than 250 employees and turnover of up to €50 million). The crisis resulted in the GSEVEE losing many of its members as small and medium-sized enterprises were badly affected, so it is trying to attract additional members by expanding into new sectors of economic activity. Around 90 per cent of the new enterprises are active in the food service and entertainment business. The annual fee is only around €30, but the cost in time that participation in the GSEVEE involves is important for new businesses. For these new firms, business conditions are less favourable than in the past; prior to the crisis, businesses would on average operate for around five to seven

years, whereas currently the figure is only around three months. Thus, the turnover of potential GSEVEE members is much higher, making the expansion of membership more difficult.

The ESEE represents 14 federations, 283 commercial associations and five representatives of commercial associations. It covers the entire territory of Greece, even its smallest towns, and has a membership of over 270 000 enterprises. In its current form, the ESEE was established in 1994, although there has been a Coordinating Council of Commercial Associations since 1961.

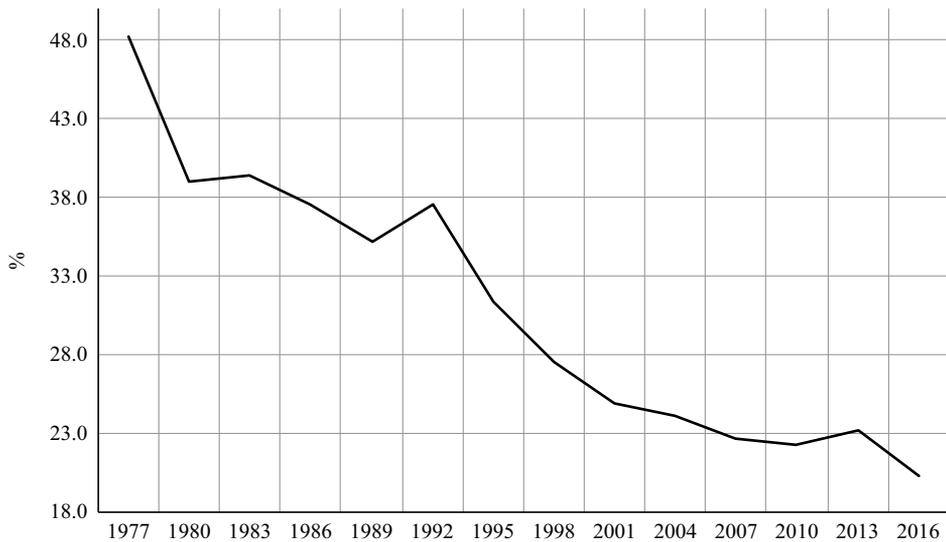
The SETE was established in 1991 and currently represents 14 unions of tourism enterprises. It was given the status of national social partner in 2013.

The SBE is a national social partner with effect from mid-2018, following a decision by the Minister of Labour, Social Security and Social Solidarity.³ Formerly known as the Federation of Industries of Northern Greece, it was established in 1915 and represents industrial organizations and manufacturing companies.

The GSEE was established in 1918. It is a third-level trade union organization (confederation) which covers workers under private law contract, regardless of the sector in which they are employed in. Therefore, the GSEE does not have persons as direct members. Members come through a total of 148 second-level organizations: the 79 labour centres – local unions – and 69 sectoral federations (two of the 69 are federations of pensioners). The large number of second-level organizations reveals a fragmented trade union system, a feature resulting from, among other factors, political rivalries and lack of financial autonomy (see Ioannou 2005). The second-level organizations have only employees in dependent employment as members; that is, there are no self-employed members.

The representativeness of the above bodies is not questioned in a legal sense. Representativeness in substantive terms, however – that is, whether these bodies represent the interests of the labour force – is a different matter and not easy to settle; and even more so as hard data on the members of employers' and employees' organizations are not made publicly available. The GSEE argues vehemently that, while data on membership is available it should not be made public as it is sensitive and publishing even aggregate figures would be an infringement of confidentiality. Nevertheless, every three years, at the time of the GSEE Congress, figures are released on the number of registered members, members who have met their financial obligations and voting members. Inevitably, the three different sets of figures give different trade union density estimates. Employers' organizations have not been forthcoming with this information either. Consequently, the discussion here on trends in union and employer association membership is based on estimates.

Regarding membership of employers' organizations, estimates from the Visser database (Visser 2019) suggest that the percentage of employees working in private sector firms belonging to an employers' organization out of the total number of employees in employment in the private sector stood at 43.7 per cent in 2008 (58.4 per cent if we include all employers and not just those in the private sector) and 25 per cent in 2013.⁴ The European Social Survey (ESS) data for the years 2002–10 show that membership of people aged between 30 and 64 years of age is low and declining (see Figure 8.9). The four employers' contacted organizations acknowledged the need to expand their membership without, however, doubting that they are currently representative in the substantive sense



Source: OECD (2017).

Figure 8.9 Trade union density

mentioned previously. The main way of doing this is to enrich the services offered. They mentioned the need to clarify their role as not confined to signing the National General Collective Agreement, but also offering other services to their members (for example, legal advice, training and group insurance schemes). The interview with the GSEE brought into the discussion another aspect of employer association representativeness, relative representativeness. It appears that, although GSEVEE and ESEE membership is more typical of Greek business (micro enterprises and small and medium-sized enterprises), the five national social partners on the employers' side are of equal standing.

The GSEE also acknowledges the need to expand its membership to all vulnerable groups that could suffer from discrimination (for example, younger individuals, and lesbian, gay, bisexual, transgender, queer and intersex plus persons). Existing union density estimates, from the Visser database (Visser 2019), suggest that in 2012 union density in the private sector stood at 17.3 per cent, while in the public sector it was 47.1 per cent. Figure 8.9 shows data on overall (private and public) trade union density from the OECD for the period 1977–2016.

Existing evidence suggests that women are underrepresented both as members (Matsaganis 2007) in ESS data (Table 8.1) and in higher union positions (Varchalama et al. 2015). The same appears to be true for immigrants and younger individuals; the Visser data estimate union density for those aged 15–24 at 6.5 per cent in 2008 and 8.2 per cent in 2012 and the ESS data (Table 8.1) also show that union density is lower for young people.

The GSEE's penetration is higher in particular sectors (for example, banks, and utilities operated as state-owned enterprises) in which working conditions (such as remuneration and pensions) are more favourable than for the private sector as a whole. Furthermore,

Table 8.1 Union membership by age and gender among employed individuals in the market non-agricultural business sector in Greece, 2002–08

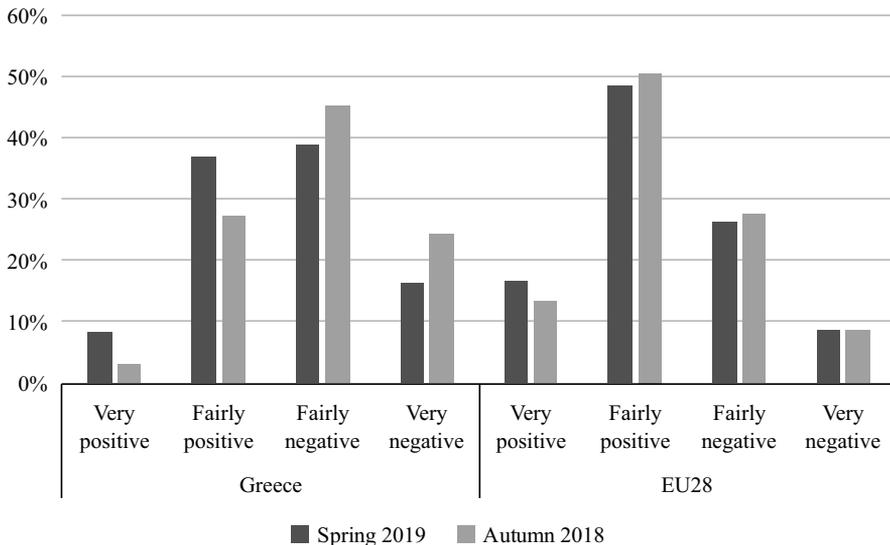
Year	Age	Men	Women	Total
2002	20–29	18.53	6.06	14.55
2004	20–29	19.60	3.51	12.21
2008	20–29	5.01	3.32	4.42
2002	30–44	19.72	14.73	17.98
2004	30–44	16.40	6.24	13.07
2008	30–44	11.64	12.55	12.01
2002	45–54	33.64	11.21	27.32
2004	45–54	35.97	14.28	31.07
2008	45–54	15.42	10.53	13.60
2002	55–64	27.30	22.39	26.90
2004	55–64	34.83	13.17	29.03
2008	55–64	16.84	12.02	15.47

Source: European Social Survey data, Rounds 1, 2 and 4.

the GSEE tries to maintain contact with the entire labour force (workers and unemployed) through interaction with its 148-member second-degree organizations, their affiliate first-level trade unions and their individual members. The GSEE's own expert structures (INE/GSEE, KANEP/GSEE), as well its Information Centre for Workers and the Unemployed (KEPEA) also help to obtain for the GSEE administration a vivid knowledge of the current labour environment and workers' needs. The task of expanding GSEE membership is made more difficult because there appears to be little trust in trade unions in Greece, although this is improving. Eurobarometer data (Figure 8.10) suggest that in spring 2019 the percentage of individuals with a positive view of trade unions (either very positive or fairly positive) is 44 per cent (29 per cent in autumn 2018), whereas in the EU28 the figure is 59 per cent (58 per cent in autumn 2018). As things stand, however, the most pressing issue for the GSEE are the competing party factions within the confederation itself (Panagopoulos 2019).

The government's introduction of the SBE as a social partner on an equal footing met with opposition from the other social partners (including the GSEE). Written correspondence between the four employers' organizations and the minister is critical both of the decision being made without consulting the existing social partners and of the decision itself; the SBE should not be given the standing of a national social partner in view of its regional (northern Greece) and sectoral (manufacturing) focus. 'This action', say the established employers' organizations, 'therefore constitutes a state violation of the autonomy of employers' and employees' unions, which could impede the legitimate operation and functioning of employers' and workers' unions'.⁵ The exchange also gave the four employers' organizations the opportunity to criticize the government's stance on social dialogue:

Finally, we must comment on your claim that you respect social dialogue and the actors involved. Practice to date does not illustrate this, as evidenced by most of the extremely serious



Source: Eurobarometer, Standard Eurobarometer, spring 2019.

Figure 8.10 Percentage of individuals with each view on trade unions

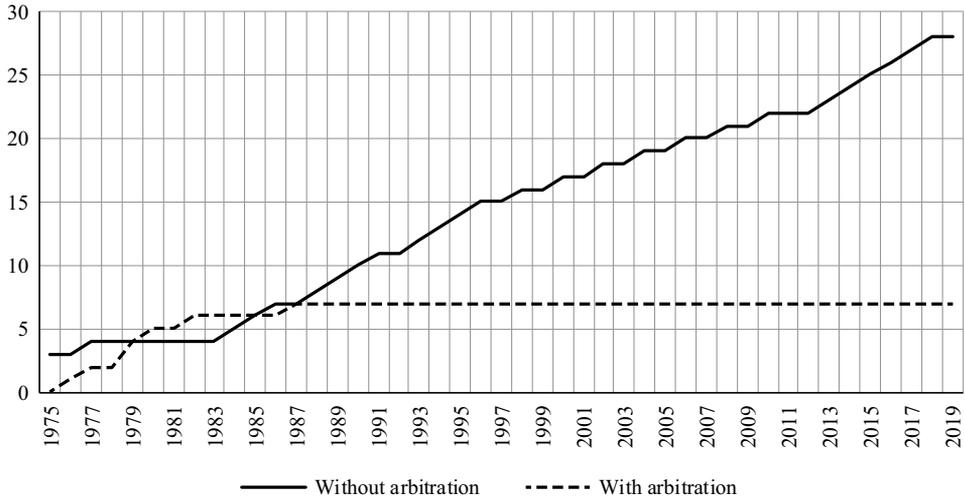
issues that have been legislated during your time as Minister, without any substantive updating or technical discussion and negotiation with the designated social partners, including your latest legislative initiative, which directly affects the freedom of collective bargaining by changing the composition of the institutional social partners.⁶

The introduction of the SBE has inevitably contributed to the already fragmented employers' side: there are now five employers' associations designated as national social partners.

The social partners have signed the National General Collective Agreement since 1975. It is, however, since the late 1980s that state interventionism started to subside (Ioannou 1999). Law 1876/1990 set out the framework for collective bargaining, explicitly introducing the right to bargain at sectoral and company level. It also introduced an independent mediation and arbitration body (OMED) to resolve bargaining impasses, replacing the custom of state intervention in resolving deadlocks. Figure 8.11 plots the cumulative number of National General Collective Agreements that have been signed without the involvement of an arbitration body in each year starting in 1975, together with the cumulative number of national agreements signed with the involvement of an arbitration body. While the signing of a national agreement continued through to 2018, there has been no recourse to arbitration since the late 1980s. However, the signature of a National General Collective Agreement is a lengthy process (see Figure 8.12) and this inevitably creates uncertainty for businesses and their employment decisions.

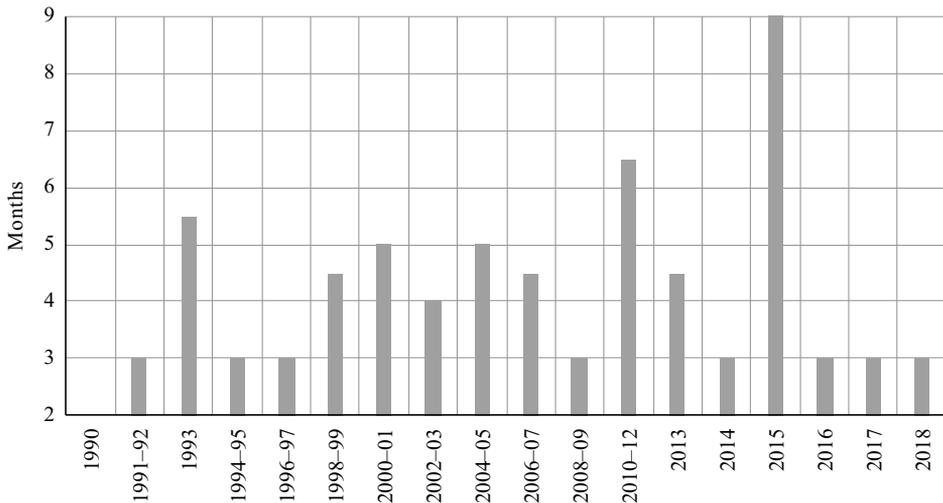
The absence of arbitration involvement in the process of signing the National General Collective Agreement implies that a minimum degree of consensus at national level does exist, a point confirmed by the social partners interviewed for this chapter.

Turning to the issues that a National General Collective Agreement can regulate, they



Source: Ioannou (1999); Ministry of Labour and Social Affairs.

Figure 8.11 Cumulative number of National General Collective Labour Agreements without and with arbitration



Source: Ministry of Labour and Social Affairs, National General Collective Labour Agreements.

Figure 8.12 Months following start of the year to which the agreement refers

are determined by law (Law 1876/1990). They extend beyond the basic minimum wage and include other items of remuneration (for example, allowances and overtime pay), general terms and conditions of work (such as number of annual days leave, maternity and paternity leave, length of working week and dismissal compensation). Some of these are later ratified by law, at which point these clauses cannot be reversed by a National

Table 8.2 Recurrent themes with no decision in National General Collective Agreements, Greece, 2000–2019

Issue	Agreement in which issue first mentioned	Last agreement in which it still appears unresolved and indication of whether it has been solved
Need to reform the social security and pension system	2000–2001	Reappears in 2006–07 (unresolved)
Profit-sharing: social partners to ask for favourable tax treatment of employees' participation in profits	2000–2001	Reappears in 2010–12 (unresolved)
Need to reform training fund (Special Fund for Employment and Vocational Training, LAEK)	2002–03	Reappears in 2006–07 (unresolved) Reappears in 2008–09 (unresolved)
Need for a permanent social dialogue structure	2008–09	Reappears in 2018 with a more specific mandate and plan

Source: Author.

Agreement. It is thus evident that the scope of the agreement is not restricted to remuneration. In several instances, however, the terms beyond remuneration are not really dealt with, although there is an acknowledgement by all parties that the issue is important and that it should be resolved in the future. This applies to a number of issues (for example, acknowledgement of the need to revamp the social security system, acknowledgement of the need to design common actions for the upgrading of lifelong training and education and awareness of the need to deal with the environmental footprint of businesses), but these are left, notwithstanding their significance or perhaps because of it, to be dealt with in the future. Table 8.2 lists a few issues that have never been settled but keep coming up in each round of negotiations.

The most prominent example of the social partners failing to reach agreement with the government was the attempt at a radical reform of the pension system in 2001. International organizations had been calling for reforms since the early 1990s (OECD 2002, 2005), but what reforms were introduced were not sufficiently bold (Zambarloukou 2006). The consequences of this failure contributed to the derailment of public finances, which led to the recent severe recession. The causes of the failure have been discussed in the literature (Matsaganis 2002; Featherstone 2003). Some of the arguments put forward are that the union movement appears mainly to defend the rights of individuals affiliated to very well-off pension funds (banking sector and state-owned enterprises) instead of the rights of the typical worker or pensioner, and the unreliability of particular employers as social partners (Zambarloukou 2006; Matsaganis 2007). The way the issue was handled by the government, the lack of trust between the social partners and the absence of a legacy of dialogue also contributed to failure (Zambarloukou 2006; Matsaganis 2007).

Notwithstanding all the above, there are some long-term issues (such as dealing with

BOX 8.1 EXAMPLES IN WHICH SOCIAL DIALOGUE IN THE CONTEXT OF THE NATIONAL GENERAL COLLECTIVE AGREEMENT RESULTED IN COMMON POSITIONS BY THE SOCIAL PARTNERS

On the following issues some social dialogue appears to have taken place and a common position to have been agreed. This sets a precedent for future social dialogue.

1. Establishment of the Hellenic Institute of Occupational Health and Safety (ELINYAE), a body governed by a nine-member board representing all national social partners. The board meets on a regular basis. According to its constitution the objectives of the ELINYAE are:
 - (a) to detect, record, process, analyse and investigate the various hazardous agents and conditions in the working environment and their effects on the health and safety of the employees;
 - (b) to elaborate regulations, rules and pertinent legislation;
 - (c) to monitor international developments and experiences and promote documentation of related matters;
 - (d) to promote information, communication and education of both social partners on issues of occupational health and safety;
 - (e) to contribute to the investigation and solution of problems, arising from the interaction between the working environment and its conditions, on one hand, and the general environment and living conditions, on the other;
 - (f) to study the possible impact of the application of new technologies and of new preventative measures on occupational risks; and
 - (g) to serve as a body of experts on issues of occupational health and safety, if asked by either social partner (employers or employees).
2. Creation of a permanent platform for social dialogue in the 2008–09 National General Collective Agreement. The platform, however, has not yet been activated.
3. The completion of a common action consisting of four projects to restore confidence and empower effective participation in social dialogue. These include a project investigating the effectiveness of social dialogue structures, a project on strengthening the procedures and effectiveness of sectoral-level bargaining, a project on issues of vocational education and training and a project on combatting labour market discrimination.
4. Undeclared work – social dialogue to reach a commonly agreed action plan (see section 6 in this chapter).

health and safety issues at work) that eventually have led to agreement on a common action plan. Box 8.1 presents a few good practice examples.

We have provided an overview of the extent to which dialogue between the social partners takes place and on which issues in the context of the National General Collective Agreement. However, this does not reflect developments that took place during the period 2010–18, however, and it also does not discuss other contexts in which social dialogue takes place.

In May 2010, Greece asked for international financial assistance as it was unable to tap into the international bond markets (see Tzannatos 2014 for details of the first stages of the crisis). The financial assistance was provided by the International Monetary Fund (IMF) and by EU member states, and demanded strict conditionality in exchange. Reforms were insisted on in a few areas (fiscal, product markets and the financial sector), including the labour market. During 2010–12, the Minister of Labour invited

the social partners to consultations on potential reforms a number of times (ILO 2014; Yannakourou 2015). Any dialogue that took place, however, did not bring about reforms as the social partners appeared not to be prepared to give in. As mentioned in the introduction to this chapter, the social partners might not, be solely responsible for this deadlock; successive governments were not willing to assume ownership of the memorandum of understanding between Greece and its partners, and thus were not giving clear guidelines.

Early in 2012 the government took a clear stance and called for a reduction of the minimum wage in order to improve the country's competitiveness. The social partners were not willing to consider any curtailment of the basic wage while certain partners appeared ready to discuss only temporary abolition of seniority allowances and a reduction in non-wage labour costs. This stance of the social partners in Greece was manifestly different from that in other countries hit by the crisis (Cyprus, Ireland, Italy, Portugal and Spain) where tripartite agreements were reached. Had the first governments taken a clearer stance on the reform measures, it is possible that the social dialogue would have progressed more.

The government had to act on its own; the minimum wage was reduced by 22 per cent for those aged 25 or above and by 32 per cent for younger workers (Law 4093/12). In addition, according to Law 4172/13, a change in the way the minimum wage was to be determined was introduced. More specifically, a statutory minimum wage was introduced; henceforth it would be set by the Minister of Labour following consultation with the social partners and a number of research institutes and organizations, including the Bank of Greece. This was to be with effect from the end of the financial assistance programme. All national social partners expressed their opposition to the change from a negotiated to a statutory minimum wage.

A number of strikes (and national strikes) were organized by the GSEE in response to the measures introduced; 445 in 2011 (four national strikes), 439 in 2012 (six national strikes) and 443 (five national strikes) in 2013 (Katsaroumpas and Koukiadaki 2018).

As expected, given that the financial assistance programme ended in August 2018, the basic minimum wage increased soon afterwards. With effect from 1 February 2019, following consultations among the Minister of Labour and the social partners, research institutes and other organizations, the minimum wage was increased by 11 per cent. The social partners interviewed generally took the view that although the letter of the law was observed in this procedure, the spirit was not. The consultation was just a formal information procedure rather than a substantive discussion. As far as the actual increase was concerned, the GSEVEE, the SETE and the SEV explicitly expressed reservations; the three social partners claimed that although an increase in the minimum wage was advisable, this should be accompanied by mitigating measures to reduce labour costs for businesses and to increase employees' disposable income. The GSEE refused to participate in the consultations as this would have legitimized a process for setting the minimum wage to which they are opposed.

Following the change from a bargained minimum wage to a statutory minimum wage, the National General Collective Agreement deals only with non-pecuniary issues. A national agreement was signed every year between 2013 and 2018. The SEV refused to sign the agreement in 2013, as it considered it to be void. The role of the ILO in persuading the SEV to return to the negotiating table must be acknowledged. The ILO's role at

this time was wider than just persuading the SEV. In September 2014, the ILO Director-General facilitated a discussion between the national social partners. The discussion was the trigger for a series of joint papers by the social partners on the principles for effective social dialogue, the extension of sectoral collective agreements, combating illegal discrimination at the workplace and vocational education and training.

3.2 Tripartite Cooperation

Social dialogue is not restricted to the National General Collective Agreement. There are a few issues that call for social dialogue and there are a few institutions established for this purpose. The main institution is the OKE established in 1994 and, from May 2001, constitutionally recognized by the Greek state. Its structure follows that of the Economic and Social Committee (ESC) of the European Union, representing employers (eight organizations), workers (two organizations representing private and public sector employees) and other employed individuals and citizens in general (15 organizations representing, among others, farmers, self-employed, consumers, environmental protection organizations, disabled peoples' confederation, gender equality organizations and local government). The OKE has a well-specified governance structure and its president is appointed by the Minister of Finance, following a proposal by the OKE plenary, for a four-year term. The OKE plenary selects, in rotating order, from each of the three groups (employers, workers and wider society) forming the OKE, individuals of recognized standing, adequate academic training and wide social acceptance. The OKE's role is consultative: it provides opinions to the government on legislative proposals. However, the OKE also serves as a platform to enhance social dialogue with the aim of formulating mutually acceptable positions on issues of concern to society or to specific social groups. The OKE plenary meets twice a year while the OKE's Executive Committee meets, typically, once every two months. During the 2010–14, however, meetings were not as frequent and state funding for its operations was cut back (Yannakourou 2015). While the OKE seems to be doing satisfactorily in meeting the criteria set out by the ILO (ILO 2013) on the effectiveness of social dialogue, it appears, at least to parties not directly involved in the dialogue, that in a number of instances the dialogue has only led to a documentation of the different opinions rather than a synthesis of the various views to reach a common position. The President of the OKE, when asked during our interview to identify the reasons for the failure of social dialogue in Greece, expressed the view that the preference of social partners to negotiate with the government directly, each defending the interests of its members, instead of consulting within the framework of OKE, which represents society as a whole, was mainly to blame. In addition, the limited tradition of dialogue in the country, especially between those involved in public administration, also contributes to the absence of dialogue. The period during which Greece was under a financial assistance programme dealt a final blow to social dialogue, according to the OKE President. Asked whether the lack of a tradition of social dialogue could lie behind the government's unilateral decision to take measures during the financial assistance programme, the OKE's President stated that it was difficult to identify cause and effect. He emphasized that self-interested behaviour on the part of social partners was to be distinguished from a mutual lack of trust, which he does not believe exists. The social partners, he went on, are used to dealing directly with the political parties and the government, and not engaging in

dialogue with each other or with the groups they represent. He suggests a restructuring of the OKE, with a broadening of its membership to encompass civil society, as currently a number of social groups are not represented adequately or at all. Remodelling the OKE along the lines of the Dutch ESC was one option, according to the OKE's President.

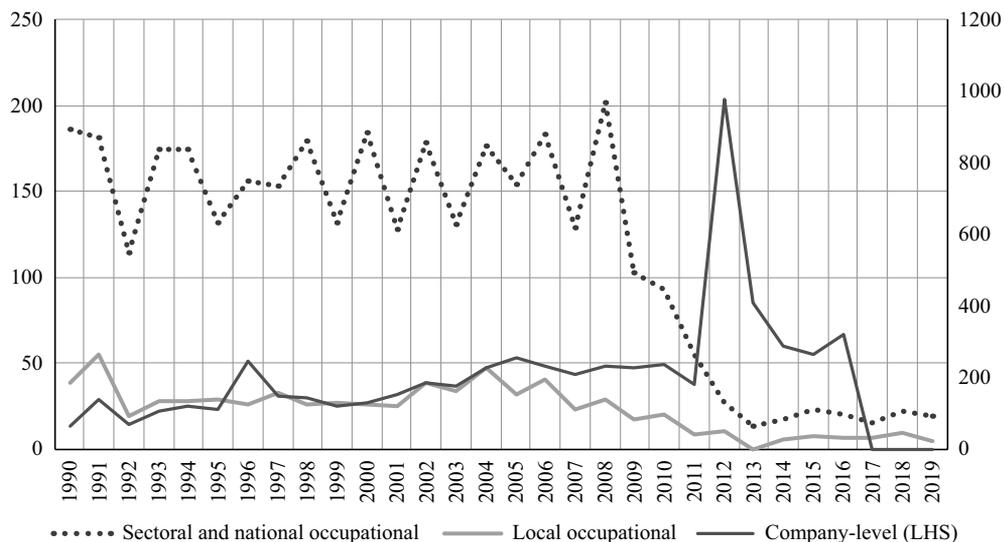
The institutions for tripartite social dialogue in Greece include 15 bodies operating at national level (the National Employment Committee, the National Social Protection Committee, the National Council for Competitiveness and Growth, the National Planning Council, the National Tourism Council, the National Education Council, the National Agricultural Policy Council, the National Water Council, the National Exports Council, the National Shipping Policy Council, the National Committee for Gender Equality, the National Committee for the Social Inclusion of Immigrants, the National Council against Tax Evasion, the National Consumer and Market Council, and the Government Employment Council). In addition, a number of committees have been established at regional level: the Prefectural Economic and Social Committees. Finally, a number of bodies have been established in which representatives of the social partners participate, their role being to consult with the government (for example, the Supreme Labour Council, including the Committee on Undeclared Work, the Council for Social Control of Labour Inspection, the Council for Occupational Safety and Health, the Social Insurance Council, and the Coordinating Council for Health Provision). The lack of social dialogue cannot thus be due to the absence of committees and for a, as also stressed by the social partners themselves in the common position papers produced in 2015 as part of the common action project mentioned in Box 8.1.

The social partners interviewed were all critical of their role in the legislative process; it was deemed that their contribution was merely formal and that their opinions were not properly taken account of when shaping the legislation. The SETE member interviewed was more specific on the role of the different social dialogue committees listed above. First, he stated that only two committees actually meet (the Council for Occupational Safety and Health and the Committee on Undeclared Work), and second, he mentioned that it would be no exaggeration to say that dialogue takes place only in the Council for Occupational Safety and Health.

In addition to the National General Collective Agreement, collective bargaining takes place at sectoral, regional and firm levels. It is to the issues of representativeness and autonomy at these levels that we turn next.

4. THE ROLE OF SOCIAL PARTNERS BELOW THE NATIONAL LEVEL: BEFORE THE CRISIS, DURING THE CRISIS AND TODAY

In addition to national-level bargaining, bargaining in Greece also takes place at levels below national. Sectoral', occupational', regional' and firm-level bargaining were explicitly established with Law 1876/1990. Until 2012, most firms followed the sectoral-level collective agreement of the sector to which they belonged (Figure 8.13) as in any event most of these agreements were extended to the whole sector, beyond the signatory employers' organization(s). The boundaries between sectoral and occupational agreements are not always clear, and the legal classification of collective agreements as



Note: Each column contains the sum of collective agreements signed with and without arbitration.

Source: Ioannou and Papadimitriou (2013); Katsaroumpas and Koukiadaki (2018); Ministry of Labour and Social Affairs.

Figure 8.13 Collective agreements by type, 1990–2019

occupational or sectoral is in some instances a matter of dispute. In addition, as sectoral agreements might not cover the full range of occupations in a sector, in several instances firms have to follow a few collective agreements. A number of changes that took place under the financial assistance programme, however, led to a decline in the number of sectoral-level agreements signed. Between 2011 and 2018 firms followed, in general, either the national agreement or a firm-level agreement.

The changes introduced during the financial assistance programme included:

1. The suspension of extensions. Prior to October 2011 sectoral collective agreements could be extended by ministerial decision following a request by either of the negotiating parties, if the employers' associations negotiating the agreement employed 51 per cent or more of the employees in the sector. Between October 2011 and August 2018 extensions were suspended. Extensions, with the same criterion, were reinstated in August 2018. Since then, 18 sectoral collective agreements have been extended (10 in 2018 and eight in 2019).⁷
2. The abolition of the favourability principle. From October 2011, the favourability principle, according to which firm-level agreements have to improve sectoral-level agreements, was abolished. Firm-level collective agreements could thus negotiate terms inferior to the sectoral agreement, but not the general collective agreement (or the legislated minimum wage). The favourability principle has been reinstated with effect from August 2018, that is, from the reinstatement of extensions of sectoral agreements. More recent legislation (Law 4635/2015), however, gives

firms the right to opt out of the sectoral agreement if they are in a dire financial position.

3. A threshold for the maximum duration of collective agreements was established. Since October 2011 the maximum duration of collective agreements is three years. There was no threshold beforehand.
4. Shorter binding force for a previous collective agreement. A limit of three months' (instead of six) extension of the binding force of the previous collective agreement was given for the negotiation of a new agreement. According to a further restrictive provision on the after-effect of collective agreements, subsequently, if no collective agreement has been reached, only the basic wage and four allowances (education, tenure, children and onerous working conditions) remain in effect.
5. The ability to sign a firm-level collective agreement. Prior to 2011, signing a firm-level collective agreement in a firm with fewer than 20 employees was possible only through the intermediation of a sectoral union. With effect from late 2011, however, firm-level agreements can be signed in firms with as few as five employees provided at least three-fifths of them have formed an association of persons (AoP) that signs the agreement on their behalf.

It is evident that the changes introduced during the financial assistance programme led to the decentralization of wage bargaining. The social partners disagree on whether the above measures enhance collective bargaining or not. With particular reference to the ability of an AoP to represent workers at the firm-level, the employees' side claims that this creates conditions for bogus, not proper social dialogue. The SEV and other employers' organizations, however, argue that AoPs could enhance collective bargaining and social dialogue. They assert that establishment of AoPs is in accordance with ILO standards and that attempting to introduce conditions specific to trade union sections in small companies would be considered a violation of the autonomy of the social partners. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), after the One-hundred and Eighth International Labour Conference (ILC) session in June 2019, asked the government about the possibility of trade union sections being formed in small enterprises, while acknowledging that by 2017 only 37 per cent of all firm-level agreements were being signed by AoPs and the rest by trade unions (compared with 72.4 per cent in 2012).

The social partners appear in principle to be in favour of the extension of sectoral collective agreements if a significant mass of firms is already covered; there is a common position paper attesting to this. However, there are a number of qualifications relating to the representativeness of those covered by the initial agreement. The issue of representativeness can only be judged with sufficient data on economic activity and employment by detailed sector of economic activity. The lack of these data can cause disputes, as an incident in 2019 attests. More specifically, in July 2019 an employers' organization (the Greek Mining Enterprises Association, SME) appealed to the Council of State to annul the extension granted, in February 2019, by the Minister of Labour to apply the collective agreement signed by the SME and the Greek Miners' Federation (OME), in August 2018, to all firms in the mining industry, irrespective of them not being members of the SME. The extension of the agreement also implies that workers in occupations covered by the initial agreement but working in activities outside mining and not members of OME, are also covered if

they are working in SME members but in activities other than mining. The SME argues that the data used to determine the coverage of employees is wrong as the agreement only covers the employees working in particular lines of business. As sectoral boundaries are very elusive, especially now that firms are active in a number of business lines, it is not clear how the threshold of 51 per cent coverage of employees by the signatories of a collective agreement will be verified. Furthermore, the SME claims that only 27 large firms belong to the sector, while 120 small firms in the sector do not belong to the SME and might not be able to pay the wages agreed. The possibility of an opt-out for firms in a poor financial situation was only introduced recently. In October 2019, the GSEE made a public intervention to the Council of State against the SME and in favour of extending the August 2018 agreement.

The discussion on the extension of sectoral agreements brings about the issue of free-riding (see, for example, Visser 2018): firms and employees that know they will be covered by an agreement regardless of whether they belong to the employers' association or the union are likely to free ride. Furthermore, it is unclear whether the principles specified by the ILO Collective Agreements Recommendation (No. 91) in extending agreements – such as the need for an extension request from one of the parties to the agreement or an opportunity for the employers and workers to whom the agreement is to be extended to submit their observations – are met in general.

Union density differs significantly between sectors of economic activity in the private sector. Thus, in certain sectors union density is very low and union representativeness is an important issue. This is also clear from the excessive fragmentation of sectoral bargaining; until 2010 there were too many sectoral agreements.

Employers' organizations also claim that there is a lack of transparency in sectoral bargaining when non-representative bodies can sign collective agreements. More specifically, only rival organizations can dispute the representativeness of an organization and only within 10 days of the organization issuing an invitation to the other party to bargain. As the call for negotiations is not made public, however, rival organizations do not know when to appeal. The GSEE disputes the claim that there is a lack of transparency, arguing that the case of a non-representative body asking to sign a collective agreement could arise only in the event of new collective agreements as existing agreements are renewed after their expiration. Thus, any organization that wishes to dispute representativeness would be on the lookout for a call to bargaining.

With the aim of increasing transparency regarding the identity of the negotiating parties, recent legislation provides for the creation of a registry of unions and a registry of employers' associations. Information on, for example, the number of members that voted in the last leadership election, the statute of the organization, the number of employees employed by each member of the employers' association, and financial statements will also be included in the registry. The GSEE expressed reservations since they believe that having to provide this information infringes confidentiality of personal information. The ESEE also raised doubts regarding the feasibility of creating this registry, given the way their members (physical persons and companies) are registered.

Another feature of the Greek collective bargaining system is the disproportionate recourse to mediation and arbitration at sectoral level. This has inevitably led to less bargaining because mediators and arbitrators tend to be called in when a disagreement arises. This system is not conducive to social dialogue (see Box 8.2).

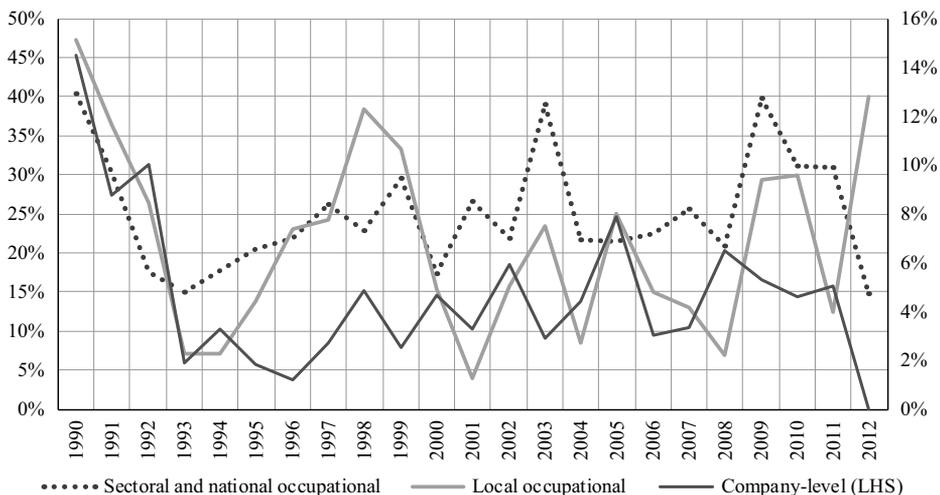
BOX 8.2 IS SYSTEMATIC ARBITRATION COMPATIBLE WITH COLLECTIVE BARGAINING?

The system of mediation and arbitration in Greece has itself been a reason for dispute for a long time.⁸ Employers have long been opposed to the provisions of Law 1876/1990, which gives workers unilateral recourse to compulsory arbitration. The ILO has acknowledged in a number of instances (2003, 2018) that unilateral recourse to arbitration is inconsistent with the principle of free and voluntary collective bargaining and has expressed concern with the decision of the Council of State to find suppression of unilateral recourse to compulsory arbitration unconstitutional. Unilateral recourse to compulsory arbitration is also against the EU European Charter of Fundamental Rights. Despite the above, the legal provisions have not been revised in Greece as the courts have concluded that they are compatible with the Constitution.

Turning to the impact of this provision on collective bargaining, we note that a very high percentage of sectoral and occupational agreements are signed following an arbitration decision (Figure 8.14). More specifically, during the period 2000–10 (1990–99) just under one-quarter (24.2 per cent) of national sectoral and occupational agreements arose from arbitration decisions, as did around 17 per cent (25.7 per cent) of local occupational agreements and 4.7 per cent (5.2 per cent) of company-level agreements.

The implication of this frequent recourse to arbitration is that social partners avoid sitting around a table to negotiate, that is, arbitration undermines the culture of social dialogue. A second implication is that arbitration in effect replaces strikes. While this might be beneficial for business and employees alike, it has come at the expense of wage increases that are not compatible with preserving or improving external competitiveness, as evidenced by unit labour cost developments over the previous decade.

Revision of the mediation and arbitration system is an area in which social dialogue has not taken place, despite several attempts. One aspect that further complicates matters in resolving what appears to be OMED interference in free collective bargaining is the feeling that mediators and arbitrators are not impartial (Ioannou 2011).



Source: Ioannou and Papadimitriou (2013).

Figure 8.14 Percentage of collective agreements settled by arbitration decision, 1990–2012

Recent legislation (Law 4635/2019) tries to partially rectify the asymmetry in access to arbitration by introducing a few prerequisites for unilateral recourse. It remains to be seen to what extent mediation and arbitration will be used from now on.

5. SOCIAL DIALOGUE TO MEET THE CHALLENGES OF DIGITALIZATION AND NEW FORMS OF WORK

As discussed in section 2 of this chapter, the Greek economy is not adequately digitalized. One of the reasons for this is insufficient market competition in the area of digital services (Rewheel 2020). Despite limited digitalization, some social dialogue on the matter and its impact on the workplace took place as long ago as in 2006, when a framework for teleworking was adopted as part of the 2006 NGCLA. Since then, however, there has been little social dialogue on digitalization issues.

In November 2015, however, the national social partners (GSEE, SEV, GSEVEE, ESEE and SETE), realizing the importance of training in the future, produced a policy paper emphasizing the need for social dialogue on vocational education and training. The paper acknowledges the absence of a national strategy on the matter, and calls for the establishment and activation of a central institution dedicated to vocational education and training (VET) consultation and social dialogue under the aegis of the Ministry of Education and in cooperation with other competent ministries and state authorities. Furthermore, the paper acknowledges the need to establish a monitoring and evaluating mechanism for continuous education and training. While this common position paper is a step in the right direction, it is too general and little progress has since been made in developing a strategy or a road map.

More recently, the SEV, through a number of studies and events, has been trying to evaluate the impact of the forthcoming automation and to raise awareness. The other social partners have not shown particular awareness in this field; a very recent survey by the Research Branch of the GSEE on the impact of digital transformation on the labour market is an exception (Lapatsioras et al. 2020).

In addition to digitalization, new forms of work will substitute for existing employment relationships. The gig economy, an umbrella term used to capture work transacted remotely or via platforms, already exists in Greece. Greece has a tradition of self-employment and freelance workers and as early as 2000 the National General Collective Agreement contained a provision on non-discrimination against other types (non-dependent) of employment relationship. Nevertheless, the gig economy has a number of features that differentiate it from traditional self-employment.

The pandemic has forced business, educational establishments, individuals and the public sector to work digitally, when possible. The appropriate legislative framework was introduced in order to provide for this possibility. While teething problems do exist, and notwithstanding that these measures were introduced urgently and with a short-term horizon in mind, using them to overcome obstacles brought about by the pandemic implies that infrastructural shortcomings in the future might not be that great.

The gig, or sharing, economy is currently to be found mainly in the hospitality industry, and less so in the transport industry (taxis). According to an Institute of the Association of

Greek Tourism Enterprises study (INSETE 2019) home-sharing (for example, Airbnb) now accounts for around 10 per cent of total revenues from tourist accommodation: it generated some €1.15 billion between June 2018 and May 2019. Employers in the tourism industry are concerned, as they face unfair competition from this unregulated and untaxed segment of their market, whereas their segment is over-regulated and over-taxed. Competition from these unregulated segments of the market could perhaps explain why hotel workers' wages have declined to a similar extent to those of other sectors of the Greek economy, which were hit much more severely by the financial crisis (Papadopoulos and Lyddon 2020). Despite the constant pleas from employers in the tourism industry for regulation of the gig economy, little has been done, apart from some tax revenue measures. Moreover, there has been no dialogue between the social partners on this matter. Employers view these new forms of work as a threat and are trying to confront them through their links with the government, not in cooperation with the unions (Mexi 2019), confirming the concerns of the President of the OKE, as presented in section 3.2 of this chapter.

An encouraging step towards better preparation for the future of work was taken recently by the Ministry of Education. The Secretary General for Vocational Education, Training and Lifelong Learning met with representatives of the social partners and established a permanent committee in which social partners and the government participate to draw up a strategic cooperation plan on vocational education and training for the former to follow. This appears to be a positive sign for social dialogue in an area that, as the GSEE noted, has been marred with difficulties in the past, as traditionally the Ministry of Labour and the Ministry of Education – the two ministries with a pivotal role in training and education – have had a tense relationship, jeopardizing the possibility of common actions. While representatives from the Ministry of Labour do not seem to participate currently in the Committee, formation of the Committee appears to be a step in the right direction.

6. CASE STUDY: SOCIAL DIALOGUE WITH A MISSION TO COMBAT UNDECLARED WORK

6.1 Extent

The underground economy in Greece is substantial (25 per cent of GDP in 2010, according to Schneider 2013). Not only does part of the output not appear in official national accounts, but part of the input used for its production is also not registered. This is because individuals work as self-employed without paying social security contributions, or neither individuals themselves nor their employers pay social security contributions, or the employee is a family worker. Furthermore, during the crisis the extent of undeclared work has increased (explanatory memorandum to Law 4554/2018). Undeclared work leaves workers unprotected, firms face unfair competition and state revenues are forgone. The occurrence of undeclared work suggests that there is a gap between state morality and citizen morality (ILO 2016). The reasons behind this gap are more difficult to identify and there is disagreement on their importance. In a more descriptive mode we can associate undeclared work with formal institutional voids, weaknesses, inefficiencies and uncertainties. Lack of trust between the state and its citizens and among citizens also plays a role.

6.2 Details on the Action Taken

Starting from the premise that improving institutional weaknesses would reduce undeclared work, national tripartite social dialogue, under the guidance of the ILO and funded by the European Commission, took place in Greece between 2015 and 2018 (Malagardi 2018). This involved producing diagnostic reports on undeclared work in Greece (ILO 2016), including a business survey to understand the obstacles faced by small and medium-sized enterprises in creating formal jobs and a diagnostic report on bogus self-employment, the design of a three-year road map by a tripartite team and a pilot programme of targeted inspections. The road map evolved into an operational instrument following active social dialogue at the level of the Supreme Labour Council. This involved reaching a consensus on a new system of fines (now legislated in Law 4554/2018) and implementation of the road map by the Supreme Labour Council (a tripartite body). The roadmap contains several interrelated actions to unfold between 2017 and 2019. The role of social partners in the implementation of the fight against undeclared work involves the establishment of a Tripartite Committee with equal representation under the Supreme Labour Council. This tripartite committee is responsible for steering and monitoring the implementation of the roadmap, and involving social partners in the design and execution of economic, employment and social policy. The road map being validated by a tripartite body ensures that there is a solid political commitment to the actions provided. An awareness-raising campaign on the negative impact of undeclared work has been launched (information brochure, campaign in schools, website and social media) and a protocol of cooperation has been established between the Labour Inspectorate, the Unified Social Security Institution (EFKA), the Financial Police and the Financial and Economic Crime Unit (SDOE).

All this is evidence that social dialogue can produce tangible results in relation to an important problem for the Greek economy. The action against undeclared work being a product of tripartite work gives it more weight, as all parties will be willing to support its implementation.

7. CONCLUSIONS

There is only a limited tradition of social dialogue in Greece. This was made evident during the recent financial crisis, in which dialogue could have contributed to a speedier design of better measures than those implemented. The crisis, however, might have planted the seeds of change. There is some evidence to this effect: the extensive tripartite work on combating undeclared work, the series of common projects by the social partners in 2014–15, and the willingness stated in the 2018 National General Collective Agreement to revive social dialogue and take joint action on a number of pressing issues: occupational pension funds, actions to reignite private sector growth, and effective collective bargaining are signs that cannot be ignored. The tripartite work on combating undeclared work (see case study in section 6 of this chapter) is an important indication of how, through social dialogue, the social partners can arrive at a consensus to combat a problem that has implications not only for state revenues and competition between firms, but more importantly for the safety, rights and well-being of workers. The action plan,

agreed through dialogue, has more chance of being implemented than a government plan would.

Going further, those experienced in what social dialogue needs in order to succeed – including the ILO – emphasize the need to ensure the representativeness of social partners, to expand the social dialogue agenda beyond narrow wage-related topics to issues such as technology, demography/migration, climate change and globalization, and to include civil society in this process.

NOTES

- * I would like to thank the team of experts working on the ILO-EC project, of which this chapter is part, for their comments on earlier versions of this work and the representatives of employers' associations and unions – listed in the Appendix at the end of this chapter – who generously made time to provide me with the information requested.
1. [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Population_age_structure_by_major_age_groups_2008_and_2018_\(%25_of_the_total_population\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Population_age_structure_by_major_age_groups_2008_and_2018_(%25_of_the_total_population).png) (accessed 12 December 2019).
 2. Civil servants are covered by the Confederation of Civil Servants' Trade Unions (ADEDY). The confederation does not bargain over pay. This chapter does not deal with the dialogue between ADEDY and the government.
 3. Government Gazette, vol. B, issue 4860 (31 October 2018).
 4. The data including the public sector employers and employees are not available for 2013.
 5. Letter by SEV, GSEVEE, ESEE and SETE to the Minister of Labour, dated 6 June 2018 (http://www.sev.org.gr/uploads/Documents/syn2_6718.pdf, accessed 12 December 2019).
 6. Letter by SEV, GSEVEE, ESEE and SETE (http://webcache.googleusercontent.com/search?q=cache:VWE0BoWuHS4J:www.sev.org.gr/uploads/Documents/syn4_6718.pdf+&cd=2&hl=el&ct=clnk&gl=gr&client=firefox-b-d, accessed 28 July 2020) to the Minister of Labour dated 14 June 2018 in reply to the letter by the Minister on 12 June 2018.
 7. Until mid-December 2019.
 8. Ioannou (2011) and Katsaroumpas and Koukiadaki (2018), on which this box draws, provide excellent descriptions of OMED's workings and shortcomings.

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APPENDIX

A. Questionnaires Used for the Semi-structured Interviews

Unions

- (a) What is your general assessment of social dialogue in recent years? Compared with the past have any changes taken place in the frequency of dialogue, the issues covered, the trust between the parties and so on?
- (b) Were you consulted when the government raised the minimum wage in January 2019?
- (c) How did you assess the government's action to introduce a new social partner: SBE? Does introducing a regional social partner not enhance representativeness as there would be a more balanced (at least regionally) view on the issues facing the Greek economy?
- (d) The introduction of the possibility of negotiating a collective labour agreement with an association of persons meant that many more firms had the opportunity to sign an agreement which fitted their circumstances better. This could perhaps be regarded as more representative bargaining. What is your position on this?
- (e) The percentage of firms that sign a firm-level collective agreement is not high. Do you think this is related to the possibility that was given to opt out of sectoral collective agreements?
- (f) What is your estimate of union membership and union density/coverage? Do you have hard data?
- (g) What actions have you taken to increase the number of your members?
- (h) How do you consult your members in order to ensure that you capture the pulse of your members' demands?
- (i) What are the main reasons you can identify for the decreasing number of union members?
- (j) Does the decreasing number of union members pose a financial threat to the trade unions?
- (k) In other countries (for example, Germany) there appears to be more trust between the social partners and between individual employers and their employees. What do you think is the main factor hindering the development of trustworthy relations in the case of Greece?
- (l) What signal should the employers give to persuade you that they are trustworthy (investment, training)?
- (m) What challenges do you think digitalization is creating for trade union membership and collective bargaining? Have you started discussing these with your members? Have you started discussing them with the employers' side?

Employers

- (a) What is your general assessment of social dialogue in recent years? Compared with the past, have any changes taken place in the frequency of the dialogue, the issues covered, the trust between the parties and so on?
- (b) What are the main services you offer your members today?
- (c) How aligned are the interests of your members?
- (d) Are there enterprises that are not your members but are free-riding on your actions?

- (e) How did you evaluate the government's introduction of a new social partner? Does introducing a regional social partner not enhance representativeness as there may be a more balanced view on the issues facing the Greek economy?
- (f) The introduction of the possibility of negotiating a collective labour agreement with an association of persons meant that many more firms had the opportunity to sign an agreement which fitted their circumstances better. This could perhaps be regarded as more representative bargaining. What is your position on this?
- (g) In other countries (for example, Germany) there appears to be more trust between the social partners and between individual employers and their employees. What do you think is the main factor hindering the development of trustworthy relations in the case of Greece?
- (h) If you provided your employees with more training you undertook more investment would employees not show more trust in you?
- (i) How frequently do you inform employees about the true financial situation of the company?
- (j) Do you think that if the government consulted with the employers before setting the minimum wage it would improve the overall competitiveness of the country?
- (k) How can the government be prevented from using the minimum wage as a tool for electoral purposes?
- (l) What challenges do you think digitalization is creating for employer representation in employer associations? What are their implications for collective bargaining? Have you started discussing these with your members? Have you started discussing them with the employees' side?

9. Social dialogue and the new world of work in Ireland

Philip J. O'Connell

1. INTRODUCTION

1.1 Institutional Context of Collective Bargaining in Ireland

Irish industrial relations are a post-colonial inheritance from the British voluntarist system, in which employers and workers' representatives enter into free collective bargaining over terms and conditions of employment (D'Art et al. 2013). A core assumption of voluntarist conflict-resolution systems is that employers and trade unions regulate their affairs in the absence of state regulation, and the role of the state is that of an honest broker in dispute regulation, as well as in the implementation of legislation to protect workers and to regulate health and safety. Crucially, in Ireland the state does not legislate for either trade union recognition by employers or collective bargaining rights, a long-held aspiration of Irish unions. In this respect Ireland differs from Britain and the United States, where unions do enjoy such rights.

Voluntarism has two other important consequences for collective bargaining. First, union density is important: workers in enterprises and sectors in which unions are strong are able to press their claims, often in adversarial conflict. Where unions are weak, workers are unable to press their interests. Union density has been falling in Ireland over the past three decades, and it is unevenly distributed across economic sectors. Second, collective bargaining coverage is limited: collective agreements are negotiated between pairs of actors – employers and unions – and typically do not extend beyond the signatories of those agreements.

Wage costs are an essential component of competitiveness in a small, open economy. Developments in collective bargaining during the 1970s saw a series of bipartite national wage agreements negotiated between unions and employers. Over the course of that decade the state became increasingly involved directly in supporting national collective wage bargaining through the use of budgetary incentives, including higher spending and greater equality of taxation (Hardiman 1988). These early attempts at tripartite social dialogue collapsed in the face of dissatisfaction among employers with the number of days lost to strikes owing to industrial conflict and the extent of wage drift from national agreements through local bargaining. Growing pressure on state finances undermined its capacity to underwrite further national-level collective bargaining. Collective bargaining was decentralized during the early 1980s.

In 1987, the state again became involved in tripartite collective bargaining with employers and unions in response to the deep economic and fiscal crisis during the 1980s.

Centralized collective bargaining in the Irish model of social partnership would dominate industrial relations in Ireland for the next two decades until the next economic and fiscal crisis in 2009 (O'Connell 2019). Seven national social partnership agreements were negotiated over this period, setting wages through centrally negotiated pay deals every three years or so.

The initial tripartite social partnership agreements represented an exchange of tax reductions for wage moderation, designed to enhance competitiveness and thus increase employment. Later agreements expanded the coverage of social partnership to general economic, fiscal and social policy, and included a wide range of actors, including non-governmental organizations, which played an important role in delivering elements of social policy in education, health and social services. The series of social partnership agreements are considered by many commentators to have facilitated the industrial peace and gains in competitiveness that ushered in a period of economic growth that resulted in economic convergence with the developed economies of the European core.

The severe economic crisis experienced in Ireland between 2008 and 2013 brought the era of social partnership to an end. Since then, there has been a dualization of industrial relations. In the public sector, collective bargaining eventually resumed between the state, as employer, and the public sector unions. In the private sector, collective bargaining, where it occurs, has been decentralized to sector and firm level.

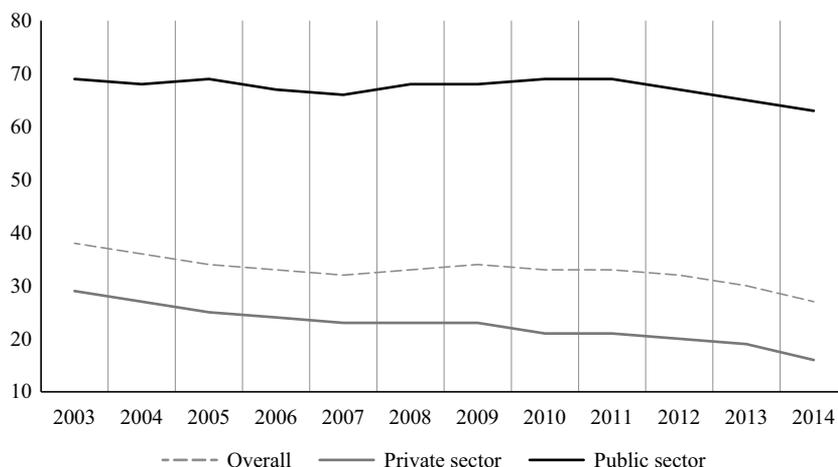
1.2 Socio-economic Context: Crisis and Recovery

The Great Recession had a very severe impact in Ireland, leading to a crisis that entailed the bursting of a property bubble, a systemic banking crisis, a severe economic contraction, a fiscal crisis of the state, and a dramatic contraction in employment and sharp rise in unemployment. Gross national product contracted by 20 per cent between 2007 and 2010, unemployment increased from 5 per cent of the labour force in 2007 to almost 16 per cent in 2012, and the national debt increased to 120 per cent of gross domestic product in 2011 under the combined pressures of bailing out the failed banking system and sharply falling tax revenues (O'Connell 2019). A programme of assistance was agreed, with a loan of €67.5 billion from the European Commission, the European Central Bank and the International Monetary Fund, and this 'Troika' supervised domestic policy-making from 2010 to 2013. Economic growth resumed in about 2013, led largely by exports to markets beyond the ailing Eurozone, associated with foreign direct investment, mainly of US origin; employment has grown and unemployment has fallen. Indeed, unemployment fell below 5 per cent at the beginning of 2019, and the number of people employed was at an all-time high of over 2.3 million, although, expressed as a percentage of the population, the employment rate still lagged below its pre-Recession peak.

2. THE REPRESENTATIVENESS OF THE SOCIAL PARTNERS

2.1 Trade Union Membership

We noted previously that union density is very important in a voluntarist system: where unions are strong, workers are able to pursue their material interests. Union density has



Source: Roche (2017), derived from Walsh (2014).

Figure 9.1 Trends in union density, Ireland, 2003–14

been in steady decline in Ireland for decades. Walsh (2014) shows that union density declined from about 46 per cent of employees in 1994 to about 27 per cent in 2008. Figure 9.1 shows that union density fell from 38 per cent in 2003 to 32 per cent in 2007, and then recovered to 34 per cent in 2009. Thereafter, in the context of economic contraction and declining employment, the decline accelerated, to a low point of 27 per cent in 2014.

The overall pattern conceals important differences between the public and private sectors in both level and trends over time in union membership. In the private sector, union density is low, never higher than 30 per cent in the twenty-first century. Moreover, while the decline in union density appeared to level out during the latter years of the boom, there has been a steady decline since the recession, to just 16 per cent in 2014.

Table 9.1 shows union membership rates by economic sector in 2007 and 2018. The Labour Force Survey (LFS) data show the decline in union membership from 30 per cent in 2007 to 25 per cent in 2018: the total number of union members fell from 560 000 to fewer than 460 000 over this period. The data also reveal very substantial variation by economic sector. Union membership rates are extremely low in agriculture and in accommodation and food, where than 4 per cent of employees are unionized. Union membership is also low in professional and scientific activities, and in information and communication, where there was a sharp decline in union density between 2007 and 2018. Density is also low in wholesale and retail trade. Union membership is much higher in sectors with large proportions of public sector workers, including public administration and defence, in education, and to a lesser extent in health and social work. Union density fell in every sector except education, which saw a 3.6 percentage point increase in the proportion of union members in the sector, between 2007 and 2018.

Collective bargaining coverage rates have followed the downward trajectory, from 46 per cent in 2003 to 39 per cent in 2008 and 32 per cent in 2013 (OECD.stat, n.d.). These declines in trade union density and coverage prior to the crisis may have been

Table 9.1 *Employment and union density by economic sector, Ireland, 2007 and 2018*

	2007		2018	
	Employment	Union density	Employment	Union density
	Number	%	Number	%
Agriculture	22 536	8.2	27 825	3.6
Industry	290 902	32.5	251 069	18.3
Construction	179 489	21.5	94 840	16.8
Wholesale and retail trade	277 452	16.0	263 673	11.8
Transport and storage	67 861	45.3	77 456	36.6
Accommodation and food	124 217	7.3	157 648	2.3
Information and communication	77 870	22.6	101 526	9.6
Finance, insurance etc.	98 170	30.7	100 356	19.3
Professional, scientific	90 936	15.1	103 018	8.0
Administration and support	85 135	16.7	89 532	14.9
Public administration and defence	94 713	78.4	103 262	66.9
Education	132 250	59.3	155 726	62.9
Health and social work	213 611	47.3	263 180	44.3
Other	83 637	13.8	85 827	10.0
All	1 843 332	30.4	1 883 801	25.0

Note: Columns do not sum to 100 per cent owing to missing economic sector data.

Source: Analysis of LFS micro data, 2007 and 2018 (quarter 2).

partly due to the tendency for nationally agreed pay agreements in the social partnership system to function as benchmarks for pay trends across the entire labour market, thus creating a free-rider problem in which individual workers benefit from the collective bargaining organized by unions of which they may not be members.

A new public service union, Fórsa, with over 80 000 members, came into being in 2018 through the amalgamation of three public sector unions: the Civil, Public and Services Union (CPSU), IMPACT and the Public Service Executive Union (PSEU). Fórsa is the second largest union in Ireland, representing a wide spectrum of occupations and grades, including about 30 000 civil servants, 30 000 health workers, 12 000 education staff, 10 000 local authority workers, and 6500 people in semi-state organizations and private companies. According to the leadership of the Irish Congress of Trade Unions (ICTU), the amalgamation was intended to reduce the fragmentation of union organizations, highlighted in a 2011 report by a commission into the union movement, and to enhance the capacity and effectiveness of the wider trade union movement (Sheehan 2017).

Table 9.2 examines union membership rates among different groupings of employees. In general, young people are much less likely to be members of a union than older age groups: in 2018, less than 12 per cent of employees below 30 years of age were union members, compared with 29 per cent of adults. Union membership declined among both age groups between 2007 and 2018.

Recent entrants to jobs are less likely to be union members than are longer-term incumbents, which reflects unionization rates among newly created or newly filled jobs.

Table 9.2 Union membership as percentage of employees, selected groups, Ireland, 2007 and 2018

	2007	2018
Aged below 30	17.5	11.6
Aged 30 or more	39.7	29.2
In job more than 24 months	40.0	31.8
In job less than 24 months	12.1	10.3
Irish	34.9	28.5
Non-Irish	16.6	8.8
All	31.1	25.0

Source: Analysis of LFS micro data, 2007 and 2018 (quarter 2).

In 2018, just 10 per cent of employees who had been in their jobs for less time than 24 months were union members, compared with over 28 per cent of those who had been in their jobs for more than 24 months. Unionization rates declined for both new entrants and long-term incumbents between 2007 and 2018, although the decline was greater among those with longer job tenure.

Non-Irish nationals are also less likely to be members of a union: in 2018 than 9 per cent of non-Irish national employees were union members, compared with over 28 per cent of Irish nationals. The decline in union membership among non-Irish employees was particularly marked.

These data on union membership by sector and by population sub-group indicate areas of the economy and workforce in which union membership is particularly weak. Individual unions have sought to respond to this with membership drives in particular sectors and targeting particular groups, such as young workers and immigrants (ICTU official, interview). Several unions, including the largest union, the Services Industrial Professional and Technical Union (SIPTU), the retail workers union, MANDATE, and Fórsa, the public sector union, have established organizing departments to increase membership.

The SIPTU established a National Organizing Unit in 2003 to counteract the decline in union density, particularly among workers in precarious and non-traditional jobs, and it sought to learn from organizing campaigns by Australian, British and American unions (Geary and Gamwell 2019). The union appointed young, female and immigrant organizers who would identify with an increasingly diverse workshop in a 'like recruits like' approach to organizing (Murphy and Turner 2016). The SIPTU established a hotels division within the National Organizing Unit in 2008. Union membership is low in the hotel sector: less than 8 per cent of workers were unionized in 2008 and only 14 per cent of hotels recognized unions or bargaining. A Joint Labour Committee (JLC) had operated in the sector setting working conditions, and wages above the national minimum, through Employment Regulation Orders (EROs) (Murphy and Turner 2016). In 2011, the JLC system was found to be unconstitutional in a case taken to the High Court by an employer organization representing the accommodation and food sector (described in greater detail in section 5 of this chapter). The JLC system was reinstated in 2014, with restricted powers, and its operation has been hampered by the refusal of employers to

participate in the system. Wages are low in the hotel sector and non-standard working is common, with high levels of part-time and temporary working. Murphy and Turner (2016) document a range of additional issues in the sector, including those relating to health and safety, bullying and harassment, unfair treatment, job security, and a high incidence of breaches of employment law detected by the National Employment Rights Authority (NERA) relating to pay, underpayment of the national minimum wage, and records of contracts.

The SIPTU's organizing attempts had two dimensions. First, the initial grassroots drive to mobilize hotel workers began in 2008 in a harsh economic climate of contracting employment, growth in unemployment, falling wages and declining hotel occupancy. The campaign met with employer resistance and difficulties in mobilizing a sector with high rates of turnover and a part-time, casual and diverse workforce. Second, in 2010, the SIPTU adopted an alternative approach to increasing public awareness and mobilizing public, and customer, opinion in favour of hotel workers through the 'Fair Hotels' campaign. In the campaign, hotels were deemed fair based on staff treatment, wages, representation, health and safety and job quality. The campaign sought to undermine non-union hotels and poor employers by encouraging individuals and organizations to use 'fair hotels'. The campaign was supported by the union movement, non-governmental organizations and other civil society organizations. Murphy and Turner (2016) estimate that over 50 hotels with collective bargaining arrangements already in place signed up to the campaign, and they argue that the SIPTU achieved recognition agreements with another ten hotels, extending collective bargaining coverage to an additional 1000 employees. Murphy and Turner regard the outcome of the campaign as a mixed success. On the one hand, the SIPTU secured a foothold in the hotel industry despite the adverse economic and institutional environment and the difficulties of organizing a precarious and diverse workforce. On the other hand, the tactic of waging a public campaign, while it garnered support for the mobilization effort, 'failed to forge a sense of community, collective identity and solidarity among hotel workers' (Murphy and Turner 2016, p. 603). That failure exposed the unions' weakness and the strength of the employers' refusal to recognize the union or to enter into collective bargaining.

The SIPTU's organizing efforts have not been confined to the private sector. A campaign to organize home care workers was conducted over nine years between 2004 and 2013. Employment in the home care sector is split between 10 000 direct employees of the state through the Health Service Executive (HSE), about 5000 employees of not-for-profit voluntary organizations funded by the HSE, and 9000 employees of private sector agencies and companies (Murphy and Turner 2014). The campaign involved grassroots mobilization through home visits and communication with home-workers organized in partnership between the SIPTU and the HSE. These road shows built support for the campaign but also offered the union a recruitment mechanism. The grassroots activism was supported by a public campaign, 'Be Fair to Those Who Care', to mobilize the support of care recipients, their families and the general public. Initial success came by way of increased membership and a 2009 non-binding ruling by the Labour Court that home care workers should be covered by a 2004 agreement covering employment contracts, pay scales and pension rights. However, that recommendation was not implemented by the HSE (Murphy and Turner 2014). The campaign was reinvigorated by the SIPTU with a new public campaign, 'Time to Care', in 2012, seeking to mobilize

support from clients and the wider community, knowing that the state industrial relations machinery had already ruled in favour of the care workers. A new hearing was secured at the Labour Court in 2013, which resulted in a binding recommendation that guaranteed a minimum of at least seven hours per week for care workers. Murphy and Turner note that the campaign secured collective bargaining rights for almost 12 000 home care workers. This was important for the union in a broader context of declining union membership and recognition. They argue that the success of the campaign derived from three elements: the grassroots membership recruitment; the appeal to clients and the wider public; and the reliance on state industrial relations institutions.

Geary and Gamwell (2019) provide an analysis of SIPTU organizing campaigns in three sectors: the red meat industry, contract cleaning and the hotel sector in the late 2000s and early 2010s. All of these sectors faced intense competition, wages were key to competitiveness and they employed many workers outside traditional union constituencies: female, immigrant or precarious workers. The organizing tactics were adapted to the specific conditions in each sector and employed combinations of grassroots mobilization, top-down organizing and public appeals to consumers. The meat industry campaign targeted a large multi-establishment company. The cleaning campaign focused on large employers. The hotels campaign combined grassroots organizing with a public campaign focusing on consumers, as described previously.

Geary and Gamwell argue that the three campaigns met with mixed results. The hotels campaign achieved union recognition in 70 hotels, a 24 per cent increase in the number of unionized hotels, but membership remained low. The meat and cleaning campaigns achieved increased union density and greater activism, and succeeded in reducing divisions between different groups of workers. The campaign in the cleaning sector resulted in a collective agreement in the large cleaning companies, which then served as a launch pad for a wider campaign across the industry. The wider campaign brought about the negotiation of the Registered Employment Agreement (REA) for the contract cleaning sector in 2012 that set wage rates, introduced a sick-pay scheme and allowed for the deduction of union dues at source (Geary and Gamwell 2019).

These union organizing campaigns reflect the challenges encountered by unions in seeking to recruit and represent often precarious and diverse groups of workers in industrial sectors where wages are of key importance to competitiveness, and frequently in the face of employer resistance. The campaigns employed a combination of tactics, including bottom-up mobilization and top-down organizing, with public relations campaigns to secure public support from clients and consumers. In both the contract cleaning and home care sectors, the institutions of the state industrial relations machinery proved important in securing collective rights for workers.

2.2 Business Organization

Ibec (formerly the Irish Business and Employers' Confederation) is Ireland's largest membership organization representing business interests. Its membership is drawn from a wide range of firms, small and large, indigenous and multinational, and its combined membership employs 70 per cent of the private workforce in Ireland. It organizes 36 trade associations covering a range of industry sectors, and undertakes lobbying activities on their behalf. Ibec also provides a wide range of professional services for its

members, including an advisory service on employer–employee relations, legal services, and management training on human resource management, occupational health and safety, employee relations and employment law. Its employer relations executives advise and support member firms in negotiations with trade unions, with conciliation, and with hearings at the Work Relations Commission and the Labour Court. Most of this support activity takes place at firm level, although there has been a return to information exchange and some negotiation at industry-sectoral level (Ibec official, interview).

Ibec was a key participant in the social partnership arrangements until their demise in 2009. After the collapse of social partnership in the context of economic crisis, Ibec withdrew from national-level collective bargaining and redirected its activities towards lobbying on behalf of business in general and of its industry-sector trade associations (Regan 2012). However, it continues to participate in consultative for a, such as the National Economic and Social Council (NESC) and the Labour Employer Economic Forum (LEEF), and attends the annual National Economic Dialogue (LED) meetings, all of which are described in this section. Ibec also participates, with the ICTU, in European Union (EU) committees on social dialogue at the European level.

Gunnigle et al. (2007) argue that many multinational corporations in Ireland adopt sophisticated union avoidance strategies. Foreign-owned companies employ about 45 per cent of employees in manufacturing industry, and account for about 80 per cent of total industrial production. Foreign direct investment (FDI) is particularly important in information and communications technology (ICT), pharmaceuticals, medical devices and food processing. Resistance to union organization has not been confined to the multinational sector. Murphy (2016) provides an account of the tactics employed by employers in Ireland to avoid unions and resist union activists.

Other industry-specific employer organizations have also been involved in industrial relations. The Quick Service Food Alliance (QSFA), which was formed in 2008 to represent over 180 employers in the fast-food sector, including multinationals as well as local independents, has played a particularly prominent role. The QSFA took a successful challenge to the High Court in 2011, arguing that the JLC system, which had set minimum pay and conditions in the catering industry since the early 1990s, was unconstitutional, because JLCs set legally binding regulations, which was the exclusive preserve of Parliament under the Irish Constitution (O’Sullivan and Royle 2014). The abolition of the JLC system left many low-paid and precarious workers without recourse to state protection, until subsequent legislative reforms were attempted.

2.3 Social Dialogue at the National Level

During the era of social partnership, wage bargaining was highly centralized. Seven national social partnership agreements were negotiated between 1987 and 2008, setting wages through centrally negotiated pay deals every three years or so under the auspices of the Office of the Taoiseach, the Prime Minister’s office. National agreements set benchmarks to be followed voluntarily across the economy and non-unionized firms tended to shadow the national benchmarks (McGuinness et al. 2010). In contrast with earlier attempts at centralized bargaining, under social partnership a high degree of control was exercised with limited scope for bargaining at local or company level during these two decades (Roche 2007; Teague 2009).

The consensus approach to social partnership was one of the first casualties of the Great Recession in Ireland. The social partners had negotiated a national wage agreement, 'Towards 2016: Review and Transitional Agreement 2008–2009' (T16), immediately before the economic collapse in 2008, which agreed temporary pay-pauses in both public and private sectors, to be followed by a 6 per cent increase over an 18-month period. The agreement also included government commitments to improve collective bargaining and employment rights, issues that had been on the trade union agenda for a number of years (Regan 2012).

The Irish model of social partnership was at odds with several dimensions of the Irish political economic structure. First, centralized collective bargaining, the key element of social partnership, fits uneasily with the voluntarist, liberal model of industrial relations, in which collective bargaining is usually conducted at enterprise level. Second, centralized bargaining was also at odds with the high level of dependence on mostly United States-owned FDI, which has resisted union organization and collective bargaining. Third, social partnership in Ireland entailed an unusual combination of national social dialogue through the social partnership institutions with a liberal welfare regime. Typical of liberal welfare regimes, Irish welfare policies are dominated by market provision, with low rates of social provision and an emphasis on cash transfers that are targeted and largely allocated on a means-tested basis. The tax reductions offered in exchange for wage restraint under social partnership deals set fiscal constraints on the type of welfare state expansion more common in other countries with extensive social partnership arrangements.

In addition to the structural dissonance, social partnership as practised in Ireland between 1987 and 2009 was distinctive in several other respects. Its institutional basis was underdeveloped. Most of the social dialogue focused on the seven wage agreements, with many other elements of economic and social policy added on. There was an implementing body, the National Implementation Body, with senior government officials in addition to the ICTU and Ibec representatives, but little else in the way of institutional structures. A great deal depended on personal relationships in a network of contacts. This informality may be more feasible in a small country with a highly centralized state.

Social partnership was also born of union weakness. This reflected relatively low and declining membership. It also included, in the context of the economic and fiscal crisis of the 1980s, that there was a good deal of concern, particularly in union circles, about a shift to the type of radical neoliberal Thatcherite policies that had taken hold in the United Kingdom. Social partnership was seen as an alternative.

Corporatist-type arrangements are generally expected to increase pay and union influence at national level, as well as to increase union density and improved workplace access for unions. With trade unions exerting greater influence on policy, what did social partnership achieve at national level in Ireland? D'Art and Turner (2011) show that union density declined during the period of social partnership, from between 39 to 43 per cent in 1990 to between 21 and 23 per cent in 2007. Union density in the public sector more or less held up at around 80 per cent over the same period.

Union density decreased throughout the social partnership era, partly because centralized collective bargaining created a free-rider problem and undermined the case for local organization of workers in unions. In a context in which the right to bargain is not recognized in Irish law, union density is important in regard to whether bargaining takes place and who is covered by any agreements.

The ICTU campaigned for union recognition and collective bargaining rights in the workplace. Tripartite negotiations under social partnership created bargaining rights under the Industrial Relations Acts 2001 and 2004. Maccarrone et al. (2019, p. 321) argue that under the 2001 and 2004 Acts the right to bargain was intended to ‘provide unions with the opportunity to obtain a legally binding determination from the Labour Court regarding pay, conditions of employment and procedures for conflict resolution in firms in which collective bargaining did not take place.’ This did not, however, address the issue of union recognition. D’Art and Turner (2011) argue that this light regulation had little impact on trade union access to the workplace, or on reversing the decline in union density in the private sector. However, a limited number of collective agreements were negotiated under the system regulated by the 2001 and 2004 Acts, leading to pay increases and improved working conditions for some workers in non-unionized firms (Cullinane and Dobbins 2014).

At the macro-level, over the two decades from 1987 to 2007, a period that saw seven national-level social partnership agreements, real wages increased by 35 per cent averaged across all industries (CSO 2017). However, these pay increases did not keep pace with productivity increases, and the wage share of national income fell over the period of partnership. Strike rates also fell to historically low levels.

Two institutions to improve pay and conditions for vulnerable and poorly organized workers were initiated during the social partnership era. The National Minimum Wage was established by legislation in 2000 covering many low-paid workers, bringing Ireland into line with practice in many other European countries. The initial standard rate was €7.65 at the time of its introduction, and had increased by €1 by 2007, just before the Great Recession.

The National Employment Rights Authority (NERA) was established in 2005 following a number of scandals over the treatment of workers by rogue employers. Unions used the social partnership processes to argue for the establishment of a dedicated employment rights regulator with adequate resources to inspect working conditions and prosecute employers in breach of regulations. In 2008, the NERA found breaches of JLC regulations and other employment regulations in 79 per cent of catering establishments inspected. O’Sullivan and Royle (2014) argue that the success of the NERA was one of the stimuli for the fast-food catering employers’ group to challenge the JLC system in court.

Social partnership took on some of the blame for the economic crisis that had brought about the devastating impact on the state, businesses and workers. Regan (2017b, p. 125) argues that social partnership ‘expanded to include almost every interest group in civil society’, leading to mounting expenditure commitments and declining tax returns, particularly from income tax. This was considered to have exacerbated the fiscal crisis of the state when the Recession hit and government revenue collapsed. Wages increased steadily, and the gap between average public and private sector pay expanded after a public sector increase of nearly 9 per cent was awarded to all public sector workers in 2002 in addition to a 3 per cent increase in the National Wage Agreement (Kelly et al. 2009). Social partnership now came to be regarded as bypassing parliamentary democracy and favouring the interests of insiders to the partnership process, particularly those represented by the top organizations of employers and workers.

Alternatives to austerity in response to the crisis were proposed early on by the National Economic and Social Council (NESC), the state agency with core responsibility

for supporting tripartite social partnership institutions and by the ICTU (Roche et al. 2017). While the NESC accepted the need for fiscal consolidation and stabilization of the banking system, it argued for lower cuts in capital spending, greater consultation with the social partners and protection of the most vulnerable in society from the burden of fiscal adjustment. The ICTU advocated a Keynesian response to the economic crisis, emphasizing the need for social solidarity in negotiations with government. The ICTU was opposed to austerity cuts and sought to sustain pay levels, and even to honour pay increases that had been negotiated under the T16 national agreement, to extend the repayment period for the growing public debt and deficits, and to increase infrastructural spending to stimulate employment and economic activity. ‘The ICTU proposals gained little traction from employers and government and lost ground completely with the collapse of social partnership in late 2009’ (Roche et al. 2017, p. 8). The failure of the NESC and the ICTU to influence the austerity response to the crisis marked a sea change in Irish political economy, and is symptomatic of what was to follow in relation to the capacity of unions to represent the interests of their members, and workers in general, throughout the crisis and the recovery.

Despite strong growth in the economy and in employment since about 2013, there has been little appetite among the principal actors for a return to centralized tripartite bargaining. The centre-right Fine Gael government has shown no interest in a tripartite approach. For example the Taoiseach (Prime Minister) from 2011 to 2016, Enda Kenny, is quoted in Regan (2017a, p. 157) as saying ‘We are not going back to social partnership in the way that it was’ and ‘the social partnership model practiced by previous governments had become a closed shop, where decisions with national consequences were made behind closed doors by a chosen few, accountable to nobody’.

After the Great Recession and the euro crisis, the increasing concentration of economic influence in the European Commission (EC), national governments, perhaps particularly in countries that became dependent on the EC, European Central Bank (ECB) and International Monetary Fund (IMF) Troika, are less likely to develop tripartite approaches in order to implement labour market and fiscal reforms and more likely to impose reforms dictated by the new economic governance regime (Regan 2017b).

Ibec, has shown no interest in a return to any form of centralized collective bargaining (interview, Ibec official). The unions would be more favourably disposed to some form of national level social dialogue (ICTU official, interview). Regan (2017a) argues that unions need the access to government that participation in social partnership afforded them. Regan also notes that unions and employers would have a preference for a return to a narrower labour–employer conference that would not include all of society. However, D’Art and Turner (2011) argue that social partnership was a Faustian bargain that caused a weakening of labour’s collective organizing capacity in exchange for access to government and limited improvements in workers’ terms and conditions.

In recent years there have been three institutional fora in which the social partners meet: the NESC, the NED and the LEEF. Participation in these fora has been more consultative than representative in the post-social partnership era.

The NESC is a statutory body with an independent secretariat charged with advising government on strategic economic and social policy, and under the auspices of the Office of the Taoiseach (Prime Minister) was the state agency which had orchestrated the social dialogue underpinning the national wage agreements at the core of the Social Partnership

era and had taken over core responsibility for supporting tripartite social partnership institutions. With the collapse of social partnership, and in a context in which social partnership took some of the blame for the economic crisis, the NESC was effectively marginalized (Roche et al. 2017). Regan (2017a) argues that the role of the NESC has been reduced in the absence of national tripartite dialogue. The NESC ‘used to provide a problem-solving forum for the leadership of unions and employers to engage in dialogue, and it was not obliged to represent the immediate concerns of its members. This enabled the leadership of various organizations to reach a “shared understanding” on certain policy priorities.’ (Regan 2017a, p. 158).

The NED was established in 2015 to facilitate discussions on the economic and social priorities confronting the government. It has become an annual consultative event hosted by the Department of Finance and the Department of Public Expenditure and Reform. It includes representatives of all main interests in society, including Ibec and ICTU, voluntary groups, experts in various policy fields and members of the Oireachtas (houses of parliament). Regan (2017a) notes that the NED differs from social partnership and the NESC in three key ways. First, it is an open consultation observed by the media. Second, it is not a negotiation between independent parties entailing a quid pro quo. Third, the Department of Finance sets the agenda by laying out the fiscal and macroeconomic policies to be discussed. Regan (2017a, p. 158) comments that the ‘process is more an exchange of information than effective social dialogue’. However, he also notes that the 2015 NED was the first time since the collapse of social partnership that Ibec and the ICTU had been at the same table to discuss public policy. An Ibec official also commented that there were many other participants at that table representing various civil society interests, and that the event was entirely consultative (Ibec official, interview).

The LEEF was established in 2016 to act as a ‘formal structure for dialogue between representatives of employers and unions to discuss economic and social policies insofar as they affect employment and the workplace’ (Paschal Donoghue, Minister for Expenditure and Reform, quoted in Sheehan 2016a). The LEEF’s role is to provide a space in which to discuss areas of shared concern affecting the economy, employment and the labour market on a thematic basis, such as competitiveness, sustainable job creation, labour market standards and equality and gender issues in the workplace. At its inception, Minister Donohoe noted that ‘this is not Social Partnership. The Labour Employer Economic Forum will not discuss or determine wage levels or wage increases within the public or private sector’ (quoted in Sheehan 2016a). The Labour Court and the Workplace Relations Commission (WRC) remain the key dispute-settling industrial relations institutions.

The role of the LEEF was extended in 2018 to cover four key policy issues: employment rights, pensions, childcare and housing. This extension took place in a context in which employers and union leaders had been seeking more than the limited LEEF meetings (Sheehan 2018). The consultative nature of the LEEF was confirmed in interviews with representatives of both Ibec and the ICTU. However, in 2019, the LEEF also provided an institutional forum in which the leaders of the ICTU and Ibec jointly appealed to government to develop a scheme to protect employment in the context of a disorderly Brexit (Sheehan 2019a).

With relatively rapid growth, a surge in employment levels and unemployment falling below 5 per cent in 2019, wage pressure intensified. Average hourly earnings increased by over 4 per cent in the 12 months to quarter 3 in 2019, up from 2 per cent the previous

year (CSO 2019). Increasing wage pressure may eventually lead to a fresh consideration of the potential contribution of centralized collective bargaining. In 2019, the chief executive officer (CEO) of Ibec, Danny McCoy, suggested that a social partnership-type moderate wage arrangement, in return for agreed commitments on social infrastructure, should be seriously considered (Sheehan 2019a). McCoy argued that pay demands were being driven by the lack of social infrastructure, such as in housing, and consequent high rents and house prices. Moderation in pay agreements could be traded for social infrastructure benefits in much the same way that tax cuts had been traded for moderate wage increases in the early National Wage Agreements negotiated in social partnership in the late 1980s. However, the leader of the SIPTU, the largest private-sector union in Ireland, Gerry McCormick, responded that the trade unions are not interested in a centralized wage agreement, in view of the successes of its local bargaining strategy (Sheehan 2019b). McCormick also argued that local bargaining needed a national framework to deal with national issues, such as industrial relations legislation, pensions, innovation and serious industrial disputes requiring state intervention or mediation.

3. THE AUTONOMOUS ROLE OF SOCIAL PARTNERS

3.1 Institutional Context

The voluntarist features of Irish industrial relations have undergone significant changes over time. First, a number of state institutions were established to support the collective bargaining system. The Labour Court was set up in 1946 to provide impartial arrangements for the resolution of industrial disputes. This court operates as an industrial relations tribunal, issuing non-binding recommendations setting out its opinion on disputes and the terms on which they should be settled. It also serves as an enforcement mechanism for employment legislation. The role of the Labour Court has evolved over time and, under the Industrial Relations Act 2015, it has sole appellate jurisdiction in all disputes under employment rights enactments. The Labour Court deals with both rights-based and interest-based disputes. The Labour Relations Commission was established in 1990 to promote workplace dispute resolution through conciliation and advisory services, and was concerned mainly with interest-based disputes.

Joint Labour Committees were set up in the 1940s as independent wage-setting institutions to determine pay rates in certain low-wage sectors, particularly where union organization was weak, such as agricultural labouring, catering, hairdressing, hotels, cleaning and retail. Joint Labour Committees were composed of representatives of workers and employers, with independent chairs, and the Registered Employment Agreements (REAs) for each sector were implemented through EROs via the Labour Court. Joint Labour Committees also set overtime rates and other minimum employment conditions, such as sick pay. The effect of the JLC/REA system was to raise wages and reduce inequality among vulnerable workers (O'Connell 2019). Here the state intervened because of union weakness. The JLC/REA came under pressure when a group of fast-food employers successfully challenged their legality in court in 2008.

Other institutions focused more on individual employment rights. The Employment Appeals Tribunal was established in 1967 and evolved to adjudicate in disputes on

individual employment rights, particularly in relation to unfair dismissals and equality issues (O'Mahony 2017). The Rights Commissioner Service was set up in 1969 to resolve disputes over industrial relations or employment rights affecting individuals or groups of employees. (Teague 2009). The Equality Tribunal, set up in 1999 to investigate and adjudicate discrimination, also had a role in employment relations. Teague (2009, p. 505) argues that in the decade preceding the Recession, public agencies became increasingly concerned with 'rights-based employment grievances alongside the decline of large-scale industrial relations disputes'.

The Workplace Relations Act (2015) represents a major reform of labour market institutions concerned with employment rights and collective bargaining designed to improve the efficiency of Irish industrial relations institutions through the establishment of the WRC. The WRC took over the functions of the Labour Relations Commission, responsible for dispute resolution, the Employment Appeals Tribunal, governing unfair dismissals, the NERA, which supervises employers' compliance with employment rights legislation, and the Equality Tribunal, which adjudicates on cases of alleged discrimination under Irish equality legislation. In the new system, all workplace disputes are referred to an adjudication officer in the WRC with a view to resolving conflict through mediation. Where disputes cannot be settled, they can be referred to the Labour Court, which has become the single appeal body for all decisions by the institutions gathered under the umbrella of the WRC. The Board of the WRC includes representatives of the social partners, as does that of the Labour Court.

Industrial relations practitioners have raised concerns about a lack of balance between disputes of rights and disputes of interest in the greater emphasis on rights determination than on collective industrial relations issues in the WRC, leading to a possible diminution of traditional industrial relations solutions within the dispute resolution system (Prendergast 2017). Hickland and Dundon (2016) argue that the newly reformed industrial relations architecture is heavily legalistic and emphasizes individual employment rights over collective interests. Both of these characteristics tend to weaken collective organization through unions in pursuit of shared material interests. Sheehan (2016b) quotes Kevin Duffy, former Chairman of the Labour Court:

Industrial relations, as that term is historically understood, refers to collectivism and the regulation of the employer/employee relations by negotiation between trade unions and employers. The very significant body of employment rights legislation that we now have has resulted in a narrowing of the range of issues dealt with collectively. Disputes concerning employment rights raise what are by definition individual rather than collective issues.

However, this is a question of balance, and the WRC and Labour Court also deal with more traditionally articulated disputes between unions and employers. Indeed, Roche and Gormley (2018) note that the WRC and the Labour Court, in attempting to resolve pay disputes, have tended to respect the 2 per cent norms established in other companies and sectors, thus providing institutional support and legitimacy to the emerging forms of coordination. Institutional support for the more widespread proliferation of the 2 per cent pay norm has also facilitated convergence with European wage trends and inflation targets, and has supported competitiveness.

Part of the reason for the increase in rights-based disputes was the increase in employment legislation since the 1990s. Irish membership of the EU, since 1973, brought with it

an increase in individual employment rights through the transposition of a range of EU directives. Employers refer to '70 EU directives' and perceive the labour market in Ireland to be highly regulated with a strong concentration on individual employees' rights (Ibec official, interview). However, unions would challenge the notion that Ireland's labour market is highly regulated, noting that Ireland typically adopts a minimal compliance approach to EU directives on the labour market, and that much of the legislation implementing EU directives focuses on health and safety standards (ICTU official).

The series of interventions on the part of the government to overcome the impediments to sectoral wage-setting institutions in a manner that would be compatible with the Constitution, shows that the state was proactive in seeking solutions to protect vulnerable workers with weak collective bargaining capacity (interview with Department of Business, Enterprise and Innovation official). However, these attempts at reforming the system were not an outcome of social dialogue. These and other reforms, including the establishment of the Low Pay Commission and increasing the National Minimum Wage, were promoted by the Labour Party as a minority partner in the coalition government from 2011 to 2016, and thus emerged from the electoral process not from social dialogue (Regan 2017a).

Other state interventions have been in response to lobbying by social partners. For example, legislation on minimum working hours was passed in the Employment (Miscellaneous Provisions) Act 2018 which introduced banded working hours and outlawed zero-hour contracts in Ireland. The act was an initiative of government that was lobbied for by unions and with the agreement of employers (interview with Department of Business, Enterprise and Innovation official).

The increased state intervention in the labour market in dispute resolution in response to weak collective bargaining in low-paid sectors has made it easier for unions to represent employees to the WRC and the Labour Court, even where an employer refuses to engage in collective bargaining. However, even where the Labour Court recommends a settlement in favour of employees, this does not include union recognition. This enhanced role of the state in the labour market offers protections to workers, particularly in sectors with weak collective bargaining. This may undermine autonomous union organizing attempts along traditional interest-based lines.

3.2 Collective Bargaining in the Public Sector

From the onset of the crisis in 2008, the state retreated from the tripartite social partnership system and, as an employer, reneged on the T16 wage deal. The vast majority of private sector employers followed suit, signalling a shift from national to local enterprise-level bargaining (Hickland and Dundon 2016; Roche 2017). Cuts in public service pay and numbers were central to the fiscal consolidation policies adopted in response to the crisis after 2009. Three pay cuts were implemented across the public service, in 2009, 2010 and 2013: the 2009 cut entailed a public service pension levy averaging 7 per cent and the two subsequent pay cuts averaged 6 per cent each, although all three cuts were progressive, cutting more from those on higher incomes (Roche 2017). Overtime rates were cut, and premium salary payments reduced. In an effort to secure a long-run reduction in pay rates, all new entrants to the public service from 2010 were appointed at salary scales that had been reduced by 10 per cent of the scales applying to incumbents (O'Connell 2013).

Total numbers working in the public sector fell by 10 per cent between 2008 and 2013 and the total public service pay bill fell by almost 13 per cent (Malone 2019a).

After the demise of social partnership two different forms of collective bargaining developed in the public and private sectors. In the public sector, the institutional heritage of social partnership facilitated the emergence of a series of centrally negotiated agreements that were limited to public sector and semi-state organizations (Regan 2017a; O'Connell 2019). In the private sector, the pattern of collective bargaining 'changed almost overnight from national corporatism to multiple local bargaining levels, without any intermediary mechanism or formal sectoral or industry structure' (Hickland and Dundon 2016, p. 246).

Bipartite centralized collective bargaining re-emerged in the public sector in 2010, following the unilateral imposition of two wage cuts. These were concessionary agreements on the part of the ICTU as a damage limitation exercise. Regan (2017a) argues that the institutional heritage of social partnership facilitated the emergence of these centralized agreements. In spring 2010, the public-sector unions and the government re-engaged in dialogue and the Public Service Agreement 2010–2014 (known as the Croke Park Agreement, referring to the conference venue) was negotiated between the ICTU and the Department of Public Expenditure and Reform, reflecting the withdrawal of the Prime Minister's office from the partnership process. The government undertook not to implement further pay cuts for four years and to demand no compulsory redundancies. The agreement also provided for substantial reductions in public service numbers, largely via voluntary redundancies, revised work practices, organizational restructuring and redeployment of staff across the public sector, and an industrial peace clause.

The Croke Park Agreement was formally endorsed in June 2010 by the ICTU. The rationale on the union side was that the agreement represented 'an avenue to save people's jobs' (MacCarthaigh 2017, p. 171). A significant minority – seven trade unions representing some teachers, nurses, lower paid public servants and others – voted against the agreement, but most subsequently accepted it.

The Public Service Stability Agreement 2013–2016, known as 'the Haddington Road Agreement', imposed additional pay cuts, progressively from 5.5 per cent of salaries over €65 000 to 10 per cent of earnings over €100 000 and increased working hours (about two hours per week), but also provided for the restoration of these pay cuts to follow an anticipated recovery after 2016. The agreement also sought further flexibility from workers on redeployment, performance management, work-sharing arrangements and workforce restructuring. The first draft of the Haddington Road Agreement had been rejected by a majority of unions, and the final agreement was accepted after the government threatened to again legislate for cuts in the absence of an agreement (MacCarthaigh 2017). The Lansdowne Road Agreement 2013–2018 was negotiated in a context of economic recovery and an improvement in the fiscal outlook. Trade unions pressed for repeal of the cuts imposed under the emergency legislation and the Haddington Road deal and increases in public service pay and an end to the moratorium on recruitment. The new agreement represented an extension of the Haddington Road Agreement and provided for restoration of pay cuts and reductions in the public sector pensions levy, although the extent of any public sector pay increases were constrained by new European fiscal rules, which required any increases in public spending to be offset by tax increases, which faced resistance from the electorate.

A particular feature of the series of wage cuts imposed in the public sector during the Irish crisis, and of the series of collective agreements surrounding those cuts, was the differential treatment of new entrants. From 2010, in an effort to secure a long-lasting structural reduction in pay rates, all new entrants to the public sector were to be appointed at salary scales reduced by 10 per cent relative to the scales applying to incumbents.

Since the recovery, public sector unions have sought to restore the pay cuts imposed during the crisis and to unravel the differential pay scales between new entrants and incumbents. The Haddington Road Agreement provided for the reintegration of the new, lower scales with the older, higher scales, and added two additional points at entry level. Therefore, public-sector workers are now on the same incremental scales, but new entrants come in at a lower entry level, entailing a cumulative loss of earnings until they reach the top of the scale.

Notwithstanding the more robust relationship evident in this bipartite collective bargaining between government-as-employer and public-sector unions, the series of agreements after 2009 represent some degree of continuity in social dialogue that delivered pay cuts and reductions in public sector numbers, as well as reforms in work practices and redeployment, while providing job security for public servants on permanent contracts. They also provided for pay restoration when macroeconomic and fiscal conditions improved. Hickland and Dundon (2016) argue that the agreements indicate the utility of maintaining social dialogue as a problem-solving response to economic crisis.

3.3 Wage Setting in the Private Sector

In the private sector, collective bargaining was decentralized to the sector and firm levels. Collective bargaining in the private sector shifted to local and enterprise level after Ibec withdrew from the T16 national pay agreement. The remnants of social partnership in the private sector took the form of a protocol between Ibec and the ICTU for the 'Orderly Conduct of Industrial Relations and Local Bargaining in the Private Sector', which was agreed in 2010 and renewed in 2013 as a mechanism to promote industrial peace (Hickland and Dundon 2016). Regan (2012) argues that the accord is premised on a strategy to sustain employment and that it has a symbolic function of demonstrating to the state dispute resolution authorities that the erstwhile social partners still recognize each other. During the Recession, from 2009 to about 2011, unions mainly engaged in decentralized firm-level concession bargaining with private sector employers, exchanging concessions on pay, conditions and work practices for commitments to protect jobs (Roche 2017). Unions were mainly concerned with protecting jobs in the face of the sharp contraction in private sector employment: there was little scope for pay increases except in the most resilient and profitable firms (Roche and Teague, 2015).

In 2011, in an effort to reinvigorate collective bargaining in the very difficult context of recession and mass unemployment, the SIPTU developed an enterprise-level campaign in pursuit of modest pay rises of about 2 per cent (Hickland and Dundon 2016). The 2 per cent strategy entailed bargaining for modest incremental increases with carefully targeted profitable enterprises, mainly in pharmaceuticals and electronics – foreign owned companies exporting to markets outside of the Eurozone. The strategy was to negotiate directly between the union and the company without the involvement of outside bodies, including Ibec and the Labour Relations Commission. Roche and Gormley (2018) argue

that this represented a form of pattern bargaining in which deals reached in the buoyant and profitable export sectors spread progressively beyond those sectors into engineering, large retail chains, construction supply, banking and state-owned commercial enterprises as economic recovery gathered pace. The 2 per cent target originally set out by the SIPTU was respected by other large unions, including Unite, the Technical Engineering and Electrical Union (TEEU) and Mandate. Roche and Gormley also argue that the 2 per cent strategy took account of wage rises in Germany, as well as the ECB target of 2 per cent inflation. This attempt to match wage increases to wage movements in Germany and to European inflation would suggest that the effect of industrial relations practices in this phase was to increase the extent of convergence with European trends. The 2 per cent strategy was regarded by unions as providing for modest pay increases and protecting jobs while also supporting competitiveness. By 2014 the 2 per cent strategy had delivered over 220 collective agreements covering 'upwards of 50,000 workers' (Hickland and Dundon 2016, p. 246).

A lot of the international literature contends that one effect of the Great Recession was to accelerate trends towards decentralization of pay bargaining in a disorganized manner that compromised the capacity for unions to represent their members (Visser et al. 2015; Koukiadaki et al. 2016). Ireland was one of the European countries that suffered deep recession and fiscal contraction, entered a programme of financial support managed by the EU/ECB/IMF Troika and saw a decline in collective bargaining coverage, leading to what Visser et al. (2015) terms 'disorganized decentralization' of collective bargaining. However, the resumption of collective bargaining across most of the public sector, and the development of pattern bargaining in the private sector in the context of economic recovery, suggests some continuity, and a degree of coordination in social dialogue. Thus, Roche and Gormley (2017) argue that the conduct of Irish industrial relations did not follow the path expected by commentators who saw disorganized decentralization as the outcome of recession and weakening of trade unions. Instead, they argue that pay bargaining in Ireland after the crisis represents orderly decentralization, entailing new forms of coordination based on pattern bargaining in the private sector and sectoral bargaining in the public sector.

Sectoral bargaining took place mainly through the JLC/REA system. Joint Labour Committees mostly covered employment in service sectors, such as restaurants, hotels, retail sales, cleaning and security. Thirteen JLCs in 11 sectors protected about 17 000 employees, which is about 9 per cent of employees in Ireland (O'Sullivan and Royle 2014). In 2008 a group of fast-food companies undertook a court challenge against the JLC in the catering sector. They argued that JLCs were unconstitutional since they set legally binding regulations, which under the Irish Constitution, only the Dáil (the Parliament) had the competence to do. In June 2011, in the middle of the economic crisis, the High Court found in favour of the fast-food employers, deeming the JLC in catering to be unconstitutional. The government introduced legislation in the form of the Industrial Relations (Amendment) Act 2012 to reform the JLC system. There were two objectives. One was to restore wage-setting in vulnerable low-wage sectors. The other, introduced at the behest of the Troika, was to include an inability-to-pay clause whereby employers could be exempted from pay increases mandated by EROs. A legal challenge in the Supreme Court in 2013 found that the REAs were unconstitutional.

The most recent attempt to legislate to provide for wage setting in low-paid sectors was the Industrial Relations (Amendment) Act 2015 under which unions and employers can no longer autonomously negotiate an agreement for a sector. Instead, either unions or employers can ask the Labour Court to make a recommendation for a Sectoral Employment Order (SEO) (Regan 2017a). This requires several conditions: the union must be substantially representative of the sector, and the employer and union must represent a sufficiently large proportion of employees in the sector. The meaning of the requirement that a union be substantially representative is not well established, although an Ibec official suggested that a union which represents 21–30 per cent of a group may be recognized by the Labour Court (interview, Ibec official). The Labour Court must take into account a number of additional economic criteria, including the potential impact on employment, existing national wage agreements, firm competitiveness and rates of pay of similar workers in the same sector. It is important to note that SEOs do not result from an agreement between employers and unions (Higgins 2015). Even where the Labour Court awards a pay increase, the 2015 Act does not require employers to recognize unions for collective bargaining purposes, a long-held aspiration of the trade union movement in Ireland.

Few SEOs have been implemented to date. Employers in many sectors, including catering, have refused to engage with the system, arguing that unions representing 4000 workers are not representative of the 50 000 employed in the catering sector (Regan 2017a). Employers in security and cleaning and in construction and electrical trades have engaged, partly as SEOs can provide certainty and a level playing field. The resistance of many employers, particularly in small and medium-sized enterprises (SMEs), to sectoral wage setting in EROs and REAs means that many workers in SMEs are outside sectoral pay regulation and lack representation by unions. Ibec, however, has reservations about statutory wage-setting mechanisms such as JLCs owing to the extensive legislative framework on employment rights, equality, health and safety and industrial relations, as well as relatively high minimum and hourly wages (respectively second and fifth highest in the EU) and rapid wage growth (Ibec 2019; and interview with Ibec official). Those SEOs that have been established involved situations in which both employers and unions jointly requested intervention by the Labour Court. If the Labour Court were to seek to impose a wage increase based on a unilateral application, it is likely that such an SEO would be challenged in the High Court (Ibec official, interview).

4. DIGITALIZATION AND THE NEW WORLD OF WORK

Technological change and the increase in non-standard employment relationships are expected to transform the world of work in coming decades. Developments in artificial intelligence and machine learning have dominated recent debates on the future of work, raising fears that many occupations are at risk of being automated. Frey and Osborne (2013) suggest that up to 47 per cent of jobs in the United States are at high risk of being automated. Nedelkoska and Quintini (2018), refining the Frey and Osborne methodology and applying it across 32 Organisation for Economic Co-operation and Development (OECD) countries, suggest that about 14 per cent of jobs in OECD countries are highly automatable, with a probability of automation of over 70 per cent. Another 32 per cent

of jobs have a risk of between 50 and 70 per cent automation, with the potential for significant changes in the way these jobs are carried out as a result of automation. Applying the two alternative approaches to Irish data, Doyle and Jacobs (2018) finds that between 15 and 33 per cent of jobs in Ireland are at high risk of automation, while another 19–25 per cent of jobs are at significant risk. The average risk of automation across the labour force is between 45 and 48 per cent. The most exposed economic sectors are transport and storage, agriculture, forestry and fishing, and administration. Doyle and Jacobs also show that there is an inverse relationship between education and automation: those with higher levels of education are less exposed to automation.

The Irish government launched a strategy document, 'Future jobs Ireland 2019: preparing now for tomorrow's economy' (Government of Ireland 2018). The document sets out the government's approach to supporting enterprises and workers in the rapidly changing global economy. The strategy focuses on five pillars:

1. embracing innovation and technological change;
2. improving SME productivity;
3. enhancing skills and developing and attracting talent;
4. increasing participation in the labour force; and
5. transitioning to a low carbon economy.

The approach was developed through a series of engagement events which brought government together with stakeholders. This represents a form of public consultation involving a wide range of actors in the economy and civil society instead of social dialogue between the social partners. There has been little evidence of dialogue between the social partners on the workplace issues raised by new technology. Even in the public sector, where the series of Public Service Stability Agreements negotiated between 2013 and 2018 provided for wage setting as well as a series of reforms in relation to working hours, rostering, redeployment and performance management of public servants, there is no mention of new technology.

Employers see great potential in the digital economy, although Ibec regards the pace of technological change as challenging and disruptive, particularly for SMEs (Ibec official). Employers also argue that it is hard to get ahead of the rapid changes in technology, and emphasize the importance of skills development through lifelong learning to equip employees and firms to take advantage of new technologies. While the union stance on the impact of digitalization is still being developed, unions would argue that there is a need for a just transition in the adoption of new and digital technology in the workplace (ICTU official).

Non-standard employment is on the increase in most countries and is often facilitated by digitalization, particularly through digital platforms that disrupt more traditional forms of work organization and employment relationships. Non-standard workers are under-represented by unions and less likely to be covered by collective bargaining. This is particularly true of workers who fall between conventional distinctions between self-employment and dependent employment. Bogus self-employment is an issue of conflict between the social partners in Ireland. Unions see bogus self-employment as open to exploitative employment practices and the undermining of union solidarity. Employers seek to maximize the flexibility afforded by these contracts, although Ibec would be

concerned to ensure a level playing field between employers (Ibec official). As regards the potential abuse of bogus self-employment, an Ibec official argued that current legal remedies are available to distinguish self-employment from dependent employment, and that collective bargaining is unnecessary. The state has developed mechanisms to adjudicate between self-employment and dependent employment. In 2018 the Department of Employment Affairs and Social Protection (DEASP) launched a new awareness campaign on bogus self-employment, with instructions on how to pursue a claim through the department's Scope section. The DEASP initiated the campaign with the aim of informing workers about what constitutes genuine self-employment and how it is distinguished from bogus or false self-employment. The DEASP also notes the role of the WRC in this context, in that, if a worker thinks that he or she is an employee and have a complaint about how he or she is being treated in relation to employment rights or equality matters, he or she may bring it to the attention of the WRC. However, unions are concerned about what they consider to be state weakness in developing adequate protections for workers on bogus self-employment contracts (ICTU official). It should be noted that McGuinness et al. (2018), analysing LFS data, show that freelancers, defined as self-employed without employees outside the traditional professions, account for less than 2 per cent of total employment: those engaged in false self-employment could only account for a sub-set of these freelancers.

The OECD (2019, p. 230) argues that 'collective bargaining systems can still play a key role in promoting inclusive labour markets for workers and a level playing field for all companies'. The lack of development of social dialogue on the impact of technology and new employment relationships in Ireland represents a missed opportunity to respond to technological and organizational change in the workplace in a manner that shares the benefits between employers and workers.

5. CASE STUDIES

5.1 Case Study 1: Precarious Work in Ireland

There has been a great deal of interest in the growth of precarious work in recent years. Kalleberg (2018) defines precarious work as 'work that is uncertain, unstable, and insecure and in which employees bear the risks of work (as opposed to businesses or the government) and receive limited social benefits and statutory entitlements'. This is similar to Vosko (2010), who includes low income, uncertainty and limited social benefits.

One of the common threads in the atypical work debate concerns the decline of traditional full-time permanent jobs and their replacement by part-time, temporary and self-employment. This atypical working may entail flexibility for employees, and provide a route out of unemployment, or lead to increased inequality and insecurity (OECD 2014).

Table 9.3 shows trends in temporary contracts as a percentage of total employees for different groups in 2007, 2012 and 2018, the latest year for which we have micro data from the Labour Force Survey (LFS). Just under 10 per cent of all employees were on temporary contracts in 2007. This increased to 11 per cent in 2012, but by 2018, with the recovery, the proportion on temporary contracts had fallen to 10 per cent of total employment. Historically, women were more likely to be working on part-time contracts

Table 9.3 Temporary employment contracts, Ireland, 2007, 2012 and 2018

	2007	2012	2018
Men	8.2	10.4	10.0
Women	11.1	11.6	10.1
Age less than 30	16.6	23.2	22.9
Age 30–64	5.2	6.7	6.0
In job more than 2 years	3.6	3.9	3.5
In job less than 2 years	22.7	34.7	25.2
Non-Irish nationals	12.3	10.7	8.3
All	9.6	11.0	10.1

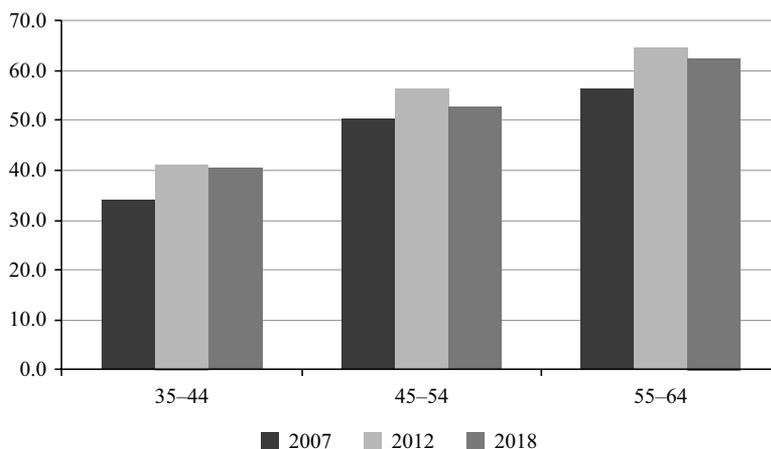
Source: Analysis of LFS micro data, 2007, 2012 and 2018 (quarter 2).

than are men, but gender differences declined during the recession and the gender gap has been eliminated.

Young people are much more likely than their older colleagues to be on temporary contracts. During the Great Recession the share of young people on temporary contracts increased sharply to 23 per cent compared with less than 7 per cent among those aged 30–64 years. In 2018, the share of young people on temporary contracts remained at this elevated level (23 per cent), substantially higher than among their older counterparts, and higher than among young employees before the Recession. The proportion of non-Irish nationals with temporary contracts was higher than average in 2007, but this declined steadily over the Recession and the recovery.

We can also examine the incidence of temporary employment among new entrants to jobs – defined here as those who have been in their current job for less than two years – and compare them with those with longer job tenure. This allows us to obtain a sense of conditions in newly created or newly filled jobs and may help us to identify emerging trends in job quality. In general, those who have been in their jobs for less than two years are more likely than those with longer tenure to be on temporary contracts. There is an element of selection in this as temporary workers are more likely to be new entrants. In 2007, 23 per cent of new entrants were temporary, compared with less than 4 per cent of those who had been in their jobs for more than two years. The gap expanded during the recession: in 2012, 35 per cent of new entrants, compared with 4 per cent of longer-term incumbents, were on temporary contracts. Six years into the recovery, the incidence of temporary employment had almost returned to its pre-crisis level (25 per cent in 2018 compared with 23 per cent in 2007) among those who had been in their jobs for less than two years, suggesting a strong business-cycle effect rather than a long-term change in the incidence of temporary work among new entrants.

Concern has also been raised about a decline in job stability (for example, Gregg and Wadsworth 2002). This refers to the decline in expectations of a job for life, with individuals taking on multiple jobs or occupations over the course of a working life. This is regarded as a structural shift owing to technological change, globalization, the shift from manufacturing and the growth of neoliberal approaches to labour market regulation. It is unclear, therefore, whether the boom–bust cycle experienced in Ireland may have given rise to a decline in job stability. Direct evidence from Ireland is not available. However,



Source: Author's analysis of Labour Force Survey micro data.

Figure 9.2 *Proportion of employees with tenure of ten years or more in the current job, Ireland, 2007–2018*

it is possible to examine trends in job tenure – the length of time an individual has been in their current job. If job stability is on the decline, then we would expect to observe a decline in the proportion of workers who have been in their jobs for an extended period.

Figure 9.2 shows estimates of the proportion of employees who have been in their current job for ten years or more, based on data collected in the LFS. The data suggest three patterns. First, job tenure increases with age. Second, it varies with the business cycle. When companies reduce their workforces they usually impose a last-in, first-out rule, so that those with longer tenure are less likely to lose their jobs. If there are widespread job losses, as occurred in the Irish labour market between 2007 and 2012, then the share of those with longer tenure increases. When total employment grows, the number of new entrants increases, so the share of long-tenure jobs in the total will fall. Third, notwithstanding this cyclical pattern, the proportion of employees with tenure of ten years or more in the current job has increased over time. Thus, over 62 per cent of those aged 55–64 had been in their job for ten or more years in 2018, compared with 56 per cent in 2007, while the share of those with such long tenure in the 45–54 year age group increased from 50 per cent in 2007 to 53 per cent in 2018.

Table 9.4 shows rates of part-time employment. Overall, part-time employment increased from 18 per cent of total employment in 2007 to 24 per cent in 2012. By 2018, after six years of recovery, part-time working had fallen to 19 per cent, marginally higher than before the Recession. Part-time employment increased sharply among men between 2007 and 2012 and remained substantially higher (11 per cent) in 2018 than in 2007 (less than 8 per cent). Part-time employment is generally substantially higher among women than men: it increased by three percentage points between 2007 and 2012, and had fallen below the pre-crisis level by 2018, to 29 per cent.

Young people often take part-time jobs, frequently combining education with work. In 2007, 19 per cent of those in the 15–29 age group worked part-time, compared with

Table 9.4 Part-time employment, 15–64 years of age, Ireland, 2007, 2012 and 2018 (percentage)

	2007	2012	2018
Men	7.6	14.0	10.9
Women	32.4	35.2	29.2
Age less than 30	19.1	32.9	28.5
Age 30–64	18.0	21.4	16.9
In job more than 2 years	15.5	20.0	16.5
In job less than 2 years	25.1	37.9	27.5
Non-Irish nationals	13.6	22.2	16.8
All	18.3	24.1	19.4

Source: Analysis of LFS micro data.

an average of 18 per cent of those aged 30–64. During the Recession, part-time working accounted for almost one-third of all those in work aged under 30, reflecting the disproportionate impact of the crisis on the labour market for young people. In 2018 part-time employment among young people remained at over 28 per cent, substantially higher than among the older age group (17 per cent) and much higher than was observed among young people before the Recession.

In general, new entrants to jobs are more likely than those with longer tenure to be working part-time: in 2007, 25 per cent of new entrants were part-time, compared with just over 15 per cent of those who had been in their jobs for more than two years. The gap expanded during the Recession: 38 per cent of new entrants, compared with 20 per cent of longer-term incumbents, were working part-time in 2012. With the recovery, the rate of part-time working almost returned to its pre-crisis level (16.5 per cent in 2018) among those who had been in their jobs for two years or more. However, the part-time rate among new entrants (27.5 per cent) was substantially higher than among those with longer tenure and higher than among new entrants before the Recession. Non-Irish nationals have lower levels of part-time working.

Many workers choose to work part-time to combine work with other activities, such as students or those working in the home. However, many others would prefer to be in a full-time job but cannot find one: they are considered to be involuntarily underemployed. Involuntary underemployment increased from just under 11 per cent of all part-time employment in 2007 to 38 per cent in 2012 before declining to 18 per cent in 2017.

Table 9.5 shows trends and patterns in involuntary part-time underemployment expressed as a percentage of total employment. Involuntary part-time working increased sharply from 2 per cent of total employment in 2007 to 9 per cent in 2012 and with recovery declined to just 3.5 per cent in 2018. Greater proportions of women and young people are in involuntary part-time underemployment; both groups saw substantial increases in underemployment during the recession. Young people continue to show elevated levels of underemployment. In 2007, over 4 per cent of new job-entrants were underemployed, compared with just 1 per cent of those who had been in their jobs for two years or more. During the Recession, 18.6 per cent of new entrants were involuntary part-time, as were

Table 9.5 *Involuntary part-time employment as a percentage of total employment, Ireland, 2007, 2012 and 2018*

	2007	2012	2018
Men	1.4	7.2	3.5
Women	2.7	11.1	3.4
Age less than 30	2.2	12.7	4.6
Age 30–64	1.8	8.0	3.1
In job more than 2 years	1.1	6.4	2.4
In job less than 2 years	4.1	18.6	6.1
Non-Irish nationals	3.1	11.1	4.7
All	2.0	9.1	3.5
As % of part-time	10.7	37.7	17.8

Source: Analysis of LFS micro data.

Table 9.6 *Part-time employees on temporary contracts, Ireland, 2007, 2012 and 2018 (percentage)*

	2007	2012	2018
Men	3.4	5.7	5.4
Women	6.4	7.2	5.9
Age less than 30	8.5	14.4	13.6
Age 30–64	2.5	3.7	3.1
In job more than 2 years	2.0	2.4	2.3
In job less than 2 years	11.0	19.3	13.1
Non-Irish nationals	3.7	5.3	3.4
All	4.8	6.4	5.6

Source: Analysis of LFS micro data.

6 per cent of longer-term incumbents; in 2018, despite the recovery, still 6 per cent of all new job entrants were involuntary part-time.

To identify workers with particularly atypical arrangements, Table 9.6 looks at the proportions of employees combining part-time working with temporary contracts. About 5 per cent of employees are found in this particularly atypical category, which increased to over 6 per cent during the Recession. However, prior to the crisis, this atypical combination accounted for 8.5 per cent of young employees in 2007 and climbed to over 14.4 per cent in 2012. This proportion fell only lightly to 13.6 per cent in 2018, much higher than among older workers and higher than before the Recession. New entrants showed a similar pattern, with part-time temporary working increasing during the Recession and remaining higher in 2018 (13 per cent) than in 2007.

An alternative approach to the instability dimension of precarious work is to focus on variation from week to week in the number of hours worked. There has been a great deal of interest in the United Kingdom in the rise of zero-hours contracts (Brinkley 2013).

O'Sullivan et al. (2017) argue that zero-hour contracts are unusual in Ireland, but they also suggest that if-and-when contracts are growing and are prevalent in particular industries. Under if-and-when contracts, employees are not guaranteed any given hours of work, but they differ from zero-hours contracts in not requiring the employee to be available for work, allowing the individual worker to be free to engage in other work. Unfortunately, representative data on these contracts are not available in Ireland.

O'Connell (2021) develops a new approach to estimating the extent of precarious working hours by combining the information in the Irish LFS on actual hours of work in the reference week based on responses to a question relating to usual working hours. This is not an estimate of zero hours working or of if-and-when contracts, but it does attempt to assess the extent of precarity in working hours. Table 9.7 shows that in 2018, 2.7 per cent of all employees (almost 47 000 workers) reported that they had worked less than ten hours in the reference week of the LFS. Of these, 7.3 per cent indicated that their 'usual hours cannot be given because hours worked vary very considerably from week to week and month to month'. These employees who combined both very short actual working hours and highly variable usual working hours accounted for just 0.2 per cent of all employees.

Those who worked 10 to 19 hours in the reference week but were subject to considerable weekly variation accounted for another 0.4 per cent of all employees, while those who worked 20 to 29 hours in the reference week but were subject to weekly variation accounted for another 0.3 per cent of all employees. These estimates suggest that in any given week in 2018 up to 1 per cent of all employees could be regarded as working precarious hours in that they combined short working hours (less than 30) with substantial

Table 9.7 Precarious working hours: comparing actual with usual hours worked, Ireland, 2007, 2012 and 2018

	Hours actually worked in the reference week				
	Less than 10 hours	10 to 19	20 to 29	30 or more	All
2007					
% of employees actually worked these hours	2.8	7.3	13.3	76.6	100.0
of which usual hours vary	10.5	6.5	4.8	4.4	4.8
% of all employees	0.3	0.5	0.6	3.4	4.8
2012					
% of employees actually worked these hours	3.4	9.2	16.4	71.0	100.0
of which usual hours vary	18.1	12.9	10.3	6.7	8.3
% of all employees	0.6	1.2	1.7	4.8	8.3
2018					
% of employees actually worked these hours	2.7	7.1	12.5	77.6	100.0
of which usual hours vary	7.3	4.9	2.7	1.5	2.1
% of all employees	0.2	0.4	0.3	1.2	2.1

Source: Analysis of LFS micro-data.

Table 9.8 Proportion of employees with a precarious combination of short and variable working hours, Ireland, 2018

	Less than 19 hours	20–29 hours
Men	0.6	0.2
Women	0.5	0.5
Age less than 30	1.2	0.6
Age 30–64	0.3	0.3
In job more than 2 years	0.4	0.3
In job less than 2 years	0.8	0.5
Non-Irish nationals	0.3	0.4
All	0.6	0.3

Source: Analysis of LFS micro data.

variation in working hours from week to week. Further analysis of the LFS data suggests that about 2 per cent of employees in accommodation and food services were subject to this precarious combination of short and highly variable working hours, as were about 1.5 per cent of those in agriculture and in wholesale and retail sales. Table 9.8 shows that younger workers, below 30 years of age, are more exposed to this precarious combination of working hours.

By this measure, precarious working hours were more common during the Recession as employers sought to increase the flexibility with which they employed workers and, in a context of high unemployment, employees had reduced bargaining power. In 2012, 29 per cent of all employees worked fewer than 30 hours in the reference week, and 8 per cent indicated that their usual hours varied considerably from week to week. A total of 3.5 per cent of all employees combined short actual working time (fewer than 30 hours) with substantial week-to-week variation in 2012, and this proportion was substantially higher than at the end of the boom in 2007, when 1.4 per cent of all employees combined short with variable working hours.

Younger workers, below 30 years of age, are more exposed to this precarious combination of short and variable hours. In 2018, 1.8 per cent of workers under the age of 30 worked less than 29 hours in the reference week and were subject to substantial week-to-week variation. This was true of just 0.6 per cent of workers aged over 30 years. New entrants, less than two years in their current job, also showed a higher incidence (1.2 per cent) than those with longer job tenure (0.7 per cent).

These patterns suggest that this particularly precarious combination of short actual hours with substantial weekly variation is relatively unusual in Ireland, and that it has declined considerably in the context of the economic recovery.

While concerns have been raised about a deterioration in the quality of jobs and an increase in precarious work in the Recession and its aftermath, the available evidence suggests a mixed picture. Overall, atypical work increased during the Recession and declined in the recovery. The proportion of temporary employees, which increased during the Recession, had fallen nearly to the pre-crisis level by 2018. Part-time working also increased and then returned to pre-Recession levels, although involuntary part-time employment remained at elevated levels in 2018. The proportion of employees who

combine short working hours in a given week with substantial variation in hours worked from week to week accounted for less than 1 per cent of all employees in 2018, although this precarious combination increased during the Recession and fell subsequently.

In general, there is no evidence to suggest a long-term decline in job stability: the proportion of employees who have been in their jobs for ten years or more has increased over time. Survey evidence indicates that subjective insecurity, measured by the share of employees who believe they might lose their job in the next six months, also increased and then declined. This is borne out by survey data relating to subjective assessments of job security: European Social Survey data show that the proportion of workers in Ireland who believed that their jobs were secure declined from 43 per cent in 2004 to 25 per cent in 2010, in the middle of recession, but increased to 43 per cent in 2018, in a context of economic recovery.

Not everyone has participated in these positive trends. Young people in particular stand out as having higher rates of atypical or precarious work. The labour market for young people collapsed in the Recession and employment rates remain far below their pre-Recession peak. Young people are still far more likely to be on temporary contracts and in part-time work, compared both with older people and with the situation before the Recession. They are also more likely to be involuntarily part-time. Young people also show higher rates of the precarious combination of short hours with variable working time. Young people, and new job entrants, are much less likely to be members of trade unions than their older counterparts, or those who have been in their jobs for longer.

5.2 Case Study 2: Teachers' Unions

A particular feature of the series of wage cuts imposed in the public sector during the Irish crisis, and of the series of collective agreements surrounding those cuts, was the differential treatment of new entrants. From 2010, all new entrants to the public sector were to be appointed at salary scales reduced by 10 per cent relative to the scales applying to incumbents. New teachers suffered larger losses. Teachers who entered the profession after 2010 were put on different pay scales than their established colleagues, who had the same duties and responsibilities. Budget 2011 cut teachers' pay by 10 per cent. In addition, from 2011, new teachers were appointed to the first point, rather than the third point, of the pay scale. In 2012, qualification allowances, such as the degree and Professional Master of Education (PME) allowances, were abolished for those entering teaching.

Since the recovery, public sector unions have sought to restore the pay cuts imposed during the crisis and to unravel the differential pay scales between new entrants and incumbents. The Haddington Road Agreement provided for the reintegration of the new, lower, scales with the older, higher, scales and added two additional points at entry level. This means that public-sector workers are now on the same incremental scales, but the new entrants came in at a lower entry level, entailing a cumulative loss of earnings until they reach the top of the scale.

Young teachers were hit particularly hard by the pay cuts as they lost additional allowances (of up to five incremental points on the salary scale) for higher education degrees, while their older colleagues retained those allowances, and these have not been restored to the younger teachers.

Table 9.9 Salary and allowances of teachers: pre-versus post-2011 entrants, Ireland (€)

Year	2019 (for entrants pre-2011)				2019 (for entrants post-2011)			
	Entry	After 5 years	After 12 years	After 25 years	Entry	After 5 years	After 12 years	After 25 years
H.Dip. in Education/ Postgrad. diploma in Education (Hons)	1 236	1 236	1 236	1 236	–	–	–	–
Primary degree (Hons)	4 918	4 918	4 918	4 918	–	–	–	–
Total qualification allowances	6 154	6 154	6 154	6 154	0	0	0	0
Salary	36 985	42 059	54 584	64 302	36 953	43 431	56 417	69 407
Total salary	43 139	48 213	60 738	70 456	36 953	43 431	56 417	69 407

Source: Malone (2019b).

Malone (2019b) provides estimates of both salaries and allowances for new entrants compared with those that would have applied for those who entered the teaching profession before 2011. Table 9.9 shows that teachers who entered before 2011 with both a Primary Honours Degree and a Higher Diploma in Education (the basic teaching qualifications) were entitled to a qualification allowance of over €6150, generating a total salary of over €43 000 on entry. These teachers would earn a total salary of over €48 000 euros after five years, and over €70 000 after 25 years of service.

Teachers entering after 2011 are no longer entitled to qualification allowances, so their starting salary, at 2019 rates, amounting to almost €37 000, is about €6000 euros lower than the entry starting salary of their older colleagues. The shortfall is almost €5000 after five years. Teaching unions have been in conflict with government, seeking to restore these differentials between new entrants and incumbents. Under the Haddington Road Agreement, new entrant teachers were able to skip increment points 4 and 8 in their scale, with the consequence that the gap between new entrants and incumbents fell in respect of those with service of 12 years, to about €4000 per annum, and to about €1000 euros for those with 25 years of service. While pay restoration achieved by collective bargaining by the teachers' unions has restored most of the differentials in salary, the differences in allowances remain. Malone (2019b) estimates that the cumulative differential between pre- and post-2011 entrants would amount to almost €95 000 over 25 years of a teaching career.

Teaching unions adopted differing approaches to the cutbacks relating to new entrants. The Association of Secondary Teachers in Ireland (ASTI) took a more militant approach, refusing to sign up to the Lansdowne Road Agreement and engaging in strike action. The Teachers' Union of Ireland (TUI) took a more conciliatory approach and did eventually sign up to the agreement. The ASTI saw its members threatened with being left behind in elements of pay restoration, and penalized for strike action with loss of salary increments. These penalties were applied to ASTI members in 2016–17, following strike action. While the increment freeze ended in June 2017, the original increment dates were not restored. Higgins (2018) notes that these lost increments are unlikely to be restored

until after the current public service agreement ends in 2020, leading to cumulative future losses compared with what they would have been paid had they not taken industrial action.

Here we find an example of more militant unions and their members continuing to suffer from cuts that have been returned to those of more compliant unions. This has given rise to the continued controversy of unequal pay for younger teachers. It has also led to tensions between teachers' unions with the emergence of turf battles over membership; over 1000 ASTI members transferred to the TUI during the period when the ASTI was outside the Lansdowne Road Agreement (Higgins 2019). This conflict over members led to a complaint by the TUI to the International Labour Organization (ILO) arguing that the pay cuts imposed on teachers under the Financial Emergency Measures in the Public Interest legislation led to ASTI members being compelled to switch unions. These inter-union rivalries weakened the unions' bargaining position. The more militant stance adopted by the ASTI has also caused tensions with the wider union movement. Sheehan (2016b), citing a 'well-placed ICTU official' argues that the other public sector unions that signed up to the Lansdowne Road Agreement, representing over 260 000 public sector workers, would not encourage the government to cave in to the ASTI, as this would undermine the Lansdowne Road Agreement and potentially compromise the fiscal stability of the state.

6. CONCLUSIONS

Ireland has a voluntarist system of industrial relations, with employment terms and conditions shaped by free collective bargaining between employers' and workers' representatives. Traditionally, the state has played a relatively light role. A distinctive and important feature of the Irish system is that the state does not legislate for either union recognition by employers, or for collective bargaining rights: both parties must be free to associate or not.

Under these circumstances, union density is important: in sectors and firms where unions are strong, workers can press their claims; where they are weak, workers are vulnerable. Union density has been falling in Ireland throughout the twenty-first century and it is unevenly distributed: throughout much of the private sector, unions are very weak, while union density has generally held up in the public sector. Collective bargaining coverage has also declined in recent years. Unions have responded by increasing their mobilization and organizing drives, but they have met with mixed results in seeking to recruit new members from increasingly diverse workforces in sectors characterized by weak existing organization and diverse and often precarious employment conditions.

While legislation to support collective bargaining has traditionally been relatively weak in Ireland, this has been boosted in recent years by legislation to enhance the capacity of the state to regulate the labour market. The Industrial Relations Act 2015 sought to address the problem of union recognition and the reluctance of employers to engage in collective bargaining, particularly where collective bargaining has been weak and workers vulnerable. The Workplace Relations Act 2015 sought to simplify and enhance the institutional framework for the resolution of industrial disputes.

In parallel with this increase in state intervention in industrial relations, there has been a sustained increase in legislation to underpin individual workers' rights. This emerged

in part owing to the adoption in Ireland of a series of EU directives on workers' rights. However, it also derived from indigenous initiatives, including the establishment of the Low Pay Commission and the National Minimum Wage, and legislation to outlaw zero-hours contracts and to set minimum banded hours. As Regan (2017b) argues, many of these initiatives emerged from the electoral process instead of social dialogue.

The enhanced role of the state in regulating the labour market and enhancing industrial relations machinery may represent in a shift from traditional collective organization and collective bargaining towards more legalistic dispute resolution of individual rights (Maccarrone et al. 2019). This enhanced role of the state in the labour market offers protections to these workers, particularly in sectors with weak collective bargaining. However, this may undermine autonomous union organizing attempts along traditional interest-based lines. As the dispute resolution system currently stands, even where the Labour Court issues a binding recommendation for an SEO, this may not result from an agreement between employers and unions, and it does not require that the employer recognize the union for collective bargaining purposes.

The most important structural change in collective bargaining in the twenty-first century to date was the collapse of social partnership in 2009 during the Great Recession and the economic crisis in Ireland. Social partnership, and the associated centralized National Wage Agreements had dominated industrial relations for the previous two decades, although I have argued previously that the extent of its impact on labour market policy may have been overemphasized: union density fell throughout the era of social partnership, real wage gains over the period were modest, compared with productivity, and the issue of union recognition remained unresolved. After the demise of social partnership, collective bargaining revived in the public sector, giving rise to a series of collective agreements that initially facilitated fiscal adjustment and helped to resolve the fiscal crisis of the state, and subsequently saw restoration of the wage cuts imposed during the fiscal crisis, although, in relation to the teachers' unions, this process was not without conflict and it led to continuing disputes over fairness relating to the manner in which the cuts were imposed. In the private sector, in contrast, collective bargaining was decentralized to sector and firm levels. As economic recovery took root, a form of pattern bargaining developed in the private sector, beginning in the more profitable sectors and gradually extending beyond them.

During 2019, after several years of strong growth in the economy and employment, and a sharp decline in unemployment, wages have increased and wage pressure has begun to intensify. In that context, there have been cautious calls for a more orderly approach to pay at national level, and suggestions that a conversation might be had about a more centralized approach to wages, mainly on the part of employers. Unions have not been enthusiastic. Given the favourable macroeconomic conditions, and in the absence of a formal institutional forum for engaging in social dialogue, unions may choose to flex their muscles in more traditional forms of industrial action. One trade-off that might be considered in such an impasse might be an agreement between the social partners on a concession on the long-held aspiration for union recognition and collective bargaining rights, perhaps mediated by a government seeking to encourage stable and peaceful industrial relations.

Union officials contend that successive governments have resisted union demands for legislation to enable mandatory union recognition by employers (Geary and Gamwell

2019; ICTU 2019). State officials working in the area maintain that this legislation is impossible under the Irish Constitution, which guarantees freedom of association, but prevents mandatory engagement. Employers are opposed to mandatory union recognition on the grounds that forcing them to engage in collective bargaining with unions where they do not wish to do so is precluded by the Irish Constitution and would be an impediment to competitiveness. Ibec (2019) asserted its opposition to proposed reforms to industrial relations legislation that would allow the Labour Court to impose a settlement against employers, and noted that this would probably prompt a legal challenge by employers.

In a recent report the OECD (2019, p. 14) noted that ‘Collective bargaining and workers’ voice are key labour rights and important labour market institutions that matter for job quality. ‘Collective bargaining, provided that it has a wide coverage and is well-coordinated, fosters good labour market performance’. The ICTU (2019) is in broad agreement with this argument that collective bargaining can yield both equity and efficiency.

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10. Enhancing the social partners and social dialogue in the new world of work: The case of Italy

Lorenzo Bordogna

1. INTRODUCTION

Italy has a long experience of bilateral, and partly tripartite, social dialogue, with well-established institutions, actors and practices. In recent times, however, as in most European Union (EU) countries, this experience has been facing severe challenges, owing to both internal and exogenous factors. These include globalization and the still enduring effects of the 2008 economic crisis, aggravated by: a stagnating productivity; persisting dualisms in the economic, social and employment structure; the transformation of the production system and the shift towards a service economy; pressures towards a stronger decentralization of collective bargaining in a context of low inflation; digitalization and technological innovation; and political developments that call into question the role of the social partners in the governance of Italian society (termed ‘disintermediation’). All these factors challenge social dialogue as it has been experienced hitherto. After briefly recalling the socio-economic and legal context, this chapter examines, through documentary analysis and interviews with protagonists and experts, how the social partners and public authorities are responding to these challenges.*

1.1 Socio-economic Context: Population, Economy, Labour Market Indicators

Italy is a unitary state comprising 20 regions, five of which have special autonomous status, 108 provinces, two of which have special autonomous status, and about 8000 municipalities. At the beginning of 2019 it had a population of 60.5 million (of whom 51.3 per cent are female), making it the fourth largest in the EU. It has increased by 3.6 per cent since 2007, but has decreased slightly since its 60.8 million peak in 2015 (Table 10.1). Foreign residents on 1 January 2019, not only non-Europeans, made up about 8.5 per cent and the foreign-born population about 10 per cent. With a proportion of 22.6 per cent aged 65 or over in 2018, Italy has the oldest population in the EU.

The Italian economy has experienced difficulties in overcoming the effects of the 2008 crisis (Table 10.2). Only in 2015 was gross domestic (GDP) higher than in 2008. After a sharp decrease in 2009 and 2012 (–5.5 per cent and –2.8 per cent, respectively), GDP has grown in subsequent years to 1.7 per cent in 2017, slowing down to an estimated 0.1 per cent in 2019 and 0.4 per cent in 2020. Per capita GDP at current prices has slightly increased since 2007 (6.2 per cent), but per capita GDP in purchasing power

Table 10.1 Population, Italy, 2007–18

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Population (residents, 000s)	58 224	58 653	59 001	59 190	59 365	59 394	59 685	60 783	60 796	60 666	60 589	60 484
Females (%)	51.5	51.6	51.6	51.6	51.6	51.6	51.6	51.5	51.5	51.4	51.4	51.3
Aged > 65 (%)	20.1	20.2	20.3	20.4	20.5	20.8	21.2	21.4	21.7	22	22.3	22.6
Foreign residents (000s)	—	—	—	—	—	4052	4388	4922	5014	5026	5047	5144
Foreign residents (%)	—	—	—	—	—	6.82	7.35	8.10	8.25	8.29	8.33	8.51
Foreign-born population (000s)	—	—	5814	5788	5759	5715	5696	5737	5805	5908	6021	6175
Foreign-born population (%)	—	—	9.85	9.78	9.70	9.62	9.54	9.44	9.55	9.74	9.94	10.21

Table 10.2 Economic indicators, Italy, 2007–18

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
GDP at market prices (000)	1 614.8	1 637.7	1 577.3	1 611.3	1 648.8	1 624.4	1 612.8	1 627.4	1 655.4	1 695.8	1 736.6	1 766.2
Real GDP growth	1.50	-1.0	-5.3	1.7	0.7	-3.0	-1.8	0.0	0.8	1.3	1.7	0.8
GDP per capita in PPS (EU28 = 100)	107	106	106	104	104	101	98	96	95	97	96	95
Compensation of employees (% on GDP)	38.3	39.2	40.4	40.0	39.8	39.9	39.7	39.4	39.5	39.6	39.6	40.2
Inflation rate (ISTAT)	1.83	3.49	0.77	1.62	2.94	3.32	1.25	0.23	0.11	-0.05	1.33	1.24
Current account balance, % GDP – annual data	-1.4	-2.8	-1.9	-3.4	-3.0	-0.3	1.0	1.9	1.3	2.5	2.6	2.5
General government deficit as % of GDP	-1.5	-2.6	-5.2	-4.2	-3.7	-2.9	-2.9	-3.0	-2.6	-2.5	-2.4	-2.2
General government debt as % of GDP	99.8	102.4	112.5	115.4	116.5	123.4	129.0	131.8	131.6	131.4	131.4	134.8

standard (PPS) (EU28 = 100) has steadily worsened from 107 in 2007 to 95 in 2018. The weakness of the economy affects Italy's capacity to comply with the EU Stability and Growth Pact. While the public deficit, as in other EU countries, exceeded the 3 per cent threshold during 2009–2011 (–5.2 per cent, –4.2 per cent and –3.7 per cent, respectively), slowly decreasing thereafter, the public debt, which was 99.8 per cent of GDP in 2007, has been stuck at more than 130 per cent since 2014, the second highest in the EU, after Greece. The size of this debt makes any expansionary fiscal policy almost impossible; its annual cost in interest payments amounts to about 4 per cent of GDP (€65 billion in 2018).

In the real economy, one of the main problems is the long-lasting stagnation of labour and total factor productivity compared with competing countries. This feature displays wide regional (north versus south) and sectoral (manufacturing versus services sector) disparities, and is also linked to a production system strongly biased towards small and very small companies, as often stressed by the European Commission's Country Report (EU Commission 2016, p. 13; 2018, p. 19). In 2017, only 2.65 per cent of companies in the industrial sector (construction excluded) had 50 or more employees, accounting for less than 50 per cent of total employment in the sector. Despite these weaknesses, however, Italy has a comparatively strong manufacturing and export sector. After suffering during the crisis, the current account balance has been positive since 2013, reaching about 2.5 per cent of GDP in 2018 (Table 10.2), sustained by trade surpluses in goods and services that persisted in 2019 despite the general slowdown in international trade.

With regard to labour market indicators (Table 10.3), Italy has the second lowest employment rate in the EU, after Greece (58.5 per cent in the age group 15–64), substantially the same as in 2007, although increasing slightly since 2013. Much worse is the female employment rate, which is approximately 10 percentage points lower. About 70 per cent of total employment (including self-employed persons) is currently concentrated in the service sector, public administration included, 20 per cent in the industrial sector, slightly more than 6 per cent in construction and slightly less than 4 per cent in agriculture. It was only in the second half of the 1950s that the percentage of total labour force in the industrial sector started to exceed that in agriculture, and only at the end of the 1970s did the service sector take the lead, with an acceleration in the past two decades.

In addition to the low employment rate, Italy has both the third highest unemployment and youth unemployment rates in the EU, after Greece and Spain. The unemployment rate was 9.7 per cent in October 2019, notably above the 6.1 per cent of 2007, although decreasing since the 2014 peak (12.7 per cent). The youth unemployment rate (below 25 years of age) was 32.2 per cent in 2018, 12 percentage points up from 2007, but down from the 2014 peak of 42.7 per cent. Both values are much worse in the southern regions of the country, especially for young women. In 2018 part-time dependent employees, a significant share of whom are non-voluntary part-timers, were about 20 per cent, mainly women. Employees with a temporary contract aged 15 years or over made up 17 per cent of total dependent employees, mainly young workers, while the 19 per cent of those not in education, employment, or training (NEETs) in the 15–24 age group was by far the highest in the EU. Since the late 1990s there has been a proliferation of various types of non-standard, often precarious employment contracts; not only fixed-term, temporary agency and non-voluntary part-time workers, but also semi-autonomous and para-subordinate employees. Finally, the rate of self-employed persons (about three-quarters

Table 10.3 Labour market indicators, Italy, 2007–18

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Employment (15 and over, 000s)	22 894	23 090	22 699	22 527	22 598	22 566	22 191	22 279	22 465	22 758	23 023	23 215
Employment rate (15–64)	58.6	58.6	57.4	56.8	56.8	56.6	55.5	55.7	56.3	57.2	58.0	58.5
Unemployment rate on active population	6.1	6.7	7.7	8.4	8.4	10.7	12.1	12.7	11.9	11.7	11.2	10.6
Unemployment rate less than 25 years	20.4	21.2	25.3	27.9	29.2	35.3	40.0	42.7	40.3	37.8	34.7	32.2
NEET age class 15–24 (% of total population in same group)	16.1	16.6	17.6	19.0	19.7	21.0	22.2	22.1	21.4	19.9	20.1	19.2
Dependent employees (15 and over, 000s)	16 913	17 213	17 030	16 833	16 940	16 945	16 682	16 780	16 988	17 310	17 681	17 896
% fixed-term dependent employees on total dependent employees (15 and over)	13.16	13.27	12.45	12.68	13.28	13.79	13.18	13.57	14.03	14.01	15.40	17.01
% foreign dependent employees on total dependent employees (15 and over)	7.23	8.33	9.05	9.77	10.40	10.85	11.40	11.86	12.14	12.00	11.91	11.97
Part-time dependent employees (15 and over, 000s)	2 387	2 546	2 552	2 667	2 769	3 051	3 149	3 254	3 346	3 474	3 561	3 569
% Part-time dependent employees (15 and over)	14.11	14.79	14.99	15.84	16.35	18.01	18.88	19.39	19.70	20.07	20.14	19.94
Nominal labour productivity per person (EU28 = 100)	113.9	114.7	114.6	112.5	111.7	109.9	108.5	107.0	106.1	107.7	106.9	105.8
Nominal unit labour cost (% change)	2.0	4.2	4.6	0	0.7	1.4	0.7	0.1	0.7	0.7	-0.4	2.0
Real labour productivity per person employed	0.2	-1.3	-3.9	2.3	0.3	-2.5	0.1	0	0.3	-0.2	0.5	0
Unit labour cost performance related to the Euro area	7.9	11.4	11.6	13.8	12.8	10.4	6.7	4.1	3.7	1.8	-0.5	-1.2
Labour productivity (annual growth rate)	-0.08	-0.65	-2.18	2.25	0.49	-0.32	0.91	0.18	0.22	-0.43	0.67	-0.23
Multifactor productivity (annual growth rate)	-0.42	-1.38	-3.5	1.72	0.23	-1.19	0.12	0.18	0.42	0	0.92	n.a.

of whom were self-employed without employees) – traditionally quite high in Italy – was close to 23 per cent in 2018, compared with 15.3 per cent in the EU28 and slightly less than 15 per cent in the Eurozone (OECD 2019).

The Italian economic and labour market structure is characterized by deep and often overlapping cleavages. These cleavages are not only between the northern and southern regions of the country, with a few exceptions, but also between manufacturing and services, export-orientated companies and those operating in the domestic market, large and small or very small companies, insiders and temporary workers. The above-mentioned trade surpluses are substantially the product of no more than 4000–5000 medium-sized and large companies, based mainly in the northern and partly in the central regions of the country. These structural and territorial cleavages also affect the dynamics of industrial relations, as well as the companies' capacity for innovation.

1.2 Main Legal and Institutional Features of the Italian System of Employment Relations

The Italian system of employment relations is characterized by a high degree of voluntarism. The 1948 Constitution, similar to most democratic constitutions, includes the freedom or right of association, that is, the freedom or right to create interest organizations and to join or leave them (Art. 39, c. 1). The same article also provides for the public registration and legal personality of interest organizations, provided they have a democratic statute, as well as the possibility, in proportion to their membership, to sign collective agreements with compulsory general validity for all firms and employees belonging to the category to which the agreement refers. However, these latter provisions have never been enacted, so that interest organizations, on both sides, remain private actors confined to the private sphere, with no public registration. Likewise, unlike other countries (for instance, Germany), Italy does not have an ordinary law regulating collective bargaining in the private sector, despite the indirect reference to collective agreements in the last comma of Article 39.¹ The non-implementation of these provisions has not prevented the growth of trade unions and employers' associations in subsequent decades, as well as the wide development of collective bargaining practices, within a voluntarist system. However, this lack of regulation has recently raised several problems owing to the substantial increase in the number of private sector collective agreements signed by bargaining parties (especially, but not only, on the employers' side) with uncertain representativeness. This is the problem of pirate contracts that undercut wages and normative conditions agreed upon by the major organizations (see section 3 in this chapter).²

The Italian constitution also includes the (individual) right to strike 'to be practiced within the [ordinary] laws regulating it', without distinction between private and public sector workers. No ordinary legislation had been adopted for four decades, however, until in June 1990 a law was approved regulating the exercise of the right to strike in essential public services,³ partly amended in 2000 (Law No. 146/1990 and Law No. 83/2000).

For a number of decades after the 1948 constitution was adopted, the intervention of the law in relationships between the social partners was limited, reflecting the private and voluntary nature of the actors and their relations. In the private sector, this largely still persists. This tradition of legislative abstentionism, however, did not prevent the approval in 1970 of an important piece of legislation, the *Statuto dei Lavoratori* (Workers

Statute, Law No. 300, 20 May 1970), with provisions supporting trade union prerogatives in companies. These provisions included the right to establish workplace representation bodies in companies or production sites with more than 15 employees, and to carry out union activities (availability of rooms for union meetings, possibility to hold ballots, leave periods, time off and special protection for union representatives), as well as sanctions against employers' anti-union and discriminatory behaviour. The same legislation also included a very strong job security provision for workers in companies with more than 15 employees, establishing the right of reinstatement (*reintegrazione*) in case of unlawful individual dismissal – the well-known Article 18, substantially amended in 2015 for newly hired workers (right to economic compensation instead of *reintegrazione*).

Consistent with the voluntarist character of the system, in Italy there is no formal, legally based infrastructure for social dialogue. Bilateral collective bargaining practices and other types of negotiations are private, voluntary activities, regulated by agreements between the parties. Also, forms of tripartite social dialogue, which do occasionally (less frequently in recent times) occur at national and territorial level, do not have a dedicated, institutionalized infrastructure. The only formal body in which the social partners are institutionally involved in *latu sensu* forms of social dialogue is the CNEL (National Council of the Economy and Labour) created by the 1948 Constitution (Art. 99), and reformed in 1986 (Law No. 936) and on later occasions. Currently, in addition to the President, its governance structure consists of ten experts, 48 representatives of the productive categories (both workers and employers) and six representatives of social associations, nominated through a decree of the President of the Republic taking into account the numerical and qualitative importance of these categories. Social partners are therefore included together with the representatives of a number of other civil society organizations (the ONG and voluntary/third sector associations). It is an advisory body to the parliament and the government on economic and social matters, with the power of legislative initiative and the right to contribute to the drafting of legislation on the same matters. Its role in the functioning of employment relations has not been particularly relevant for many years. Recently, however, under the presidency inaugurated in 2017, it has been intensively engaged in the measurement of social partners' representativeness, which is a precondition for any action to contrast the proliferation of collective agreements signed by parties with uncertain representativeness that undercut wage and employment conditions (Treu 2019; see section 3 in this chapter).

2. STRENGTHENING THE REPRESENTATIVENESS OF THE SOCIAL PARTNERS

The issue of social partner representativeness has two, interrelated features, one common to most countries, the second probably typical of the Italian experience.

The first concerns the social partners' capacity to represent the interests and values of their actual or potential constituencies, through organizational initiatives, labour market and collective bargaining policies, or political lobbying. The results of these activities are at least partly reflected in their respective membership and density rates, which, in turn, depend on the social partners' capacity to retain old members and attract new ones, possibly beyond the traditional areas of representation. In trade unions, for instance,

as underlined by the interviews, this may imply actions or organizational campaigns to replace workers who retire or exit the unions and to recruit new members, such as young people or precarious workers, who are often more averse to joining unions for cultural or structural reasons. Similarly, in employers' associations, as equally stressed by the interviews, first this includes efforts to deal with the high turnover of companies, especially small companies, during the economic crisis, and to enlarge the area of representation to cover previously neglected sectors or types of companies. In both trade unions and employers' associations, the strategies aimed at strengthening social partner representativeness may also involve actions to improve the internal democracy of these organizations, their ability to reflect or interpret the interests of rank-and-file members through more effective channels of communication and, in general, better mechanisms of internal governance. This is especially true for trade unions (Baccaro et al. 2019), but can also be relevant for employers' associations. Finally, this feature is connected to the social partners' capacity to negotiate bilateral agreements with their counterparts to regulate terms and conditions of employment and labour market matters, as well as to engage government and public authorities in tripartite social dialogue or concertation practices at various levels.

In relation to this first perspective, analysed in this section, a resilience or even a partial recovery of the representative strength of the main social partners can be observed, despite adverse contextual factors and prospective difficulties underlined in the interviews.

The second feature concerns the rules for selecting the organizations entitled to participate in negotiations and to sign agreements with general validity. This feature is connected to a representation system characterized by the presence of a high number of organizations often competing with each other in the same labour market area, on both the workers' side and, even more, the employers' side. Although since the 1950s this has been a traditional characteristic of the Italian system of employment relations, in recent times it has acquired greater relevance and produced increasing tensions, challenging the representativeness of the traditionally dominant actors and, to some extent, the stability of the system itself. There is, however, an asymmetry between the private and the public sector. While in the latter, for reasons explained below, the fragmentation affects exclusively the workers' side, in the private sector it also affects, perhaps above all, employers' representatives. In either sector, the main organizations, and partly the public authorities, have adopted strategies and initiatives to address these challenges, which will be illustrated in section 3.

2.1 Trade Unions: Membership and Density Trends

On the workers side, the scene is still dominated, as in the entire post-war period, by the three largest confederations: CGIL, CISL and UIL. Re-established as a unitary organization at the end of fascism (1943), they split in the late 1940s along ideological and political lines, being mainly linked, respectively, to the Communist and Socialist parties (CGIL), the Christian Democratic party (CISL) and the Social Democratic and Republican parties (UIL). These links weakened during the period of high mobilization of the late 1960s and 1970s, when unity of action tended to prevail, as well as after the collapse of the traditional party system in the early 1990s. However, they have not

entirely disappeared in the following decades, occasionally giving rise to particularly bitter contrasts, such as those that emerged in connection with the labour market reforms of 2002–03 and 2014–16, and with the 2009 reform of the bargaining system. Currently, these are apparently fading away.

From an organizational point of view, CGIL, CISL and UIL are very large and encompassing organizations, with the strengths and weaknesses proper to organizations with a highly heterogeneous membership (Olson 1965; Walton and McKersie 1965; Kochan 1980). They cover the private and the public sectors, as well as blue-collar and white-collar workers of all grades of professional qualification, and combine vertical (the industry federations) and horizontal structures, at different territorial levels (province, regional and national level). After several sectoral mergers, owing to changes in the structure of the production system and to financial difficulties, in 2019 the federations affiliated to CGIL, CISL and UIL numbered, respectively, 12, 19 and 16, including the federation of pensioners and that of atypical and temporary agency workers (which may include also unemployed and, partly, self-employed persons). Several mergers have occurred also at territorial level, particularly numerous in the case of CISL.

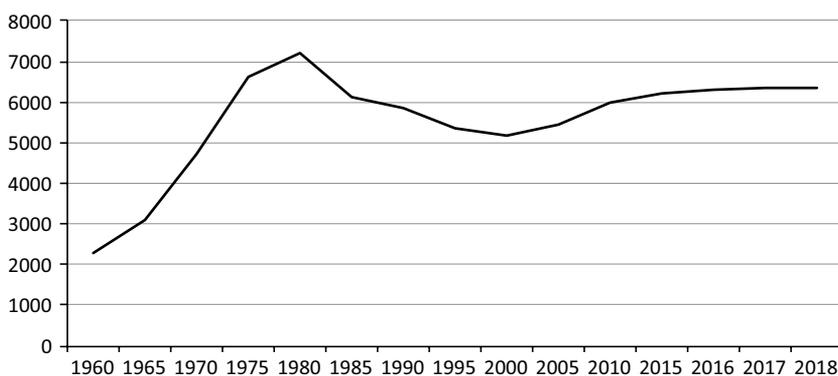
The strength of the three confederations, excluding pensioners,⁴ is substantial in comparative perspective. The aggregate density rate has varied over the past six decades from a minimum of 25 per cent in 1960 to a maximum slightly over 50 per cent, at the end of the 1970s, with 7.3 million members (excluding pensioners), before two decades of sharp decline (Table 10.4, and Figures 10.1 and 10.2). The lowest point in active membership was touched in 1998 (5.1 million members, according to Visser 2019a), when the three largest confederations together lost almost 30 per cent of their 1980 membership – more than 2 million members – despite a significant increase or an almost identical number of dependent employees (depending on the source⁵). From 1999, union membership started to reverse this negative trend, although at a notably slower pace than the increase in employment levels, reaching 6.36 million members in 2018, still 12 per cent less than the 1980 peak but notably more than two decades earlier. Women make up a little less than 50 per cent. Consequently, the density rate also fell sharply for three decades from the 50.5 per cent peak of 1976 to the lowest value of 33.1 per cent in 2006, recovering again slightly to 35.5 per cent in 2018.⁶ This decline was more than offset by the constant increase in the membership of retired workers, rising from 1.6 million members in 1980 to 5.7 million in 2008, in some years equalling or even surpassing the number of active members (especially in CGIL). Afterwards, however, this onset of pensioners stabilized and then started to reverse, and is probably bound to shrink even more in the near future, being mainly the heritage of past militancy, that is, workers who joined the unions in the 1970s (Carrieri and Feltrin 2016, pp. 32–4).

In summary, while membership has fared reasonably well, the density rate has held up less well, although not too badly. In 2018 the largest confederations had 1.2 million active members more than in 2000, with a 35.5 per cent union density rate. This is among the highest values in the EU after the Nordic countries and a few others (Belgium, Luxembourg and Austria). These results reveal a notable organizational capacity of the three largest confederations to adapt to the deep transformations of the Italian production system, especially the shrinking of the traditional manufacturing sectors, and to react to the adverse pressures of the recent economic crisis, as well as, partly, the political context (government disintermediation policies). They are also due to trade union

Table 10.4 Membership and density rate of the three largest trade union confederations, Italy, 1960–2018

	CGIL + CISL + UIL active membership pensioners excluded (000)	Density rate (%)	CGIL + CISL + UIL pensioners (000)
1960	2885.8	24.7	–
1965	3096.2	25.5	–
1970	4736.2	37.0	–
1975	6599.1	48.0	–
1980	7189.0	49.6	–
1985	6125.5	42.5	–
1990	5872.4	38.7	–
1995	5341.2	37.3	–
2000	5194.5	34.4	–
2005	5468.1	33.3	–
2010	5974.4	35.5	–
2015	6210.2	36.6	5410.9
2016	6295.4	36.4	5202.6
2017	6361.8	36.0	4829.8
2018	6358.4	35.5	4789.8

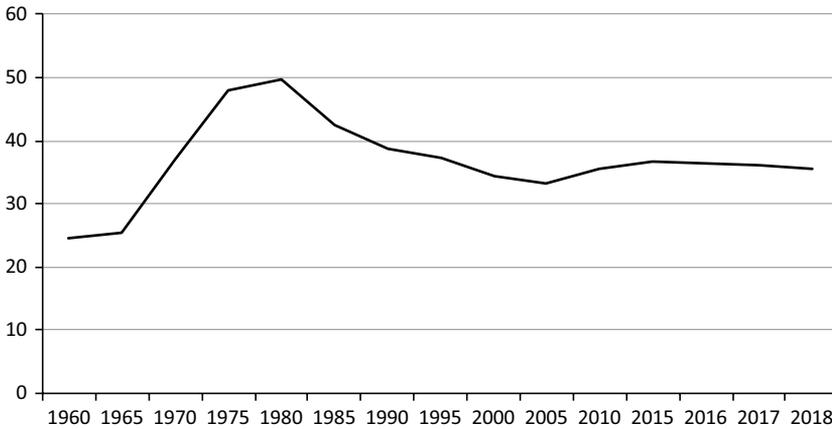
Source: Up to 2010 is Visser (2019a), then websites of CGIL, CISL and UIL (<https://www.cgil.it>, <https://www.cisl.it> and <https://www.uil.it>, respectively, accessed on 25 October 2019).



Source: Up to 2010 is Visser (2019a), then websites of CGIL, CISL and UIL (<https://www.cgil.it>, <https://www.cisl.it> and <https://www.uil.it>, respectively, accessed on 25 October 2019).

Figure 10.1 Membership of the three largest trade union confederations, Italy, 1960–2018 (000s) (pensioners excluded)

efforts to explicitly address the issue of recruiting new members, carried out more or less systematically at confederal, sectoral and territorial levels. Their efforts have included, as for many other EU countries (Pedersini 2010), both organizational measures (creation of specific departments or committees) and policy initiatives targeted at the recruitment



Source: Up to 2010, is Visser (2019a), then websites of CGIL, CISL and UIL (<https://www.cgil.it>, <https://www.cisl.it> and <https://www.uil.it>, respectively, accessed on 25 October 2019).

Figure 10.2 Density rate of the three largest trade union confederations, Italy, 1960–2018 (pensioners excluded)

process in general⁷ or of specific groups of workers (women, young people, foreign workers and workers with atypical employment contracts).

2.2 Trade Unions: Changing Internal Composition

The above-mentioned trends, however, have affected individual categories differently (Table 10.5; Carrieri and Feltrin 2016, pp. 42–4; also Leonardi 2018, pp. 92–4). All private sector categories have lost members, with only two exceptions – commerce and tourism, and banking and insurance⁸ – but not all at the same pace. Capacities differ when it comes to combating the decline in employment levels or taking advantage of employment increases. The manufacturing and industrial sectors, construction excluded, and the transport sector have suffered the largest membership losses, exceeding the decrease in the number of employees or even despite an increase (transport). The membership of the metalworking federations in 2018 is only just over half that in 1978, with notably a greater decline than the decrease in employment levels, although the losses were concentrated in the last two decades of the twentieth century, stabilizing after 1998. Even more pronounced has been the decline of the textile, chemical and energy federations, whose membership in 2018 is little more than one-third of that in 1978, even though employment levels have only halved. This means that in both cases the density rate has declined sharply, losing ten or more percentage points since the late 1970s. By contrast, the commerce sector has almost tripled its trade union membership since the early 1980s, at least partly taking advantage of the extraordinary rise in employment levels, from below 2 million to more than 5 million employees. However, the density rate, slightly lower than the 1978 peak at a little below 20 per cent, is still by far the lowest of all the sectors, explained by factors such as the prevalence of very small firms, the widespread diffusion of precarious jobs and the high turnover of both firms and employees. However,

particularly in this difficult context, the increase in absolute terms from 382 000 members in 1978 (Carrieri and Feltrin, 2016, p. 42) to about 1.1 million in 2018 is astonishing. In the past four years (2015–18) alone, aggregate membership has increased by 17 per cent, with more than 150 000 new members, benefiting all three union federations, albeit unevenly.⁹ The only other private sector category that has almost constantly increased its membership – up from 146 000 in 1978 to 214 000 in 2018 – is that of banking and insurance, despite their obvious difficulties during the recent crisis. With an aggregate density rate of around 42 per cent in 2018, the three unions in this sector have substantially been able to regain their position of 40 years earlier, after a decline to a 35.4 per cent density in 1988.

In transport, membership and employment levels moved in opposite directions until the end of the 1990s, the first declining sharply (in connection with privatization and liberalization), and the second increasing by about 14 per cent. Thereafter, up to 2018, however, this decline in membership was reversed, together with a stabilization of employment levels. This brought about a small recovery in the density rate, although it remains significantly below its 1978 value. In communications, union membership declined by more than 20 per cent at the end of the 1990s compared with 1978, despite only a minor decrease in employment levels, but then stabilized until 2018. Finally, public administration, not considered in Table 10.5, has substantially maintained or slightly increased its membership since the early 2000s, although with some variations from year to year.

The upshot of these different trajectories is a radical change in the internal geography of trade union representation (Table 10.6 and Figure 10.3). While in 1981 the manufacturing sectors accounted for about 30 per cent of total (active) membership, public services, private services and agriculture/agro-food industries for about 20 per cent each, and constructions for about 11 per cent, in 2001 the picture was very different

Table 10.5 Membership of some CGIL, CISL and UIL federations, Italy, 1978–2018 (000s)

	Metal-workers	Textiles, chemicals, energy	Construction	Commerce and tourism	Transport	Communication	Banking and insurance
1978	1050	1108	800	382	516	357	146
1988	765	774	653	361	460	369	173
1998	650	632	584	443	328	285	199
2008	654	529	816	674	364	287	222
2014	656	470	754	901	381	288	212
2018	617	427	663	1083	401	273	214

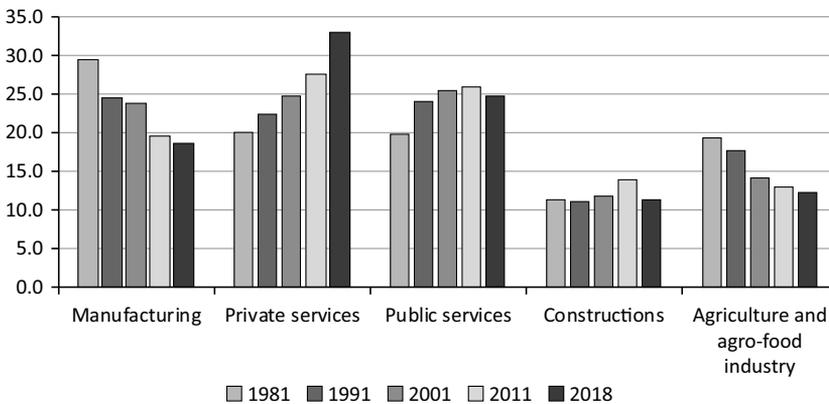
Note: Metalworkers: FIOM CGIL + FIM CIS L+ UILM UIL; Textiles, chemicals, energy: FILCTEM CGIL + FEMCA CISL+UILTEC UIL; Construction: FILLEA CGIL + FILCA CISL + FENEAL UIL; Commerce and tourism: FILCAMS CGIL + FISASCAT CISL + UILTUCS UIL; Transport: FILT CGIL + FIT CISL + UILTRASPORTI; Communications: SLC CGIL + FISTEL and SLP CISL+UILCOM and UILPOSTE UIL; Banking and insurance: FISAC CGIL+FIRST CISL+UILCA UIL.

Source: Up to 2014, Carrieri and Feltrin (2016, p. 42); for 2018, websites of CGIL, CISL and UIL (<https://www.cgil.it>, <https://www.cisl.it> and <https://www.uil.it>, respectively, accessed on 25 October 2019).

Table 10.6 Changing geography of union representation: composition of active members by sector, Italy, 1981–2018 (CGIL + CISL + UIL) (percentage in total active membership)

	Manufacturing	Private services	Public services	Construction	Agriculture and agrifood
1981	29.6	20.1	19.8	11.2	19.3
1991	24.6	22.5	24.1	11.0	17.7
2001	23.8	24.7	25.6	11.8	14.1
2011	19.5	27.7	26.0	13.8	13.0
2014	18.9	29.9	26.0	12.7	12.5
2018	18.7	33.0	24.7	11.4	12.3

Source: For 1981–2014, adapted from Carrieri and Feltrin (2016, p. 36); for 2018, author's elaboration of data from the CGIL, CISL and UIL websites (<https://www.cgil.it>, <https://www.cisl.it> and <https://www.uil.it>, respectively, accessed on 25 October 2019).



Source: For 1981–2011, Carrieri and Feltrin (2016), p. 36; for 2018 author's elaboration.

Figure 10.3 Changing geography of union representation: percentage composition of active members by sector, Italy, 1981–2018 (CGIL + CISL + UIL)

in 2018. Currently, almost 60 per cent of the active members of CGIL, CISL and UIL are in the service sector, private and public, and less than 20 per cent from traditional manufacturing, with a significant decrease in agriculture and agro-food as well, while the relative weight of construction has remained substantially stable. In particular, the weight of private services has increased strongly and constantly, from 20 per cent to 33 per cent, by far the largest share of active union members. This is a rather composite area of employment, comprising commerce, tourism, transport, communications, and banking and insurance, covered by a number of union federations. The most dynamic category is that of commerce, tourism and services (Filcams-CGIL, Fisascat-CISL and Uiltucs-UIL), which covers a wide range of activities, from wholesale and retail trade to large-scale distribution, from hotels and restaurants to catering firms and tourist services,

from professional and advanced tertiary services to cleaning industry, domestic work and care-givers. According to an interviewed expert and trade union consultant, among the reasons for the relative¹⁰ trade union success in organizing such a fragmented area of activity is, paradoxically, the very same precariousness of employment. Precisely because of the high turnover of both firms and employees, typical of many of these activities, 'these workers are in particular need of the (individual) services trade unions can provide to assist them when moving from one job to another'. This amounts to a type of Ghent system without formal Ghent institutions.

2.3 Representation of Foreign, Atypical and Young Workers

Other labour market areas in which trade union efforts to organize and represent workers' interests have been effective are foreign and atypical workers, while to some extent greater difficulties have emerged with regard to young workers.

Despite the harsh contrasts raised by the rhetorical abuse of migrants in the Italian political debate, foreign workers are more of a resource than a problem as regards trade union membership. The available information suggests that at least since the beginning of the 2010s foreign workers have made up a significant share of total active union members, at around 13–15 per cent or more. This share is greater than the weight of foreign dependent employees in total dependent employment in the same years, which is approximately 10–12 per cent (see Table 10.3). With nearly 1 million union members in 2011 and a little fewer in 2013, foreign workers are to some extent overrepresented in active union membership compared with their weight in the Italian economy, contributing significantly to compensate the loss of members in the same period, especially in some categories (author's elaboration of Carrieri and Feltrin 2016, p. 38). More recent information on the two larger confederations, CGIL and CISL, confirms this union recruitment among foreign workers (Table 10.7). More than 440 000 foreign members of CGIL and more than 340 000 foreign members of CISL account for 16.1 and 14.9 per cent, respectively, of total active membership of CGIL and CISL, again exceeding the weight of foreign dependent employees in total Italian dependent employees in the same years (11.9 and 12 per cent, respectively). In both CGIL and CISL, the share of foreign workers is particularly important in particular sectors, such as construction, agro-food, commerce and tourism (including care-givers), but also in metalworking, transport, textiles, chemicals and energy. The pattern is very similar in the two confederations, with the exception of transport and, partly, atypical workers.

Similarly significant is the Italian unions' apparent capacity to expand their area of representation to the varied world of workers with atypical employment contracts, 'a success story also in comparative perspective, often envied abroad', as underlined by an interviewed union official in the sector. This success can be attributed to the strategic choice made by all three confederations at the end of the 1990s to create separate, ad hoc federations specifically devoted to organizing these workers, irrespective of sector.¹¹ The three main groups targeted by these organizations are temporary agency workers, coordinated workers with a para-subordinate employment contract and autonomous/self-employed without employees; for Nidil-CGIL, unemployed persons and young people in search of their first employment are also a target. The density rate is very difficult to estimate, given the indeterminate and fluid boundaries of these labour market areas;¹²

Table 10.7 Percentage of foreign workers in active membership of some CGIL (2017) and CISL (2018) federations, Italy

	Construction	Agro- food	Commerce and tourism	Metal- workers	Transport	Textiles, chemicals, energy	Atypical workers	Total	Percentage of foreign dependent employees in total dependent employment (IT, 15 and over)
CGIL (2017)	26.0	25.3	20.1	14.6	21.9	11.3	27.3	16.1	11.9 (2017)
CISL (2018)	29.5	25.9	23.7	15.4	13.5	13.1	20.4	14.9	12.0 (2018)

Source: Author's elaboration based on: CGIL (2019); CISL (2019b).

Table 10.8 Membership of atypical worker federations (CGIL + CISL + UIL), Italy, 2010–18

	2010	2015	2016	2017	2018	% VAR 2015–18
Nidil-CGIL + Felsa-CISL + UILTemp	100 957*	182 672	204 810	216 855	230 795	26.3%

Note: * Only CGIL + CISL.

Source: Websites of CGIL, CISL and UIL (<https://www.cgil.it>, <https://www.cisl.it> and <https://www.uil.it>, respectively, accessed on 25 October 2019).

but it is probably fairly low. However, the membership trend, despite an extremely high turnover because of the precarious employment conditions (CGIL 2019, pp. 40–41), has been increasing constantly, from a few thousand in the early 2000s to, in recent years, surpassing the membership of traditional important categories such as banking and insurance (Table 10.8). This growth has been greater than 26 per cent in the past four years alone. It does not fill the gap in the density rate, but it can hardly be considered ‘sluggish’ (Pedaci et al. 2018, p. 43).

The key to this expansion, as underlined by an interviewed union official, is the provision of (individual) services through a network of institutions and bilateral bodies that are well publicized on the websites of all three unions (see the following section for more details). For the largest component of this group, temporary agency workers, wages and working conditions are determined by the sectoral collective agreement applied by the companies where they temporarily work, and, with regard to certain features, by legislation. Thus, the national collective agreement for temporary work agencies¹³ focuses mainly on measures to protect the ‘employment continuity of workers, supporting them also in non-working periods, through activities aimed at the professional reskilling of workers and at the improvement of welfare programmes’.¹⁴ Many of these measures and programmes are provided by two bilateral bodies, Ebitemp and Formatemp, the first created in 1998 by the first national collective agreement of the sector, and the second in 2000, implementing the 1997 legislation that introduced temporary agency work in Italy. Both are financed by the employers and managed jointly on an equal basis by employers and union representatives. The original mission of Ebitemp was to tackle the problems affecting temporary agency workers during periods of work discontinuity. This mission was later progressively extended to the creation of a comprehensive sectoral welfare system, including supplementary health insurance programmes, integrative pension funds, financial aid for the education of workers and their families, and support for kindergarten attendance. Formatemp’s mission is to develop passive and active labour market policies (income maintenance measures and training and retraining activities). For autonomous, self-employed persons without employees, who are often professionals, legal and fiscal services are very important and highly appreciated, provided by the authorized centres for fiscal assistance (CAAFs) managed by the trade union confederations (one for each confederation). As stressed by an interviewed union representative, in a recent survey of self-employed workers, about 90 per cent of respondents declared that they feel best represented by their own accountant. The trade union plan is to provide

the same services as accountants through the CAAFs, at a lower price, with a view to persuading at least some CAAF clients to unionize.¹⁵

Unlike the foreign workers and atypical workers, trade union organizational capacity looks less effective for young workers, confirming a feature often underlined in comparative analyses (recently, Visser 2019b). For instance, according to a 2006 article by Jelle Visser, in all the seven countries for which data were available (the USA, the UK, the Netherlands, Ireland, Sweden, Norway and Finland), workers in the 16–24 years age group had a much lower density rate than the overall rate, in some cases well below half (the USA, the UK and the Netherlands) (Visser 2006). A similar difference concerned casual versus standard workers in all four countries for which data are available (UK, Ireland, Netherlands, Norway). The two groups often overlap. Young workers are more likely to have a precarious job, at least at the beginning of their career, and conversely, temporary workers are often young, even if the recent economic crisis has also pushed many adult workers into conditions of precariousness that previously seemed to affect mainly their younger colleagues (as stressed in an interview). It is plausible that such a situation of structural uncertainty may discourage unionization. Italy does not disprove this comparative evidence. The percentage of members below 35 years of age out of the total active CGIL membership was 17.4 per cent in 2017, and 15.9 per cent of total active CISL membership in 2018. In both, then, it was below the 24 per cent share of dependent employees in the age group 15–34 years in total dependent employees in the same years. As stressed by a confederal union leader ‘our language does not reach young workers’, referring to traditional communication channels and messages.

In light of these difficulties, all the confederations, and partly the federations, have created structures or positions for handling youth policies, usually reporting to the secretary for organizational matters, and have adopted initiatives specifically targeted to young people. These initiatives include summer or winter youth camps, lasting a few days, in which discussions on work-related topics are mixed with broader political and cultural debates, as well as other activities potentially interesting to young people (sport, music and similar).¹⁶ To the same purpose, CGIL has long cultivated special links with associations of university students, from which to attract new members and, sometimes, also junior officials. More specific, and perhaps innovative, policies have recently been adopted (see the case study in section 5.1 of this chapter).¹⁷

2.4 The Increasing Importance of (Individual) Services

An increasingly important driver of the recovery of trade union membership is the provision of individual services to workers and citizens at large. With some exceptions,¹⁸ this is an often neglected area of union activity, to some extent obscured by the primary and more visible trade union missions of collective bargaining and political lobbying. However, it is carefully cultivated and widely practised by all the unions, very important for both membership and financial resources, and well publicized on trade union websites, including the smaller and little representative organizations. Despite the absence of a formal Ghent system, as found in Belgium and the Nordic countries, the Italian trade unions are important providers of a wide variety of individual services to workers and citizens generally, sometimes as intermediaries between them and the state. Services include the employment relationship, unemployment and pension procedures,

work-related grievances, tax obligations, professional training, welfare and health care, but also tourist or travel packages, supermarket discounts and special insurance packages. The relative importance of providing these services has grown in parallel with the erosion of identity incentives, as in most market democracies, as a way of solving the free-rider problem (Olson 1965) that always plagues the provision of public goods, such as national or company-level collective agreements or legislative measures. In some instances, benefiting from these goods is conditional on union membership; in others, they are open to all, but at a lower cost for union members, as an incentive to unionize (Feltrin and Maset 2007, 2010; Feltrin, 2015).

Three of the most important services are as follows:

1. Assistance to workers and citizens generally, on behalf of the state financial administration, in completing the annual income tax declaration and many other tax obligations and documentation necessary for accessing various types of welfare benefits. These services are provided by the CAAFs created by Law No. 413/1991 (modified in 1997 and 1998), which have to be authorized by the Ministry of Finance. They are promoted and controlled by the trade unions, but are also autonomous.¹⁹ Users pay a fee for services, with a discount for union members. Moreover, the CAAFs receive financial support from the state. The three major trade union confederations have CAAFs in all regions and provinces, and in most municipalities.²⁰ In 2014, for example, CGIL, CISL and UIL CAAFs processed more than 7 million income tax declarations (Table 10.9), to which just under 4 million instances of other services (Isee and Red services; see Carrieri and Feltrin, 2016, pp. 72–3, tables 3 and 4) must be added, totalling almost 11 million. The numbers in 2018, not available in aggregate, are higher (the *Bilancio di missione CISL 2017–18* reports 4.571 million), although they have grown at a slower pace than in the past owing to increased competition from other centres not belonging to the main confederations.
2. Assistance to workers and citizens generally, with applications for social security, health care and welfare services, including migration services. This is provided without cost to the user by the *patronati sindacali*, which are bodies regulated by a 1947 law, amended in 2001 (Law No. 152). The Patronati are financed through a public fund based at the Ministry of Labour, which is provided by a small percentage of total social security contributions paid by dependent employees, distributed proportionately by volume of activity. Not all the services provided by the Patronati receive public financial support, however, and the volume of activity is usually influenced directly by the legislation: for instance, the change in the retirement age introduced at the end of 2011 has reduced the volume of services provided linked to social security applications. In 2012 the three major confederations provided these services in 4.5 million instances.
3. Legal assistance with work-related litigation and legal disputes regarding the employment relationship, or the termination of the employment relationship (such as actions against dismissals and debt recovery). These services are provided by the Ufficio Vertenze (lawsuit or litigation offices), which are much utilized also by not yet unionized workers, and are a very important channel to unionization, since being a union member is a legal prerequisite for assistance at court.

Table 10.9 Number of instances of services provided by CAAFs and Patronati (CGIL, CISL and UIL), Italy, 2000–2014

	2000	2005	2010	2014
Number of income tax declarations (000s)	5258	6146	6702	7037
Number of pension and other services processed by Patronati (000s)	n.a.	2068*	3680	4512**

Note: * Only CGIL + CISL; ** 2012.

Source: Carrieri and Feltrin (2016, p. 71, table 2 for the first line; p. 74, table 5 for the second line).

The provision of these individual services is very important not only from the viewpoint of union membership, being an important channel of unionization (Feltrin and Maset 2010), but also for the unions' financial resources. Although difficult to calculate, recent estimates suggest that these services contribute more than 50 per cent of the revenues of the three largest confederations coming from union dues (Table 10.10).

In addition to these services, in recent years the provision of a wide range of health and welfare benefits for employees has also notably increased, laid down in collective agreements at both sectoral and company levels, to some extent compensating for the moderate wage increases of recent bargaining rounds. Benefits include supplementary unemployment, health and pension payments, training activities, financial aid for children's education and, in some instances, even discounts at the supermarket or for fuel. Some of these benefits are provided by a network of *Enti Bilaterali*, bilateral bodies created by national collective agreements, jointly managed on an equal basis by representatives of the employers and of the trade unions, financed by the parties to the agreement. Although these autonomous bodies are created by the social partners, if they provide services of public interest – for example, those related to health and safety at the workplace, professional and lifelong training, and integrative pensions – they are subject

Table 10.10 Estimated financial resources of CGIL, CISL and UIL, Italy, average 2013–14 (€ million)

	CGIL	CISL	UIL	TOTAL
Union dues – active workers	320–370	260–310	150–180	730–860
Union dues – pensioners	150–180	90–120	30–40	270–340
Union dues – total	470–550	350–430	180–220	1000–1200
CAAFs				
Min. Finances	38–41	33–37	13–15	84–93
Individual fees	74–81	65–72	26–29	165–182
Others	19–22	17–18	7–8	43–48
Total	131–144	115–127	47–52	292–323
Patronati	100–110	70–75	30–35	200–220

Source: Carrieri and Feltrin (2016, p. 83).

to public regulation. Among the most important bilateral bodies are those created in the construction sector, at provincial and regional level, the *casse edili* (Bellardi 1989), and those in the artisan sector (Nogler 2014),²¹ followed by many others in most bargaining sectors at various levels (Leonardi 2005; Feltrin and Maset 2007; Bellardi and De Santis 2011; Feltrin 2015). The outcome is a very articulated and fragmented system, which in 2013 comprised 29 national bilateral bodies and 386 territorial bodies.

Finally, 2000 legislation introduced the possibility of creating in each (private) sector of economic activity, through inter-confederal agreements between the comparatively more representative social partners at national level, joint funds for employees' occupational training and lifelong learning (*fondi interprofessionali*). They are authorized and monitored by the Ministry of Labour, and are financed by a contribution of 0.30 per cent of firms' total monthly wage bill. All firms must pay this contribution, whether they decide to participate in these funds or not. In 2014, there were 18 funds, with more than 920 000 participating private firms (69 per cent of potential member firms), covering about 9.6 million employees, that is, more than 80 per cent of private dependent employees (Carrieri and Feltrin 2016, pp. 78–9). These funds may finance training programmes at sectoral or company level, and have played a role in recent years in training programmes related to the National Plan Industry 4.0 and company digitalization.

2.5 Union Organizations Other than CGIL, CISL and UIL

In addition to the three major confederations, there are other organizations, that is, independent or autonomous unions. Visser (2019a) reports a total number of seven confederations in 2009 and six in 2017, including CGIL, CISL and UIL. However, these numbers fail to take into account that in the public sector alone, in addition to the three main confederations, four confederations representing managerial staff are (according to the provisional data) admitted to negotiations for the 2019–21 bargaining round, and five different confederations to negotiations for non-managerial staff. Some of these confederations operate in both the public and the private sectors, such as CISAL, CONFISAL, USB and UGL, the latter traditionally linked to right-wing parties. The membership of these independent unions in the private sector is often unknown or obscure. The above-mentioned density rates would be higher if these unions were taken into account.

The independent unions are particularly numerous in the public sector and in transport. With regard to the public administration, the provisional list published by ARAN (the agency for the representation of public administration in national negotiations), in view of the 2019–21 bargaining round, includes 90 unions in the central functions sector, 128 in the local functions sector, 116 in the health care sector and 175 in the education sector (Bordogna and Pedersini 2019, p. 211, table 7.4). In total, the independent unions account for about 35 per cent of total public sector union members (excluding managerial staff), while the unions affiliated to the three largest confederations account for between 64 per cent and 70 per cent of the votes cast in the elections of the unitary workplace representation bodies, held in April 2018. Despite this extreme fragmentation, owing to the rules on trade union representativeness introduced in the public sector by 1997 legislation, hitherto unchanged, only seven unions are admitted to national-level negotiations in the central functions sector, including those affiliated to the three largest confederations, four in local functions and six in each of health care and education.

2.6 Employers' Associations

On the employers' side representation is characterized by a comparatively medium-high organization density, partly decreasing since the mid-1990s (Table 10.11) and strongly linked to company size. Fragmented representation also characterizes the employers' associations in the private sector (Feltrin and Mamprin 2013; Feltrin and Zan 2014; Bellardi 2016; Olini 2016, 2017; Bordogna and Pedersini 2019, ch. 3). There are several divisions in sector, type and size of companies, in addition to those based on broad political orientations.

The most important organization is Confindustria, the general confederation of Italian industry founded in 1910, which operates both as a trade association and as an employers' association. It was originally concentrated in the manufacturing (especially mechanical) sector, representing mainly large and medium-large companies. Over time, and accelerating in the past two decades, together with the transformation of the production system, it has evolved into an organization that represents both manufacturing and services firms of any size, on an inclusive basis: there are no size limits and all types of firms are accepted, including cooperatives and public companies. According to the Head of the Area Sistema Associativo of Confindustria: 'The perimeter has changed and so the representation and organizational structure has adapted. Now it is almost fifty-fifty made up of manufacturing and services firms, of any size'.²²

Confindustria is an umbrella organization with 15 sectoral federations, 19 regional associations and 71 territorial associations, mainly on a provincial basis. In recent decades, there have been several reforms, one in 2002, another in 2014 and the most recent in 2018, as well as a number of mergers, both between sectors and at territorial level, resulting in

Table 10.11 Density of employers' organizations, Italy, 1995–2012

	ED	EDpriv
1995	71.2	64.0
2002	69.6	62.0
2008	68.0	60.0
2012	64.8	56.0

Note: ED – employers' organization density (wage and salaried employees in firms organised in employers' organizations as a proportion of all wage and salary earners in employment); EDpriv – employers' organization density in the private sector.

Source: Visser (2019a).

Table 10.12 Number of firms associated with Confindustria, Italy, 2002–18

2002	2005	2009	2013	2018	% VAR. 2002–18
113 307	120 329	142 762	144 302	150 766	33.1

Source: Author's elaboration of data provided by Confindustria.

Table 10.13 Composition of firms associated with Confindustria by sector, Italy, 2018 (percentage)

Manufacturing	Services	Commerce	Construction	Total
50.3	36.4	7.5	5.8	100.0

Source: Data provided by Confindustria.

a more flexible organizational model. Its total revenues from member firms amount to approximately €450–500 million, mainly from small firms, with, in recent years, territorial structures becoming increasingly important compared with the central confederation. At the end of 2018, Confindustria reported a membership of almost 151 000 firms on its website, covering more than 5.4 million employees, allegedly accounting for 34 per cent of Italian GDP. The number of associated firms increased by 33 per cent between 2002 and 2018, constantly and at a rapid pace until 2010–11, followed by a small decrease in 2012–13 and a slight recovery afterwards (Table 10.12).

Half of the member firms are still concentrated in the manufacturing sector (Table 10.13), while the other half are in services (36 per cent), commerce (7.5 per cent) and construction (5.8 per cent).

Based on these numbers, Confindustria has a seat on all the bodies and institutions in which the legislation envisages employers' representation, including INPS (the Italian Institute of Social Security Institute), all the chambers of commerce, the committees of Cassa Integrazione Guadagni – CIG (wages guarantee and redundancy funds), and other similar bodies.

Regarding composition by firm size, more than eight out of ten member firms – about 127 000 – have 50 employees or fewer, 13 per cent between 50 and 250, and only 2.6 per cent more than 250 employees (Table 10.14). As a representative of Confindustria with organizational responsibilities said:

practically all large Italian firms in any sector, with 250 employees or more, are associated with CONFINDUSTRIA, as well as a high proportion of medium-large firms. We have no or little room to expand our membership in those segments.²³ In the past, often firms outside the traditional manufacturing sectors have come to seek our representation, including firms in the ICT sector at the end of the 1980s, as well as the tourist and hotel sector and the media sector. Recent members include organizations unusual for CONFINDUSTRIA, such as the association of large supermarkets (GDO), the association of large bathing establishments, wedding planning firms and NCC associations.

Table 10.14 Composition of firms associated with Confindustria by size of employment, 2018 (percentage)

Up to 50 employees	50–250	> 250	Total
84.1	13.3	2.6	100.0

Source: Data provided by Confindustria.

In effect, the interviewed representative continues,

where we still have room to grow is among the small and very small companies, although some of them are hardly organizable and it is debatable whether it should be attempted. In the last (2018) reform there were some proposals, then abandoned, to consider a minimum threshold in terms of employees below which to preclude membership.

In this context, in the past few years Confindustria has adopted more systematic strategies, with marketing techniques (*marketing associativo*) and recruitment targets assigned to territorial structures, to enlarge its area of representation to encompass small firms, even if there is a limit below which it is hard, and perhaps not desirable, to go. Again according to the Head of the Area Sistema Associativo of Confindustria: 'Here there is a world of entrepreneurs who are very difficult to organize and represent, but that we cannot abandon.'²⁴ This strategy has included a greater emphasis on the provision of services, particularly needed by small firms that often do not have the necessary resources and competences to produce them in-house, such as services in support of export activities in distant markets. The data in Table 10.14, provided by Confindustria, show that there has been some expansion in this segment, but also that there is still room for growth if we consider the number of firms of this size in the Italian economy.

This is, however, a segment in which the inter-organizational competition for representation is quite strong (Feltrin and Zan 2014; Bordogna and Pedersini 2019, ch. 3). One of the employers' association operating in the industrial sector is Confapi – the 'Italian confederation of small and medium size private firms' – founded in 1947, which, according to its website,²⁵ claims more than 80 000 member firms (partly also in the transport and services sectors) with more than 800 000 employees. On average, therefore, these are very small firms, a segment presumably below the threshold of Confindustria. Another is Confimi, the confederation of Italian manufacturing industry, founded in 2012.

The organizations of the craft sector, especially Confartigianato and CNA, have a greater capacity to compete with Confindustria. The first, founded in 1946, has 12 sectoral federations, 173 000 associate firms with employees in 2018 (22 per cent in the construction sector) with about 640 000 employed persons; it has its own CAAF, which provides fiscal and tax-related services, as well as its own Patronato, which provides welfare services. The second, the National Confederation of the Artisan Sector and of Small and Medium-Sized Firms, also founded in 1946, declared about 621 000 members firms in 2018 with 1.2 million employees. It is the signatory of 17 national collective agreements in various sectors, and the founder of the inter-professional fund for training and lifelong learning for the artisan sector, as well as of the bilateral body EBNA. Both organizations are increasingly trying to expand their area of representation beyond craft and artisan firms, entering into competition with Confindustria in the segment of small firms. Two other, smaller confederations in the artisan sector are CLAAI and Casartigiani.

In the commerce sector, the main confederations are Confcommercio, founded in 1945, which organizes also professional activities and self-employed persons and declares more than 650 000 member firms, and Confesercenti, founded in 1971. Confesercenti claims more than 350 000 small and medium-sized member firms operating in commerce, tourism, services, artisanal and industrial activities, allegedly employing more than 1 million people. Three organizations exist in the cooperative sector: Legacoop, founded in 1893

and currently organizing more than 15 000 cooperative enterprises; Confcooperative, founded in 1919 currently organizing 18 500 cooperative and social enterprises; and the General Association of Italian Cooperatives (GCI). In the agricultural sector, the main organization is Confagricoltura, founded in 1948, which claims to organize two-thirds of all the enterprises in the sector and covers more than 500 000 employees.

All these organizations, and other minor organizations, are divided by sector, type, size and, in some cases, legal status of the represented firms, and partly also along ideological and political lines, although this aspect has been declining in recent decades. They compete for membership in the relevant sector, and often across sectors. This fragmentation of employers' representation in the private sector, even more than the fragmentation on the workers' side, has contributed to the previously mentioned abnormal proliferation of national collective agreements in recent times, often signed by organizations of limited and dubious representativeness. This, in turn, is currently a main challenge for the traditionally dominant social partners and the stability of the system (Bellardi 2016; Olini 2016, 2017; Treu 2019; see section 3 in this chapter).

By contrast, in the public sector there is only one employers' organization, ARAN, created by 1993 legislation, subsequently amended, compulsorily representing all Italian public administrations in collective negotiations at national level (d.lgs n. 93/1993, d.lgs. n. 165/2001). The public employees, both managerial and non-managerial, falling under ARAN's jurisdiction, whose employment contract is regulated through national collective agreements negotiated and signed by ARAN, currently number about 2.6 million. In addition, there are about 500 000 public employees, mainly military and police (but also judges, prefects, diplomatic personnel, prison personnel and university professors), whose employment relationship is either unilaterally determined by legislation and/or administrative acts, or regulated through specific procedures carried out at the Ministry of Public Functions, outside ARAN's domain (Bordogna 2016; Bordogna and Pedersini 2019, ch. 7).

3. SUPPORTING THE AUTONOMOUS ROLE OF THE SOCIAL PARTNERS

Bilateral social dialogue institutions and practices have a consolidated tradition in the Italian system of employment relations. As anticipated, consistent with the system's voluntarist character, there is no law regulating collective bargaining in the private sector, while it has existed since 1993 (partly 1983) in the public sector. Bargaining practices go back to the 1950s, however, and a two-tier bargaining structure has existed since the early 1960s. The national sectoral (industry-wide) collective agreement (CCNL) is the main pillar, complemented by a second level of negotiations, usually at company level, but at territorial level in some sectors, such as agriculture, construction and artisan enterprises. This two-tier structure was institutionalized, within a vertically coordinated system, by a major reform in July 1993³⁶ and confirmed by another (albeit controversial) reform in 2009. Bargaining coverage is about 80 per cent or higher, granted by the national industry-wide collective agreements that, if not applied, can be extended through appeal to the courts (see note 2); it is, however, much lower with regard to the second-level negotiations. In the public sector and public administration coverage is 100 per cent, and

nearly 100 per cent for second-level negotiations. On the eve of the third decade of the new millennium, however, this experience faces a number of problems, especially in the private sector.

Difficulties in national-level negotiations arising from a context of low or negative inflation, started in 2012–13 and still endure. There are also pressures towards greater decentralization of the bargaining system, to the detriment of the role of national, industry-wide and multi-employer collective agreements. Second-level negotiations are mostly limited to large and medium-large firms, in a context of three decade-long stagnating productivity. There are also persisting labour market dualisms, with territorial, sectoral, firm-size cleavages, as well as differences by gender, age and insider/outsider workers, in which platform workers lie. Another problem is the proliferation of national collective agreements signed by parties with uncertain representativeness. Finally, the government has recently tended to downgrade the role of the social partners in the governance of the Italian economy and society (disintermediation), to which the possible introduction of a statutory minimum wage is connected.

Some of these problems are new, others have existed for a long time. For some of them, the social partners have converging interests and attitudes; for others, their interests are in conflict, as stressed in the interviews. In some instances, public policies help in overcoming the difficulties (incentives to engage in second-level negotiations), in others they are lacking (rules on representativeness), while in yet others still they are regarded with suspicion, even hostility, by the social partners (disintermediation and statutory minimum wage).

3.1 Pressures towards Decentralization, Separate Agreements, and the Issue of Trade Union Representativeness

The 22 January 2009 reform of the bargaining model, adopted through a (separate) tripartite framework agreement between Confindustria and other employers' associations, on one side, and CISL and UIL, on the other, while confirming the two-tier bargaining structure, left a number of problems open. There were problems, first, because of its character as a separate agreement, since CGIL, the largest trade union confederation, refused to sign it, fearing that the agreement could open the way to unlimited derogations *in pejus* at company or local level from economic and normative standards defined by national sectoral collective agreements. This might lead to a system of uncoordinated, disorganized decentralization. However, this did not prevent the unitary renewal of almost all national industry-wide agreements, thanks also to a subsequent agreement between Confindustria, CISL and UIL that made derogations at company or local level subject to several conditions and to the final approval of the signatory organizations of the national industry-wide agreement, thus limiting the risk of disorganized decentralization. With two relevant exceptions in the commerce and the metalworking sectors, where the agreements were not signed by the CGIL union federations (respectively Filcams and Fiom). The latter case was particularly problematic, as for a particular period two different national collective agreements were in force: (1) one separate agreement signed in October 2009 only by the CISL and UIL metalworker federations, according to the new 2009 rules, and (2) an agreement signed in January 2008 by all three federations in accordance with the old rules as defined in 1993. This confused situation was further

complicated by several appeals by Fiom-CGIL to different Italian courts to contest the validity of the 2009 separate agreement, which received different rulings from different tribunals. A similar problem of inter-union rivalries arose in 2010–11 with regard to several second-level agreements in the Fiat group, not signed by Fiom-CGIL, which in many cases was the union with the higher membership.

In all these instances, the underlying issue was one of union representativeness in a context of inter-union rivalries: who represents whom, and who has the power to sign agreements with general validity.

The risk of uncontrolled derogations at company or local level was made even more serious by highly controversial 2011 legislation (Art. 8, Law No. 148), which allowed wide scope to derogate at company and territorial levels from industry-wide collective agreements and, partly, even legal norms, undermining the vertical coordination of the system (Pedersini 2019, p. 348).

The social partners autonomously found a solution to these problems through a number of unitary inter-confederal agreements between Confindustria and CGIL, CISL and UIL in June 2011²⁷ and May 2013, later incorporated in the more comprehensive agreement of January 2014, the *Testo Unico sulla Rappresentanza* or TUR (Single Text on Representation), which was later signed or adopted also by other employers' associations (Carrieri 2014).

The agreement included two basic principles widely borrowed from the 1997 legislation for the public sector, still in force. The first of these principles was a precise quantitative criterion to measure the representativeness of trade unions in order to select those admitted to national-level negotiations. This criterion is a representativeness of at least 5 per cent as an average of membership strength and the votes received in the elections of workplace unitary trade union representation bodies (RSU), to be held every three years. Below this threshold, unions are not admitted to national-level negotiations. The second was a majority principle for collective agreements with general validity, applicable to both national industry-wide agreements and company-level agreements. For national industry-wide collective agreements, the criterion requires that the signatory union has (or the signatory unions have together) a representativeness of at least 50 per cent + 1. For company-level agreements, the criterion requires a majority of members of the workplace representation bodies.

These criteria are sufficient, in principle, to resolve the issue of separate agreements owing to inter-union rivalries, leaving only a practical problem of implementation linked to the gathering of membership and electoral data. This problem was a great deal more complicated to overcome in the private than in the public sector, the solution to which took more than five years and a number of agreements and conventions between INPS, CNEL, the Ministry of Labour and the signatory parties. Finally, however, after a September 2019 convention between INPS, the National Inspectorate of Labour, Confindustria, CGIL, CISL and UIL that defines the procedures and responsibilities for gathering the relevant membership and electoral data, all the practical obstacles were removed and the system should be operating from 2020.²⁸

It remains a major problem, however. These agreements are binding only for the signatory parties, but not for the organizations, on both sides, that did not sign it or adhere to it. This can be resolved only by legal intervention, which was once opposed by some social partners (especially CISL and Confindustria) in the name of the

autonomous role of bilateral social dialogue, but is now unanimously accepted and even solicited, as confirmed by all the relevant interviewees. The decision of the government and parliament is crucial, potentially hampered by pressures from organizations possibly damaged by the prospective rules. No such legislation has been approved so far (Treu 2019).

3.2 The Abnormal Proliferation of National Industry-wide Collective Agreements and the Issue of the Representativeness of Employers' Associations

Linked to the previous issue, but neglected in the previously mentioned inter-confederal agreements, is the matter of the representativeness of employers' associations, put on the agenda of private sector industrial relations by the recent abnormal proliferation of CCNLs, well documented by CNEL, the National Council for the Economy and Labour (Table 10.15).

The number of national industry-wide collective agreements has constantly increased, from 552 in 2012 to 909 in November 2019. A large number of them are concentrated in the commerce, services and transport sectors (commerce 240, private institutions 111, services firms 47 and transport 69), where the fragmentation of the representation system is traditionally higher. However, they are also numerous in construction (74) and, to a lesser extent, in the manufacturing sectors as well, such as metalworking, chemicals (33 in both) and textiles (28). Often they are signed by organizations with uncertain representativeness also on the employers' side. For instance, only a minority of all the agreements recorded by CNEL in December 2018 belonged to the Confindustria system (68 out of 888, that is, 7.6 per cent). In some instances, the coverage of the first three agreements in each category of the INPS-CNEL database is high, but in others it is around 70 per cent or even 50 per cent (Table 10.16). Therefore, for a significant part of workers in these

Table 10.15 *Number of national sectoral collective agreements in force, recorded in the CNEL archive, Italy, 2012–19*

	Total number	
2012 December	552	
2013 December	607	
2014 December	675	
2015 December	741	
2016 December	819	
2017 December	868	
2018 December	888	68 of which referred to the Confindustria system
2019 December	909	of which:
		33 metalworking sector
		74 construction
		240 commerce
		111 private institutions

Source: CNEL (2018, 2019a, 2019b), accessed 10 February 2020 at <https://www.cnel.it/Archivio-Contratti/Notiziari>.

Table 10.16 Coverage of the first three CCNLs, Italy, 2018

Macro-sector (INPS-CNEL database)	Number of workers	Number of workers covered by the first three CCNL	Coverage of the first three CCNL (%)
Metalworking	2 362 515	2 309 304	98
Chemical	530 964	412 791	78
Textile	381 720	279 347	73
Food, agro-food	421 149	356 352	85
Construction, wood, furniture	712 265	492 594	69
Printing sector and entertainment	283 094	146 536	52
Commerce, tourism, professional and household services	4 704 634	3 797 963	81
Transport	805 918	645 573	80
Bank and insurance	463 228	409 755	88
Services (cleaning, telecommunication, environmental services)	809 942	568 692	70
Education, health, social and cultural services	828 583	649 195	78
Other	560 426	548 077	96
Total	12 864 438	10 616 179	82

Source: Text of the Hearing of the CNEL President (T. Treu), House of Representatives, XI Committee, 14 January 2020, table 2.

categories (one out of two, or one out of three) there is the concrete risk of being covered by collective agreements that undercut the wage and normative standards set by the agreements between the comparatively more representative parties. The risk of bargaining dumping is evident, raising problems for the employees and trade unions, but also raising concerns for fair competition between employers.

The issue of the certified assessment of the representativeness of the employers' associations, previously opposed by Confindustria, together with the possibility of a normative or legal regulation on this matter, are probably the main innovations of the most recent inter-confederal agreement between Confindustria and CGIL, CISL and UIL (the *Patto della Fabbrica*, 9 March 2018).²⁹ This new agreement states:

knowing the effective level of representation of both the signatory parties of a CCNL is indispensable if one wants to contrast the proliferation of collective agreements signed by parties with no certified representation, exclusively aimed at providing 'formal justification' for situations of real 'bargaining dumping' that compromise the competition between firms and damage workers.

To this end, the parties agree upon the need to define 'a shared path with the other employers' associations to arrive at a model of certified representation of employers' associations capable of conferring general validity on collective agreements'. Moreover, as for trade union representativeness, the new agreement opens up the possibility of normative or legal regulation of this matter as well.

However, the prospective procedure for achieving this purpose is full of practical and legal (even constitutional) difficulties, more than in the case of union representativeness. In particular, according to different labour law scholars, Article 39 of the Constitution (freedom of association) prevents the possibility, hypothesized in the agreement, of pre-determining the 'objective parameters' (sector/category) within which to measure the representativeness of the parties and, consequently, identify which collective agreement has general validity ('contratto leader'). According to the Constitution, these scholars continue, the parties have the constitutional freedom or right to define for themselves the category of enterprises to which their agreement applies (Ichino 2018; Liso 2018). Resolving this problem is therefore in stalemate, depending only partly on the autonomous role of the social partners, despite the intensive work carried out by CNEL in collaboration with INPS to help them in this process. The intervention of the law, and perhaps a constitutional revision, is again necessary.

3.3 Public Policies to Promote the Diffusion of Second-level Negotiations and Firm-level Welfare Benefits

The role of the second level of negotiations in the bargaining structure has long been on the social partners' agenda. In the main reform of 1993, which institutionalized the two-tier model within a vertically coordinated structure and an income policy framework, there was an implicit exchange between wage moderation in national sectoral collective agreements, on the one hand, and a greater diffusion of secondary-level negotiations, possibly supported by public incentives, on the other. This exchange, as well as the public incentives, became clearer in the 2009 reform, in which the economic role of national collective agreements was more strictly limited to exclusive protection of the purchasing power of wages against inflation, with no distribution of productivity gains, to be pursued only in second-level negotiations. However, no substantial increase has occurred in the diffusion of company or territorial agreements after the 2009 reform (D'Amuri and Nizzi 2017; Leoni 2017). The available evidence shows that decentralized collective bargaining, as in the past, remains limited mainly to large and medium-large companies (Table 10.17).

The issue has acquired still greater relevance in recent years, within the new economic context of low or negative inflation that started after the new recession and sovereign debt crisis of 2012–13. The national agreements for the period 2013–15 included wage increases in line with the forecast inflation rate, which for the first time turned out to be notably higher than the actual inflation of the period. According to the text of the 2009 reform, this difference (estimated at approximately €70 a month) should have been given back by workers to the employers in the following bargaining round, which was unrealistic. Thus, all the contract renewals for the 2016–18 (or 2019) period, after a one-year wage freeze and despite significant differences across sectors,³⁰ further stressed the crucial role of the second level of negotiations in increasing the real value of wages and salaries, in the form of productivity or performance-related pay and firm-level welfare benefits.

That is why extending second-level bargaining to more companies than in the past has recently become an increasingly important issue on the social partners' agenda, especially that of the trade unions, which see here the only possibility of increasing real wages. The public authorities also have an interest in this issue because of the potential positive effects on company productivity and general economic competitiveness. Public policies

Table 10.17 Extent of second-level bargaining by industry and company size, Italy, 2012–13 (percentage of enterprises)

	10–49	50–199	200–499	500 and over	Total
Manufacturing	19.7	46.4	75.6	86.0	25.1
Construction	25.9	41.0	63.8	72.6	27.1
Market services	14.0	32.7	49.5	59.4	17.1
Social and personal services	15.2	27.1	41.8	59.0	18.3
Total	17.5	38.5	60.5	69.1	21.2

Source: Pedersini (2019, table 16.5), based on CNEL-ISTAT (2016, ch. 4 and table E1).

adopted in the Stability Law for 2016 (Law No. 208/2015), always substantially renewed thereafter, have introduced significant incentives (tax and social contribution rebates) for employees and employers on wage increases negotiated at company or territorial level, provided that these agreements satisfy certain conditions and are submitted online to the territorial structures of the Ministry of Labour. Moreover, these incentives are higher if monetary wage bonuses are converted into welfare benefits listed in national or company-level collective agreements (education, health, training, assistance for family members, and so on) and linked to employee involvement arrangements (Leonardi and Pedersini 2018; Leonardi et al. 2018, pp. 216–17). The social partners supported this policy, and in July 2016 Confindustria, CGIL, CSIL and UIL agreed on a type of template of territorial agreements to also facilitate access to these incentives for small and very small companies without workplace trade union representation.

The number of these agreements registered in the database of the Ministry of Labour has notably increased since 2016, reaching a total of 52 588 at mid-December 2019 (the last available report at the time of writing), of which about 18 000 are still in force (Table 10.18).

From a quantitative viewpoint, it appears to be a success, even though it remains to be seen to what extent these are new agreements, involving previously uncovered companies

Table 10.18 Second-level productivity agreements with tax and social contribution incentives in force on 16 December 2019, registered in the database of the Ministry of Labour, Italy

	A	B	C	D	E
	Total agreements in force on 16-12-2019	Of which company-level agreements	Of which territorial-level agreements	With welfare benefits	With employee involvement arrangements
Number	17937	13912	4025	9461	2046
% (on A)	–	77.6	22.4	52.7	11.4

Source: Author's elaboration of Ministry of Labour, Premi di produttività, report online, 16 December 2019, Rome, accessed 3 February 2020 at <https://www.lavoro.gov.it/notizie/pagine/premi-di-produttivita-online-il-report-al-16-dicembre-2019.aspx/>.

and territories, or pre-existing agreements suitably adapted to qualify for fiscal incentives (D'Amuri and Nizzi 2017, pp. 15–17; European Commission 2018, p. 36).³¹ From a public policy perspective, the main question is the effectiveness of these agreements in relation to improved productivity. This is what justifies the use of public resources in the amount of €1 billion in 2019 (D'Amuri and Nizzi 2017, p. 216; European Commission, 2018, p. 36) to grant tax rebates to approximately 2.5 million beneficiaries (INAPP 2019, estimates until June 2018).

3.4 Relationships with Government and Political Parties: Disintermediation and the Issue of the Statutory Minimum Wage

After the period of tripartite concertation in the 1990s, with the basic agreement of July 1993, in the first two decades of the twenty-first century industrial relations have entered a period of more troubled and discontinuous relationships with the government, conditioned by the political orientations of the parties in office and by the worsening economic context. Tensions have emerged on several occasions after the double-dip recession of 2008–09 and 2011–13, often with divisive effects between and within the social partners. Examples are the contrasts with regard to the reform of the bargaining model in 2009, under a centre-right government, or the labour market reform of 2014–15 under the Renzi government, which abolished Article 18 of the Workers' Statute for employees hired after 7 March 2015 with a permanent employment contract, both strongly opposed by CGIL.

If a common feature can be observed in this period, with continuity across different governments, it is the downgrading of social dialogue in the governance of the Italian economy and society. Major reforms have been adopted by the government with little or no consultation and, in some instances, even against the social partners. Sometimes this has occurred in response to crisis, within the stricter rules of EU economic governance. For example, on the occasion of the freezing of public sector collective bargaining and wage increases after 2010, or the major pension reform at the end of 2011 (Monti government) and other austerity measures, or again as regards the first modification of Article 18, a few months later, again under the Monti government. However, the downgrading of social dialogue, at least intermittently, has continued under subsequent governments, often labelled 'disintermediation' to underline that it is a deliberate programme to erode the role of the social partners in national policy-making. This applies to the labour market reform of 2014–15 (the Jobs Act) of the Renzi government, or the partial amendment of this reform in 2018 by the Five Star–Northern League government. It also applies to the introduction of citizenship income in early 2019 and the new rules for early retirement under the same government. In all of these, the social partners were hardly consulted, or were consulted in such unwieldy meetings (involving up to 40 organizations) that discussion was almost impossible or meaningless.

However, there have been interventions with beneficial effects on the role of autonomous social dialogue. This applies, for instance, to the measures to promote second-level bargaining, approved in 2015 by the Renzi government and substantially renewed, with few modifications, by all the budget laws of the following governments. We might also mention the National Plan Industry 4.0, launched in 2016–17 by the Renzi and Gentiloni governments, with the intense involvement of social partners, and confirmed, albeit

with some amendments, by all the following governments (see section 4 in this chapter). Moreover, the coalition government currently in office, of which the Democratic Party is the second largest component after the Five Stars movement, is paying more attention to the role of social dialogue than its predecessor did.

The most important issues currently on the agenda are probably the regulation of trade union and employer association representativeness, and the statutory minimum wage. The latter issue is controversial. Strongly supported by the largest political party currently in office (the Five Stars Movement), it is substantially opposed by all the social partners, at least with reference to the first unofficial proposals that hypothesized a high value of the minimum wage (€9 an hour, before taxes). It has been noted that in some sectors and for some occupations this value would be higher than that fixed by corresponding industry-wide collective agreements. This would inevitably undermine the wage authority of the social partners, not only the trade unions, thereby challenging and eroding their representative capacity. Moreover, both social partners underline that the coverage of national collective agreements is very high in Italy, making the minimum wage less important than in other countries. However, Italy is one of the very few countries in the EU without a statutory minimum wage, and some independent experts, as well as some of the interviewed social partners, stress that the main problem is how a minimum wage could be introduced, and what its relationship would be to the wage standards determined in collective agreements.

In summary, the debate is open and it remains to be seen whether and how the government plans to proceed on this issue. Whatever the solution, it is likely under present circumstances that it will not proceed unilaterally.

4. SOCIAL PARTNERS AND DIGITALIZATION³²

The importance of digitalization on the agenda of the Italian social partners has experienced a qualitative leap since the launch of a public policy on Industry 4.0 in summer–autumn 2016. Prepared by a parliamentary inquiry in February–June 2016 (Commissione Permanente Attività produttive, commercio e turismo, 2016), in which the social partners were also audited, in the following months the government, and in particular the Ministry of Economic Development (MISE), launched the ‘Piano Nazionale Industria 4.0 2017–2020’, which was incorporated in the Stability Law for 2017 (Law No. 232/2016). The programme aimed at promoting the investments of Italian firms in innovation and research and development (R&D) in the area of digitalization and new technologies, through direct investments in technological infrastructure and substantial fiscal incentives to firms, amounting to €23 billion in four years. It also included measures to improve students’ capacities in digital skills 4.0 at all levels of the education system, in particular through the enhancement of the technical high schools (ITS) and an increase in the number of graduates in science, technology, engineering and mathematics (STEM) subjects. To date (January 2020), the plan has been refinanced every year in the state budget, despite some uncertainties in the past two years and amendments aimed at also promoting green investments and involving other economic sectors beyond manufacturing, as well as small-size firms. In particular, in 2018 the incentives for activities related to human capital formation and more specifically to workers’ training and

retraining in the area of digitalization and new technologies were subject to the precondition of a company or territorial level agreement with trade unions.³³ This novelty in a short time led to three national framework agreements on this matter between CGIL, CISL and UIL and, respectively, Confindustria (5 July 2018), Confapi (23 July 2018) and Confimi (2 August 2018); in March 2019 a similar agreement was also reached with the employers' associations of the artisanal sector (Confartigianato, CAN, CLAAI and Casartigiani).

On the issue of workers' upskilling and reskilling, and in general workers' training, although not exclusively related to digitalization and Industry 4.0, it is worth noting also the introduction in the 2016–19 CCNL of the metalworking sector of an individual right for each employee to 24 hours' training. It is a first and limited step, whose implementation has been problematic, but in principle it is important and could be extended in the national agreement currently under renewal.

The original plan also included the creation of a steering committee with the involvement, among others, of the social partners, and the promotion of digital innovations hubs and competence centres to help companies to increase their awareness of these issues and assist them, especially small and medium-sized enterprises, in their innovation programmes.

From the very beginning this government programme has been appreciated by the social partners as a welcome, and long awaited, industrial policy initiative, although the two sides have stressed different features and concerns: investments in equipment and new technologies, on one side, and employment effects, workers' involvement, upskilling and reskilling programmes on the other. Moreover, both social partners have complemented the plan with their own organizational measures and policy initiatives.

4.1 Trade Union Initiatives

A few months after the launch of the Plan, CGIL, CISL and UIL submitted a joint document to the government ('Una via italiana a Industria 4.0 che guardi ai modelli europei più virtuosi', Rome, 13 March 2017). The document underlined the importance of three features: giving the steering committee a precise agenda, monitoring the effects of investment on employment and working conditions at company and territorial level, and avoiding a situation in which the incentives benefited only, or mainly, medium-large companies in central and northern Italy. Among the matters of most interest for collective bargaining, CGIL, CISL and UIL stressed working time, work–life balance, wage increases linked to productivity and workers' participation, not only in the organization of work but also the definition of company business plans. The main underlying idea, as later expressed in an interview by the CGIL general secretary, was to allow workers and unions to engage in 'informed bargaining in order to anticipate and govern change rather than simply resist or adjust to its effects'.³⁴ A few examples of company-level agreements inspired by this idea are illustrated in Case Study 2 in section 5.2 of this chapter.

CGIL and CISL also established new organizational units or programmes specifically dedicated to digitalization. At the end of 2016, CGIL set up an 'Office for Work 4.0' (Ufficio Progetto Lavoro 4.0), reporting directly to the general secretary, a 'Consulta Industriale' with internal and external experts, within its industrial policies department, and a collaborative online platform, Idea Diffusa, a virtual laboratory to organize debates

and exchanges between experts and union officials.³⁵ From June 2017, Idea Diffusa also issued a monthly supplement of *Rassegna Sindacale*, CGIL's journal. In early 2019, two years after the launch of this project, the Office for Work 4.0 published the handbook *Contrattare l'innovazione digitale. Una cassetta degli attrezzi 4.0 (Negotiating Digital Innovation. Nuts and Bolts 4.0)*, with a foreword by the General Secretary. This was presented at CGIL's eighteenth congress on behalf of the national secretarial office, to underline the importance of this initiative to the confederation and the related topic (Cipriani et al. 2018; Gramolati and Sateriale 2019). Together with general analyses, the handbook goes more deeply into specific topics (for instance, negotiating working conditions in the gig economy), presents brief company case studies and provides guidelines for company and territorial level negotiators.

CISL followed a similar course. In February 2017, the General Secretary of the confederation launched 'Laboratory Industry 4.0' (Laboratorio Industria 4.0), within its industry department, as a set of 'competences in support of bargaining and negotiations with the government and employers, with a view to seizing the opportunities of Industry 4.0 and positively managing their effects on working conditions and employment'. The Laboratory, with the collaboration of a few experts from the Polytechnic University of Milan, involved union officials of all CISL industrial and services federations and a number of workers' delegates from 27 companies in 13 sectors. Some of its members, as in CGIL, participated as members of the steering committee initially created by the Ministry of Economic Development to accompany the plan Industry 4.0 (the committee met only twice, however, in 2017 and at the beginning of 2018). The Laboratory also produced two publications, a short introductory report at the beginning and a longer book including general analyses and ten case studies, written mainly by company workers' delegates (CISL 2017, 2019a). In addition, the Laboratory helped to promote various training activities related to Industry 4.0, including a year-long (2019–20) course for workers' delegates and union officials on 'Innovation and work organization 4.0', organized at the confederation's national training centre in Florence.

As an example of the utilization of digital technologies in the internal organizational life of trade unions, the June 2019 organizational conference of the metalworking federation FIM-CISL, under the programme motto 'Smart Union to Drive Change', launched a 'digital union card' project and a 'digital check-off' process, based on blockchain technology. The declared dual aim of the project is to promote a certified and transparent process of unionization (also solving the problem of measuring representativeness), and to improve representation capacities based on the much larger quantity of information made available by the technology. New technologies, in particular social networks, are also used to improve trade unions' communication with workers, especially at small and very small firms. However, as one interviewee stressed, 'new technologies help but do not replace the need for person-to-person relationships'.

4.2 Employers' Initiatives

The government Plan Industry 4.0 also involved employers' associations, both in its preparatory steps (the 2016 Parliamentary Inquiry) and in the operational phases following its formal approval in the budget law for 2017 (then renewed for 2018 and 2019). As underlined by the interviewed Confindustria Director of the Area of Industrial Policies,

social partners' involvement in the formulation and early management of the plan has been very intense, 'with a strong and positive dialogue with trade unions'.

Confindustria, specifically the Area Politiche Industriali, in addition to participating in the steering committee, has been particularly active since early 2017 in the creation of digital innovation hubs (DIH), one of the two structures, together with competence centres, envisaged by the National Plan Industry 4.0 to facilitate innovation. Organized mainly on a regional basis and related to the confederation's territorial associations, in summer 2019 the number of digital innovation hubs under the aegis of Confindustria, in collaboration with other employers' associations (Rete Imprese Italia, comprising associations in the artisanal and commerce sectors), reached 22. These are structured as a network and coordinated by a DIH executive team to try to ensure homogeneity of interventions all over the country, define common strategic guidelines and allow the diffusion of best practices among the different territories. The activities of the DIHs are addressed mainly to small and medium-sized firms, as large companies tend to have their own capacities and resources. Their three main tasks are to raise companies' awareness of the opportunities offered by 4.0 technologies, to support companies in assessing their digital maturity, and to orientate them in the broader innovation system (national and European competence centres, private and public research centres, technological incubators, and so on). In July 2019, the Confindustria DIH network carried out about 430 seminars, meeting more than 5200 companies and making more than 800 assessments of digital maturity (Bianchi 2019; Confindustria 2019). In 2018 and early 2019 a few agreements were reached with important players in the field (Siemens, HP Italy and Google) for the provision of training activities to companies on specific features of 4.0 technologies.

4.3 Platform Workers and Riders

As in many countries, the world of platform workers is a growing and much diversified universe, not easily identified. According to a 2018 survey carried out by INAPP (the National Institute for the Analysis of Public Policies), and a hearing of the INAPP Director at the House of Representatives on 25 September 2019, Italian gig workers now number 213 150 (0.49 per cent of the population between 18 and 74 years of age), of whom approximately 30 per cent provide cleaning services and housework, 25 per cent urban transport services, 15 per cent food delivery, 7 per cent online activities and 23 per cent work for other platforms (INAPP-Nicastro 2019). Their distribution with regard to level of education, gender, age and occupational status compared with the entire INAPP sample is shown in Table 10.19. Compared with the INAPP sample (comprising 45 000 persons between 18 and 74 years of age), males outnumber females, workers are younger, sometimes more educated (high school and university degree), less frequently regularly employed, and much more frequently students and people in search of employment. As for the type of employment contract, 14.4 per cent declared they did not know what type of contract was used, 42.1 per cent work with informal agreements, that is, without a proper contract of employment, 19.2 per cent have a contract of occasional collaboration, 6.9 per cent engage in ancillary work and only 2.9 per cent are involved in continuous and coordinated collaboration, with some public insurance cover, while 4.9 per cent are self-employed. Moreover, the survey shows that although almost 40 per cent of these workers are already employed, with another occupation and another

Table 10.19 Distribution of platform workers and entire INAPP sample by level of education, gender, age and type of occupational status, Italy, 2018 (percentages)

	Platform workers	Entire INAPP sample
<i>Level of education</i>		
Primary school	2.8	4.6
Intermediate	34.7	38.0
High school diploma	46.8	41.1
University degree	15.8	16.3
<i>Gender</i>		
Male	54.0	48.0
Female	46.0	51.0
<i>Age</i>		
18–24	18.9	9.6
25–29	25.6	7.4
30–39	20.5	16.7
40–49	24.2	21.8
50–64	9.2	29.6
65–74	1.7	14.9
<i>Occupational status</i>		
Employed	39.8	52.8
In search of employment	23.8	10.6
Pensioner	1.0	13.4
Other non-active	17.9	17.2
Student	17.1	6.0

Source: INAPP-Nicastro (2019).

source of income, about 30 per cent of them consider their earnings from this activity essential to them surviving financially and 35 per cent had to postpone medical treatment for financial reasons in the year before the survey.

In summary, the survey shows that within this varied world, although a significant percentage of workers have another occupation and utilize platforms to supplement their main income, another important part are exposed to precarious conditions from both an economic and a contractual point of view. These two groups do not always have the same interests.

Riders in the strict sense (in the food delivery sector) make up less than 15 per cent of this whole, numbering approximately 30 000 people concentrated mainly in medium-large towns and accounting for just 0.1 per cent of total employment. However, they are probably the clearest example of the blurring of boundaries between autonomous and dependent or subordinated work in the context of digitalization, raising complex problems and discussions from a labour law perspective (among others, Voza 2017; Bavaro 2018; Faioli 2019). The public visibility of the riders' issue has been strengthened by protests in recent years, including one involving Foodora employees in Turin in

October 2016 regarding hourly pay, and a legal case filed by five Foodora workers, who lost their jobs after the 2016 protests, claiming the right to be hired by the company as dependent employees, with all the associated guarantees. This claim was rejected in the first instance by the Turin court (April 2018), but partly accepted by the Court of Appeal (ruling in January 2019), which, although it did not confer on these workers the right to be hired as dependent employees, it did require that they receive treatment equal to that of dependent employees in the logistics sector. The appeal, at the Court of Cassation (24 January 2020), substantially and definitively confirmed this sentence, with a few amendments. This has been welcomed by all the confederal trade unions, as well as the federations of atypical and contingent workers, and particularly by the transport federations, which in July 2018 had reached an agreement with the employers' associations to include riders in the CCNL of the logistics and transport goods sector.

Meanwhile, Parliament has adopted legislation (Law No. 128, 2 November 2019) that brings the regulation of riders and other groups of platform workers closer to the regulation of dependent employees, at the same time conferring a significant regulatory role on the social partners and collective bargaining at both national and decentralized levels.

5. CASE STUDIES

5.1 Case Study 1: Examples of Recruitment Policies – FIM-CISL and FP-CGIL, and Confindustria

Every year, trade unions and employers' associations have the organizational problem of retaining old members and recruiting new ones, at least ensuring the replacement of natural turnover, which is high in both cases (usually more than 10 per cent for CGIL, CISL and UIL, and significant also on the employers' side, especially among small companies after the 2008 crisis). For trade unions, a particularly critical area is that of young workers; for Confindustria it is small companies.

Increasing youth membership in the metal sector: CISL project

In 2015–16, the metalworkers federation affiliated to CISL launched a project ('FIM 4.0: A completely different union. Young people in training activity for change') aimed at recruiting young people to become trade union officials (*operatori sindacali*) in various regional or territorial structures. The idea of this project was not to contact young workers directly in order to unionize them. Instead, it was to renew union political staff with younger personnel, aiming in this way to hire younger skills, such as digital competences, familiarity with social media and languages or channels of communication presumably more attractive to young workers. The potential results in recruitment of young workers were therefore indirect, and expected only in the medium term.

The selection procedure was innovative given the tradition of recruiting union staff only among workers in workplaces. It started with an open call launched in most Italian universities and many high schools, targeted at newly graduated people or students at the end of their academic career. This call registered about 400 applications all over Italy. The second step was the analysis of the candidates' curricula vitae (CVs) and interviews with most of them, at the end of which 20 applicants were selected (with gender equality) for a

nine-month internship in territorial structures of FIM, mentored by a senior union official. The internship also included forms of online training and three specifically planned, three-day joint training activities, carried out at the FIM national training centre, so that the participants could meet and possibly create a network. At the end of this experience, all but one were hired as junior union officials in different territorial structures. According to one participant we interviewed, it was a very positive experience and the contacts made between the participants were to some extent still active. One of the organizers also gave a very positive evaluation of this project in an interview. However, the project, which ended in October 2016, has not been replicated at national level owing to its complexity. It has been substituted with more flexible internship and apprenticeship programmes at local level for university students (for instance, with the University of Milan), which seem attractive. As a consequence of these renewal programmes, at the end of 2018 the number of FIM union officials below 35 years of age was double that in 2015 (data presented at the national organizational conference of FIM-CISL, Rome, 27–28 June 2019, by Valerio D'Alò, national secretary for organizational matters).

The initiative for public employees by CGIL (FP-CGIL)

Another interesting example is a recent initiative of the CGIL public sector union (FP-CGIL). After the end of the recruitment freeze in all Italian public administrations owing to the austerity policies launched in 2010, over the next few years approximately 450 000–500 000 recruitments are expected, mainly or exclusively young workers, to be selected through public procedure. In view of this, FP-CGIL has organized a website (www.concorsi pubblici.fpcgil.it) with relevant information on the public recruitment procedures of all Italian public administrations. In addition to information, the website also offers (free) online courses to prepare applicants for these public exams. According to a CGIL secretary we interviewed, this initiative has been very well received, with a high success rate in the selection procedures among the participants in these courses. It has also had significant results in relation to new members.

The policies of Confindustria for small companies, young employers and start-ups

The target of small companies is to some extent a mandatory choice for the associational efforts of Confindustria. This is owing to, first, these companies being numerous in the Italian production system and, second, most of the larger companies are already associated. It is, however, an area in which recruitment and retention of members is difficult, because of high turnover and the competition for membership of other employers' organizations, in particular those of the artisanal sector. In the past few years, Confindustria has developed systematic strategies based on marketing techniques, analysing the potential recruitment area, assigning precise growth targets to territorial associations and periodically monitoring the results achieved. The benefits provided to attract new members in this area are mostly services that are particularly attractive for small companies: forms of support for accessing credit, internationalization through trade fairs, trade missions and other means of contacting distant markets that they would not be able to reach on their own, and other, similar services. These services are very much needed by small companies, since they often lack the necessary resources or skills, while larger companies usually have the capacity to provide them in-house. According to the Confindustria director we interviewed, this policy seems to have been successful. With

regard to young employers, Confindustria has a special structure dedicated to employers between 18 and 40 years of age (Confindustria Giovani Imprenditori), with about 13 000 associates, 60 per cent of whom are in the 30–35 age group. The policy towards people behind start-ups, who are often very young (below 30 years of age), is not to try to associate them through the traditional channels and with the standard requirements (industrial structure, and minimum thresholds for revenues and employment). Instead, it is to facilitate their growth by providing support through access to credit, creation of contacts with potential lenders, and creation of networks with other firms associated with Confindustria, especially small firms, collaboration with which is mutually advantageous. A specific channel for these contacts was recently promoted within the wider initiative Connex, a two-day marketplace launched in early 2019 with the participation of about 1000 companies of various sizes and 7000 participants (entrepreneurs, managers, start-ups, institutions and stakeholders). The digital platform linked to this initiative has registered 40 000 users since January 2019. In its second edition (in 2020) Connex also includes a special ‘Call for Startups’, through which a selected group of start-ups are offered the possibility to participate in the initiative free of charge with their own exhibition desk. The territorial structures of Confindustria also apply special membership conditions to young start-ups, such as reduced association fees, or suspension of fees for a certain period, without limiting access to association services and facilities.

5.2 Case Study 2. Examples of Company Level Negotiations on Digitalization

The attitude of trade unions towards digitalization, well expressed in the interview with the General Secretary of CGIL (see note 34), is to ‘negotiate the algorithm’, meaning that the unions should engage in ‘informed bargaining in order to anticipate and govern change rather than simply resist or adjust to its effects’. As also underlined by the General Secretary of CISL, ‘innovation is not to be curbed or feared, but accompanied with solutions and concrete opportunities capable of giving workers new factors of security and social advancement’ (CISL 2019, pp. 7–8). The idea is that technological innovation is inevitable, and it can have both positive and negative effects on workers and working conditions, depending on how the innovation is introduced and managed. As an RSU representative of a metalworking company said: ‘In 4.0 there are many shadow zones but also many opportunities for workers’ professional growth, by learning to do new things. This is where the trade unions come in’ (quoted in Mancini 2018b, p. 49).

All the cases analysed in Gramolati and Sateriale (2019), CISL (2019a) and others studies (for instance, Campagna et al. 2017; Pero 2015; Pero and Ponzellini 2015; Sai 2017), show that, while the challenge for trade unions would be to anticipate change by negotiating innovation before its introduction (Gramolati and Sateriale 2019 pp. 59, 70–71), this is not always easy to achieve. Nor are there any one-size-fits-all solutions (Mancini 2018b, p. 59). The effects can be ambivalent, even in the same company. On the one hand, they may improve the quality of jobs by reducing repetitiveness, promoting autonomy, facilitating cooperation and teamwork. On the other, they may cut out more of the cognitive content of jobs with little or no development of skills, worsening work-related stress and increasing forms of strict control of workers’ behaviour (CISL 2019a, p. 184).

The most recurrent issues in company-level negotiations include vocational training and retraining, health and ergonomic issues, working time, workers’ participation and

the organization of work in general. Job classification is tackled far less often, since it is more complicated, as are, surprisingly, wage and monetary incentives linked to increased productivity, with a few exceptions (CISL 2019a, pp. 193–4).

An example of successful anticipatory bargaining is that of Nuovo Pignone, a General Electric oil and gas company based in Florence, at whose plant all work stations involving digitalization have been equipped with an alert device to signal a technical malfunctioning of the system and issue a work order to the problem-solver team. The RSU has been involved since the beginning in a long, and initially confrontational, negotiation to define the type of information employees have to enter into the device and to limit the use of the procedure exclusively to optimizing the functioning of the plant, avoiding any remote control of individual workers (Mancini 2018b, pp. 55–6; Gramolati and Sateriale 2019, pp. 47, 77). Another agreement on the remote control of workers' activity concerns the use of cyber-security systems at Hewlett Packard (Gramolati and Sateriale 2019, p. 50).

Workers' skills are crucial to avoiding or at least mitigating the potentially negative effects of digitalization on the quantity and quality (polarization, precarization) of work. An individual, subjective right to training, although not necessarily linked to digitalization and apparently little utilized hitherto, was recently included in the 2016–19 metalworkers CCNL, and is on the agenda of the current contract renewal process. Training and retraining, reskilling and upskilling specifically linked to digitalization are often negotiated at decentralized level, in companies or territories undergoing innovation processes, thanks also to the financial incentives made available by the National Plan Industry 4.0 in 2018 and 2019 (for 2020 these incentives have been confirmed, but without the precondition of an agreement with trade unions). Training and retraining, covering soft skills and cognitive abilities in addition to technical matters, are often dealt with together with other issues, such as teamwork and workers' participation. They are crucial not only for the employees, but also for the success of the innovation itself, as many instances testify (CISL 2019a, p. 192). One example of a company agreement in this area is that at Hewlett Packard Enterprise, where in 2017 a training programme 'Nuovo Rinascimento Digitale' ('New Digital Renaissance') was launched, which focused on soft skills to accompany organizational restructuring, together with the online training platform 'Accelerating U', available to every worker, and a job architecture system to help individual employees with their careers (Gramolati and Sateriale 2019, p. 76). Another example is the 'Bonfiglioli Digital Retraining' pilot programme at metalworking company Bonfiglioli, focusing on technical and soft skills, aimed at training 15 employees to become trainers and tutors of other employees (Mancini 2018b, p. 50).

Another important topic in negotiations linked to digitalization is that of the organization of working time, often in connection with forms of teleworking and smart-working (remote). New technologies make it possible to relax the traditional space/time constraints typical of Fordist work organization, opening the way simultaneously to more flexible solutions to meet companies' economic and organizational needs, in a context of increased market uncertainties, but also to more favourable schemes to help workers achieve a better work–life balance (CISL 2019a, p. 193). Examples of negotiations on these matters are frequent in the large supermarket chains, where the decoupling of employees' working time and service hours is well known and more pronounced. As evidenced by two case studies in Campagna et al. (2017, pp. 162–3; also Pero 2017; Ponzellini 2017), in a context of a high proportion of employment feminization, the

exchange is between flexibility on the part of the employees and greater autonomy in the choice and management of shifts, time off, leave periods and vacation time for a better work–life balance, in addition to monetary incentives.

A similar win–win story with regard to working time is an agreement on teleworking reached in 2013 in a large multinational company, initially limited to a small group of white-collar employees at head office, then extended to all white-collar employees (about 1600 employees). The project has involved a shift of control from physical presence in the company's offices for a specific number of hours to control based on performance and results, abolishing overtime and empowering employees. A trade union survey six months after the launch of the plan has recorded 'more than positive reactions' on the part of employees (Campagna et al. 2017, pp. 168–9).

Another and more recent win-win case is the June 2019 company-level agreement in the Italian plants of Luxottica, regarding an exchange between the stabilization of about 1150 fixed-term and temporary agency workers and a more flexible organization of working time, in addition to employee involvement schemes and company-level welfare benefits (Feltrin and Pero 2019, which offers an extended analysis of this case; Luxottica 2019).

Luxottica is a highly profitable, vertically integrated producer of top-quality glasses, originating in north-east Italy, with approximately 9500 employees in 2019, two-thirds of them women, and a global wholesale network in more than 150 countries. Recently it merged with the French Essilor, a worldwide leading producer of glass lenses. Although the unionization rate is low, the company has a long and well established tradition of strongly cooperative relationships with the internal RSU and the sectoral and territorial unions affiliated to CGIL, CISL and UIL, facilitated by its strong financial position. Over the past two years Luxottica has left the Confindustria territorial associations of the regions where its plants are based, as well as the national sectoral association of glass producers (ANFAO). Unlike Fiat, however, it did not abandon the national industry-wide collective agreement signed by ANFAO, whose terms and conditions it applies as the floor for company-level negotiations. The production cycle is subject to high seasonal variability, which the company traditionally copes with by means of overtime and part-time, fixed-term and temporary agency workers. The 2019 company-level agreement, in connection with the introduction of digital technologies in both production and sales, changed this approach completely. The parties decided to stabilize the 1150 or so temporary workers and, in exchange for this, to introduce a new, compulsory part-time incentivized scheme for the stabilized employees involving a 37-hour average week, varying from six hours for five days in the approximately 22 weeks of low demand (usually September–January), and eight hours for five days during the 30 weeks of high production. The average 37 weekly hours also include 30 paid hours of training activities in new technologies. Every year the management announces the expected periods of high and low demand for each department, with possible variations. The monthly wage is paid on the regular basis of 37 hours, irrespective of the variations over time, plus an additional flexibility bonus of €700 gross a year for each worker. In the future, this scheme will be applied to all newly hired employees. This process of reorganization has been accompanied by a strengthening of the institutions of employee participation, in the form of a new joint management–RSU Organization and Working Time Committee at each production site, with the task of monitoring the implementation of the new working time

scheme and matching it with the new technologies. The six-hour day in the periods of low demand is much appreciated by the employees (mostly women) for the improvement of their work–life balance, while the 30 hours of training activities in the new technologies are especially appreciated by young workers. The solution of June 2019 comes at the price of a small wage reduction (much less, however, than in the traditional part-time scheme of four hours), compensated by the traditionally rich company-level welfare benefits and accompanied by strengthened employee participation. In return, the company obtains better adaptation to new technologies and a simplification of working-time management. This win–win agreement was facilitated by the company's strong financial position, but also by the tradition of cooperative relations between the social partners.

6. CONCLUSIONS

At the beginning of the third decade of the twenty-first century, the Italian social partners and social dialogue show both strengths and weaknesses in the face of the challenges of the new world of work.

As regards the representation system, both the main employers' and workers' organizations have shown good capacity to represent the interests of their constituencies, adapting to changes in the production system and the effects of the 2008 financial and economic crisis. The three largest trade union confederations, after two decades of sharp decline at the end of the twentieth century, especially in the manufacturing sector, have increased their active membership to some extent since the early 2000s and have stopped, or even slightly reversed, the erosion of the density rate, currently one of the highest in the EU after the Nordic countries and a few others. This has been achieved through a deep transformation of their internal geography and owing to the increasing importance of the provision of (individual) services to retain members and attract new ones. To some extent, employers' organizations have exhibited a similar capacity to resist the effects of the crisis, including the high turnover of firms, despite some more pronounced difficulties.

One problem affecting the representation system on both sides is its increased fragmentation, with the connected inter-organizational rivalries. This is a traditional feature of the Italian employment relations system, linked to its voluntarist character, but greatly aggravated in recent times, especially on the employers' side. This leads, in turn, to the abnormal multiplication of national collective agreements, often signed by parties with uncertain representativeness, which undercut wages and normative conditions agreed upon by the major organizations and challenge the stability of the employment relations system itself. The major social partners have reached important agreements in recent times to regulate this issue in the private sector, following the public sector model, through a procedure of certified measurement of representativeness, based on precise quantitative criteria. Apart from practical difficulties of implementation, however, these rules are binding only for the signatory parties and their affiliated members, and are insufficient to solve the problem. Despite past aversion, the social partners recognize that legal intervention is necessary, as shown by the public sector experience. This calls into question the role of the government and public authorities, and the capacity of the social partners to influence public policies. This capacity, however, has weakened in the

past decade, partly because of the disintermediation policies practiced by some recent governments, aimed at downgrading the social partners' role in the governance of Italian society. This is a challenge that the social partners have to tackle in the near future.

Strengths and weaknesses can also be observed in respect of bilateral social dialogue. Collective bargaining institutions and practices have resisted and adapted to the crisis. The two-tier bargaining structure, within a model of vertically coordinated decentralization, was reaffirmed by the 2009 reform, despite some serious contrasts between the largest trade unions confederations, which were overcome by a number of important unitary inter-confederal agreements in 2011, 2013 and 2014. National industry-wide collective agreements have been regularly renewed during and since the financial crisis, although with difficulties owing to adverse economic conditions. One source of difficulty is the low, or even negative, inflation rate after the 2012–13 recession. The social partners have reacted to this new economic regime in different ways across sectors, as shown by the different solutions adopted in the chemical and metalworking national collective agreements to adjust wages to inflation. Despite these differences, however, all recent contract renewals, to compensate the modest or almost zero wage increases at national level, have accentuated the role of secondary-level negotiations for the distribution of productivity improvements and the provision of company-level welfare benefits. In this instance, public policies have supported the choices and the role of social partners, providing significant financial incentives to secondary-level agreements linked to productivity goals, and further reinforcing these incentives in relation to participatory arrangements and the transformation of monetary increases into welfare benefits. However, the real effects on the diffusion of secondary-level negotiations, which are currently still confined only or mainly to large and medium-sized companies, remain to be seen. That applies even more to the effects on the improvement of productivity, one of the most serious problem facing the Italian economy.

Another controversial issue, with possible dis-alignments between the government and the social partners, is the statutory minimum wage. The social partners tend to oppose this measure, defending their autonomous role as wage authority, supported by the high bargaining coverage. However, as a few experts have underlined, some – limited – areas are still not covered by national collective agreements, and in some cases, given also the proliferation of pirate contracts, workers may have substandard wages even if covered by national agreements. This remains an open question. The ultimate attitude of the social partners may depend on how a statutory minimum wage is eventually designed and introduced, and its relations with the wage levels decided by collective agreements.

Finally, with regard to digitalization, a process accelerated by recent government policies on Industry 4.0, both social partners are apparently engaged, separately and at times jointly, in trying to seize the potential benefits and to manage possible negative effects through organizational innovations, as well as policy initiatives. All have been involved in the government National Plan Industry 4.0, participating cooperatively in its preparatory work and in the first phases of its implementation. All have created dedicated organizational structures or units to deal with this process, and have promoted related initiatives. For instance, the unions have established groups of experts to study these new problems, online platforms to discuss them and training initiatives for workers' delegates and union officials to learn the appropriate negotiation skills. These themes have started to enter into national, industry-wide collective agreements, as well as company or territorial level

agreements. Matters such as working time, training and retraining, ergonomic issues, health and safety, control devices, wage incentives and work organization, in addition to employment security, are recurrent topics in these negotiations. All or most of the available case studies show that the social partners may play an important role in conditioning the effects of new technologies, and in some cases even in their design and implementation, through forms of anticipatory bargaining ('negotiating the algorithm' is the formula often utilized by trade unions). Workers' participation, at operational, organizational and strategic level, is an important issue, relevant not only for workers' interests but for the success of innovation itself. The 2018 agreement between Confindustria and CGIL, CISL and UIL, subsequently adopted by other organizations, has opened up a modest but important road in this direction. This is a challenge for both social partners in the new world of work, putting previous scepticism and resistance behind them.

Digitalization also has a dark side, as regards precarization and fragile working and employment conditions, often affecting platform workers, not only riders in the food delivery sector. Recent legislation in this field and the ruling in a legal case brought in 2017 by a small group of Foodora workers give some answers to these issues. In both instances, an important regulatory role is recognized for collective bargaining. This, too, will be a challenge for the social partners in the new world of work.

NOTES

- * I am very grateful to all the protagonists and experts I interviewed (mostly by phone) in June and October–December 2019. They involved six representatives of Confindustria, ten representatives of CISL at national and regional level, five representatives of FIM-CISL at national and territorial level, six representatives of CGIL at national level, one representative of UIL at national level and three experts on labour and employment relations. The responsibility for the content of this chapter is mine alone.
1. By contrast, since a major reform in 1993, legislation exists in the public sector that clearly defines the actors, structure, procedures and coverage of collective bargaining, as well as negotiable matters (d.lgs. n. 29/1993; d.lgs. n. 165/2001) (Bordogna 2016; Bordogna and Pedersini, 2019, ch. 7). The unilateral determination of the employment conditions of public employees, which existed in the post-Second World War period, was partly abandoned in the 1970s and early 1980s (Law No. 93/1983). Only in 1993, however, was it definitely substituted by the right to collective bargaining granted to the large majority of public employees, with the exception of some groups that remained under a public law statute (military forces and police, magistrates, prefects, diplomatic personnel, university professors, top-level state managers, the latter privatized and contractualized in 1998). On employment relations in outsourced public services, see Dorigatti (2017), Mancini (2018a) and Mori (2020).
 2. Also owing to the failure to implement Article 39 of the Constitution, in Italy there are no easily accessible legal or administrative extension clauses of collective agreements (*erga omnes* clauses) similar to those existing in other countries (for example, France and Spain). However, individual employees of companies that do not apply the sectoral collective agreement have the possibility (usually assisted by a trade union) to go to court and obtain the application of the standard pay level (*minimi tabellari*) established by the national collective agreement of the pertinent sector. Thanks also to this mechanism, the bargaining coverage is high, estimated at around 80 per cent or more. However, this mechanism does not solve the problem of the proliferation of collective agreements signed by organizations with little or no representativeness (Treu 2019).
 3. Essential public services are defined in this law as those instrumental in ensuring the constitutionally protected rights of the person (to life, health, freedom, security, safety, education, information, communication, mobility, and so on), irrespective of the private or public status of the providers and of their employees.
 4. Unlike other countries, in the largest Italian confederations retired workers do not remain members in their original category but are organized in a separate federation of pensioners, whose membership grew constantly until recent years, especially for CGIL and CISL.

5. According to the ICTWSS_v6.0 source, based on OECD data, the number of wage earners in employment was substantially identical in 1980 and 1998 (14.5 million). Instead, according to the Italian Institute of Statistics the number of dependent employees (permanent + fixed-term contracts) increased by 1 million in the same period, from 13.9 million in 1980 to 14.9 million in 1998 (I.Istat data).
6. The ICTWSS_v6.0 database and Carrieri and Feltrin (2016, ch. 3) present slightly different data over the past four decades concerning membership, although with an almost perfectly overlapping trend. Greater differences between these two sources emerge with regard to the union density rate, owing to a larger aggregate of employees used as denominator in Carrieri and Feltrin (2016); but also in this instance the trend is very similar.
7. All the confederations have annual recruitment targets, monitored mainly systematically through the year, first to replace members who retire or leave the organization for other reasons. These losses, for instance, are estimated by the interviewed confederal secretary for organizational matters to have been approximately 500 000 or 600 000 active members a year for CGIL; correspondingly lower numbers, but still fairly substantial can be estimated for CISL and UIL. An example of these policy initiatives is the *piano di reinsediamento* of CGIL, which is an annual plan for financing recruitment projects submitted by decentralized structures and selected by an assessment committee, part of the support being conditional on results. Similar initiatives in support of decentralized, peripheral structures have been adopted by CISL. Another example is the practice of negotiating (and monitoring) annual membership targets by the CISL general secretary in an important region with the lower-level territorial and federal structures of the same region.
8. A third category has increased its membership – temporary agency and atypical workers, whose federations, however, were founded only at the end of the 1990s and are transversal across economic sectors.
9. FILCAMS-CGIL 21 per cent, FISASCAT-CISL 14.1 per cent and UILTCUS-UIL 8.3 per cent.
10. Relative success because, as already noted, the union density rate in this sector is the lowest in Italy.
11. Respectively: Nidil-CGIL, Felsa-CISL (originally Alai and Clacs, merged in 2009), and UILTemp (originally CPO-UIL), all founded in 1998–99. Only a couple of years after that this type of employment contract was introduced in Italian labour legislation. These dedicated structures are an Italian peculiarity (Pedersini 2010; Gumbrell-McCormick 2011; Pulignano et al. 2016; Pedaci et al. 2018). They are flanked by other specific initiatives, such as CGIL's Consulta delle professioni, created in 2003, the association vIVace created by CISL and Networkers, created by UIL, which offer information and advice, especially legal and tax advice, as well as an arena in which to discuss common problems (Pedaci et al. 2018, p. 43).
12. The Nidil-CGIL website reports a potential area of 600 000 temporary agency workers, 920 000 para-subordinate workers and 350 000 autonomous workers (accessed 19 July 2021 at https://www.nidil.cgil.it_).
13. The last CCNL was signed on 15 October 2019 between Nidil-CGIL, Felsa-CISL, UILTemp and Assolavoro, the national association of temporary work agencies affiliated to Confindustria.
14. CCNL for the category of Agency workers, 15 October 2019, Premessa Generale, p. 2.
15. For instance, Nidil-CGIL recently launched an online consultancy service for self-employed persons and workers in the gig economy, which requires remote pre-enrolment, 'a new frontier of experimentation with quick and effective patterns of first unionization and a new form of membership' (CGIL 2019a, p. 41). Another strategy sometimes adopted at territorial and local level is to offer co-working spaces for self-employed persons on union premises.
16. A slightly different initiative, targeted at both young shop stewards (*delegati sindacali*) and young workers in general, is the week-long work camp organized by the network of young metalworkers of FIM-CISL in an area of high organized crime near Naples (Casal di Principe), with social innovation and education projects linked to the world of work smoothing the path to legality. Held for the fourth time in September 2019, its motto is 'Let's sow the seeds of legality, let's create bonds, let's reap work!'
17. In addition to the organizational policies described in this paragraph, also important are trade unions' political activities in support of legislation to extend some of the protections enjoyed by standard dependent employees to non-standard workers, especially those not covered by collective agreements (see, for instance, Burroni and Pedaci 2014; Pedaci et al. 2018).
18. For instance, Romagnoli (1980), Bellardi (1989), Bellardi and De Santis (2011), Leonardi (2005) and, more recently, Carrieri and Feltrin (2016, ch. 4, on which much of the information in this paragraph is based).
19. According to the legislation, CAAFs can be promoted also by employers' associations and other organizations as well, provided they meet specific conditions. The number of CAAFs other than those promoted by CGIL, CISL and UIL has increased in recent years.
20. For example, the Bilancio di missione CISL nazionale 2017–2018 reports 2138 CAAF offices (CISL 2019b).
21. In 2011, there were 119 *casse edili* in the construction sector at regional and provincial level, with 165 000 adherent firms, employing about 850 000 workers. In the artisan sector there were 21 territorial bilateral

- bodies, coordinated by the central national body (EBNA). A June 2010 inter-confederal agreement in the artisan sector introduced the obligation for all artisan firms, adhering or not adhering to the signatory employers' organizations, to provide all the services agreed upon in the bilateral system (for all this information, see Carrieri and Feltrin 2016, p. 78).
22. Interview with the Head of the Area Sistema Associativo of Confindustria, 5 December 2019 at the headquarters of Assolombarda, Milan. (Assolombarda is the employers' association of the metropolitan area of Milan, and of the provinces of Lodi, Monza and Pavia, and is affiliated to Confindustria.)
 23. However, in recent years there have been some defections among the larger firms, such as Fiat at the end of 2011, Aero Piaggio and Ferrari in 2012, Essilor-Luxottica in 2018, and others, although in some cases they have maintained their association to the territorial structures (like Fiat) or to the sectoral organizations of Confindustria. Larger firms have less need of some services provided by Confindustria (for instance support for export activity), while they may be looking for greater flexibility in the management of employment relations in a context of globalized competition.
 24. Interview with the Head of the Area Sistema Associativo of Confindustria, 5 December 2019 at the headquarters of Assolombarda, Milan.
 25. Website: <https://confapi.org> (accessed 10 February 2020).
 26. The tripartite agreement on incomes policy, collective bargaining model and labour market policies defined as the Italian version of the basic agreements of 1898 in Denmark and 1934 in Sweden.
 27. In September 2011, just after the approval of Law No. 148, the parties added a brief but significant clause to this agreement, specifying that they would not utilize the derogation possibilities provided by Art. 8. But, of course, a legal provision cannot be cancelled by a private agreement, however significant.
 28. However, a telephone contact on 24 January 2020 with an official of the Ministry of Labour, e Division IV (Diritti sindacali e rappresentatività, contrattazione collettiva e costo del lavoro), confirmed that the procedure has not been completed yet.
 29. 'Contenuti e indirizzi delle relazioni industriali e della contrattazione collettiva di Confindustria e Cgil, Cisl, Uil' ('Contents and guidelines of industrial relations and collective bargaining of Confindustria and Cgil, Cisl, Uil'), Rome, 9 March 2018. For an analysis of this agreement, see Liso (2018); Bordogna (2019).
 30. The clearest difference was between the chemical and metalworking sectors. In the first instance, the 2016–18 national collective agreement envisaged a distribution *ex ante* of wage increases to all employees according to the expected inflation rate, but with an evaluation every year of the difference between real and expected inflation and a corresponding adjustment. This is the novelty: previously, the evaluation and adjustment were at the end of the three-year period of validity. In the metalworking agreement (2016–19), instead, any *ex ante* increase was abolished, substituted by an *ex post* increase, starting from the month of July, only after certification of the actual inflation rate of the previous year. In both cases, the outcome is that real wage increases are achievable only through second-level negotiations.
 31. According to Bank of Italy estimates (INVIND survey), the percentage of non-financial private firms with more than 20 employees with second-level agreements is stable at around 20 per cent and did not increase between 2010 and 2016 (Banca d'Italia 2017; D'Amuri and Nizzi 2017, p. 14). To avoid opportunistic behaviour, public authorities, including the Ministry of Finance, introduced measures after the 2016 legislation to make tax rebates conditional on actual (certified) productivity increases. The effectiveness of such measures, however, is scarcely assessable (D'Amuri and Nizzi 2017, p. 16).
 32. This section is based on interviews with the person responsible for industrial policies at Confindustria, CISL members of the Laboratorio Impresa 4.0, the CISL confederal secretary, formerly coordinator of the Industry Department, the CGIL former coordinator of the Department Industrial Policies and responsible for Ufficio Progetto Lavoro 4.0, CGIL representative of Ufficio Lavoro 4.0 and Progetto Idea Diffusa, and an independent expert from the Politecnico of Milano. Some of the interviewees were audited during the inquiry on 'Industria 4.0' by the Parliamentary Committee on Production Activities, and later participated in the Steering Committee on this matter, created by the Ministry of Economic Development.
 33. Law No. 205/2017 (budget law for 2018), Art. 1, 46–56, and DM 4 May 2018, Art. 3, c. 3. The existence of a decentralized agreement with trade unions as a precondition for obtaining the financial incentive was confirmed in the budget law for 2019, but cancelled in the budget law for 2020.
 34. Interview with CGIL general secretary, by Chiara Mancini, in 'Idea Diffusa, supplement on Work 4.0', *Rassegna Sindacale*, April–May 2019, pp. 1–2. According to Eurostat data, in 2016 only 8.3 per cent of Italian workers aged 24–65 participated in training courses, compared with the EU average of 10.8 per cent, and 14.4 per cent in Britain and 18.8 per cent in France.
 35. CGIL, 'Report on the Activity of the Ufficio Lavoro 4.0 updated to February 2019'. I am grateful to Chiara Mancini, formerly responsible for the Ufficio Progetto Lavoro 4.0, for sending me this report. See also Mancini (2018a).

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11. Social partners and the world of work in Poland: Between East and West

Dominika Polkowska

1. INTRODUCTION

With a population of about 38 million, Poland is the largest of the new European Union (EU) member states. Its geographical location means that it is exposed to processes and phenomena not found elsewhere (for example, its eastern border is an external border of the EU). Since Poland's accession to the EU in 2004, the national labour market has experienced large-scale outward and inward labour migration. In his study, Jan Czarzasty (2019, pp. 465–82) observes that ‘one of the key features ... is post-socialist path dependency, which has led to the creation of a hybrid form of capitalism labelled the “dependent market economy”’.

The main purpose of this chapter is to present the positions of the social partners (employers' organizations and trade unions) regarding the future of the labour market in Poland. Secondly, it examines its most important problems. Thirdly, it presents examples of good practices among the social partners as they seek to strengthen their role in social dialogue. Another aim is to facilitate mutual understanding between the individual parties to social dialogue (which converge on many points), which in turn will strengthen general social dialogue in Poland.

This chapter presents the standpoint of the social partners (employers' organizations and trade unions) in Poland on the three most pressing issues concerning the future of work: the representativeness of the social partners, the autonomy of the social partners, and digitalization, as well as their general assessment of social dialogue in the country.

The most current issue in the context of the changes taking place in the Polish labour market is economic migration. Polish employers face a severe labour shortage and the problem is increasingly being solved by employing migrants from the countries across Poland's eastern border, mainly Ukraine. This chapter also includes the social partners' opinions on economic migrants in Poland.

In addition, I present the key labour market indicators, the Social Dialogue Council and the social partners' attitude to it, as well as two case studies. The first case study is devoted to the activities of the Sworn Translators' Trade Union in Poland as an example of an organization whose members are in the same occupation but are mainly self-employed. The second concerns social dialogue in Company A in the e-services sector.

In section 2, I present the context of the study, that is, the current characteristics of the labour market in Poland. Section 3 then presents basic information on social dialogue and its role, and section 4 discusses significant facts about trade union density and

the membership rate of employers' organizations in Poland. In section 5 I present the national story of migration and migrant workers in Poland. The main challenges in the new world of work faced by trade unions and employers' organizations are the core of sections 6 and 7. The case studies are described in section 8. Section 9 looks at the central public administration's view of, and role in, social dialogue. Some conclusions are offered in section 10.

2. CONTEXT: BASIC FACTS ABOUT THE POLISH LABOUR MARKET

According to the data provided by Statistics Poland (2019), recent years have seen an intensification of positive trends in the Polish labour market: employment has been increasing constantly and unemployment falling. In 2017, the proportion of people aged 15 years or over who were economically active was 56.2 per cent, 95.5 per cent of whom were employed. The unemployment rate was 4.5 per cent, the lowest since the 1990s, when it first began to be systematically measured, as was the number of unemployed registered with labour offices (slightly over a million at the end of 2017).

Other positive phenomena include the highest number of job vacancies since 2010 (which may also be the result of a mismatch between supply and demand), at around 118 000 (mainly in manufacturing, trade and construction). We can also observe a systematic increase in pay.

This generally positive picture of the labour market is not, however, devoid of threats. One of these threats is the persistent significant difference between the economic activity of women and of men. In 2017, the male employment rate was 62.2 per cent, but female rate only 45.8 per cent. This has been the case (despite the increase in both indicators) for years. There are also considerable differences in economic activity depending on age, education and place of residence.

A number of other labour market indicators (for 2017) are also of interest:

- part-time employment – 1 180 000 people, that is, 7.2 per cent of the employed, 10.6 per cent for women and 4.4 per cent for men;
- time-related underemployment – 1.4 per cent of those employed;
- temporary employment – 3 340 000 people, that is, 25 per cent of those employed;
- civil-law contracts – 3.4 per cent of those employed (no employment contracts);
- undeclared work (estimated) – 5.4 per cent of the working population;
- self-employed – 17.5 per cent of the working population.

In summary, although the situation on the Polish labour market is relatively good (low unemployment rate of 4.5 per cent and increasing employment), we still find some negative points, such as the very high rate of temporary employment (25 per cent of the working population), a persistently high proportion of civil-law contracts (3.4 per cent of all those employed, at 1.2 million people), which is particularly unfavourable from employees' viewpoint as these arrangements amount to 'no employment contracts' that deprive them of their entitlements. Finally, there are also very high estimates of undeclared work, at 5.4 per cent of the working population.

The high rate of temporary employment, as well as the high proportion of civil-law contracts (especially bogus self-employment) represent the biggest challenge for the Polish labour market. The next biggest challenge is labour shortages, which could be overcome with a proper migration policy and migrant workers. Employers need more workers to maintain their productivity and development. The most easily available jobs are in manufacturing, trade and construction; they are mainly simple jobs, not requiring special skills or qualifications. Polish workers are generally not interested in this work, mainly owing to the low wages. That is why the migrant workers are indispensable. Trade unions and employers' organizations should, within the framework of social dialogue, seek possible solutions that will be attractive for both.

3. GENERAL INFORMATION ON SOCIAL DIALOGUE IN POLAND: THE SOCIAL DIALOGUE COUNCIL AND ITS ROLE

The Social Dialogue Council (Rada Dialogu Społecznego, hereafter RDS) was established by the President of the Republic of Poland on 22 October 2015, pursuant to the Act on the Social Dialogue Council and Other Institutions of Social Dialogue.¹ The RDS is a forum of tripartite dialogue involving representatives of employers, of employees and of government. Apart from this central body, there are also Regional Social Dialogue Councils. The RDS replaced the Tripartite Commission for Social and Economic Affairs (Trójstronna Komisja do spraw Społeczno-Gospodarczych), established in 1994.

Article 1 of the Act specifies three principal objectives of the RDS:

1. To ensure favourable conditions for socio-economic development and to enhance the competitiveness of the Polish economy, as well as social cohesion.
2. To implement the principle of social participation and solidarity with regard to employment relations.
3. To work to improve the quality of developing and implementing socio-economic policies and strategies and build social consensus on these issues by holding transparent, substantive and regular dialogue between workers' and employers' organizations and the government.

The activities of the RDS are supposed to support social dialogue at all levels of territorial government. The responsibilities of the workers' and employers' organizations, which are the parties to the council, focus on expressing opinions and taking positions, as well as on giving opinions on draft guidelines for proposed and draft legal acts.

The RDS is composed of representatives of the government, representative trade unions and representative employers' organizations. The three trade unions considered representative at the national level are: Solidarity (NSZZ Solidarność), the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ) and the Trade Unions Forum (Forum Związków Zawodowych, FZZ). The representative employers' associations, in turn, include: the Employers of Poland (Pracodawcy Rzeczypospolitej Polskiej), the Polish Confederation Lewiatan (Konfederacja Lewiatan), the Polish Crafts Association (Związek Rzemiosła Polskiego, ZRP), the Business Centre

Club (BCC) and the Union of Entrepreneurs and Employers (Związek Przedsiębiorców i Pracodawców, ZPP). Finally, the government representatives are members of the Council of Ministers and other representatives nominated by the Prime Minister.

Unfortunately, representatives of the trade unions and the employers' organizations have considerable reservations about the role of the RDS.

What are representative trade unions in Poland busy doing? What do they devote a lot of their time and energy to? To expressing their opinion on draft acts and regulations. Those things – which they do under Article 19 of the Act on Trade Unions – take about 80 per cent of the time. And this begs the question of whether these proportions shouldn't be different. Do we really have to give our opinion on everything? Wouldn't it be more important for us to sign more collective agreements? These are the questions that the leaders and the Presidium [of the National Commission] will have to face. (Representative of trade union, hereafter TU)

Over almost four years, the RDS has adopted 34 resolutions,² mainly concerning the approval of its annual documents (reports on operations, reports on the implementation of annual financial plans by the Office of the Council, and plans of operations), setting up teams dealing with particular issues, and changes in membership of the council.

On the basis of its annual reports on operations, it can be assumed that members of the council are aware of changes currently under way in the world of work. This is also apparent from the key points on its agenda for 2019 that include such issues as the future of work in Poland, and professional qualifications in the context of the changing needs of economy and the labour market. The council also considers it necessary to strengthen the existing mechanisms of social dialogue and to increase the participation of social partners in the legislative process.

In the same period, the parties to the RDS adopted 82 resolutions.³ Although none of them referred explicitly to the future of work and future roles of the social partners, there were several that directly or indirectly concerned labour market issues (for example, Resolution No. 9, concerning a proposed draft amendment to the Act on the Minimum Wage, Resolution No. 13, concerning a proposed draft amendment to the Act on Employment Promotion and Labour Market Institutions, and Resolution No. 18, concerning a proposed draft amendment to the Labour Code).

According to its annual report on operations for 2017,⁴ the RDS accomplished the objective concerning the adaptation of workers' skills to the needs of the labour market. The proposed solutions were included in Resolution No. 48, adopted by the parties to the RDS, on recommended changes in the national education system in the domain of vocational education.

However, trade unions and employers' organizations both give a negative assessment of the work of the Social Dialogue Council. At the formal level, the process operates as it should, and there are no barriers or obstacles to social dialogue. However, the reality is entirely different: most view social dialogue conducted within the framework of the RDS as a façade:

Technically speaking, it all looks perfect. There is proper legislation in place and our representation is guaranteed. But there is one question that arises here: how far is the Council really ignored? I'll give you one perfect example. The responsibilities of the RDS include making a decision on the level of increase of the minimum wage. That's something guaranteed in the legislation; it's guaranteed that the parties to the Council give their opinions, that there is a whole

procedure for what happens if social partners don't agree and so on. And what's the use of all that if the government simply issues a statement declaring an increase of the minimum wage in the media? They didn't even pretend to hold any social dialogue on this issue. (Representative of employers' organization, hereafter EO)

Under these circumstances, employers receive a clear signal that their opinion will not be considered at all, which may foster a sense of being ignored by the government. To some extent, this also stems from the choice of government representatives who are involved in the work of the RDS:

It should be a rule that government representatives in the Council should include a minister. If we see that the officials representing the government are increasingly lower in rank – let's be fair, they are often very competent, but they have no powers to make decisions. This situation weakens the role of social dialogue and of the RDS. (EO)

Currently, the role of social dialogue depends entirely on how it is approached by the government. The quality of social dialogue can best be seen by looking at how the government (regardless of the party in power) treats the outcomes of the decision-making process:

If we have gone through a long process, the social partners have reached agreement and the government finally ignores all that, the situation is as follows: in formal terms, a certain process has taken its course, but in fact this whole work is utterly pointless; it has no bearing on reality at all. On occasion the government should also consult the RDS on some issues [such as the minimum wage – DP], but they don't.⁵ (OE)

4. TRADE UNION DENSITY AND MEMBERSHIP OF EMPLOYERS' ASSOCIATIONS IN POLAND

At the time of writing, there are three trade unions and five employers' associations that are considered representative at the national level. The former are Solidarity (NSZZ Solidarność), the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ) and the Trade Unions Forum (Forum Związków Zawodowych, FZZ); and the latter are the Employers of Poland (Pracodawcy Rzeczypospolitej Polskiej), the Polish Confederation Lewiatan (Konfederacja Lewiatan), the Polish Crafts Association (Związek Rzemiosła Polskiego, ZRP), the Business Centre Club (BCC) and the Union of Entrepreneurs and Employers (Związek Przedsiębiorców i Pracodawców, ZPP). All these organizations are represented in the Social Dialogue Council.

According to the data provided by the Central Statistical Office (GUS), in 2018 there were 400 employers' organizations and 12 500 trade union organizations at different levels. Most of the latter were those active in particular enterprises or institutions, or parts or branches (78.1 per cent) thereof, followed by inter-enterprise trade union organizations (19.5 per cent). There were also federations and confederations of trade unions with local or industry branches, as well as uniform trade unions; their total number was about 300 (2.3 per cent). The smallest category was trade unions of individual farmers (0.1 per cent).⁶ In the period between 2014 and 2018, the number of employers'

organizations increased by 10 per cent and the number of active trade unions decreased by 2.9 per cent. In 2018, the proportion of trade union organizations affiliated to a trade union centre representing workers in the Social Dialogue Council was 82.6 per cent, and the corresponding figure for organizations representing employers was 22.2 per cent.

Trade unions and employers' organizations both reported problems. In the former, these were problems caused by law and legal procedures (33.1 per cent) and difficulties in dealing with employers (30.8 per cent); in the latter, problems were caused by law and legal procedures (45.8 per cent) and in dealing with public administration (33 per cent). The last challenge both for trade unions and employers' organizations was related to insufficient number of members (24.7 per cent and 19.9 per cent, respectively, reported these issues, respectively).

In 2018, the trade unions had a membership of 1.5 million, which amounts to 4.9 per cent of the adult population, and to 16.3 per cent of workers employed on the basis of employment contracts in enterprises employing more than nine people.⁷ Employers' organizations, in turn, had a membership of 19 100 entities.

As regards the structure of trade union membership, the most numerous were those working in education (23.2 per cent), followed by public administration and defence (13.9 per cent), manufacturing (12.7 per cent), and human health and social work (18.5 per cent). Members of employers' organizations were to be found in the following sectors: human health and social work (18.5 per cent), manufacturing (10.3 per cent), services (9.8 per cent) and trade (9.2 per cent).

5. MIGRATION AND MIGRANT WORKERS: A NATIONAL STORY

Poland is both an emigration and an immigration country (Kałuża-Kopias 2014): while many Poles have moved to the United Kingdom and Germany (Kostrzewa and Gudaszewski 2018), the country has received a large number of migrants, mainly from Ukraine (Grzymała-Kazłowska 2013). Since Poland's accession to the EU in 2004, there have been considerable changes in the employment policy towards foreign nationals. For Ukrainian, Armenian, Belarusian, Russian, Moldovan and Georgian citizens migrating to Poland, an employer's statement declaring the intention to employ a foreigner is often sufficient for the Polish authorities (Kałuża-Kopias 2014). Changes in legal regulations introduced in 2017–18 made it even easier for holders of Ukrainian passports and some other nationals to cross the border and work in Poland. As a consequence, according to some estimates, the number of Ukrainian migrants working in the country may be as high as 3 million and continues to increase (Lis 2017). Although these migrants have usually taken low-paid jobs in industries such as agriculture or construction, the situation is rapidly changing owing to the growing demand for professionals in the information technology (IT) and financial sectors (Grabowska-Lusińska et al. 2011).

Industries hiring foreigners in Poland are, for the most part, those with low prestige that most often offer the minimum wage for regular employees and simple, monotonous work, very often in difficult conditions. In these industries, the shortage of manpower is particularly apparent. Polish workers do not want to accept the minimum wage in the

construction or service sectors, for example. This work often does not even require a good command of Polish. As far as the form of employment is concerned, non-employee employment predominates (civil law contracts) (Polkowska and Filipek 2020, p. 567).

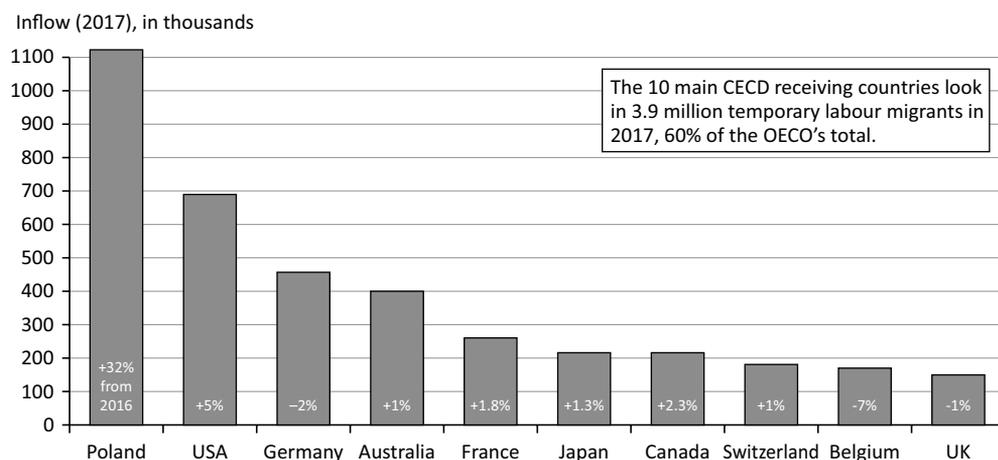
Affected by workforce shortages, central and eastern European economies are benefiting from ongoing migration from Ukraine (Fedyuk and Kindler 2016). Cultural and geographical proximity make the region the first choice for workers leaving that country. However, the recent wave of migration from Ukraine has often had a transitional, circular or seasonal character (Molodikova and Yudina 2016). The current Polish migration policy is focused mainly on short-term needs, and there is no long-term vision of the role and significance that Ukrainians might play in the Polish economy. Also, no changes in this respect are to be expected in near future, contrary to the wishes of the social partners in particular.

According to the Organisation for Economic Co-operation and Development (OECD), in 2017 Poland had an inflow of labour migrants numbering 1.1 million, the highest in the OECD (see Figure 11.1).⁸

In 2017, Poland was not only the top temporary⁹ labour migration destination among OECD countries, but also the third largest, after the United States and Germany, for total number of migrants. Most of those who arrived in the country were temporary labour migrants (OECD 2019).

When asked about labour migration, social partner representatives replied as follows:

From the point of view of the trade unions, it's a really difficult issue. First of all, because the unions in Poland aren't active enough when it comes to recruitment. Why? Because everyone is convinced that it's a temporary situation. In the past there were only Poles on the national labour market here and according to many people that's a normal situation. And what we have here now is a deviation from that normal state, and things will get back to normal at some point. (TU)



Source: OECD (2019).

Figure 11.1 Inflows of temporary labour migrants: ten main OECD receiving countries, 2017

The government does not make the situation any easier. There is no official document that outlines the principles of migration policy. Indeed, migration is not a topic under discussion, and any debate on this issue in Poland is extremely difficult.

And here we come back to the argument that it's a transitional situation – it wasn't necessarily a good decision to let all those Ukrainians in, but they will surely go back as soon as the situation in Ukraine improves, or they will go to Germany. Of course, we are absolutely against any kind of discrimination against them. But this doesn't mean we are really making an effort to help them organize; why should we, really? They will be gone soon, anyway. (TU)

The other trade union representative had a very similar view of the situation:

We strive for a consistent migration policy in Poland – there isn't one in place at all. We want to know what Poland as a country wants when it comes to labour migration. Are we opening up or closing? What we want is a balanced migration policy that would take into consideration the reality of the Polish labour market and local workers, but of course wouldn't close the borders at the same time; a policy that would also involve integration and adaptation programmes. I'm against special regulations for migrant workers. We want to get to a point when all workers are covered by the same standards. (TU)

In this representative's opinion, the problems started when eligibility requirements and entry procedures for citizens of the six countries of EU Eastern Partnership were simplified. Under considerable pressure from employers, who insisted they suffered from a shortage of manpower, the Polish labour market was gradually opened to non-EU citizens (mainly Ukrainians).

As a result, we've got to a point where there are two million statements [declaring the intention to employ a foreign citizen] a year. This comes as a combined result of several problems which stem from the fact that we don't have a migration policy; and the current government doesn't want to develop one. (TU)

According to this informant, one factor that contributes to the expansion of the informal sector is the inefficiency of the public administration, which is unable to process such a vast quantity of documentation; it cannot offer competitive salaries and it is understaffed.

The situation of economic migrants on the Polish labour market is thus clearly worse than that of local workers. In a number of sectors (for example, construction, restaurants and catering, care services and agriculture) foreigners earn less than Polish workers, and are often employed without any contract and thus without any guarantees of their rights.

The key issue here is the temporary work agencies. While the largest agencies play by the rules, smaller agencies – often run by self-employed entrepreneurs working on their own – tend to disappear when affected by solvency issues, and contacting them is often problematic.

When analysing the situation of economic migrants in Poland, note that, according to union activists, the informal sector keeps growing. Although the scale of the problem is impossible to gauge, it is apparent that a considerable proportion of migrant workers work without contracts: 'There is obviously a large-scale informal sector; absolutely no one has any control over it. It's a massive opportunity for abuses of all sorts' (TU).

One way to tackle the problem would be to inform prospective migrants of their rights while they are still in Ukraine. However, this idea does not seem to be widely supported. A better suggestion might be to employ members of ethnic communities to help their compatriots working in Poland, which is a model adopted in Germany:

I would really like to see a network of information and advice centres with people from ethnic communities working there, so that migrants could sort things out in their own language. It's a German model that's worth copying. But this requires funding because such staff would be employed by trade unions. We can't afford that. (TU)

In general, the trade unions do not address issues related to migration policy, and they do not even aspire to initiate a debate on economic migrants. As viewed by the main trade union centres, everything has already been regulated and there is no room for improvement. Any new solutions in this respect, such as opening the labour market to new categories of foreign nationals, would not be welcome.

Consequently, any attempts by trade unions to organize foreign nationals working in Poland are praiseworthy. One that attempting to do so is the Inter-Enterprise Trade Union of Ukrainian Workers in Poland (*Międzyzakładowy Związek Zawodowy Pracowników Ukraińskich w Polsce*), affiliated to the OPZZ.

This union is different from typical trade unions. It's a bit like an advice or information centre. The question of membership is very fluid there; it's about dealing with particular problems: from finding a new job, through help in finding accommodation, to information about schools. It's more like an association. Although they focus on workers' issues, of course. The head of the union cooperates closely with the National Labour Inspectorate (PIP), the Border Guard and the public prosecution service. Because there are cases resembling forced labour when it comes to Ukrainians in Poland. (TU)

It is interesting to consider why this union was established. This largely stems from Ukrainian workers being reluctant to join the existing unions in Polish enterprises where they work. They have low trust in trade unions in Ukraine and transpose this attitude to Poland. Their outlook can only change over time, but the process is even more difficult considering that they have to circulate between Poland and Ukraine owing to current legal regulations.

This type of activity is worth developing. Taking into account that the number of migrant workers in the Polish labour market is still increasing, there is a need to extend this type of initiative. There is a chance not only for the OPZZ but for all trade unions, to take migrant workers (not only from Ukraine) under their wing. However, it might be also a challenge for employers' organizations: they should uphold equal treatment of migrant and local workers, especially equal pay.

Another problem here is the passive attitude of the state: 'The problem is that the government doesn't want to talk about it. Any attempt to regulate this area ends up in proposed legislation being thrown out, or in the dismissal or resignation of the minister responsible for this issue' (TU).

Let us now turn to how the issue of economic migrants in Poland is viewed by employers. In their opinion, migration fills a gap in the labour market: some local workers are not ready to accept certain jobs, mainly simple ones, which do not require particular skills and are low-paid or involve work in difficult conditions. These positions are often filled

by migrants, particularly from Ukraine. Employers stress cultural proximity between the two countries, thanks to which they integrate very well in Poland. This factor is very important from the employers' point of view.

They play an important role. Apart from working in jobs that Poles don't want to do, and which are important for the survival of some firms, they also do something extra: they buy goods here, they fuel our economy. They play a very important role. To some extent, the shortage of workers can be dealt with by automation but there will always be work that has to be done by people. In this situation, economic migrants are our lifeline. (EO)

However, not all employers are honest and not all of them treat migrants properly. There are a considerable number of cases of abusive and illegal practices:

There is a problem. Some employers – and we have to beat our own chest here – don't treat those workers honestly. We [as an employers' organization] don't approve of such practices because they are against the law. Secondly, they affect competition. If enterprises employ migrants illegally, their costs of manpower are much lower and that's unfair on those who play by the rules. We keep monitoring the situation as far as we can. (EO)

The most acute problem faced by employers is the lengthy administrative procedure required in the case of foreign workers. Employers' organizations view it as their role to put pressure on public administration to apply procedures in a more timely fashion:

A lot of people from our member enterprises contact us about the problems they have when they want to employ foreign nationals: they have problems with government administration at the regional level when they apply for work permits. It takes a really long time, even a few months, to issue those permits. (EO)

Employers' organizations make a great effort to draw to the attention of regional authorities that procedures take too long. They make civil servants aware that the situation creates considerable problems for business. They also propose solutions, which range from employing more office staff to deal with the processing of documentation, to modifying the system of filing applications and required documents (for example, by going toward its full digitalization).

Considering that a number of business entities are entirely dependent on workers from across the eastern border, employers' organizations stress that foreign nationals are very much needed on the Polish labour market. They also stress that there is much to be done to protect their rights and to enable employers to offer them jobs according to all legal regulations. What they identify as the most serious barrier is the administrative process of issuing work permits.

The labour shortage was mentioned by all informants from employers' organizations. In their view, it can be solved only by labour migration as local workers are not interested in the kind of jobs on offer. Considering that it is the most serious barrier to the growth of their businesses, employers are very much interested in making the employment of foreign nationals even simpler. Also, since the inflow of migrants from the neighbouring countries in the east is decreasing, they more often turn their attention to migration from Asia.

Employers understand the government's concerns over security issues stemming from such a large influx of migrants. They stress that it is absolutely necessary to streamline

the administrative legalization of their status in Poland. As it is now, the situation has reached a point at which

firms compete over migrants. At the moment, you could say that a worker is an object of desire. Firms keep looking for employees and the shortage of manpower is really serious. And so if there is an opportunity to bring over migrants, they are interested. And even once they come here not all firms are able to satisfy their employment needs. (EO)

All employers' organizations stress that the problem lies in the government administration at the regional level, which is responsible for work permits and the legalization of the status of migrants in Poland. The procedures involved take a very long time and are extremely detailed. The problem is largely attributed to the insufficient number of officials dealing with these matters directly. To some extent, the situation comes as a result of very low salaries: as part of the government administration, staff in regional offices have not had their salaries increased for several years. Consequently, sometimes people who process work permit and residence applications receive pay that is lower than that of the migrants whose applications they handle.

Finally, the informants also mentioned the issue of migration from Asia. For Asian migrants, simplified procedures concerning residence and employment status in Poland do not apply, which means that the process takes even longer. Also, the flow of workers from Ukraine is decreasing, which is attributed to better pay rates offered in Germany and Czechia. 'That's why employers are increasingly turning to people not only from Asia, but also Brazil and Argentina, for example, when it comes to IT jobs' (EO).

6. MAIN TRADE UNION CHALLENGES IN THE NEW WORLD OF WORK

On the basis of the official agendas of the three main trade union centres,¹⁰ it is possible to indicate the following ten key challenges in the context of the future of work in Poland:

1. The necessity of trade union revitalization, enhancing the unions and increasing their potential.
2. The segmentation of the Polish labour market and the existence of employee groups that have no stable employment – precarious workers; the proportion of people performing work on the basis of contracts other than employment contracts is stable but remains very high; the level of protection of their rights is far from sufficient.
3. Removing barriers to the employment of young people – the issue of junk contracts (the colloquial name of civil law contracts).
4. The importance of strengthening collective bargaining.
5. Migration policy – integrating migrants in the Polish labour market and encouraging them to join a union;
6. Digitalization, automation and robotization as an opportunity (for example, digitalization, properly controlled, can help to improve working conditions) and a challenge; there are many issues here that are not regulated by national law (for example, working through digital platforms).

7. The need to regulate platform work – extension of employee rights to platform workers.
8. Technological unemployment.
9. Competency gap – imbalance between the skills of employees and the needs and requirements of employers; it is particularly important in the context of rapidly changing expectations resulting from technological progress.
10. The need to develop protective mechanisms to reduce the outflow of young and well-educated workers from Poland to other EU countries.

In-depth interviews with trade union representatives cast a different light on the three issues in focus: representativeness of social partners, their autonomy and digitalization.

6.1 Strengthening the Representativeness of Social Partners and Increasing their Institutional Capacity to Shape the Labour Market through Social Dialogue and Consultative Processes

The reasons behind low membership of trade unions and its constant decline are complex. They can be explained by a number of factors, both external and internal to the labour movement. Considering the former, they include several broader social and economic processes. One social process mentioned by trade union representatives was an increasing focus on individualism, on the one hand, and a progressively smaller role of collective values on the other: ‘That’s the heritage of the 1990s, of this liberal vision of the economy that was implemented here at the time. Trade unions were viewed as some kind of a burden, a problem for the restructuring of the economy and its proper functioning’ (TU).

Reducing the role of collective values in everyday life in favour of the individual is one reason for the decline in trade union density. Another reason is changes in the labour market, which can be seen as the result of globalization and technological change. According to trade union activists, the direction of these changes is evident: the growing scale of fixed-term contracts, the need to retrain, sometimes more than once, in the course of professional career, and frequent change of employers. The labour market in Poland is also becoming increasingly diverse.

The scene was dominated by large industrial plants; people who worked there shared similar views, similar biographies; they were often all males – that was the golden era of trade unions; building a sense of community around them was easier. In a situation where the labour market is more flexible and hence more diverse, where people have different interests, building a sense of group solidarity among them is really difficult. (TU)

The reasons for low representativeness also include factors within the trade union movement itself and are the same in different countries: the problem with recruiting young people and people working in the service sector (which employs two-thirds of the entire working population in Poland),¹¹ and problems with recruiting women and foreign workers (in Poland, mainly Ukrainians).

In addition to the changes that must take place in trade unions themselves, increasing their representativeness also requires creating a friendly environment for establishing trade unions, including the media atmosphere and education system (introducing

elements concerning the labour market or trade unions to the curriculum). ‘The media discourse has improved a bit. There are journalists who understand trade unions. They might not be enthusiastic, but at least they don’t do harm. I would expect some institutional support from the state’ (TU).

You can strengthen employee participation or employee democracy – act indirectly. Let’s forget about workers’ councils, because they probably died a natural death. We might think about introducing employee representatives to the boards of private companies (although I know its complete science fiction). This would strengthen the position of employees. There is also the issue of creating a good climate. (TU)

When it comes to methods of recruitment, this work is still done mainly in the traditional way, at the grassroots level – trade union activists encourage workers to join by talking to them during cigarette breaks or at local shops where they go to get their breakfast, or by handing out leaflets at the door of their workplaces.

These methods are effective, but they are effective in the manufacturing sector, where there are many people working in one place. They aren’t effective in all cases. For example, we’ve been completely unable to organize international transport drivers, simply because it’s more expensive; you need to stand in car parks. The level of their organization is practically none at all. (TU)

The final group of factors tends to be overlooked by labour relations researchers. Also, sometimes crucial from the point of view of trade unions, is the issue of financial resources. The funds that they have at their disposal are very limited:

If we calculate, it turns out that we are more effective if we recruit classic unionists employed in large industrial plants – men. Of course, we are aware that it would be best to recruit Ukrainians driving for Uber, or people doing platform work – but let’s be realistic: it’s just impossible. The amount of money that would have to be spent on this is huge, and trade unions have limited resources. That’s why the resources we have must be used in a classic and rational way – where it’s easier to recruit. (TU)

Why do employees not want to belong to the trade union movement? First, this results from the individualism mentioned previously. The conviction that everyone is master of their own destiny and that individual action is superior to collective is instilled in workers from the very moment they enter the labour market. Secondly, they do not want to join a trade union unless something dramatic happens that cannot be resolved in any other way:

People usually organize themselves only when they have a sense of fundamental injustice about their working conditions or about their work as such; for example, working time standards are not respected, they don’t receive additional overtime pay, or basic employment rules and norms are broken. The second situation is when word gets around about restructuring, collective redundancy or merger. (TU)

Also, workers do not want to join (or establish) unions, especially in private enterprises, as they are afraid of dismissals or problems they might bring on themselves as a consequence of doing so. One solution to these concerns would be if the National Labour Inspectorate (Państwowa Inspekcja Pracy, PIP) became more efficient.

Trade unions in the private sector are quickly neutralized or destroyed by employers. If the PIP were efficient, they would immediately send an inspection to such companies, identify the problem and impose sanctions, and an efficient labour court would quickly issue an order of reinstatement. This is also an institutional problem – an efficiently operating labour court would reinstate an employee (a dismissed trade unionist) after three months, and not after four years, as it is now. He would be able to survive three months without work. He would know that if he got dismissed for his trade union activity, the labour court would quickly order his reinstatement and he would be able to continue. But if this involves a two-, three- or four-year prospect, no one will risk setting up a trade union. (TU)

In conclusion, it is worth adding that, according to trade union activists, the reason for low representativeness lies also in workers themselves: they say they do not join unions as they are ineffective, and they are ineffective if they do not have enough members. When a union is viewed as ineffective, it fails to attract new members, which amounts to a vicious circle. Other barriers include employers' hostility to trade unions (especially in private enterprises), a lack of awareness and knowledge about them in general, and stereotypes.

6.2 Supporting the Autonomy of Social Partners

The key issue in this area is collective labour agreements. Their number keeps falling every year, which is explained by trade union representatives as follows:

From the point of view of the unions, collective agreements are pointless in their current form. They should only apply to union members and not to all employees in a particular enterprise. If they were restricted to members, others would be more inclined to join so that they could benefit from those agreements. (TU)

Collective agreements in Poland may be concluded at two levels: single-employer and multi-employer. Table 11.1 presents the number of registered collective labour agreements and the number of employees covered by the agreements from 1995 to 2018 at single-employer level.

Based on the data from Table 11.1, note that the number of collective agreements (single-employer level) is decreasing, as is the number of employees covered. The reasons for this were listed by the trade union representatives.

In the 1990s, a certain pattern developed of drafting and concluding collective agreements, which still functions today, although both the social and, above all, economic situation have changed significantly. Thanks to this pattern and to the legislation in place, we can still say (and this is an added value) that trade unions represent and act for the benefit of the entire world of work, all employees, and not just for their members. Since they are a representative of all employees, trade unions have the legitimacy to give opinions on legal acts, participate in tripartite dialogue and influence public policies, including the minimum wage and social benefits. If we departed from this pattern, it would perhaps increase their representativeness, as people driven by their personal interest would start joining trade union organizations, but it would also cause them lose their legitimacy and position in social dialogue. For this reason, there is no indication that this would ever change, which may, however, adversely affect the recruitment of new members. Instead of negotiating more collective agreements, trade unions are busy giving their opinion on an immense number of legal acts, which they are obliged to do under the current legislation.

Table 11.1 *Collective labour agreements in Poland, single-employer level, 1995–2018*

	Number of registered collective labour agreements	Number of employees covered by the agreements
1995	7343	–
1996	1464	–
1997	882	–
1998	614	–
1999	622	–
2000	498	–
2001	361	–
2002	310	117 653
2003	441	174 600
2004	328	181 000
2005	220	119 604
2006	176	68 000
2007	168	121 500
2008	154	62 800
2009	123	62 500
2010	130	172 000
2011	136	50 000
2012	92	61 000
2013	109	43 800
2014	88	43 500
2015	69	106 552
2016	79	38 227
2017	50	28 230
2018	54	21 067

Source: National Labour Inspectorate reports (2016, 2017, 2018).

Another trade union activist commented on the issue of collective agreements as follows:

Why are there so few of them [collective labour agreements]? The way the unions see it, it's because employers don't want to conclude them. Those that materialize could be explained by an awareness that there is such a possibility, but, on the other hand, they could also be explained by concern about preserving social order: there might have been a threat of a collective dispute. Finally, the third option is that they are there already and they simply continue, just like that; they are kind of taken for granted. (TU)

According to trade union representatives, employers also tend to explain their refusal to conclude such agreements (particularly multi-establishment ones) by claiming that the unions involved do not represent an entire sector. Another problem is that collective agreements are very easy to cancel: 'You just submit notice and it's gone' (TU).

What can be done to have more collective agreements? It is apparent that trade unions expect action from the government. This could involve, for example, tax benefits for business entities that have such agreements. Moreover, the Labour Code includes

provisions that authorize the minister responsible for the labour market to extend multi-establishment agreements to those enterprises which are not party to them; as specified, such a decision can be taken for reasons of important public interest.¹² Regrettably, this particular article of the Labour Code has never been applied. The question is, why? It seems that the problem lies in the weakness of collective agreements; there is little they can offer employees, so there is not much point extending them at all.

How can the social partners' autonomy be enhanced? Where can they have a say in decisions concerning working conditions and various elements of labour market policy? In the opinion of the informants, there are two principal areas to consider in this respect. The first is meaningful dialogue in the Social Dialogue Council, which is possible even in the existing legal framework. However, there is a key condition:

I think that when it comes to the tripartite dialogue in the Social Dialogue Council the first thing to do is to start treating the social partners seriously. This refers to things like sending draft legislation to the parliament before the consultations in the RDS have been completed, not listening to the opinions of social partners, not considering their opinions, conducting the legislative process round the clock, at night, asap [as soon as possible], even though the issues at stake are fundamental to the labour market. In most cases, this tripartite dialogue is just a façade. Of course, there is a lot to be done here. It would be enough to respect and observe the law, no more and no less. (TU)

Those observations were confirmed by another trade union representative:

The RDS repeats all the mistakes of its predecessor, the Tripartite Commission. It's a bit like a decoration. It's a case of illusory corporatism. We aren't really supposed to negotiate or work out a common position. It's the same all over again: the government party to the commission is a stronger partner. They come there with ready drafts and they say: 'That's our solution and we don't care much what you have to say because it's all been decided and it's going to the parliament any time now'. (TU)

The other key area on which trade unions should focus is collective agreements. Two issues that always surface in this context are a high level of protection offered by the Labour Code, on the one hand, and limited negotiation space, on the other. Most legal experts agree that the Labour Code is so detailed and so comprehensive that there is not much to negotiate. This view is coupled with a conviction that the level of statutory protection is so high that employers cannot afford to offer workers much more. Therefore, it is simply impossible to bargain. However, trade union activists do not entirely agree with this interpretation:

These are just stereotypes. Let's look at the first of them: if we limited the extent of certain provisions of the Labour Code, we would have more negotiating space, which would be a factor enhancing the autonomy of the unions. But negotiating arrangements that which go below the Code in some areas would have a similar effect. (TU)

When it comes to collective agreements, then, the unions say that they are in a difficult position: it is rather difficult to imagine what they could do in real terms to revive them and make them more popular. A successful attempt would require focus not only on their number, but also on quality. Note that the new collective agreements currently being concluded are increasingly weaker, as the number of union members keeps reducing and

thus pressure on employers is less effective. As a consequence, the added value of those agreements is limited. They often copy provisions of the Labour Code verbatim, perhaps adding an extra sentence at the end, which does not mean much.

A good example of a multi-employer collective agreement is that for State Forests National Forest Holding. It was established in 1998 and is still valid. The company updates the document frequently. In October 2019, the twenty-ninth upgraded protocol came into force. This agreement applies to all employees of the State Forests. It regulates additional rights in detail, on top of what is entailed by the Labour Code. They receive, among other things, bonuses when the company does well financially (s. 32 of the Agreement). In addition, the agreement contains a list of work the performance of which entitles employees to receive preventive meals throughout the year,¹³ as well as the rules on personal hygiene, personal protective equipment, work clothing and footwear, protective vaccinations, washing work clothes, and so on. This multi-employer collective agreement is one of the most long-standing.

6.3 Trade Unions and Digitalization

Trade union activists are aware of the impact of digitalization, robotization and automation on the labour market. However, based on the interviews, it can be concluded that, apart from identifying the problem, there is not much their organizations do in relation to those issues. The informants agreed that their activity in this area is insufficient.

They certainly realize how much technological change works against them. The reasons are fairly obvious: technological progress, including artificial intelligence, means fewer jobs, and the process can already be seen. Also, the jobs that are lost are those which require medium-level skills. The impact of technology in relation to job loss is much greater here than in the case of low- or high-skill positions.

But medium-skill jobs are the traditional base of the trade union movement. The trade union movement has never been based on people with a low level of skills or people with high skills. One point is that the erosion of this middle group will contribute to lower social cohesion and even greater income stratification. Another thing is that it throws a spanner in the works when it comes to organization as such. (TU)

The question is how far trade unions, on the one hand, and employers, on the other, are ready for technological changes. As it turns out, there are increasing developments at the level of particular enterprises: ‘Shopfloor factory workers can feel the breath of the robots on their necks; in car manufacturing, for example, employers try to improve the skills of their workers; there is multiskilling; it’s a self-propelling process. Employers also want this because they realize what is going on’ (TU).

The second important problem in the context of the impact of technology on our lives is the right to disconnect. Our lives are increasingly more online than offline. From the individual’s point of view, it is necessary to temporarily disconnect from technology because people are increasingly dependent on it. ‘Some companies turn off their servers during the night because people checked their emails all the time. This is more and more often noticed and something is being done about it, especially in sales, where the rat race continues’ (TU).

When it comes to platform work, there are no discussions or even attempts to negotiate on this matter in Poland. Trade unions do not treat it as a problem or an issue that should

be addressed. In Poland, according to the informants, this phenomenon is so marginal that no union will focus on platform workers who earn some extra cash after hours.

If we are talking about such platforms such as AMT, it's just impossible. As for Uber, well, perhaps ... It would have to be something like an EU project; I mean the money for this, for getting Uber drivers organized, for trying to do it. Maybe, just maybe, under such a project someone would try to do something to organize those drivers without any guarantee that the whole thing would work out. (TU)

The other trade union representative openly stated that the unions are only just beginning to examine the problem. Currently, they are at the stage of describing rather than solving it:

I think that if all of those platform workers came to trade unions and asked for protection, they would get help. The unions still need to develop some kind of a mechanism for solving this problem at the systemic and institutional levels. For now, they don't have it, but we are aware of the problem and are slowly trying to include it on the agenda. The unions are a little behind, there is no doubt about that. (TU)

In conclusion, the biggest challenges faced by trade unions include the need for the internal promotion of young and women activists, and for the introduction of an age limit for members of the leadership. However, the informants are aware that these changes are highly unlikely; no one wants to challenge the status quo.

In addition, it would definitely help unions if they were able to promote a better media image. In many cases, they set up trade union organizations from scratch, which is not easy to present to a broader public, and thus far has not been done well.

According to the informants, the changes that would strengthen trade unions and social dialogue in Poland include, for example, increasing the role of the Social Dialogue Council. This can be achieved in two ways. First, social partners in the council need to be taken seriously, and the dialogue should be meaningful and genuinely based on existing mechanisms. As it is now, there is a power imbalance between partners in the RDS: the government side is the stronger and imposes solutions on the others. Until the parties to the council develop partnership relations, social dialogue in Poland will not function. Secondly, the council itself can be strengthened by involving experts. This, however, would require more public funding, which makes it difficult.

Only a steady provision of funds could do anything. But it would have to be done in a smart way; the flow would have to be small. Like support for particular actions so as not to throw the baby out with the bathwater. It would be necessary to develop a mechanism, a subsidy algorithm for employee initiatives, for small unions, small movements. (TU)

None of these mechanisms would work without the will of the government to support social dialogue.

In addition, research¹⁴ was conducted¹⁵ among Uber drivers in Poland (in the context of their social rights). The results show very clearly that the drivers do not want to be members of trade unions. The main reason may be the nature of the labour market today: flexible, individualized, demanding constant adaptation to a changing situation, variable and based on new technologies. Under the circumstances, people make themselves 'the centre of their own planning and conduct of life' (Beck 1992, p. 90).

On the basis of this study, it seems that the unionization of platform work is now impossible. The interviewed drivers do not have a sense of common interest and they stress that their work is only temporary. Consequently, collective values, which are at the core of the trade union movement, are beyond their concern. High rotation and dispersion are additional factors that discourage unions from trying to promote the organization of platform workers.

7. MAIN CHALLENGES IN THE NEW WORLD OF WORK FACED BY EMPLOYERS' ORGANIZATIONS

The principal challenges identified by employers' organizations most often include the following:

- the need for changes in regulations concerning the employment of foreign nationals in Poland – in order to maintain the pace of economic development, by 2050 we will need at least 5 million economic migrants;¹⁶
- the need to extend the simplified employment procedure to citizens of such countries as India, Bangladesh or Pakistan (owing to the outflow of Ukrainian workers to Germany);
- the problem of mismatching between the skills of employees and those required by employers; and
- the need to introduce regulations on temporary work agencies.

In-depth interviews with representatives of employers' organizations cast a different light on the three issues in focus: the representativeness and autonomy of the social partners, and digitalization.

7.1 Strengthening the Representativeness of Social Partners and Increasing their Institutional Capacity to Shape the Labour Market through Social Dialogue and Consultative Processes

It turns out that the employers' organizations have a different approach to increasing their representativeness compared with the trade unions. The issue of increasing membership is not their priority and they do not want to recruit new members by resorting to compulsory measures. They expect that the initiative to join should come from businesses themselves: 'We want employers to become associated of their own initiative. We don't support the idea of compulsory associations as such. And so we are not in favour of legal regulations that would make it obligatory for employers to associate' (EO).

The informants noted two main reasons for the low rate of membership of employers' organizations. First, there is no such tradition and businesses do not see the need; they have little awareness of these organizations. The second reason is 'the structure of the business sector in Poland: it is dominated by small and medium enterprises. It's difficult for employers' organizations to construct an offer for them. ... this means delegating employees to deal with that, which is practically impossible in small enterprises' (EO).

Strengthening the social partners is certainly important but it should be addressed at the national level and involve a policy that would encourage membership of employers' organizations; boosting the entrepreneurial spirit, and convincing employers that it is important for them. Activities aimed at increasing representativeness should thus focus on enhancing social dialogue in general, which will translate into strengthening the representativeness of employers' organizations. They also acknowledge the following:

We also face the challenge of how to reach new members. We often hear very blunt answers, like: 'Why would we join; what's the use of all that if there is a principal decision-maker at the top who doesn't listen to partners?'. Entrepreneurs don't see any point in joining organizations. The way we see it, this stems from a general crisis of social dialogue in Poland at the moment. It isn't only about employers' organizations or only trade unions. On the other hand, there still is no message to the public, no idea of partnership, no style of management that would consider joining employers' organizations important. (EO)

Particular initiatives encouraging employers were characterized as follows:

They are mostly promotional activities. Let's not hide that we make a living from the contributions of our members, so this marketing activity aiming to attract new members dominates. But it isn't easy. We encourage them to join, we stress our regional activities. Regional organizations that are affiliated with us operate according to the specificities of the local market. We have our activities as the headquarters, and those regional organizations have theirs. But the main thing is to get as many members as possible. And to represent their interests. (EO)

This indicates that the development of regional structures and activity at the regional level are most effective and desirable: 'It turns out that the issues that employers come to us with are often local' (EO).

It follows that activities should be conducted at two levels: the national level, where there are mainly legislative issues, and the regional level, where issues are local in nature. As regards desirable solutions, representatives of employers' organizations agree with trade unions that the most urgent issue is 'The general strengthening of dialogue, respecting its functions, restoring its status and using it for the purposes for which it was established under the Constitution. This will have an impact on the functioning of employers' organizations and strengthen their representativeness' (EO).

On the other hand, it is also important to build up an accurate image of employers:

The point is to show that, after all, employers create jobs – with their own money, at their own risk, by their own efforts. We don't want an image of employers that's worse than reality, at least. Employers are a group of people who risk their own money, devote their own time and work to build companies and create jobs. (EO)

This issue is related to access to public media:

The opportunity to present employers' organizations in public media is supposedly guaranteed in the Act on Radio and Television Broadcasting (Article 23), which states that employers' organizations and trade unions have the same right to present their views in state media outlets as political parties. We can see what it's like in reality. We have political parties on TV all day long. (EO)

The purpose would be to show the public (including business people) that there are employers' organizations and that they have a mission that they actively pursue. One

barrier to the expansion of membership is a lack of knowledge about them among business people, who are unaware of what they could do for them.

In summary, although employers' organizations are aware of the need to strengthen their representativeness, they have still not resolved to do it.

7.2 Supporting Social Partner Autonomy

In the opinion of employers' organizations, social partner autonomy is directly related to national social dialogue:

This issue is very much related to the crisis of dialogue. Supporting social partner autonomy will make sense if their voice is respected – we respect what you think, we give you a voice – and if it isn't like that now, when public consultations, for example in the Social Dialogue Council, look like an illusory privilege: we can say something, say what we think, but it's a mere formality. If social partners have three days for consultation of a draft legal act – it's just not serious at all. And that's what it looks like now. (EO)

One reason behind the small number of collective agreements is the construction of the Labour Code; it is so detailed that employees often do not see the need to expand their rights. According to employers, such an expansion would not only go too far but also amount to a burden they would not be able to deal with. One representative observed:

This may be partly true. Still, in our opinion it isn't the only problem. The first problem is that some employers are not able to strengthen employee rights for various reasons; but on the other hand the problem lies in dialogue. Even if there is a will on the part of the employer to increase these rights, sometimes it's difficult to agree on how to set about this. (EO)

Employers' organizations also stress that there is a contradiction between how employers and employees approach the provisions of the Labour Code:

Employers talk about the need to make the Code less restrictive, about greater flexibility; they think that they should be allowed to adjust the level of employment to their needs to a greater extent. On the other hand, trade unions say that the Code should be even more detailed and stress employers' obligations and employee rights on some points even more. (EO)

Collective bargaining is not a dominant topic in Poland. There are no agreements that cover entire sectors, and their low number at the enterprise level results from the structure of the country's business sector, which is a domain of large workplaces and enterprises with strong trade unions. One informant observed: 'As a rule, it is an employer and not an employers' organization that is party to a collective agreement in Poland' (EO).

Another representative of employers' organizations noted: 'If we negotiate a collective agreement, it may contain provisions that are more favourable to employees and thus less favourable to the employer, and not the other way round. And this is one of the barriers' (EO).

What solutions do employer organizations propose? One option is to amend the Labour Code:

We could make a package deal: we, as employees, agree to this, and in return we get that. With this logic in place there would be more collective agreements because some options would

be open – options that ... employees agree to some changes that are more favourable to the employer and vice versa; in return they would get other things that are important to them. With this approach there would be agreements. This would require deviations from the Labour Code; they wouldn't apply to all employees but only some of them. What I mean here is particular sectors. In this case, a provision that is beneficial in one sector will be a problem in another. There could be an additional safety mechanism that would condition such deviations from the Labour Code on approval by trade unions or – in workplaces which don't have them – by employees. (EO)

In summary, it should be observed that although employers' organizations have full autonomy to make their own decisions, their influence on shaping collective labour agreements is negligible. This stems from a number of factors. First, they are not parties to these agreements at any level. Second, the vast majority of collective agreements in Poland are concluded at the enterprise level, and one of the parties involved is a particular employer, not an organization. Third, the number of multi-establishment agreements (those to which an employers' organization may be party) is very small and falling (at the end of July 2019, there were 87 binding agreements of this type – out of the 174 in the register – covering only 200 000 employees).¹⁷ Fourth, low trade union density, on one hand, and the structure of the business sector in Poland (dominated by small and medium-sized enterprises, SMEs), on the other, are not conducive to increasing the number of collective agreements. Fifth, according to the Labour Code and other legislation, collective agreements may only contain provisions which are more favourable to employees than are their statutory rights. Many employers are convinced that these regulations provide so much protection to workers that they do not want, or cannot afford, to offer them more.

7.3 Social Partners and Digitalization

Employers' organizations are aware of new trends in the world of work stemming from technological changes. Similar to the trade unions, however, they do not yet fully know how to deal with them.

Work culture and the way work is done is changing. We have digitalization and other processes and, as employers, we face the challenge of how to manage this new form of work. We have fewer and fewer employees; a large number of companies have to invest in automation and robotization. On one hand, we introduce automation because we don't really have much choice – there are no people willing to work. On the other hand, these processes also generate new jobs. (EO)

Also, employers believe that digitalization and robotization are such serious issues in the context of the future of work, that approaches to dealing with their challenges should be developed through social dialogue:

A robot may not have needs like an employee; but we also see the need for social security for employees who are here and are really valuable. Because there are fewer and fewer employees, we think they should be even more appreciated. There will still be jobs where machines cannot replace people. But you also need to support the process of automation because companies have to grow. We have to listen to each other; it all needs to be balanced. The role of social partners is very important: they have to react to these changes, taking their needs into account. (EO)

Another informant emphasized the following:

As an employers' organization, we can see this digital transformation, we can see that it's changing employment relations in some ways; for example, we have something like teleworking, which isn't really regulated by the Labour Code, or platform work, where even the employment relationship is somehow lost. (EO)

On the one hand, then, employers' organizations are aware of the changes that are taking place in the labour market, which result from technological progress; on the other, they do not treat them as a problem that must be tackled today. They tend to see them as a chance for development rather than a threat. They are also aware that the law in Poland cannot keep up with technological progress. Talking about this, one of their representatives stressed that 'As employers' organizations, we have nothing to do with platform work – none of our members is involved in this kind of activity' (EO).

8. CASE STUDIES

8.1 Case Study 1. The Sworn Translators²¹⁸ Trade Union: Example of a Trade Union with Freelancers as Members

Introduction

Established in 2017, the members of the Sworn Translators' Trade Union in Poland (Związek Zawodowy Tłumaczy Przysięgłych w Polsce, ZZTP) do not work in one workplace, but are dispersed throughout the country. Most of them are self-employed, which means that their professional situation is more insecure. The ZZTP is an example of a trade union that deviates from how we have imagined these organizations thus far.

We must remember that the labour market in Poland is diverse. Industrial sectors (such as mining or the car industry) have a rich trade union tradition and trade union membership is common. However, in service sectors dominated by freelancers, trade unions practically do not exist; therefore, employees usually do not have any protection against employers' abuses of their rights.

The ZZTP is one of the few exceptions here, and for this reason is particularly worth analysing. It also perfectly illustrates current developments on the labour market: flexibility of employment and self-employment, on the one hand, and increasingly limited job security (especially in economic terms) and uncertainty, on the other. Sworn (or certified) translators often work remotely, online; they may be worried about their future owing to the progress of advanced automation and digitalization processes that may lead to their replacement by software. The work they do reflects the trends that we have long seen on the Polish labour market; that is, flexibility of work, characterized by high uncertainty and instability, and progressive automation and digitalization, which may threaten the existence of some professions in the future.

Incentives to establish a trade union

Like any professional group, sworn translators have their problems. The main motives for establishing the union included the need to resolve issues that they faced on a daily basis in cooperation with the judicial authorities, mainly concerning the improvement of

working conditions and pay. For example, the rates for certified translations, which are subject to official regulations, have not been increased for 14 years.¹⁹ The ZZTP operates on the basis of the Trade Unions Act on and thus can conduct talks with the Ministry of Justice (which is an employer of sworn translators).

The ZZTP's mission is to protect the rights and interests of sworn translators, in particular: to optimize their working conditions, to support members in disputes with judicial and public administrations and in their work, to increase the rates of pay for sworn translators, to strive to adapt the Act on the Profession of Sworn Translators to current conditions, to develop uniform working standards for sworn translators, to consolidate and integrate members of the profession, and to strengthen its image as a profession of public trust.

Outcomes: a mixed situation

On the basis of an in-depth interview with a representative of the union, it can be concluded that not many of these aims have been achieved so far. When talking about the reasons for failure, he mentioned, above all, difficulties in recruiting new members:

I'm aware that the strength of an organization also lies in the number of its members, and we have a problem with that. I mean, people don't want to join unions, and it isn't only our problem. I think there are at least two reasons for this. The first is that unions have bad connotations: they are associated with elderly men in sweaters who are busy acting as union activists; all the benefits they manage to achieve apply only to themselves. There is this conviction that if someone works in a union, he works only for his own good and it has no impact on the people he represents. The second reason is the strong politicization of trade unions so far, especially union centres, and especially people in top positions. In Poland, we have two main trade unions that are clearly associated with particular political parties. The successive leaders of those unions have confirmed this more or less openly. This means that in the media discourse we have this image of competition between them, and not of their joint defence of the rights of employees. (ZZTP)

This comment also indicates the two main reasons why trade union density in Poland is so low. These issues were not mentioned by representatives of other trade unions. The first reason is a negative image of trade unions among the general public. This is also confirmed by a survey conducted by the Public Opinion Research Centre (CBOS) in 2017,²⁰ which shows that the majority of Poles (41 per cent) believe that unions are ineffective, both when it comes to their activity for employees in workplaces and, more broadly, for the defence of employees' interests in Poland. The second reason is the politicization of the largest unions. History has shown that many of their leaders or people in high office treated their functions as a springboard for national politics.

The interviewed ZZTP representative, however, stressed that that the founders of the union wanted to create a modern, effective and, above all, non-political organization:

Our union is completely different. None of us has any trade union experience and we haven't followed any existing organizations. None of us has any political ambitions either. We wanted to create a modern organization which would be the voice of the whole community of sworn translators. But unfortunately, we can't overcome people's mentality. We're unable to overcome this overall negative image of trade unions. People don't want to join us because they don't believe we're going to be effective. And we won't be effective if we don't have the entire community behind us; it's a vicious circle. (ZZTP)

This comment shows that, despite its very modern approach, attempts to detoxify the current image of trade unions have failed. The translators' union has not been very successful: it has not achieved its basic aim – to raise the official regulated rates for certified translations – despite numerous attempts to influence and negotiate with the Ministry of Justice.

However, despite the limited possibilities of action resulting from the wide geographical dispersion of the members, they managed to achieve (at least in part) what the trade union has sought from the beginning. They managed to win higher pay rates for sworn translators, which came into force at the end of 2019. The way the trade union operates, the strong emphasis on the development of regional structures, frequent meetings in larger cities and the organization of additional training and workshops, have undoubtedly contributed to this success. Thanks to this increased activity, they have managed to unite the members and jointly fight for higher rates.

Challenges for the future

In the context of strengthening trade union representativeness, the first task is to try to change their image. The unions themselves should evolve into more modern organizations (perhaps resembling corporations) and show that they work for people and not for themselves. However, the public needs to be shown how they work and that all those who engage in union activities have a task; if you sign up to a union, you should be active and not just be a name on a list. Owing to the small numbers, not just some but all members must be active. For this reason, the union has found it difficult to recruit more members (but all trade unions have problems with this). However, as the interlocutor stressed several times, nothing can be done without changing the image of trade unions and this is the most difficult task.

The example of the Sworn Translators' Trade Union in Poland is important for several reasons. First, it shows that it is possible to act even if employees are geographically dispersed and do not have a common employer (in the traditional meaning), although they do have common problems. Secondly, it is one of the first initiatives that connects people who are self-employed (freelancers). Thirdly, it can be an example for all employees who work on the basis of civil law contracts or are self-employed that the lack of an employment contract is no longer a barrier to creating and acting in a trade union. The modest, though significant successes of the union prove that it is worth making the effort to try to improve the situation, even if there is no strong and large trade union organization in the background.

Conclusion

The Sworn Translators' Trade Union in Poland is one of the few trade unions that represents the self-employed (freelancers). It is a good example for other self-employed occupations that are not yet unionized. Together they were able to improve the financial situation of all sworn translators (the trade union contributed to the introduction of higher pay rates for sworn translators).

8.2 Case Study 2: Company A in e-Services

Introduction

In 2018, LinkedIn Top Companies listed Company A as the company for which American professionals most want to work. That is why the operations of Company A

in the e-services sector attract great interest around the world, including in Poland. The company opened its first two distribution centres there in October 2014. At the end of 2017, new centres were launched and another was opened in 2019. Along with the one that is scheduled to become operational in 2020, the company now has six distribution centres in Poland.

Initially, Company A appeared to be an ideal employer in Poland: it was considered a prestigious, 'Western' company offering stable jobs. It soon turned out, however, that opinions about it are strongly divided; from enthusiastic (based on the fascination with technology and innovation, and global economic success) to extremely negative, dominated by the criticism of high performance norms and dehumanised treatment of employees, reduced to mere algorithms. This has also stirred concern that its global business model is applied here at the expense of employees' rights, and that the ongoing expansion is a result of the hard work of thousands of workers rather than innovation. The question asked by researchers is whether Company A, and other Western global players investing in Poland, take advantage of lower labour costs, a well-qualified workforce and flexible labour law without providing adequate employee security as offered in many Western economies (Owczarek and Chełstowska 2016, p. 6).

Alternatively, as one of Company A's managers said, 'the Company's aim is to provide the best service to the client, and this desire is the driving force of innovation and development. But this would not be possible without accepting failures, which are part of experimenting, are part of the nature of introducing the latest solutions'.

The presence of trade unions

In December 2014 (less than two months after the opening of the first centre) the first trade union was established in Company A: the Workers' Initiative at Company A (hereafter Workers' Initiative), affiliated with the All-Poland Trade Union Workers' Initiative; another trade union, affiliated with Solidarity, was registered in January 2015. The establishment of both was motivated by the well-being of employees in general, and the intention to represent their interests in dealing with the global employer in particular.

The impulse came from several employees, the lowest in the hierarchy, who attended training courses at Company A in Germany and Britain. When they returned to Poland they were unhappy about the differences between the working conditions in Poland and in those other countries. From the beginning, the initiators of Workers' Initiative were convinced that Poles were treated worse. However, we soon noticed that the company was starting to apply pressure as regards the pace of work, but the earnings were not satisfactory; and so we decided to establish a trade union (Workers' Initiative).

Initially membership was only 12 or so people among several thousand workers, but now (October 2019) the union has a membership of over seven hundred. Considering that the number of all Company A employees in the country is between 14 000 and 16 000, this proportion is not particularly impressive. However, the problem here is the structure of the corporation in Poland: there are six centres in different parts of the country. While some of them (especially those recently opened) have no unions at all, trade union density in others is high for Polish conditions (and the industry). Workers' Initiative in the centre near Poznań has about 500 members out of 3000 employees, just under 17 per cent.

Working conditions in Company A

The numbers in employment, and thus trade union membership, change dynamically owing to the substantial rotation and turnover of employees in the company. Also, only a quarter have indefinite contracts; all others have temporary contracts with Company A or are employed by temporary work agencies. According to a union representative, this situation stems from the economic model adopted in Poland (Workers' Initiative). He explained:

We keep struggling with structural problems – for example, constant rotation and turnover in the company. On one hand, employees who have worked here for a long time change jobs, on the other – new ones have to go through the ordeal of agency employment first (nine months on monthly contracts, for example), then they work on a three-month trial contract and then on a one-year contract, which of course can also be terminated without consulting trade unions. It turns out that you can count on a better contract only after two and a half years. Very few employees survive long enough to see it: if you get sick during this period or you don't fulfil performance norms, you don't get the next contract. And so these people are afraid to join the union. We would have three times as many members if we counted everyone who went through our ranks. It's because of this huge turnover and this instability that we are struggling with these problems. In these circumstances, we consider these 700 people a great success. (Workers' Initiative)

The company operates within the law. It does not dismiss trade unionists, but does not undertake any communication with them either; it recognizes the body known as the employee forum as the only partner for discussion. The problem is that this body is composed of people who are practically selected by the company itself, and has no rights to conclude agreements on behalf of all the workers.

Company A's trade union members stress the following:

This dialogue is just a façade and nothing more. I'd even say there is no dialogue at all. Company A isn't interested and negotiates only when it's forced to do it under the law; and Polish law is very weak. Several issues that should be regulated in a collective agreement are not consulted with us [trade unions] at all. (Workers' Initiative)

Company A's representatives stress, however, that the company will never discriminate against employees based on gender or age. Each employee is medically examined before starting work, to assess whether their age and health status allow them to work in a specific position. The job description and list of harmful factors are available to the occupational medicine doctor. Therefore, it is the doctor and not Company A who assesses whether the age or health of the employee allows them to work there.²¹

Negotiations on the performance assessment system

It seems that 2019 brought a breakthrough, however. It all began in September 2018, when a seemingly straightforward matter led to a conflict. One of the few matters that Company A has to negotiate with trade unions is the amount of the Christmas bonus. The unionists decided to use this opportunity to raise the most pressing issue, the employee performance assessment system, which they considered unfair: a worker who fell below 100 per cent of the performance norm (even AT 99.9 per cent) received negative weekly feedback, which could provide the basis for their dismissal at some stage. The unions agreed to the amount of Christmas bonus, which was not

very high, on condition that the employee performance assessment system would be suspended:

Company A was up against a wall a bit. They signed an agreement. It was a breakthrough for us because the assessment performance system, along with pay and contracts for an indefinite period, is the biggest problem in our company. Employees were not rated for productivity for five months, from September to February 2019. During this time, we had seven meetings with the management. We didn't reach an agreement about the assessment system because all our proposals were rejected, and in March the employer brought the old system back. (Workers' Initiative)

When the employee performance assessment system was restored, performance norms were increased. All employees felt they were under great pressure; they also strongly resented the pace of work, which, in their opinion, became unbearable. As a consequence, both unions operating at Company A (Workers' Initiative and Solidarity) initiated a collective dispute in which they demanded: (1) a decent pay rise (25 złoty [*circa* €6] after tax); (2) a new employee assessment system (without the feedback); and (3) stable working conditions: contracts for an indefinite period.²² The unions stressed that the assessment system was unfair as it did not take into account achievements: decisions on dismissal were made only on the basis of the number of negative assessments generated by the system. The parties to negotiations did not reach agreement and signed a record of divergence.

The next stage of the dispute involved negotiations with the participation of an independent mediator, which were broken by Company A:

It was really bizarre. There were three demands on the table, including a pay rise. We were to meet to negotiate the amount. The meeting was to take place at 10 am, and at 7 am all employees in Poland got a text message that they would receive a pay rise in July. It wasn't as much as we [the unions] wanted. But this also shows their logic. The mediator was shocked by the situation – what kind of social dialogue is that if the employer resorts to a fait accompli three hours before a meeting with the mediator and the trade unions? Company A claimed they had offered the pay rise themselves; they also said they were not ready to meet the other two demands anyway, so they broke off the negotiations. (Workers' Initiative)

In accordance with procedure, both trade unions at Company A moved on to the next stage of the dispute, a strike referendum, which has still not been concluded: 'We don't know when the referendum will be over because we keep struggling with structural problems. We don't have easy access to employees because we work shifts. People commute from different places, so the votes are flowing in quite slowly' (Workers' Initiative).

When it comes to this area, Polish law is very general and the Act on the Settlement of Collective Labour Disputes (1991)²³ is inadequate in the current circumstances. A union representative explains: 'We are trying to get the votes via the internet, but we already know that the employer will want to challenge this method in court. For now, we are striving to get over 50 per cent of the employees.²⁴ We are over 30 per cent now' (Workers' Initiative).

The problem is that there is one employer, Company A, which employs people in six centres around the country. A strike must be supported by the majority vote of more than 50 per cent of all employees (about 7500).

However, apart from the demands addressed to the employer, the action conducted by the unions is also indirectly addressed to the public, and in particular to the authorities that are responsible for legislation:

Our goal is to articulate employees' dissatisfaction with working conditions. But we also want to show that the Act on Collective Disputes includes provisions that are quite absurd. In our case, the right to strike is only on paper; it's impossible in a company with such a structure as ours. Another thing is to draw attention to the fact that the law is inadequate in the current conditions. (Workers' Initiative)

The company stresses that they have created over 14 000 permanent, good jobs in Poland. They provide employees with a competitive wage and among the best benefits and opportunities for occupational development in the industry.²⁵

There are also other issues, such as drawing attention to the insufficient powers of the National Labour Inspectorate (PIP) but the key problem is the pace of work:

We tried to measure energy expenditure at work because we thought Company A's estimates were too low. We invited an independent company to investigate this and it turned out that the energy expenditure required to fulfil performance norms was several times over the limit. Company A challenged these results and the court ruled that energy expenditure is not the same as effort. (Workers' Initiative)

From the employers' viewpoint the question of requirements looks a little different. They admit that there are requirements, but they are not laid down in advance. The company takes the results achieved by employees responsible for a given process in each centre over a period of four weeks, and they become targets for the next four weeks. This means that there are periods in which goals are higher, as well as periods in which they fall to lower levels. If anyone has a problem with achieving the set goal, the company offers them free dedicated training. The company admit that they would have to close the business if they imposed goals (on the current labour market) that they were unable to achieve.²⁶

Another problem is the Labour Court. One union member was dismissed on the grounds of non-compliance with performance norms. He took it to court and won his case in the first instance; Company A appealed and the case continues. The court also showed a lack of understanding of the situation: it awarded an employee who had been dismissed unlawfully three monthly wages; the case has been going on for three years and there is still no final and binding judgment. This shows the weakness of Polish labour law.

The above example shows what social dialogue (or a lack of it) looks like at enterprise level. Company A is certainly stronger and rejects union proposals to improve working conditions. However, trade unions operating within particular distribution centres are not discouraged by the situation. It can even be said that the employer's stubborn attitude has united the different organizations, which have had disagreements about their approach.

Also, the company recruits people from areas with high unemployment and a low level of vacancies. Company A offers them transport from home to work and back (which in extreme cases can take up to two hours each way), and thus binds them to the company. There are hardly any people from the area working in the distribution centre near

Poznań: they are mostly commuters from all over the Wielkopolska region; the pattern is the same in the other centres. They depend on Company A because they have no alternative job opportunities in the area where they live: 'An employee like that says: I don't like it, but I'm afraid of losing this job because I won't find anything else. I have a permanent contract here; I have a loan to pay off and I have to work here. I have no alternative' (Workers' Initiative).

The example of the Company A in the e-services sector is important for several reasons. First, it shows that it is possible to defend employees' rights even in a big private company. However, it shows that this is not easy and that the employer is in a stronger position. The trade union activity in the Company A proves that the existing law (Trade Union Act) is difficult to adapt to new business models in Poland. For example the existing law allows strike action, but also lays down requirements that are impossible for trade unions to achieve in a firm such as Company A. This might need to be solved within the RDS. Company A aims to find innovative solutions. Some innovations are easily adaptable, but some are not.

Conclusion

Company A illustrates well the Polish labour market's problems. First, there are many foreign companies (such as Company A) that are located in Poland mainly owing to lower labour costs (compared with other EU countries) and highly qualified employees. Secondly, the business model that Company A has introduced in Poland, in common with many other business models from the Western hemisphere, does not always work in post-communist countries. Thirdly, the problems that Company A has to face in Poland are the same as those in the whole e-commerce sector.

That is why the trade unions face numerous difficulties within the new types of e-commerce companies. The first is related to the different geographical locations of these companies' headquarters, the second is the high staff turnover typical of this sector and the third is employees' general reluctance to join a trade union. The trade unions in Company A indicate that the employees' problems are the same in every company in this sector and there is a constant struggle to protect their rights.

However, we need to remember that the problems emerging within the e-commerce sector are similar in many countries, and to some extent related to the business reality which is changing faster than the law. Companies and trade unions both have to act within a legal framework that is not sufficiently adapted to e-commerce.

The only way to overcome these problems is to enhance the capacity of the social partners and social dialogue in this sector. Within the social dialogue (in this example, RDS) new regulations that are important in the e-commerce sector might be discussed, taking into account the problems faced by trade unions and employers. Trade unions from Company A drew attention to the inadequate strike laws that are impossible to apply in this sector.

9. THE VOICE OF THE CENTRAL PUBLIC ADMINISTRATION: THE MINISTRY OF THE FAMILY, LABOUR AND SOCIAL POLICY, DEPARTMENT OF SOCIAL DIALOGUE AND SOCIAL PARTNERSHIP²⁷

9.1 Strengthening the Representativeness of Social Partners and Increasing their Institutional Capacity to Shape the Labour Market Through Social Dialogue and Consultative Processes

The Act on the Social Dialogue Council and Other Institutions of Social Dialogue specifies the representativeness criteria for social partner organizations. Those that fulfil the criteria are entitled to participate in the work of a number of social dialogue bodies, including the Social Dialogue Council, Regional Social Dialogue Councils and newly established Tripartite Sectoral Working Groups. In addition, a number of ministries have bodies and teams appointed as experts and advisers, one of which is the Labour Market Council at the Ministry of the Family, Labour and Social Policy. Although these forums serve different purposes, they provide additional opportunities to articulate social partners' expectations.

Labour market issues are within the scope of interest and activity of most social dialogue institutions. They are discussed both at plenary sessions and in working groups dealing with particular topics.

The Act on the Social Dialogue Council granted the social partners a number of new prerogatives, which strengthened their role in dialogue with the government in this forum. Most importantly, the Act granted them not only the right to express opinions on draft legal acts, but also they can prepare their own draft guidelines, draft bills or other draft legal acts. They can also conduct a public hearing, file joint applications to issue or amend legislation or any other legal act concerning issues within the competence of the Council, and the chair of the Council may apply to the Supreme Court for a ruling on a point of law.

The Act on the Social Dialogue Council which is currently in force provides a legal framework and a number of instruments that enable the social partners to affect the socio-economic environment, including the labour market.

9.2 Supporting Social Partner Autonomy

There are a number of reasons why there are few collective agreements. They include decreasing trade union density, low membership of employers' organizations and the reluctance of employers to incur additional labour costs in conditions of relatively high statutory standards. Another significant barrier to concluding collective agreements is the considerable variation in the economic situations of particular employers. Most important, however, is the economic environment in which they operate. Fierce competition and constantly changing trends and consumer tastes not only affect the demand for goods and services, but also require a capacity to invest in modern means of production and to dynamically change the field of operations. Consequently, we have long observed an increasing demand for more flexible methods of setting pay at the level of the workplace. This trend contradicts the established European model of negotiations at a level

higher than that of the individual employer. It should be remembered, however, that this model was developed in the stable European market economies, before the opening up of labour markets to the free movement of people, services and capital.

The severe impact of the 2008 financial and economic crisis on collective labour agreements is also a factor. This led to significant changes in the structure of employment relations and working conditions in EU member states. Processes set in motion at the time brought about the progressive decentralization of collective bargaining.

In Poland, the trend of decentralization in wage determination emerged much earlier than in other EU countries. After the political transformation of 1989, the functioning of business entities changed completely, which led to a significant weakening of sectoral negotiations and, practically, their demise in the following years. The new model of collective labour relations introduced during this period could not foresee the dynamic progress of restructuring processes in many sectors and workplaces. The Polish economy is no longer dominated by giant workplaces but by micro-entrepreneurs and small enterprises. The Polish SME sector is characterized by a negligible level of membership in employers' organizations, on the one hand, and trade union density close to zero on the other; it is slightly higher only in the public sector. Poland belongs to a group of countries characterized by a low level of unionization, at 12 per cent. It was three times as high in the early 1990s.

These factors have an impact on the implementation of the current provision of the Labour Code according to which the conditions of pay are determined in collective agreements and, in their absence, in remuneration rules (Article 77.1). The application of these agreements in practice has clearly been in decline for several years. Before 1995, the year that saw the introduction of a new Labour Code, most workplaces had been party to sectoral collective agreements. Since then, there has been not only a continuous decline in the number of new multi- and single-establishment agreements, but also an increase in the number of those that are cancelled. It should also be noted that neither the Tripartite Commission for Socio-Economic Affairs, nor its successor, the Social Dialogue Council, managed to conclude any multi-establishment collective agreement, even though they have had statutory power to do so. Nor did the social partners take advantage of the possibility of extending the application of multi-establishment agreements to employers who are not party to any such agreement.

Considering the above, it seems that the dominant form of wage determination for Polish employees is an individual employment contract, although in practice a significant number of them are employed on the basis of civil law contracts, which means that they do not have the status of an employee as defined in Article 2 of the Labour Code. However, the few existing collective agreements apply to employees in the public sector or in business entities controlled by the state as the majority shareholder.

In the absence of collective agreements, trade unions are increasingly seeking legislative solutions. However, statutory regulations cannot respond flexibly to dynamic economic changes and social expectations. Although the government supports social dialogue with trade unions and employers' organizations, it should be remembered that in a democratic state the role of the government is to create appropriate legal standards which foster negotiations and agreements. The model of these standards should be decided by its beneficiaries.

9.3 Social Partners and Digitalization

It is estimated that platform work is the main occupational activity of about 2 per cent of the adult EU population, which is relatively small. Work in the sharing economy is often undeclared, that is, performed outside the legal system. Some companies take advantage of the situation and operate according to the principle of privatizing profits and socializing losses.

In Poland, platform work is performed mainly on the basis of self-employment and non-standard forms of employment (mandate contract and contract to perform a specified task). Owners of digital platforms may view the absence of adequate legal regulations as an opportunity to save on employee rights.

Issues related to platform work, which include providing platform workers with the opportunity to benefit from social dialogue, have not yet been sufficiently examined in Poland. The nature of this work requires further study. As concerns social dialogue, the complexity of the phenomenon entails problems in relation to proper representation, especially when it comes to employees. Pursuant to the amendment to the Act on Trade Unions enacted on 5 July 2018, persons performing such work may establish trade unions and join existing ones.

9.4 How Does the Government Party to the Social Dialogue Council See Its Role as Regards Social Dialogue in the Context of the Future of Work?

New forms of employment, particularly those related to the digital revolution, may need new regulations at appropriate levels. Expert cooperation and exchange of good practices is recommended in order to select the best way of developing those regulations.

In Poland, the government and the social partners both attach significance to EU cooperation in general, and the European Semester, the European Pillar of Social Rights and the new agenda of the European Commission, in particular. The Social Dialogue Council is an appropriate forum for dialogue in this area.

Cooperation with other international organizations, particularly the International Labour Organization (ILO) and the OECD, is also viewed as important. For example, the work of EU expert groups in the information and consultation of employees indicates that the first measures needed include the development of guidelines and best practice. Experience to date indicates that collective bargaining and employee participation mechanisms at the enterprise level are appropriate tools to respond to changing needs in this area. The knowledge and experience of the social partners can be a valuable contribution to implementation of the EU social *acquis*.

10. CONCLUSIONS

The social partners have different emphases in relation to the problems besetting the Polish labour market (that is, high rate of temporary employment, high proportion of civil-law contracts and labour market shortages). Employers' organizations are particularly interested in recruiting more employees to maintain productivity and development. One solution for labour market shortages may be migrant workers (especially from

Ukraine, but also from Asia). According to the employers, however, the situation is not so simple. The main problem lies in government administration at the regional level, which is responsible for issuing work permits and legalizing the status of migrants in Poland. The procedures take a very long time and are extremely complex.

Alternatively, the trade unions note that migrant workers often work under worse working conditions than do local workers. This is partly owing to the dishonesty of the intermediaries (work agencies) who organize the work in Poland, but partly owing to their ignorance of Polish law, and sometimes owing to the dishonesty of employers.

Trade unions and employers' organizations should, within the framework of social dialogue, seek solutions that will be attractive to both and that improve the situation of migrant workers in Poland.

Poland has low trade union density and a low membership rate among employers' organizations. It also has a very low level of collective bargaining compared with other European countries. These affect the level and quality of social dialogue in Poland. With such a low trade union membership, on the one hand, and a very detailed and strict Labour Code on the other (limiting the activities of employers), there is no room to establish new collective agreements and shape collective labour relations. This does not mean that there is no such activity, but it is low key. That is why it is worth trying to strengthen social dialogue at the national level as well as at the regional level.

The surveyed social partners unanimously emphasized that the existing formula of the Social Dialogue Council generally works well in conducting social dialogue in Poland, and the only problem, and crucial, is the imbalance of power within the council, with all the advantage going to the government.

Nevertheless, it is worth highlighting those activities of the council that are directed to the future world of work. One of these is Resolution No. 48, adopted by the workers' and employers' sides (within the RDS) in 2017, which concerns recommended changes in the national education system, specifically vocational education. The social partners indicated that reform of the vocational education system should be based on strengthening practical learning at the workplace and closer linking of the direction and content of education to the needs of the labour market. The social partners claim that this change should be prepared in close cooperation with employers' and business organizations, as well as with the trade unions. Discussions on promoting vocational training in Poland in cooperation with employers' and business organizations and trade unions were also the subject of RDS debate in 2018.

Within the RDS there is a working group that focuses on labour law. It was established to develop common positions on issues related to individual and collective labour law. Since December 2016 there has also been a sub-team for labour market policy reform. In 2018, it focused on the employment of foreigners in Poland and Polish labour market needs in relation to hiring migrant workers. In 2018, a debate started which was aimed at developing recommendations for long-term migration policy.

During the meeting in February 2018, the government representatives declared their readiness to talk about the demands of employers, who wanted more flexible employment opportunities for foreigners, and trade unions, who were calling for the maintenance of social standards and safeguards for employee safety.

According to the interviewees, changes that would strengthen trade unions and social dialogue in Poland include enhancing the role of the Social Dialogue Council. This is

worth emphasizing since the social partners would prefer a more prominent role in the council, even if they are aware of its defects. This may lead to an improvement in the social partners' role in autonomous social dialogue.

Trade union representatives suggested that the role of the RDS may be improved in two ways. First, the social partners in the council need to be taken seriously, and the dialogue should be meaningful and genuinely based on existing mechanisms. Currently, there is a power imbalance between partners in the RDS: the government side is the stronger and imposes its wishes on the others. Secondly, the council itself can be strengthened by bringing in experts.

The employers' organizations voice similar views. They also insist on a general strengthening of dialogue, respecting its functions, restoring its status and using it for the purposes intended by the law. They see a need to enhance the role of social dialogue at national level. They also support stimulating and strengthening social dialogue at lower, regional levels. That is why they pay particular attention to their regional structures and support local activities.

In relation to collective agreements note that, from the employer organizations' point of view, their influence on shaping collective agreements is negligible. This stems from a number of things. First, they are not parties to these agreements, at any level. Secondly, the vast majority of collective agreements in Poland are concluded at the enterprise level. Thirdly, the number of multi-establishment agreements (those to which an employers' organization may be party) is very small and falling. Fourthly, low trade union density, on the one hand, and the structure of the business sector in Poland (dominated by SMEs), on the other, are not conducive to increasing the number of collective agreements.

Given the aforementioned domination of SMEs it is worth asking how to help the social partners to extend their coverage and the number of collective agreements in SMEs. It is worth promoting activities aimed at SMEs and showcasing positive outcomes from SME employees joining trade unions. One option that the social partners may recommend to the government (within the RDS) is to offer tax concessions to SMEs that help their employees to establish a trade union. An increase in the number of trade unions would, in turn, help to boost the number of collective agreements. Only strong cooperation between the social partners and the government will improve social dialogue in Poland.

NOTES

1. Ustawa z dnia 24 lipca 2015 r. o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego, *Dziennik Ustaw (Journal of Laws)* of 2015, item 1240.
2. See <http://www.dialog.gov.pl/dialog-krajowy/rada-dialogu-spolecznego/uchwaly-rds/> (accessed 16 September 2019).
3. See <http://www.dialog.gov.pl/dialog-krajowy/rada-dialogu-spolecznego/uchwaly-partnerow-spolecznych/> (accessed 16 September 2019).
4. See <http://www.dialog.gov.pl/gfx/mpips/userfiles/n.krasuska/RDS%20i%20ZESPOLY%202018/Sprawozdanie.pdf> (accessed 16 September 2019).
5. In the report on the activities of the Social Dialogue Council from 2018 one can see that the social partners pointed to irregularities related to consulting draft legal acts submitted to the Council. They argued, among other things, that the consultation dates of legal acts were violated, which prevents the Council from expressing an opinion and that there are still examples of government initiatives following the parliamentary path, which cuts out consultation with the Social Dialogue Council (p. 27 in www.dialog.gov).

- pl/gfx/mpips/userfiles/n.krasuska/RDS i Zespoly 2019/Zalacznik do uchwały 34.pdf, accessed 11 January 2020).
6. See <https://stat.gov.pl/obszary-tematyczne/gospodarka-spoeczna-wolontariat/gospodarka-spoeczna-trzeci-sektor/partnerzy-dialogu-spoecznego-zwiazki-zawodowe-i-organizacje-pracodawcow-wyniki-wstepne,16,1.html> (accessed 24 September 2019).
 7. There are currently no data on trade union membership among workers other than those employed on the basis of employment contracts.
 8. See <http://www.oecd.org/migration/humanitarian-migration-falls-while-labour-and-family-migration-rises.htm> (26 September 2019).
 9. According to the OECD, temporary employment includes wage and salary workers whose job has a pre-established termination date. National definitions broadly conform to this generic definition, but may vary depending on national circumstances (accessed 27 January 2020 at <https://data.oecd.org/emp/temporary-employment.htm>).
 10. See <http://www.opzz.org.pl/assets/opzz/media/files/d2bde577-f1ee-4487-ae30-94714ab2fd99/program-opzz-na-lata-2018-2022.pdf> (accessed 1 July 2019), http://www.solidarnosc.org.pl/images/files/dokumenty/uchwaly/programowe/Uchwala_Programowa_XXIX_KZD.PDF (accessed 30 June 2019) and <http://fzz.org.pl/wp-content/uploads/2019/04/Praca-na-rzecz-lepszej-przysz%C5%82o%C5%9Bci-executive-summary.pdf> (accessed 1 July 2019).
 11. See <https://stat.gov.pl/obszary-tematyczne/rynek-pracy/zasady-metodyczne-rocznik-pracy/rynek-pracy-w-2017-r-,4,1.html> (accessed 1 July 2019).
 12. Labour Code (Kodeks pracy), Article 241.18.
 13. Preventive meals are extra meals paid for by the employer.
 14. Some of those interviews were conducted with support from the National Science Centre Poland (NCN), grant no. 2018/02/X/HS6/00957.
 15. The IDI method was used. The research was carried out in 2018 and 2019 on 21 Uber drivers in Poland.
 16. See <https://zpp.net.pl/stanowisko-zpp-ws-projektu-ustawy-o-rynku-pracy-z-29-czerwca-2018-roku/> (accessed 1 July 2019).
 17. Data from the register of multi-establishment collective labour agreements kept by the Ministry of the Family, Labour and Social Policy (end of July 2019).
 18. Also known as certified translators.
 19. At 7 September 2019.
 20. See https://www.cbos.pl/SPISKOM.POL/2017/K_087_17.PDF (accessed 24 September 2019).
 21. See <https://www.wirtualnemedi.pl/> (accessed 10 February 2020).
 22. See <http://www.ozzp.pl/> (accessed 25 September 2019).
 23. Ustawa z dnia 23 maja 1991 r. o rozwiązywaniu sporów zbiorowych, *Dziennik Ustaw (Journal of Laws)* of 1991, item 236.
 24. Article 20 of the Act provides that a strike can be announced on condition that it is supported by the majority vote of at least 50 per cent of all employees in the workplace concerned.
 25. See <https://www.wirtualnemedi.pl/> (accessed 10 February 2020).
 26. See <https://www.wirtualnemedi.pl/> (accessed 10 February 2020).
 27. This section is based on written answers, not interviews.

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12. Social dialogue and world of work challenges in Romania

Magda Volonciu

1. INTRODUCTION

Romanian industrial relations have been in a state of flux since the beginning of the country's transition from socialism, which started in 1989 and has been marked, at times, by extreme ruptures. The decentralization of collective bargaining and the deep changes to tripartite social dialogue structures following the global financial crisis that engulfed Romania in 2009–10 have had negative reverberations that are still felt today. Union and employer association densities plummeted, collective bargaining coverage declined dramatically and the social partners, especially the unions, lament a weakening of the consultation and negotiation roles that social dialogue institutions had been endowed with.

Despite these negative developments, however, there are several signs of optimism. First, Romanian social dialogue institutions are well under way at the tripartite level, namely, the Tripartite National Council for Social Dialogue (Consiliul Național Tripartit pentru Dialog Social, CNTDS); at the bipartite-plus level, in the form of the Economic and Social Council (Consiliul Economic și Social, CES); and at the bipartite level, with the sectoral committees (for vocational training) and joint committees (through which the social partners interpret collective contracts). Second, collective bargaining is effectively conducted at company level, although the establishment of more relaxed representativeness criteria is being sought.

Most importantly, there is rising awareness, both on the part of the social partners and of the government, of the multiple challenges facing the future world of work, represented by technological advancement, in general, and digitalization, in particular. This awareness stems from Romania experiencing an information technology (IT) boom, which has already produced tangible results: a comprehensive law on teleworking and an ambitious agreement in the banking sector to train employees to improve their digital skills, as well as several concrete proposals aimed at strengthening social dialogue.

After a brief overview of the history of industrial relations in post-socialist Romania in section 2, the chapter is structured in accordance with the three main issues raised by the social partners. Section 3 takes a thorough look at the representativeness of the trade unions and employer organizations, exploring its weaknesses and strengths, as well as possibilities for improvement. Section 4 assesses the autonomous role of the social partners when engaging in social dialogue and the mechanism's involvement in policy-making. In doing so, it presents a detailed overview of the main tripartite, bipartite-plus and bipartite social dialogue institutions in Romania, as well as the current state of affairs in collective bargaining. Section 5 explores the social partners' attitudes to digitalization

and the platform economy, as well as the most recent development in Romania, namely, the regulation of teleworking. Section 6 presents the recent agreement in the banking sector.

2. BRIEF HISTORY OF THE DEVELOPMENT OF LABOUR RELATIONS IN ROMANIA

Since the beginning of the multiple transition to democracy, a market economy and European integration, Romania has experienced three periods in the development of collective labour relations: (1) a pioneering period in which the seeds of collective labour relations were planted; (2) an intermediate period of integration with European Union (EU) labour standards; and (3) a post-crisis period of decentralization and deregulation.

2.1 The Initial Pioneering Period

After the dramatic demise of patrimonial communism in Romania, characterized by widespread repression, material rewards for co-optation and no tolerance of dissent (Kitschelt et al. 1999), the country embarked on a long and troublesome democratic transition, which turned into democratic consolidation after the 1996 elections.

This period also coincided with the pioneering days of Romanian labour relations, which had to adapt to the nascent democratic state and the market economy. Thus, in 1991 Law No. 13/1991 on collective labour contracts (*Legea nr. 13/1991 privind contractul colectiv de muncă*), Law No. 15/1991 on collective labour disputes (*Legea nr. 15/1991 pentru soluționarea conflictelor colective de muncă*) and Law No. 54/1991 on trade unions (*Legea nr. 54/1991 cu privire la sindicate*) were adopted.

One of the main problems that hampered the establishment of functioning social dialogue and partnership was the underdevelopment of private enterprises, their organizations and capital–labour relations, whose role and functioning was barely understood at the beginning of the transition (even though a law on commercial companies had been passed in 1990).

Whereas the trade unions were regulated through a specific law, employer organizations were not. In 1991, Government Resolution No. 503/1991 was adopted, concerning national organizations, autonomous companies and state-owned commercial companies (*Hotărârea nr. 503/1991 privind organizațiile patronale ale regiilor autonome și societăților comerciale cu capital integral de stat*). Hence, only state-owned employers were regulated, which meant that the unions did not face a proper bargaining counterpart in the market. Despite this, major foundational institutions of labour relations were established during the pioneering period, none of which had existed under communist law.

2.2 From Democratic Consolidation to the Global Financial Crisis

The underdevelopment of employer organizations was felt during democratic consolidation and the gradual accession to the EU, completed in 2007. As Dimitriu (2019) recalls,

new regulations replaced previously adopted laws (Law No. 13/1991 with Law No. 130/1996 on collective labour contracts, and Law No. 15/1991 with Law No. 168/1999 on resolving labour disputes).

A new Labour Code entered into force in 2003 (Legea nr. 53/2003 codul muncii). Law No. 53/2003 harmonized labour law with European regulations, introducing temporary work, apprenticeships and individualized or flexible work contracts, among other things. It also regulates the rights of employees to information and consultation, as well as providing new contractual clauses, such as clauses on non-competition or confidentiality. As for the social partners, the Law on employers No. 356/2001 (Legea patronatelor nr. 356/2001) was adopted for the first time and a new Law on trade unions No. 54/2003 (Legea sindicatelor nr. 54/2003) was also adopted.

Despite joining the EU and a relatively harmonized Labour Code, some industrial relations rules were exceptional compared with those of other member states. Dimitriu (2019) refers in this context to the *erga omnes* enforceability of collective labour agreements at all bargaining levels, the absence of works councils (apart from in very large undertakings at the EU level), the impossibility of imposing a lock-out and the possibility of striking legally only as a consequence of failed collective bargaining.¹

2.3 After the Crisis

The crisis that engulfed Romania at the end of the 2000s provoked a major shift in the country's labour relations. According to Eurostat (2019a), Romanian gross domestic product (GDP) fell by 5.5 per cent in 2009 and a further 3.9 per cent in 2010. Subsequent recovery was swift, but the uncertainty as regards fiscal policy and concerns about the magnitude of the current account deficit led the international rating agencies to cut Romania's credit rating more severely than those of other emerging economies. The ten-year Romanian government bond yields crossed the symbolic 7 per cent threshold in 2007, which prompted Romania to seek a €20 billion emergency assistance package from the European Commission, the International Monetary Fund (IMF), the World Bank and other international lenders.

Drastic austerity measures were part of Romania's IMF-led agreement, which had far-reaching implications for public employment levels, pensions and other transfer payments, public-sector wage levels and other measures that impact disposable incomes and living standards. Under Article IV Consultation, the IMF held bilateral discussions with the Romanian government on economic development and policies. The consultation report focused on structural reforms and concluded that (IMF 2010, p. 26): 'Romania's labour market is rigid compared to others in the region.' 'These reforms were aimed at achieving macroeconomic stability and reducing government budget deficits, thus satisfying conditions Romania had signed up to in agreements it had made with various international financial institutions' (Chivu et al. 2013, p. xi).

Consequently, in spring 2011, the Labour Code as amended by Law No. 40/2011 and the new Law No. 62/2011 on social dialogue (Legea dialogului social nr. 62/2011) were adopted. The latter's breadth is vast, covering collective labour relations, the structures of social dialogue, aspects related to the social partners, collective conflicts and labour jurisdiction. Unlike previous labour regulations, these laws impacted the prevailing system of labour relations through greater requirements for exercising the right of association,

increased requirements for representativeness and fundamental decentralization in collective bargaining. Even the composition of the Romanian CES, a tripartite public institution for national social dialogue between trade unions, employer organizations and the government, has been changed, through Law No. 248/2013 on the organization and functioning of the CES (Legea nr. 248/2013 privind organizarea și funcționarea Consiliului Economic și Social), which amended Law No. 62/2011.

Ever since Law No. 62/2011 came into force it has drawn recommendations from several supranational institutions involved in the assessment of their member countries' social dialogue – the European Commission EU Council and the ILO, but also Eurofound – on how to amend it in order to ensure the fuller involvement of the social partners in national policy-making.

As noted by Eurofound (2019), despite pressures to improve social dialogue, also voiced through Country-Specific Recommendations (CSRs) issued by the Council of the European Union (2018; 2019), little has changed in Romania. An important development occurred in 2017, when the social partners actively participated in the discussions of the draft for the modification of Law No. 62/2011. The consultations were carried out under the aegis of the Ministry of Social Dialogue, which was abolished in January 2018, thereby halting a process that had been positively evaluated by the social partners themselves. Soon thereafter, in April 2018, the ILO (2018) analysed the draft law and issued several recommendations, especially concerned with definitions present in the law that deviated from international practice, starting precisely with the definition of social dialogue. Even though a new draft amendment was produced, it was not the result of concertation with the social partners.

3. REPRESENTATIVENESS OF THE SOCIAL PARTNERS

3.1 Labour Unions and Employer Organizations: Establishment and Membership

Unions are legal persons, acquiring their juridical personality by judicial means (a court grants them legal personality). According to Law No. 62/2011, trade unions can be set up by a minimum of 15 employees belonging to the same firm (previously this was possible across different firms within the same sector) and with a regular contract. The union representatives argue that these provisions limit unionization. First, atypical workers are thus barred from joining. Second, the production structure in Romania is such that there are close to half a million firms employing fewer than 15 employees, which limits the formation of trade unions. In addition, people who hold a public function, such as magistrates or the military, cannot form or join a trade union.

Union density in Romania – similar to the rest of post-socialist Europe – has been steadily declining, from 80.2 per cent in 1991, to 44 per cent in 2001 and as low as around 20 per cent in 2016 (Figure 12.1). The situation is even worse for employer organization density in the private sector, which stood at 12 per cent in 2013.

Also, in order for a trade union to be representative, it must account for at least half plus one of the employees of the company.² If it is representative, it can negotiate collective agreements. The unions have criticized the tough requirements for representativeness, which undermine the employees' capacity to engage in collective bargaining.

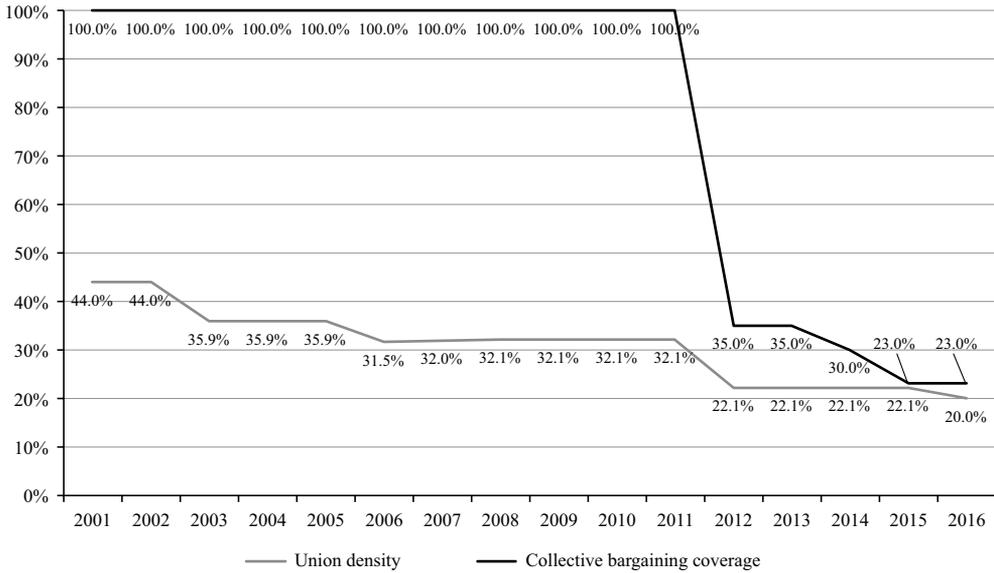


Figure 12.1 Union density and collective bargaining coverage, Romania

In their view, a threshold of 30 per cent of the total number of employees in a company (instead of half plus one) would be sufficient, thereby guaranteeing greater union pluralism.

As regards their vertical structure, unions can constitute federations (for example, at sectoral level) and confederations at the national level. Furthermore, they can also be set up at the local level (local unions, with or without legal personality). As a result of these pyramidal structures, lower-level unions table decisions that are adopted at the top. In addition, the superior structures provide the necessary support through expertise, assistance and consultancy. Similarly, employer organizations can constitute federations (for example, at the sectoral and local levels), as well as confederations at the national level.

From the standpoint of these internal structures, the unions display greater decentralization than the employers, both horizontally and vertically. This state of affairs is seen as suboptimal from both the employers' and labour's point of view. Excessive decentralization carries the risk of fragmenting the labour movement into disconnected local units. Conversely, too much centralization of employer structures creates gaps in their representativeness and leads to operational rigidity at the federation level.

The unions would hence prefer greater centralization in order to foster solidarity and closer links between different levels. The employers favour a degree of decentralization in order to be able to offer better tailored services to their members – especially in the context of technological advancements through digitalization and the spread of atypical contracts – and engage in more direct, timely, practical and principles-based bipartite dialogue.

3.1.1 Representativeness at the national level

As detailed by Stoiciu et al. (2019), trade unions are deemed to be representative at the national level if the affiliated organizations account for at least 5 per cent of the employees in the national economy. Employer organizations require that their members account for at least 7 per cent of all employees in Romania. In both instances, the affiliated unions and employer organizations need to have territorial structures in at least half plus one county, including in Bucharest.

According to these criteria there are five representative unions at the national level and six employer organizations, as detailed in Table 12.1.

Neither the unions nor the employers are particularly satisfied with the representativeness criteria at the sectoral or national levels. Both criticize the establishment of these

Table 12.1 List of representative unions and employer organizations, Romania

	Acronym	Estimated members	Year
<i>Trade unions</i>			
National Confederation of Free Trade Unions from Romania Frăția (Confederația Națională a Sindicatelor Libere din România Frăția)	CNSLR Frăția	306 486	2016
Meridian National Trade Union Confederation (Confederația Sindicală Națională Meridian)	CSN Meridian	264 811	2016
National Trade Union Confederation ‘Cartel Alfa’ (Confederația Națională Sindicală ‘Cartel Alfa’)	CNS Cartel Alfa	259 443	2016
National Trade Union Bloc (Blocul Național Sindical)	BNS	253 227	2016
Confederation of Democratic Trade Unions in Romania (Confederația Sindicatelor Democratice din România)	CSDR	249 264	2017
<i>Employer organizations</i>			
Romanian National Council of Private Small and Medium-sized Enterprises (Consiliul Național al Întreprinderilor Private Mici și Mijlocii din România)	CNIPMMR	327 433	2016
National Confederation of Romanian Employers (Confederația Națională a Patronatului Român)	CNPR	318 279	2015
Romanian Employers Organization Confederation (Confederația Națională a Patronatului Român)	PNR	262 519	2018
Employers Organization from Industry, Agriculture, Construction and Services of Romania (Confederația Patronală din Industrie, Agricultură, Construcții și Servicii din România)	CONPIROM	260 412	2015
Employers’ Confederation Concordia (Confederația Patronală Concordia)	Concordia	230 343	2017
General Union of Romanian Industrialists (Uniunea Generală a Industriștilor din România)	UGIR	141 800	2014

Source: Stoiciu et al. (2019).

criteria based entirely on a mathematical formula as this does not gauge the coordination efforts, effective force or commonality of espoused causes on the part of either organization. As the employers lament, obtaining representation under the conditions set out by the law sometimes results in only formal associations. Even the government authorities admit that the legal representativeness criteria are based on strictly quantitative criteria, and less on the capacity of, for example, unions to represent the interests of the employees in tripartite dialogue, thereby betraying a certain degree of formalism. However, they also claim that this formalism can be overcome through better cooperation with other organizations operating in the market, such as the chambers of commerce and industry, with the objective of improving the services offered to and defending the interests of their members.

3.1.2 De facto representation

Beyond the legal aspects of representation, *de facto* representation should be considered. Are the trade unions and employer organizations truly representative for the purpose pursued? Can these groups fully respond to the demands of those they represent? By what means will the unions and employers become representative both externally, in relation to third parties, and internally, in relation to their own members? Two main problems have been identified.

First, what is the most effective means of consolidating the position of the social partners: by law or through specific actions and dialogue? In Romania, legislation is prioritized, thereby determining the existence and functioning of the social partners. Yet, it would be beneficial in the future to base the consolidation of the social partners' mutual standing on trust and by assuming the responsibilities that come with the agreed social dialogue mechanisms. In practice, this means that the social partners should be routinely involved in consensual decision-making, whose results should be then taken into account by the government in normative acts.

Second, there is a specific problem of the obsolescence of union structures, that is, the low replacement rates among its members and leadership. Romanian society in general is affected by demographic ageing. This is even more pronounced in the case of the unions. They are not sufficiently attractive to younger members. One possible cause, identified by the unions themselves, is an education system that does not pay enough attention to the importance of introducing workers' rights in the curriculum (despite the support of the ILO).

The social partners understand the importance of attracting new members and preparing social dialogue for a changing world of work. According to one government representative:

there is a need to rethink the role of social dialogue and to support the ability to adapt representative organizations to new economic realities and to new work-related expectations. Social partners have an important role to play in providing assistance, information and training for new skills, including digital skills, for developing entrepreneurship and integrating people into traditional forms of work. The deficient protection of new types of workers also requires the intervention through regulation and control, as well as the involvement of the partners in different forms of collective bargaining, on topics of interest and with other interested/involved actors. Autonomous dialogue is essential for the efficiency and acceptance of the results of the tripartite consultation processes.

4. AUTONOMY OF THE SOCIAL PARTNERS

When trying to assess the autonomy of the social partners, two approaches are possible: a subjective approach, in which the independence of the social partners is evaluated; and an objective approach, which gauges the autonomous functioning of social dialogue itself. Even though these two dimensions overlap, this section is interested in assessing the quality and independence of the social dialogue mechanisms in place, at both the tripartite and the bipartite levels.

In general, neither the social partners nor the government are entirely satisfied with the functioning of tripartite social dialogue in Romania. On the one hand, the government contends that the social partners are too passive, thereby often leaving responsibility for taking decisions to the executive. On the other hand, the employers claim that when they want to achieve a result, lobbying, especially of politicians, still ensures the greatest chance of success.

4.1 Tripartite Social Dialogue Institutions

Tripartite (and bipartite-plus) social dialogue institutions in Romania include: (1) the CES; (2) the CNTDS; and (3) social dialogue committees in the ministerial or local public administration (for example, county) level.³

The CES is constituted and operates on the basis of Law No. 248/2013 (*Legea nr. 248/2013 privind organizarea și funcționarea Consiliului Economic și Social*). It used to be a tripartite body, then became a bipartite-plus institution, whose predominant role is approving the normative acts affecting labour relations, social protection, wage policies, equal opportunities and treatment in the field of citizen rights, as well as in areas such as health care, education and young people, sustainable development and environmental protection. The CES prepares its own studies and analyses of socio-economic themes and events (at the request of either the government and/or the parliament, or on at its own initiative) and notifies the government and parliament in all instances and in all socio-economic fields prescribed by the law.

The Plenum of the CES consists of 45 members, nominated as follows: (1) 15 by employer organizations representative at the national level; (2) 15 by the representative trade unions at the national level; and (3) 15 members represent civil society (appointed by the prime minister, at the proposal of the Labour Ministry) from among cooperative organizations, liberal professions, consumer protection organizations, the scientific and academic community, farmer, pensioner and local community organizations, associations that represent the family and the disabled, as well as other relevant non-governmental organizations (NGOs).

The CNTDS is the main social dialogue institution in Romania and is regulated by Law No. 62/2011 on social dialogue. It is constituted by: (1) the presidents of employer organizations and unions that are representative at the national level (six employer confederations and five trade union confederations, respectively); (2) government representatives, appointed by the prime minister, at least at the level of secretary of state, from each ministry, and from other public structures, as agreed with the social partners; and (3) a representative of the National Bank of Romania, the president of the CES and other members agreed with the social partners.

The prime minister presides over meetings of the CNTDS. Within its premises the social partners negotiate social pacts, protocols and agreements at the national level (and monitor their implementation), they adopt resolutions on social and economic litigation through dialogue, approve extensions of collective agreements to all companies in a sector, and analyse and support the implementation of national programmes, methodological strategies and/or standards in the field of social dialogue. The CNTD provides the consultation framework in which minimum wages are determined at national level (Guardiancich and Artale 2018) and determines the sectors of activity, subsequently approved by government decision. The CNTD also actively participates in all aspects of labour relations and is entrusted with consolidating social peace through social dialogue.

The social dialogue committees are set up at the level of the ministries and counties and the municipality of Bucharest. They have a consultative role, whereby (mainly) the local administrative authority has to ensure permanent information of and consultation with the social partners on all socio-economic aspects of local and general interest. Also, the members within these structures are designated by the employer organizations and trade union confederations representative at the national level. In order to ensure a unitary working methodology and to achieve unitary policies at the national level, the activity of social dialogue committees is coordinated and supervised by the Ministry of Labour and Social Justice.

4.1.1 Assessment of national social dialogue institutions

The supranational institutions monitoring social dialogue have at times been critical of the functioning of tripartism in Romania. Two years in a row the Council of the European Union (2018, 2019) has issued CSRs within the European Semester policy cycle, which recommend that the Romanian government improve the functioning of social dialogue. In particular, the recital of the 2019 CSR states:

Beyond the collective bargaining framework, the timely and meaningful involvement of social partners on policy issues and reforms is limited. Most social dialogue takes place formally, within the CES and the Social Dialogue Committees. However, despite the established framework of dialogue and consultations, the stability and the role of these institutions has weakened over the last year. (Council of the European Union 2019, item 16)

This is echoed by Eurofound (2019), which reports that the social partners are consulted only sporadically on government policies (the executive's assessment is more positive). The CNTD hardly met in 2018, overriding the requests of the social partners to do so. Relevant policies, such as the reforms affecting social contributions, were adopted unilaterally without due consultation and despite the social partners having a common position on the issue.

From the interviews and discussions, there is correspondence between the assessments above and the views of the social partners. Yet, the situation appears to be more nuanced. Neither the trade unions, nor the employers fully recognize the benefits of having parallel social dialogue bodies. The question arises of whether there is a need for a civic dialogue institution (the CES, in which the social partners sit alongside representatives of civil society), together with a traditional tripartite dialogue institution (the Tripartite Council). While in theory this solution is democratically sound, since civil society is called

on to evaluate the positive or negative impacts of legal acts, in practice the CES's role is currently marginal.

The unions argue that while the social partners are well represented within the CES, the government is not, as it was substituted with civil society representatives. Also, its independence of politicians has not increased, as it is still the Labour Ministry that nominates these civil society representatives without any prior popular selection. The employers decry the excessive formalism of these tripartite institutions; the state should understand its role as a mediator rather than as a decision-maker. Too often, the social partners are called to meetings, but their views are not taken into account. During consultations on draft laws, the social partners are not given an active role in discussions; the government is only interested in checking legal requirements. Political lobbying is a more reliable way of achieving policy changes, which are decided before social dialogue begins. Finally, the government representatives claim that when the social partners do not reach consensus (often they merely express their opinions and positions), it is legitimate to exercise decision-making powers.

There are different solutions to increasing the relevance of tripartite institutions in Romania. Although no regulatory power can be conferred on these institutions, decision-makers should be bound by the deliberations of tripartite dialogue. Also, in order for the consultation to be meaningful, a reasonable amount of time should be allowed for discussion on legislative projects.

As for the social dialogue committees, these also ensure the direct participation of the social partners in the adoption of socio-economic policies. However, the participation of the social partners in these commissions was relatively low in 2019. As shown in Table 12.2, of 131 social dialogue committee meetings at the ministerial level that took place in 2019, the union confederation that participated the most was CNS Cartel Alfa (81 meetings) and the least was CSDR (48 meetings). At the ministerial level, the Ministry of Transport organized the most meetings of social dialogue committees (33 sessions). Alongside the Ministry of Labour and Social Justice, its meetings were most popular among the unions. The participation of employer confederations in these meetings is lower than that of labour. The highest participation was registered by CONPIROM (58 meetings) and the lowest by PNR (15 meetings). The Transport Ministry and the Ministry for Public Finances elicited the highest interest.

It seems that Romanian tripartite social dialogue institutions suffer from inertia and rigidity. The government has not always adopted the best practices to ensure efficient participation of the social partners in the areas in which they are consulted (although government representatives claim that through dialogue common solutions have been found for agriculture and tourism, agreements have been reached in construction, education and schools, support has been extended to entrepreneurship and employment and apprenticeships have been introduced). Also, the social partners have not been determined enough to get their voices heard. There is a passivity among all the participating actors, which harms them and the institutions in which they interact. Tripartism is itself a balancing mechanism. Here, the state is the arbiter resolving the contradictions between the social partners, and it has a clear obligation to maintain social peace and a climate conducive to social progress.

Table 12.2 Participation of social partners in social dialogue committees at the ministerial level, Romania

	Total meetings		Trade unions						Employer organizations					
			CNS Cartel Alfa		CNSLR Frăția Meridian		CNIPMMR Concordia		UGIR PNR		CNPR CONPIROM			
			BNS	CSDR	CNSLR Frăția	CSN Meridian	CNIPMMR Concordia	UGIR PNR	CNPR	CONPIROM				
Total	131	81	59	48	68	55	32	35	25	15	19	58		
Ministry of Internal Affairs	10	9	9	0	9	9	1	3	0	1	0	9		
Ministry of Transport	33	21	5	0	15	16	7	1	7	6	4	16		
Ministry of Communications and Informational Society	0	0	0	0	0	0	0	0	0	0	0	0		
Ministry of Justice	3	2	1	0	2	0	0	0	0	0	0	1		
Ministry of National Defence	1	1	1	1	0	1	1	0	0	1	0	1		
Ministry of External Affairs	0	0	0	0	0	0	0	0	0	0	0	0		
Ministry of Health	9	6	3	2	6	0	4	1	0	2	0	0		
Ministry of Agriculture and Rural Development	5	4	2	5	1	3	3	2	0	2	1	0		
Ministry of Regional Development and Public Administration	8	5	5	0	6	7	2	2	1	1	0	1		
Ministry of Public Finances	16	14	10	10	4	3	3	6	10	2	6	11		

Ministry of Labour and Social Justice	17	2	15	11	13	6	1	7	5	0	3	9
Ministry of Environment	0	0	0	0	0	0	0	0	0	0	0	0
Ministry of Economy	6	0	3	5	0	5	6	2	0	0	0	0
Ministry of Energy	7	4	4	1	1	0	3	4	1	0	1	2
Ministry of National Education	10	10	0	10	10	3	0	7	1	0	0	7

Note: The total number of meetings refers also to a number of agencies.

Source: Ministry of Labour and Social Justice (2019).

4.2 Bipartite Social Dialogue

Bipartite social dialogue plays a complementary role together with tripartism in Romanian industrial relations. If most institutions based on tripartism are set up and operate under the law, the majority of bipartisan bodies are the consequence of agreements between the social partners. This section covers collective bargaining (in both the private and public sectors), as well as the setup of bipartite sectoral and joint committees.

4.2.1 Collective bargaining

The procedures regulating collective bargaining are set out in Law No. 62/2011 on social dialogue. The aim is to conclude collective agreements covering wages and working conditions in the broadest sense, such as remuneration and introduction of new payment methods, daily and weekly work schedules, holiday arrangements, training, job security, and provisions related to informing and consulting workers (Dimitriu 2019). Collective agreements can also include clauses on personnel rights that are either more advantageous or not expressly regulated by labour legislation. Under the sanction of nullity, no clause in collective agreements can include rights below the level established by law. Under pressure from the IMF, Law No. 62/2011 abolished collective bargaining at the national level, substituted branch-level with sectoral-level bargaining and increased the importance of company-level agreements. Bargaining at firm level is compulsory for companies employing at least 21 workers (but reaching an agreement is not).⁴ In addition, extension mechanisms have been abolished and collective agreements only cover the companies affiliated to the signatory employer organization (bargaining at the level of a group of units). The only exception to this rule are sectoral collective agreements, signed by employers covering at least half of the sector's employees. These can be then extended to all the units in that sector by order of the Ministry of Labour and Social Justice, with the approval of the CNTD.

Post-crisis decentralization of collective bargaining had a huge impact on coverage, at three levels. First, at the end of 2010, the last national collective labour agreement, concluded for three years (2007–10) ceased to have effect and, owing to disagreement between the social partners, for the first time since 1992 it was not renewed. Second, very few sectoral collective agreements have been signed since 2011, for example, in the pre-university education sector and in health care. This level should have been of key importance, as its provisions are mandatory for all companies included in that sector of activity. However, the high thresholds in sectoral bargaining have given way to company-level bargaining as the dominant level. Third, small enterprises in Romania with fewer than 20 employees, totalling 459 000 units and employing 1.283 million workers in 2017 (Eurostat 2019b), were left entirely uncovered.

Thus, as shown in Figure 12.1, collective agreement coverage declined significantly from 100 per cent prior to 2011 to around 23 per cent in 2016, with large differences between the private and public sectors (the latest data, referring to 2013, show coverage rates of, respectively, 7.2 and 45.5 per cent; Visser 2016). According to the Labour Inspectorate, there were 7226 company-level collective agreements covering 853 000 employees in 2017.

With regard to the content of collective agreements, negotiations in Romania are chiefly about wages and other pecuniary rights. In the public sector, wages and any other

pecuniary rights are all regulated by law, hence the limitations to collective bargaining are substantial. Article 138 paragraph (1) states that agreements in the public sector 'cannot be negotiated or include clauses regarding rights in money and in kind, other than those provided by the legislation in force for the respective category of personnel', and at paragraph (3) it is stipulated that:

salary rights in the public sector are established by law within precise limits, which cannot be the object of the negotiations and cannot be modified by collective labour contracts. If wage rights are established by special laws between minimum and maximum limits, the concrete salary rights are determined by collective bargaining, but only within the legal limits.

The question is therefore legitimate: if it is not allowed to negotiate any salary rights, what is the purpose of these collective agreements? Yet most sectoral-level agreements apply to the public sector, thereby rendering the collective labour contract a mere formality. Limiting the object of negotiations so drastically seems to violate even the freedom of negotiation, the fundamental right to bargaining that is recognized also for public employees.⁵ Also, joint committees in the public sector are organized and operate according to the law. Their decisions are binding on the parties. In the public sector, therefore, social dialogue is required by law, while collective agreements are emptied of content.

In the pre-university education system, for example, it was possible to increase the rest days for the auxiliary and non-teaching staff through the decision of a joint committee. If collective bargaining in the public sector were not entirely hollowed out, this could have been achieved simply through traditional negotiation between the social partners, within the framework of the relevant collective agreement.

4.2.2 Sectoral committees

Law No. 268/2009 (Legea nr. 268/2009 pentru aprobarea Ordonanței de urgență a Guvernului nr. 28/2009 privind reglementarea unor măsuri de protecție socială) considers sectoral committees as institutions of social dialogue of public utility. These are constituted at the sectoral level on the basis of the association agreement between at least one trade union and one employer organization, both representative at the level of that sector of activity. The sectoral committees have legal personality and a special register at the Bucharest court.

The sectoral committees have several duties in relation to vocational training: they participate in the discussion of national and sectoral strategies, in establishing the normative framework in the field, and in promoting continuous professional training and occupational standards. These committees have proved their usefulness, as the social partners are interested in joint projects to be carried out within their structures. The sectoral committees, together with the Ministry of Education, elaborate the standards for professional training and are in permanent dialogue with the Ministry of Labour and Social Justice.

At the moment, according to the National Authority for Qualifications (ANC 2019), there are 16 of these sectoral committees, for: (1) construction; (2) tourism, hotels and restaurants; (3) transport; (4) health care and social assistance; (5) administrative services and support activities; (6) electricity, thermal energy, oil and gas; (7) agriculture, wood harvesting and processing, and the furniture industry; (8) the textile and

clothing industry; (9) culture; (10) ferrous metallurgy, non-ferrous metallurgy and refractory products; (11) machine building; (12) chemicals and petro-chemicals; (13) vocational training in environmental protection; (14) agriculture, fishing and fish farming; (15) administration and public services; and (16) financial, banking and insurance activities.

Two main problems afflict sectoral committees. The committees are established at the level of branches or sectors of activity, which are now also established by normative act. As a consequence, cross-sectoral committees cannot be set up. Yet, these sectoral committees have been registered,⁶ which has led to tensions in the National Association of Sectoral Committees of Romania (*Asociația Națională a Comitetelor Sectoriale din România*). Similarly, according to the law, sectoral committees should remain bodies of social dialogue and not bodies in which third parties become involved. This has been the case, which is questionable from the viewpoint of the unions and employers.⁷ The employers consider that both practices exceed the existing legal framework and distort the committees' purpose of being a link between the labour market and the education system in Romania.

The government has, instead, taken a benign view; it notes that through the involvement of the social partners in the sectoral committees, they have managed to access European funds for the development of occupational standards and for increasing labour market efficiency.

4.2.3 Joint committees

In collective bargaining, the social partners establish joint committees, whose objective is to interpret and implement collective agreements, thereby resolving any possible misunderstandings without resorting to conflict. In practice, these committees often play only a formal role. Ambiguous clauses have to be interpreted to the employees' advantage (favourability) and this may involve high costs for the employer. The unions often press the employers to grant alternative rights, in exchange for waiving an action in court. The exceptions are larger companies, where joint committees are involved in all aspects related to the execution of a collective agreement,⁸ and in the public sector, where they are regulated by law.⁹

Other types of committee also exist. Large enterprises have set up social dialogue committees, thereby fulfilling the requirements of Directive 2002/14/EC establishing a general framework for informing and consulting employees.¹⁰ More rarely, there are joint disciplinary committees (the prerogative belongs mainly to the employer).¹¹

According to the government, absent a willingness among the social partners to collaborate and engage in common actions, with the aim of getting involved in flexible and mutually beneficial partnerships, the authorities may impose rules in relation to association, organization, negotiation and effects of collective agreements. Here, the opinions of the social partners and of the government converge; autonomy implies active participation on behalf of all actors involved. This applies to bipartisan bodies, such as joint committees as well; they can be effective only through the continuous involvement of all parties.

The social partners agree on the need to develop bipartite dialogue, as the Law on Social Dialogue is not exhaustive. For example, joint committees are seen as functional and necessary, as they not only interpret the clauses of collective labour contracts,

but also monitor the general applicability of contracts.¹² In addition, some employer representatives have suggested that examples of good practice in social dialogue should also be part of school curricula (for example, in secondary schools).

Last but not least, in order for social dialogue mechanisms to be truly functional, adequate training of union and employer activists (not only the leadership) is necessary. This can be achieved by developing specific vocational training programmes and using socioeconomic expertise in social dialogue structures.

5. SOCIAL DIALOGUE IN THE DIGITAL AGE

Romania is near the forefront regarding technological advancement. Its IT sector is booming and Cluj-Napoca has been dubbed the Silicon Valley of Transylvania; in the course of a decade it has been transformed from an industrial graveyard into a technology hub boasting 1350 IT companies and 20 000 developers and engineers by the end of 2018 (The Economist 2018).

According to the Employers Association of the Software and Services Industry (Asociația Patronală a Industriei de Software și Servicii; ANIS 2018), the IT market in Romania grew at an annual average rate of 12.6 per cent between 2012 and 2018 and was likely to be worth close to €6 billion by the end of 2020, employing 114 000 employees with an average productivity of €52 500 per year. Almost all the industry's exports in 2018 went to the EU (74 per cent) and the United States (22 per cent).

This IT revolution elicits both positive and negative responses from the social partners, especially in respect of the platform economy. It has triggered several legislative actions by the government – for example, a law on teleworking passed in 2018 – as well as initiatives at the bipartite level, notably through the actions of the Federation of Insurance and Banking Unions (Federația Sindicatelor din Asigurări și Banci, FSAB).

5.1 Legislative Action

Even though in Romania there are still only a few flexible employment contracts, designed to fully benefit from new technologies, in 2018 the parliament passed Law No. 81/2018 on the regulation of teleworking (Legea nr. 81 din 30 martie 2018 privind reglementarea activității de telemunca). The law laid down the condition that teleworking requires employees to perform their duties outside the employer's premises through remote communication technologies at least one day a month.

It should be noted that even before Law No. 81/2018 came into force, especially in large companies and multinationals, there was a tradition of allowing staff to work from home, usually one day a month, before the weekend. Law No. 81/2018 codified this custom, establishing the procedures, formalities and conditions to be met. Also, Romanian law regulates in detail the health and safety of teleworkers, provided that the work is performed in a location outside the employer's direct supervision and that the employer is still responsible for health and safety at work.¹³

Law No. 81/2018 does not differ much from similar regulations in other European states. Implementation, however, is problematic. Employers are often tempted to severely limit the locations where teleworking can take place, specifically to reduce the risks

caused by the lack of direct supervision. Also, even if regulations exist, employers are supposed to develop precise internal norms regarding activity reporting, the work programme, and the rules of confidentiality in the case of telework, which often fail to cover all the relevant realities.

5.2 Social Partner Attitudes

Since the challenges posed by digitalization are diverse, here we gauge the attitudes of the social partners and government, first, in relation to the general process itself and, second, to the specific challenges posed by the emerging platform economy.

5.2.1 Pros and cons of digitalization

Employers tend to list several negative effects of digitalization on employees: redundancies of older workers owing to difficulties in assimilating digital skills, specific health problems related to the use of digital equipment, and the scarcity of specialized occupational training in the latest digital technologies. Among the positive effects, they argue that digital education leads to a decrease in social inequality and the creation of digital hubs for vocational training and communication, while physical work becomes easier.

As to collective labour relations, positive aspects include the fact that digital technology is cheap, fast and reduces face-to-face contact (and related emotions arising from conventional communication and negotiation). On the negative side, the ability to concentrate and assimilate information decreases, attention spans are shorter and reduced, and subdued communication limits the ability to socialize.

Two further issues were emphasized. First, the employers argue that, even under the new employment arrangements (teleworking and work on digital platforms), they exercise their authority as before, by periodically evaluating the employee's performance. Second, employers believe that digitalization in labour relations can bring down the negotiations between employee and employer to the level of the individual. This is likely to reduce the forms and instances of protest, as it would become more difficult to identify common (to workers as a group) problems.

Looking at digitalization from the trade unions' perspective, its positive effects on the individual are the possibility of working partially or totally from home, the capacity to archive documents electronically (not physically), and fast and efficient communication between people at any distance one from another. The negative aspects include the risks associated with digitalization and use of the Internet, such as exposing personal information or sensitive documents, aggressive communication, harassment and specific medical problems. Also, with the diffusion of new contractual arrangements and new forms of subordination of the employee to the employer, digitalization may increase the precariousness of work in some sectors, remove particular categories of workers from social protection and labour law, isolate and atomize the labour force, create data monopolies and over-control, while also keeping wages low through direct global competition.

Similarly, at the collective level, the use of technology for building online communities may foster connections, exchange and collaboration, as well as creating new opportunities for distance learning. On the negative front, the unions mention the atomization

of members, their fluctuation and a decrease in the power of representation and of collective action. As for forms of protest, even if new forms of dissent emerge (online petitions are an example), street action and strikes retain the strongest impact. However, traditional forms of protest may be supported by the digital environment.

The Romanian government representatives are upbeat. According to them, digitalization may lead to the emergence of new industries creating business and employment opportunities, to greater production efficiency and to the improvement of working conditions, as well as to managerial practices that emphasize employee participation. The negative aspects should not be underplayed, though; new forms of work may be difficult to regulate, the protection of rights and representation of atypical workers is problematic owing to their lower propensity to associate, and this has a related impact on collective bargaining.

5.2.2 Harnessing the platform economy

The platform economy is spreading fast in Romania. Conventional employment relationships seldom apply, as individual employment contracts are substituted by civil contracts. Special rules are needed to protect these workers, and employers recognize that, although those who work on a digital platform are categorized as self-employed workers or individual companies, they have to follow the rules imposed by the platform.

Employer representatives view the workers in the platform economy from two perspectives. On the one hand, the vast majority of platform ‘employees’ are own-account workers (working for these platforms through their own company, which is tiny). On the other hand, they are subject to the authority of the platform’s owners, who have to be held responsible for the provision of a modicum of social protection to those who work for them.

Platforms differ with regard to which aspect prevails. Uber drivers, for example, are interested in the social protection that could be provided through the platform, even if they do not consider it to be a real employer. Other platform workers, for example those providing services, such as consulting, are more concerned with the quality of what is produced and, hence, with the entrepreneurial side of their work.

Strict regulation in this context is not desirable. Generally, flexible regulations are needed to reconcile the entrepreneurial nature of some platform jobs with their social component; that is, with the basic principles of social protection. With this regulation, both the quality of the services provided and customer satisfaction would increase. In addition, by removing the traditional forms of work, the right to association is not lost. Specific new forms may emerge. For example, even within the relatively few platforms currently in operation, there are groups that interact, usually in virtual space, thereby ensuring rapid coalescence of interests and the emergence of social movements. It is possible that traditional forms of association may be less popular now mainly because in both standard and atypical employment relationships (such as through platforms for the latter) workers are less interested in organized forms of representation connected to traditional labour relations than they were in the past.

This decline has also been fostered by limitations in Romanian law. Unions can be formed only among employees of the same employer, thereby binding their existence to conventional individual employment contracts. This is outdated and should be changed. Without eliminating current practices, associations should be allowed between

persons belonging to the same profession, independently of the worker's subordination to the same employer or the contractual relationship under which the work is carried out.

6. CASE STUDY: COLLECTIVE AGREEMENT ON DIGITALIZATION IN THE BANKING SECTOR

An important breakthrough in the debate on digitalization and the future of work came in the financial, banking and insurance sector, in which the social partners collaborated and have achieved some remarkable results (although they did not manage to conclude a collective employment contract at sectoral level, only at the group level).

On 18 November 2019, the Federation of Insurance and Banking Unions (FSAB), together with the Employers' Federation of Financial Services of Romania (Federatia Patronala a Serviciilor Financiare din România, FinBan) and the Council of Banking Employers of Romania (Consiliul Patronatelor Bancare din România, CPBR), signed the agreement on the professional training of employees (Acordul pentru Pregătirea Profesională a Angajaților). This is the first of this type of agreement signed between the social partners in Romania.

The agreement refers to 'collaborations between FinBan and CPBR on the one hand and FSAB on the other, as social dialogue partners in the context of the increasing needs of employees in the banking system, on the present and future challenges generated by digitalization' (CPBR 2019). The agreement involves, in practice, the setting up of an e-learning platform offering 500 courses in electronic format, of which half are available also in English. Banking employees will be able to access these courses, optionally, according to their individual interests. Courses will be available for around 25 000 bank employees (out of 53 000 employees at the beginning of 2019), employed by the members of CPBR. The curricula can be accessed free of charge, the costs being borne by CPBR member banks, which also provide their own platforms for project implementation. The project was to become operational in March 2020.

The agreement aims to focus on three priorities, taking into account the challenges of the digital age. These were thoroughly discussed and analysed by the social partners, who agreed to focus on the following:

1. Digital skills – aimed at more efficiently using the existing IT infrastructure and systems, in order to ensure the adaptation of the employees to digital tools, regardless of the employer. Examples of courses accessible through e-learning are personal computer (PC) literacy and reporting skills, analytical and numerical skills, digital awareness, and so on.
2. Collaboration through digital channels – aimed at acquiring and improving employees' ability to use remote working and collaboration tools, such as video conferencing, messaging, managing remote project teams.
3. The approach to customers and their satisfaction in the context of digitalization – aimed at acquiring skills and competences for easier use of the tools made available by the employer from a digital perspective.

These priorities are conceived as contributing to the development of a modern worker's skills, and not necessarily specializing in the banking sector. The broad purpose of the e-learning platform should appeal to a large number of employees. Regarding the project's success, the employer association CPBR stated that: 'We expect both our employees and our social partner, FSAB, to let us know their personal and professional satisfaction with these courses. Also, as this is to some extent an "experiment" in Romania, we hope, as employers, to see positive results.'

The agreement between FSAB, FinBan and CPBR on the professional training of employees is perceived by the social partners and the government as a tangible result of concertation and a template for serious, engaging and autonomous social dialogue.

7. CONCLUSIONS

The decentralization of labour relations in Romania, which followed the global financial crisis, has thus far not been fully replaced by constructive social dialogue. As the trade union representatives lament, since December 2010 no inter-sectoral collective agreement has been concluded, despite the existence of several common points of interest – on which negotiation would be needed either because there is a legislative void or because clarifications are due – often stated by the social partners themselves. This lack of real dialogue and the rigidity of current arrangements (formal and lacking a voice) have led to social conflicts in the form of strikes and spontaneous protests. These were particularly harmful to a number of employers as Romania is experiencing substantial labour shortages.

Faced with the options of stricter regulation or deregulation, the employers and the government have opted for deregulation, but also empowerment of the social partners, as a means of relaunching Romanian social dialogue. An important initiative would be to extend the reach of bipartite social dialogue to areas that are now directly subject to normative intervention. Through the routine involvement of the social partners, the government would be relieved of many tasks that could be solved directly through bipartite negotiations.

Among the measures needed to strengthen the social partners and social dialogue, some legislative changes have been extensively recommended by the European Commission and the ILO, and are favoured by all parties. In particular, the labour movement is vocal in deploring that Law No. 62/2011 has been responsible for weakening social dialogue, reducing the possibility of negotiating and concluding collective labour agreements at a higher level (above the company), and even limiting the normal exercise of union rights. Conversely, the employers do not believe that the principles on which the current legislation is based are excessively imbalanced. There are, however, problems related to the way legislation is drafted, which would require technical revisions of the normative act.

The most important development in Romania – also testified by the agreement reached in the banking sector in our case study – is that the social partners are open to real dialogue, based on good faith and reciprocity, as there is mutual understanding of the challenges ahead. It seems, also, that the government is responsive to these calls and is interested in the active cooperation of both partners, in the removal of formalism, and in the full integration of the unions and employers into the mechanisms of social dialogue.

NOTES

1. Note that, since 2010, the National Institute of Statistics (Institutul Național de Statistică, INS) no longer reports on strikes, arguing (incorrectly) that no strikes took place between 2010 and 2017.
2. In companies with more than 20 employees, but without a trade union, the workers can be represented by employee representatives, as specified in the Labour Code. These are elected by a majority of all employees in the company (half all employees plus one), for a maximum of two years, and receive a special or general mandate. Beyond that, they cannot carry out activities entrusted by law to the unions (for example, representing in court employees who are members of a union). In company-level collective bargaining, they negotiate if there is no representative union. The labour unions are critical of employee representatives. They claim that they are often manipulated by the employer and that they do not possess the necessary knowledge or sufficient material resources and time, thereby undermining the labour movement. Furthermore, the unions estimate that up to 85 per cent of company-level collective agreements are concluded with employee representatives.
3. In addition, there are tripartite boards that deal with labour market policies, the Advisory Board of the National Agency for Employment (Agenția Națională pentru Ocuparea Forței de Muncă, ANOFM), with pensions, the Advisory Board of the National House of Public Pensions (Casa Națională de Pensii Publice, CNPP) and with health care, the National Health Insurance Agency (Casa Națională de Asigurări de Sănătate, CNAS).
4. Law No. 1/2016 amended Law No. 62/2011, thereby establishing as a rule that the representation of employees is the task of the representative union. If a union is not representative at the unit (company) level, representation is provided by the federation to which the union is affiliated, if the federation is representative at the sectoral level (to which that unit belongs). Where there is no union, representation is assured by the employees' elected representatives.
5. In Romania there have been many appeals against the decisions issued by the Court of Accounts (Curtea de Conturi a României), a government body that controls how public money is spent, trying to recover undue payments issued by public employers based on collective agreements. The decisions and appeals not only led to a large surge in the cases brought to trial, but also to contradictory jurisprudence. Ultimately, the High Court of Cassation and Justice of Romania (Înalta Curte de Casație și Justiție a României) ruled in 2016 that a right enshrined in a collective agreement must be respected, but that it also has to be compliant with the law. In so far as Romanian law puts maximum limits on to the negotiation of any rights that entail costs for the public employer, clauses resulting from negotiation that are above these limits can be nullified.
6. For example, the sectoral committee for vocational training in environmental protection refers to no specific sector of activity.
7. In the sectoral committee for financial, banking and insurance activities, there are frictions between the social partners and an educational institution that wants to be directly involved in all related professional training activities.
8. For example, joint committees determine the applicable regulations for contractual clauses related to the granting of bonuses, or the selection criteria for redundancy in the event of enterprise restructuring.
9. Resolution No. 833/2007 regarding the rules of organization and functioning of joint committees and the conclusion of collective agreements (Hotărâre nr. 833/ 2007 privind normele de organizare și funcționare a comisiilor paritare și încheierea acordurilor colective) ensures that social dialogue is carried out in the public sector through the participation of civil servants in the joint committees. The role of these committees is advisory and they are involved in both the professional training of civil servants and the implementation of the clauses of collective agreements at the public sector level.
10. The Directive was transposed into national law by Law No. 467/2006 establishing a general framework for informing and consulting employees (Legea nr. 467/2006 privind stabilirea cadrului general de informare și consultare a angajaților).
11. For example, when, according to the Labour Code, the employee requires in his or her defence specialized assistance through a union representative and/or a lawyer.
12. For example, by clarifying some common concepts used in collective agreements, such as salary versus income.
13. The employers claim that serious image problems can occur. Overwork and working until exhaustion are not negligible phenomena. There should be clear policies moderating the activity of employees, thereby ensuring that the rules on working time and rest are respected. At the normative level, these rules are widespread, and are the subject of EU Directives. Yet, at times, employers stretch these rules to increase productivity, and employees overwork to obtain additional monetary benefits. In an organized work environment, employers can prove that they have taken all necessary measures to protect their employees from overwork. If the employee is working remotely, the possibility of direct control on the part of employers

is limited, but they still bear responsibility for employees' well-being. Examples of overwork in such a context abound and have been reported in the media. In these instances, not only was the health of the employee damaged, but so too was the image of the employer. The lack of direct supervision explains why in any regulation of teleworking, there are many provisions dedicated to the protection of occupational health and safety. This type of employment relationship requires not only that the employer ensures the well-being of the workers through internal norms or direct measures, but also that the employee adopts some responsibility when working outside the workspace organized by the employer.

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13. Enhancing social partners' capacity and social dialogue in the new world of work: The case of Spain

Oscar Molina

1. INTRODUCTION

Since the transition to democracy, social dialogue in Spain has played a key role in coordinating collective bargaining, regulating the labour market and governing socio-economic policy-making. It has become a defining trait of the industrial relations system and a central element of the governance of the socio-economic model. Its importance and intensity has evolved in accordance with the economic and political context, however.

During the financial and sovereign debt crises, tripartite social dialogue was temporarily abandoned in the context of the implementation of austerity policies. The sovereign debt crisis not only led to the implementation of far-reaching fiscal austerity packages in the peripheral countries of the Eurozone, but it also triggered significant reforms of labour market institutions, industrial relations and welfare states. The political and economic context in which crisis-induced austerity reforms occurred was certainly propitious to the abandonment of tripartite concertation and social dialogue (Molina and Miguélez 2013; Pedersini and Regini 2013; Guardiancich and Molina 2017). The explicit or implicit external imposition of these reforms on governments under strong pressure to comply with fiscal stability led, in many cases, to unilateral reforms.

The abandonment of tripartite social dialogue and the adoption of a unilateral approach to policy-making in areas such as labour market regulation, industrial relations and the welfare state is not novel, however. The ups and down of tripartite social dialogue are related to three main characteristics of industrial relations in Spain. First, its weak and late institutionalization, since policy concertation has developed outside institutional mechanisms such as the tripartite Economic and Social Council. Second, it has mainly dealt with issues with a strong distributional character, while having a limited impact on general economic policy-making, except during the early 1980s. Finally, and as a consequence of the above, its discontinuance depended on the economic cycle and the colour of the governing party (Espina 1999). These three interlinked features have been exacerbated as a consequence of the recent economic crisis and help to explain the collapse experienced by tripartite concertation and the weakness of social dialogue during this period.

However, the crisis added new tensions and obstacles to the development of social dialogue. First, the tightening of fiscal rules and the macroeconomic surveillance mechanisms severely limited governments' room to manoeuvre and possibilities for

engaging in political exchange with the social partners, even in a post-crisis recovery scenario. Second, the democratic and institutional crisis that has also affected the social partners has further reduced governments' incentives to involve them in policy-making (Culpepper and Regan 2014).

1.1 Late Revitalization of Social Dialogue in the Post-crisis Period

In the post-crisis period there has been a belated and only timid recovery of tripartite social dialogue. Industrial relations developments in the period 2014–19 were characterized by institutional stability, after the convulsions experienced in the previous period of the crisis. The social partners have tried to find a new equilibrium and rebuild consensus after the many reforms that have taken place since 2010, culminating with the 2012 unilateral reform that introduced far-reaching changes in the labour market and collective bargaining institutions. More specifically, trade unions have tried to halt the trend towards decentralization of collective bargaining and to neutralize the negative effects of the reform of automatic extension of collective agreements.

After its abandonment in 2011, social dialogue struggled to revitalize in the 2014–19 period. Despite the economic and labour market recovery, tripartite social dialogue has remained weak and limited in scope (Molina and Miguelez 2017). A long-term process, consisting of narrowing the issues negotiated in tripartite social dialogue, has also contributed to detaching social dialogue from economic policy-making. In this vein, the European Semester and the negotiation and implementation of National Reform Programmes can be considered missed opportunities for strengthening tripartite social dialogue. The 2012 reform remains a major source of disagreement among social partners, with the trade unions pushing to remove it before any dialogue on reforming the labour market and industrial relations takes place. Finally, political instability since 2015 has also had a negative impact on the revitalization of social dialogue that has only gained momentum since 2018. Since 2015 there have been four general elections as a consequence of the fragmentation of the political party landscape and the difficulties experienced in forging a majority in Parliament. Moreover, in June 2018 the right-wing government headed by Mariano Rajoy lost a no-confidence vote and the socialist Pedro Sánchez became the new prime minister. However, the new socialist government is also facing significant problems putting together a stable majority and, since then, two general elections have taken place.

Notwithstanding these problems, social dialogue has delivered some outcomes over this period. Social dialogue gained momentum in 2018 after several years of recovery following the period of unilateral policy-making during the crisis and austerity policies. In early June 2018, the Parliament appointed the Socialist Party's Pedro Sánchez as the new prime minister after winning a no-confidence vote. In the following ten days, the new head of the executive had two tripartite meetings with trade unions and employer organizations in order to open a new social dialogue cycle and start negotiations on several issues, including a 'Plan for decent work'. With these meetings, the new government transmitted to the social partners its strong commitment to social dialogue and willingness to give it further momentum, after the modest revitalization experienced since 2015.

These agreements have helped to recover workers' employment and social rights lost or eroded during the crisis. These included agreements for public sector employees, a

bipartite peak agreement in 2018, the fight against youth unemployment and precariousness. Particularly important is the role played by social dialogue between unions and employers and their efforts to restore the autonomy lost by unilateral government regulation of collective bargaining during the crisis. Both trade unions and employers have an interest in maintaining their institutional position in the industrial relations system and collective bargaining, and as a consequence have developed autonomous mechanisms to enhance its coordination and governability.

In this chapter we explore the role of social dialogue in addressing some of the most important challenges facing industrial relations institutions and actors in Spain, and how to enhance social partners' capacity to face them through social dialogue. Section 2 provides an overview of the main features of industrial relations in Spain, together with the main challenges identified by the social partners. Section 3 contains an analysis of: first, the challenges in relation to representativeness, the decline in membership and the mechanisms for addressing them; second, the role of the state in industrial relations; and, finally, the impact of the digital economy, with a particular focus on the platform economy.

2. MAIN CHALLENGES FACING INDUSTRIAL RELATIONS IN SPAIN

Industrial relations in Spain exhibit three distinctive features compared with other European Union (EU) countries. The first is a fragmented and weak trade union movement from an associational point of view. The second feature is the pervasive role of the state in regulating industrial relations and collective bargaining (Molina 2014). The final feature is a collective bargaining system with high coverage levels owing to the automatic extension of agreements and the predominance of sectoral negotiations.

The trade union movement that emerged during the transition to democracy in Spain is an attenuated duopoly of two large national confederations (Unión General de Trabajadores, UGT, and Comisiones Obreras, CCOO), together with a number of small professional and/or regional confederations. The CCOO was close to the Communist Party (Partido Comunista de España, PCE) in the transition to democracy, while the UGT maintained close links with the Partido Socialista Obrero Español (PSOE). The two confederations account for 70 per cent of elected representatives in works councils and define themselves as class-based trade unions, covering all sectors of the economy.

The crisis has aggravated some of the structural weaknesses of trade unions, while posing new challenges for them (Barranco and Molina 2014). In this vein, some authors have noted that trade unions have lost both the power and the social legitimacy to force governments to involve them in the policy-making process (Culpepper and Regan 2014). This is explained not only by their declining membership, but also by the identification of trade unions as part of the political system, and hence the causes of the economic crisis not as part of the solution to it. These two faces of the crisis have put trade unions in a different scenario compared with previous crisis episodes as their monopoly in channeling social discontent has been contested. New social movements and other civil society actors have played a more prominent role in gathering and organizing anti-austerity movements (della Porta 2015). In doing so, they have relied upon mass protests and

demonstrations from which trade unions have often been excluded, played a marginal role or have themselves been the target of protests as part of the political status quo. Increasing membership and regaining social legitimacy currently constitute significant challenges for trade unions, and they are trying to develop strategies to recruit members and gain representativeness (see section 3 in this chapter).

The state's role is also a distinctive feature of the Spanish industrial relations system (Molina 2014). The consolidation of democratic institutions and the opening up of spaces for autonomous self-regulation and interaction among the social partners have characterized industrial relations developments since the early 1980s. However, this process has been characterized by a comparatively higher degree of state intervention in order to overcome some of the coordination problems among social partners that appeared in the early years of the return to democracy. This is a differentiating trait of the Mediterranean or mixed variety of capitalism (Amable 2003; Molina and Rhodes 2007). In return for cooperation in the early stages, the state has often provided the social partners, and especially the trade unions, with institutional compensation, including their participation in public policy-making, extension mechanisms for collective bargaining, and so on. Owing to this, the social partners have achieved institutional and political power that far exceeds their real influence in terms of membership or company-level representation. Moreover, a production structure that makes it difficult for the unions to reach many workplaces has hindered the development of a strong bargaining coordination capacity. Laws extending collective agreements have accordingly played a key role in governing industrial relations. We can therefore expect the state to face greater incentives to adopt a unilateral approach to policy-making in Spain, particularly in the context of economic crises. Even though the social partners feel they enjoy considerable autonomy in relation to collective bargaining, they nonetheless agree on the need to consolidate and enhance this autonomy, as explained in section 4.

In relation to collective bargaining, Spain is characterized by a multi-level bargaining structure, with a historically weak articulation between levels (Martin Artiles and Alos Moner 2003). In the early years after the transition to democracy, collective bargaining occurred at several levels, with negotiations at territorial (provincial) sectoral level being the most significant in relation to workers covered. However, negotiations took place in several bodies, and the issues were often renegotiated at lower levels, leading to cascading negotiations. The hierarchy principle in the Labour Code (*Estatuto de los Trabajadores*) made it very difficult for company-level agreements to dilute the conditions negotiated at a higher level. Peak agreements in the early 1980s contributed to maintain a formally high level of centralization, but after its abandonment after the mid-1980s, a process of gradual decentralization has occurred owing to the lack of a coherent articulation between bargaining levels. The limited presence of unions at enterprise level hindered the efficacy of collective negotiations at higher levels as they could only occasionally reach workers in small and medium-sized establishments. As a consequence, collective bargaining was very sensitive to changes in actors' strategies, preferences and power, which undermined its stability and became a permanent source of conflict, as shown by the comparatively high conflict rates.

Peak cross-sectoral agreements since the mid-1990s have helped to govern and coordinate collective bargaining in Spain and to maintain a formally high level of centralization.

Despite this, a process of decentralization has been in place since the early 1990s, as a consequence of changes in collective bargaining regulations. The trend towards collective bargaining decentralization has accelerated in the context of the crisis and has adopted a clear bottom-up, disorganized character. This has eroded the regulatory capacity of sectoral agreements. We may expect this to reduce the incentives for governments to engage in tripartite concertation with the social partners owing to their lower capacity to steer industrial relations developments.

2.1 Strengths, Weaknesses, Challenges Ahead and the Role of Social Dialogue

The main strengths of the industrial relations system in Spain are its institutionalization, on the one hand, and the strong consensus among the most representative social partners around its key features, on the other. The second aspect is well reflected in the peak bipartite cross-sectoral agreements on employment and collective bargaining (see section 4 in this chapter). These are signed every two years and provide general guidelines and orientation for collective bargaining. The strong institutionalization of the industrial relations system can be observed at all levels and dimensions, and consists in intensive legal regulation, from the rules for representativeness of social partners, to the *erga omnes* extension of collective bargaining, trade union workplace elections or the articulation between levels in the collective bargaining structure. Together, these characteristics explain the resilience and stability of the industrial relations system in Spain.

There are, however, some developments that pose important challenges for the future of the system. Four are particularly important for Spain, according to those interviewed. The first is the role of the state in industrial relations and the autonomy of the social partners, an aspect that is a current matter of concern for trade unions and employer organizations. Even though, since the transition to democracy, the state has intervened unilaterally, particularly during periods of economic crisis, this trend seems to have become stronger since the Great Recession. Even in a context of economic recovery and with a left-wing government since June 2018 that emphasized its commitment to social dialogue, the social partners have expressed their discomfort with some decisions, including the unilateral increase in the minimum wage, the unilateral approval of a law for registering working time or their limited involvement in the most recent phase of the European Semester process. The social partners consider that governments of different colours have often intervened in policy issues that should be dealt through tripartite social dialogue. To an extent, these developments show the fragility of collective self-regulation in countries with statist traditions under the external pressures of economic adjustment. The state still plays the role of coordinator and regulator of last resort, as has become evident in the recent economic crisis and its aftermath.

A second challenge for the industrial relations system is the low levels of union membership, particularly among younger groups, and the trend towards fragmentation in the trade union landscape (Alós et al. 2015). Low levels of union membership and the decline in citizens' trust in trade unions can also be considered a weakness, and challenge the capacity of trade unions. Even though low membership levels have been a historical feature of trade unions in Spain, the decline in trust experienced since the Great Recession constitutes another cause for concern for them, as it might make it even more difficult to recruit new members, while eroding its legitimacy. The trade unions consider

that there is a strong cyclical pattern in this indicator and it is already recovering from the low levels reached in the worst years of the Great Recession, but it confirms the need to make greater efforts at reaching new groups of workers. Moreover, there has been growth in recent years in occupational, regional and yellow trade unions (a trade union which is dominated or influenced by the company/employer). Even though this could be interpreted as a sign of the vitality of the trade union movement, it will nonetheless pose an important challenge to the future governance of the system. For instance, it could lead to an increase in conflict levels, or to growing difficulties in implementing collective agreements.

A third risk facing industrial relations in Spain is the trend towards disorganized decentralization and the enhanced power of the employers that was inherited from reforms implemented during the Great Recession. The objective of these reforms was to enhance employers' capacity to adjust collective agreements or simply to opt out of them, thereby pushing labour relations closer to the market (Rodríguez et al. 2016). This may also further erode the social partners' capacity to govern industrial relations in the future, in the context of the digital transformation and the growth of the number and types of outsourcing practices.

The final challenge is the impact of the digital economy on industrial relations and collective bargaining. Even though the digital economy is a multi-dimensional concept, the discussion here focuses on two aspects that are currently on the agenda of the social partners and/or government: first, the use of digital mechanisms for monitoring and surveillance at the workplace; and second, the extension of platforms and platform work and the challenges associated with it.

3. REPRESENTATIVENESS, MEMBERSHIP AND SOCIAL PARTNER LEGITIMACY

Representativeness and membership are linked to the input legitimacy of social dialogue. The higher the representativeness and affiliation to the social partners, the stronger and perhaps more effective social dialogue will be. Also, the legitimacy of the social partners depends on their capacity to deliver to their members. Thus a key element of enhancing their capacity is to enlarge the membership base and strengthen their representativeness.

As regards Spain, representativeness and membership are not directly related. There are clear rules defining representativeness that are independent of affiliation. The social partners agree in their support for these rules and coincide in identifying some beneficial outcomes, including a higher degree of governability of industrial relations and lower levels of industrial conflict. On the union side, increasing membership levels remains a top priority, even though representativeness rules are not based on membership. However, the unions admit that the institutional context and the characteristics of the labour market make it very difficult to attract new members. The unions are paying growing attention to attracting young workers and this is partly why they are also focusing on occupations or activities with a predominantly young workforce. This applies, for instance, to the platform economy.

3.1 Workplace-level Employee Representation Structures and Trade Union Elections in Spain: Election-based Representativeness

One of the defining traits of the Spanish industrial relations system is the way in which representativeness is defined. Contrary to other EU industrial relations systems, representativeness is based on work council election results (number of delegates elected), not union membership. The most representative trade unions at company, regional or sectoral level will participate in the negotiation of collective agreements. Also, the automatic *erga omnes* extension of collective agreements is a key element in explaining the relatively low trade union density in Spain (around 15–20 per cent of the workforce), as it endows the most representative trade unions and employer organizations with the capacity to negotiate agreements on behalf of all workers in the sector or company in which the agreement is negotiated, but reduces the incentives for workers to join trade unions.

The specific socio-political and institutional context during the early years of the transition determined the most important power resources of trade unions in Spain. As noted by Jordana (1996) the rapid increase in trade union membership and workers' mobilization in the early months of the transition was rapidly brought under control by the two largest union confederations, the CCOO and the UGT. In exchange for their role in channelling workers' discontent through negotiation and institutional participation, they were granted a strong institutional role and detailed legal regulation of collective bargaining. By contrast, on other traditionally important power resource indicators, the position of Spanish trade unions is weakening. This includes associational power resources, owing to the low membership levels, and organizational power, as a consequence of the increasing difficulty of mobilizing their members and getting them to play an active role. By contrast, they have a relatively strong mobilization capacity that far exceeds their organizational and associational power. Another key power resource of trade unions in Spain, the structure, is also under stress owing to the downsizing of the public sector, as well as the increase in temporary employment.

Through the concept of 'most representative organizations', employers' organizations and trade unions are entitled to conclude multi-employer collective agreements, to have institutional representation (that is, to be a part of tripartite bodies, to be consulted by the government and to conclude social pacts) and to take part in extrajudicial forums of labour conflict resolution. Moreover, meeting the criterion of legal representativeness is the basis for gaining access to public funds.

The main bodies for workplace representation in the private sector are personnel delegates and works councils. In the public sector, workplace-level representation is achieved through the Juntas de Personal. Staff delegates are responsible for representing workers in those establishments and workplaces with between 11 and 49 employees. There may also be a personnel delegate in companies with between six and ten employees, if a majority of the employees agree. In companies with up to 30 employees there may be one personnel delegate, and three in companies with between 31 and 49 employees.

3.2 Are Representativeness Rules Contested?

The interviews revealed a general consensus on the existing representativeness rules in Spain. The most representative trade unions and employer organizations consider that

these rules have allowed a high level of governability of employment relations, while reducing conflict levels. However, some trade unions and economic/political actors think these rules could be revised or improved.

On the one hand, smaller trade union confederations and other professional trade unions criticize the representativeness criterion as it constitutes an obstacle to trade union involvement, but also to the growth of smaller organizations. For this reason, a few years ago some smaller confederations filed a complaint that these rules go against freedom of association. The Constitutional Court established in several rulings that the representativeness rules in Spain do not violate the right to freedom of association since the advantages conferred by this condition constitute a positive that favours and enhances trade union action, but does not deprive the remaining unions of any essential instrument for fulfilling their objectives. Similarly, the constitutional principle of equality is not affected as the differences between the unions are established on an objective basis, election results, which counts as the best defence of the interests of the workers.

According to the interviewees from the most representative trade unions in Spain (the CCOO and the UGT), although the representativeness criteria could be improved, the criterion based on works council elections is more inclusive and guarantees that trade unions can reach a vast majority of workers, in contrast to a membership-based criterion. This is particularly so in an economy characterized by a fragmented and atomized production structure, with a predominance of small and micro companies.

Figures 13.1 and 13.2 show the distribution and evolution of works council election results. Even though the CCOO and the UGT maintain a dominant position in works council elections at state level (Figure 13.1), this position has weakened in recent years (Figure 13.2). According to the most representative trade unions at national level, a number of factors account for the decline in the percentage of delegates elected in works council elections:

1. The closure of establishments/companies during the Great Recession, which has most affected companies in which where the two largest trade unions had a stronger presence (including manufacturing).
2. Employers' development of strategies to weaken and interfere with class-based trade unions. These include supporting the creation of alternative, yellow trade unions.

3.3 Trade Union Membership: Trends and Composition

Most studies categorize Spain as a country that historically has had relatively low union membership (Beneyto et al. 2016; Rigby 2016; Jódar et al. 2018). The evolution of membership levels in Spain has not followed the same downward pattern as in other EU countries. Since the 1980s there has been sustained growth in the number of affiliates, although at a slower rate than the growth of the active population. Union membership reached a peak in 2010 and then declined until 2016, when it started to increase again. The manufacturing sector has been a traditional trade union stronghold, and has a higher density of membership than in other sectors. However, with the decline in the gross domestic (GDP) share of manufacturing, together with growing outsourcing, the service sector and, in particular, public services currently concentrate a significant share of trade union members in Spain.

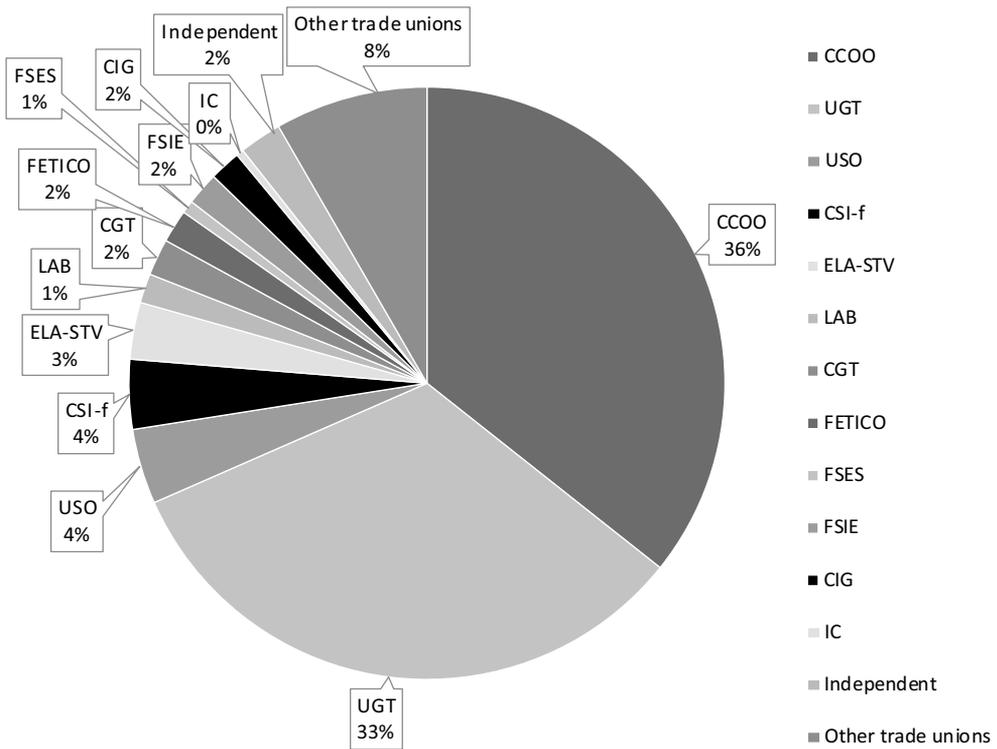


Figure 13.1 Distribution of delegates elected, 2015–19 (percentage)

The low trade union membership levels are a combination of several factors:

1. Institutional – automatic extension of collective agreements and the use of electoral criteria to determine trade union representativeness.
2. Organizational – complex multi-level organizations with regional and sectoral federations, but with a moderate level of centralization, making it difficult to develop effective organizing strategies (see Martínez Lucio 2003).
3. Structural – a production system in which small and very small companies predominate, and there is a strong seasonal component in important sectors, as well as a large share of workers in non-standard forms of employment.
4. Social/cultural – historically low levels of civic engagement in Spain.

Köhler and Calleja (2011) highlight two characteristics in the evolution of trade union membership figures in the pre-crisis period. First, Spain is one of the few EU countries where membership in absolute numbers increased. However, as this period also witnessed strong employment creation, union density remained stable. Secondly, the composition of trade union membership in Spain changed in the growth period preceding the economic crisis, but very slowly. This means that the traditional under-representation of some groups, such as women, foreign workers or young people, remains a trait of trade

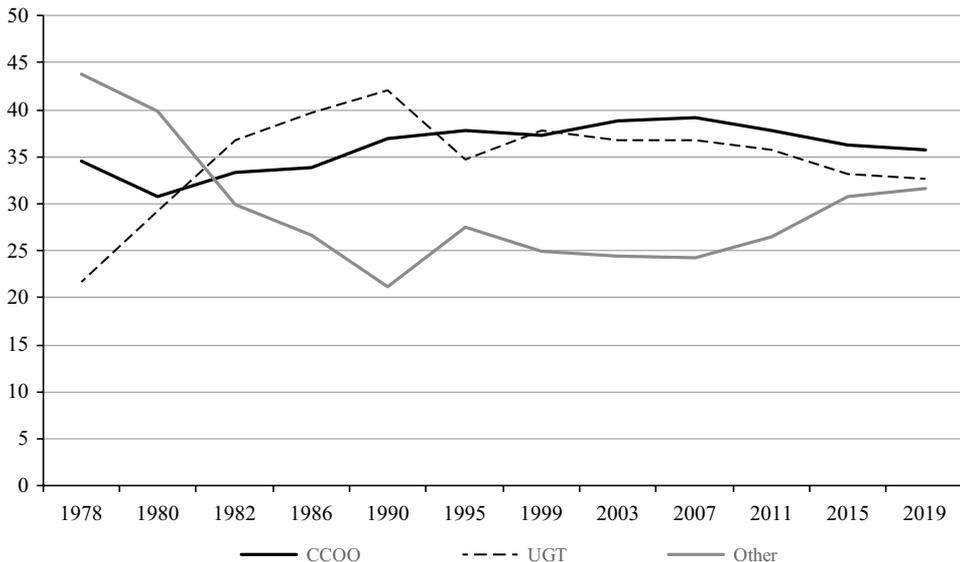


Figure 13.2 Evolution of shares of delegates elected, 1978–2019

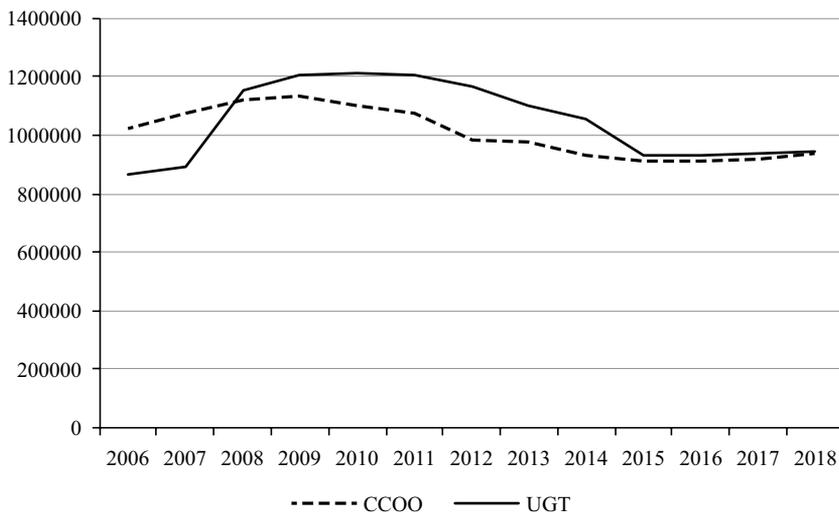


Figure 13.3 Trade union membership levels in Spain, 2006–18

unions in Spain. The increase in membership registered in the pre-crisis period, together with the maintenance of a strong role in collective bargaining and the political sphere, has hindered the process of organizational renewal within the unions that many authors consider key to increasing membership (Behrens et al. 2004).

When studying the composition of union members in Spain, the first problem is the lack of available union data. There is no publicly accessible registry and/or database providing

data on official membership levels, and when publicly available, the data provided are not disaggregated by age, sex and so on. That means that union membership and density data are self-reported by trade unions, difficult to access and hardly comparable. Overall, this poses significant difficulties for the study of trade union membership in Spain.

The only survey-based data available for studying the level and composition of union membership in Spain was the Encuesta de Calidad y Vida en el Trabajo (ECVT; Quality of Life at Work Survey), which was discontinued in 2010. We can summarize the characteristics of trade unionism in Spain based on the final round of the survey:

- Low to moderate membership rate (21 per cent of employees).
- High collective bargaining coverage rate (between 80 and 90 per cent).
- The majority of members have an open-ended contract (87.3 per cent).
- Higher membership in large companies (32 per cent affiliation rate in companies with more than 250 workers, but a mere 7 per cent affiliation in those with fewer than ten workers).
- Higher membership in the public sector (one in three public sector workers are affiliated, while in the private sector, only one in six employees was a trade union member in 2010); within the private sector, there is greater union density in industry than in services.
- The older and more experienced the worker, the greater likelihood of union membership (one-third of those over 50 are members, but only 15 per cent of those under 30 are). The mean age difference between members (44 years) and non-members (40 years) is gradually increasing and it seems that a decreasing number of young people are joining trade unions.
- Higher membership among men than among women (23.2 per cent of men and 18.2 per cent of women). The differences in gender affiliation have been significantly reduced in recent years, with an increase in members in the service sector.
- A similar level of education between non-members and members.

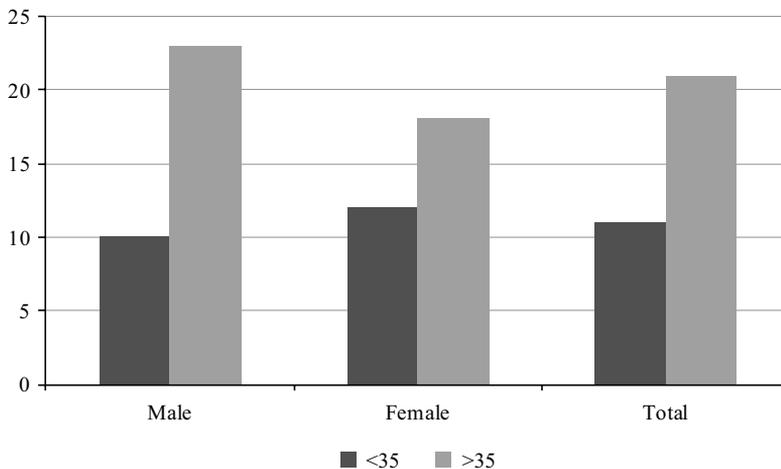


Figure 13.4 Trade union density in Spain by age group and sex, 2010

According to this survey, the trade union density of those aged below 35 years of age is half that of those above 35 years old. The difference is lower for women than men. When we look into the differences by type of contract we find how being in a temporary contract constitutes an important factor for non-affiliation to a trade union. In both age groups, the affiliation is lower for workers with a temporary contract, but significantly lower as regards younger workers (Figure 13.5). This means that temporary workers have fewer incentives to become a union member, and the temporary-contract effect outweighs the age effect.

A static analysis of membership figures needs to be complemented with a more dynamic approach based on flows in and out of trade unions. This is particularly important for the unions as they aim to renew their membership basis by increasing the inflow of young people to make up for the outflow of older workers. Moreover, membership turnover in Spain is very high. Vidal et al. (2014) presented short-lived union membership, using the case of the CCOO. According to this analysis, more than 10 per cent of new members left the union after only 12 months, suggesting that there is a high turnover among recent joiners, probably owing to a change in job situation or after using union services (Jódar et al. 2011). In this vein, an instrumentalist approach towards trade unions explains the high quit levels, especially among young workers. Moreover, there is an obvious difference in the levels and speed of leaving among the youngest age group, evidently the most vulnerable, and other age groups: 20 per cent of the youngest age group left the union before the second year of membership. This highlights the need to pay more attention to retention of existing members, not just to attracting new members, which has been the main concern of trade unions thus far.

Retaining young temporary workers is very difficult. The problem is that the time lapse between labour market entry and a young person's first stable, open-ended contract is becoming longer. Moreover, this period is characterized by frequent unemployment spells and changes in contractual position, sector, company, and so on. This implies that the young person will spend a long period without having any contact with

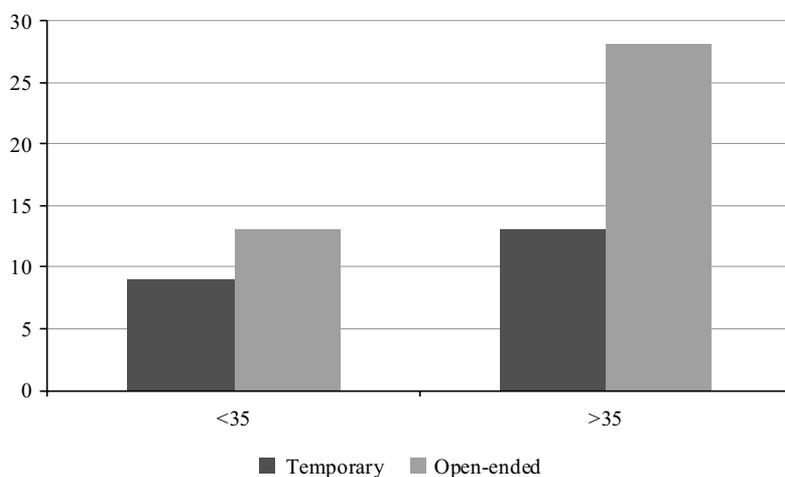


Figure 13.5 Trade union density in Spain by age group and type of contract, 2010

trade unions, hence decreasing their probability of joining in the future, as used to be the case. According to the trade unionists interviewed, this is the real problem in relation to the membership of young people, not that young people have unstable membership careers. Longer stabilization trajectories mean less contact with trade unions, hence making it less likely that they will become members even if they do get an open-ended contract.

3.4 Strategies for Attracting New Members and Tackling Membership Decline

In the interviews with the two largest trade union confederations, different approaches to curbing membership decline were discussed. However, they agreed on three general considerations. First, the institutional context in Spain (and more specifically, the automatic extension of collective agreements) is a significant obstacle to increasing membership levels. Second, changes in the labour market and the organization of work pose additional difficulties to recruiting new members. Finally, there is no magic recipe or single best strategy, but they agree on combining elements from different approaches.

In the workplace; beyond the workplace

Both trade unions agreed on the importance of extending trade union organization and representation strategies to attract new members beyond the workplace. The changes in the ways companies organize their activities, including the fragmentation of production units through outsourcing, makes a narrow focus on workplace representation insufficient. It is therefore necessary to move beyond the workplace, paying particular attention to the local level to reach, organize and represent workers. Thus, for platform workers, and more specifically, riders, local forms of organization are the only mechanism for reaching these workers owing to the absence of a physical workplace. This poses a challenge as trade union organizations and structures are tailored to a different, Fordist, institutional and socio-economic setting, and are difficult to change. That is, local-level representation and organization need to strengthen this level within the trade union structure, something that is already ongoing, according to the unions, but that is difficult in a context of limited resources.

Even though there are strong incentives for trade unions to move beyond the workplace, in relation to both their representation structures and agenda, they also acknowledge that, currently, the best way to attract new members is to have strong workplace representation structures (staff delegates or works councils). These representation structures are, for many workers, the best and most effective way to get in touch with the union.

Related to this point, the organizing strategy has often been presented as an effective method for expanding membership and extending organization and coverage in sectors traditionally unlikely to unionize. Organizing is a concept of union recruitment and mobilization first developed by US service unions and is based on the organization of solidarity in a given territory and group, for example, the cleaning workers in a neighbourhood or the security workers of a port area or an industrial district. Through services and campaigns in this area, the unions plan to reach these dispersed and fragmented groups with precarious jobs and organize them as a grassroots community with a capacity for self-organization. It has reaped some success in Anglo-Saxon countries

in which neoliberal deregulation policies have been imposed, weakening union power (Vandaele and Leschke 2010).

There is an abundant literature on this union strategy in other countries, but very few experiences in Spain, where the strong institutionalization of trade unions and collective bargaining, together with representativeness rules, constitute a significant obstacle to developing such strategies.

Endorse a broader agenda

Shifting trade union action beyond the company necessarily leads to the adoption of community issues not necessarily linked to workers' representation activities or working conditions at company level. This means that the scope of trade union action should not be limited to workplace issues, but encompass community-related aspects, in line with the logic underlying social movement unionism (Turner and Hurd 2001; Köhler and Calleja 2015). Moreover, trade unions are well aware of the importance of including other issues or demands in their agenda as socio-political actors, including climate change, feminism, depopulation of rural areas and demographic change. According to trade unions, during the crisis but also the post-crisis period, trade unions have reinforced this dimension and accordingly have become very active in supporting the 8M feminist strikes and the whole feminist movement. They have also made stronger efforts to include environmental sustainability issues in their policy-making, including collective bargaining.

'Make the union useful' as general recruitment strategy

Spain's low union membership is the result of a number of factors. Some are common to other EU countries and help to explain the long-term decline in union membership in all of them (Vandaele 2019): the growth of the services economy, changes in the labour market and the extension of non-standard and precarious employment, the extension of new business models, and so on.

However, the low membership levels specific to Spanish trade unions are explained mainly by institutional factors and, as noted earlier, two are particularly important. First, automatic *erga omnes* extension in collective bargaining whereby both unionized and non-unionized workers are covered by collective agreements. Second, the Spanish model of union representativeness based on works council elections. Under this system, the institutional presence of trade unions is to a large extent based on electoral criteria, in the specific electoral unit and in all sectoral and territorial dimensions.

These characteristics of the Spanish industrial relations system have important consequences for union membership. The main and most significant is the disincentive to join unions, as the automatic extension of collective agreements means that they apply to all workers, regardless of affiliation, and not just to the signatory party. However, the system also introduces stronger incentives for trade unions to act as electoral machines that capture votes, rather than affiliates, since union (institutional) power is obtained mainly through the computation of elected workplace representatives. As a consequence of this, we observe that the low union membership in Spain exhibits a pro-cyclical pattern. For instance, during the Great Recession, trade unions lost approximately 500 000 members, in a context of high unemployment, deteriorating working conditions and an increasingly negative social perception of trade union organizations (see Figure 13.3). Moreover, the workplace representation system entails only a modest direct role for

union delegates at workplace level, owing to the predominance of works councils and the low levels of affiliation.

Since an important trade union power resource in Spain is institutional and not associational (Rigby 2016; Calavia and Rigby 2019), few innovative strategies are devoted to attracting new members, stabilizing their affiliation and tackling membership decline. More specifically, as the institutional setting hinders trade union affiliation by limiting incentives for members, campaigns have focused on stressing the role played by unions as the main instrument for workers' representation, a mechanism for protecting labour rights and fighting against precariousness.

As union officials recognize, these initiatives are aimed not only at increasing membership, while aware that the institutional obstacles are huge, but also at enhancing the unions' representative role (that is, improving their results in workplace elections), which is considered key in their role as socio-economic and political actors.

For this reason, the strategies for attracting new members tend to emphasize general aspects of unions' roles in society, such as how useful trade unions can be for workers. That is, owing to the lack of strong selection incentives, affiliation is considered to be largely dependent on the perception of the trade union as the most effective actor for representing and defending workers' interests. This is why the most representative trade union confederations in Spain are so keen on strengthening their institutional and representation capacities (Vidal et al. 2014). In line with this approach, strategies aimed at increasing or retaining members should focus on developing proximity services, developing welcome protocols, permanent contact with local level officials, and so on.

Passive and active approaches to recruitment

In this context, we observe a predominance of passive approaches to recruitment (including reduced fees for particular groups) instead of more active approaches that entail the development of new services. Two main strategies have been identified in union leaders' discourse regarding organizational change and the need to reach hard-to-organize groups.

The first strategy, aimed at strengthening the connection between the union and society, promotes a modernization of structures, working procedures, communication strategies and services offered to new types of workers and specific groups, paying particular attention to young people. The objective would be to make the union visible and emphasize its role in defending workers' interests in collective bargaining.

The second strategy, based on worries about lost influence and negative attitudes towards unions in a hostile economic and ideological context, is aimed at reinforcing the traditional union working-class identity and at ensuring unions' social influence in the institutional arena. Analysis shows that union leaders regard these strategies as being in conflict with other strategies and find it very difficult to articulate them (Martínez-Iñigo et al. 2012).

Institutional change to promote trade union membership?

According to some authors, the institutional roots of low membership in Spain suggest that unless there are changes in this dimension, all the trade unions' efforts will have limited success (Lahera 2016). One alternative put forward is to change workplace representation structures. In this way, workers' representatives should be elected directly

to trade union sections, which, depending on the election results, would exclusively manage negotiations and conflicts in the workplace. On this basis, determining union representation should be based on a combination of election results and the number of members. Also, collective bargaining should be transformed from general effectiveness (automatic, *erga omnes* extension) to limiting effectiveness to the signatory parties, at least in conventional units below sectoral level. All this would enable the union, finally, to fund itself better through membership fees and thus make it less dependent on public subsidies (Lahera 2016). These changes would help to increase trade union affiliation; workers would have an incentive to join a union in order to enjoy the benefits of a collective agreement and the union could attract members, thereby gaining power and representativeness.

The most representative trade unions at national level (the CCOO and the UGT) are critical of these mechanisms. Even though they agree on the negative incentives provided by the institutional context for union membership, they nonetheless believe that institutional change would not be beneficial for the working class as a whole. They favour an inclusive system that allows all workers to be represented and covered by collective agreements, at the expense of lower union membership, instead of a system in which non-unionized workers would be left out and membership would be higher.

3.5 Representativeness and Membership of Employer Organizations

Even though it has received less scholarly and media attention, the representativeness and membership of employer organizations are crucial, for several reasons: first, because – as shown in the ‘varieties of capitalism’ literature – employer organizations are central to socio-economic coordination (Hall and Soskice 2001). Secondly, because employer organizations are also key to coordinating collective bargaining and ensuring high levels of coverage.

In the case of Spain, there is also less public debate around representativeness and membership of employer organizations compared with trade unions. There is one major employer confederation, Confederación Española de Organizaciones Empresariales (CEOE), which represents all types of companies and sectors. Within the CEOE is the CEPYME, a confederation representing the interests of small and medium-sized companies. Historically, large companies have played a leading role within the CEOE. In a country dominated by small businesses, this has created some tensions. In 1980 there was an organizational merger of the CEPYME into the CEOE to try to address this. The CEPYME has accordingly acted as a counterbalance to the interests of big business within the CEOE.

Employer organizations do not have election processes similar to those that determine the condition of more representative trade unions, and there are no reliable, publicly available data on membership of employer organizations. It is self-reported by employer organizations without a standard methodology. Even though the law establishes a priori clear criteria to determine which employer organizations are considered most representative, there are aspects that remain vague (Miñarro 2016). According to the Labour Code, employer organizations that cover 10 per cent of companies will be able negotiate sectoral agreements, provided that they employ the same percentage of workers within the functional and geographical scope of the collective agreement. Moreover, employer organizations whose

members cover at least 15 per cent of the affected workers within the functional and geographical scope of the collective agreement will also be able to negotiate sectoral collective agreements. In those sectors in which no employer organizations meet these criteria, those organizations that cover 10 per cent of companies affiliated at national level, or at least 15 per cent of companies or workers at regional level will be able to negotiate.

The criteria for determining the most representative employer organizations are, accordingly, more vague and flexible compared with those affecting trade unions. Generally, determination of the most representative employer organizations to negotiate a collective agreement is not based on objective numbers – either of member companies or workers covered (owing to the difficulties involved in obtaining the data) – but on mutual recognition among all parties involved in the negotiations. However, for new employer organizations that claim to meet the criteria and therefore to be involved in signing the collective agreement, this mechanism introduces a bias, as it obliges them to prove they meet the criteria but does not do so for those that have already been mutually recognized by all the other parties. Thus, in a context of unity among employer organizations, mutual recognition can work without major problems, but in a context of fragmentation of employer representation, it can be a source of conflict, as shown by the Italian case (Pensabene 2019).

As noted by Lahera (2019) the system determining the most representative employer organizations has a strong bias in favour of large companies, which confer a high volume of employment and representativeness on their employer organizations, while marginalizing small and medium-sized enterprises. The representativeness of employers thus revolves around a criterion that deviates from the reality of an economy based on small and medium-sized companies, which must apply agreements with little connection to the negotiators. The power of the most representative employer organizations tends to be concentrated in large companies, which may be leading to the rise of new employer organizations at regional or local level as a counter-power to the existing employer organizations. This can be observed in the Basque country and Catalonia, but also in Andalucía (Miñarro 2016).

The only survey that tries to capture the number of companies affiliated to employer organizations is the Encuesta Anual Laboral. Table 13.1 contains the percentage of member companies according to company size. There is an overrepresentation of large companies in employer organizations compared with smaller ones. Moreover, there has been a clear decline in the number of companies affiliated over the period, considering all company size groups. Unfortunately, we do not have data on the number of workers covered. Table 13.1 suggests that the percentages of workers in companies affiliated to employer organizations are higher.

4. THE STATE'S ROLE IN INDUSTRIAL RELATIONS AND THE AUTONOMY OF THE SOCIAL PARTNERS

4.1 Statist Industrial Relations in Spain?

The most salient feature of the system inherited from the Franco dictatorship was its heteronomy, whereby the state maintained control of employment relations through

Table 13.1 Percentage of companies that are members of an employer organization, Spain, 2013–17

	2013	2015	2017
Total	28.5	24.7	20
5 to 9 employees	21.3	19.6	14.8
10 to 49 employees	35.3	28.1	23.7
50 to 249 employees	46.9	46.5	38.4
250 to 499 employees	55.6	55.4	48.4
More than 499 employees	67.1	65.2	55.0

Source: Encuesta Anual Laboral.

extensive regulation of collective bargaining, as well as employees' rights and working conditions, through the Ordenanzas Laborales (Labour Ordinances), covering issues ranging from pay scales to skills. The whole regulatory edifice was built around the standard form of employment (full-time, permanent, blue-collar male industrial workers) and provided strong protection for this group compared with others.

The democratic transition brought some changes aimed at opening up new spaces for autonomous regulation by employers and unions. However, the legacy of Francoist authoritarian corporatism was still visible in some aspects of the industrial relations framework created in the early years of democracy, as state intervention through statutory regulations remained pervasive (Del Rey and Falguera 1999). The strong institutionalization of the industrial relations system can be observed at all levels and dimensions of the system, and consists of intensive legal regulation; from the rules on the representativeness of social partners, to the *erga omnes* extension of collective bargaining, trade union workplace elections or the articulation between levels in the collective bargaining structure. Legal regulation of collective bargaining means that the Spanish system is far from voluntarist in nature, as confirmed by the 1980 Labour Code that set a substantial floor of procedural and substantive state regulation. The objective was to assist in the development of collective bargaining to weak social partners (Valdés 1995).

Even though a high degree of institutionalization with strong regulatory intervention by the state has often been presented as a strength (as it contributes to institutional stability), it is also one of the weak points of Spain's industrial relations. The regulation of processes and contents of collective bargaining reduces the room for manoeuvre of social partners and hence, their autonomy. Moreover, it can be an obstacle to developing innovative approaches in collective bargaining, such as introducing new issues in collective agreements. Similarly, the high degree of regulations provides incentives for actors to rely on judicial mechanisms for conflict resolution, therefore hindering the development of out-of-court mechanisms and triggering higher levels of industrial conflict (Rodríguez et al. 2016). Summing up, intensive regulation of industrial relations can have a positive impact in relation to institutional stability, but can also become an obstacle for the system to adapt to new challenges.

Since the early 1980s, the governance of industrial relations in Spain has been characterized by two partially contradictory movements (Molina 2007): first, by an increase in the autonomy of the social partners in regulating employment relations; and second, by

episodes of unilateral state regulation, especially in crisis periods. The contrast between these two long-running trends became particularly clear during the Great Recession (see the following section).

4.2 Stronger State Unilateralism in the Crisis ...

Even though all actors interviewed agree on the stronger role of state unilateralism during the crisis, they maintain slightly different perspectives on the impact of reforms. As regards trade unions, they consider the reforms to industrial relations pushed unilaterally by governments in 2011 and 2012 as largely unnecessary and as having a strong negative impact on working conditions, as shown by the internal devaluation and the increase in inequalities (Rocha 2014). By contrast, while considering that these reforms should always respect social partners' autonomy, employer organizations evaluate their impact positively, despite not agreeing with all aspects.

In contrast to collective bargaining reforms in the 1990s and 2000s, whose aim was to enhance autonomy by opening larger spaces for collective self-regulation and company-level bargaining under the umbrella of industry-level agreements, these spaces were reduced in the unilateral reforms introduced in the Great Recession and, in particular, by the 2012 reform. With the crisis, there has been an extension of opt-out clauses, accompanied by conferring greater unilateral decision-making capacity on employers. The ultimate aim of these changes is to enhance competitiveness and labour market flexibility by increasing the adaptability of collective bargaining to the conditions of firms and sectors.

The weakening of collective autonomy and self-regulatory capacity can also be observed in conflict resolution mechanisms. In the 1980s, the detailed body of statutory legislation made the judicial channel the default mechanism for collective conflict resolution. Sectoral and company-level agreements were endowed with the capacity to settle disputes, but this mechanism was seldom used and remained largely ineffective. An important change occurred in 1996 when the social partners signed the Inter-confederal Agreement for Out-of-Court Conflict Resolution (*Acuerdo Interconfederal de Solución Extrajudicial de Conflictos Colectivos, ASEC*). This bipartite peak agreement was not only aimed at further developing extrajudicial mechanisms, but it also created the Inter-confederal Service for Mediation and Arbitration (*SIMA*). This institution is in charge of organizing and monitoring the development of extra-judicial mechanisms, and participates mainly in mediation and arbitration cases. This agreement has subsequently been renewed by the social partners, revealing a strong commitment towards developing extrajudicial mechanisms. Compulsory state arbitration was limited to conflicts that affected basic community services or the development of trade union elections.

Changes introduced during the economic crisis have gone in different directions. The 2011 reform made recourse to mediation compulsory in cases of disagreement, regarding either the renewal of the collective agreement or implementation of mechanisms for internal flexibility. If no agreement is reached under mediation, compulsory arbitration within the *SIMA* is used to resolve any disagreement. In contrast, the 2012 reform established the possibility for compulsory arbitration by the Advisory Commission on Collective Agreements (*Comisión Consultiva de Convenios Colectivos*) in cases of conflict regarding opting out of company-level agreements.

As to wage-setting, developments during the economic crisis also show the tensions existing between collective self-regulation and state regulation. In the 1980s there was a clear move towards the consolidation of autonomous wage-setting in the private sector based on peak-level cross-sectoral coordination. Even though the state was an important actor behind the wage pacts of the early 1980s, the conflict between trade unions and the Socialist government hindered any attempt at replicating incomes policy agreements. After some years of uncoordinated wage bargaining and decentralization, wage-setting since the late 1990s has been characterized by genuinely autonomous coordination through peak bipartite cross-sectoral agreements, signed by the most representative trade unions and employer organizations.

Finally, an additional impact of the crisis and austerity measures has been a move back to unilateral state regulation of working conditions in the public sector. In 2008 and 2009 wage increases for civil servants were agreed in the General Bargaining Forum. For salaried employees, their wages and wage increases for 2008 and 2009 were negotiated in the ‘Second collective agreement for salaried employees 2006–2008’ and in the ‘Third collective agreement for salaried employees 2009’. These two agreements established that the same increases negotiated for civil servants should be applied to salaried employees. In contrast, from 2010 until 2015, pay increases for public sector employees were imposed unilaterally.

In summary, the above developments show the fragility of collective self-regulation in a country with a statist industrial relations tradition under the external pressures of economic adjustment. Despite the consolidation of autonomous collective bargaining and the reduction in conflict rates, the state still plays the role of coordinator and regulator of last resort, as became clear in the recent economic crisis.

4.3 ... Which Remains Strong in the Post-crisis Period

Even in a context of economic recovery and with a left-wing government since 2018 that has made clear its commitment with social dialogue, the social partners have expressed their discomfort with some decisions, including the unilateral increase in the minimum wage for 2019 (see Box 13.1), the unilateral approval of a law for registering working time (see Box 13.2) or their limited involvement in the most recent phase of the European Semester process. The social partners consider that governments of different colours have often intervened in policy issues that should be dealt with and decided through social dialogue. To a certain extent, these developments show the fragility of collective self-regulation in countries with statist traditions under pressure of economic adjustment.

The social partners interviewed provide several explanations for the persistence of state unilateralism in the post-crisis period. First is the unstable political situation. The fragmentation in the political party landscape has made it very difficult to reach stable majorities in Parliament. As a consequence, there have been four general elections since December 2015. In June 2018, the right-wing government lost a no-confidence vote and a new left-wing government, headed by Pedro Sanchez, was appointed that nonetheless failed to achieve the necessary support after the elections held in April 2019. After new elections in November 2019 delivered similar results, negotiations delivered – only in January 2020 – a coalition government with the left-wing party Podemos. The social

BOX 13.1 THE INCREASE IN THE STATUTORY MINIMUM WAGE FOR 2019

At a meeting of the Council of Ministers held in Barcelona on 21 December, the executive approved a 22.3 per cent increase in the minimum wage as of 2019, from €735.9 to €900 per month, or €12 600 per year (based on 14 monthly payments). This is the largest increase in the minimum wage since 1977.

The increase was negotiated between the Socialist government and the left-wing party Podemos as part of their agreement for the 2019 budget. The government justified the move as needed to converge with the EU average minimum wage in the context of economic growth. It will also serve to improve the general condition of the economy, while helping to prevent in-work poverty and encouraging more dynamic wage growth. More specifically, this increase is in line with recommendations made by the European Committee of Social Rights to set the minimum wage at 60 per cent of the median wage in the economy and will contribute to meeting the objectives of the 2030 Agenda. The government also expects this increase to have a positive impact on domestic demand and lead to an increase in tax revenues through social security contributions.

Contrary to standard practice, the increase in the minimum wage has been set unilaterally, without negotiations with trade unions and employer organizations, although they were consulted about it. While trade unions have welcomed it, employer organizations have been very critical of the increase, as they feel it will weaken jobs and become an obstacle to job creation.

BOX 13.2 COMPULSORY REGISTRY OF WORKING TIME: BETTER WITH SOCIAL DIALOGUE

The registration of working hours was long demanded by the Labour Inspectorate, which warned that it did not have sufficient tools to prove abuses of working hours, such as unpaid overtime and fraudulent part-time contracts (for which employees have a reduced working day on paper, but they must work more hours).

In March 2019, and after informing the social partners, the government approved a package of measures designed to improve the position of particularly vulnerable groups in the labour market and to combat precarious work (Royal Decree 8/2019).

One measure was a new regulation on registering employees' working time in an effort to curb the abuse of unpaid overtime by companies. The regulation on registering working time gives companies two months to record the start and end times of the working day for each employee. These records must be kept for four years and be accessible to employees, their representatives or the Labour Inspectorate.

The implementation of the registration system is left to collective bargaining between companies and trade unions or, failing that, the discretion of the employer.

This regulation has received strong criticisms from employers, but also from trade unions. As regards, employers (CEOE), they complain about the form and content of the reform. More specifically, they consider that this is a terrain for social dialogue, not for the government's unilateral regulation. Doing it unilaterally has prevented the regulation from being polished to make it easily applicable by companies. Currently, there is a great deal of uncertainty about how to apply it, and companies are adopting very different criteria for measuring things such as rest breaks, lunch time, and so on. In relation to the content of the reform, employers consider that it introduces additional elements of rigidity instead of the flexibility required by the labour market. More importantly, the CEOE believes that in some companies this new obligation is giving rise to a different reality from what might have been expected, which was the control of illegal or abusive overtime. In this way, many companies are realizing that once they make the record, the employees owe them the hours.

The most representative trade unions (the CCOO and the UGT) think that this reform is a step in the right direction in tackling an important problem of the Spanish labour market, namely, the abuse of part-time contracts and, more generally, non-payment of overtime. However, they also believe that it falls within the domain of the social partners and should be addressed and regulated through social dialogue. They also think that had it been negotiated with the employers, the reform would have been different.

partners agree that this situation, with a series of acting governments, has obstructed social dialogue, as they could not commit to substantial reforms. Moreover, governments have been more concerned with forging alliances with other political parties than in engaging in social dialogue.

Secondly, the trade unions consulted also mentioned the fiscal straitjacket of the euro as a further impediment to engaging in meaningful social dialogue. According to them, the financial stability rules limit governments' room to manoeuvre, therefore making it more difficult to reach agreement on some issues. In this context, the trade unions have also shown disappointment with their role in the European Semester process, which is constrained by a very tight schedule and does not allow them to fully incorporate the social partner's views.

5. SOCIAL PARTNERS, DIGITALIZATION AND INDUSTRIAL RELATIONS: WHAT ROLE FOR SOCIAL DIALOGUE?

The growth of digitalization, automation and the emergence of platforms are diverse manifestations of the technological revolution that is currently taking place throughout the world, and is rapidly transforming the structure and governance of companies as well as the labour market. The algorithms behind these processes are increasingly important as determinants of social order, work organization and business decisions (Fernández-Macías 2018; Foerster-Metz et al. 2018). Analysing the impact of digitalization therefore entails studying the new set of economic relationships that are arising from continuous and widespread datafication, the application of digital intelligence through digital networks, and the implications of this change for social and business structures.

Within the framework of all the social processes linked to the new technologies, and specifically in the labour market, in this section we adopt a narrow approach and focus on the platform or gig economy. Platforms are open and dynamic Internet spaces that offer products and services, and intermediate between supply and demand. Thus, the platforms have a significant impact, not only on prices, but also on the manner of providing the service, the organization of work and the way in which consumers interact with their services and suppliers. Work on platforms, or gig work, refers to those services developed by independent workers who depend on one or more intermediary platforms, to which they are connected by a smartphone or an application. These workers are generally underpaid (sometimes less than the national minimum wage), can be 'deactivated' at any time, have no protection through collective bargaining, and lack any of the work-related rights that workers enjoy when classified as 'employees' (Hawley 2018, p. 8).

The digital economy is currently the focus of public policy-makers. Although we do not have precise estimates, we can say that we are experiencing a substantial transformation

(Fernández Macías 2018) which is affecting a growing number of sectors and workers. Thus, the importance of these processes for national and supranational labour and markets cannot be ignored by regulators.

The rapid advance of the digital economy and, in particular, the platform economy in the EU has generated increasing pressure from different actors for governments to act quickly (Maselli et al. 2016). Governments are being asked to regulate to protect workers and (traditional) companies that compete with the platforms, emphasizing the need to establish a level playing field and appealing not only to fair competition, but also to maintaining Social Europe. In the face of these voices, however, there are others who advocate greater caution, since excessive and hasty regulation could hamper innovation (Lenaerts et al. 2017; Nooren et al. 2018).

Despite the growing voices calling for regulation of the platform economy, to date few steps have been taken, with significant variation in the degree and type of regulation across EU countries. This is also the situation in Spain, where no regulation has been adopted thus far and the process remains largely within the legal realm (see Box 13.4 in section 6 of this chapter). There are a number of reasons for this. On the one hand, this is part of the very essence of the platforms, which were born in a legal vacuum and have the generally explicit objective of avoiding regulations. Second, there is the perception, encouraged by the platforms, that as their activities represent a completely new business model arising from rapid technological change, they should not be treated in the same way as existing economic activity (Garben 2017, p. 3). Finally, the greatest difficulty affecting its regulation is that some aspects of the operation of online platforms do not fit easily into pre-established regulatory categories (Munkøe 2017).

The impact of the digital economy on industrial relations is a controversial topic in Spain. Nonetheless, the interest among trade unions and employer organizations has not yet been reflected in social dialogue outcomes or collective bargaining. The interviews have revealed two topics on the agenda of the social partners in relation to the impact of digitalization on employment relations: first, the use of digital mechanisms and tools for workplace monitoring and surveillance; and second, the regulation of platform workers.

5.1 Social Dialogue, Digital Monitoring and Surveillance

One of the most important impacts of the digital economy on employment relations is the use of new technologies that allow employers to collect large amounts of data and information on employees, tasks carried out and their performance. This raises a number of issues in relation to the use and ownership of this data. The most controversial aspects concern their use in monitoring employees and assessing their performance.

The role of collective bargaining in regulating the use of digital mechanisms for monitoring and surveillance is still limited, as acknowledged by the interviewees. The policy debate in relation to workplace monitoring has moved to data protection and the new regulation on registering working time (see Box 13.2), which obliges employers to maintain a detailed record of working time for all employees with the objective of reducing abuses of unpaid overtime. In relation to data protection, in 2015 the Spanish Agency for Data Protection produced a handbook for data protection in employment relations (AEPD 2015), containing recommendations on companies' use of employees' data and

information, including data gathered through surveillance mechanisms. More recently, the UGT published a document containing guidelines for collective bargaining in relation to data protection and guaranteeing digital rights (UGT 2019). In this document, the UGT demands that the role of collective agreements in defending workers' rights be strengthened in relation to data use. The union asserts that the inclusion of protection clauses in collective agreements has an important pedagogical and formative role as a regulator of the necessary protection of employees' right to the protection of their personal data, and the guarantee of specific digital rights.

A digital right discussed, but not yet regulated, is the digital disconnection right. Since 2017 there has been a growing debate among the Spanish social partners and political parties on the possibility of allowing workers to disconnect their digital devices (primarily mobile phones and computers) when their working day ends or during rest breaks. In January 2019, the Ministry of Employment suggested that there should be a national debate on these issues through social dialogue. The Socialist Party and trade unions are strongly in favour of regulating the right to digital disconnection outside working time as there is a lack of relevant legislation, while there has been an increase in symptoms of stress and burnout associated with the continuous use of digital mechanisms beyond working hours. However, CEOE has suggested that there are some sectors in which applying digital disconnection might not be feasible, in which case regulating it by law would impose unnecessary rigidities on companies.

In 2018, the UGT in Catalunya produced a detailed analysis of the relationship between new technologies and workers' privacy rights (Ezquerria 2018). In this document they reiterate the need for the employer's use of technological devices for monitoring purposes in the workplace must be agreed with the workers and adapted via collective bargaining. In its Digital Plan for 2025, the main employer organization, the CEOE, makes a series of proposals in relation to the digitalization of the economy, but nothing is mentioned about workplace monitoring and surveillance (CEOE 2019). However, there is significantly less debate around the use of digital mechanisms and devices at the workplace for monitoring purposes. In fact, this topic has not yet entered bipartite social dialogue and is present only to a limited extent in collective bargaining.

5.2 Platform Economy and Platform Workers

Extension of the digital economy in Spain and the challenges posed to the labour market

The second important challenge posed by the digital economy, and its manifestation in platforms, is the extension of new forms of organization and employment. This is probably the most disruptive aspect of the digital economy in relation to the labour market, as it implies a reconfiguration of traditional employment relationships. Even though it is difficult to quantify the extension of platform work, a number of surveys have suggested that Spain has one of the highest incidences of platform work in the EU (Pesole et al. 2018).

Several factors may explain the stronger incidence of the platform economy and platform work in Spain (Rocha 2017). First, Spain has a high unemployment rate, in particular high youth unemployment. The use of online platforms is more intense for younger people, owing to their greater familiarity with digital technologies and environments. In a situation in which it is difficult to find a job, and many of the jobs that exist are very

precarious, participation in this type of platform is an alternative to unemployment, and in some instances, an alternative to other jobs. Studies agree on the youthful profile of crowd and platform workers, and the use of these platforms as an alternative means of obtaining income in otherwise bleak circumstances (De Stefano 2016). Crowd workers tend to fall passively into this type of employment rather than it being a way of improving their labour market situation.

Secondly, an economy whose competitive model is based on low costs (including wages), will have more incentive to develop this type of platform since it introduces greater competition among potential service providers, and therefore the development of business models based on price/cost competition. The reduction in the cost of the service, either for individual consumers or for companies, can therefore favour crowdsourcing.

Governing platform work in Spain: from judicialization to social dialogue?

Since its emergence and extension, there has been a growing debate on whether to regulate the digital economy in general, and the platform economy in particular. This debate is polarized between supporters and opponents of regulation (Codagnone and Martens 2016). Those who defend regulation argue that it is necessary to guarantee the protection and safety of consumers, avoid social dumping (Dittrich 2018) and guarantee fair competition, while others argue that regulation of the negative effects would be more expensive than those effects themselves (Allen and Berg 2014). Although there is a growing consensus that government action is required, the challenge lies in addressing the phenomenon in a way so that the negative impacts of the platform economy can be limited, while enabling opportunities to be seized (Maselli et al. 2016). In particular, those who advocate greater caution in regulation emphasize that the main objective of the new digital governance must be to foster innovation and development, and its regulation must be sufficiently inclusive and prudent while the platform economy is still at an early stage.

In relation to the labour market impact and regulation of platform work, there are several aspects that cause concern among the social partners and therefore justify regulation. This includes the imposition of a commercial relationship between the platform and its service providers, who are treated as independent and thus denied the guarantees of an employee or, even, a self-employed worker (De Stefano 2016; Kuhn 2016). As stated in Eurofound (2018), of all the transformations that the digital economy entails, its labour market impact poses important challenges to governments and the social partners. Of particular concern in this regard is the extension of contractual relationships that evade labour regulations, although many issues are subject to regulation in market and employment relationships (Munkøe 2017, p. 43). Whether or not workers on platforms that have traditionally been framed within the collaborative economy should be considered employees or freelancers is a key issue, as employees enjoy rights and employers have tax obligations that do not apply to massive outsourcing (Todolí-Signes 2017). To the extent that a platform worker is not considered a dependent worker, they lose particular social and labour rights, both individual (unemployment protection, training, and so on) and collective (representation and collective bargaining) (Lenaerts et al. 2017).

Similar concerns were raised by the social partners interviewed in Spain. Their main responses to the platform economy are summarized next.

Organizing platform workers: challenges and strategies to creating a collective identity

The organization of platform workers themselves is the first response. The protest and strike actions carried out by Spanish riders took place after actions in other European countries, including the UK and the Netherlands. Several organizations representing riders have been created in recent years, but the first and most important one is 'Riders x Rights' (Riders x Derechos). This organization brings together and represents riders from various platforms, including Glovo and Deliveroo. Through protest actions and strikes, these workers asked for improvements in their working conditions, including setting a minimum number of hours of work per week and an increase in hourly deliveries, with the aim of improving their income and achieving greater stability.

Organizing platform workers, whom platform companies refuse to acknowledge as employees, is aimed at building a collective identity. Although this organization has been carried out autonomously, the largest unions are becoming more sensitive to the problems of these workers. Thus, the UGT has launched a platform to collect demands and complaints from platform workers (Tu Respuesta Sindical Ya). The organization of these workers is a necessary condition for better regulation of their working conditions. More specifically, their organization requires overcoming the fragmentation and individualization imposed by digital platforms, and developing forms of collective action to defend their common interests. Even though their circumstances make organizing these workers very difficult, the use of technology and, in particular, social networks, can – paradoxically – be very effective (Aloisi 2015).

Judicialization of the conflict around platform workers

To date, the main strategy followed by the most representative trade unions in relation to the platform economy and its workers is to judicialize the conflict. For the unions, this is a response to (1) the difficulties involved in making progress through social dialogue owing to the political situation, and (2) the uncertain legal position of platform workers, who are not considered employees, which makes it difficult for the trade union to organize them.

The most representative trade unions have thus focused their efforts on achieving legal recognition of a dependent employment relationship for platform workers. For this reason, they have helped platform workers to file complaints before the Labour Inspectorate and the Social Courts. The trade union officials interviewed are confident that this strategy will result in judgments that oblige platforms to recognize an employment relationship with their workers. They note that there have already been some early rulings in this direction, although it may still take some time until the superior judicial instances adopt a firm policy in this regard and unify the jurisprudence. Particularly relevant were the first court case on digital delivery companies (in this instance, Deliveroo), in December 2017, in which the Labour Inspectorate concluded that food distributors are not self-employed, and the recent judgment by the Madrid High Court against Glovo (see Box 13.3). In both cases, although the contract between the platform and the riders stipulates that the latter are self-employed, the Courts ruled that this is in fact a dependent employment relationship.

BOX 13.3 RULINGS ENDORSE EMPLOYMENT RELATIONSHIP FOR RIDERS OF DELIVEROO AND GLOVO

A judgment in 2018 by the Social Affairs Court of Valencia ruled that Deliveroo riders are dependent workers, forcing the company to reinstate or compensate a worker who had been dismissed. The company was sued by a rider who had received daily average remuneration, excluding taxes, of €28.49. The contract signed with the company indicated that the rider would act 'at all times as an independent contractor' and would not be considered an 'agent, employee or partner of the company'; and set the amount that would be received (€3.38 per delivery) and how the deliveries should be carried out. The worker was then dismissed without receiving any compensation.

The ruling declared the dismissal of the worker to be unfair and established, for the first time, that there was an employment relationship between Deliveroo and the rider. This judgment endorses the position of the Labour Inspectorate of Valencia made in December 2017, according to which, riders cannot be considered self-employees or independent workers. The judgment came amid growing interest and concern about work in the platform economy and the extension of new forms of employment, including crowd employment, facilitated by technology. This is the first time a ruling has rejected the idea, promoted by platforms, that these workers are merely service providers and do not have an employment relationship.

Moreover, in November 2019, the Social Section of the Superior Court of Justice of Madrid failed that the riders of Glovo are bogus self-employed. The 17 judges involved in this sentence achieved uniform criteria in this case that contradict and annul a previous ruling of Social Court Number 17 of Madrid that in January had endorsed the company's business model against a rider who had been fired.

Now the Madrid Court has partly upheld the complaint made by the rider that the contractual nexus comes under regular labour law; that is, riders cannot be considered economically dependent autonomous workers (*trabajadores autónomos económicamente dependientes*, TRADE) because it is not true, according to the magistrates, that they carry out their tasks with 'total freedom' and because they work with 'other people's means' on the basis of the digital platform.

6. CASE STUDIES

6.1 Case Study 1: Governing the Digital Economy: The Role of Social Dialogue and Collective Bargaining

Trade unions, employer organizations and the government agree on the need to move beyond the current judicialization of the conflicts affecting platform workers and achieve a new equilibrium releasing these workers from the current uncertainty in relation to their status. However, there are marked differences concerning how to reach this goal. Some actors support the enactment of new regulation, adapting existing legal instruments to the needs of the platform economy. Others find that there is no need to regulate (as this would imply an erosion of existing rights) and that collective bargaining can also be a valid mechanism for protecting platform workers.

Digital TRADE (economically dependent autonomous workers) and the regulation of platform work through social dialogue

The interviews have revealed a common interest on the part of both employers and trade unions in regulating the platform economy, and in particular the working conditions of platform workers, in order to ensure a level playing field for all companies and avoid

unfair competition. The current situation is characterized by uncertainty when it comes to qualifying the relationships between digital platforms and service providers (platform workers). The contradictions that arise in judicial rulings on the legal status of these workers make it reasonable to demand regulations aimed at clarifying the nature of their relationship to digital platforms.

However, there is no consensus among the social partners on how to achieve this goal. Even within employer organizations, different positions have been identified. In March 2019, the Asociación de Trabajadores Autónomos (ATA, Association of Autonomous Workers), a hybrid between a union and a business association that organizes and represents the self-employed, and is a member of the main employers' confederation, the CEOE, launched, together with ADIGITAL (Asociación Española de la Economía Digital, Spanish Association for the Digital Economy), a proposal to establish the category of 'digital TRADE' aimed at platform workers.

The concept of economically dependent self-employed (or autonomous) worker falls between employment and self-employment. It refers to those who do not correspond to the traditional definition of employee since they do not have an employment contract as dependent employees. However, although from a formal point of view they are self-employed, they are also economically dependent on a single employer for all or much of their income (according to Spanish law, more than 75 per cent of their wages, either as a paid employee or as a businessperson). This special relationship is strongly regulated and needs to be carefully defined in a written contract, which should also specify whether it is permanent or temporary.

According to the ATA and ADIGITAL, the TRADE category provides a good starting point for developing a new regulation that fits the characteristics and needs of workers in the platform economy. In a recent document, ADIGITAL (2019) presented a proposal to regulate in this direction, taking France as an example. The idea is to open up a debate on this issue and define the digital TRADE. The proposed regulation is based on two pillars: the first establishes a criterion in terms of the relevant labour regime and the second focuses on ways in which the TRADE model can be improved. In relation to the first aspect, the requirement is that a digital channel is the only means of offering the platform's services, for contracting and paying for them, and for formalizing the contract between the worker (termed the user provider) and the digital platform. The proposal considers three additional requirements: first, these workers must be able to decide independently how much work they will take on and how to organize it; second, the relationship must be non-exclusive; and third, instruments or tools must be provided for carrying out the work. Autonomy concerning decision-making is particularly important as that has been the criterion used in some judgments and by the Labour Inspectorate to define the relationship between platform and worker as one of dependency.¹ According to this interpretation, the platform maintains control over the organization of work as a prerogative of the employer. For this reason, a platform worker should be considered an employee of the platform. ADIGITAL's proposal specifies the conditions that determine whether a worker is truly autonomous, namely if they, as service provider, can freely choose the form, schedule and days on which they want to work, without penalties.

However, the Labour and Social Security Inspectorate warns that most of the judgments coincide in asserting the existence of an employment relationship between riders and platforms. Moreover, they do not see the need to make an ad hoc regulation for

platform work, as this would probably entail the erosion of existing rights. In their view, platform work could be brought under existing regulations.

The lack of consensus among employers could be seen when in September 2019 the ATA withdrew its support for the digital TRADE proposal. According to the ATA, this move was a response to the need to wait for clear judgments and solid jurisprudence on the categorization of platform workers. Moreover, they also think it is important to reach a common position within the employers' confederation in order to enhance their bargaining position and avoid organizational tensions.

It is also interesting to note that another important association for the self-employed, the Unión de Profesionales y Trabajadores Autónomos (UPTA) maintains a different position, which is close to the UGT's, that there is no need to issue new regulations on platform work because platforms and their activities could be adapted to the current legislation in Spain.

Finally, the acting Minister of Employment and Social Security, Magdalena Valerio, has already expressed her intention to increase the protection of riders and platform workers more generally. The caretaker government has already made clear its intention to draft a new Labour Code to adapt regulations to the new technological and social environment. However, any new regulation will come out of tripartite social dialogue.

Even though they disagree on the best formula for regulation, employers and trade unions do agree that this should be one of the top priorities for social dialogue, but the current political uncertainty is a major impediment to progress.

Regulating platform work through collective bargaining: food delivery in Spain

The main strategy pursued by the most representative trade unions in Spain, the CCOO and the UGT, is to incorporate platform workers in existing collective agreements so that their working conditions are governed by its provisions, thereby assimilating them to those of workers performing similar tasks in non-platform companies. In this endeavour, the trade unions have the support of the main employer organizations in the sector, since they share an interest in limiting social dumping through the use of platforms and ensuring a level playing field.

A major achievement here was the extension in March 2019 of the fifth sectoral collective agreement for restaurants and catering (ALEH-V) until December 2020. With this extension, the main employers and trade unions in the sector brought in home food delivery workers 'on foot or in any type of vehicle that does not require administrative authorization established by transport regulations, as a service provision from the establishment or commissioned by another company, including digital platforms or through them'.

The inclusion of riders in the collective agreement categorizes them as workers in the hospitality sector, thereby ending the legal uncertainty that afflicted them as independent workers. According to the CCOO, this collective agreement constitutes an important landmark and points the way for other collective agreements to improve the working conditions of platform workers. This union indicates that other collective agreements can, along the lines of the ALEH-V, regulate the occupational category, wages and functions of platform workers in that sector. Moreover, these workers are also protected in case of subrogation, succession or replacement of businesses with concession catering services in public places such as airports and railway stations, either as a single concession, or in cases of segregation in various concessions.

Employers in the sector have also welcomed this extension as a way of guaranteeing that all businesses in the sector play by the same rules. However, ADIGITAL, the association that groups the companies of the digital economy, has criticized this agreement. First, the lack of involvement of any worker or worker representative in the negotiation of this extension does not make much sense. Secondly, they note that the mere recognition of an employment relationship in a collective agreement (as the ALEH-V does) does not mean that digital platforms fit this regime. Some important members of ADIGITAL such as Glovo and Deliveroo, have not applied the agreement because they consider that a collective agreement is not applicable to the self-employed. Both platforms maintain that there is no employment relationship between the riders and the platform, and that the extension of the ALEH-V further complicates the public debate on platform workers. As previously noted, ADIGITAL insists that the existing regulations need to be adapted to what it considers to be the new economic and social reality, as some other EU countries are already doing.

The trade unions consulted consider that this extension to be the way forward, however, and indicate other collective agreements, such as that in transport and logistics, where they are pushing to introduce similar clauses with the support of the main employer organizations in the sector.

6.2 Case Study 2: Peak Cross-sectoral Social Dialogue between Unions and Employers Remains Strong

Despite the problems in relation to tripartite social dialogue during the crisis, bipartite social dialogue between unions and employers has remained very strong. The social partners nonetheless agree on the importance of bipartite cross-sectoral social dialogue as an instrument for governing industrial relations and reaffirming their autonomy vis-à-vis the state. In contrast to tripartite social dialogue, bipartite social dialogue between trade unions and employers has maintained its vitality and, in July 2015, the social partners signed the ‘Third Agreement on Employment and Collective Bargaining 2015–2017’. Even though negotiations took longer than expected owing to disagreement on wage increases, the unions and the employers reached agreement on the guidelines for developing collective bargaining in the coming three years. Bipartite social dialogue has accordingly shown greater resilience than tripartite social dialogue, a trend that has already been identified (Molina and Rhodes 2011).

A new agreement was signed in 2018. After several months of negotiations, which broke down on several occasions owing to disagreements between unions and employers on wage increases, in June 2018 a new peak cross-sectoral agreement was signed by the most representative trade union organizations – the CCOO and the UGT – and employer organizations (the CEOE and the CEPYME). The peak-level, inter-sectoral agreement covers wages and collective bargaining until 2020. The social partners are keen for this pact to mark a turning point in relation to the internal devaluation that started in 2010 and led to a decline in wages in real terms. The agreement sets out negotiated wage increases of up to 2 per cent until 2020, with the possibility of an additional 1 per cent increase depending on productivity trends, business performance and levels of absenteeism. It also establishes a base of €14 000 a year for negotiated wages, a clear improvement for the lowest wages, which suffered most in the crisis (see Box 13.4).

BOX 13.4 THE ROLE OF SOCIAL DIALOGUE IN INCREASING REAL EARNINGS AND FIGHTING AGAINST LOW WAGES IN THE POST-CRISIS PERIOD

Since 2014, the Spanish economy has experienced positive growth rates and the labour market has improved considerably in relation to employment. However, real earnings have lagged behind in both the private and the public sectors of the economy. Governments and social partners have implemented a series of initiatives in order to tackle this situation. The first step consisted of a new framework agreement for working conditions and employment in the public administration, signed between the finance minister and the most representative trade unions in the public sector: the CSIF, the CCOO and the UGT. The agreement establishes a minimum wage increase of 6.1 per cent for public employees over the period 2018–20 (1.75 per cent in 2018, 2.25 per cent in 2019 and 2 per cent in 2020), and a maximum of 8.9 per cent conditional upon GDP growth and the fulfilment of the budget deficit target for 2020. It is the first time that wage increases for public employees will be linked to macroeconomic performance, with higher wage increases to be paid when GDP growth surpasses 2.5 per cent. Moreover, the agreement means that collective bargaining in the public sector has been restored after several years of unilateral regulation.

The second step consisted of the bipartite peak agreement between trade unions and employers signed in June 2018. With this agreement, the social partners wanted to mark a turning point in relation to the internal devaluation starting in 2010, which led to a substantial decline in real wages. This pact also puts an end to the deadlock in bipartite peak inter-sectoral agreements for collective bargaining coordination and employment, as the last agreement was signed in 2015 and attempts to negotiate a new agreement have failed since then. The agreement contemplates negotiated wage increases of up to 2 per cent until 2020, with the possibility of an additional 1 per cent increase conditional on productivity, performance and levels of absenteeism. In addition, the agreement also establishes a floor for negotiated wages of €14 000 a year, a clear improvement for the lowest wages, which suffered most in the crisis.

Finally, late in 2018, the government approved a 22.3 per cent increase in the statutory minimum wage to €900 per month for 2019, the largest increase in the period since the restoration of democracy. This increase was set unilaterally by the government in December 2018.

7. CONCLUSIONS

This analysis of practices and cases around three major industrial relations issues has revealed the important role of social dialogue in governing the challenges facing industrial relations in Spain. Social dialogue was abandoned during the Great Recession, but experienced a slow revitalization in the post-crisis period. Even though it has gained some momentum since 2018, the social partners coincide in identifying political instability as a main obstacle to advancing on some of the issues. Moreover, they also converge in the need to reaffirm social partners' autonomy in a context in which unilateral state regulation remains in place, notwithstanding the improvement in economic conditions. The role of bipartite cross-sectoral agreements on employment and collective bargaining signed since the late 1990s constitutes, according to the social partners, the best example of autonomous governance of industrial relations and has become one of the key elements of industrial relations in Spain. Employers have been particularly concerned in recent months about the state regulating unilaterally in key areas, such as the minimum wage and working time register.

The social partners in Spain face significant challenges in the new world of work and agree on the need to strengthen a number of capacities in order to be able to provide effective responses based on social dialogue. Enlarging the membership base is considered key from the trade union side, as this would not only enhance the input legitimacy of social dialogue, but also help to strengthen other power resources of trade unions. However, no clear strategy on achieving this goal has been identified owing to the institutional context, which the unions view as the main obstacle to boosting their membership. Even though membership is not considered a problem for employer organizations, there are emerging issues in relation to determining representativeness, especially for new employer organizations. On both sides, associational fragmentation and the appearance of new organizations is considered an important challenge from the point of view of membership, representativeness and the governance of industrial relations.

The multi-dimensional character of the impact of digitalization on industrial relations explains why the social partners tend to focus on different elements. For trade unions, the implementation of new technologies that allow employers to collect a large amount of data from employees, poses important challenges in relation to their use for surveillance or disciplinary purposes. Even though existing regulations on data protection and a number of legal judgments already provide some criteria on how to collect and use data, there remain gaps in relation to employers' use of artificial intelligence (AI) or algorithms. Trade unions believe that this should be one of the key issues to be negotiated in the context of tripartite social dialogue. The extension of the platform economy and platform work constitutes another main concern for trade unions, and to a lesser extent for employers. Currently, the quantitative extension of the platform economy remains limited, but the unions have raised the alert about the risks of platformization of the economy if adequate regulations are not introduced. Similarly, some employers have also expressed concern about the unfair competition practised by platforms in some sectors (for example, retail, hospitality and food and restaurants), as they do not comply with existing collective agreements or regulations. In these instances, trade unions and employers are building a shared space for autonomously regulating platform work through social dialogue.

NOTE

1. Rulings on this issue differ: some assert that the relationship between the rider and the company is a true work contract (judgments of Social Court 6 of Valencia, 1 June 2018 and of Social Court 31 of Barcelona, 11 June 2019), while others find that the special circumstances of this legal relationship mean that it differs from an employment relationship (judgments of Social Court 39 of Madrid, 3 September 2018 and of Social Court 17 of Madrid, 11 January 2019).

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APPENDIX: LIST OF INTERVIEWS

- Marcos José Pérez – Ministry of Employment, Migration and Social Security, Madrid, 17 October 2019.
- Rubén Ranz – Coordinator of Turespuestasindical.es, telephone interview, 23 November 2019.
- Ana Herraéz – Employment Relations Department, CEOE, Madrid, 16 October 2019.
- Margarita Bravo Torres – Social and Economic Council of Spain, Director of the International Relations and External Action, Madrid, 14 June 2019.
- José Domingo Roselló – Research Department UGT, Madrid, 31 October 2019.
- Miriam Pinto Lomena – Employment Relations Department, CEOE, Madrid, 16 October 2019.
- José Varela Ferrío – Coordinator of Digitalization of Work, UGT, telephone interview, 5 December 2019.
- Carlos del Barrio Quesada – Head of Trade Union Action, CCOO Catalunya, Barcelona, 29 October 2019.
- Gonzalo Pino – Head of Trade Union Action, UGT, telephone interview, 11 December 2019.

14. Industrial relations, social dialogue and the transformation of the world of work: The Swedish experience*

Dominique Anxo

1. INTRODUCTION

A fundamental feature of the Swedish model is the crucial role played by the two sides of industry in shaping the norms that regulate the labour market: working conditions and wage formation. Essentially bipartite, social dialogue in Sweden is well developed and based principally on collective bargaining between strong and independent social partners. There are few tripartite institutions in Sweden, and both substantive agreements and procedural rules are the outcome of negotiated, bipartite self-regulation that is independent of state intervention. State intervention in the labour market does occur through labour legislation and employment policy, but a characteristic of the Swedish industrial relations system is that most labour laws can be modified via collective agreements, reinforcing the social partners' role in producing norms and rules regulating the labour market. Just because the Swedish industrial relations system is based predominantly on bipartite self-regulation, trust and cooperation between the social partners, as well as on autonomous collective bargaining, does not mean, however, that social dialogue between public authorities and the social partners is absent. Consultation and concertation between the latter have a long tradition, for example, in the form of government and parliamentary inquiries or committees, and they are an important element of Swedish industrial relations, influencing the design of employment, training and social policies. Government policy and attitudes towards social dialogue also affect the development of industrial relations.

Recent developments in the Swedish industrial relations system and social dialogue – in particular the emergence of new compromises regarding the organization of collective bargaining and the resolution of labour market conflicts, as well as changing power relations between the two sides of industry over the past two decades – are closely related to policy and institutional reforms. The reorientation of macroeconomic policy (fiscal consolidation and non-accommodative monetary policy), the waves of deregulation in labour and product markets, and modifications in the tax and benefit system, in particular the unemployment insurance system, have influenced the Swedish industrial relations system and may explain the significant decline of union density and the shift in the balance of power to the advantage of the employers.

This chapter is structured as follows. Section 2 describes the main features of the Swedish industrial relations system, the nature of the collective bargaining and social

dialogue system, and reasons for its resilience, and then presents some outcomes of the industrial relations system. Section 3 sets out the recent transformations in Swedish industrial relations, focusing on the trends in trade union and employer density, as well as changes in the level of collective bargaining. Section 4 illustrates the impact on the Swedish industrial relations system of policy reforms and institutional changes, with a special focus on the reform of unemployment insurance (Ghent system) in explaining recent developments (Case Study 1). Furthermore, a short description is given of strategies used by trade unions to counteract declining membership and union density. Section 5 analyses the attitudes and role of social partners and public authorities as regards restructuring and technological changes in general, and information technology (IT) and digitalization in particular (Case Study 2). The final section offers some concluding remarks.

2. SWEDISH INDUSTRIAL RELATIONS SYSTEM AND SOCIAL DIALOGUE¹

2.1 Triad of Swedish Industrial Relations: Autonomy, Strength and Self-regulation

The Swedish industrial relations system relies on powerful, independent and all-encompassing employers' and workers' organizations that enjoy substantial autonomy vis-à-vis the public authorities (see Anxo 2018, 2019). The Swedish industrial relations system, and therefore social dialogue, constitutes the archetype of a bipartite agreement-based model of labour market governance, in which the social partners play an essential role in determining the norms and mechanisms for regulating the labour market, as well as the employment relationship (working conditions and wage formation).² This tradition of self-regulation as regards not only labour market norms, but also procedural rules regulating conflicts and collective bargaining, is based on voluntary collective agreements, not agreements enforced by law. As noted by Kjellberg (2017), the only way to oblige employers to enter collective agreements is through collective action.

Despite a notable decline since the early 1990s, union density in Sweden remains the highest among advanced economies (see Kjellberg 2019c; Visser 2019), at around 68 per cent in 2018 (63 per cent in the private sector and 79 per cent in the public sector; see Table 14A.2 in the appendix at the end of this chapter). The coverage rate of collective agreements stood at around 90 per cent in 2017 (84 per cent in the private sector and 100 per cent in the public sector (see Kjellberg 2019b; LO 2019; Mediation Office 2019; Table 14A.6 in the appendix). In the private sector, the coverage rate of collective bargaining is higher among manual workers than among white-collar workers (95 per cent compared with 75 per cent, respectively; see Table 14A.7 in the appendix). It is important to stress that the high coverage rate of collective bargaining in Sweden is not owing to statutory extension of collective agreements, but to the high affiliation rate of employers' associations and the strong presence of trade unions at the firm or organization level. Note also that the provisions set out in collective agreements apply even to employees who are not union members.

Sweden is therefore characterized not only by powerful unions,³ but also by well-established and strong employers' organizations.⁴ In 2017, the density rate of employers'

organizations, that is, the share of dependent employees in workplaces affiliated to employers' associations and covered by a collective agreement, reached 88 per cent, a rate significantly higher than union density (see Kjellberg 2019c; Table 14A.5 in the appendix).

In contrast to some other EU member states, wage-earners are represented by local union clubs and not by separate works councils. Union representatives at the workplace also have a mandate to negotiate. In the early 1970s, the adoption of several labour laws reinforced the influence and bargaining power of union representatives at the company or organization level and restricted employers' unilateral right to manage. The Act on Union Representatives Position at the Workplace (SFS 1974, p. 358) stipulates that an employer may not prevent trade union representatives from performing their duties. Trade union representatives are entitled to time off, and the employer has to provide premises at the workplace for the performance of trade union duties. Furthermore, the Act specifies that trade union representatives shall not be subjected to worse working conditions or terms of employment as a result of their appointment.

The second law, adopted in 1976, strengthening the influence of trade union at the company level, is the Law on Codetermination in Working Life (SFS 1976, p. 580). This Act stipulates that, prior to any decision regarding significant changes in employment and working conditions, employers are obliged to inform and consult the trade union organization(s) in charge of concluding collective agreements. Should the employees' organization so request, an employer has to negotiate with that organization before implementing decisions concerning, among other things, restructuring, collective dismissal and substantial changes in employment and working conditions.

With some exceptions, employers' and workers' organizations in Sweden are structured along sectoral or industry lines. Despite some tendencies towards decentralization during the past two decades, the Swedish bargaining system remains fundamentally two-tier, in which bargaining takes place first at the industry level and then at the company/organization level. It is important to emphasize that, by international standards, the Swedish two-tier bargaining model remains centralized and coordinated, and that the articulation between the industry and company level is regulated by the social partners.

Another central feature of the Swedish industrial relations system is that the role of labour legislation is limited by comparison with labour legislation in other EU member states, and for the most part is optional; that is, most provisions of labour market legislation may be wholly or partly amended by collective agreements. An illustration of the interplay between statutory policy and contractual arrangements is the Employment Protection Act (SFS 1982a, p. 80). According to the law, seniority rules mean that employee priority and selection are based on the last-in-first-out principle. However, the employer and the trade unions may deviate from the statutory rules when determining the order of dismissals by concluding a local collective agreement. Another illustration of the optionality of labour law and the predominant role of social partners in regulating working conditions concerns working time. The Swedish Working Hours Act (SFS 1982b, p. 673) appears to be particularly flexible and has, since the late 1950s, also left the social partners free to negotiate and draw up industry-wide agreements on working hours. Hence, the Working Hours Act is also optional and can be partly or entirely replaced through collective agreements at the industry and/or plant level. In addition to protecting individuals not covered by collective bargaining and limiting the negative externalities

coupled with longer hours, the optional nature of the law has encouraged the social partners to negotiate flexible working-time arrangements at the industry or firm level.

Collective agreements also often supplement social security regulations, such as a higher income replacement rate for parental leave or sickness benefits. Another illustration of the social partners' involvement in social protection is the unemployment insurance system. The Swedish unemployment insurance system is a Ghent system based on voluntary membership in unemployment insurance funds subsidized by the state. These funds are administered by different trade unions covering different industries. The Ghent system of unemployment insurance is often used to explain the relatively high union density in Sweden. It should be noted, however, that employees may choose to be affiliated to an unemployment insurance fund without being a trade union member. To illustrate the impact of policy changes on the autonomy, strength and bargaining power of the two sides of industry, in section 3 we explore the consequences of the reform of the unemployment insurance system initiated in 2006 by the liberal–conservative coalition government for the development of industrial relations and union density.

2.2 Tripartite Social Dialogue in Sweden

There are no legal obligations in Sweden governing consultations between the government/public authorities and the social partners. However, tripartite talks or consultations have a long tradition, are well established and are a key element in government employment and social policies.⁵ The social partners are usually represented or consulted in parliamentary and government committees responsible for drawing up employment, education or training and social policies. Thus, the social partners exert significant influence on the contents of labour market legislation. Even though consultations and information-sharing concerning labour market issues between government, parliament and both sides of industry are a common feature of the political and legislative process, the nature of industrial relations and social dialogue in Sweden remains mainly bipartite. The state is involved in social dialogue in its capacity as employer at the central and local authority levels, but this takes place through the respective employers' associations⁶ and workers' organizations in the public sector.

A recent illustration of tripartite consultations or concertation concerns the integration of newly arrived refugees into the Swedish labour market. While Sweden has been very successful in integrating women, the elderly and those with a work disability into the labour market, the country has been singularly less successful in integrating people with an immigrant background.⁷ The situation of migrants on the Swedish labour market has deteriorated over the past two decades and remains a challenge. Against this background, in 2015 the government launched a first round of tripartite talks, with particular focus on the integration of newly arrived refugees and migrants in the labour market, which led to the conclusion of several fast-track agreements between the Swedish Public Employment Agency (PEA, Arbetsförmedlingen) and the social partners. The fast-track initiative involved early validation and assessment of education and professional skills according to industry-specific agreements. The overall aim of these tripartite talks and agreements was to better identify and assess at an early stage the skills of newly arrived migrants with education or experience in occupations facing a labour shortage, so that they could be matched more quickly with the needs of industry and companies. The Swedish PEA

initiated closer collaboration with the social partners and relevant government agencies⁸ on creating fast tracks in several sectors (forestry and agriculture tourism, health and medical care, local government, industry, health and social care, transport, painting, timber and graphics companies, real estate, energy and electronics, and building) and specific occupations (such as agronomists, nurses and assistant nurses, doctors and dentist, teachers, machine operators, mechanics, social scientists and social workers).

Another recent example of tripartite talks and concertation concerning the introduction of new technologies, and their impact on the world of work, is given in section 5 (Case Study 2).

2.3 Main Factors Explaining the Strength and Autonomy of Trade Unions and Employer Organizations

The main objective of this section is to identify the main institutional factors explaining Sweden's good performance regarding its industrial relations system and social dialogue, and the persistence and resilience of a bipartite agreement-based model of labour market regulation. As stressed by Kjellberg (2017, 2019a), the Swedish system, characterized by voluntarism, self-regulation and bipartite social dialogue, relies on high union and employer association density, promoting high coverage of collective agreements.

Several factors, contextual and institutional, explain the strength and autonomy of trade unions and employer organizations in Sweden. First, the autonomy and independence of the social partners are related to the source of financing of trade unions and employer organizations, based on fees paid by union members and affiliated companies, without financial support from the state. High union membership (see Table 14A.1(a) in the appendix) ensures solid financial resources and union autonomy, as well as strengthening their bargaining power, their capacity for action and their legitimacy. The high proportion of firms affiliated to employer organizations (see Tables 14A.4 and 14A.5 in the appendix), in particular medium-sized firms and large multinational companies, which employ more than 85 per cent of employees in Sweden, explains the high coverage of collective bargaining, reinforcing the crucial role of social partners in shaping working and pay conditions.

The positive attitudes of the two sides of industry towards the prevailing two-tier bargaining system of labour market regulation, based on collective agreements at the industry and company or organization level and their mutual reluctance to accept state intervention in wage setting,⁹ is explained by the social partners' belief that bilateral social dialogue and a two-tier bargaining system are more efficient and flexible, allowing the two sides of industry to reach agreements that are more in line with employees' demands regarding wage and working conditions, and are better adapted to industry and local production constraints and competitiveness.

The relatively high centralization and coordination of collective bargaining, coupled with collective agreements at the industry or company or organization level applying even to non-union members, largely explain the dominant role played by collective agreements in shaping labour market norms. In this context, the tendency towards re-coordination of collective bargaining in the mid-1990s is an important factor explaining the resilience of the Swedish industrial relations system. During the 1980s, the weakening of mechanisms for coordinated collective bargaining, the resurgence of industrial disputes, the threat

of state intervention, high wage inflation and the dramatic increase in unemployment during the recession of the early 1990s all had a decisive impact on the emergence of new compromises for industrial relations. The three main trade unions¹⁰ in the sectors exposed to international competition asked their employer counterparts to consider the possibility of setting up new procedural rules that fostered both industrial peace and wage increases guaranteeing balanced growth and a return to full employment. The ensuing talks culminated in the adoption of an Industry Agreement on Cooperation on Industrial Development and Salary Formation in 1997 (Industriavtalet). One of the main innovative features of the Industry Agreement, apart from its tendency to re-coordinate collective bargaining, is that it explicitly regulates the conduct of negotiations and the resolution of disputes. If there is any risk of industrial action, the social partners concerned are obliged to notify the impartial chairs before the start of the notice period for a strike or lockout. These changes in industrial relations also re-established the pace-setting role of the sectors exposed to international competition, by establishing a wage norm in line with productivity developments, which should also apply to all other bargaining areas. In this context, the coordination role of the LO confederation has been increasing for LO affiliates in order to ensure that the new industry wage norm is respected.

It should also be stressed that the consensual nature of social dialogue in Sweden¹¹ and the root of the Swedish model does not rely on a specific cultural legacy, an idiosyncratic mentality favouring consensus and compromise, but relies more on the strength and relative balance of power between the two sides of industry, as well as the explicit negotiated procedural rules regarding the code of conduct between social partners and the organization of collective bargaining. To illustrate, the historical compromise of 1938, the Saltsjöbaden Agreement,¹² paving the way for almost 40 years of peaceful industrial relations in Sweden, was concluded in a period characterized by social unrest and threats of state intervention. From the end of the nineteenth century up to the second half of the 1930s, Sweden had the highest incidence of labour market disputes (strikes and lockouts) in Europe. As noted above, the Industry Agreement was also concluded during a period of frequent industrial disputes (see Anxo 2018) and the threat of state intervention. That is, these agreements are a good illustration of the social partners' willingness to retain their autonomy vis-à-vis public authority, and to safeguard a system of labour market regulation and governance based on bipartite social dialogue and collective agreements.

Another important feature of the Swedish industrial relations system is that Swedish labour law does not contain rules on union recognition, but several laws were adopted during the 1970s limiting *de jure* and *de facto* employers' unilateral prerogative to manage and reinforcing the bargaining power of trade unions at the company or organizational level.¹³ The high representativeness of trade unions at the workplace level, coupled with local union representatives having a mandate to negotiate, also explain the high union density in Sweden. Contacts between union representatives and employees at the workplace level favour the formulation of local union strategies in line with the demands of their members and ease the communication of results. The strong presence of trade unions at the firm or organization level also facilitates the recruitment and retention of union members.

The independence, or autonomy, and bargaining power of unions rely heavily on voluntary union membership and their mobilization capacity. To maintain high union density is therefore crucial for trade unions' legitimacy, autonomy, bargaining strength

and long-term sustainability. As stressed by Kjellberg (2019c), although collective agreements apply even to non-union members, this does not constitute an incentive to join a union (free-rider issue). Therefore, unions have to develop strategies in order to encourage employees to join and stay. Collective agreements at the industry level, and even at the company level, often extend and improve the statutory universal basic social protection in the form of higher replacement or compensation rates, or longer periods of entitlement, for example, regarding unemployment and sickness benefits, parental and training leaves and (occupational) pensions. That is, the role of the social partners is not limited to the regulation of the labour market in a strict sense, but extends to the realm of social protection via collective agreements and specific insurance restricted to union members (see Sjögren-Lindquist and Wadensjö 2006). This supplementary insurance reserved to union members constitutes an important incentive to join a union, and is a contributory factor explaining the high union density in Sweden. Another advantage of membership is the provision of legal services and support in case of conflicts or disagreements with employers.

If the services, benefits and protection or insurance against labours market-related risks provided by trade unions explain the relatively high union density in Sweden, strong support, the positive attitude of employees and workers' conviction that the unions defend workers' interests might also be a factor. According to the Organisation for Economic Co-operation and Development (OECD 2019), Sweden, after Denmark, has the highest level of population (aged 20–54) trust in trade unions (more than 80 per cent in 2018).¹⁴

2.4 Outcomes

With its developed social dialogue, Sweden has high employment rates,¹⁵ high job quality and low inequality not only in relation to wages and income, but also regarding equal opportunities, such as access to training or education, the labour market and social protection. To a considerable extent, this situation and Sweden's good employment record can be ascribed to its institutional setup, in particular its industrial relations system.

The contractual nature of labour market regulations and governance, coupled with the high union density and high collective bargaining coverage rate, creates an institutional environment favouring the emergence of negotiated compromises aimed at balancing flexibility and security in the labour market. Sweden thus constitutes a good illustration of a regime of negotiated flexibility, in which the social partners are involved extensively in regulating working conditions, wage formation and the shaping of vocational training at the industry and company or local levels. By international standards, wage and income inequality is low in Sweden. In 2016, Sweden had the lowest share of low-wage earners¹⁶ among EU member states (only 2.6 per cent compared with 17.2 per cent for the whole EU). Despite a tendency to rising wage dispersion since the mid-1990s, the Swedish wage structure remains compressed. The lower wage dispersion in Sweden, one of the lowest among OECD countries (see Paccagnella 2014) can be ascribed to a series of interrelated factors: the centralized and coordinated wage-bargaining system, limiting wage disparities between firms and industries, relatively high collectively agreed wage floors and, last but not least, the strong bargaining power and implantation of Swedish trade unions, at both the industry and company levels, favouring a more balanced outcome regarding

wage structure and wage development. This more balanced outcome is not limited to wage structure but also concerns working and employment conditions. The role of the social partners is also central in connection with lifelong learning, training facilities and occupational mobility, as illustrated by their active involvement in the shaping of traditional (passive and active) labour market policies (see also section 4 and the job transitional agreements).

The compressed wage structure, with high collectively agreed wage floors, has also promoted productivity-enhancing structural changes, limited the development of low-paid or low-skilled jobs and contributed to the development of a high-skilled, knowledge-intensive workforce. Large investment in labour saving technologies and research and development and the associated increase in demand for high-skilled jobs,¹⁷ the well-developed lifelong learning and training system, the expansion of tertiary education during the past three decades, as well as a more balanced bargaining power between the two sides of industry, have limited the tendency towards job polarization found, for example, in liberal market-orientated economies.

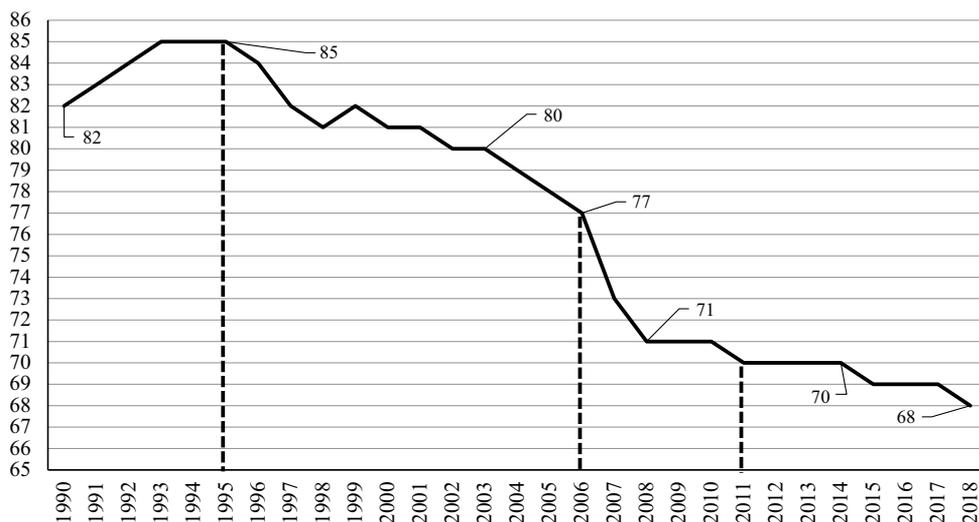
As far as working time – a central element of working conditions – is concerned, compared with the EU as a whole, Sweden displays a higher concentration of wage earners around the 40-hours norm and a lower dispersion of working time, with a lower incidence of marginal part-time work and longer working hours. These are strong reasons for believing that the higher concentration around the 40 hours-norm is related to the high degree of coordination and centralization of collective bargaining in Sweden. The weaker (gender) polarization of working time can be ascribed to several factors: the low incidence of low-paid jobs (the lowest in the EU), limiting the incidence of long working hours, legal enforcement of collective agreements, and more favourable gender contract and work–life balance arrangements.

In summary, the bipartite contractual nature of Swedish social dialogue and the balance of power between the two sides of industry largely explain the country's good performance regarding job quality and fair working conditions, equal opportunities and wage inequalities, even though some challenges remain, in particular regarding the labour market integration of newly arrived migrants.

3. RECENT DEVELOPMENTS IN THE SWEDISH INDUSTRIAL RELATIONS SYSTEM: THE SIGNIFICANT DECLINE OF UNION DENSITY

Even though Sweden still has the highest union density in the EU, it has experienced a significant decline in its union membership and density over the past three decades. Several factors help to explain falling union membership in Sweden, with a decline of almost 15 percentage points between 1990 and 2018 (see Figure 14.1, and Tables 14A.3 in the appendix). Parallel to this development the coverage rate of collective agreements has also shown a tendency to decline, from 94 per cent in 1995 to 89 per cent in 2017 (see Table 14A.6 in the appendix).

It is important to distinguish long-term factors, related principally to major changes in employment and occupational structure, from short-term factors, linked to specific policy measures. In particular, the long-term reduction of employment in manufacturing



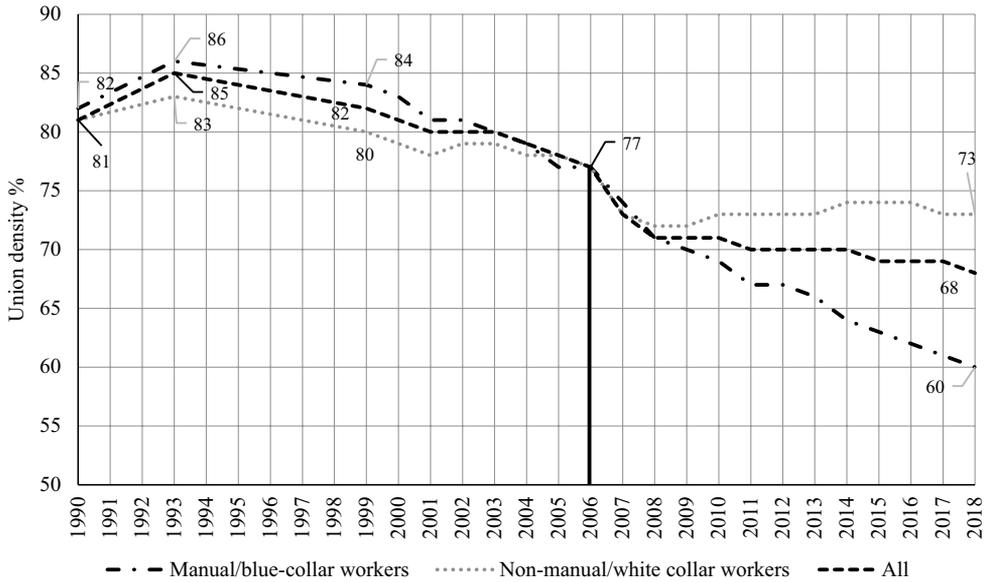
Source: Kjellberg (2019c) and Mediation Office (2019).

Figure 14.1 Union density, 1990–2018 (percentage)

industry owing to restructuring and rationalization, and the decline of employment in the public sector¹⁸ owing to fiscal consolidation measures, waves of deregulation and privatization in the service sector initiated in the 1990s, combined with changes in societal norms (individualistic values), explain part of the long-term decline in membership and union density. The fall in membership (and union density) has been particularly marked among manual workers (LO members; see Figure 14.2, and Table 14A.3 in the appendix). For white-collar workers, membership has been increasing, especially among the high-skilled or highly educated (principally members of Saco unions), reflecting the changes in employment and skill structure in recent decades. Looking at the distribution of membership by confederations (see Table 14A.1b in the appendix), in 1975, LO members accounted for around 65 per cent of all union members, but for only 40 per cent in 2018. As further shown by Tables 14A.1(a) and 14A.1(b) in the appendix, during the same period, the number of Saco members increased by around 280 000, whereas its relative share went up from 4 per cent to 19 per cent between 1975 and 2018.

The successive reforms of the employment protection system in Sweden, in particular the introduction of short-term contracts not requiring justification from the employer, combined with the deregulation of employment intermediation in the early 1990s and the associated expansion of temporary agency work, have contributed to a significant increase in employment instability and a growing duality in the labour market between insiders and outsiders.

The rise of short-term contracts and the increasing use of temporary agency and self-employment work has also contributed to the decline of union density in Sweden; union density is significantly lower among people on fixed-term contracts compared with those on open-ended contracts (44 per cent versus 72 per cent, respectively, in 2018; see Table 14.1). Over the past few decades, union density among short-term contacts



Source: Kjellberg (2019c).

Figure 14.2 Union density by category of employees, 1990–2018 (percentage)

has declined significantly more than for open-ended contracts. Between 2005 and 2018, among manual workers, the drop in union density amounted to 23 percentage points for fixed-term contracts compared with 16 percentage points among open-ended contracts (the corresponding figures for white-collar workers during the same period were 16 and 5 percentage points, respectively).

The negative trends in union density have been particularly marked among young people aged 16–29 (a decline of around 20 percentage points compared with 11 percentage points for adults between 1990 and 2018) and among the foreign born (a drop of 16 percentage points compared with 6 percentage points for natives, over the past ten years; see Table 14.2).

These two socio-demographic groups are often over-represented among short-term contracts, jobs with unsocial hours and in low-paid industries with low union density

Table 14.1 Union density by type of employment contract, Sweden, 2005–18

Type of contract	Open ended	Fixed term	All	Open ended	Fixed term	All	Open ended	Fixed term	All
2005	83	63	80	80	68	79	81	61	78
2010	76	43	71	75	58	73	74	48	71
2018	67	37	62	75	53	73	72	44	68

Source: Kjellberg (2019c).

(hotels and restaurants, transport; see Table 14A.3 in the appendix for union density by broad industries), which also explains the negative trends in union density. Regarding gender disparities, union density is higher among women (72 compared with 64 per cent in 2018) and decreased less than for men in the period 1990–2018 (11 compared with 16 percentage points; see Table 14.2).

Even though structural factors and compositional effects explain the long-term decline of union density in Sweden, the acceleration of this decline after 2006 is closely related to specific policy measures, in particular the reform of the unemployment insurance system initiated by the centre-right government in 2007 (see Case Study 1 in the next section) and the abolition of the tax deductibility of union fees by the right-wing government between 2007 and 2017. The tax deduction of union fees was temporary reintroduced by the Social Democrats in 2018, but abolished again in 2019 by the same government under pressure from the right-wing dominated parliament.

The decline in trade union membership and the related change in the balance of power between the two sides of industry has hitherto had a limited impact on the development of wages and working conditions, as well as the wage-profit share of gross domestic product (see Anxo 2018). However, if this downward trend in union density continues at the same pace,¹⁹ we cannot exclude that the associated decline in the bargaining power of trade unions will negatively affect the outcome of social dialogue in Sweden, leading to a continuous erosion of the Swedish industrial relations system and the long-term sustainability of the Swedish model.

Table 14.2 Union density by age, gender and ethnicity, Sweden, 1990–2018 (percentage)

	1990	2000	2006	2008	2010	2015	2018	Var. 2018/1990 percentage points	Var. 2018/2006 percentage points
<i>Age</i>									
16–24	62	52	46	36	34	35	36	–26	–10
25–29	78	74	68	61	60	59	58	–20	–10
30–44	85	82	77	72	73	70	68	–17	–9
45–64	88	88	85	81	80	79	77	–11	–8
16–64	81	81	77	71	71	69	68	–13	–9
<i>Gender</i>									
Men	80	78	74	68	68	66	64	–16	–10
Women	83	83	80	74	75	73	72	–11	–8
<i>Ethnicity</i>									
Natives	–	–	77	72	72	71	71	–	–6
Foreign born	–	–	74	67	67	61	58	–	–16

Source: Kjellberg (2019c).

4. CASE STUDY 1: INDUSTRIAL RELATIONS SYSTEM AND INSTITUTIONAL CHANGES: REFORMS OF THE UNEMPLOYMENT INSURANCE SYSTEM

4.1 Reforms of the Unemployment Insurance System and the Significant Decline of Union Density in Sweden

Even though structural factors and compositional effects explain the long-term decline of union density in Sweden, the acceleration of this decline after 2006 is closely related to policy measures, in particular the reform of unemployment insurance initiated by the centre-right government in 2007 and 2008. This reform resulted in a notable reduction in the generosity of the Swedish unemployment insurance system: the income replacement rate fell from 80 per cent to 70 per cent after 200 days of unemployment, and the maximum duration for receiving unemployment benefits was reduced to 300 days. Furthermore, the financing of unemployment insurance was modified: the contributions of the various unemployment funds administered by the trade unions (Ghent system²⁰) were dramatically increased and differentiated according to the unemployment level in the sector or industry concerned. That is, a system of experience rating was introduced, and individual unemployment insurance contributions increased or decreased depending on whether unemployment grows or declines in an industry. This reform entailed a large rise in individual monthly contributions; in some instances, unemployment insurance fees paid by individuals tripled.²¹ The consequence was both a large decrease in union membership and a dramatic decline in the number of dependent employees covered by the unemployment insurance system: around 500 000 employees left the system between 2007 and 2008.²² As reported by Kjellberg (2015), the decline of union density in the aftermath of the unemployment insurance reform was unprecedented and, as a whole, dropped by 6 percentage points (from 77 per cent in 2006 to 71 per cent in 2008). The main objectives of the centre-right government with these unemployment insurance reforms were to enhance job seekers' work incentives and to indirectly influence the outcome of wage bargaining by weakening trade union bargaining power, and thereby to induce wage restraint.

The 2008 financial crisis particularly hit sectors exposed to international competition and blue-collar workers. Against this background, the reform of unemployment insurance financing had a stronger impact on union density among LO members, in particular in low-skilled and low-paid sectors, such as hotels and restaurants and retail, with high labour turnover and large shares of short-term contracts, but also in manufacturing industry. There are therefore strong reasons to believe that a significant part of the recent decline of union density in Sweden was a consequence of this reform.

Also worth noting is that while the 2008 great recession did not break the fall of union density among blue-collar workers,²³ the reverse is true for white-collar workers. While unemployment insurance reform also affected the latter between 2007 and 2009, their union density increased again in the aftermath of the crisis, reaching about the same level as in 2006 (see Table 14A.3 in the appendix). In early 2014, the centre-right coalition government again changed the rules on unemployment insurance financing, restoring individual monthly unemployment insurance fees to their 2006 level.²⁴ Nevertheless, the number of unemployment insurance members has increased again in recent years, by

almost 55 000, but it is still below its 2006 level. More recently, the Social Democratic–Green coalition government, which took office in September 2014, increased the unemployment insurance income replacement rate. As indicated by Figures 14.1 and 14.2, these measures did not manage to halt the decline in union density among blue-collar workers. The measures initiated in 2014 and 2016 helped temporarily to stabilize the level of union density among white-collar workers, but union density has been falling again during the past two years.

4.2 Trade Union Strategies to Counteract Falling Union Density

Confronted by the significant decline in union membership and union density, trade unions have developed a range of strategies to reverse it. As shown by previous developments, the decline in union density has been particularly high among young people, low-skilled, low-paid workers, short-term contract workers and foreign-born workers. Against this background, trade unions have prioritized recruitment of new members among these vulnerable groups and are trying to reach individuals with a weaker attachment to the labour market. The trade unions have also prioritized activities at workplaces.

At the last LO congress, membership issues were to the fore and measures have been taken to counteract the decline in union density. In the LO Work Programme 2017–2020, entitled ‘Organize or Die’, one of the stated objectives was to restore a union density of 80 per cent. The LO strategy has been to recruit new members at the workplace level and stem the number of exits. Against this background, measures have been taken to support trade union representatives in the workplace. In order to counteract the falling youth membership, at the end of 2018, some LO federations decided to launch an information campaign at school level. Among white-collar unions, the TCO launched a big information campaign ‘Membership Value and Union Transformation’ targeted principally towards students and young academics. In order to broaden their recruitment base, some federations, within the confederations TCO and Saco, have opened membership to the self-employed and students.²⁵ In recent years, several white-collar unions have also introduced supplementary income compensation, restricted to union members, in the event of unemployment or sickness, to counteract the increase of unemployment insurance fees and the worsening of unemployment benefits (duration and income replacement). Except for Saco, which has seen its membership increase significantly during the past decade, up to now the efforts of the LO and the TCO have not resulted in a significant improvement in membership and union density.

In summary, the marked decline in union membership and union density in Sweden among blue-collar workers threatens the representativeness and legitimacy of blue-collar unions, as well as their autonomy and bargaining power. This development, if it continues, endangers the long-term sustainability of the Swedish model of industrial relations and its ability to reconcile efficiency and social justice. As shown by previous developments, the decrease in union density can be ascribed to policy reforms, the weakening of the Ghent system of unemployment insurance and to major changes in the world of work, particularly the rise of precarious employment related to the change in employment protection and labour market deregulation. Against this background, trade unions in Sweden have taken several measures to broaden their recruitment base, trying to reach low unionized vulnerable groups and non-standard forms of employment (short-term

contracts, temporary agency workers, solo self-employed and digital platform workers). In order to attract and keep members, unions have also developed new services and have made more use of digital technologies to communicate with and reach new members (Facebook and Twitter). Furthermore, in order to limit the negative impact of *erga omnes* practices on union membership (free-rider problems), several trade union federations have introduced complementary insurance schemes (sickness and unemployment) that are restricted to union members. Except for high-skilled, white-collar workers, who have experienced an increase in union density during the past decade, the efforts of the LO and the TCO to date have not significantly improved membership and union density.

5. CASE STUDY 2: ACCOMMODATING STRUCTURAL AND TECHNOLOGICAL CHANGES: THE CENTRAL ROLE OF THE SOCIAL PARTNERS IN SWEDEN

The Swedish industrial relations system, together with the bipartite contractual nature of labour market regulation, creates a favourable institutional environment for the emergence of negotiated compromises aimed at balancing flexibility and security in the labour market. This institutional environment has resulted in innovative practices and solutions for dealing with job losses, and structural and technological changes. Particularly notable are the creation, in the early 1970s, of the job security/transitional job agreements that were established by the social partners on a bipartite basis to support employees and companies affected by restructuring.

5.1 Overall Framework: Attitudes of Swedish Social Partners to Structural and Technological Change and the Role of Social Dialogue and Flexicurity Regime

Sweden is a small open economy strongly exposed to international competition. Against this background, the strategy of the Swedish social partners has seldom been to safeguard jobs in declining low-productivity sectors or in industries confronted by severe restructuring. Instead they have favoured measures to uphold Sweden's competitiveness by boosting investment in workers' human capital (training or lifelong learning) and the introduction of productivity-enhancing technologies or rationalization. This explains why structural changes or economic downturns have seldom been accommodated by measures aimed at maintaining employment or favouring labour hoarding, for example, by work-sharing measures, as in France or Germany, or by a worsening of working conditions or wage cuts.

Traditionally, employment adjustments caused by structural and technological changes in Sweden have mainly taken the form of negotiated external numerical flexibility,²⁶ combined with active support for dismissed workers through public active labour market policy programmes and/or bipartite negotiated job transitional agreements, helping redundant workers to find new jobs rapidly or by enhancing their employability through mainly training or skill-upgrading measures. Hence, the roles of social dialogue and collective bargaining in accommodating structural and technological changes are at the core, and the social partners play a key role in preserving Sweden's competitiveness and limiting the negative individual consequences of introducing new labour-saving

and productivity-enhancing technologies (see Anxo 2017). The job security/transitional agreements constitute a good illustration of such negotiated flexicurity arrangements. In cases of collective redundancy owing to restructuring, or individual notice owing to a shortage of work, the Swedish social partners have, since the early 1970s, negotiated security/adjustment agreements to help displaced workers to find new jobs quickly, by way of adjustment measures²⁷ and financial support. These support programmes are administered by the two sides of industry: the job security councils (*trygghetsrådet*) and job security foundations (*trygghetsstiftelser*), specially designed for this purpose.²⁸ The support measures offered by the job security councils take several forms, including severance payments and complementary unemployment compensation above the standard unemployment benefit in order to guarantee a decent level of income during the transitional period. The job security councils play an important role at different stages in the restructuring process. In the initial stage of the process, counsellors provide the employer and trade union representatives with expertise related to the restructuring process. After the decision has been taken on which restructuring strategy to pursue, the second phase involves guidance and support to the employees affected by restructuring (see Anxo 2017).

By supplementing the role of local public employment agencies, these agreements, covering about 75 per cent of the labour force, help to improve employment security, promote efficient allocation of resources and have played an important role in accommodating economic restructuring and technological changes. Sweden is in this way unique, in that the social partners assume responsibility for an important part of restructuring.

The centralized and coordinated collective bargaining system and a still compressed wage structure, with relatively high wage floors, have also limited the development of low paid or low-skilled jobs in Sweden, and instead have boosted policies favouring skills upgrading. In effect, substantial investment in research and development and a well-developed lifelong learning and training system have limited the tendency towards job polarization found, for example, in liberal market-orientated economies. In this context, the Swedish job security councils and transitional job agreements have played a fundamental role in alleviating the detrimental individual consequences of structural and technological changes, in particular by limiting long periods of unemployment, which we know are a crucial determinant of social exclusion and increased inequality. These agreements are another good illustration of the prevailing regime of flexicurity and negotiated flexibility, combining individual security for employees and flexibility for employers in respect of necessary restructuring and readjustment measures. The joint management structure of the social partners appears also to be an advantage, reinforcing the social legitimacy as well as the positive attitude of Swedish trade unions towards structural and technological changes and productivity-enhancing restructuring.

5.2 Digitalization and Tripartite Social Dialogue: Recent Developments in Sweden²⁹

In June 2012, the centre-right Swedish government set up the Digitalization Commission to analyse the impact of digitalization on Swedish society and the policy strategies that should be initiated in order to meet the new technological challenges. In February 2015 the newly elected Social Democratic government decided to amend the directive for the commission to identify strategic areas and to investigate how support in the area should

be implemented. Tripartite talks (industrial dialogue) were also initiated, inviting the social partners to give their views on the policies that should be implemented.

According to the government, a well-developed and well-functioning digital infrastructure is a precondition for meeting the challenges linked to digitalization and to ensure that the policy strategy contributes to enhancing productivity and competitiveness, full employment and sustainable economic growth. The strategy is based on five main areas: digital competence, digital security, digital innovation, digital management and digital infrastructure. The report published by the Digitalization Commission highlighted a number of needs and submitted a number of recommendations (see SOU 2015, p. 109), namely, to further digitalize public administration and to adapt labour and consumer laws and social insurance to meet the digitalization challenges. The Commission recommended also that the Swedish work environment authority should define a concept for the digital work environment and provide guidelines regarding how the new environment should be treated in accordance with existing work-environment and working-time legislation.

Last but not least, the Digitalization Commission recommended favouring a strategy of skill-upgrading by further developing lifelong-learning facilities and IT education at university level. The social partners were asked to give their opinions on the Commission's proposal.

The two sides of industry have traditionally been positive towards structural changes and the introduction of new productivity-enhancing technologies. The social partners agree also that the necessary transformation of working conditions and employment relations owing to digitalization should mainly be the outcome of negotiations via the conclusion of collective agreements at the industry level, even though employers were also more inclined to initiate some labour law reforms (mainly of employment protection). As stressed by Bergström and Ismail (2019), it is interesting to note that digitalization has tended to reinforce established positions between the social partners and that the digitalization discourse has become an arena in which the social partners invoke old positions.

Trade unions use digitalization as a way of explaining the emergence of new forms of insecure employment relationships, such self-employment and fixed-term contracts. For employers' organizations, however, digitalization provides a rationale for why jobs may need to be shed and why labour law needs to be reformed. They both share the view, however, that digitalization creates new demands on workers in relation to skills and competences, and they also seem to agree upon the need to reform the structure and content of the Swedish education system to provide the skills and competences necessary to compete in a world of digitalization. This concerns the role of both higher education and secondary education, as well as discussions about new structures for adult education to facilitate career development and continuous or lifelong learning. Despite this paradox, the discourse on training and education is placed in the nexus of already established conflicts regarding how training and education should be financed and organized in the Swedish labour market. According to the trade unions, training should be provided by employers and be seen as part of continuing development at the workplace. Employers, however, argue that education should be provided by the state as a form of societal infrastructure and that workers have an individual responsibility for competence development to ensure their employability. Digitalization thus reconfirms and reinforces already established positions between social partners. That is, despite the novelty, the digitalization discourse becomes an arena for social partners to recall old positions. (Bergström and Ismail 2019, p. 33).

As also stressed by Bergström and Ismail (2019) the tripartite industrial dialogue on digitalization initiated in 2015 by the Social Democratic government underscored the importance of developing a common platform for collaboration between the government and social partners. The main objective is to identify common challenges, as well as to create a basis for implementing government initiatives and policies. This tripartite industrial dialogue may from this perspective be considered successful because it has been continuous over a four-year period, involving a relatively large number of key actors. However, as noted by Bergström and Ismail (2019), the tripartite dialogue has, to date, not resulted in concrete policies, legal reforms or broad collective agreements. The industrial dialogue initiated by the government was mainly concerned with general strategies, in the form of exchanges of opinions rather than direct bargaining concerning specific policies, incentives or regulatory frameworks.

The digitalization process underlines the importance of skill-upgrading measures via lifelong-learning and education policies, as well as job transition measures facilitating the relocation of human resources and ensuring employability over the life course. In this context, there are strong reasons to believe that the structural changes related to further digitalization will be met within the framework of the prevailing bipartite social dialogue, and will mainly take the form, as in the past, of job security/transitional agreements.

Even though the tripartite dialogue on digitalization to date has not resulted in broad collective agreements, some interesting developments can be noted regarding platform work. Sweden constitutes an interesting illustration of the social partners' role and capacity in regulating the digital platform economy, as evidenced by the recent collective agreement (April 2021) concluded between the Swedish Federation of Transport (Transport Union) and *Foodora* (Food delivery digital labour platform). This agreement stipulates a minimum wage for cycle riders and guarantees an annual wage increase in line with transport industry agreement as well as entitlements to pensions and insurances in accordance with Transport's other collective agreements. Two digital labour platforms, *Instajobs* and *Just arrived* (personal and household services) are members of the Employer Association Competence Agency of Sweden (*Kompetensföretag*) and signatories of the Temporary Agency Collective Agreement. Reflecting the Swedish flexicurity model, this Agreement stipulates that permanent employment contracts constitute the norm, and guarantees that salaries are paid between assignments and that staffing consultants are entitled to the same benefits and rights as other employees, such as the right to paid holidays, study/training and parental leave, as well as entitlements to occupational pensions.

6. CONCLUSIONS

Despite a significant decline in union density, Swedish trade unions and employer organizations remain the main actors responsible for labour market norms and regulations affecting the terms and conditions of employment. The capacity of the Swedish economy to adapt to societal and economic challenges is intimately related to its industrial relations system. The Swedish experience remains a good illustration of the positive productive role played by a developed bipartite social dialogue based on powerful and independent social partners, especially regarding the mitigation of potentially negative consequences of globalization, external macroeconomic shocks, rapid structural and technological

change, and the transformation of the world of work. The Swedish flexicurity regime, based on negotiated flexibility, creates a favourable institutional environment for negotiated compromises aimed at balancing flexibility, security, efficiency and social justice in an open economy strongly exposed to international competition and growing economic turbulence. As illustrated by Case Study 2, the Swedish job security councils and transitional job agreements have played a fundamental role in alleviating the detrimental individual consequences of structural and technological changes, in particular by limiting long periods of unemployment, which we know are a crucial determinant of social exclusion and increased inequality. These collective agreements constitute a good illustration of the prevailing regime of flexicurity and negotiated flexibility, combining individual security for employees and flexibility for employers with regard to necessary restructuring and readjustment measures.

Similar to a majority of EU member states, over the past two decades Sweden has experienced a marked decline in union density, particularly among blue-collar workers. This threatens the long-term representativeness and legitimacy of blue-collar unions, as well as their autonomy and bargaining power. This development, if it continues, will compromise the long-term sustainability of the Swedish model of industrial relations and its ability to reconcile efficiency and social justice. The decrease in union density can be ascribed to policy reforms negatively affecting the Swedish Ghent system of unemployment insurance, as well as the substantial modifications in the world of work, particularly the rise of precarious employment related to changing employment protection and labour market deregulation. To counteract this development, Swedish trade unions have initiated several measures aimed at broadening their recruitment base. These include trying to reach vulnerable groups and atypical forms of employment (short-term contracts, temporary agency workers, solo self-employed and digital platform workers). In order to attract and retain members, unions have also developed new services and make increasing use of new digital technologies to reach new members. They have also introduced complementary insurance schemes (sickness and unemployment) limited to union members. It remains to be seen whether these measures will reverse the negative trends in union density.

The, by international standards, still high union density, high coverage rates of collective bargaining, and relatively centralized and coordinated multi-employer collective bargaining processes explain, to a large extent, the predominant role played by collective agreements in shaping the world of work in Sweden. Viewing developments over the past three decades, it can be seen that the Swedish industrial relations system and its bipartite nature have favoured the development of high-quality jobs, fair working conditions, decent wages and low inequality. The compressed wage structure, with high, collectively agreed, wage floors, has also promoted growth-enhancing structural change, limiting the development of low-skilled jobs and contributing to the development of a high-skilled, knowledge-intensive, economy. In effect, large investments in labour-saving technologies and research and development, the positive attitudes of trade unions towards the introduction of new technologies and productivity-enhancing technological change, as well as well-developed lifelong learning and training systems and active labour market policies have limited job polarization, reinforced the competitiveness of the Swedish economy and promoted balanced growth and full employment.

NOTES

- * I would like to thank Anders Kjellberg for constructive and very helpful comments on a previous version of this chapter.
1. We use the ILO definition of social dialogue, which encompasses all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest related to economic and social policy.
 2. In 2018, Sweden counted around 670 nationwide collective agreements at the industry level.
 3. The Swedish trade union landscape comprises three confederations: the Swedish Trade Union Confederation (Landsorganisation, LO) organizing blue-collar workers with 14 federations and around 1.23 million active members; the Swedish Confederation of Professional Employees (Tjänstemännens Centralorganisation, TCO) organizing white-collar workers (professionals and qualified employees), counted at the same date, 14 federations and around 1.1 million active members; and the Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation, Saco) organizing university graduate employees, which at the same date had 539 000 active members affiliated to 23 federations (see Kjellberg 2019c; Mediation Office 2019). Sweden counted around 4.7 million dependent employees in 2018 (Statistics Sweden 2019).
 4. Sweden has three main employer confederations. In the private sector is the Confederation of Swedish Enterprise (Svenskt Näringsliv, SN). It has two employer associations in the public sector: the Swedish Association of Local Authorities and Regions (Sveriges Kommuner och Regioner, SKR) for local authorities (covering more than 1 million employees, or 25 per cent of total employment in Sweden) and the Swedish Agency for Government Employers (Arbetsgivarverket, Agf), which has 240-member agencies in the central government sector (around 270 000 employees). The Confederation of Swedish Enterprise is Sweden's largest and most influential business confederation in the private sector, representing 49 member organizations and 60 000 member companies, with over 1.6 million employees. In 2018, around 65 per cent of the Confederation's member companies had fewer than ten employees, while only 2 per cent had 250 employees or more (see Table 14A.4 in the appendix).
 5. As suggested by one of my colleagues, Anders Kjellberg, it should, however, be noted that since the early 1990s the concertation role of the social partners in Sweden has been reduced. In the early 1990s the Swedish employers' confederation withdrew from representation in public authority boards and, consequently, the former system of representation of social partners in public authorities was abolished.
 6. Namely, the Swedish Association of Local Authorities and Regions (Sveriges Kommuner och Regioner, SKR) for local authorities (with more than 1 million employees, or 25 per cent of total employment in Sweden) and the Swedish Agency for Government Employers (Arbetsgivarverket, Agf) with 240 member agencies in the central government sector (around 270 000 employees).
 7. In 2018, the employment rate (20–64 years of age) among the native population was 86.5 per cent (87.8 per cent for men and 85.2 per cent for women) compared with 70.1 per cent among the foreign-born population (74.5 per cent for men and 65.8 per cent for women). During the same period, the unemployment rate stood at 3.0 per cent among the native population, compared with 15.0 per cent among the foreign-born population. Also, the unemployment rate among young immigrants (15–24 years of age) is significantly higher (29.5 per cent in 2018) than that of their native counterparts (14 per cent at the same date).
 8. The National Board of Health and Welfare, the Swedish Council for Higher Education, the Swedish National Agency for Higher Vocational Education and the Swedish Forest Agency. Together with the PES these agencies also took part in the in-depth tripartite talks.
 9. Sweden does not have a statutory minimum wage and the social partners have always been opposed to state interference in the regulation of wage and working conditions.
 10. The Swedish Federation IF Metall (Industrifacket Metall), affiliated to the LO confederation and organizing blue-collar workers in mechanical engineering, ironwork, chemicals, plastics, textiles/clothing and mining; the Swedish Federation of White-Collar Workers in Industry and Services (Unionen), affiliated to the TCO confederation; and the Swedish Association of Graduate Engineers (Sveriges Ingenjörer) affiliated to the Saco confederation. Three other LO federations joined the Industry Agreement, namely, the Swedish Paper Workers' Union (Pappers), the Swedish Union of Forestry, Wood and Graphical Workers (GS) and the Food Workers' Union (LIVS). Mainly procedural, the Industry Agreement was first concluded in 1997 and twice revised in 2011 and 2016, respectively. In 2020, the union signatories of the Industry Agreement will conclude new agreements on wages and working conditions, covering around 400 000 workers.
 11. By international standards, Sweden has comparatively few labour market conflicts (strikes and lockouts) (see Anxo 2018; Kjellberg 2019c).
 12. The Saltsjöbaden Agreement (1938) established a series of regulations covering the roles of the various actors in the labour market, and accorded the social partners considerable room for manoeuvre in respect

- of wage policy. The Saltsjöbaden Agreement also influenced the organization and functioning of negotiations, and regulated industrial disputes by demanding prior agreement with the confederations in the event of disputes affecting more than 3 per cent of the workforce, thus guaranteeing industrial peace as soon as the collective agreements were concluded.
13. The Act on Union Representatives' Position at the Workplace (SFS 1974, p. 358), the Law on Codetermination in Working Life (SFS 1976, p. 580) and the Employment Protection Act (SFS 1982a, p. 80).
 14. A total of 88 per cent among young people (aged 20–34) and 77 per cent among prime age workers (25–54 years old), see OECD (2019).
 15. The highest female employment rate (20–64 years old) and senior employment rate (55–64 years old) in the Sweden were, respectively, 80.2 per cent and 78 per cent in 2018. The corresponding figures for the EU were, respectively, 67.4 per cent and 58.7 per cent; see Eurostat (2020).
 16. Low-wage earners are defined as those earning two-thirds or less of national median gross hourly earnings.
 17. Owing, in particular, to a strong complementarity between skills and new technologies.
 18. The propensity to join a trade union is traditionally higher in these two sectors.
 19. According to Kjellberg's (2019b) calculations, if union density declines at the same pace in the future, overall union density will drop from 68 per cent in 2018 to 65 per cent in 2023 (from 60 to 56 per cent among blue-collar workers and from 73 to 69 per cent among white-collar workers).
 20. The Swedish unemployment insurance system is a Ghent system, based on voluntary membership subsidized by the state. Different trade unions covering different industries administer the unemployment insurance funds.
 21. To illustrate, between 2006 and 2009 the individual monthly unemployment insurance fees for construction workers increased from SEK116 (€11.9) to SEK455 (€46.6), for workers in engineering from SEK93 (€9.9) to SEK384 (€40.9) and for employees in hotels and restaurants from SEK97 (€9.9) to SEK430 (€44.0) (see Kjellberg 2015). If you add the normal affiliation fee for being a trade union member, the monthly cost increase was significant.
 22. The share of the workforce covered by unemployment insurance decreased from 80 to 67 per cent between 2007 and 2009.
 23. Previous economic recessions, in particular the deep economic crisis of the early 1990s, led to an increase in trade union membership, and also of union density (see Figures 14.1 and 14.2).
 24. Two main reasons explain this change: new general elections and the reform of unemployment insurance that implied that a large number of wage earners, in particular low-paid or low-skilled employees with unstable employment conditions, lacked sufficient protection in the event of unemployment, which amplified the risk of social exclusion.
 25. Up to now the only LO federation to accept the self-employed as members is the Federation of Musicians (Musikerförbundet). The main federation within the TCO accepting the self-employed is the Federation Union (600 000 members). Most Saco unions have self-employed persons as members since many occupations within Saco have a tradition of self-employment (for example, dentist, medical doctors, psychologists, lawyers, economists and graduate engineers).
 26. As noted by Rönmar and Numhauser-Henning (2012, p. 465): 'The Swedish law provides a rather broad scope for numerical flexibility, by way of the employer's possibilities to adapt the size of the workforce to the changing demands of the business and to dismiss employees for reasons of redundancy. ... and redundancy constitutes objective grounds of dismissal.'
 27. It can be anything from simple advice, such as how to improve a curriculum vitae (CV), to more far-reaching measures, such as participation in vocational training or education schemes, changing occupation or starting a business.
 28. The employers finance the various activities by paying a contribution of 0.15 per cent to 0.3 per cent of the wage bill. All employees covered by these agreements are included in the activities, regardless of whether they are union members or not.
 29. Section 5.2 relies heavily on the recent study conducted by Bergström and Ismail (2019).

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APPENDIX

Table 14A.1(a) Trends in the number of trade union active members, by confederation

Sector	1990	2000	2005	2006	2010	2015	2018	Var. 2006–18	Var. 2018–1990
LO	1 962 416	1 753 075	1 586 927	1 564 409	1 318 343	1 271 129	1 232 815	–331 594	–729 601
TCO	1 144 218	1 045 473	1 039 870	1 025 990	962 629	1 060 977	1 097 415	71 425	–46 803
Saco	260 127	370 462	418 648	424 621	454 110	491 477	538 947	114 326	278 820
All	3 366 761	3 169 010	3 045 445	3 015 020	2 735 082	2 823 583	2 869 177	–145 843	–497 584

Notes:

LO – Swedish Trade Union Confederation, organizing blue-collar workers (Landsorganisation. LO).

TCO – Confederation of Professional Employees (Tjänstemännens Centralorganisation, TCO) organizing white-collar workers (professionals and qualified employees).

Saco – Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation) organizing university graduate employees.

Source: Kjellberg (2019c).

Table 14A.1(b) Trends in union member shares by confederation, LO, TCO and Saco (percentage)

	LO	TCO	Saco
1975	63.5	32.1	4.4
1980	62.6	31.7	5.7
1985	60.2	33.3	6.6
1990	58.3	34.0	7.7
1995	57.4	33.7	8.9
2005	52.1	34.1	13.7
2010	48.2	35.2	16.6
2015	45.0	37.6	17.4
2018	43.0	38.2	18.8

Notes:

LO – Swedish Trade Union Confederation, organizing blue-collar workers (Landsorganisationen. LO).

TCO – Confederation of Professional Employees (Tjänstemännens Centralorganisation, TCO) organizing white-collar workers (professionals and qualified employees).

Saco – Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation) organizing university graduate employees.

Source: Kjellberg (2019c).

Table 14A.2 Union density by age, gender and ethnicity, Sweden, 1990–2018 (percentage)

	1990	2000	2006	2008	2010	2015	2018	Var. 2018/1990 percentage points	Var. 2018/2006 percentage points
<i>Age</i>									
16–24	62	52	46	36	34	35	36	–26	–10
25–29	78	74	68	61	60	59	58	–20	–10
30–44	85	82	77	72	73	70	68	–17	–9
45–64	88	88	85	81	80	79	77	–11	–8
16–64	81	81	77	71	71	69	68	–13	–9
<i>Gender</i>									
Men	80	78	74	68	68	66	64	–16	–10
Women	83	83	80	74	75	73	72	–11	–8
<i>Ethnicity</i>									
Natives	–	–	77	72	72	71	71	–	–6
Foreign-born	–	–	74	67	67	61	58	–	–16

Source: Kjellberg (2019c).

Table 14A.3 Trends in union density by industries, Sweden, 1990–2018 (variation in percentage points)

Sector	1990	1996	2006	2008	2010	2018	Var. 2008–2006	Var. 2010–2008	Var. 2018–2006	Var. 1990–2018
<i>Manual workers/blue-collars</i>										
Manufacturing industry	91	92	89	88	85	81	81	79	–9	–12
Construction	91	92	89	88	85	81	81	79	–9	–12
Retail	91	92	89	88	85	81	81	79	–9	–12
Hotel and restaurants	91	92	89	88	85	81	81	79	–9	–12
Private services	91	92	89	88	85	81	81	79	–9	–12
Public services	91	92	89	88	85	81	81	79	–9	–12
All	91	92	89	88	85	81	81	79	–9	–12
<i>Non-manual workers/white-collars</i>										
Manufacturing industry	82	83	80	75	77	78	–5	2	–2	–4
Retail	60	63	62	56	61	65	–6	5	+3	+5

Table 14A.3 (continued)

Sector	1990	1996	2006	2008	2010	2018	Var. 2008–2006	Var. 2010–2008	Var. 2018–2006	Var. 1990–2018
Private services	66	73	65	60	63	65	–5	3	0	–1
Public services	94	93	89	85	86	82	–4	1	–7	–12
All	81	83	77	72	73	73	–5	1	–4	–8
All sectors/ occupations	82	84	77	71	71	68	–6	0	–9	–14

Source: Mediation Office (2019) and Kjellberg (2019).

Table 14A.4 Swedish Confederation of Enterprise (Svenskt Näringsliv) number of affiliated enterprises and number of employees, 2018

Number of employees	Number of companies	Share (%)	Number of employees	Share (%)
0	9 279	15.6	–	–
1–9	28 107	47.1	115 490	6.3
10–49	16 792	28.2	355 117	19.3
50–249	4 430	7.4	441 228	24.0
250–499	515	0.9	179 530	9.8
500–	495	0.8	748 959	40.7
All	59 618	100.0	1 840 324	100.0

Source: Mediation Office (2019).

Table 14A.5 Share of dependent employees in companies/organizations affiliated to an employer organization, 1995–2017 (percentage)

Sector	1995	2005	2007	2010	2017	Var. 2010–17
Private	77	78	77	80	82	+5
Public	100	100	100	100	100	0
All	86	86	84	87	88	+2

Source: Mediation Office (2019) and Kjellberg (2019c).

Table 14A.6 Coverage rate of collective bargaining, Sweden, 1995–2017 (percentage of dependent employees)

Sector	1995	2005	2007	2010	2017	Var. 1995–2017
Private	90	89	86	84	84	–6
Public	100	100	100	100	100	0
All	94	93	91	89	89	–5

Source: Mediation Office (2019) and Kjellberg (2019c).

Table 14A.7 Share of manual/blue-collar workers and non-manual/white-collar workers covered by collective agreements, 2017

Categories	Private sector	Public sector	All
Blue collars	95	100	96
White collars	75	100	84
All	83	100	89

Source: Mediation Office (2019).

15. Turkey: Enhancing social partners' capacity and social dialogue in the new world of work

Gaye Burcu Yıldız

1. INTRODUCTION

This chapter has been prepared within the framework of an International Labour Organization (ILO) and European Commission project on 'Enhancing social partners' capacity and social dialogue in the new world of work'. It focuses mainly on the representativeness of the social partners in Turkey, the development of collective bargaining and the attitudes of the social partners to digitalization. First, for a better overall understanding, we present a brief history of Turkish industrial relations. After that the key aspects of industrial relations and labour market challenges in Turkey are addressed. Primarily, social dialogue mechanisms are examined, as it is essential to describe social dialogue mechanisms in order to assess their capacity for tackling forthcoming challenges, such as digitalization. We then examine population statistics and unemployment. One of Turkey's main problems is high unemployment, especially among young people. Taking into consideration that digitalization will change labour market structures, current unemployment statistics gain more importance for the purposes of this chapter. Another important issue for Turkey is migration. This topic is examined through official statistics on migrants and published reports on migrant workers. Unregistered working by migrant workers is also a large problem facing the national labour market.

Global supply chains are also important for conditions in the Turkish labour market. Turkey has many factories which are producing mostly textiles and garments for various global brands. Working conditions in those workplaces are thus important and social dialogue is needed to find solutions to their problems.

Unionization rates and collective agreement coverage are very important for maintaining effective social dialogue. We look at trade union representativeness, taking account of the social partners' views and suggestions. We also look at collective bargaining and social partner autonomy, as well as the need for extension mechanisms considering the low coverage rate of collective agreements.

Finally, we examine digitalization and the social partners' attitudes towards it.

2. TURKISH INDUSTRIAL RELATIONS

During Turkey's Republican Era, which began in 1923, trade unions and collective rights were overshadowed by vigorous industrialization strategies. The new republic gave priority to the development and reformation of the war-stricken country. Accordingly, the Constitution of 1924 made no reference to collective labour rights. With a view to facilitating industry-based reforms and accelerating the country's economic development, policy-makers discouraged the establishment of trade unions and employer associations.

Until 1947, unions and employer associations had no legal status and attempts to establish such organizations were suppressed. After the Second World War, Turkey was transformed into a multi-party democracy and this led to the development of collective rights. The first year of Turkey's multi-party democracy was marked by the first Trade Unions Act. This ended the legal uncertainty afflicting such organizations.

Prior to the 1947 reforms, despite the existence of the Labour Code regulating individual employment relations, there was no specific legislation regulating collective rights. The Ministry of Labour was established in 1946, prior to the adoption of the Trade Unions Act. According to this Act, workers and employers were entitled to form unions and associations to assert their rights. However, the Act contained numerous restrictions regarding its scope and the autonomy of the relevant organizations, and it imposed a total ban on strikes and lock-outs.¹

In 1961, a new Constitution was adopted, in which collective bargaining and strike action were regulated as constitutional rights for the first time. Subsequently, in 1963, Laws 274 and 275 were adopted by the Turkish National Assembly, which became the main legal texts appertaining to trade unions and collective bargaining, as well as grievance procedures, strikes and lock-outs. These liberal laws remained in force for nearly two decades (Dereli 1998, pp. 35–40).

The 1961 Constitution and accompanying laws enabled the unions and employer associations to emerge and develop. The main bargaining level was the workplace, where the vast majority of unions were established. The unions' representative power and influence increased substantially, and collective agreement coverage was wide. Unfortunately, the coup d'état of 1980 hit freedom of association hard and the legal framework took an authoritarian turn. Many liberal laws and regulations were abolished and the military-driven administration generally took an obstructive stance.

After the abolition of the above-mentioned laws, the new Turkish Constitution of 1982 also regulated collective bargaining and strike action as constitutional rights. Accordingly, Articles 51, 53 and 54 of the Constitution guarantee the right to form associations, the right to collective bargaining and rights to strike and lock-out.

In 1983, two new laws were adopted: Law No. 2821 on trade unions and Law No. 2822 on collective bargaining, collective agreements and grievance procedures. These two laws were in force for 29 years and have been criticized for being restrictive as regards collective labour rights.

The scope of Laws Nos 2821 and 2822 was limited to employees; the legal status of public service workers' freedom of association was not regulated until 2001. In that year, following collective action by public servants, a new Law No. 4688 was enacted and limitations on the formation of public service unions were loosened.

In 2012, new legislation was prepared to regulate collective labour relations. The Law on Trade Unions and Collective Labour Agreements (Law No. 6356) is the current main legal tool in relation to Turkish collective labour relations (Dereli 1998, pp. 41–6; Yıldız 2016, p. 6). Implementation is supported by secondary legislation, which regulates the functioning of related institutions or procedures for determining representativeness.

It is important to acknowledge the relationship between domestic and international laws, such as treaties and conventions. The international treaties directly regulating citizens' economic and social rights were given priority over domestic law in the Turkish Constitution. According to Article 90 of the Constitution:

International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

The final sentence of this Article states that, in event of conflict, international agreements on collective rights will prevail over national legislation. On this basis, the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the ILO's Conventions Nos 87 and 98 and the European Social Charter (revised) have a direct impact on national practices and jurisdiction² concerning collective rights, if there is a conflict.

3. KEY ASPECTS OF INDUSTRIAL RELATIONS AND LABOUR MARKET CHALLENGES IN TURKEY

3.1 Social Dialogue Mechanisms

The Economic and Social Council (ESC) must be mentioned first in relation to national social dialogue mechanisms and institutions. In 2001, Law No. 4641 founded the ESC. According to that legislation, the ESC had 39 members in total, 15 of them from government, 12 from the workers' side and 12 from the employers' side. The ESC held eight meetings between 2001 and 2009. Since 2009, however, the ESC has not convened. As indicated by various European Commission reports,³ the ESC cannot be described as an active and appropriate institution for tripartite social dialogue at present.⁴ The Confederation of Turkish Employer Associations (TISK), a member of the ESC, has also stated that the ESC should be more effective.

Another multipartite institution is the Labour Assembly. This has a more venerable history than the ESC. It gathered 12 times between 1947 and 2019 as an advisory committee. The last Labour Assembly was convened on 23 May 2019. The theme was 'Working for a brighter future' and the meeting was dedicated to the ILO centenary. The Labour Assembly could be an effective platform for tripartite social dialogue on current economic, labour and social issues in Turkey.

In addition, the Labour Code regulates the Tripartite Consultative Board for improving consultation among government, workers' representatives (as well as public employee

representatives) and employers' representatives. The last meeting was held on 15 October 2018. Since then, the board has not been convened.⁵

The Committee for Determining Minimum Wages should also be mentioned. This is a tripartite commission which held annual meetings.

So, there are several legal mechanisms for multipartite or tripartite dialogue. However, notwithstanding the Committee for Determining Minimum Wages, their effectiveness is problematic. In order to gain positive results from these institutions and use them to promote social dialogue, meetings should be held on a regular basis.

The ILO's Ankara office implemented a project on promoting social dialogue between 2016 and 2019, of which the Ministry of Family, Labour and Social Services was the beneficiary.⁶ Arising from this project, a number of reports have been published, for example, on organizing and representing hard-to-organize workers, the Ministry of Labour, the contribution of social dialogue to economic development and growth, and social dialogue mechanisms in Turkey.⁷ They underline the importance of the social partners' own initiatives for fostering social dialogue. On their side, there is an expectancy on the part of the public authorities that social dialogue mechanisms at national level will not meet the current challenges. Instead, social partners will have to start social dialogue mechanisms and invite the public authorities to meetings.

During the interviews, public service union confederation *Turkiye KAMU-SEN* mentioned the linkage between social dialogue and democracy:

Social dialogue mechanisms are important factors for improving democracy. For foreign investment, stability, justice and trust in the country concerned are of crucial importance. Economically and politically developed countries are the most democratic. This is natural. Social dialogue mechanisms and developed and institutionalized democracy enhance a country's competitiveness, as well as global trade. In relation to Turkey, however, we cannot talk about efficient social dialogue mechanisms and a correlation between them.

TISK also underlines the importance and defines the major problems that effective social dialogue may help to overcome, as follows:

Successful social dialogue structures and processes have the potential to solve important economic and social problems, promote good governance, improve social and industrial peace and stability, as well as support economic progress.

However, social dialogue plays an important role in social security management, dissemination of national and international labour standards, forms of employment, gender equality and fair transition to low-carbon economies. It also helps to overcome the political and economic transition processes and mitigate the effects of the crisis.

It is known that the technological developments and digital transformation that go together with globalization have a profound effect on working life. Changes in working life, digitalization and the emergence of new business areas directly affect the competitiveness of countries. While these changes offer both opportunities and risks, more social dialogue is needed in order to adapt to these changes and to find solutions to the problems that may arise.

Although the official social dialogue mechanisms fall short in a number of ways, the social partners and government officials may gather in other forums. *TISK* organized a multipartite international event in order to promote social dialogue, and it explains the structure and mission of the event as follows:

The Joint Dialogue Forum, which was held on 11–13 October 2019 with approximately 400 participants, was attended by the Turkish Minister of the Family, Labour and Social Services, the chairs of the Confederation of Turkish Trade Unions (Türk-İş), the Hak-Is trade union confederation, the Confederation of Progressive Trade Unions of Turkey (DISK) and the heads of trade unions and employers' associations, and representatives of the International Organization of Employers (IOE), the International Trade Union Confederation (ITUC), the ILO and the World Economic Forum (WEF). The participants have formed working groups on the environment, the elderly, disabled people, women and children, which have made 15 recommendations. For each recommendation, concrete action was voted on by all participants and the social partners made a commitment to take action. The Forum also held a special session on occupational health and safety.

In addition to the Joint Dialogue Forum, TISK organized two Working Life Consultation Meetings in 2017 and 2018 to discuss recent developments with regard to working life.

In order to maximize the benefits of social dialogue for all parties, TISK has made a number of suggestions:

- Social dialogue mechanisms established at workplace level or the possibility of social dialogue through more active bodies should be provided to employees.
- Social dialogue should be established gradually at the workplace, sectoral and national level, and concrete outputs should be enshrined in law.
- As a consequence of globalization, labour market flexibility and constructive social dialogue mechanisms should be enhanced in order to adapt to new working styles and occupations, to ensure workers' adaptation to these processes and to foster international competitiveness.

In addition to tripartite mechanisms, collective bargaining functions at the bipartite level among the social partners.

3.2 Turkey's Main Challenges in the World of Work Concerning Labour Markets and the Labour Force

Prior to focusing on the social partners, social dialogue and the future of work, the main challenges facing Turkey's labour market have to be addressed. Turkey's population was established by TURKSTAT (the official statistical institution) as being over 83 million in 2019, according to data released in early 2020 (Table 15.1).⁸

The population growth rate was 1.24 per cent for 2017, 1.47 per cent for 2018 and 1.39 per cent for 2019. The numbers indicate that Turkey has a large population of working age. Creating new jobs is therefore a top priority. However, Turkey has been suffering from high inflation, as shown for the past 15 years in Table 15.2.

Especially in the last quarter of 2018 and the first quarter of 2019, then, Turkey suffered high inflation of around 20 per cent. Although it decreased considerably by November 2019, inflation is still in double digits. A large population with a huge working-age segment and high inflation are not Turkey's only labour market problems. Unemployment is also a big issue (Table 15.3).

The unemployment rate for July 2019 (14.1 per cent) is the highest value for 14 years. Its lowest value between 2005 and 2019 was 8 per cent in June 2012. In the same month,

Table 15.1 Population by year, age group and gender, Turkey, 2016–19

	Age group	Total	Male	Female	Total %	Male %	Female %
2016	Total	79 814 871	40 043 650	39 771 221	100.0	100.0	100.0
	0–14	18 925 782	9 715 020	9 210 762	23.7	24.3	23.2
	15–64	54 237 586	27 409 238	26 828 348	68.0	68.4	67.5
	65+	6 651 503	2 919 392	3 732 111	8.3	7.3	9.4
2017	Total	80 810 525	40 535 135	40 275 390	100.0	100.0	100.0
	0–14	19 033 488	9 769 101	9 264 387	23.6	24.1	23.0
	15–64	54 881 652	27 732 601	27 149 051	67.9	68.4	67.4
	65+	6 895 385	3 033 433	3 861 952	8.5	7.5	9.6
2018	Total	82 003 882	41 139 980	40 863 902	100.0	100.0	100.0
	0–14	19 184 329	9 846 565	9 337 764	23.4	23.9	22.9
	15–64	55 633 349	28 123 283	27 510 066	67.8	68.4	67.3
	65+	7 186 204	3 170 132	4 016 072	8.8	7.7	9.8
2019	Total	83 154 997	41 721 136	41 433 861	100.0	100.0	100.0
	0–14	19 212 345	9 859 547	9 352 798	23.1	23.6	22.6
	15–64	56 391 925	28 524 329	27 867 596	67.8	68.4	67.3
	65+	7 550 727	3 337 260	4 213 467	9.1	8.0	10.2

Source: TURKSTAT (www.tuik.gov.tr, accessed 10 April 2020).

Table 15.2 Annual rate of inflation, Turkey, 2004–20 (annual rate of change, percentage)

	January	February	March	April	May	June	July	August	September	October	November	December
2004	10.59	9.48	8.40	7.87	7.31	7.08	7.79	8.45	8.01	9.43	9.47	9.35
2005	9.23	8.69	7.94	8.18	8.70	8.95	7.82	7.91	7.99	7.52	7.61	7.72
2006	7.93	8.15	8.16	8.83	9.86	10.12	11.69	10.26	10.55	9.98	9.86	9.65
2007	9.93	10.16	10.86	10.72	9.23	8.60	6.90	7.39	7.12	7.70	8.40	8.39
2008	8.17	9.10	9.15	9.66	10.74	10.61	12.06	11.77	11.13	11.99	10.76	10.06
2009	9.50	7.73	7.89	6.13	5.24	5.73	5.39	5.33	5.27	5.08	5.53	6.53
2010	8.19	10.13	9.56	10.19	9.10	8.37	7.58	8.33	9.24	8.62	7.29	6.40
2011	4.90	4.16	3.99	4.26	7.17	6.24	6.31	6.65	6.15	7.66	9.48	10.45
2012	10.61	10.43	10.43	11.14	8.28	8.87	9.07	8.88	9.19	7.80	6.37	6.16
2013	7.31	7.03	7.29	6.13	6.51	8.30	8.88	8.17	7.88	7.71	7.32	7.40
2014	7.75	7.89	8.39	9.38	9.66	9.16	9.32	9.54	8.86	8.96	9.15	8.17
2015	7.24	7.55	7.61	7.91	8.09	7.20	6.81	7.14	7.95	7.58	8.10	8.81
2016	9.58	8.78	7.46	6.57	6.58	7.64	8.79	8.05	7.28	7.16	7.00	8.53
2017	9.22	10.13	11.29	11.87	11.72	10.90	9.79	10.68	11.20	11.90	12.98	11.92
2018	10.35	10.26	10.23	10.85	12.15	15.39	15.85	17.90	24.52	25.24	21.62	20.30
2019	20.35	19.67	19.71	19.50	18.71	15.72	16.65	15.01	9.26	8.55	10.56	11.84
2020	12.15	12.37	11.86									

Source: TURKSTAT (www.tuik.gov.tr, accessed 10 April 2020).

Table 15.3 Main seasonally adjusted labour force indicators, Turkey, 2018–20 (age 15+)

Months	Labour force, labour force participation and employment rates							Unemployment rates (%)		
	Labour force (000s)	Employed (000s)	Agriculture (000s)	Unemployed (000s)	Labour force participation rate (%)	Employment rate (%)	Total	Non-agricultural	Youth (15–24)	
2018										
January	32 076	28 908	5 500	3 168	53.1	47.9	9.9	11.8	18.5	
February	32 068	28 898	5 426	3 170	53.1	47.8	9.9	11.7	18.2	
March	32 036	28 825	5 366	3 210	53.0	47.7	10.0	11.9	18.1	
April	32 145	28 812	5 365	3 333	53.1	47.6	10.4	12.3	18.6	
May	32 152	28 727	5 318	3 425	53.1	47.4	10.7	12.6	19.5	
June	32 306	28 783	5 284	3 522	53.3	47.5	10.9	12.8	20.2	
July	32 299	28 746	5 256	3 553	53.2	47.4	11.0	12.9	19.9	
August	32 473	28 849	5 215	3 624	53.5	47.5	11.2	13.0	20.5	
September	32 397	28 705	5 223	3 692	53.3	47.2	11.4	13.3	21.4	
October	32 521	28 738	5 283	3 783	53.5	47.2	11.6	13.6	21.9	
November	32 434	28 484	5 207	3 950	53.3	46.8	12.2	14.2	23.0	
December	32 331	28 200	5 178	4 131	53.0	46.3	12.8	14.9	23.3	
2019										
January	32 325	27 988	5 159	4 336	53.0	45.9	13.4	15.7	24.9	
February	32 499	28 037	5 135	4 462	53.2	45.9	13.7	16.0	25.1	
March	32 639	28 104	5 129	4 536	53.4	45.9	13.9	16.2	25.8	
April	32 568	28 032	5 048	4 536	53.2	45.8	13.9	16.2	25.6	
May	32 434	27 896	5 024	4 538	52.9	45.5	14.0	16.3	25.5	
June	32 539	28 016	5 057	4 523	53.0	45.6	13.9	16.2	25.8	
July	32 623	28 016	5 119	4 607	53.0	45.5	14.1	16.5	27.0	
August	32 652	28 078	5 112	4 574	53.0	45.6	14.0	16.4	26.9	
September	32 579	28 094	5 104	4 485	52.8	45.6	13.8	16.1	25.8	
October	32 595	28 213	5 010	4 382	52.8	45.7	13.4	15.7	24.9	
November	32 602	28 328	5 051	4 274	52.7	45.8	13.1	15.3	23.9	
December	32 406	28 191	4 954	4 215	52.3	45.5	13.0	15.1	23.8	
2020										
January	32 150	28 090	4 922	4 060	51.8	45.3	12.6	14.6	22.9	

Source: TURKSTAT (www.tuik.gov.tr, accessed 10 April 2020).

youth unemployment was 15.1 per cent, also the lowest value in the same period. The population growth rate, population density in the working-age segment, high inflation and unemployment are crucial issues and need to be properly addressed.

In a country in which youth unemployment stands at 22.9 per cent (January 2020) and the not in education, employment or training (NEET) rate was 28.6 per cent at the end of September 2019,⁹ government and social partners have to act. The trade unions in particular have to focus on 'outsiders' more than they have done before. Otherwise the consequences will be harsh for working life and future generations. This situation will only worsen with digitalization and changes in the structure of work.

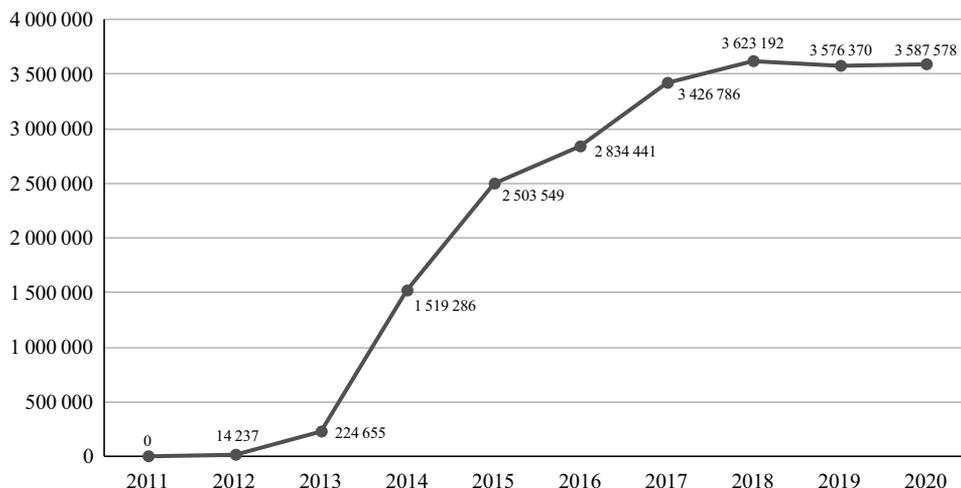
The social partners are focusing on unemployment. At the confederation level, DISK summarizes the current status as 'the appearance of unemployment: desperate, young and female' in its report issued in January 2020.¹⁰ Türk-İş also considers unemployment to be a large problem¹¹ and, in order to reduce its negative social effects, has proposed an amendment on the conditions of eligibility for unemployment payments. Türk-İş is calling for the simplification of the conditions of unemployment payments so that more unemployed people are able to meet these. The president of the Hak-İş confederation's has also declared that they are hoping for a fall in the unemployment rate, to 5 per cent.¹² On the employer's side, TISK's president, too, considers unemployment to be a major problem, which can be solved through more flexible working practices.¹³

In addition to the social partners' distinct perception of unemployment as a main problem, the government has established a number of incentives to tackle it. Employers are entitled to a cut in social security contributions if they employ young workers and/or women in addition to current employees. Although these incentives are appreciated, it is evident that they are not capable of bringing about a great improvement. Tripartite social dialogue would be one way of seeking appropriate solutions to the unemployment problem.

3.3 Migration

Another problem facing Turkey is the massive number of migrants within its territory. Mainly owing to the Syrian crisis, according to the United Nations High Commissioner for Refugees (UNHCR), Turkey is hosting 3.6 million Syrians and 400 000 refugees and asylum seekers of other nationalities.¹⁴ Only 1.7 per cent of them are living in temporary accommodation centres, with over 98 per cent of refugees live in urban, peri-urban and rural areas (UNHCR 2019). Owing to legislation,¹⁵ Syrians cannot be granted 'refugee' status from Turkey. In order to shelter them in the country, Turkey grants 'temporary protection' status to Syrians. The latest statistics show that 3 587 578 Syrians in Turkey are registered as having temporary protection status (Figure 15.1).

Temporary protection status does not give people the right to work directly. Any foreign-born worker who wants to work in Turkey has to obtain a work permit. The International Workforce Directorate General, under the Ministry of the Family, Labour and Social Services, deals with work permits. The latest official statistics for 2017 indicate that a total of 87 182 of work permits were issued, 20 966 of them to Syrians. Only 1641 work permits were issued to women. The official statistics for 2018 and 2019 have not been released, but the Ministry of the Family, Labour and Social Services has stated that 31 185 Syrians had been granted work permits by the end of March 2019.¹⁶



Source: Republic of Turkey, Ministry of Interior, Directorate General of Migration Management (last updated on 3 April 2020) (<https://data.tuik.gov.tr/Bulten/Index?p=Adrese-Dayali-Nufus-Kayit-Sistemi-Sonuclari-2020-37210>, accessed on 10 April 2020).

Figure 15.1 Syrian refugees in the scope of temporary protection by year, Turkey, 2011–20

There is a marked imbalance in the number of work permits issued to Syrians living outside temporary accommodation centres in urban, peri-urban and rural areas under temporary protection status in 2017 and in 2019. It is evident that many Syrians are working informally, without a work permit.

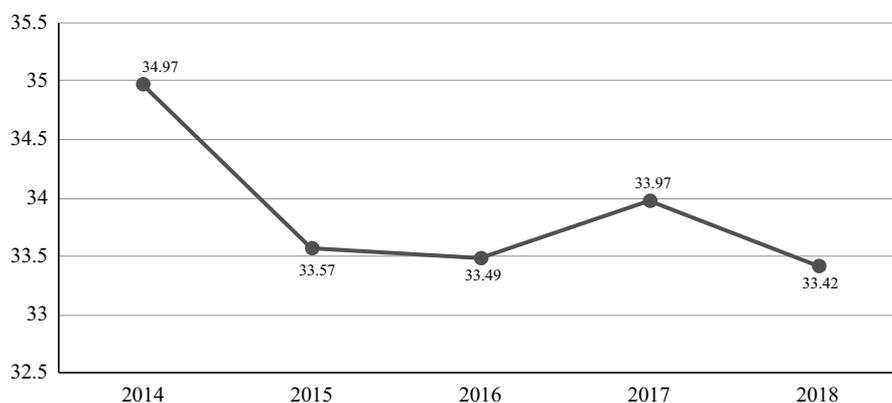
The ILO's national office is running several projects on Syrian refugees.¹⁷ Its Ankara office estimates that of the 2.1 million Syrians of working age in Turkey, 1 million are working. According to the ILO:

Syrian refugees are mostly employed informally in low-skilled jobs such as seasonal agricultural work, construction, manufacturing and textiles. They work long hours in unsafe conditions, receiving below minimum wage rates, or even not being paid at all. Ongoing research on the socio-economic situation of non-Syrian refugees indicates that, in a similar vein, they also mostly work informally in low-skilled occupations, however, sectors and occupations differ according to nationality and ethnic group.¹⁸

Informal work is not an issue for Syrians or foreigners alone. For the period 2014–18, according to the official statistics, over 33 per cent of work in Turkey was unregistered (Figure 15.2).

The ILO's Ankara office published the outcome of a needs analysis in 2018, focusing on what needs to be done by trade unions and employers' associations in order to maintain decent work for Syrians who are under temporary protection in Turkey.¹⁹ According to the report, there is a consensus about an open door policy towards Syrians among workers' confederations (DISK, Hak-İş and Türk-İş) and the employers' confederation (TISK). In addition, workers' confederations underline the necessity of registered

employment for Syrians with the same conditions as national workers. However, the majority of trade union representatives have stated that there are negative attitudes towards Syrians among their members owing to concerns about rising unemployment. That is, unregistered employment makes Syrians much cheaper than registered national workers. This report reveals that there is very limited contact with Syrians and trade unions at institutional level. As regards employers' associations, the situation is the same (Erdogdu 2018, p. 61). Erdogdu (2018, p. 80) also notes that migration issues in relation to working life have not been on the agenda of tripartite social dialogue mechanisms such as the Tripartite Consultative Board or the Labour Assembly. As a consequence, needs analyses have highlighted the need for training to create an inclusive working environment for Syrian workers (Erdogdu 2018, pp. 105–8).



Source: SGK (Institution of Social Security), accessed 10 April 2020 at http://www.sgk.gov.tr/wps/portal/sgk/tr/calisan/kayitdisi_istihdam/kayitdisi_istihdam_oranlari.

Figure 15.2 Unregistered work in Turkey 2014–18

Unregistered work affects both the social partners. Informal work causes worker exploitation in every aspect of working life, and unfair competition between employers. In addition, the state is losing tax revenue and social security contributions, which also affects future generations. There is no doubt that unregistered work should be a joint topic for tripartite social dialogue.

3.4 Global Supply Chains

Another substantive issue that needs to be better understood among the challenges facing the Turkish labour market are working conditions at the suppliers of global brands. Turkey is one of the top 25 textile and garment producing countries. According to a survey, conducted by Impact Centre Erasmus (Erasmus University Rotterdam) and ASN Bank (Maas et al. 2016), Turkey is in the supply chain of nine different textile and garment brands.²⁰

One of the biggest groups with a significant number of suppliers in Turkey is Inditex. Inditex and IndustriAll launched a programme in Turkey based on the Global Framework Agreement. The Joint Turkey Programme began in 2013 and aims to strengthen worker

participation in large Turkish factories. The purpose of the programme was defined by Inditex as follows: 'By opening up new channels of communication between workers and managers, local union representatives and the employer, all sides are building trust and finding common purpose for positive change. Workers selected their own representatives who were trained in the principles of collective bargaining.'²¹ In order to achieve this goal Inditex and IndustriAll carried out training programmes for workers in three factories. Over 800 workers benefited from these programmes in 2016.²²

Inditex also focuses on migration as a key topic concerning Turkey. The company launched a remediation plan to support Syrian workers in the country. The initial aim was to prevent any type of exploitation, including violations of their human rights. Subsequently, Inditex and the Refugee Support Centre (MUDEM, a non-profit organization) put their efforts into ensuring that refugees have fair working conditions and rights. In this context, MUDEM inform workers of their rights and advise them to legalize their employment status in Turkey, teach them Turkish and translate the necessary documents, such as regulations, procedures and health and safety topics.²³

Another international group, the Ethical Trade Initiative (ETI), also focuses on Syrian refugees working in Turkey's garment sector. The ETI launched a programme to encourage better employment conditions for both Turkish and Syrian workers. In partnership with ITKIB (General Secretariat of Istanbul Textile and Apparel Exporters' Associations), the UN refugee agency UNHCR, and the International Middle East Peace Research Centre, the ETI trained 178 suppliers on the employment of Syrian refugees in line with a 'law and decent work' agenda.²⁴

According to a survey conducted within the ETI project, factories in the first circle of international brands' supply chains do not have significant numbers of Syrian workers. As an example, in the first circle suppliers of a firm with around 400 suppliers in Turkey, there are around 20 Syrian workers in total. However, there are no Syrian members of trade unions in the textile sector and it seems that the unions have not prioritized this issue (Korkmaz 2018, p. 104).²⁵ One reason for this is the widespread informal working among Syrians. Although the four trade unions that are entitled to conduct collective bargaining in Turkey do not have any Syrian members, they are involved in programmes promoting legal and registered working among Syrians. Nevertheless, they have not made much effort to register them. According to researchers, one reason for that is the trade unions' institutional weakness. Only the Oz-Iplik Is trade union, which is affiliated to the Hak-İş confederation, is involved in the Hak-İş project for the employment of Syrians. Researchers consider this to be the most substantial effort directed towards Syrian workers even though they do not have any Syrian members. The Deriteks trade union, too, has shown solidarity with Syrian migrants, encouraging its members to rent accommodation to them, setting rentals and organizing its members to donate household items to Syrian migrants. However, Deriteks has not done anything about registering Syrian workers as members either (Korkmaz 2018, p. 111).

In addition to these multipartite initiatives, national researchers have also conducted studies on Syrians in the textile sector. One research project was conducted November 2015 and January 2016. The researchers (Mutlu et al. 2018) focused on 300 Syrians and 303 Turkish workers in the textile sector in Istanbul. A number of major issues were uncovered (Mutlu et al. 2018, p. 29). First, the proportion of child labour among the 300 Syrians working in the textile sector was 29 per cent. All of the Syrian workers and half

of the Turkish workers within the scope of the survey were working informally. Another infringement of national legislation concerned working hours. Although the legal working week is 45 hours in Turkey, only 2.3 per cent of these workers were in compliance with this. The rest were working the following hours: 46–50 hours (14.26 per cent), 51–55 hours (32.17 per cent), 56–60 hours (19.73 per cent), 61–65 hours (16.58 per cent) and more than 65 hours (14.93 per cent) (Mutlu et al. 2018, p. 81).

Excessive working hours are widespread in the textile sector. Employers in the first circle of brand supply chains told the researchers that the brands' purchasing practices were the primary cause of excessive working hours and informal work. According to them, the brands demand production that is 'as quick and cheap as possible'. In order to meet their demands, first-circle factories are obliged to subcontract. The researchers described this situation as follows:

As we heard from business associations in our fieldwork, unpredictable orders from many different buyers, and downward pressure on prices, put significant stress on suppliers. Young buyers, who lack experience, reportedly do not well understand the structure of the Turkish industry and the frequency and risks of subcontracting. They also reportedly disregard price components of production, including labour costs, minimum wages, and health and safety, and tend to set unreasonably low prices. This frequently leads suppliers to outsource production, often to undeclared factories that provide services at a lower cost, partly through exploiting workers. (Goethals and Korkmaz 2017, p. 13)²⁶

In order to be ready for the future world of work, the ongoing structural problems must be tackled. The high inflation rate and high unemployment create significant problems that are exacerbated by migration and informal working. The social partners have to be more effective in tackling these existing problems, as well as being ready to face the forthcoming challenges of digitalization and the changing world of work. In the following sections, we focus on the three items that were selected as most important by the social partners in this project: the representativeness of the social partners, the development of collective bargaining, and the social partners' attitudes to and role in digitalization.

4. STRENGTHENING THE REPRESENTATIVENESS OF SOCIAL PARTNERS

4.1 Formation and Legal Capacity of Trade Unions and Employer Associations

The establishment of trade unions and employers' organizations is free and no prior authorization is required. Trade unions and employers' organizations have legal personality. They are established by an association of at least seven workers or employers for the purpose of protecting and promoting their common economic and social rights and interests in labour relations. The same principles are valid for public service trade unions.

These organizations can be formed by workers and employers, on the basis of branches of activity. These branches of activity are determined by the annex to Law No. 6356, according to which there are 20 of them.²⁷ Article 5 of Law No. 4688 prefers the term 'service branches' to 'branches of activity' and defines 11 different service branches in which public service trade unions can be established.²⁸

Employer associations and trade unions, as well as public service trade unions may form confederations according to both of the codes. A confederation can be established by five trade unions established in different branches of activities or service branches.

4.2 Representativeness of trade unions

4.2.1 Representativeness of trade unions

In Turkey, the Ministry of the Family, Labour and Social Services releases biannual statistics (in January and July) of the total number of workers and the number who are affiliated to a trade union. The competency and authority of the trade unions, examined in section 5.2 of this chapter, can be determined in accordance with these statistics. The latest official statistics for trade union membership were released in January 2020.²⁹ The numbers of workers and of those affiliated to a trade union can be seen in Figure 15.3.

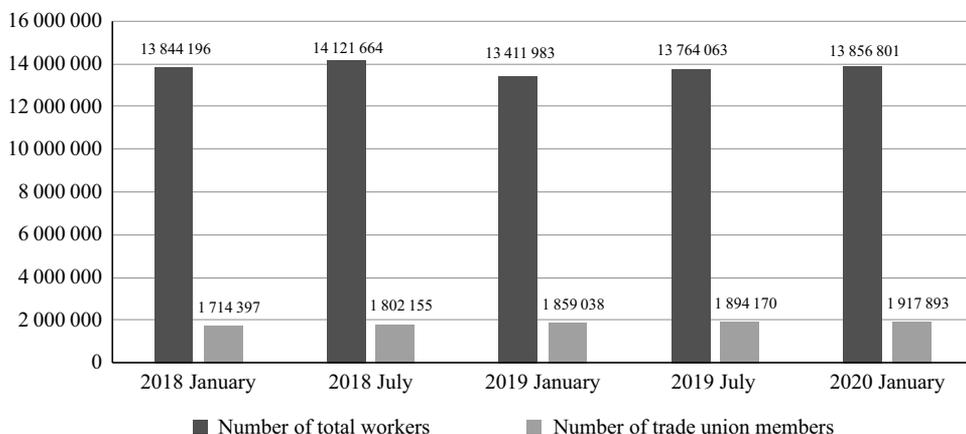


Figure 15.3 Total workers and trade union-affiliated workers, Turkey, 2018–20

As Figure 15.3 shows, trade union-affiliated workers can be described as a minority, with a unionization rate of around 13 per cent. However, these data published by the Ministry of the Family, Labour and Social Services are based on registered workers. A recent survey on unionization carried out by DISKAR (DISK's research centre), issued in February 2019 (DISKAR 2019), takes informal work into consideration when determining the unionization rate. The difference between unionization rates can be seen in Figure 15.4.

Concerning solutions for strengthening trade unions, trade unionists tend to underline impartiality and member support. They have to be independent of the state and other social actors. By contrast, if a trade union is granted by management or other sources it does not help their cause. According to the trade unionists, only by fulfilling these basic requirements will trade unions be capable of protecting workers' rights.³⁰

4.2.2 Strategies for recruiting new members

To maintain their existence, gain support and attain power trade unions need to reach and register new members. According to the Türk-İş, which is the largest trade union

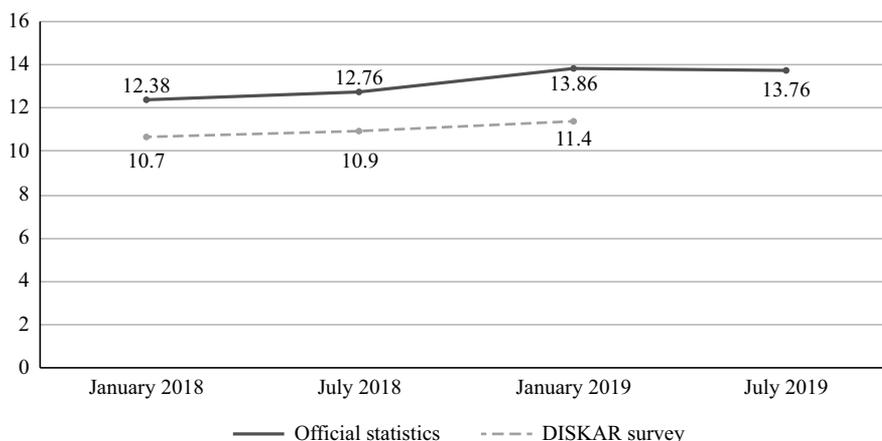


Figure 15.4 Unionization rates, Turkey, 2018–19

in Turkey, ‘awareness raising has to be realized among workers in order to gain new members. The most important obstacle to unionization is workers’ lack of knowledge about trade unions and their functions. This lack of knowledge also leads to prejudices against trade unions’. This approach is shared by other trade unions,³¹ as is the belief in the natural bond between democratization and unionization indicated during the interviews in relation to workers’ perception of unionization.³²

Sometimes this situation causes another misuse of freedom of association, as one trade union interviewee explained:

Occasionally some workers try to ‘instrumentalize’ the right to join to a trade union only on the condition of a forthcoming dismissal on grounds of different causes. In that scenario, workers only think about gaining extra compensation on the grounds of dismissal due to trade union membership. This approach diminishes the importance of trade unions as well as the freedom of association.

One suggestion for informing workers in industrial zones made during the interviews was workers’ offices, which would help trade unions to identify the specific problems with working conditions in that industrial zone. This would also facilitate workers’ union registration.³³

In general, trade union representatives declare that some employers are against trade unions. In order to eliminate this hostility, a suggestion made during the interviews was to make it possible for employers’ social security contributions to be tax deductible. This would be a useful incentive for employers to alter their attitude towards trade unions and collective bargaining.³⁴

DISK approaches the representativeness problem in the light of ILO Convention Nos 87 and 98. Underlining the issue that Turkey has contradictory practices and legislation in relation to these conventions, Turkey has been identified as among ‘the world’s ten worst countries for workers’ in the ITUC global rights index. They face obstacles in daily working life regarding their current members and potential members. A DISK representative states:

The double threshold system, long legal cases to determine the branch of activity and/or authority of a trade union, deterrent trials against workers and dismissals on the grounds of unionization restrict the right to organize. It may take years for us to sign a collective agreement due to de facto and de jure pressure. Anti-trade union utterances by some employers or politicians create another obstacle for registering new members.

The main problem with reaching new members on the workers' side is thus a lack of awareness of trade unions and inadequate legal protection.³⁵

Birlesik Metal-İs trade union has suggested special protective measures during workplace unionization. For example, employers should not be able to say anything, whether positive or negative, about trade unions. Also, other than on justified grounds, no employment contract can be terminated during a trade union's efforts to organize at that workplace. A system imposing industrial bans may also help to protect workers during the initial phases of unionization.³⁶

On the employer's side, as regards TISK, they have no difficulty reaching new members. They provide their members with assistance and information on domestic and international developments in relation to working life. TISK also plays an important role in launching projects to meet their member associations' needs. These projects and services include the following:

- Given the lack of skilled labour and the difficulties experienced by the business world in this regard, studies have been carried out in Turkey on 'Improving the vocational and technical education system and increasing the contribution of the private sector to on-the-job training programs'.
- In order to contribute to the development of employment and support companies in qualified staff training, the Global Apprenticeship Network (GAN Turkey) was established in coordination with the Turkish Confederation of Employer Associations in 2015 at the recommendation of the Global Apprenticeship Network (GAN Global), which was established in 2013 at the initiative of the IOE and Business at OECD (BIAC) and with the support of the ILO. GAN Turkey is still in operation.
- Furthermore, UK National Education Institution training in occupational health and safety (NEBOSH) training courses were provided free of charge to 200 people in the workplaces of our members at their request.
- Within the scope of the OHS Forum Theatre Event, 110 plays were performed free of charge at the workplaces of our members at their request. This is planned to be increased to 200 plays.

As an employer representative, one of TISK's priorities is capacity-building among its members in relation to sustainability. In this context, TISK provides the foundation for the UN Global Compact Turkey Network. The platform has a significant impact on increasing corporate sustainability in the business world. This may be regarded as one of TISK's services.

An important trade union tool for recruiting new members is the provision of new services. Historically, trade unions are main actors in wage development and collective bargaining. In addition, they may provide services, such as cheap holiday accommodation, discount shopping at supermarkets, and hospitals and/or private schools for their

members. Turkmetal reports that it provides training in various areas for its members and their families; for example, training related to drug use and oral hygiene. They also issue their members with discount cards for various supermarkets. In addition, women's boards have been proposed in workplaces at 152 different employers, within the context of group collective agreements with MESS (Turkish Employers' Association of Metal Industries). The main purpose of these boards is to eliminate violence and discrimination. Complementary health insurance was also included in the group collective agreement, to be financed by MESS.³⁷

The second biggest trade union in the metal sector, Birlesik Metal-İs, also provides new services for its members, such as seaside holiday options at the union's training facilities, issuing and disseminating various publications, assistance with hospital care for members suffering severe and long-term illnesses. DISK, to which Birlesik Metal-İs is affiliated, tries to improve its members' capacities with training activities, publications, and social and cultural events. These efforts enable members to participate actively in democracy.

The employers' association, MESS, is the signatory party of group collective agreements with Turkmetal and Birlesik Metal-İs. During our interview, they declared that approaching new members does not constitute a problem for them and they had registered 28 new companies in 2019.

MESS also provides additional services for its members. This includes cash support for payment of the employer's social security contributions. In the event of strikes and lock-outs, they can also provide cash assistance from the MESS Strike and Lock-out Assistance Fund.

Concerning the complementary health insurance, MESS also mentioned that the group collective agreements of 2017–19 provided 130 000 employees and their families with access to free health care with complementary health insurance, financed by MESS. To date, complementary health insurance has been used 460 000 times for treatment and for more than 10 000 operations. MESS also provides various training courses in the workplace and promotes grants for vocational training.

Tez Koop-İs also provides new services, such as vacation possibilities at the union's training facilities, mainly at the seaside, complementary health insurance, deductions for members at private hospitals, schools and dental clinics. In addition, there are special provisions on the elimination of domestic violence and the prevention of bullying in collective agreements.

There are two ways of providing new services. The first is to offer deductions or promotions from the manufacturers and/or service providers for trade union members. The second is for the union itself to provide services.³⁸ Turkish trade unions generally prefer the first option.

Trade unions use social media and communications actively to reach new members. They think that this is the best way to contact potential and existing members.³⁹

4.3 Representativeness of Public Service Trade Unions and Assessments of Registering New Members

The Ministry of the Family, Labour and Social Services releases annual statistics on unionization rates among public employees. Trade union representativeness and

registration of new members have different dynamics among public service employees. Since 2002, unionization rates have developed as listed in Table 15.4.

Table 15.4 Public service employees and unionization rates, Turkey, 2002–19

	Total public service employees (who can join a trade union)	Total public service employees who are affiliated to a trade union	Unionization rate (%)
2002	1 357 326	650 770	47.95
2003	1 272 267	788 846	62.00
2004	1 564 777	787 882	50.35
2005	1 584 490	747 617	47.18
2006	1 586 324	779 399	49.70
2007	1 617 410	855 463	52.89
2008	1 691 299	931 435	55.07
2009	1 784 414	1 017 072	57.00
2010	1 767 737	1 023 362	57.89
2011	1 874 543	1 195 102	63.75
2012	2 017 978	1 375 661	68.17
2013	2 134 638	1 468 021	68.77
2014	2 270 558	1 589 964	70.03
2015	2 354 314	1 679 028	71.32
2016	2 452 249	1 756 934	71.64
2017	2 431 228	1 684 323	69.28
2018	2 484 580	1 673 318	67.34
2019	2 549 094	1 702 644	66.79

Source: Ministry of Family, Labour and Social Services statistics, accessed 10 April 2020 at https://www.ailevecalisma.gov.tr/media/12228/2019_uyesayilari.pdf.

The unionization rate is high, but it cannot be said that there are no problems with representativeness and recruitment of new members. *Turkiye KAMU-SEN* Confederation states that they face political pressure and that their members and potential members suffer from discrimination regarding promotion, reinstatement and posting to lower ranking or worse positions. However, *Turkiye KAMU-SEN* tries to improve its members' quality of life with its social facilities.

As regards the autonomy and self-governance of public service trade unions, *Turkiye KAMU-SEN* has its critics:

Unfortunately, many of the trade unions are influenced by ideological zealotry. Although efforts to promote trade unionism, prevent exploitation of labour, protecting legal rights of public servants are weakened by some of the public servants' trade unions which are close to political power, they keep gathering more and more members. This oxymoron is the best example of trade union's ideological quandary. Even though they do not realize any action for promoting civil servants' working conditions, they continue to register new members. They act like a civil appendix of the political power by manipulating crowds through a certain ideological aim. The important point for a trade union must be the position of itself towards labour exploitation. In order to determine these, long-term actions of a trade union and/or confederation have to be analysed. As *Turkiye KAMU-SEN*, we have realized our first mass action in 1994. Consecutively in 1995, 1996, 1997, 2000, 2002, 2006, 2009 [and] 2012 we have organized protest

in order to promote rights of public servants as well as democracy. The latest action was in 2014 concerning an 'additional rise' for public servants, 25 000 public servants have involved in this action.

4.4 What Has to Be Done for the Social Partners in Order to Be More Effective in the Changing World of Work?

In order to be ready for the new challenges, the social partners must have the ability to react properly. It will be beneficial for all the partners to be proactive in relation to the future of work. During the interviews, social partners were asked what is needed to enable them to be more effective. On the employer's side, in order to play a more effective role in the changing world of work, MESS lists major problems and solutions as follows:

- combating the structural unemployment problem and creating new jobs;
- the ability of enterprises to rapidly adapt to changing production conditions and competition in domestic and international markets;
- combating unregistered employment;
- improving employment options for groups such as women, young people and people with disabilities, and facilitating their first job by using assured flexicurity mechanisms.

TISK's suggestions are similar:

As change accelerates, decision-makers, business and its representative organizations need to be innovative, adaptable and more flexible in order to ... take advantage of opportunities. It is important that employers' organizations cooperate more closely with governments and trade unions to establish a regulatory and institutional framework to monitor global and domestic developments and minimize negative impacts. It should proactively support its members in providing some services, such as training, counsel, representation or support. It should provide support to its members in matching skill trainings with the demands of the education and business community.

DISK interprets its main need as follows: 'Unless full compatibility with ILO Conventions is realized in the sense of freedom of association, there is no way for trade unions to be effective. Thus far, the hands of trade unions have been tied.'

5. SUPPORTING SOCIAL PARTNER AUTONOMY

5.1 Levels of Collective Bargaining

5.1.1 Collective bargaining for workers and employers

According to Law No. 6356, there are three levels of collective bargaining: the workplace, the enterprise and the group. There is also another type of agreement. According to Article 2 of Law No. 6356, a framework agreement can be concluded at sectoral level between unions and employers' associations that are members represented in the ESC. This is not a type of collective agreement in legal terms. It is an agreement that can be

concluded about vocational training, health and safety at work, social responsibility and employment policies. However, Law No. 6356 stipulates that only a collective agreement can contain provisions on the conclusion, content and termination of employment contracts. A framework agreement can be considered to be a policy statement or a roadmap for the signatory parties, instead of a binding collective agreement. As a general principle, there can be only one collective agreement in the relevant bargaining unit (workplace or enterprise) in Turkey (Directorate-General for Employment, Social Affairs and Inclusion 2018, pp. 6–7).

The Law also mentions group collective agreements, which cover workplaces and enterprises in the same sector. The main difference between enterprise and group collective agreements is the number of employers involved. If there is only one employer (whether a natural or a legal person) who runs an enterprise, an enterprise collective agreement has to be concluded. This is mandatory for enterprises within the meaning of Law No. 6356. If there is more than one employer (whether natural and/or legal persons) in the same sector and the same trade union is authorized in their workplaces or enterprises, they can conclude a group collective agreement.

Group collective agreements cannot cover contractual terms and conditions for an entire sector. Only one trade union can represent the workers and the same trade union has authority and competency in several workplaces and/or enterprises. The employer side consists of employers active in the same sector who have chosen to be a part of a negotiating group. The main difference between a framework agreement and a collective agreement is the scope of provisions. A framework agreement does not contain provisions about the terms of an employment relationship. There are several group collective agreements in the metal, textile and cement sectors. This is not a mandatory level of collective bargaining. If the social partners do not wish to negotiate a group collective agreement, they can conduct separate and independent collective bargaining for every workplace or enterprise (Directorate-General for Employment, Social Affairs and Inclusion 2018, p. 7).

The legal determination of collective agreement levels and types has been deemed contrary to the ILO's Conventions by some trade unions. In order to comply with international standards, levels and types of collective agreement have to be decided by the social partners.⁴⁰

5.1.2 Collective bargaining for public servants

According to Law No. 4688, collective bargaining for public servants can only be about financial and social rights. For example, collective bargaining cannot discuss issues such as promotion, work regulation or disciplinary procedures. This has repeatedly been criticized by the ILO's Committee on the Application of Standards on the grounds that limiting the subjects for collective bargaining is contrary to Convention No. 98.

There is only one level of collective bargaining and collective agreement for public servants. The negotiations are carried out for all public service employees and all public sector workplaces. Collective bargaining for public service trade unions is conducted between the Public Employers' Delegation (PED) and the Public Service Employees' Trade Union Delegation (PSUD). The PSUD is composed of 15 members. The head of the delegation is determined by the confederation with the most members among public service employees affiliated to a trade union. The trade unions with the most members

in each branch appoint a representative, and the first three confederations by number of members each names a representative. The most representative rule is applied when determining the members of the PSUD.

The method of collective bargaining among public service employees was criticized by the Committee of Experts on the Application of Conventions and Recommendations in 2019:

The Committee had also noted the observation of *Türkiye KAMU-SEN* in this regard, indicating that many of the proposals of authorized unions in the branch are accepted as proposals relating to the general section of the agreement, meaning that they should be presented by a confederation pursuant to the provisions of section 29 and that this mechanism deprives the branch unions of the capacity to directly exercise their right to make proposals. Noting that although the most representative unions in the branch are represented in the PSUD and take part in bargaining in branch-specific technical committees, their role within the PSUD is restricted in that they are not entitled to make proposals for collective agreements, in particular where their demands are qualified as general or related to more than one service branch, the Committee had requested the Government to ensure that these unions can make general proposals. The Committee notes the Government's indication in this regard that it is only natural that the proposals concerning all public servants are tabled by members representing those confederations in the PSUD that are higher level union organizations and that, during the four collective bargaining rounds that have taken place since the inception of the system in 2012, public service unions have participated in the negotiations as members of the PSUD and could in this way influence the general proposals. The Committee notes that the Government's indications seem to confirm that within PSUD only confederations can make proposals relating to issues concerning more than one branch. Given the fact that, where joint bodies are set up for the conclusion of collective agreements, and the statutory conditions for participation in these bodies are such as to prevent the most representative trade union in the branch from involvement in said bodies, the principles of the [ILO] Convention are impaired, the Committee again requests the Government to ensure that Act No. 4688 and its application enable the most representative unions in each branch to make proposals for collective agreements – including on issues that may concern more than one service branch – affecting public servants who are not engaged in state administration. (ILO 2019, p. 170)

As the Committee clearly stated, the main public servants' trade unions in the sector can make proposals within the PSUD only to a limited extent.

5.2 Two Important Terms: Competency and Authority

There are two main requirements for collective bargaining and collective agreements in Turkish collective labour law, competency and authority. A competent trade union is a trade union that represents at least 1 per cent of workers in the relevant sector. This is the first prerequisite for a trade union to engage in collective bargaining. The Ministry of the Family, Labour and Social Services issues biannual statistics on the membership of trade unions at sectoral level. The second requirement is authority. An authorized trade union is a trade union that represents the majority (50 per cent plus one) of workers at the workplace in concluding a collective agreement at this level. To be considered an authorized trade union for the conclusion of an enterprise level collective agreement, at least 40 per cent of the workers at that enterprise have to be members (Sur 2017, pp. 263–81; Directorate-General for Employment, Social Affairs and Inclusion 2018, p. 7).

As regards unionization, most workers want to be a member and they put some effort into achieving this. Problems arise if employers are hostile to trade unions and do not want one in their enterprise. Some employers may offer extra benefits to persuade workers to renounce their union membership, while others fire workers who join a union.⁴¹

The period during which a union is waiting for recognition is the most precarious for the workers. According to trade unionists,⁴² the legal protections are not badly designed on paper, but are not effective enough in practice to protect workers who have been discriminated against (including dismissal) on the grounds of their union membership.

Trade unions have put forward various models for authorization. *Birlesik Metal-İs* has suggested the establishment of an independent board⁴³ to take charge of determining the authorized trade union and the imposition of a deadline. As an example, this independent board would have to make its decision within four months, otherwise the authority would be conferred on the trade union that applied for it.⁴⁴ *Tez Koop-İs* has also demanded simplification of the authorization procedure.

The double threshold system, which has been criticized by the ILO especially in respect of the 1 per cent threshold (ILO 2019, p. 169), puts additional pressure on trade unions. A union that meets the 1 per cent threshold needs to register enough workers as members at the workplace or enterprise level within a short period of time, otherwise some employers will put pressure on workers to resign from the union.⁴⁵ Some trade unions approach the double-threshold system positively; in their opinion, if there was no threshold, trade unions would proliferate excessively. One interviewee declared that ‘before 1980 there were 956 trade unions; after 1980 the number of trade unions had decreased while the number of trade union members remained almost same’. He continued, ‘before 1980, trade unions were like granulated sugar; after that, they became cubes: together and strong’.

Another issue is employers’ legal objections to trade union authority. These objections can disrupt activities whether they are legally justified or not. Owing to judicial delays, trade unions risk losing their majority in workplaces where the employer takes legal action. During the proceedings, the courts demand information from the Ministry of the Family, Labour and Social Services in order to determine the number of members and the authority of the trade union concerned. Sometimes the list of trade union members is provided to the courts by the Ministry and the information enables the employer to identify them. This may lead to pressure or even dismissal.⁴⁶

5.3 Collective Bargaining Coverage

The Ministry of the Family, Labour and Social Services releases official statistics every year on various aspects of working life. One indicator included is the number of collective agreements. The latest official statistics, for 2017, were released in December 2018. Figure 15.5 presents total workers, unionized workers and workers covered by a collective agreement for the period between 2014 and 2017.

According to July 2017 statistics from the Ministry of the Family, Labour and Social Services on workers and trade union membership, there were 13 581 554 workers, 1 623 638 of whom were trade union members. Among these, only 800 288 – just under half – were covered by a collective agreement.⁴⁷

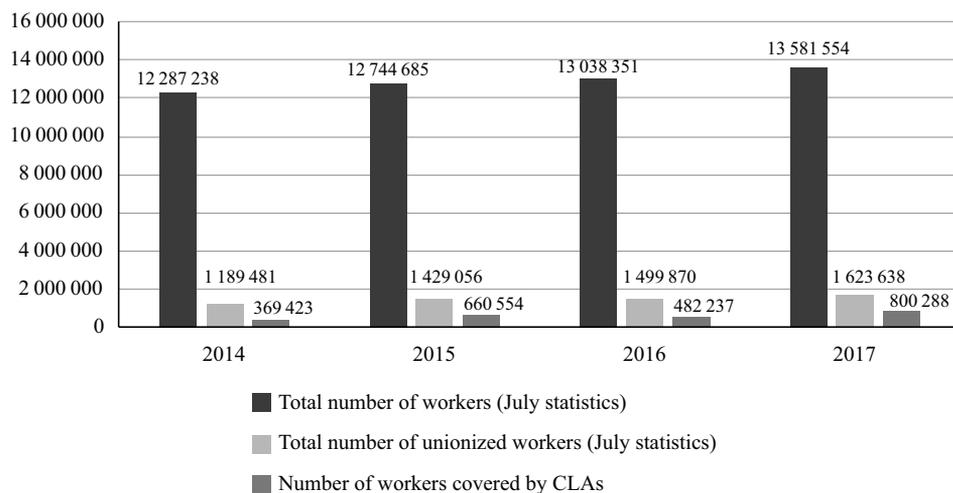


Figure 15.5 Coverage of collective agreements, Turkey, 2014–17

The number of workers presented as covered by a collective agreement in these statistics is the total number working at the relevant workplaces, but the number of workers actually within the scope of these agreements is much lower. This means that there can be different working conditions, wages and other pecuniary rights even in the same workplace. This depends on workers' membership of the trade union that signed the agreement. Another option is for workers who are not members of the signatory trade union to pay a solidarity contribution to benefit from the collective agreement. As a consequence, workers who are not members of the signatory trade union and do not pay a solidarity contribution to it cannot demand the same wage as members.

One of the main problems with the low coverage of collective agreements is the segmentation of workers on a blue-collar/white-collar basis. Most white-collar workers do not consider themselves workers and they may be omitted from the scope of a collective agreement. This can obstruct a great many workers from enjoying the collective rights recognized by the Constitution and other legal documents. This should be corrected as soon as possible.⁴⁸

According to the trade unions, the procedure of collective bargaining is complex and very detailed. Another shortcoming is that the legal regulations put all the responsibility on the trade unions, even if the employer's side does not accept them as a counterparty and does not even communicate with them. If the employer does not attend meetings and has no contact with the union, Law No. 6356 nevertheless imposes all the relevant procedures, including obligatory mediation. The law should be amended urgently to prevent employer behaviour which obstructs freedom of association and the right to collective bargaining.⁴⁹

Furthermore, coverage of collective agreements among public service employees differs from among workers in general. Article 28 of Law No. 4688 states that, excluding the collective agreement bonus, all public servants will be within the scope of collective agreement provisions, irrespective of trade union membership.

5.4 Extension Mechanism in Turkey

Extensions can be used to increase collective agreement coverage. This does not occur in Turkey, however, although there is an explicit article in Law No. 6356. According to the first subparagraph of Article 40 of Law No. 6356:

The President of the Republic may, upon the request of any of the trade unions or employers' associations or any of the employers within a sector, or at the request of the Minister of Family, Labour and Social Services, after receiving the opinion of the Higher Board of Arbitration, extend a collective labour agreement concluded by the trade union with the largest number of members in the sector in which the workplace for which an extension is to be made is established, either in whole or in part or after making the necessary changes to all or some of the workplaces not covered by any collective labour agreement within the same sector. The Higher Arbitration Board shall declare its opinion on the related subject within fifteen days.

Between 1963 and 1980, extension was never used, and in 1983–2012 there were only 18 instances of extension. Between the two periods, after the military coup in 1980, there were bans on strikes and lock-outs, and for the years 1980–83 there were as many as 63 extension decisions for different workplaces in various industrial branches.⁵⁰

Regarding the Ministry of the Family, Labour and Social Services, despite the article about extension, neither trade unions nor employer's associations (and employers) apply for extension, owing to various concerns. For the trade unions, extension can have a negative impact on unionization rates. Implementing extension in non-unionized workplaces faces opposition from the employers' side on the grounds of cost increases. On this issue, the Ministry underlines that there is no restriction on extension, so the social partners need to be more enthusiastic about it.

According to Türk-İş, the extension of collective agreements could be used on condition of deducting a contribution from workers who will benefit from it, which is then paid to the trade union that signed it. If any worker does not want to be within the scope of that extended agreement, they can be excluded.⁵¹ Another approach to extensions requires that they are used only on condition of deducting solidarity contributions to the signatory trade union. If that requirement is not met, the usage of extension mechanisms would undermine trade union membership.⁵² DISK has declared that extension mechanisms should be implemented widely. The low coverage of collective agreements and low unionization rates are leaving workers unprotected, so in order to overcome this, DISK suggests that the extension mechanism regulated in Law No. 6356 should be imposed on non-unionized workplaces.⁵³

Birlesik Metal-İs assumes that extension mechanisms may cause an increase in non-unionized workplaces. According to the interviewee: 'Extension mechanisms [may lead] workers to think that they do not need to be a member of a trade union. They can be used only on condition of the termination of extension if a trade union starts registering members at that workplace.'⁵⁴ According to the employers' association MESS approach, extensions covering most of a sector are beneficial if needed to keep the peace.

TISK, too, takes a positive approach to extension mechanisms, defining its attitude as follows:

There is no doubt that being subject to the same provisions of the collective agreement for workers working in the same sector will ensure equality and labour peace.

However, it is important to take into account the effect of extension of the scope of agreements, which are the product of the mutual will of workers and employers, as well as on freedom of contract and trade union activities.

5.5 Autonomy of the Social Partners

In Turkey, the social partners can engage in bargaining on every aspect of working life. That is, they can bargain about the conclusion, contents and expiry of contracts of employment. Turkish law, of course, enshrines numerous provisions to protect workers. For example, overtime work must be remunerated with at least a 50 per cent bonus per hour. However, the social partners can agree to pay overtime work at a higher rate. There are also statutory provisions in the Labour Code that the social partners cannot deviate from; for example, compensation for invalid termination of an employment contract cannot exceed eight months' salary. The minimum wage is determined nationally by a tripartite board.

Regarding the autonomy of the social partners, the opinions of trade unions and employers' associations differ. The unions did not mention any problem with the room provided for collective bargaining by legislation. By contrast, MESS remarked on the limitation to wage bargaining, which they see as arising from the attitude of the trade unions. They explained that they want flexibility in order to adapt to digitalization and emerging economic reality. Considering the rapid development of technology and the changes brought about by digitalization in business life, the impediments to social autonomy are thought to be eliminated by increasing the level of knowledge and awareness. Another topic for MESS is the trade unions' attitude towards their demand that the duration of collective agreements should be set at three years. Each contract period is preceded by four or five months' preparation, after which negotiations begin. Negotiations officially go on for two months. In the event of conflict, mediation may begin. Therefore, at least eight to ten months out of every 24 are spent on collective bargaining. This corresponds to about half of the work schedule, and the system may disrupt investment and production decisions. In addition, according to MESS, legislation on working conditions generally includes mandatory provisions. This restricts the employer's right to manage and conduct collective bargaining as it sees fit, which may make it difficult to reach agreement.

When evaluating legal restrictions on social partner autonomy, workers employed by sub-subcontractors should be mentioned. For over a decade, workers employed by a subcontractor within the scope of a public procurement agreement constituted a source of great unrest in the field of labour law and social policy. Massive law suits were filed by subcontractor workers against public institutions with legal status as principal employer. These law suits mainly concerned differences in wages and other social and economic rights between state workers and subcontracted workers.

This situation has aroused public opinion against the sub-contracting system in the public sector. In December 2017, a decree was issued and most public sector subcontractor workers were deemed to be regular or direct workers of the relevant public institution. This decree has many provisions, related to both individual and collective labour law. Considering the aim of this chapter, however, only the collective bargaining aspects are discussed.

According to Decree No. 696, for workers who have transferred from subcontractor to permanent worker status at a public institution, their wages and social benefits are fixed at the statutory level. Even if they are covered by a collective agreement, the provision on wages and social benefits cannot exceed the amount laid down in a model agreement concluded by the High Board of Arbitration for public sector subcontractors. The decree fixes an upper limit on wage increases and social benefits up to 2020, which constitutes an infringement of the autonomy of collective bargaining, which is recognized as a constitutional right in Turkey (Yıldız 2018, p. 10).

Another restriction has been imposed on Law No. 6356 by Decree No. 696. According to a new article added to Law No. 6356, government, public employers' associations and employer confederations can sign framework agreement protocols for workers in the public sector. This will be binding for the trade unions affiliated to the signatory confederation during the period of validation. That is, if the protocol is in force, no trade union can sign a collective agreement with a higher wage increase than that decided in the protocol. This article was criticized by trade unionists during the interviews.⁵⁵

The autonomy of public service trade unions is very limited regarding collective bargaining, which for public servants is limited by the law to financial and social rights. Article 28 of Law No. 4688 excludes working time, promotion and careers, as well as disciplinary sanctions. The Committee of Experts once again noted that this restriction is contrary to ILO Convention No. 98 in 2019 (ILO 2019, p. 170).

5.6 Industrial Action and the Social Partners

Although strike action is a right in the Constitution and in Law No. 6356, in practice strikes are rare. The ban on strikes and lock-outs has been regulated broadly in Turkish

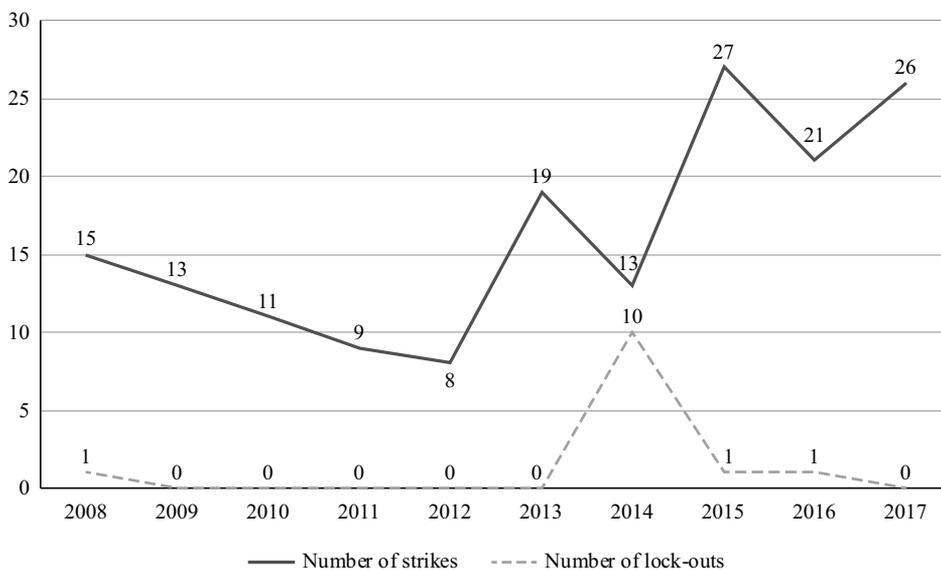


Figure 15.6 Number of strikes and lock-outs, Turkey, 2008–17

legislation. The list of prohibitions is as follows: life- or property-saving; funeral and mortuary; production, refining and distribution of city water; electricity; natural gas and petroleum, as well as petrochemical works, whose production starts from naphtha or natural gas; in workplaces operated directly by the Ministry of National Defence, the General Command of the Gendarmerie and Coast Guard Command; firefighting carried out by public institutions; and in hospitals.

In addition to this wide ban on strikes and lock-outs, there is an article on suspending strikes. According to Article 63 of Law No. 6356, the President can suspend a strike or lock-out for 60 days, on the grounds of public health or national security, by decree. During that postponement, the social partners can conclude a collective agreement. If they are unable to conclude a collective agreement, they may not go on strike or impose a lock-out. That is, in Turkish legislation, if a strike is suspended by decree of the President, the strike is prohibited. The system regards the solution of the conflict as compulsory arbitration by the High Board of Arbitration (Yıldız 2016, p. 307).

Article 63 was criticized by the Committee of Experts in 2019, which stated that 'for a number of years, the Committee, along with the Committee on Freedom of Association (CFA), has been requesting the Government to ensure that section 63 of Act No. 6356 is not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference' (ILO 2019, p. 165). The Committee regards Article 63 as an infringement of ILO Convention No. 87.

Restrictions on the right to strike are a massive problem for Turkey, according to DISK and Birlesik Metal-İs. The ban on the right to strike related to conflicts of rights is of particular importance. The suspension of strikes is also contrary to international agreements. These restrictions weaken trade union power.⁵⁶

According to Law No. 4688, public servants do not have the right to strike. If there is a dispute during the collective negotiations between the PSUD and the PUD, the conflict has to be addressed to the Public Employee Arbitration Board.

However, in 2003, a public-school teacher joined a strike called by Egitim-Sen, and was punished by a wage cut. The first-instance court rejected the application made by the union on behalf of the teacher about this punishment. Egitim-Sen appealed against this judgment and the result was positive. According to the Board of Administrative Circuits of the Council of State, the punishment was illegal. This decision was based on Article 11 of the European Convention on Human Rights. After that decision, another application was made to the Constitutional Court. As a result, in judgment No. 2013/8463, the Constitutional Court stated that the applicant's 'right to organize' regulated in Article 51 of the Constitution had been violated, and their legal fees should be compensated by the state (Yıldız 2016, p. 310).⁵⁷

Another important decision was made by the Seventh Circuit of the Court of Appeal. In 2013, approximately 100 workers at Mersin Port occupied their workplace, blocking the gates with machinery and preventing other workers from entering the workplace. After that occupation, the employer dismissed several workers, one of whom, who was the union representative at the workplace, sued. The Court of First Instance rejected this, stating that the dismissal was justified on the grounds of participating in an illegal strike. The applicant appealed against that decision and the Seventh Circuit of the Court of Appeal declared that, according to ILO Conventions, the European Convention on Human Rights and the European Social Charter, collective actions, including strikes, are

a human rights. In light of this international legislation and Article 90 of the Turkish Constitution, workers' actions aiming to improve working and living conditions, including occupations of workplaces, on condition they are peaceful, have to be regarded as exercising a democratic right. These collective actions cannot be declared illegal, on condition that they comply with the proportionality principle. As consequence, the Seventh Circuit of the Court of Appeal stated that the dismissal was unlawful and the worker had to be reinstated by the employer.⁵⁸

6. SOCIAL PARTNERS AND DIGITALIZATION

Digitalization is still a mysterious word in relation to working life. There are both optimistic and pessimistic views. There are also non-committal views.

As regards the social partners, it is logical to begin with the attitudes of the union confederations. Türk-İş began to deal with the concept of Industry 4.0 institutionally in January 2019. Digitalization is not yet an issue for them, however. According to DISK, digitalization is leading to job insecurity, uncertainty and more abuses. Digitalization, and specifically platform work, make industrial relations more equivocal. One DISK representative expressed their concerns as follows:

Who is the employer of a courier [rider] who works through a platform? The application, the sender or the receiver? Or the producer of the transported good? If the courier has a work accident during a delivery who will be responsible? These are hard questions for workers and public authorities. Digitalization is a new tool for outsourcing.

The public servants' trade union confederation, Türkiye KAMU-SEN, has a suggestion about preparing for digitalization. In order to tackle the challenges, it proposes launching a 'Trade Union 4.0'. The main idea is to establish a permanent and country-wide centre tasked with finding solutions to possible problems arising from digitalization. This centre will help to harmonize digitalization and workforce needs. In addition, they suggest starting programmes to identify future jobs that will be needed, and jobs that may be eradicated, because of technological changes. For the second group, the necessary means for step-by-step transition must be created. After that initial step, the education system has to be developed to introduce these changes to society, especially to children. They also underline the importance of legal changes that need to be planned.

On the employers' side, at confederation level, TISK focuses on digitalization as an important topic. TISK states its concerns as follows; 'Digital transformation is the most important subject on our agenda and this is not only specific to Turkey, this is a problem facing employers in other countries as well. Turkey has great potential to adapt to new technologies, employment creation or software investment in new digital industry.'

TISK is also taking steps to be more effective in dealing with the challenges. They describe their efforts as follows:

At TISK, we are conducting Future of Work research in cooperation with McKinsey & Company. Through this research, we will be able to demonstrate in detail the transformation of sectors and businesses in Turkey, as well as of the skills used in working life. In the meantime, we will mobilize the social dialogue parties on the priority steps to be taken in order to be prepared most effectively for the future that will be transformed by digitalization.

In addition, in order to help individuals, especially young people, to acquire more skills and develop them in the workplace, we are trying to encourage employers to offer as many and varied on-the-job training programmes as possible through the GAN Turkey on-the-job training network. It is important that employers increase their on-the-job training programmes, instil a lifelong training culture in their employees, and communicate the importance of their participation in these programmes in a motivating manner through incentives.

As to the steps needed, TISK underlines the importance of cooperation between government, employers and workers. TISK states that:

In this sense, governments and employers need to invest in new lines of business and there are a lot of job areas open for improvement in this regard.

Trade unions should also make demands and recommendations regarding digital transformation in collective bargaining processes, such as skills transformation and investment in blue-collar workers in particular.

Determining a common roadmap for the future business community through public–private cooperation will be one of the most important aspects of preparation for this change. This roadmap should include planning appropriate business transition paths by sector, reviewing practices related to workers' reacquisition or relocation, and proposals for transition to a new business world.

Cooperation between public institutions, the private sector, educators and legislators in this field will help to improve the system in general and provide new skills for employees.

At TISK, we have started to participate in and support this change thanks to the Technology Centre established and run by one of our member unions in order to develop the skills of the employees of medium-sized companies and support business by sharing good practices.

Regarding digitalization on the government side, the Ministry of the Family, Labour and Social Services is putting its efforts into awareness-raising and capacity-building. The topic of the Twelfth Labour Assembly was 'Working for a Brighter Future'. The Ministry, too, has launched a project to support decent work for the future. This project, founded by the European Union (EU), encompasses training in e-trade, digital literacy, future jobs and awareness-raising as regards the future of work. One aim of the project is to promote cooperation and coordination between workers and employers' organizations, as well as universities and other institutions. In addition, the National Employment Strategy (2020–2023) will contain 'the Future of Work Basic Policy Axis'. In order to realize these goals the Ministry prioritizes active participation of social partners.

The Ministry of the Family, Labour and Social Services also recognizes the importance of investments aimed at workers, including lifelong learning programmes. Naturally, preparing for the future of work demands multilateral efforts. The Ministry of the Family, Labour and Social Services lists the following as important in efforts to strengthen social dialogue and capacity-building in order to meet the challenges of the future of work, including digitalization:

- In order to tackle the challenges of digitalization the education system has to be adapted to keep up with technological change.
- Tripartite strategies on digitalization will be a pillar of the system.
- Protecting fundamental rights of workers regardless of their employment status.
- Adaptation of social policy and the world of work to demographic change. Youth unemployment and older people's difficulties entering the labour market have to be taken seriously.

- Managing migration-related problems.
- Adaptation to new production and working methods owing to digitalization and robots. At that point, flexicurity has to be a preference, rather than an obligation, for workers.
- Investments are needed in the green economy, the care economy, the transformation of jobs and digital infrastructure.

Tez Koop-İs is a trade union in the commerce sector, in which it has the majority of members. In commerce, digitalization has taken the form, among other things, of e-commerce and automatic cash machines. These latter were first introduced in some of the supermarkets in which Tez Koop-İs organizes. Some customers were unsure how to use this technology, however, and so workers were recruited to help them. This emphasizes that digitalization will not occur in the same manner and at the same speed throughout the world. With regard to developed countries, e-commerce has led to the closure of some supermarkets, but in Turkey traditional commerce and e-commerce still coexist. Also, Tez Koop-İs has called for measures to reskill workers. This remains obscure, however, as we still cannot be sure which areas of work will be needed in the future. At that point, they think that social dialogue mechanisms will help.

Turkmetal notes, in relation to digitalization, that Turkish industry has not yet reached a level at which production by robots is an issue. Also, they are allying with trade unions in other Mediterranean countries and organizing conferences. Turkmetal says that, when the time comes, it will do whatever is necessary to adapt to digitalization. The union has also prepared a report on Industry 4.0. According to a Turkmetal representative, even if digitalization, including production by robots, causes unemployment, it will be temporary. New types of jobs and new types of profit distribution will develop, and workers will be able to work less.⁵⁹

Birlesik Metal-İs also assumes that mass production by robots will not come to Turkey soon because its labour force is cheaper than in most countries. However, if production by robots does become mainstream, distribution problems will occur.⁶⁰

The employers' approach to digitalization is more detailed than that of the trade unions. In 2017, MESS, which is affiliated to TISK, started to work on the MESS Technology Centre (MEXT), one of the largest in the world in volume and scope, to support its members in the process of digitalization and technological transformation, and to accelerate their efforts in this field. The Technology Centre will start training in January 2020 and in June 2020 will be at full capacity.

The Technology Centre, which will be implemented within the scope of this project, will host more than 10 000 domestic and foreign participants annually, with 40 employees, more than ten training halls, a conference centre with a capacity of 250 people, and a model factory equipped with the latest technology, all in an area of 1000 square metres.

These are some of the main services MESS will offer to its members:

- Production Maturity Assessment – the compliance of member workplaces with the digital transformation and the adequacy of their existing applications will be examined by experts from abroad in terms of production lines, technical infrastructure, organizational structures and corporate cultures in factories. For each member, they determine targets and target levels, produce a roadmap and offer guidance to

businesses on attaining their ideal level. MESS will conduct this process with the Fraunhofer Institute, Europe's largest organization for applied science research and development. Then, detailed reports will be produced on areas open to development will be made. These evaluations are supposed to be repeated every two years and any changes measured.

- **Competence Development Programme** – training programmes have been created to enable employees working in MESS member companies to develop their skills in new technologies, digital transformation and Industry 4.0. Within this, the employees were put into four main groups: Senior Managers (CXOs and Owners), Mid-level Managers, Engineers/Experts and Team Leaders/Operators. The training was supposed to increase motivation and basic knowledge with regard to industrial transformation, and change and development issues. The contents, methodologies, durations and target outputs were determined by conducting interviews with universities and academies who provide similar training worldwide. This programme is supposed to provide training to more than 20 000 employees annually. This training can be given abroad, in the workplace, in the MEXT training rooms as well as online. As part of this programme, 'Go & See' events are to be organized periodically with the participation of senior executives of MESS member companies. Within the scope of these activities, examples of best practices implementing the most advanced technologies globally, where the transformation process has been completed, will be examined and field visits will be conducted.
- **Ecosystem** – in the ecosystem to be formed with MEXT; the idea is to bring together the most successful companies and institutions around the world with which MESS members can collaborate in transformation processes. Within this framework, it is planned to allocate workspaces for certain periods within the MEXT framework to competent organizations in order to provide the highest quality service with regard to training, software and technical solutions. These institutions are intended to be at the forefront in terms of service quality and brand awareness around the world. Within the ecosystem, regular meetings and events will be held with the participation of experts from world-renowned universities and research institutes, at which members will have the opportunity to exchange information, supplement their technical know-how and reinforce cooperation.
- **Model Factory** – in the 1000 square metre factory area, 40 people in groups will be given training at the same time, under the leadership of the relevant training experts, to examine the latest applications in industrial technologies. In this field, which will be continuously updated in line with technological developments, the aim is to enable members to experience the most advanced applications and solutions in a model production structure similar to their own production processes. The model factory, which is designed to serve nearly 8000 employees per year, will see the latest applications in production. The solutions in the model factory will be the fastest adaptable alternatives to existing factories and thus accelerate the transformation processes of MESS members.

MESS also has opinions about the future of work. According to 'The future of jobs' report published by the World Economic Forum in 2020, it is predicted that, by 2025, 75 million jobs will have been eliminated worldwide.⁶¹ However, it claims that 133 million

new jobs and 58 million more positions will be created. Most new business opportunities are linked to technological development. MESS declares that they accept that digitalization will change jobs and work organization in the metal industry. This situation is expected to lead to changes in business models and management systems. Some of these will change completely, others will remain the same. In this context, the existing workforce will be retrained within the framework of skills and competences to adapt to these changes. Employees will need to have more digital skills. There will also be a need for non-digital skills and capabilities, however, such as a good understanding of the digital world and the creation of new business models for this new world.

In this context, the effects of digitalization on employment and skills need to be evaluated together. The first step will be to configure the education system to meet the rapidly changing labour market needs. In a second step, the cost of this restructured training system and the training to be provided will have to be faced.

Given the speed of technological development, cooperation between educational institutions and organizations, vocational and technical education institutions and industry is vital for improving the quality of labour. MESS underlines that government support will be needed to reduce the costs of adaptation to digitalization. Social dialogue is another tool for shaping technological change. It is important that the social partners work together to shape training on the acquisition of digital skills. In addition, MESS underlines the importance and necessity of Labour Code amendments in order to tackle the challenges.

7. CASE STUDIES

7.1 Case Study 1: Reinstatement of Workers through Social Dialogue

The ETI and three of its member brands – Next, Primark and Tesco – were made aware of a dispute at one of the sock factories in their supply chain. Local members of Deriteks (and global union IndustriAll) alleged that they had been dismissed by their employer on the basis of their union membership.

The ETI and member brands reached out to both the employer's and the union's management to hear all sides of the story, which can be summarized as follows:

- Deriteks had started to organize at the factory concerned without formal notification of the management.
- The management did not feel it necessary to contact the union before implementing dismissals at the factory.
- Deritek's efforts to have workers reinstated were rejected by management, which claimed the workers were being dismissed on the grounds of downsizing.

The ETI and member brands therefore collaborated with IndustriAll and asked Deriteks and the employer to come to the table to discuss what steps could be taken. At the first meeting, a channel of communication was established, with both parties nominating contact points who, it was agreed, should be in constant dialogue with each other. As a goodwill gesture, the employer also agreed that the right to freedom of association and

to organize would be recognized and encouraged at the factory. A public announcement was subsequently made during the factory's working hours in the presence of Deriteks, the ETI, member brands and IndustriAll. On the issue of the dismissed workers, factory management asked the ETI to conduct an independent assessment to find out whether the dismissals were made in response to trade union membership. While the ETI was making preparations to conduct an independent assessment, the goodwill of the employer in making the freedom of association announcement and in transparently asking for an independent assessment was recognized by all parties, including the union. In its contacts with management, Deriteks respected the importance of the announcement at the factory and avoided provocative forms of organization during the negotiations.

Effectively with the support of international brands, and with the fruitful cooperation of IndustriAll, mutual trust was gradually built and progress made as meetings were held. As a final step, the employer agreed to revisit the decision on the dismissal of the unionized workers. Upon discussions with the trade union, the workers were reinstated with their wages compensated for the time they were away from work.⁶²

This incident is a good example of protecting workers' fundamental rights through international workers' organizations. The workers were dismissed just after they joined a trade union. Unionization rates are around 10 per cent. The interviewees from workers' organisations declared that the main problem about registering new members and organizing at new workplaces is employer discrimination and anti-trade union practices. Multipartite efforts by various organizations are effective in protecting workers' fundamental rights.

7.2 Case Study 2: The Joint Training Project (OEP)

The Joint Training Project (OEP) was launched by MESS and the Turkish Metal Union (TÜRK-METAL) in 2000. The project was evaluated as a best practice by the ILO in a publication entitled 'Unionization, Freedom and Development'.⁶³ The OEP has an important function that gives employees a positive outlook on personal, family, trade union, workplace, production and country values. With OEP training, by creating a skilled, productive and productive workforce, the company invests in the future of its employees and contributes to enterprises in global competition. Depending on rapidly changing needs and subjects, the educational contents are periodically updated by joint decision of MESS and TÜRK METAL, with the assistance of expert trainers.

In 2019, 'Communication and Motivation' and 'Happiness and Psychology Workshop' training courses were held within the framework of the project. Through this training, non-violent communication methods are shared with employees both at work, at home and in their social lives. Since the beginning of the training in 2000, over 200 000 employees have participated in the Joint Training Programme.

The representatives of the trade unions and employers' associations we interviewed mentioned various instances of good practice as regards social dialogue:

- In General Electric's factory in Turkey, where Birlesik Metal-İs organizes the workforce, there is workers' representation and management participation even though Turkey is not an EU member (Birlesik Metal-İs).

- Tez Koop-Is organizes joint training with employers on workers' fundamental rights at the workplace. Social dialogue solves problems at workplaces and helps to maintain peace at work.

8. CONCLUSIONS

In the face of such structural problems as high inflation and unemployment rates, migration and informal work, Turkey has to find adequate solutions. The problems already affecting labour markets will worsen with digitalization. Lack of representativeness will be an aggravating factor. In order to tackle these problems, social dialogue mechanisms, especially tripartite methods, have to be used actively and efficiently. Trade unions have to be more inclusive regarding labour market outsiders. Employers, for their part, need to focus not only on flexibility, but also on creating more and new jobs. Government, in turn, has to support the social partners and do its best to maintain an appropriate environment for investment and social dialogue.

The interviews carried out for this research reveal that neither social partner is content with the current state of social dialogue. This is a good point to start from. The social partners can join together and decide what they need to do in order to promote more effective social dialogue. In my view, the social partners should be ready to initiate the processes they need, such as tackling the challenges arising from illegal working by migrants. Traditionally, the social partners wait to be invited by the government or ministries to seek solutions through social dialogue. To be more effective, they have to strengthen bipartite social dialogue. They should be capable of carrying on social dialogue on the major problems of the labour market. A proactive approach is important for both sides.

This research confirms that migration is not particularly important to the social partners. This is mainly because there are few migrants in the workplaces where these trade unions are organized. Also, they do not have migrants as registered members. This also confirms the opinion that trade unions favour insiders over outsiders.

Concerning digitalization, the trade unions' approach is not as well developed as that of the employers. However, the trade unions need to be well prepared. Currently, they believe that this issue pertains primarily to the government and the employers. However, digitalization will affect workers more profoundly. There may be mass dismissals, or large numbers of workers will need to retrain to stay in work. These scenarios and their effects have to be assessed and solutions developed. This cannot be deemed the sole responsibility of employers or workers. Strategies and solutions reached through social dialogue would benefit all.

NOTES

1. For further information on this era, see Dereli (1998, pp. 33–5).
2. For some examples of legal interpretation of the priority of international agreements over conflicting national legislation, see Y22HD, 27 June 2019, 4095/14387, Kazancı İçtihat Bankası (30 October 2019) YHGK, 13.12.2018, 1168/1928, Daniştay 10.D, 19 October 2009, 4835/8958 Kazancı İçtihat Bankası (28 October 2019).

3. European Commission Turkey 2019 Report, Brussels, 29 May 2019, p. 85, accessed 5 December 2019 at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>. EU Commission Turkey 2018 Report, Brussels, 17 April 2018, p. 84, accessed 5 December 2019 at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.
4. For further information about the ESC, see Bedir et al. (2018, pp. 13–18).
5. During the interviews, the Confederation of Progressive Trade Unions of Turkey (DISK) criticized this situation.
6. For further information see <http://sosyaldiyalog.org/news> (accessed 2 December 2019).
7. For these reports, see <http://www.sosyaldiyalog.org/yayin> (accessed 2 December 2019).
8. TURKSTAT population statistics, accessed 10 April 2020 at www.tuik.gov.tr.
9. Accessed 3 February 2020 at https://www.tisk.org.tr/yayin/495155925_turkiye-istatistikleri---eylul-2019.pdf.
10. Accessed 3 February 2020 at <http://disk.org.tr/wp-content/uploads/2020/01/DISK-AR-Ocak-2020-Istihdam-Issizlik-Raporu.pdf>.
11. See <http://www.turkis.org.tr/dosya/WqEBXerIgkMe.pdf> (accessed 3 February 2020).
12. See http://www.hakis.org.tr/haberler.php?action=haber_detay&id=2903 (accessed 3 February 2020).
13. See <https://www.hurriyet.com.tr/ekonomi/tisk-baskani-akkol-issizlikle-etkin-mucadele-icin-esnek-calisma-sart-41361909> (accessed 3 February 2020).
14. Among these the majority are Afghans (172 000) and Iraqi nationals (142 000) (Heinrich Böll Stiftung 2019).
15. For further information about national legislation see Heinrich Böll Stiftung (2019, pp. 13–19).
16. See <https://multeciler.org.tr/turkiyedeki-suriyeli-sayisi/> (accessed 10 April 2020).
17. For further information, see https://www.ilo.org/ankara/projects/WCMS_379375/lang--en/index.htm (accessed 12 December 2019).
18. See https://www.ilo.org/ankara/projects/WCMS_379375/lang--en/index.htm (accessed 12 December 2019).
19. See https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/generic_document/wcms_618781.pdf (accessed 29 January 2020).
20. This survey focuses on Adidas, KappAhl, M&S, Nike, Puma, Esprit, Gap, H&M and Inditex Group. M&S, Inditex group and H&M had 85, 183 and 216 suppliers, respectively, in Turkey at the date of the Impact Centre Erasmus and ASN Bank's report (Maas et al. 2016).
21. Source: <https://www.inditex.com/our-commitment-to-people/our-suppliers/workers-at-the-center/joint-turkey-programme> (accessed 12 December 2019).
22. See http://static.inditex.com/annual_report_2016/en/our-priorities/sustainable-management-of-the-supply-chain/supply-chain-programmes-workers-at-the-centre.php (accessed date 12 December 2019). See also Inditex Annual Report, p. 67.
23. Inditex Annual Report 2016, p. 79. In 2016, Inditex initiated 131 individual remediation cases, addressing the needs of each worker and their families.
24. Source: <https://www.ethicaltrade.org/programmes/syrian-refugees-working-turkeys-garment-sector> (accessed 12 December 2019).
25. Mr Korkmaz worked as a counsellor on the ETI's Turkey programme.
26. See also, Korkmaz (2018, p. 108) on criticisms made by Turkish employers of brands' purchasing practices.
27. These are hunting and fisheries, agriculture and forestry; food industry; mining and stone quarries; petroleum, chemicals, rubber, plastics and medicine; textiles, garments and leather; wood and paper; communication; press, publication and journalism; banking, finance and insurance; commerce, offices, education and fine arts; cement, clay and glass; metal; construction; energy; transportation; ship constructing and naval transportation, warehouse and storage; health and social services; accommodation and entertainment; defence and security; and general works.
28. These are offices, banking and insurance services; education and science services; health and social services; local administration services; press, publication and communication services; culture and art services; public works, construction and rural services; transportation services; agriculture and forestry services; energy, industry and mining services; and religion and foundation services.
29. See <https://www.ailevecalisma.gov.tr/media/35790/2020-ocak.pdf>.
30. Interviews with Turk-İs, Birlesik Metal-İs and Tez Koop-İs.
31. Turkmetal and Tez Koop-İs.
32. Turkmetal and Tez Koop-İs.
33. Turk-İs.
34. Turk-İs.
35. Turk-İs, Tez Koop-İs and Birlesik Metal-İs.
36. Birlesik Metal-İs; the Canadian model can be taken as an example according to this view.

37. Turkmatal.
38. This was suggested by one of the trade union representatives as a personal opinion.
39. Turkmatal, Tez Koop-Is.
40. Birlesik Metal-İs.
41. Birlesik Metal-İs.
42. The observations of Turk-İs, Tez Koop-İs, Birlesik Metal İs and Turkmatal are the same on this matter.
43. The same demand was made by Tez Koop-Is.
44. Birlesik Metal-İs.
45. Turk-İs, Birlesik Metal-İs.
46. Turk-İs, Birlesik Metal-İs; Tez Koop-Is.
47. Source: https://www.ailevecalisma.gov.tr/media/3302/calisma_hayati_2017.pdf (accessed 5 December 2019).
48. Turkmatal, Birlesik Metal-İs and Tez Koop-Is.
49. Turk-Is, Tez Koop-Is.
50. For further information on the extension mechanism in Turkey compared with those of EU countries, see Baycık (2019, p. 43).
51. Turk-Is.
52. Tez Koop-Is.
53. See <http://disk.org.tr/2016/08/sendikalasma-ve-toplu-is-sozlesmesi-raporu/> (accessed 13 December 2019).
54. Birlesik Metal-İs.
55. Tez Koop-Is.
56. Birlesik Metal-İs, DISK.
57. See <https://www.resmigazete.gov.tr/eskiler/2014/12/20141204-10.pdf> (accessed 1 December 2019).
58. Y7HD, 11 June 2014, 7358/13055. For further information see *Calisma ve Toplum*, 2014/4, Gulmez (2014); Yıldız (2016, p. 311).
59. Turkmatal.
60. Birlesik Metal-İs.
61. Accessed 29 July 2021 at <https://www.weforum.org/reports/the-future-of-jobs-report-2020>.
62. See <https://www.ethicaltrade.org/blog/industrial-relations-turkey-solving-workplace-disputes-social-dialogue> (accessed 9 December 2019).
63. The report's original name was 'Freedom of association and development', https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_160208.pdf (accessed 29 July 2021).

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16. Social dialogue and the future of work in the Adriatic region

Igor Guardiancich

1. INTRODUCTION

The Adriatic region, as defined here, is composed of the former Yugoslav republics plus Albania. It makes sense to study social dialogue and the future of work in Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, Serbia and Slovenia as a group owing to their common economic, political and industrial relations legacy, stemming from the Socialist Federal Republic of Yugoslavia, which adopted its very own version of self-managed socialism. The federation disintegrated after Slovenians and Croatians voted for and declared independence in June 1991. Five republics then emerged: Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia (FYRoM), the Federal Republic of Yugoslavia, and Slovenia. Following the Dayton Agreement of 1995, Bosnia and Herzegovina split into two entities: the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska. In 2006, Montenegro and Serbia became separate entities. Kosovo unilaterally declared independence in early 2008. Finally, after a name dispute lasting 27 years, FYRoM became North Macedonia in 2019. In contrast to the former Yugoslavia, Albania adopted a markedly distinct version of autarchic communism and was, until the collapse of the socialist bloc, one of the most isolated and repressive regimes ever conceived. The common objective of joining the European Union (EU) brought the interests of the two entities together from 1991. Yet, only two of Yugoslavia's successor states have joined the EU thus far: Slovenia in May 2004 and Croatia in July 2013. Currently, the official candidates for accession to the EU are North Macedonia (since 2005), Montenegro (since 2010), Serbia (since 2012) and Albania (since 2014). Kosovo, as well as Bosnia and Herzegovina, are still only potential members of the EU. Despite considerable effort, further enlargements have been delayed and the process resumed only in spring 2020.

2. THE COMMON YUGOSLAV LEGACY AND AUTARCHIC COMMUNISM IN ALBANIA

Before embarking on its heterodoxical brand of socialism, Yugoslavia was a keen emulator of the centrally planned economy developed in the Soviet Union, with all its flaws, such as the soft budget constraint and perverse incentives (see Kornai 1992).

This changed in 1950, when central planning was abandoned in favour of workers' self-management (*radničko samoupravljanje* in Serbo-Croatian), favoured by President Josip Broz Tito and Edvard Kardelj, drafter of the 1974 Constitution, and theorized

by economist Branko Horvat. Decades of reforms entirely redesigned the command economy into a more market-orientated and decentralized system, which mixed socialist, market and self-management features (Unkovski-Korica 2015; Uvalić 2018).

Key socialist features were still prominent (Lavigne 1999). The economy was firmly controlled by the League of Communists of Yugoslavia (SKJ) and its republican branches. Planning together with non-market mechanisms of resource allocation existed, but they became ever more decentralized, especially after 1974. The means of production were collectively owned in the form of social (non-private) property, an ill-defined concept that created significant problems during subsequent privatization.

Whereas market coordination was gradually introduced in product markets, as a relatively efficient way of determining final demand and supply, labour and financial markets (wage-setting and the remuneration of capital) were rejected as incompatible with socialist ideology. Market-orientated reforms intensified in the 1980s, when the International Monetary Fund (IMF) had to step in to cope with solvency problems.

Uvalić (2018) details the self-management characteristics of the Yugoslav economy, which then served as a foundation for the development of industrial relations in the region. Initially, after 1950, workers' councils became responsible for the election of members of management boards and for appointing and removing enterprise managers. Distribution of enterprise income and investment decisions remained under government control and were only gradually devolved.

The reforms of the 1970s introduced proper contractual socialism. At the micro level, self-management was adapted to larger enterprises through the constitution of various organizations of associated labour and strengthened their roles in distribution and investment. At the macro level, three coordination mechanisms were perfected: (1) social contracts, which regulated rights and obligations affecting broader economic policies and were stipulated between enterprises, political representatives, trade unions, chambers of commerce and self-managed 'communities of interest'; (2) self-management agreements that regulated relations between enterprises and other organizations, including banks, in areas such as investment projects, deliveries and joint transactions; and (3) self-managed communities of interest, which united the interests of suppliers and final users of services in health care, education, social insurance and foreign trade.

We should not overstate the economic virtues of self-management, as Yugoslavia still suffered from many of the ills of command economies. Nevertheless, the well-being of its citizens was greater than in the other socialist countries: there were no recurrent shortages, people enjoyed greater individual freedom, and workers were granted a modicum of economic democracy (the impression that they were partaking in a firm's decision-making and sharing its profits) through self-management.

Economic performance, which was at first impressive, deteriorated dramatically after the oil shocks (Uvalić 2018). Yugoslavia failed to adapt, and relied on external indebtedness until the IMF had to step in. Hence, in the 1980s, gross domestic product (GDP) stagnated and even declined (down from some 6 per cent per annum, on average), unemployment shot up to 16 per cent (with enormous regional differences), and inflation hit 30 per cent in 1980 and became hyperinflation by the end of the decade. Stabilization attempts largely failed and, consequently, living standards plummeted.

Economic decentralization and political centralization did not prove to be a successful combination: despite the efforts to level up regional differences, they widened. While

Yugoslav per capita GDP stood at US\$6203 purchasing power parity (PPP) in 1989, Slovenia's was exactly twice as high, Croatia's 1.41 times that, Serbia's 1.08, Macedonia's 1.04, Montenegro's 0.74, Bosnia's 0.68 and Kosovo's as low as 0.26.

Radical reforms were introduced at the end of the 1980s, with privatization of parts of the economy and the introduction of a number of market mechanisms. A new Company Law reduced substantially the scope for self-management in mixed property enterprises, where new management organs took over, and private enterprises, in which workers were supposed to exercise their self-management rights in conformity with collective agreements. In the remaining socially owned firms, self-management rights remained as previously.

The Albanian experience with communism could not have been more different. Partly owing to the thawing of relations between the Soviet Union and Yugoslavia under Nikita Khrushchev, during the 1950s, Albania started distancing itself from the rest of the socialist block. In particular, under the leadership of Enver Hoxha, which lasted until his death in 1985, the regime opposed de-Stalinization and accused the Soviets of revisionism. Albania withdrew from the Warsaw Pact in 1968 and stopped participating in the activities of the Council for Mutual Economic Assistance (Comecon) in 1961. Finally, it broke with China, one of its last allies, in 1978.

Consequently, Albania became a bastion of Marxist-Leninist ideology, implementing a Stalinist command economy to the fullest extent (Schnytzer 1982). As Muço (1997, pp. 7–8) lucidly explains, during the 45 years of autarchic communism, Albania substituted most market mechanisms with strictly applied central planning:

all economic decisions on production, pricing, wage setting, investment and external trade were centralized, while changes between the [five-year] plans were generally minimal ... All economic information was strictly reported vertically, and the decision-making centre was the central authorities. The agriculture cooperatives had a small degree of self-management in terms of the profit share transferred to the budget and wage policy, but the plan target was also compulsory.

In addition to centralized decision-making, private property was virtually abolished (even land, except for small plots, was collectivized) and the small country trod the path of national self-reliance, ignoring all international division of labour and comparative advantages. The consequence of this was a massive misallocation of resources, mostly geared towards heavy industry, while neglecting agriculture and services. Starting from a very low level of economic development – Albania's economy was basically a feudal agricultural system – the country nonetheless experienced high growth rates up until the late 1970s.

The stagnation that ensued and the later collapse are attributable to several concomitant causes (Muço 1997). The inefficiency of public sector production created all the familiar problems of a command economy (for a comprehensive account, see Kornai 1992). Agricultural production suffered tremendously owing to mistaken taxation choices and a string of bad harvests. The Constitution of 1976 created a virtually closed economy by banning all loans and credits from abroad. Macroeconomic mismanagement, in terms of incomes, monetary and fiscal policy, was coupled with some modest reforms during 1985–90, aimed at decentralizing decision-making and liberalizing enterprises. These, however, only aggravated the macroeconomic imbalances and fiscal emergency. Supply problems even led to fear of famine among the Albanian population in 1991.

3. DIVERGING TRAJECTORIES DURING DEMOCRATIC TRANSITION AND CONSOLIDATION

After 1991, the former Yugoslav republics, as well as Albania, embarked on different transition paths at different speeds, mainly reflecting political conditions on the ground. War-torn countries could not proceed as swiftly as Slovenia, which had the most favourable economic situation and immediately took the lead. As testimony to its success, EU membership came in 2004 with adoption of the euro in 2007. After Slovenia came Croatia, which joined the EU in 2013, and North Macedonia, which faced less serious political problems than latecomers Serbia and Montenegro. These started the democratic transition after the fall of the Milošević regime in 2001. On the lowest rung of the transition ladder stood Bosnia and Herzegovina (and Kosovo), which is barely a functional state.

Again, Albania stands out for its idiosyncratic traits. Apart from being an ethnically homogeneous independent state since 1912, and thus avoiding later disintegration, the Ottoman legacy and the extreme repression and isolation under Hoxha implied that Albanians were confronted with democracy-building for the first time in their history. A central feature distinguishing the country from the rest of post-socialist Europe was a complete 'lack of democratic liberal elites and dissident intellectual groups as initiators and leaders of the democratic movement' (Panagiotou 2011, p. 359). Absence of rule of law, an unaccountable judiciary, organized crime and corruption complicated enormously its accession process to the EU (Misha 2015). Albania was not given candidate status until June 2014.

One way in which the legacy of self-management was acknowledged in Yugoslavia was the sale of shares in socially owned property on privileged terms or their distribution free of charge to employees and managers. Croatia issued discounted shares to employees (up to 49 per cent in any one company). Macedonia relied mainly on employee and, especially, management buyouts. Montenegrin employees had priority in subscribing shares, which were later also distributed for free, up to 10 per cent of the value of social capital. Serbia offered privileged conditions to employees and managers in its voluntary privatization. Slovenia used a mixture of mass privatization and employee buyouts, which resulted in dysfunctional insider ownership structures. Bosnia and Herzegovina was the only country not to rely on buyouts. Small enterprises were privatized first, followed by free distribution of vouchers for large enterprises.

The privatization process neither maintained self-management structures intact (workers councils were replaced by supervisory boards representing the new shareholders), nor endowed workers with permanent control through ownership. In all countries, the initial sale or distribution of shares was followed by later consolidation. In North Macedonia and Slovenia, it was mainly former managers who accumulated the most shares. In Serbia and Montenegro, new oligarchs and foreign firms dominated. In Croatia, it was a mixture of the two. Every former Yugoslav republic experienced the *tajkunizacija* (oligarchization) of former social property. A small number of what have come to be known as oligarchs managed to accumulate immense wealth, mainly in the absence of strong regulatory and supervisory institutions that could provide a level playing field for privatization and competition (the likes of Boško Šrot, Luka Rajić, Miroslav Mišković are household names in, respectively, Slovenia, Croatia and Serbia, who built their fortunes also through the ownership transformation process).

All of the countries, at some point during the transition from self-management to a market economy, got stuck in what Hellman (1998) calls a partial reform equilibrium, in which the winners of transition block further reforms in order to extract rents at the expense of society at large. Despite an extremely messy privatization process in Slovenia (Guardiancich 2016), it seems that the northernmost ex-republic is the only country that has maintained a strong degree of continuity with the previous system. Worker code-termination in large enterprises continues, profit-sharing exists on a voluntary basis, the welfare state has not been dismantled, and the social partners, as well as connected bipartite and tripartite social dialogue, thrive (amid ups and downs).

Nowhere were the newly built economic and democratic institutions tested as much as in Albania. The country adopted the shock therapy of price liberalization, macro-economic stabilization and a lengthy and convoluted privatization process, based in principle on employee buyouts and the distribution of shares to the general public. Compared with the chaos that engulfed the former Yugoslavia in the mid-1990s, Albania was seen as a success story early on. The crisis of 1997, however, when sizeable pyramid schemes collapsed, the population was brought to the brink of civil war. In addition, half a million Kosovar refugees flooded the impoverished country in 1999. Hence, from the early 2000s, Albania renewed its reformist efforts, with the help of the EU. The economy stabilized, privatization proceeded at a satisfactory rate and unemployment abated. The size of the informal economy, however, and the widespread cronyism have affected the country as much as they trouble the former Yugoslav states.

If there is a hopeful aspect to the emergence of many features of unregulated capitalism across the Balkans, it is that they became a favoured destination for foreign direct investment (FDI). As shown in Table 16.1, Serbia and Montenegro rank first and second, respectively, in the Greenfield FDI Performance Index 2019, which orders countries according to their economic potential to attract FDI. In relation to the share of FDI in total GDP, Albania is similarly popular among investors.

Apart from foreign penetration (which creates problems in its own right for social dialogue), economic and social indicators in the region, except for Slovenia, and despite considerable growth, are not encouraging. In a hypothetical ranking of transitional

Table 16.1 Foreign direct investment, Adriatic region, various indicators

	Foreign direct investment (2018)		Greenfield FDI Performance Index 2019	
	% of GDP	US\$ million	Ranking	Number of projects
Albania	7.97	1204.4	n.a.	n.a.
Bosnia and Herzegovina	2.45	485.6	15	17
Croatia	2.11	485.5	n.a.	n.a.
Montenegro	8.91	1284.4	2	11
North Macedonia	5.32	674.5	18	10
Serbia	8.13	4107.3	1	107
Slovenia	2.81	1523.9	n.a.	n.a.

Source: World Development Indicators; Barklie (2019).

success, Milanović (2014) places Croatia and North Macedonia among relative failures, and Serbia, Montenegro (by extension) plus Bosnia and Herzegovina among the definite failures. More surprisingly, Milanović positions Albania among the success stories, mainly because of its relatively high growth rates (see Figure 16.1), while acknowledging that it still may not be a consolidated democracy. Perhaps the general situation is not so bleak, but economic recovery and convergence to EU average income have lagged behind, and the relative differences between the ex-Yugoslav republics seem to be constant, as shown in Figure 16.1.

Political freedoms are partial. Unemployment and low employment are endemic. As indicated in Figure 16.2, while Slovenia ranks similar to advanced European political economies such as Austria or Germany, Bosnia and Herzegovina, and North Macedonia seem to be stuck in permanent crisis.

In addition, female labour force participation rates are a good indicator of how conservative a country is, and regional variation is, once again, considerable (Figure 16.3).

Finally, reflecting the degree to which the individual economies have been captured by rent-seeking capitalists, the Gini coefficient of inequality rose quickly. Again, Slovenia

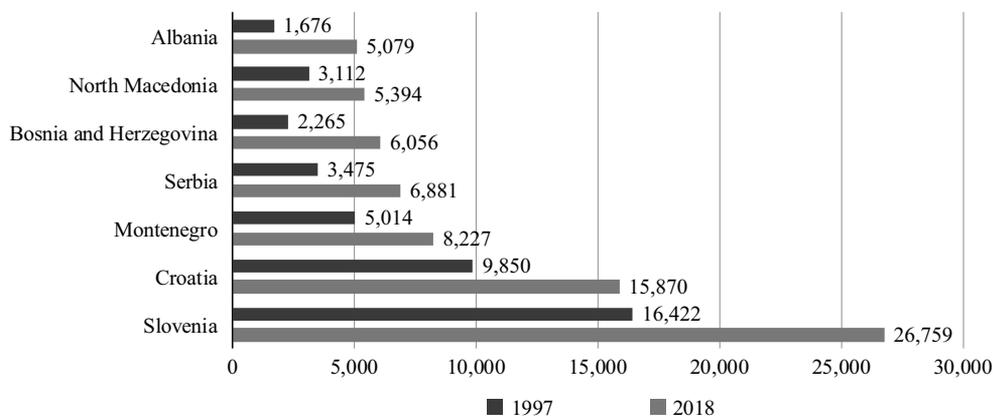


Figure 16.1 Gross domestic product per capita at constant 2010 US\$ (1997 and 2018)

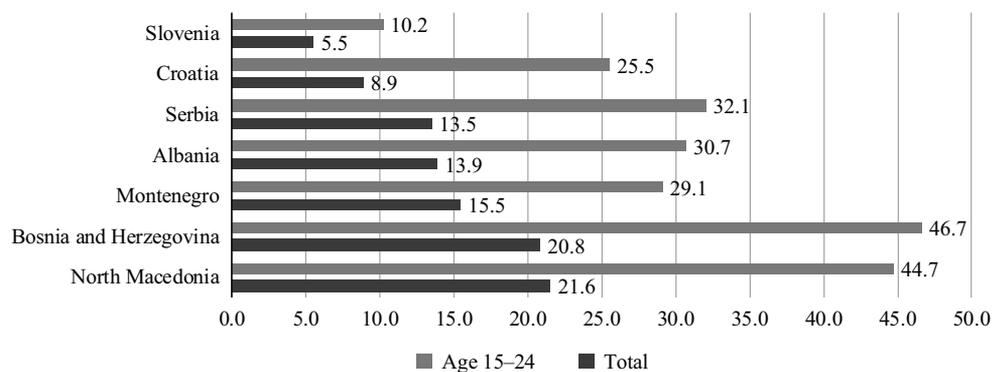


Figure 16.2 Unemployment, total and youth (2018)

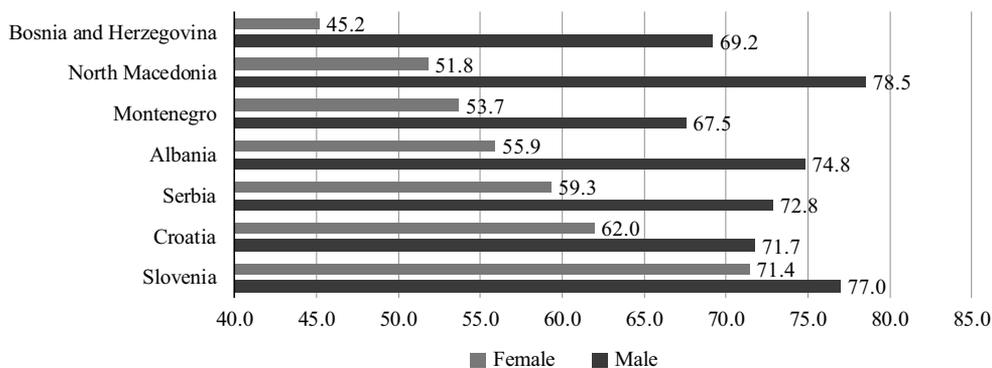


Figure 16.3 Labour force participation rate by gender (2018)

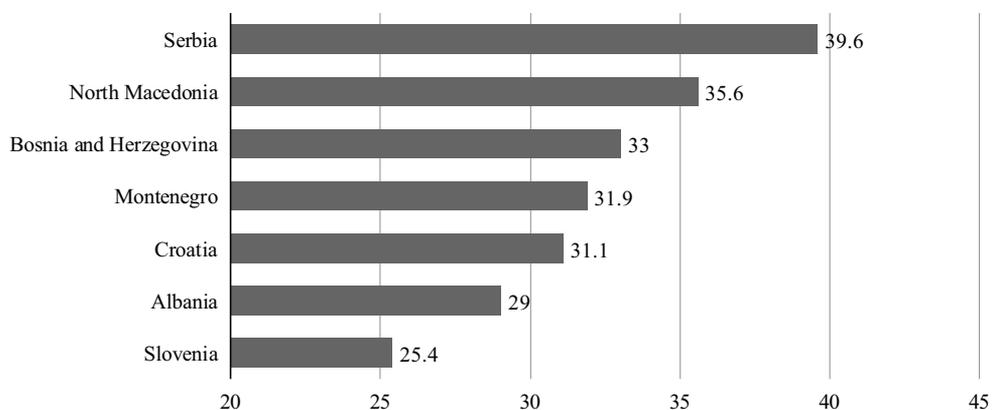


Figure 16.4 Gini coefficient 2015 (or latest)

ranks in line with Scandinavian countries, while Serbia is more akin to a developing country (Figure 16.4).

4. THE INDUSTRIAL RELATIONS LANDSCAPE AND ITS CHALLENGES

With the notable exception of Slovenia, industrial relations in the Adriatic Region are rather weak and ineffective.¹ This is the result of three interrelated developments, which constitute major challenges to be addressed at the level of both governments and individual social partners: (1) the weakness and structural deficits of the social partners; (2) functioning but ineffective tripartite social dialogue; and (3) limited and decentralized collective bargaining. To these we have to add specific problems related to the world of work: (4) demographic problems in terms of ageing and migration; (5) dependence on foreign investors and firms; and (6) incomplete political development.

Both trade unions and employer organizations have seen their densities decline relentlessly and display a number of structural problems characteristic of former socialist countries. In the two decades after transition began, union membership, which was once obligatory, plummeted to around one-third of the workforce, with further declines recorded after the financial and economic crisis. Less than in the rest of central and eastern Europe, in Yugoslavia, but not in Albania, there was a tradition of employer representation (red managers). Employer organization density was thus roughly at the same level as that of the unions, and possibly not declining so fast (except in Slovenia, where membership was obligatory until the mid-2000s and a haemorrhage of members ensued its voluntarization) (cf. Grdešić 2015).

As for the structural deficits, the unions suffer from several interrelated weaknesses (see, for example, Avdagić 2005). Several labour movements in the region still rely on the old trade union apparatuses inherited from socialism. These are accused of being relatively cosy with the government, inert, over-bureaucratized and over-privileged in respect of inherited property. Except in the countries at the forefront of transition (Croatia and Slovenia), they did not become fully autonomous nor did they push to develop collective bargaining. The trade unions that emerged after the beginning of transition are, instead, fragmented, factional and small in membership. Fights between old and new unions over inherited assets from socialism, the number of members and their legitimacy to bargain collectively are common. Second, the unions are clustered in the public sector, with little penetration among small and medium-sized enterprises or foreign firms, where resistance can be fierce. This division has had the consequence of creating a dualized (see Emmenegger et al. 2012) labour market, where insiders, especially in the public sector, have access to social and contractual protection, while outsiders, increasingly reliant on atypical contracts, do not.

The employer organizations do not fare much better. They bemoan two main obstacles to effective operation. On the one hand, in several countries, chambers of commerce, membership of which is compulsory, have exclusive (or joint) representation of the employers. This raises justified concerns over their political independence – the government can deprive them of members and funds with the stroke of a pen – and legitimacy, especially when signing sectoral or industry-wide collective agreements that would be better served by involving specialized actors. On the other hand, many employers do not feel the need to be represented. Small and medium-sized enterprises, in particular, are happy to undercut collective agreements that may be concluded by employer organizations. Large, often foreign enterprises, instead, can rely on asymmetries of power to force out favourable labour or financial conditions with the government at the national level and their own workers at the firm level.

Owing to the widespread penetration of foreign capital and interest groups in the politics and economics of the region, Nölke and Vliegenthart (2009), among others, discuss 'dependent market economies'. These are partly built around the assembly and production of relatively complex and durable consumer goods requiring skilled, but cheap labour, the transfer of technological innovations within multinational enterprises and the provision of capital via foreign direct investment. These multinationals rarely find it advantageous to participate in domestic employer organizations or to engage in multi-employer collective bargaining. Also, they often rely on parallel structures – for example, the American Chamber of Commerce (AmCham) or the Foreign Investors Council in

Serbia – to lobby respective governments, thereby sidestepping national social dialogue. The problem is particularly acute in countries in which FDI represents a large share of GDP, that is, in Albania, Montenegro, North Macedonia and Serbia (see Table 16.1).

Looking at tripartite social dialogue in the region, the International Labour Organization (ILO 2017) notes that all former Yugoslav countries, as well as Albania, have established the necessary institutions and mechanisms through collective labour laws. The Adriatic region has put in place a developed infrastructure for tripartite consultation during the past two decades, helped by widespread ratification of the three most pertinent ILO Conventions and direct ILO support.² With the notable exception of the Slovenian Economic and Social Council (*Ekonomsko-socialni svet, ESS*), however, most tripartite bodies suffer from substantial effectiveness deficits.³ Low public visibility, weak commitment of policy-makers, limited human, technical and financial resources, low trust among the social partners, misunderstanding by the government of its role as facilitator, and a lack of evaluation mechanisms mean that quality recommendations on complex socio-economic matters are scarce and that they are seldom translated into public policy. In addition, owing to recent contingencies, the Albanian National Labour Council (*Këshilli Kombëtar i Punës, KKP*), the Slovenian ESS and the Croatian Economic and Social Council (*Gospodarsko socijalno vijeće, GSV*) were inactive at different intervals between 2017 and 2019.

If tripartite social dialogue is ineffective, it is at least institutionalized and, hence, amenable to revitalization. The weakest link in the region's industrial relations are the collective bargaining systems. Decentralization at the firm level is predominant, while the sectoral level is particularly weak. Not only are multi-employer collective agreements of little interest to foreign companies that need flexibility to be competitive, but coordinated collective bargaining requires strong employer associations (Bernaciak 2015a). As partial compensation, several countries have (or had) nationwide collective agreements, whose implementation has proved to be fraught with difficulties, but which meant that coverage in Bosnia and Herzegovina, Montenegro, North Macedonia and Slovenia was for a long time almost total. Since the global financial crisis, though, collective agreement coverage has been declining almost everywhere.

Considering in turn the pressing policy problems related to the world of work, the demographic and migration emergencies should top the agenda, a feature common to most of central and eastern Europe (see Chawla et al. 2007). The former Yugoslav republics and Albania have comparable problems with emigration, except for Slovenia, which has, however, a pressing need to improve the financial sustainability of its pension system. According to the World Bank and *wiiw* (2018), the stock of migrants from the former Yugoslavia (minus Croatia and Slovenia) outside the region reached 3.32 million in 2015. Almost half of these moved to the EU15. They tend to be young, of working age (with women making up an increasingly large share) and relatively highly educated, thereby creating considerable brain drain with negative consequences for the domestic labour market (labour shortages, difficulties with labour market matching), speeding up population ageing and decline, and reducing the region's growth potential.

Finally, it seems that important issues, such as technological advancements and climate change, which will have a profound impact on the future world of work, are still partly neglected in national social dialogue discussions. Compared with the findings in ILO-AICESIS (2017), this state of affairs does not substantially deviate from the norm. The

main issue is that even though there are individual initiatives by the social partners and legislation on aspects of these two problems, these are rarely processed through national tripartite or bipartite social dialogue.

5. STRENGTHENING THE REPRESENTATIVENESS OF SOCIAL PARTNERS AND INCREASING THEIR INSTITUTIONAL CAPACITY

Not dissimilar from the rest of Europe, union and employer density, as well as the coverage of collective agreements have been dropping in the Adriatic region. As data are difficult to obtain, outdated and, in most cases, inaccurate – Croatia and Slovenia are partial exceptions – the available figures for the seven case studies (FBiH only in Bosnia and Herzegovina), presented in Table 16.2, have to be treated with caution.

In general, both union and employer organizations need to clearly define their representativeness criteria (which, in some countries, are problematic), devise strategies to attract new members, and start solving some of their structural problems, also inherited from the past. With regard to representativeness, Table 16A.2 in the Appendix to this chapter summarizes the main criteria applied in the six entities studied.

According to the ILO (2017), the lack of predetermined, objective and precise representativity criteria in Albania are a major impediment to establishing genuine and effective social dialogue, at any level, including the tripartite national level. Therefore, the government and the social partners should agree on a set of objective indicators of representativeness that are easy to check.

Given that this is the biggest stumbling block in Albanian industrial relations, one of the two largest union federations, the Confederation of Trade Unions of Albania (KSSh) – the other is the Union of Independent Trade Unions of Albania (BSPSh) – has repeatedly decried the legal vacuum and urged, first, the establishment of a level playing

Table 16.2 *Union density, employer density and collective bargaining coverage, Adriatic region (percentages)*

	FBiH	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
Union density	30 (c. 2009)	20.2 (2018)	26–4 (2017)*	28 (c. 2010)	25–30 (2016)	20.4 (2016)
Employer density	42 (2018)	53 (2013)	65 (2017)	24 (c. 2010)	30 (c. 2010)	56 (2013)
Collective bargaining coverage	100 (until 2018)	44.7 (2017)	100 (2019)	100 (2019)	55 (c. 2010)	70.9 (2016)

Notes: * According to the USSCG (personal communication), union density fell to 30–35 per cent in Montenegro in 2019.

Source: Arandarenko (2019); Bejaković and Klemenčič (2019); Domazet (2012); Grdešić (2015); Kanjuo Mrčela (2018); Majhosev (2019); Visser (2019); and personal interviews.

field through a legal package named 'On union activity, collective bargaining and peaceful resolution of labour conflicts'. This law would determine the principles and procedures for establishing, managing, representing and organizing the activities of employees and employers in unions and employers' organizations. Moreover, it would supplement the rather inadequate Labour Code articles dealing with the negotiation, drafting and signing of collective labour agreements, as well as the procedures for resolving collective disputes through peaceful means, strikes for employees and lock-outs for employers. This would be followed by regulations detailing clear representativeness criteria (discussed in section 6 of this chapter).

In addition to representativity, evident weaknesses befall both social partners. Union density is a great deal higher in the public sector (65 per cent) than in the private non-agricultural one (20 per cent), especially in former state-owned enterprises. Unionization is non-existent in the sizeable private agricultural domain (2.1 per cent), which employed a surprising 41 per cent of all employees in Albania in 2018 (Doci 2019). Almost 90 per cent of all unionized workers belong to the two confederations mentioned above, the KSSh and the BSPSh, both established in 1991. The weakest link, however, is represented by employer organizations, which, according to Doci (2019) were not active during 2018. The main organization is Biznes Albania, which was established in 2010 and represents around 30 000 employers.

As highlighted by Adis (2019), the labour laws passed in late 2015 in both entities of Bosnia and Herzegovina (Republika Srpska and FBiH) aggravate the structural weaknesses of their industrial relations. The codes were adopted through an urgent procedure, without a public debate or the participation of social partners. They were found to be incomplete and complex to apply in practice.

The Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) is the legal successor of the Confederation of Trade Unions of Bosnia and Herzegovina, which changed its name in 1990. The Federal Ministry of Labour and Social Policy granted it representative status in 2015 (according to the new Labour Code, see Table 16A.2 in the Appendix). On the employer's side, the Association of Employers FbiH (UPFBiH), is the only association that meets the representativeness criteria. It claims to have 21 000 members and employs more than 42 per cent of employees in the real, that is, non-financial, sector of the FBiH. In Republika Srpska the representative Confederation of Trade Unions of RS (SSRS) and the Union of Associations of Employers of RS (UUPRS) are parties, together with the government, in collective bargaining at the entity level.

Currently, a new draft law is being discussed on the representativeness of the social partners in the FBiH. One proposal is to include qualitative criteria as well, such as the presence of professional staff, adequate working conditions and offices, membership of international organizations, active promotion of collective bargaining, strong public relations activities, and so on.

In this respect, and also in view of attracting new members, the UPFBiH seems to be particularly active. A new online platform allows members to access domestic and international regulations, including comments on the most important pieces of legislation, and to ask for legal advice via the forum available within the platform.⁴ Other notable initiatives include: (1) the creation of a business social network, that is, a forum for the exchange of business information as well as for the promotion of products and services,

requests for joint ventures, partnerships, projects, and so on; and (2) the establishment of a training centre for employees, according to the needs of individual members, aimed at supplementing existing rather inadequate education and lifelong learning systems.

In Croatia, the representativeness criteria for both unions and employers changed drastically in 2015 with the Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Negotiation (Table 16A.2 in the Appendix). The new law was introduced, after almost two decades of debates, in order to establish more precise criteria and bring to an end the existing arbitrariness. Yet problems remain, especially as there are different criteria concerning trade union representativeness in tripartite social dialogue – therefore sitting on the GSV (Table 16A.3 in the Appendix) – and those entitled to sign collective agreements.

In June 2018, the new list of representative unions and employers was established as the old list had expired a few months earlier. The number of representative trade union confederations was decreased from four to three, including the successor Union of Autonomous Trade Unions of Croatia (SSSH), the Independent Trade Unions of Croatia (NHS) and the Matica Association of Croatian Trade Unions. As the Croatian Association of Trade Unions (HURS) lost its status, there have been talks of a merger with Matica (Šeperić 2018). The Croatian Employers Association (HUP) remained the only representative employer organization. This realignment has had repercussions for the composition of the GSV (see Box 16.2), which met for the last time in its previous incarnation in June 2018. After that the social partners started talks on the new 'Agreement on the Establishment of the Economic and Social Council' ('Sporazumom o osnivanju Gospodarsko-socijalnog vijeća'), which soon led to a standoff with the government and brought activities within the GSV to a standstill (it never convened again after the meeting on 26 June 2018) (Šeperić 2018).

There are efforts being made in Croatia to guarantee the retention in, and attraction of members to, unions and employer organizations. The HUP sees voluntary membership as a significant difference compared with the Chamber of Commerce, where this is mandatory. As the HUP relies on membership fees, the association needs to be proactive and provide satisfactory services. Lobbying the government is the main mission here, as well as the provision of legal advice on topics related to industrial relations, collaboration with the main international organizations (ILO, the International Organisation of Employers and BusinessEurope) and dissemination of knowledge, especially regarding EU legislation. Also, the HUP has created an information and communication technology (ICT) unit responsible for education and knowledge dissemination among members. For example, it organized a series of workshops on how to be legally compliant with e-commerce activities, the General Data Protection Regulation (GDPR), and so on.

The unions provide a number of legal services to their members, so retention and attraction practices are standard. New forms of work are not particularly widespread in Croatia. There are only few developments with regard to working from home, where some changes to the occupational safety and health (OSH) regulations have been implemented (see section 4 in this chapter). Other, more traditional atypical workers, such as workers on fixed-term contracts and those hired through temp agencies, rarely join unions as they fear their contracts will not be renewed. The Independent Trade Unions of Croatia (NSH) has reported some success in the Croatian public sector, where around 700 workers at Zagrebački holding (a holding of several companies dealing with utilities

in Zagreb), who were employed on fixed-term contracts for years at a time, have been regularized.

As for the social partners in Montenegro, there are two representative unions – the Union of Free Trade Unions of Montenegro (USSCG) and the Union of Trade Unions of Montenegro (SSCG) – and one representative employer organization, the Montenegrin Employers Federation (UPCG) (Table 16A.1 in the Appendix). The SSCG is the socialist successor union, which participated in social dialogue together with the Chamber of Economy of Montenegro (Privredna komora Crne Gore). The pluralization of industrial relations in Montenegro started with the establishment of the UPGC in 2002 and the USSCG in 2008. The Montenegrin Employer Federation follows ILO criteria, that is, it operates on the principle of voluntary membership, unlike the Chamber of Commerce, membership of which is mandatory. The UPGC now participates in social dialogue, instead of the Chamber, alongside the USSCG, which gained representative status after the passage of the Trade Union Representativeness Act in 2010. This was amended in 2018, thereby better regulating the composition and functioning of the committee for determining trade union representativeness (Simović-Zvicer 2019).

With regard to representativeness, there are seemingly more problems with employers than with unions. Currently, in addition to the UPGC and the Chamber of Commerce, three other business organizations are operating in Montenegro: the Montenegro Business Alliance (Montenegro Biznis Alijansa), the Montenegrin Foreign Investors Council and the American Chamber of Commerce in Montenegro (AmCham). None has expressed a willingness to become representative. Yet two problems persist. First, the committee dealing with representativeness issues is composed of social partners that are already representative, thereby generating a conflict of interest. Second, similar to other former Yugoslav republics, where foreign investment has been plentiful, these organizations compete with the UPGC. Even though they are formally excluded from social dialogue, the government often seeks their opinion when drafting new laws, sometimes sidestepping social dialogue altogether.

Employers in the UPGC are active internationally, relying on the technical assistance of and stable cooperation with the ILO's Budapest office, implementing EU-sponsored projects (more than 50 in the past few years) and through membership of the International Organisation of Employers. For example, the Montenegrin Employers Federation, in collaboration with the ILO, for the first time surveyed the green economy in the country, leading to a 2017 report that shows the potential for green jobs creation, especially in tourism (Kujundžić et al. 2017).

In North Macedonia there are two representative trade unions, the Federation of Trade Unions of Macedonia (SSM) and the Confederation of Free Trade Unions of Macedonia (KSS), as well as one representative employer organization, the Organization of Employers of Macedonia (ORM). There are also a number of other employer and business associations, of which the Business Confederation of Macedonia (BKM) is the most prominent, although it does not have representative status. Other examples are bilateral chambers of commerce, such as the American Chamber of Commerce or the Deutsche Auslandschamber, which generate similar problems as in the rest of the former Yugoslav area.

Given the low employer organization density in North Macedonia, compared with other former Yugoslav republics, it is interesting to analyse the methods by which

BOX 16.1 BUSINESS CONFEDERATION OF MACEDONIA AND NEW ENTREPRENEURS

The BKM was established in 2001 and by the early 2010s its membership consisted of *circa* 8500 companies in 13 business associations, with two regional offices in Prilep and Tetovo and head office in Skopje. The BKM developed a strategy to involve new members based on the results of a survey (managed by external consultants) on what enterprises want from a business association and involving a multiplicity of initiatives.

A whole series of services have been devised for new or potential entrepreneurs. In particular, the BKM offers e-mentoring and modules on a number of key issues, such as: (1) how to construct a new business; (2) how to apply for innovation funds; and (3) how to comply with both legal requirements and corporate social responsibility obligations towards employees and the environment. To this end, the BKM has developed and promoted, with the State Commission on Corruption Prevention, a business code of ethics, which is based on the ten principles of the United Nations Global Compact (see CSRforALL 2013).

The BKM is also part of the Erasmus for Young Entrepreneurs Programme,⁵ which is a cross-border programme facilitating the exchange of entrepreneurial and management experience. Exchange takes the form of a stint by newly established or potential (North Macedonian) entrepreneurs with an experienced entrepreneur running a small or medium-sized enterprise in another EU country for a period of one to six months. Before being granted the exchange, the potential businessperson has to present a business plan, including details on its sustainability, potential suppliers and consumers. The plan is then evaluated and approved by BKM. After the exchange, the Confederation continues to work with the entrepreneur, as the rules in North Macedonia are necessarily different from those abroad and need to be updated to ensure legal and tax compliance.

employers attempt to attract new members, such as the strategies to provide useful services to new entrepreneurs by the Business Confederation of Macedonia (see Box 16.1).

In Serbia, there are currently two representative trade unions: the socialist successor Confederation of Autonomous Trade Unions of Serbia (SSSS), which has been operating since 1903, and the United Branch Trade Unions, Independence (UGS Nezaviznost), the first independent union in Serbia, which started operations in 1991. At the employer level, only the Serbian Employers Association (UPS) is representative (Table 16A.1 in the Appendix).

Representativeness criteria are succinctly defined in the Labour Code, adopted in 2005 and amended several times (Table 16A.2 in the Appendix). Representative status grants a number of rights, including participation in the Socio-Economic Council (Table 16A.3 in the Appendix). During the past five years there has been talk of changes to the Labour Code, but these have been postponed at the time of writing because of Serbia's election in 2020.

The labour movement in Serbia bemoans its chronic weakness and, in the International Trade Union Confederation (ITUC) Global Rights Index, Serbia ranks among the group of countries in which union rights are systematically violated (Petković Gajić, 2019). There are problems similar to those of North Macedonia and Montenegro among the employer organizations. First, the intermeshed nature of organized interests and the state inherited from Yugoslavia has not been rooted out. The Chamber of Commerce of Serbia (Privredna Komora Srbije) was the only employer association under the old regime and, subsequently, under Milošević. Its membership was (and remains) mandatory and

its president is a political appointee, which undermines its independence. After having fraught relations with the UPS, especially over its role in social dialogue, the Chamber of Commerce is now the exclusive representative of the interests of Serbian business nationally and internationally (helping firms to establish business connections and trade).

Second, as Serbia ranks number one regarding the inflows of FDI within the former Yugoslav region (Table 16.1), there are a number of business organizations that represent foreign firms and investors, which operate outside social dialogue. The AmCham and the Foreign Investors Council (which covers 5 per cent of the workforce and 20 per cent of Serbian GDP), but also the Serbian branch of the Slovenian Chamber of Commerce (GZS Beograd), are often consulted directly by the government, when amending or drafting new laws. These organizations, as well as individual multinationals, engage in corporate social responsibility initiatives, such as scholarships for promising young people or improving the work–life balance for disabled people. However, none of this has anything to do with national social dialogue.

Finally, in Slovenia, if trade unions meet the criteria mandated by the Representativeness of Trade Unions Act (Table 16A.2 in the Appendix), they are legally recognized as representative and enjoy a wide range of rights, including the right to a seat on company management boards. Currently, seven union confederations have the right to participate in national tripartite negotiations. Of these, the Autonomous Free Trade Union of Slovenia (ZSSS), the successor union inherited from Yugoslavia, is the most prominent (for details, see Guardiancich 2012). Although membership data are scarce and/or outdated, unionization is declining (from 68.4 per cent in 1991 to 20.4 per cent in 2016), and labour is plagued by fragmentation and, sometimes, radicalization (Stanojević 2014).

As regards employer organizations, these existed before 1991 – the Chamber of Commerce and Industry of Slovenia (GZS) traces its origins back to 1851 and the Chamber of Crafts and Small Businesses of Slovenia (OZS) to 1969 – but their importance grew after independence. With the emergence of new firms and the privatization of state-owned enterprises, new associations sprang up, including authentic employer organizations, such as the Association of Employers of Slovenia (ZDS), founded in 1994, following the advice of the ILO and the International Organization of Employers. There is no law on the representativeness of employers in Slovenia, but five sit on the Economic and Social Council (ESS) (Tables 16A.1 and 16A.3 in the Appendix). As regards employer organization density, this is declining (down from 100 per cent to 56 per cent), especially after firm membership of GZS and OZS became voluntary in 2006 and 2013, respectively. On the one hand, the now voluntary organizations had to retain members and, hence, espoused a tougher pro-business stance. On the other hand, this has to be seen as a relatively positive change: chambers whose membership is obligatory are hardly independent from government and may not properly represent the interests of members. An important difference between Slovenia and the other former Yugoslav republics is the limited influence of foreign chambers of commerce on national politics and social dialogue. This is basically relegated to collective bargaining within individual multinationals.

Representativeness criteria are problematic for both employers and unions; hence, the Representativeness of Trade Unions Act should be updated and a law for employers introduced. First, there has been a tendency for the labour movement to fragment into smaller unions, which have weakened the bargaining power of the entire labour

movement in both the public and private sectors. Second, the Act does not mandate a subsequent check of whether the initial conditions that granted representativeness to a union still subsist. This should be actioned periodically. Third, confederations do not have separate representativeness criteria, which are now unclear. As they can now consist of narrow occupational unions, perhaps some limitations could be introduced on the sectors that can be part of a single confederation.

Regarding the recruitment of new members, both unions and employers have only recently started thinking about devising new strategies. The ZDS complains that micro enterprises and small enterprises are seldom interested in the activities of employer organizations and that only after they have reached a certain size do they start thinking about membership. On the labour side, the ZSSS bemoans that international guidelines are lacking on how to recruit new members from the ranks of those employed in new and/or atypical forms of work. Hence, its strategies are generic and untargeted (see Heery and Adler 2004; Molina and Guardiancich 2018). In addition to the many services offered (especially individual and collective legal advice in all matters related to labour relations), they have introduced a privilege card – effectively a means of payment – that has some advantages for union members. In summary, most of these activities are still in their infancy.

6. SUPPORTING SOCIAL PARTNER AUTONOMY

As the comparative ILO (2017) report shows, the institutional and legal preconditions exist in the region for functioning national social dialogue institutions. There are, however, two sets of problems: (1) the various causes of the ineffectiveness of Economic and Social Councils (ESCs); (2) the operational boycotts of the ESCs in Croatia and Slovenia.

The ILO recently launched a number of research activities (Guardiancich and Molina 2019) and the development of a self-assessment tool that addresses various aspects of effective national social dialogue institutions. A thorough examination of each Economic and Social Council in the region is beyond the scope of this study. However, we do provide two sets of comparative tables. Table 16A.3 in the Appendix shows the composition of tripartite social dialogue institutions in all six former Yugoslav republics and in Albania. Table 16.3 shows the comparative effectiveness scores for three institutions (Croatia, North Macedonia and Slovenia) based on three dimensions: (1) relevance, whether the issues discussed or researched in social dialogue institutions are of general interest, whether they help shape the political agenda and whether they inform the ensuing public policy output; (2) operational effectiveness – whether specialized technical groups exist, whether there are sufficient resources and whether there is cooperation with other levels of social dialogue; and (3) quality of services provided and impact – whether there are internal and external evaluation processes or feedback mechanisms on the quality of the recommendations provided and their societal impact.

As Table 16.3 makes clear, only the Slovenian Economic and Social Council, among the three presented, fully – albeit imperfectly – fulfils its mission. Limited resources, low political support as well as the virtual absence of any feedback mechanisms are the main weaknesses of these institutions.

Table 16.3 Effectiveness of social dialogue in Croatia, North Macedonia and Slovenia

Name of national social dialogue institution	Croatia	Northern Macedonia	Slovenia
	Gospodarsko socijalno vijeće (Economic and Social Council)	Ekonomsko socijalni sovjet (Economic and Social Council)	Ekonomsko-socialni svet (Economic and Social Council)
<i>Relevance</i>			
Participation in national policy setting agenda	Limited	Limited	Strong
Opinions on matters of general interest	Yes	Yes	Yes
Carries out research and analysis on own initiative	No	No	No
Analysis feeds government policy discussions	Limited	Limited	Yes
<i>Operational effectiveness</i>			
Existence of technical standing groups	Yes. Five groups exist	Yes	Yes
Sufficient funding	Limited, under Labour Ministry's budget	Limited	Yes, for its limited functions
Cooperation with local/regional ESC	Regional ESCs are autonomous and there is little cooperation	Yes, but not institutionalized/not all operational	Does not apply (but cooperation with other institutions is high)
<i>Quality of services provided and impact</i>			
Evaluation of impact	No systematic evaluation of impact	No	Yes (social partners independently)
Internal and external feedback	No	No	No
Evaluates satisfaction of users	No	No	No
Total effectiveness score (on a scale from 0 to 10)	4	4	7

Note: Total effectiveness score calculated by adding 1, 0.5 or 0 on each dimension, depending on whether that country gave a strong 'yes' (1), 'limited' (0.5) or 'not at all' (0) answer.

Source: Guardiancich and Molina (2019).

The National Labour Council (Këshilli Kombëtar i Punës, KKP) in Albania is established by the Labour Code, which was last amended in 2015 (Table 16A.3 in the Appendix). Lack of representativeness criteria in the country determines a fundamental weakness of the institution: membership is unusually large and uneven, determined ad hoc by government decree (most recently in 2018) and prone to politicization (ILO 2017).

The unions decry that this decree was adopted solely as a formality to fulfil an International Labour Standard. Hence, the KSSh has requested that a special law on representativity of the social partners for participation in tripartite social dialogue and collective bargaining be laid down. This should abide by the following criteria.

First, ILO standard principles of freedom and organization should be the starting point to develop these acts. It is of utmost importance to define the status of ‘most represented’ as well as ‘representative’ employee and employer organization at all levels (national, professional and territorial). To this end, objective, numerical, measurable and predetermined criteria should be used.⁶ Second, representativeness criteria should then grant preferential rights as regards negotiating and signing collective agreements; partaking in national consultations (on policies, strategies, and so on); participating in tripartite delegations involved in the activities of the ILO; appointing representatives to national tripartite institutions and boards; and nominating mediators, conciliators, arbitrators or labour judges. Third, the certification of social partner representativeness should be by a public, independent authority, which is currently missing in Albania.

In addition to the important representativeness issue, the KKP discusses a wide range of socio-economic matters, such as the impact of economic cycles, the drafting of the budgetary law, minimum wages, vocational training, energy prices, and the ratification and implementation of ILO Conventions. It has shown successful engagement in debates over wages and pension reforms.

Yet, two problems seem to emerge. First, the unions bemoan that the KKP is not fulfilling its obligations and its specialized committees (determined by law) are no longer functioning as they should or cooperating with the institutions dealing with the prevention of disputes and the peaceful resolution of labour conflicts. Furthermore, the local social dialogue structures also seem to be in disarray. These shortcomings are coupled with structural weaknesses and fragmentation of trade unions and employer organizations (in relation to legitimacy, resources, internal democracy, communication technology, and so on), which lack the capacity to negotiate effectively.

Second, the issuance of recommendations and opinions – on the Labour Code, health insurance, education and training, OSH, and on key economic issues – does not seem to be matched with sufficient policy-making action or even awareness on behalf of Members of Parliament. Hence, there is a wide gap between the KKP’s deliberations and their engagement with the political and parliamentary processes, thereby limiting the role of the KKP in national economic reforms. Consequently, it is imperative that the KKP adopts a monitoring system so that it can assess the degree to which its recommendations are acted upon at the Council of Ministers (ILO 2017). Another worry is the partial stop of KKP activities between March 2017 and the end of 2018, during which time it only held only two meetings.

According to Adis (2019), no measures have been taken towards establishing an economic and social council at the national level in Bosnia and Herzegovina. Tripartite social dialogue institutions operate at the entity levels (Republika Srpska and FBiH) and in some cantons of the FBiH (Sarajevo, Bosnia-Podrinje, Zenica-Doboj and Herzegovina-Neretva).

The Economic and Social Council (Ekonomsko–socijalno vijeće, ESV) of the Federation of Bosnia and Herzegovina (Table 16A.3 in the Appendix) operates on the

basis of two pieces of legislation: the 2002 Tripartite Agreement concluded by the government, the Confederation of Independent Trade Unions (SSSBiH) and the Association of Employers FbiH (UPFBiH), and the 2015 Labour Code, the application of which is complicated and inconsistent (ILO 2017).

On paper, the tripartite institution has a broad mandate, also addressing matters related to wages, collective agreements, taxation policy, employment and social policy, privatization, labour law, and a wide range of public policies. The Labour Code further expanded the role of the ESV to cantons and municipalities, but neither the social partners nor the government consider that the ESV functions effectively.

According to the unions and the employers, the ESV is relatively successful in its role in collective bargaining, but it suffers from the ailments typical of tripartite institutions in the region: (1) ineffective consultation and a lack of agreed outcomes; (2) limited capacity and resources; (3) lack of engagement by ministries other than the Ministry of Labour; and (4) insufficient agility (in the opinion of the executive) to deal with urgent socio-economic issues that require an immediate response. More positively, if the ILO noted that the ESV hardly met in 2017, thereby prompting the social partners to switch to bipartite social dialogue, it seems that by 2019 its meetings were taking place regularly.

In Republika Srpska, the Economic and Social Council (ESS) was established in 1997 by agreement between the social partners. The legal base is provided by the 2008 Law on the Economic and Social Council (*Zakon o ekonomsko-socijalnom savjetu*) and the 2015 Labour Law. The ESS is a tripartite advisory body to the Government of Republika Srpska, with roles in the promotion of collective bargaining, fixing the minimum wage and the extension of collective agreements. Several problems have been noted with regard to the functioning of the ESS: disagreement between employers and unions on the new Labour Code, lower activity levels owing to fewer meetings, several laws rushed through parliament without sufficient discussion, and an insufficient number of specialized committees (ILO 2017).

The Economic and Social Council of Croatia (*Gospodarsko socijalno vijeće*, GSV) is the country's main tripartite social dialogue institution, established in 1994. Currently, the GSV operations and membership are based on the collective agreement on the establishment of the Economic and Social Council of 2013, which is stipulated by the Labour Act and the Act on Trade Union and Employer Association Representativeness, and was signed by the HUP and the four representative trade unions (see Table 16A.1 in the Appendix).

According to the agreement, the social partners have a right to be consulted on all public policies and regulations before they are adopted by government or the parliament. The GSV is endowed with a long list of competences, concerning a number of labour market and socio-economic issues, to which discussions in five standing working bodies are devoted. In addition, it debates strategic issues, such as European Semester documents and the introduction of the euro. As regards collective agreements, the GSV promotes these but plays no direct role. Its function in establishing a list of conciliators is of primary importance.

Despite some important achievements (such as the provision of authoritative legislative opinions and the peaceful resolutions of collective and individual labour disputes), there is widespread dissatisfaction with the work of the GSV and the 21 regional councils (several of which have collapsed owing to lack of interest from local government). The

GSV is perceived as ineffective and having little impact on policy formulation (Bejaković 2018). The Council acts mainly as a forum in which the social partners meet, but do not produce any analytical documents or perform research activities (Guardiancich and Molina 2019).

One of the main problems highlighted by the social partners is the juniorization of those attending its meetings. Six ministers are supposed to represent the government at GSV sessions (see Table 16A.3 in the Appendix). The unions complain that rarely more than one or two are present. This led to the impression that usually the GSV did not have the political influence to take decisions which would then translate into tangible policy. The unions (and often the employers) were often merely informed of its intentions by the executive. The unilateral approach taken to pension reform in 2018 was the final straw, leading to a boycott of the GSV sessions and failure to sign a new agreement on its functioning (see Box 16.2).

BOX 16.2 THE BOYCOTT OF SOCIAL DIALOGUE IN CROATIA AND SLOVENIA

Croatia

The lack of political attention to the Economic and Social Council on the part of several subsequent Croatian governments had negative repercussions in 2018–19. Exacerbating the problem, new representativeness criteria were issued in June 2018, according to which three (not four) trade union confederations would be representative at the national level. After the Labour and Pension Ministry failed to act, the SSSH and NHS unions made a written statement that they would boycott the council's sessions until the agreement, on which the GSV is based, is amended with regard to the new representativeness criteria. The proposal for a new agreement was finalized, but this occurred when the escalation of the conflict between the unions and the Labour Minister reached its peak.

Owing to the regular exclusion of unions from formulating public policy on the labour market and pensions, the three confederations terminated the 2013 agreement and refused to sign the new agreement, as a consequence of which no GSV sessions were held for over a year. The issue of contention was the new pension reform that gradually increased the retirement age and that was passed unilaterally by the centre-right government headed by Andrej Plenković. In response, the three confederations launched an initiative – '67 is too many' (*67 je previše*) – to amend the Pension Insurance Act. The unions collected almost 750 000 signatures between 27 April and 11 May and, as a consequence, they linked the resumption of work within the GSV to the acceptance of their demands.

Slovenia

Despite relatively stable social dialogue in Slovenia since 1994 (with a few notable exceptions, especially during the sovereign debt crisis), in September 2019 the employers decided to boycott the Economic and Social Council, pending reform of its statute, and Lidija Jerkič, of the ZSSS union, followed suit by resigning as ESS chair. This was the consequence of an emergent political situation that was not foreseen within the operational rules of the ESS. In particular, Slovenia, for the first time in its post-independence history, elected a minority government that was externally supported (by a leftist party, 'The Left', or '*Levica*'). As this party was de facto part of the opposition, it tabled three legislative proposals to the National Assembly (Dr žavni zbor). The proposals angered the employers, because they were not discussed by the ESS, despite falling squarely within its remit. In particular, the new amendments to existing laws sought to improve the status of students through the Public Finance Balance Act (*Zakon za uravnovešanje javnih financ, ZUJF*), to grant parents an extra day of paid leave under the Act on

Employment Relations (Zakon o delovnih razmerjih, ZDR-1) and to render supplementary health insurance mandatory. Beyond this, the employers feared that these amendments would follow the Minimum Wages Act (Zakon o minimalni plači, ZMinP), which had been similarly changed without their consent.

As a consequence of the brief boycott, a number of informal meetings were tabled by the government in early October, with the aim of restoring peaceful social dialogue. The solution was that from then on the ESS would not only screen all relevant draft laws emanating from the government, but also from the opposition, thereby strengthening the social dialogue institution's role to a level rarely found anywhere else.

The ILO (2017) thoroughly assessed the Montenegrin Social Council (Socijalni savjet), recommending that it improve its voting procedures, increase the resources of the secretariat and reduce the number of members. Montenegro duly amended its Law on the Social Council (Zakon o Socijanom savjetu) in 2018, thereby solving some of the outstanding problems: the number of members was reduced from 33 to 24, the competences of the national and local social councils have been clearly divided, and the presidency now rotates between the social partners (Simović-Zvicer 2019).

Most importantly, the mandate has been defined and broadened. Nevertheless, it still remains to be seen whether the problems will persist: not all socio-economic issues in the country were discussed, and when they were, the non-binding recommendations were seldom followed. Systematic participation of senior government representatives in its sessions would substantially improve the institution's overall effectiveness and standing.

The Economic and Social Council of North Macedonia was formed in 1996 through a tripartite agreement between the social partners and government. At that time, there were no employer associations (compatible with the ILO definition), but the agreement was signed by the business/economic chambers. For several reasons, including vague representativeness criteria and especially a lack of political will, it functioned only intermittently until 2010, when a new agreement on the establishment of the ESC was signed, this time including authentic employer organizations.

The ESC works as a forum to bring the social partners and government together to discuss socio-economic issues and has no research or analytical capacities. There are problems with representativeness, as the committee assessing it may exclude, for example, employer associations that may become or already are representative. In 2017, the Labour Ministry decided to involve the Business Confederation of Macedonia, giving it observer status with no voting rights.

The ESC is relatively proactive in respect of the government's economic and social policies. Thus far, however, it has issued opinions, proposals and recommendations on a restricted number of topics relative to the breadth of its mandate (Trajanov et al. 2015). Issues related to public spending, corruption, the environment, infrastructure, and so on, which are all key parts of socio-economic life, have seldom been discussed.

One reason for this lack of discussion is that the issues classified as mandatory for the ESC to deliberate are determined in the Agreement on the Establishment of the ESC. The mandatory issues (helped by the Labour Minister being the chair) are related to labour relations, employment, pension and disability insurance, and occupational safety and health. Other issues are not included, although it is possible for the ESC to include them for review. Hence, the other ministries or institutions – and the ESC members

themselves – have rarely viewed the council as a consultative body that is important to the government, especially as it is almost never involved in the proper drafting of laws and legislative proposals. For the past two and a half years there have been some positive developments. According to government sources, the Ministry of Labour and Social Policy now regularly consults the social partners from the outset of the policy-making process.

A host of other documents are also regularly discussed, especially in relation to the accession procedure and pre-negotiations with the EU. Again, only those issued by the Labour Ministry are fully screened, therefore the involvement of the ESC was limited. The government broadened the council's remit in April 2019, which could represent an important change.

An important gap, common to almost all councils in the region, and decried by the Business Confederation of Macedonia, is the lack of feedback on any actions taken by the ESC. There are no public relations activities or evaluation of public satisfaction. Social dialogue and the ESC are promoted only if a specific project provides the necessary funding.

The Socio-Economic Council (Socijalno-ekonomski savet) in Serbia is a tripartite consultative body, established by the 2004 Act on the Socio-Economic Council (Zakon o socijalno-ekonomskom savetu 2004). It has 18 members (Table 16A.3 in the Appendix), a rotating chair and holds monthly meetings. It has a broad mandate, including deliberating on the development and improvement of collective bargaining, the impact and implementation of economic policy, employment policies, wage and price policies, competition and productivity, privatization, vocational training, health and social protection, and security. There are four permanent working committees dealing with legislation, collective bargaining and the peaceful settlement of labour disputes, economic issues, and OSH.

The social partners bemoan that the council is plagued by problems that are pervasive in the region. The first problem is juniorization on the government side. Apart from the Labour Minister, the other relevant ministers do not attend the council's meetings (but deputies do), thereby reducing the institution's political salience and scope. This is reflected in MPs rarely knowing what is being debated there. The second problem is the government's tendency to either employ urgent legislative processes to circumvent the council altogether or to set very short deadlines (also during holidays) for debating draft laws, which renders the whole exercise meaningless. In late 2019, the opposition did not participate in parliamentary debates, so the government did not even need to resort to urgent procedures. The third and final problem is a lack of technical capacity and knowledge on the part of the working committees, with little involvement of external experts.

Among the eight cases (counting both FBiH and Republika Srpska), the exception to the general trend is Slovenia, which is regarded as having the most developed social dialogue institutions in the region. The ESS was created in the Agreement on Wage Policy for 1994, an annex to the Social Pact between Employers, Employees and the Government of the Republic of Slovenia 1994.

The ESS is a tripartite body, which holds disproportionate power vis-à-vis the legislators, given that it is not underpinned by any legal act, apart from government regulations. The National Assembly only discusses socio-economic legislation already debated by ESS members. The ESS cooperates in the drafting of legislation and gives recommendations.

It has the right (not compulsory) to adopt new laws or amend existing laws. It elaborates opinions and positions on legislative drafts and other documents, as well as the budget memorandum and the state budget. The ESS submits its opinions to the National Assembly, the National Council and the public.

The ESS's main areas of concern are social pacts, social rights and all social insurance, employment and industrial relations, collective agreements, prices and taxes, economic policy, legal security, collaboration with the ILO and the Council of Europe, codetermination, union rights and freedoms.

It deals with some of the most important political processes in the country. First, it debates most of the documents in the European Semester policy cycle, then the budget law and executive orders. At every change of government, it tries to resume talks to draft a new social pact (one of the most important programmatic socio-economic documents in the country). The latest social pact, in a series stretching back to 1994 (Stanojević and Krašovec 2011), was stipulated for the period 2015–16, with the unprecedented exception of the Chamber of Commerce and Industry of Slovenia, which did not sign it. In the aftermath of the pact's ratification, the trust between the social partners deteriorated, leading to four employer associations boycotting the agreement. Under the centrist Šarec government, in power between September 2018 and March 2020, a new negotiating group was established with the objective of finalizing an agreement (a task that had not been accomplished by the end of 2019).

As for the boycotts of the ESCs in Croatia and Slovenia in 2018–19, these were contingent on the temporary dissatisfaction of the social partners (employers in Slovenia and unions in Croatia) with the functioning of the two councils, as detailed in Box 16.2.

At the bipartite level, there is a tendency across the region towards the decentralization of collective bargaining, as illustrated by company-level bargaining on wages becoming dominant in Albania, Croatia, Serbia and Slovenia (see Table 16.4).

In 2018, in Albania, the number of firm-level agreements (745, of which 695 are in the non-agricultural sector) was far higher than the number of sectoral agreements (22, of which 12 are in the public sector). Yet, sectoral agreements have a much broader reach, as they apply to more than 182 000 public and private workers. The coverage of different sectors reflects the degree of unionization: almost three-quarters of public employees are covered by a collective agreement, mostly in education and health care, compared with 28 per cent in the private non-agricultural sector and less than 4 per cent in the agricultural sector (Doci 2019).

Both extension mechanisms and derogation clauses apply. If half of the companies in a sector sign the same agreement, this can be extended to all employees working in that industry by the relevant minister. As for derogations, companies that have signed both a company- and a sector-level agreement, can opt for the most beneficial agreement for their employees (Danaj 2019).

The problems highlighted in relation to tripartite social dialogue apply to collective bargaining as well, namely, that the Labour Code is too vague as regards the procedures and responsibilities of unions and employer organizations in negotiations at all levels. The KSSh proposes the drafting of a comprehensive law aimed at establishing these principles.

Collective bargaining in the Federation of Bosnia and Herzegovina consists, first and foremost, of a general collective agreement (*opći kolektivni ugovor*), which guarantees

minimum rights and obligations of both workers and employers, signed by the Confederation of Independent Trade Unions (SSSBiH) and the Employers' Association (UPFBiH). In Republika Srpska, a general agreement has also been signed by the government, the Confederation of Trade Unions (SSRS) and the Union of Associations of Employers (UUPRS). At the branch and canton levels in FBiH, representative unions and employers can conclude collective agreements. This means that as long as the general agreement is valid, coverage in Bosnia is 100 per cent (Table 16.2). In 2018, however, it was terminated at the behest of the employers.

As documented by Adis (2019), there is a trend in FBiH, especially advocated by the employer associations and unanimously condemned by the unions, to reduce the scope of rights regulated by the general collective agreements and to bargain most rights and obligations at the branch or enterprise level. However, a number of sectoral collective agreements still exist (Federalno Ministarstvo rada i socijalne politike 2019). Some of those signed by UPFBiH were in manufacturing and metal processing, as well as textiles and leather manufacturing, rubber, wood and paper, road transport and commerce. A particularly problematic piece of legislation is again the 2015 Labour Code, after which several collective agreements ceased to be valid (few were renewed) and workers' rights were reduced in respect of lower severance payments and easier termination of employment.

In Croatia, representativeness criteria for unions signing collective agreements differ from those that allow unions to sit in the tripartite Economic and Social Council (Table 16A.2 in the Appendix). As the unions complain, the system is complex and opaque. While it is possible to bargain at any level, collective bargaining is decentralized in the private sector, as branch employer associations seem unwilling to raise the bargaining level, and is mostly centralized in the public sector.

Owing to the fragmentation of collective agreements in Croatia and the absence of a central registry – collective agreements registered at the Ministry of Labour are valid for the whole territory of Croatia – their coverage is only estimated (see Table 16.4): for

Table 16.4 Levels of collective bargaining, Adriatic region

	National level		Sectoral level		Company level	
	Wages	Working time	Wages	Working time	Wages	Working time
Principal or dominant level	ME, MK	HR, ME, MK, RS, SI			AL, HR, RS, SI	
Important but not dominant level			HR, ME, MK, RS, SI	HR, ME, MK, RS, SI		AL, SI
Existing level	RS, SI		AL	AL	ME, MK	ME, MK

Note: AL = Albania; HR = Croatia; ME = Montenegro; MK = North Macedonia; RS = Serbia; SI = Slovenia.

Source: Arandarenko (2019); Bejaković and Klemenčić (2019); Danaj (2019); Kanjuo Mrčela (2018); Majhosev (2019); Vanchoski (2019).

example, the Independent Trade Unions of Croatia believe coverage is about 60 per cent. A welcome development is the creation of a registry of collective agreements signed by the SSSH and the HUP within the project 'Strengthening bipartite partnerships through working together on collective bargaining', co-financed by the European Social Fund.⁷ This contains 296 collective agreements, 12 of which are sectoral. Little data exists on other aspects of industrial relations, such as strikes and arbitration procedures, however.

The type and number of collective agreements varies significantly from sector to sector. For example, the agreements for construction, hotels and catering, travel agencies, wood and paper have been concluded for an indefinite period of time, they apply to all employees and employers after administrative extension, and are dynamic owing to frequent renegotiation through annexes and additions. Although they are responsible for most of the coverage, there are no instruments to verify their application in practice. Hence, it is questionable how many employers faithfully apply them to their employees.

Derogations from minimal standards in lower-level collective agreements are usually not possible. During the crisis, however, in particular bonuses and other payments were suspended in order to save jobs (often in violation of the respective collective agreements). According to the unions, the courts have not been responsive to these and other complaints on their part.

As for the determination of the minimum wage, the 2018 Minimum Wage Act (*Zakon o minimalnoj plaći 2018*) prescribed the creation, in 2019, of an expert committee for monitoring and analysing minimum wage developments. This is a tripartite-plus institution consisting of ten members, including three from the Labour Ministry, two each for employers and unions, and three academics.

In Montenegro, the 2008 Labour Code (*Zakon o radu 2008*) determines the criteria for stipulating collective agreements (Table 16A.2 in the Appendix). Any lower level collective agreement can deviate from the Labour Code or the general collective agreement (*opšti kolektivni ugovor*) only by stipulating better conditions for workers.

The latest general collective agreement in Montenegro was concluded in June 2019 and valid until the end of 2020. It elaborated on the provisions set out in the Labour Law, thereby regulating elements for determining salaries, wage and non-wage compensation, and also determined the scope of labour rights and obligations. Even though lower-level collective agreements are underdeveloped, the general collective agreement ensures coverage of 100 per cent.

In North Macedonia there are currently 12 national and sectoral collective agreements, including the general collective agreement for the private sector (*колективен договор за приватен сектор*), most of which have expired, and the general collective agreement in the public sector has not been signed for a decade.⁸ Also the general collective agreement expired in mid-2017. Until the signatory representative employers (ORM) and unions (SSM) negotiate a new agreement, the Labour Code prescribes that its provisions remain valid (Anceva 2019). Hence, the coverage rate in North Macedonia is still 100 per cent.

There is no legal framework for the extension of collective agreements in North Macedonia. But both company-level agreements cover employers and workers who are not members of the signatory union, and wage bargaining (and working time) is coordinated at the national level through the Economic and Social Council. The coordination of collective bargaining at the national level is the responsibility of the Ministry of Labour and Social Policy. Sectoral and company-level bargaining are subordinate.

The situation in Serbia confirms the general trend towards decentralization of collective bargaining. Whereas in the public sector, sectoral agreements predominate, in the private sector company-level bargaining is commonplace (no aggregate figures are available). This tendency has been exacerbated by the changes in extension mechanisms that took place in 2014, whereby they become possible only if signatory employers employ more than half the workforce in a particular sector. By 2018, in the private sector, four sectoral collective agreements were signed: for musicians and performing artists, in agriculture, construction, and the chemicals and non-metal industry. The first two are in force, and the latter have been cancelled by the employers.

Petković Gajić (2019) highlights two main sets of problems with collective bargaining. First, the Serbian Employers Association is representative at the branch and sectoral levels to only a limited extent (as the biggest employers are members of the Chamber of Commerce), thereby weakening collective bargaining at those levels. Second, the state prevails in the public sector as the biggest employer, while trade unions are treated as simple actors instead of as social partners.

As for the content of collective agreements, Serbian labour legislation is prescriptive. The employers complain that bargaining takes place only on specific items, such as wage coefficients and holidays, and not, for example, on new forms of work. The minimum wage is instead negotiated within the Socio-Economic Council and then implemented by government.

Until 2005, Slovenia had a collective agreement for the entire private sector, which ceased to exist in 2005 after the employers withdrew from it. Since then, collective bargaining occurs at industry and company level according to the 2006 Collective Agreements Act (*Zakon o kolektivnih pogodbah 2006*), which led to a lowering of collective agreement coverage (Table 16.2), despite the widespread use of extension mechanisms (see Table 16A.2 in the Appendix). In the public sector, there is both an agreement covering the entire non-commercial sector and separate agreements for different parts of it.

By 2019, 48 public and private sector industry-level agreements were registered with the Ministry of Labour (not all recently updated).⁹ Company-level bargaining is increasingly frequent, thereby supplementing sectoral bargaining in most sectors.

Since 1999, the minimum wage has been determined at the national level, through the Economic and Social Council. It irritated the employers that the Minimum Wage Act was changed in 2018 without involving the ESS or the social partners (as it was proposed by the opposition party, the Left), and that in addition to raising it, the Act also excludes bonuses from the calculation (from January 2020), triggering the boycott detailed in Box 16.2 (Lukić 2019). In the private sector, wage bargaining is coordinated at sector level. In the public sector there is a centralized system for determining wages and other rights. Sector-level collective agreements contain minimum standards, which can be changed for the better at the company level or, in specific pre-agreed instances, for the worse (for example, seniority bonuses).

7. SOCIAL PARTNERS, DIGITALIZATION AND THE FUTURE OF WORK

Within its Future of Work (FoW) initiative, the ILO (2015) has individuated four mega-drivers of change – technological advances, demographic shifts, climate change and accelerating globalization trends – which are fundamentally transforming the world of work and represent distinct challenges for policy-makers.

The acceleration of globalization requires new decision-making structures, in which multinational enterprises are increasingly powerful agents. Demographic shifts mean hard choices concerning the modernization of welfare state institutions and the creation of new and decent jobs for young workers. The potential of technological change can be harnessed only through the effective regulation of new forms of work and by bridging skills gaps. Finally, managing climate change demands a broad consensus around a sustainable development strategy. The complexity of each challenge is compounded by the need to tackle them together and simultaneously, a daunting task for any country regardless of its income level and stage of development.

This far, however, such trends have not been systematically documented, and definitely not in the Adriatic region. In order to shed some light on the preparedness of national social dialogue institutions on issues related to the changing world of work, Table 16.5 presents an excerpt from an ILO-AICESIS (2017) survey,¹⁰ which saw the participation of the Montenegrin, North Macedonian as well as Serbian tripartite councils.

Even though the three examples provide just a glimpse of the situation, the material gathered through the interviews with the social partners corroborates the average low effectiveness of national social dialogue institutions in the whole region, including in Albania, Bosnia and Herzegovina, Croatia and, limitedly to the FoW agenda, even in Slovenia. These show the following characteristics: (1) lack of knowledge and resources, as the institutions produce little research and policy advice or provide for capacity-building; (2) a worrying lack of vision: despite growing cognizance that the challenges lying ahead have to be given serious consideration, strategic planning rarely takes place in practice; and (3) some collaboration with relevant national and supranational institutions (the European Commission and the ILO) at the regional, national and global levels that helps to raise awareness.

As for the topics considered, the length an issue has been salient seems to matter. Relatively new subjects, such as technological advancement and climate change, are discussed much less actively and by far fewer institutions than traditional issues, such as the demographic emergency and globalization. One of the main views is that either they are absent from the overall public debate (for example, digital platforms are virtually absent in almost all former Yugoslav republics) or they are debated at parliamentary or executive levels and at the level of individual social partners, but they do not constitute part of the social dialogue agenda.

Albania is still a mainly agrarian country, although its information technology (IT) sector is progressing rapidly. The KSSh estimates that the demand for skilled labour in the digital sector will advance some 30 per cent faster than for other occupations in the next decade.

One tangible aspect of these developments is the broad digitalization of public services, in which Albania is quite advanced compared with the rest of the region.

Table 16.5 Engagement in issues related to the future of work agenda, Adriatic region

	Drivers of change	Conduct research	Provide policy advice	Awareness raising	Initiative at regional, national and global levels	Capacity-building	Collaboration with relevant institutions	Develop action plan	Total
ME	Technology	0	0	0	0	0	0	0	0.00
	Climate change	0	0	1	2	0	0	0	0.43
	Demography	0	0	2	2	0	2	0	0.86
	Globalization	0	0	0	0	0	0	0	0.00
MK	Technology	0	0	0	1	0	0	0	0.14
	Climate change	1	0	0	1	0	0	0	0.29
	Demography	1	2	1	1	2	2	1	1.43
	Globalization	1	1	1	1	1	1	0	0.86
RS	Technology	0	0	0	0	0	0	0	0.00
	Climate change	0	0	0	0	0	0	0	0.00
	Demography	0	0	1	0	1	0	0	0.29
	Globalization	0	0	1	1	0	1	1	0.57
Total	0.25	0.25	0.58	0.75	0.33	0.50	0.17	—	

Notes:

Degree of involvement: 0 = none; 1 = low; 2 = active; 3 = very active.

ME = Montenegro; MK = North Macedonia; RS = Serbia.

Source: ILO-AICESIS (2017).

The e-Albania system¹¹ offers a range of services in real time and at minimal cost to the public, to businesses and to private customers, as well as public to institutions. These services are also being extended to the health sector through the digitalization of patient data, medical prescriptions, doctor and nurse recruitment portals, and so on. Regrettably, no information is available on social partner involvement in developing this strategy.

The other two interrelated issues that are of key importance for Albania are migration and the development of vocational training, high-technology training, occasional qualification training and lifelong learning. *Circa* 1.4 million Albanians (30 per cent of the population) have emigrated, especially to Italy and Greece, of which four-fifths to find employment abroad. Despite such high numbers, the Albanian population is still young (the average age is 35), while youth unemployment is stubbornly high (Figure 16.2). Hence, the development of educational training – a responsibility of the National Labour Council – is a top priority of the government, even though it is not yet yielding the expected results (Docì 2019).

As regards Bosnia and Herzegovina, it was possible to gather precise information about the situation in FBiH. According to the Association of Employers in FBiH, the economy's low level of technological development is a significant brake on economic growth and the improvement of living standards.

This is directly related to the worrying demographic trends in FBiH, driven by poor population growth and external migration, with significant effects on the labour market, the welfare system and the community in general. A government action plan to reverse this haemorrhaging of the labour force is sorely needed, as the UPFBiH has noted, as well as revision of the FBiH Employment Strategy 2018–21 (*Strategija zapošljavanja u FBiH za 2018–2021 godina*). This strategy, adopted by the government in 2018, was voted down by parliament in October 2019 because it failed to contain a vision for the development of, and employment in, the IT sector as the most promising area, especially for young people (Fena 2019).

In particular, the UPFBiH sees economic growth as a key precondition for brain-drain reversal. It advocates the lightening of fiscal and para-fiscal burdens on business and, together with the other social partners, strives to divert these funds to increase wages, create better working conditions and invest in education by connecting with schools and colleges. In addition, it holds seminars for its own members on the importance of investing in technological advancement. It sees adapting the education system to labour market needs as paramount, and indicates the importance of digitalization of the education system, the introduction of students into the world of work through practical teaching in schools and the modernization of scientific curricula.

In Croatia, the unions complain about a lack of effective social dialogue. In practice, the government has a Central State Office for Digital Society Development and has drafted the 'e-Croatia 2020 Strategy' (Ministry of Public Administration 2017), in accordance with which it is developing a number of electronic administrative procedures. These initiatives are unilateral, however, and do not involve the social partners. Not dissimilar is the position of the Croatian Employers Association. It notes that in the realm of changing working conditions, despite publishing a number of position papers, perhaps all that has been achieved so far is a number of amendments to the 2017 Labour Law (*Zakon o radu 2017*) and the 2018 Law on Occupational Safety (*Zakon o zaštiti na radu 2018*). These now regulate the occupational safety and health of

employees working from home (that is, the employer is obliged to provide the worker with safe working conditions, and the worker is obliged to comply with all safety and health measures).

There is a similar lack of communication with the social partners as regards digital platforms, which already have a presence in Croatia. For example, when Uber started operating in Croatia, there were major protests by several taxi associations in Zagreb and elsewhere, such as the Taxi Carrier Association at the Croatian Chamber of Trades and Crafts. After a number of meetings with the Minister of Transport, the new Road Transport Act (*Zakon o javnim cestama*), passed in May 2018, on the one hand liberalized the market for taxi services, thereby allowing Uber and other platforms to lawfully operate in Croatia, but on the other hand, imposed a set of common rules for all drivers, which to a limited extent protect existing taxi drivers. However, in this too, the unions were not consulted.

What is most worrying is the general lack of strategy and objectives regarding the dramatic emigration problem that Croatia is currently experiencing. Whereas Eurostat informs us that 102 000 people emigrated to other EU member states between 2013 and 2016, the Croatian National Bank (Draženović et al. 2018) calculated the number at 229 000 (plus another 41 000 to the rest of the world), a staggering 6.4 per cent of the 2016 population. Migrants' mean age is 33–34 years old, which means that demographic ageing is being exacerbated and, for example, the fiscal viability of the Croatian pension system is being further debilitated (the pension reforms unilaterally adopted by the government have brought social dialogue to a standstill, as explained in Box 16.2). The unions and employers agree that too little is being done and that the problem ought to be discussed and resolved through existing social dialogue channels.

As seen in Table 16.5, social dialogue institutions in Montenegro are engaged to only a minimal extent in FoW-related issues, with some exceptions in the areas of climate change and demography. This state of affairs is echoed by the social partners.

The USSCG, of Montenegro, for example, claims that they have no significant experience of topics related to digitalization and the future of work, even though they are gradually gaining in salience. The Montenegrin Employers Federation is more advanced, as testified by its survey on the green economy and the many other reports available on its website. As regards other items on the FoW agenda, not much is being done in relation to technological advances (there are no digital platforms yet). The UPCG had collaborated with the Ministry of Science with the aim of attracting start-ups to underdeveloped areas. They are now granted a tax exemption for the first eight years of their employees' wages (up to €200 000 in total) (DTTL 2018).

Otherwise, representative trade unions are actively involved in drafting various national strategies and a particular focus is put on population migration to European and other countries. By 2015, almost 140 000 Montenegrins had emigrated, leaving a resident population of just 622 000, which puts the country at risk of negative demographic trends and labour shortages. The social partners agree that not much has been done to address the problem, especially not through social dialogue.

The Northern Macedonian Economic and Social Council reported (ILO-AICESIS 2017) that it is far more involved in activities concerning demography and globalization than technological advancements or climate change (Table 16.5). Among the most valuable activities, it mentioned the thematic workshops for standing group members

on topics such as the International Labour Standards, gender equality and non-discrimination, employment policy, project cycle management, macroeconomics and the informal economy, wages and the minimum wage, social security and social protection, occupational safety and health. In order to create stable relationships with academia, a pilot research fund has been created, and the issues on which advanced research and data were needed were selected: monitoring the effects of minimum wages, the adequacy and sustainability of the pension system, the net effects of the personal income tax and the salary contribution, and the establishment of a fund for the promotion of social dialogue in the country.

Despite these positive developments, the Business Confederation of Macedonia has asserted that most of the positive developments to adapt the product and labour markets of North Macedonia to, for example, technological advancements or globalization are either an initiative of the social partners (for example, all their activities on corporate social responsibility) or, if legislated in parliament, they are not significantly impacted by social dialogue.

One example is the Fund for Innovation and Technology Development, established in December 2013.¹² This encourages innovation by providing additional resources (through public and project funds, such as Interreg) with a view to building a competitive knowledge-based economy. Its mission is to encourage and support innovation activities in micro, small and medium-size enterprises in order to achieve more dynamic technological development based on knowledge transfer, development research and innovations that contribute to job creation, while simultaneously improving the business environment for the development of companies' competitive capabilities.

In Serbia, the social partners bemoan that neither the Socio-Economic Council nor other social dialogue processes are very involved in the most salient issues, let alone those connected to the future of work agenda (see Table 16.5). Many laws, including those emanating from the Labour Ministry, are drafted without the assent of the social partners, in the absence of a meaningful public discussion and/or are adopted through urgent procedures (see section 6 of this chapter). In the realm of the changing world of work, there also seems to exist legislative inertia. Emblematic are the protests of taxi drivers that took place in the fall of 2019 against platform economy firms, such as Car:Go (a local version of Uber), who are waiting for a law to regulate the market. More worryingly, there seems not to be a national strategy to reverse the huge brain-drain. The stock of Serbian migrants, by 2015, surpassed 964 000, compared with a resident population of 7.1 million (World Bank and wiiw 2018).

Not covered by social dialogue, digitalization is both a priority for the government and at the core of the Interreg Danube Transnational Programme.¹³ Information and communication technology is the fastest growing industry in Serbia, with large inflows of foreign capital and know-how. Here, the employers insist on reforming education programmes to improve the preparation of pupils in digitalization-related subjects. At the government level, several initiatives have been launched (also outside of social dialogue's scope), such as in 2018 introducing a host of tax incentives for companies that develop intellectual property, for example, deductions for research and development costs, or, from 2020, a temporary zero tax rate for 'digital nomads' within the initiative Serbia Creates.¹⁴

The FoW agenda is one area in which Slovenia is not an exception to the rule in the former Yugoslavia. The social partners agree that there is no digitalization strategy and

that most existing initiatives and publications sponsored by the government – see, for example, Bogataj (2016) on the transition to a green economy – have not been discussed within the Economic and Social Council or through other social dialogue channels. They also complain that the current minority government does not seem to have a clear vision for the looming challenges on the labour market. Given their own concerns over the changing world of work, the social partners find it easier to discuss the topics among themselves than with the executive.

Instead, what has been thoroughly debated within the ESS is pension system reform, thereby continuing a long tradition of consensual policy-making in the social sphere (Guardiancich 2013). The fiscal unsustainability of the pension system, the insufficient social adequacy of future benefits and the low employability of elderly workers are the main demographic challenges facing the country, which has not experienced a brain-drain comparable to the rest of former Yugoslavia. In 2019, an amendment was passed to the Pensions and Disability Insurance Act of 2012 (*Zakon o pokojninskem in invalidskem zavarovanju, ZPIZ-2*), which slightly raises future pension benefits and improves the conditions for those enjoying dual status (the simultaneous receipt of both a wage and a portion of pension benefits) (Malovrh 2019). The amendment entered into force in early 2020, and those who qualify for an old-age pension and decide to continue working receive 40 per cent of the pension benefit (previously it was only 20 per cent), for up to three years. After that, an individual will receive another 20 per cent if covered by compulsory full-time insurance. There are currently around 10 000 people in Slovenia with dual status. Even if it sounds appealing to increase the effective retirement age, the employers maintain that they should be involved in the decision on whether to keep a worker or not after the statutory retirement age has been reached.

8. CONCLUSIONS

This study has reviewed three major aspects of industrial relations in the Adriatic region: the actors, their representativeness and strategies to attract members; tripartite and bipartite social dialogue practices; and the prominence in national social dialogue of future of work issues.

The main finding is that, apart from individual good practices and initiatives, and with the partial exception of Slovenia, industrial relations in Albania and in the former Yugoslav republics are ineffective, thereby confirming that little of the Federation's legacy of contractual socialism and self-management has survived the transformation. We have highlighted three structural-institutional limitations and three policy-related deficiencies.

As regards the first set of problems, the social partners are often weak, owing to dwindling memberships and opaque representativeness criteria (or their de facto absence in Albania), as well as suffering from a number of characteristics specific to post-socialist countries (inertia in successor unions and lack of independence of some employer organizations). Notwithstanding all that, they have exhibited inventiveness in the services they offer their members and in devising strategies to attract new members, and in respect of changing patterns in the world of work. Less positive is the situation relative to tripartite social dialogue, which can still be labelled 'illusory' (Ost 2001), mainly owing to insufficient importance being accorded to it on the part of governments. In addition, a problem

that straddles the boundary between institutions and policy is the deep penetration of foreign investors and organizations, especially in some of the former Yugoslav republics, which tend to sidestep official social dialogue channels. Finally, collective bargaining displays positive and negative features across the region. On the positive side, it guarantees minimum standards for wages, working time, conditions at work, and so on. On the negative side, the trend towards further decentralization is strong, there are implementation and enforcement problems, and little consideration has been given to the emerging topics in the changing world of work.

At the policy end of industrial relations, there have been important developments at the level of social partners and governments, including broad strategic frameworks to deal with digitalization and (partly) climate change. The downside of this is that these initiatives are rarely discussed and validated within official social dialogue channels, despite falling naturally within the remit of the relevant institutions.

As is often found also outside the Adriatic region, social dialogue institutions are often used to debate problems that have long been on the policy agenda. In the realm of the changing world of work, we are here referring to demographic and globalization issues. However, even in these two domains, it seems that the most important topics – the pervasive brain-drain across the region, and the role played by multinationals in domestic policy-making – are not being tackled systematically through social dialogue, which means that the social partners have to find individual solutions to systemic problems.

NOTES

1. For a wider discussion of varieties of capitalism in post-socialist Europe, see Bohle and Greskovits (2012).
2. Convention No. 87 on the Freedom of Association and Protection of the Right to Organize; Convention No. 98 on Collective Bargaining and the Right to Organize and Convention No. 144 on Tripartite Consultation.
3. Ost (2000) noted that such ineffectiveness is a constituent feature of ‘illusory corporatism’, while Bernaciak (2015b) labels the periodic resurgence in social pacts during crises as ‘PR corporatism’.
4. <http://www.upfbih.ba/> (accessed 11 August 2021).
5. https://ec.europa.eu/growth/smes/promoting-entrepreneurship/support/erasmus-young-entrepreneurs_en (accessed 11 August 2021).
6. The KSSh proposed to establish a basic criterion based on membership and its registration through union voting (carried out periodically, every two to three years). Other criteria include: independence in organization and decision-making, financial autonomy, geographic reach, experience and engagement in social dialogue and collective bargaining, and so on.
7. <http://www.kolektivni-ugovori.info/> (accessed 11 August 2021).
8. <http://www.orm.org.mk/index.php/mk/kolekt-dog> (accessed 11 August 2021).
9. The updated website was under construction at the time of writing, see the archive: http://mddsz.arhiv-spletisc.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/socialno_partnerstvo/evidenca_kolektivnih_pogodb/ (accessed 11 August 2021).
10. The survey was sent to 86 out of the 145 countries that ratified the 1976 ILO Convention No. 144 on Tripartite Consultation. The response rate was 52.3 per cent. Three-fifths of respondents were also AICESIS members.
11. <https://e-albania.al/Default.aspx> (accessed 11 August 2021).
12. <http://www.fitr.mk/?lang=en/#top-en> (accessed 11 August 2021).
13. <http://www.interreg-danube.eu/about-dtp/programme-presentation> (accessed 11 August 2021).
14. <https://serbiacreates.rs/> (accessed 11 August 2021).

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LIST OF INTERVIEWS

- Mile Boškov – Business Confederation of Macedonia/Бизнис конфедерација на Македонија
- Marija Hanževački – Independent Trade Unions of Croatia/Независни синдикати Хрватске
- Milica Jovanović – Croatian Employers' Association/Хрватска унија послодавца
- Mersiha Jusić – Association of Employers FbiH/Удружење послодавца у Федерацији БиХ
- Srđa Keković – Union of Free Trade Unions of Montenegro/Унија слободних синдиката Црне Горе
- Kol Nikollaj – Confederation of Trade Unions of Albania/Конфедерата е Синдикатве Шкиптаре
- Dejana Kuzmić – Serbian Association of Employers/Унија послодавца Србије
- Mirza Mulešković – ILO (former Montenegrin Employers' Federation)
- Sanja Paunović – Confederation of Autonomous Trade Unions of Serbia/Savez samostalnih sindikata Србије
- Jože Smole – Association of Employers of Slovenia/Звежа делодајалцев Словеније
- Andrej Zorko – Association of Free Trade Unions of Slovenia/Звежа свободних синдикатов Словеније

APPENDIX

Table 16A.1 List of social partners, Adriatic region

Albania	Bosnia and Herzegovina (FBiH and Republika Srpska)	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
<i>Trade unions</i>						
Confederation of Trade Unions of Albania (Konfederata e Sindikatave Shqiptare, KSSH) 120 000 (2017) Yes	Confederation of Independent Trade Unions of Bosnia and Herzegovina (Savez samostalnih sindikata Bosne i Hercegovine, SSSBiH) 213 000 (2017) Yes	Independent Trade Unions of Croatia (Nezavisni hrvatski sindikati, NHS) 96 900 (2018) Yes	Confederation of Trade Unions of Montenegro (Savez sindikata Crne Gore, SSCG) 46 900 (2017) Yes	Federation of Trade Unions of Macedonia (Sojuz na sindikatite na Makedonija, SSM) 66 400 Yes	Confederation of Autonomous Trade Unions of Serbia (Savez samostalnih sindikata Srbije, SSSS) 300 000 All levels	Association of Free Trade Unions of Slovenia (Zveza Svobodnih Sindikatov Slovenije, ZSSS) 150 000 (2015) Yes
Union of the Albanian Independent Trade Unions (Bashkimi i Sindikatave të Pavarura të Shqipërisë, BSPSh) 110 000 (2017) Yes	Confederation of Trade Unions of Republika Srpska (Savez sindikata Republike Srpske, SSRS) n.a. Yes	Union of Autonomous Trade Unions of Croatia (Savez samostalnih sindikata Hrvatske, SSSH) 94 600 (2018) Yes	Union of Free Trade Unions of Montenegro (Unija slobodnih sindikata Crne Gore, USSCG) 22 000 (2017) Yes	Confederation of Free Trade Unions of Macedonia (Konfederacija na slobodni sindikati na Makedonija, KSS) 43 400 Yes	United Branch Trade Unions, Independence (Unija granskih sindikata, UGS Nezavisnost) 120 000 All levels	Confederation of Public Sector Trade Unions (Konfederacija Sindikatov Javnega Sektorja Slovenije, KSJS) 73 400 (2015) Yes

Table 16A.1 (continued)

Albania	Bosnia and Herzegovina (FBiH and Republika Srpska)	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
Trade Union Federation of Industry Employees of Albania (Federata e Sindikatave të Punonjësve të Industrisë së Shqipërisë, FSPISH) 12 500 (2017) Yes	Matica Association of Croatian Trade Unions (Matica hrvatskih sindikata, Matica) 60 600 (2018) Yes	Matica Association of Croatian Trade Unions (Matica hrvatskih sindikata, Matica) 60 600 (2018) Yes	Union of Independent and Autonomous Trade Unions of Macedonia (Unija na avtonomni sindikati na Makedonija, UNASM) n.a. No	Union of Independent and Autonomous Trade Unions of Macedonia (Unija na avtonomni sindikati na Makedonija, UNASM) n.a. No	Confederation of Free Trade Unions (Konfederacija slobodnih sindikata, KSS) 80 000 Sectoral and company levels	Confederation of Trade Unions of Slovenia Pergam (Konfederacija Sindikatov Slovenije Pergam, Pergam) 72 000 (2015) Yes
Independent Trade Union of Education of Albania (Sindikata e Pavarur e Arsimit të Shqipërisë, SPASh) 9800 (2017) Yes	Croatian Association of Trade Unions (Hrvatska udruga radničkih sindikata, HURS) 48 000 (2015) No	Croatian Association of Trade Unions (Hrvatska udruga radničkih sindikata, HURS) 48 000 (2015) No	Confederation of Trade Union Organizations of Macedonia (Konfederacijata na sindikalni organizacii na Makedonija, KSOM) 8000 No	Confederation of Trade Union Organizations of Macedonia (Konfederacijata na sindikalni organizacii na Makedonija, KSOM) 8000 No	Association of Free and Independent Trade Unions (Asociacija slobodnih i nezavisnih sindikata, ASNS) 50 000 Sectoral and company levels	Confederation of Trade Unions '90 of Slovenia (Konfederacija Sindikatov '90 Slovenije, Konfederacija '90) 36 000 (2015) Yes

Trade Union Federation of Education and Science (Federata e Sindikatave të Punonjëse të Arsimit, Edukimit dhe Shkencës, FSASh) 9,500 (2017) Yes	United Trade Unions 'Sloga' (Udru/Sloga/ USS Sloga) 40 000 Company level	Union of Workers' Trade Unions of Slovenia – Solidarity (Zveza delavskih sindikatrov Slovenije – Solidarnost, Solidarnost) 3100 (2015) Yes
		Slovene Union of Trade Unions Alternativa (Slovenska zveza sindikatov Alternativa, Alternativa) 3100 (2015) Yes
		Independent Confederation of New Trade Unions of Slovenia (Konfederacija novih sindikatov Slovenije, KNSS – Neodvisnost) 19 000 (2015) Yes

Table 16A.1 (continued)

Albania	Bosnia and Herzegovina (FBiH and Republika Srpska)	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
<i>Employer organizations</i>						
Union of Albanian Businesses – Business Albania (Bashkimi i Bizneseve Shqiptare – Biznes Albania)	Employers' Association of BiH (Asocijacija poslodavaca BiH, APBiH)	Croatian Employers Association (Hrvatska udruuga poslodavaca, HUP)	Montenegrin Employers Federation (Unija poslodavaca Crne Gore, UPGC)	Organization of Employers of Macedonia (Organizacijata na rabotodavaci na Makedonija, ORM)	Serbian Employers Association (Unija poslodavaca Srbije, UPS)	Chamber of Commerce and Industry of Slovenia (Gospodarska zbornica Slovenije, GZS)
30 000 (2018)	n.a.	6000 (2015)	n.a.	51 300	140 000 (2019)	7500
Yes	Yes	Yes	Yes	Yes	All levels	Yes
The Council of Employers' Organizations (Këshilli i Organizatave të Punëdhënësve të shqipërisë, KOPSh)	Association of Employers FbiH (Udruženje poslodavaca FBiH, UPPFBiH)			Business Confederation of Macedonia (BCM (BKM))		Association of Employers of Slovenia (Združenje delodajalcev Slovenije, ZDS)
6477 (2018)	21,000 (2019)			8,500 (2010)		1,400
Yes	Yes			No		Yes
The Confederation of the Employers' Organizations Council (Konfederata e Këshillit të Organizatave të Punëdhënësve, KKOP)	Union of Associations of Employers of RS (Unija udruženja poslodavaca RS, UUPRS)					Slovenian Chamber of Commerce (Trgovinska zbornica Slovenije, TZS)
n.a.	n.a.					5900
n.a.	Yes					Yes

The Agro-Business Council of Albania (Këshilli i Agrobiznesit të Shqipërisë, KASH)	Federation of Employers' Associations of RS (Savez poslodavaca RS, SPRS)	Chamber of Craft and Small Businesses of Slovenia (Obrtno-Podjetniška zbornica Slovenije, OZS)
n.a.	n.a.	30 000
Yes	n.a.	Yes
The Union of Business Organizations of Albania (Bashkimi i Organizatave të Biznesit të Shqipërisë, BOBSh)	Association of Employers of Brčko District (Udruženje poslodavaca Brčko distrikta)	Association of Employers in Craft and Small Business of Slovenia (Združenje delodajalcev obrti in podjetnikov Slovenije, ZDOPS)
n.a.	n.a.	20 000
n.a.	n.a.	Yes

Note: The three rows for each social partner are English name (original name, acronym); membership; representative status or participation in collective bargaining; Yes/No.

Table 16.A.2 Representativeness criteria

	Trade unions	Employer associations	Conditions for collective agreement stipulation and extension
Albania	The Labour Code (<i>Kodi i Punës</i> , 2015) states that unions are voluntary organizations: (1) created by at least 20 founding members; (2i) whose respective acts of creation and statutes have to be submitted to the Court of Tirana for the acquisition of juridical personality. Federations are created through the voluntary association of two or more unions; confederations through the association of two or more federations	Employer associations are subject to identical requirements as the unions. The statute and act of creation have to be signed by at least 5 founding members	The collective contract of employment is concluded by one or more employers or employer organizations and one or two trade unions The agreement is legally binding for the employers and applies to all employees at company- or industry-level. If half of the companies in a sector apply or sign the same agreement, the responsible minister can make it an industry-level agreement that is applicable to all employees working in that industry
Bosnia and Herzegovina (FBiH and Republika Srpska)	The Labour Code (Zakon o radu, 2015) in FBiH lays down several representativeness criteria for trade unions. They must: (1) be registered with the competent authority; (2) be financed predominantly out of membership fees and other own sources; (3) have a qualified percentage of members among employees. At company level: 20% of employees; at Federation or canton level: 30% of employees in the Federation or canton	Representative employer associations must: (1) be registered with the competent authority; (2) be financed predominantly out of membership fees and other own sources; (3) employ at least 20% of the total number of employees in the industry in the Federation or canton	A general or branch collective agreement shall be concluded a representative employer association and a representative trade union at either federal or branch level Extension is possible if there is a justified interest for the purpose of pursuing economic and social policies in the Federation, aimed at ensuring equal working conditions. Prior to issuing a decision, the federal Labour Minister requests the opinion of the Economic and Social Council

Croatia	<p>The Labour Law (Zakon o radu, 2015) in Republika Srpska lays down the representativeness criteria for trade unions. They must: (1) operate on the principles of union organization and action; (2) be independent of the authorities and employers; (3) be financed mainly from membership fees and other own resources; (4) have the required number of members. At company level: 20% of employees; at area, district or branch level: 10% of employees in the area, district or branch; at Republic level: 5% of employees in the Republic in at least three areas, districts and branches</p>	<p>Representative employer associations must: (1) be registered in accordance with the law; (2) have the required number of employees working for the members of the employer association: 10% of employers in the area, district or branch, employing 10% of the employees in the area, district or branch at the Republic level</p>	<p>A general collective agreement at Republic level is concluded between the government, a representative employer association and a representative trade union. Collective agreements for a particular area, district or branch are concluded by a representative employer association and a representative union established for the territory, area or branch in the territory of the Republic. At company level between the employer and the representative union Extension is possible to enforce a level-playing field with regards to rights and wages that may be subject to unfair competition. It is required that the collective agreement binds 30% of employees in a specific area, district, or branch. The Economic and Social Council is consulted.</p>
Croatia	<p>The Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Negotiation (Zakon o reprezentativnosti udruga poslodavaca i sindikata, 2015). A representative trade union must: (1) be registered six months prior to requesting the determination of representativeness; (2) have 50 000 members; (3) have five unions active in different fields of activity as defined by the National Classification of Activities; (4) have regional offices in at least four counties; (5) have the necessary material conditions for work and employ at least five workers</p>	<p>Representative employer associations must: (1) be registered six months prior to requesting the determination of representativeness; (2) unite 3000 employees, or 100 000 workers employed by associate employers; (3) unite five associations active in different fields of activity as defined by the National Classification of Activities; (4) have regional offices in at least four counties; (5) have the necessary material conditions for work and employ at least five workers</p>	<p>If only one union represents an organization's employees, then that union is representative for collective bargaining, regardless of the number of members and the share of employees with union membership. If more unions represent the employees at an organization, then these must agree which union or unions are representative. A collective agreement is valid if it is signed by the representative trade union, or unions that represent at least 50% of the members of the representative union. The agreement on representativeness has to state the number of members of each representative trade union. If the unions cannot agree, then the Commission for determining representativeness decides.</p>

Table 16.A.2 (continued)

	Trade unions	Employer associations	Conditions for collective agreement stipulation and extension
Montenegro	<p>The Trade Union Representation Act (Zakon o reprezentativnosti sindikata, 2018): A representative trade union at the national level must: (1) be listed in a Register; (2) be independent from state institutions, employers and political parties; (3) be financed mainly from membership fees and other own resources; (4) bring together at least five representative branch unions (members have to make up 15% of total employees at branch level); and (5) have as members at least 10% of total employees in Montenegro</p>	<p>The Labour Code (Zakon o radu, 2008): A representative employer organization at the national level must unite members that: (1) employ at least 25% of employees in the economy of Montenegro; (2) participate in the creation of 25% of GDP of Montenegro</p>	<p>The Labour Code (Zakon o radu, 2014) stipulates that the Labour Minister may extend a collective agreement at the request of all parties, if there is a public interest and if the unions and employers with most members signed it</p> <p>The Labour Code: (1) the general collective agreement is concluded by a representative union and employer association as well as the government; (2) branch collective agreements come in several types (sector, public enterprise or institution, social security institution, state bodies) and the entities allowed to bargain change accordingly; (3) at the company level the employer concludes the agreement with a representative union at the firm level</p> <p>There are no specific extension mechanisms</p>

North Macedonia	n.a.	n.a.	<p>The Labour Relations Act (Закон за работните односи, 2007): (1) at the national level, the leading trade union and employer organizations conclude a general collective agreement pertaining to all employees and employers in North Macedonia; (2) authorized unions and employers conclude branch collective agreements; (3) collective agreements at the level of individual employers are concluded by managing boards or other management bodies between employers and trade unions</p>
Serbia	<p>The Labour Code (<i>Zakon o radu</i>, 2005): A representative trade union must: (1) be established according to freedom of association; (2) be independent from state agencies and employers; (3) be financed from membership fees and own sources; (4) be registered in conformity with the law; (5) organize 10% of all employees at national, local, sectoral, group, economic activity level; or 15% at the company level</p>	<p>The Labour Code (<i>Zakon o radu</i>, 2005): A representative employer organization must: (i) be registered in conformity with the law; (ii) have as members 10% of the total number of employers in a branch, group, subgroup or line of business, that is, in the territory of a specific territorial unit, with the proviso that such employers employ a minimum of 15% of the total number of employees in a branch, group, subgroup or line of business, that is, in the territory of a specific territorial unit</p>	<p>There are no specific extension mechanisms</p> <p>The Labour Code: collective agreements can be concluded at a general, branch and company levels. Representatives of trade unions and employers (the UPS) who participate in negotiations need to be authorized by their governing bodies. The general collective agreement and branch collective agreements for a specific branch, group, sub-group or profession are concluded for the territory of Serbia. A branch collective agreement is concluded for the territory of a unit, autonomous territory or a local self-government. All agreements are concluded by representative employers and representative trade unions</p>

Table 16.A.2 (continued)

	Trade unions	Employer associations	Conditions for collective agreement stipulation and extension
Slovenia	<p>Representativeness of Trade Unions Act (Zakon o reprezentativnosti sindikatov, ZRSin, 1993): a representative trade union must: (1) be democratic; (2) enable voluntary membership; (3) have been active for the past 6 months; (4) be independent of governmental bodies and employers; (5) be financed mainly through membership fees and other own sources; (6) have at least 10% of employees in a particular branch, activity or occupation</p>	<p>Representativeness of employers' organizations is not regulated by a separate law. It is indirectly regulated by the Collective Agreements Act (Zakon o kolektivnih pogodbah, ZKoliP, 2006)</p>	<p>ZKoliP stipulates that for collective agreements concluded between representative trade unions and representative employer organizations, one of the parties may ask the Labour Minister to extend the collective agreement to all employers in that sector. The employer organization has to employ more than half of the workers in firms covered by the extension</p>

Source: Arandarenko (2019); Bejaković and Klemenčič (2019); Domazet (2012); Grdešić (2015); Kanjuro Mrčela (2018); Majhosev (2019); Visser (2019); personal interviews.

Table 16A.3 National social dialogue institutions

	Albania	Bosnia and Herzegovina	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
<i>Form of social dialogue</i>							
National level	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Territorial level	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>Name of national social dialogue institution</i>							
National Labour Council (Këshilli Kombëtar i Punës)	Ekonomsko – socijalno vijeće (Economic and Social Council) (FBiH)	Ekonomsko – socijalno vijeće (Economic and Social Council) (Republika Srpska)	Gospodarsko socijalno vijeće (Economic and Social Council)	Socijalni savjet (Social Council)	Ekonomsko socijalno savjet (Economic and Social Council)	Socijalno – ekonomski savjet (Socio-economic Council)	Ekonomsko-socialni svet (Economic and Social Council)

Table 16.A.3 (continued)

	Albania	Bosnia and Herzegovina	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
Unions	10 members: Union of Independent Trade Unions of Albania (BSPSh), Alliance of Education Unions of Albania (ASASh), Independent Union of Miners of Albania (SPMSh), New Trade Union of Petroleum of Albania (SRNSh), Autonomous Trade Union of Food, Trade, Tourism (SAUTT), Confederation of Trade Unions of Albania (CTUA), Federation of Industrial Workers of Albania (FPISh), Federation of Health Service Employees Trade Unions (FSPSHSh), Federation of Craftsmen and Manufacturers Workers Union (FSPAM), Federation of Trade Unions of Financial Services, Commerce, Bank and Tourism	7 members: Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) 3 members: Confederation of Trade Unions of Republika Srpska (SSRS)	4 members: Independent Trade Unions of Croatia (NHS), Union of Autonomous Trade Unions of Croatia (SSSH), Association of Croatian Trade Unions (MHS), Croatian Trade Union Association (HURS)	8 members: Confederation of Trade Unions of Montenegro (SSCG, 4 seats); Union of Free Trade Unions of Montenegro (USSCG, 4 seats)	4 members are appointed by representative associations of trade unions, until 2019: Federation of Trade Unions of Macedonia (SSM, 2 seats); Confederation of Free Trade Unions of Macedonia (KSS, 2 seats)	6 members: Confederation of Autonomous Trade Unions of Serbia (SSSS, 4 seats); United Branch Trade Unions, Independence (KNSS (UGS Neodviznost, 2 seats))	8 members: Association of Free Trade Unions of Slovenia (ZSSS), Confederation of New Trade Unions of Slovenia, Independence (KNSS Neodviznost), Confederation of Trade Unions '90 of Slovenia (Konfederacija '90), Confederation of Trade Unions of Slovenia, Pergam (KSS Pergam), Confederation of Trade Unions of the Slovenian Public Sector (KSJS), Trade Union of Engine Drivers of Slovenia, Alternative (SZS Alternativa)
<i>Parties to social dialogue</i>							

Employers	10 members: Union of Albanian Businesses – Business Albania, Albanian Association of Banks (ASB), Association of Builders of Albania (ASA), Albanian Tourism Association, Food and Beverage Business Association (USSB), Albanian Association of Information Technology, Union of Albanian Investors and Industrialists (BI & ISh), National Clothing Manufacturers Chamber (DHKPV), Albanian Insurance Bureau (BShS), Albanian Agribusiness Council (MTEF)	7 members: Association of Employers FbiH (UPFBH)	4 members: Croatian Employers' Association (HUP)	8 members: Montenegrin Employers Federation (UPCG)	4 members: Organization of Employers of Macedonia (ORM)	6 members: Serbian Association of Employers (UPS)	7 members: Chamber of Commerce and Industry of Slovenia (GZS), Chamber of Craft and Small Businesses of Slovenia (OZS), Association of Employers of Slovenia (ZDS), the Slovenian Chamber of Commerce (TZS), Association of Employers for Crafts and of Entrepreneurs of Slovenia (ZDOPS)
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Table 16.A.3 (continued)

Albania	Bosnia and Herzegovina	Croatia	Montenegro	North Macedonia	Serbia	Slovenia
Government Social Welfare and Youth, Minister of Finance, Minister of Health, Minister of Education and Sport, Minister of Justice, Minister of Economic Development, Trade and Entrepreneurship, Minister of Urban Development and Tourism*	7 members nominated by the government 3 members nominated by the government	6 members: Minister of Labour and the Pension System, the Minister of Finance, the Minister for Demography, Family, Youth and Social Policy, the Minister of Economy, Entrepreneurship and Crafts, the Minister of Administration and the Minister of Science and Education	8 members nominated by the government	4 members nominated by the government: Minister of Labour and Social Policy; Minister of Finance; Minister of Economy; Deputy Prime Minister in charge of economic affairs	6 members nominated by the government	8 members: Ministers for Labour, Finance, Public Administration, Education, Health, a state secretary from the Council Presidency (and former Labour Minister), a representative from the Institute for Macroeconomic Analysis and Development (UMAR)
Other	None President is 22nd member (FBiH)	None	None	None	None	None

Note: * This was the situation until 2017, when the Ministry of Social Welfare and Youth was abolished.

17. Social dialogue and the new world of work: The case of the Baltic states

Jaan Masso, Kerly Espenberg and Inta Mierina

1. INTRODUCTION

Despite the smallness of their populations and low share of the European Union (EU) economy, the Baltic states are interesting for any study of changes in the world of work and the associated challenges for social dialogue. As post-communist economies, the Baltic states have been able to turn their, in many respects, unfavourable history to their advantage, partly because of their latecomer advantage in technological development (Varblane et al. 2012). Their strong economic convergence after regaining independence in 1991 means that, by the end of the 2010s, the Baltic states had surpassed some of the old EU member states in some indicators, such as gross domestic product (GDP) per capita. For example, in 2018, GDP per capita (in purchasing power standards, PPS) was 82 per cent of the EU28 average in Estonia, but only 69 per cent in Greece and 77 per cent in Portugal (Eurostat 2021a). While the initial advantages relied largely on, for instance, cheap labour costs, reform packages, foreign direct investment (FDI) inflows, geographical advantages and EU accession (Korhonen 2001), the Baltic states, especially Estonia, have also been successful in adopting new technologies. One example is the use of the information and communication technology (ICT) solutions in the public sector and the active creation of start-up companies in Estonia (Mets 2017). These changes have also brought about significant changes in the world of work, and the Baltic states have a high proportion of flexible working arrangements and teleworking (Chung 2018).

To date, the Baltic states have been characterized by relatively limited social dialogue and a market liberal model of industrial relations and social protection. However, is this currently successful economic convergence (and aggregate inequality indicators that are not particularly high despite the limited social dialogue; see Masso et al. 2013) likely to lead to sustained and broad social convergence without social dialogue? Changes in the world of work may create a need for more active social dialogue: for example, the demands of particular sectors for more flexible work arrangements could be solved by sectoral collective agreements (Estonian Trade Union Confederation, EAKL, representative, 11 January 2018). More generally, in relation to both economic and social development, as the former president of Estonia, Toomas Hendrik Ilves, said in 2014, ‘the things that have brought us this far will not take us any further’ (Pärnu Postimees 2014).

This chapter is structured as follows. Section 2 discusses changes in the world of work in the Baltic states. Section 3 discusses the issues facing social dialogue, such as representativeness of the social partners and their attitudes towards technological change (digitalization, flexibilization). Sections 4 and 5 present two case studies illustrating general

trends in respect of particular developments in the Estonian sharing economy and the use of non-standard employment contracts in Latvia. Section 6 concludes.

2. OVERVIEW OF THE EMERGENCE OF NEW FORMS OF WORK IN THE BALTIC STATES

2.1 Baltic State Labour Markets: Current Situation

Main labour market indicators: employment, unemployment and wages

In the second half of the 2010s, the labour markets in the Baltic countries, as in many other central and eastern European countries, were fairly tight (see Table 17.1). Unemployment rates recovered from the Great Recession and by 2019 had fallen to comparatively low levels, with 6.4 per cent in Lithuania, 6.3 per cent Latvia and 5.4 per cent in Estonia (in 2018) (Eurostat 2021b). The employment rate increased during the 2010s and the working-age population decreased. The main reason for the increase in the employment rate was the demand for labour owing to the growth of economic activity in general: GDP increased by almost one-third between 2010 and 2019. Rapid wage increases brought more people into the labour market, as did social security retrenchment, with changes in the rules on ability to work and increases in the pension age in Estonia. In Estonia in the second half of the 2010s rising employment was caused by the increase in youth employment, whereas previously it was because of rising employment among the older population. The share of students who work regularly increased from 40 per cent to 53 per cent between 2012 and 2017 (Haaristo et al. 2017). Similarly, in Latvia the employment rate reached a historical high: 65 per cent of the population aged 15–74 years were employed in the third quarter of 2018. The economic activity rate also reached its highest level, at 70.2 per cent (Ekonomikas Ministrija 2019). An important consequence of rising employment rates, despite the decreasing working-age population and unemployment, is that the potential for attracting labour from the economically inactive population is almost exhausted. Continued economic growth in combination with unsatisfactory demographic

Table 17.1 *Employment rate, share of working-age population and average wages in the EU and the Baltic states, 2008, 2013 and 2018*

	EU average			Estonia			Latvia			Lithuania		
	2008	2013	2018	2008	2013	2018	2008	2013	2018	2008	2013	2018
Employment rate (age group 20–64 years)	70.2	68.4	73.2	77.1	73.3	79.5	75.4	69.7	76.8	72.0	69.9	77.8
Share of working-age population	67.2	66.1	64.7	67.8	66.3	64.1	68.3	66.8	64.2	67.5	67	65.3
Average monthly gross wage, EUR				825	949	1310	682	716	1004	623	646	924

Source: Eurostat, Statistics Estonia, Statistics Latvia and Statistics Lithuania.

trends will exacerbate labour shortages in the coming years and make the accustomed low-productivity labour intensity unsustainable (though at the time of writing it was too early to see what the effects of the COVID-19 crisis are likely to be).

Employment conditions are fairly rigid for most employees. In 2017 just 7.6 per cent of all employees in Lithuania worked part-time and 1.8 per cent had a temporary contract. Similarly, in Latvia 7.7 per cent worked part time and 3.1 per cent had a temporary contract. In Estonia slightly more employees (9.5 per cent) had a part-time contract, but just 2.2 per cent had a temporary contract (European Commission 2018a). While over the long term there has been a small increase in part-time employment in Latvia and Estonia, temporary work contracts have become less frequent in the Baltic states compared with ten years ago. Both part-time employment and precarious work contracts are much less common there than in the EU as a whole, although Estonia shows a little more labour market flexibility. Despite the prevalence of fixed-term permanent contracts, according to the representatives of the Ministry of Welfare in Latvia interviewed for this report (13 November 2019), the labour market in Latvia is relatively flexible in how easy it is to hire and fire workers, as could be observed during the economic crisis.

In recent years, increasing labour shortages, particularly in sectors of the economy such as ICT, have led to increasing pressure for wage growth. As a consequence, labour costs have grown faster than productivity in Estonian, Latvia and Lithuania, threatening cost competitiveness. For example, in Latvia, enterprises working in low value-added segments dominate the labour market (Ekonomikas Ministrija 2019). On the positive side, the number of people receiving very low wages was decreasing. In Latvia, despite the increase in the minimum wage from €256 in 2010 to €430 in 2018, the number of people receiving the minimum wage or less decreased by 6 percentage points (Ekonomikas Ministrija 2019). One in five workers in Latvia received the minimum wage (€430) or less. The average gross wage in Latvia increased from €633 in 2010 to €1143 in 2020 (Ekonomikas Ministrija 2019). The average annual wage growth rate of 7 per cent is remarkable in that context.

Despite overall positive changes in the Baltic labour market, some groups remained vulnerable. For example, in Latvia the recovery was slower among people with a low level of education and poor qualifications, as well as among elderly and young people (Ekonomikas Ministrija 2019). The majority of these groups were also among those most affected during the Great Recession (Masso and Krillo 2011; Masso et al. 2013). Employment and unemployment rates in the Baltic states have been significantly affected by level of education. In Estonia, those with a higher education are twice as likely to have a job compared with those with only a primary education; the employment rate of those aged 15–74 years with a higher education was 78 per cent in 2017, while among those with only a primary education it was 36.1 per cent (Statistics Estonia). The substantial effect of education on employment has also been thoroughly documented for Latvia, particularly during periods of economic turbulence (Hazans 2005; Zasova 2015).

Demographic challenges

According to the most recent long-term population forecast by Statistics Estonia, if current trends continue, the Estonian population will decrease by 125 000 by 2040, and the working-age population (20–64 years of age) will decrease from 65 to 58 per cent (Statistics Estonia 2014). There are two main reasons for the population decrease: negative natural growth and emigration. According to labour needs and supply forecasts, the

number of employees will increase by 6000 by 2024. When taking into account that the Estonian population is ageing and estimates that the number of people entering into labour market will be lower than the number exiting, the activity rate must be increased (Majandusja Kommunikatsiooniministeerium 2016). This could be achieved only by increasing the pension age or, partly achieved, by bringing people with disabilities into the labour market, although the latter cannot represent a large reserve pool of unused labour. For these groups, flexible working is important. This could also make working attractive for young people and for people with care responsibilities (for example, people on parental leave, caregivers).

Population growth in Latvia and Lithuania is the lowest in the world, although most of their population loss is owing to emigration. Thus, some of the biggest challenges in the future will be related to demographic trends: a further decline in the working population, changes in the age structure (Ekonomikas Ministrija 2019) and structural problems in the Latvian labour market, including missing skills. Currently, 23 per cent of workers in Latvia are 55 or older, so it will be necessary to think about health factors as well as the possible need to re-qualify and learn new skills, especially those related to ICT. While the intensity of emigration has slowed and return migration has started to emerge, net migration is still negative. Eurostat population projections paint a worrying picture. The population is projected to change in Lithuania from 2.75 million in 2020 to 1.96 million in 2050, in Latvia from 1.91 million in 2020 to 1.51 million in 2050, and in Estonia from 1.32 million in 2020 to 1.26 million in 2050. Recently, Estonia has been trying to attract foreign workers, changing regulations and working on Estonia's attractiveness as a destination country. In Latvia, however, the realization of the importance of immigration for economic growth has been slow, particularly against the backdrop of negative attitudes among the population. The bureaucratic approach has focused on restricting and controlling migration, using a selective approach and protection of the internal labour market (Indāns 2012). There has been more emphasis on facilitating return migration and increasing birth rates by offering more generous social benefits and improving overall conditions for families with children. Still, neither increasing birth rates (which are below the natural replacement level) nor immigration will be able to compensate for population losses. Immigration rates in the Baltic states remain low, far below the Organisation for Economic Co-operation and Development (OECD) average, and a very small proportion of them are work migrants (most come for family reasons) (Eurostat 2021c).

According to Ministry of the Economy projections, employment rates in Latvia, too, will continue to increase. In the long term, the employment rate of the population aged 15–74 years could exceed 67 per cent, and unemployment is expected to drop below 6 per cent (Ekonomikas Ministrija 2019). Despite the increase in the activity rate, the economically active population could decrease by 2400 by 2023 because of the falling working-age population. The working-age population could decrease by almost 53 000 by 2023 and thus labour shortages will become more acute.

The old-age dependency ratio (that is, the ratio between the number of persons aged 65 years and over and the number of persons aged 15–64 years) is expected to grow in all the Baltic countries: from 30.6 to 50.2 in 2050 in Estonia, from 31.4 to 51.6 in Latvia and from 30.1 to 55.4 in Lithuania (Eurostat 2021d). The working-age population is expected to decrease from 63.2 to 56.8 per cent of total population in Estonia, from 62.8 per cent to 52.9 per cent in Latvia, and from 64.1 per cent to 53.6 per cent in Lithuania (European

Commission 2018b). As the average exit age from the labour market is expected to increase in Latvia and Lithuania (European Commission 2018b), one challenge will be to facilitate healthy ageing and lifelong learning, given that older people are, on average, least likely to undertake training (Bassanini and Ok 2004).

Several recent studies indicate that owing to demographic trends (decreasing population), even if Estonia is able to bring more inactive people into the labour market, it will be a challenge to maintain the employment level. Moreover, since the largest proportion of inactive individuals are students, people with a loss of work capacities, the unemployed and young not in education, employment or training (NEETs), structural reforms are needed to bring those people into the labour market. Alternatively, migrant workers will be needed (Riigikontroll 2015; Pärna 2016). Estonia has taken the first steps in this regard. The most recent approach concerns active labour market policies (ALMP) aimed at preventing unemployment. Since 1 May 2017, Eesti Töötukassa (Estonian Unemployment Insurance Fund) has been implementing ALMP measures for those who are employed but at risk of losing their job (for example, low-wage employed, the elderly, the low-educated, those without occupational training and people with health problems). Conceptually, the most important reform in Estonia is the work capacity reform implemented in 1 July 2016. The aim is to bring into the labour market inactive and people with diminished work capacity. As both reforms have been implemented only recently, their impact has not yet been measured.

An important issue in this context is the productivity of employees of different ages. For instance, the PIIAC survey showed that among older workers skills levels are lower, if not controlling for other factors (Halapuu and Valk 2013). The studies indicate some opportunities to employ older workers. Roosaar et al. (2019) showed for Estonia that although middle-aged employees were more productive than old or young workers, there was no significant difference in the productivity of young and old employees. Benkovskis and Tkacevs (2019) found a downward-sloping relationship between ageing and productivity only in manufacturing and trade, not in knowledge-intensive services, suggesting that older workers need training to reduce the downward pressure of ageing on firm performance. In their interviews, social partners claimed that some major employers still tend to tell people at the age of 45 that they are too old (EAKL representative, 18 October 2019), but also that achieving even a basic level of information technology (IT) skills helps the unemployed to find a job. It is therefore important to increase these skills among older workers (interview, representative of the Ministry of Welfare, 13 November 2019).

One way to increase the labour supply and relieve the emerging labour shortages is immigration. It has already started to fulfil that role: Estonia has had positive net population growth since 2015 thanks to migration. That has occurred even though the country sets strict limits on non-EU immigration (0.1 per cent of the population). Thus employers have suggested that the quota should be increased (Masso et al. 2018a). The social partners have different views on whether the current institutional setting is appropriate in that regard. In an interview (18 October 2019), a representative of the Estonian Employers' Confederation expressed concerns that the current quota system is outdated and the widespread use of temporary labour (though its exact extent is uncertain – the development of IT systems should help with this) is merely an emergency solution. The trade union confederation, however, sees no problems and explains that employers have many

opportunities: for example, there is the 1+1 year possibility to bring in workers, and after that posted workers' regulations which make it possible to deal with migration issues (EAKL representative, 18 October 2019). The discussions are expected to continue in relation to the response to the COVID-19 crisis.

The Latvian government has introduced several measures to address the growing labour shortages while reducing unemployment. First, since 2017 workers have had the opportunity to increase their professional competences and competitiveness in applying for training at the State Education Development Agency financed from EU funds as part of the project 'Improving professional competences of employed persons'. Other adult education programmes are also available, including those organized by the Public Employment Services. In Latvia, labour market mismatches are exacerbated by marked regional disparities in the labour market. New jobs are mainly created in the most economically active regions and cities, while the largest numbers of jobseekers are in less developed regions. In order to enhance the availability of labour in areas with higher economic activity through promoting internal mobility and return migration, an offer is being developed to support the construction of rental housing. For several years, regional mobility support has also been available through active employment measures. Also, state support for housing purchase under the ALTUM Housing Guarantee Programme has been made available, which also helps to attract skilled labour to regions (Ekonomikas Ministrija 2019).

In addition, the process of bringing in high-skilled workers from abroad has been made more efficient in Latvia, although there has been more emphasis on facilitating return migration. In Latvia, Diaspora law came into effect in 2019 which, among other things, envisages specific measures to facilitate and support return migration. A network of regional return migration coordinators has been established in which potential return migrants can receive advice and support related to returning to Latvia. Also, return migrants in 2018 had the opportunity to participate in a project competition for starting or developing a business in Latvia, and municipalities can obtain extra funding for return migration measures via a project competition. Lately, initiatives are being developed to facilitate distance work by Latvian emigrants in companies in Latvia.

Skills

The OECD PIAAC studies have shown that Estonians have had good results in functional reading skills and mathematical literacy, as well as problem-solving skills, but lower computer skills, especially surprising with regard to people with higher education (Halapuu and Valk 2013). Within-country inequality was found to be relatively low in respect of the moderate number of individuals with both very low and very high levels of skills. The latter is caused also by the relatively lower levels of skills among people with a tertiary education in the 16–65 age group, but relative skill measures (for example, functional reading skills) are much better in the 34 years of age or below age group. In central and eastern European countries, including Estonia, most information processing skills are close to the OECD average (OECD 2016), while among the other Baltic country, Lithuania, has some of the lowest indicators of the OECD countries. Aedo et al. (2013), by studying the skill content of economic production for 30 countries, measuring skills by assessing the tasks associated with different occupations, showed that the Baltic states demonstrate high skill intensity values (relative to the USA), especially in relation to

non-routine cognitive analytical skills and non-routine cognitive interpersonal skills. That is in line with the general observation that the relatively high education and skill levels of the Baltic states are not necessarily reflected in their economic indicators, such as GDP per capita. Rectifying this requires further structural changes in the economy. The same is revealed by the Programme for International Student Assessment (PISA) survey: many jobs in Estonia do not require the use of computers, accounting for more than one-third of employees (Halapuu and Valk 2013); that is, despite the high level of available skills, these skills are not necessarily in demand on the labour market.

Differences in the skills used at work may also have a gender dimension. Although the unadjusted differences in skill use between men and women are generally small in OECD countries (similarly in Estonia, while many dimensions favour women in Lithuania), these increase after controlling for occupation (OECD 2016). That is especially significant in the context of Estonia as the country with the highest gender pay gap in the EU. Tverdostup and Paas (2016), using both formal education and cognitive skills in defining human capital, showed that in Estonia the association between higher skills and formal education is particularly low compared with the Nordic countries, suggesting that factors other than formal education play a role in skill accumulation.

As to measures of skills using assessment tests, such as PISA, Estonia students have been found to perform remarkably well. That has been explained by the Estonian education system being equitable and able to support the learning of different groups of students. It has the lowest rate of poor performers in Europe for mathematics and science (Henno and Reiska 2013). Furthermore, in Estonia, similar to the Nordic countries, parents' level of education is a relatively unimportant factor in predicting adult skill levels (Halapuu and Valk 2013). The skills gap across education, family background and gender is small compared with that of the other participating countries (Halapuu and Valk 2013). The reasons for the success of Estonia's education system include free compulsory education, a national core curriculum and the autonomy of schools and teachers. One drawback is the modest level of high performers in science in PISA. Skill levels also have a clear regional dimension, and home language (Estonian versus Russian) is a factor (Halapuu and Valk 2013). Estonian trade union representatives have expressed their concern that the generally high standard and egalitarian nature of the education system is at risk of disappearing in the future, threatening also the economy's ability to adjust to changes in the labour market (EAKL representative, 18 October 2019).

Estonia also performs best among the Baltic states as regards Eurostat digital skills indicators: its share of people with above basic overall digital skills was 35 per cent in 2017, compared with 27 per cent in Latvia and 32 per cent in Lithuania (the EU28 average is 31 per cent; Eurostat 2021e). In the Digital Economy and Society Index (DESI), the Baltic countries' scores are average, with Estonia again performing better, particularly in human capital (Internet user skills and advanced skills). Connectivity (fast and widely available broadband Internet) and digital public services, such as e-government services, as well as the implementation of open data principles, are valued as strengths of the Baltic countries. However, Latvia lags far behind the EU average in human capital and entrepreneurship, owing to a marked lack of digital literacy among its citizens, a lack of ICT professionals in the labour market, with a growing demand for these specialists, and relatively poor integration of digital technologies in companies. These issues need to be addressed in order to increase competitiveness. Lithuania, by contrast, has managed to achieve

better integration of digital technologies in companies. According to a survey of IT use in Estonian enterprises for 2017–19, the share of people using computers was 51.8 per cent in 2019 (49.8 per cent for computers connected to the Internet). The share of employees using mobile devices purchased by companies was 24 per cent. However, there was wide variation on all these three indicators (share of people using computers, share of people using computers connected to Internet and share of people using mobile devices) in relation to types of company, location and so on. State-owned companies generally had the highest share of people using computers (74 per cent, 73 per cent and 30 per cent, respectively), followed by foreign-owned companies (63 per cent, 60 per cent and 29 per cent) and local privately owned companies (47 per cent, 45 per cent and 23 per cent). As for the regional dimension, IT-use indicators were much higher in the capital region: in northern Estonia with Harjumaa (58 per cent, 56 per cent and 29 per cent) as compared to the rest of Estonia (39 per cent, 38 per cent and 17 per cent).

Prospective effects of technological changes in Baltic state labour markets

Turning to technological development, automation of production and robotics are current topics of discussion. Although it is estimated that many jobs will be lost owing to automation, opinions on its likely effects are mixed. Some experts anticipate that the loss of low added-value jobs may increase demand for highly skilled labour in other areas, which would encourage re-training and create opportunities to participate in activities with higher value-added. According to the OECD Skills outlook (OECD 2019a), the share of employment in occupations at high risk of automation in Estonia and Lithuania (no data are available for Latvia) is at the OECD average. The trade unions have also acknowledged that high-wage unautomated jobs are at high risk of disappearing, but targeted policy measures to meet these challenges are hampered because many enterprises do not seem interested (EAKL representative, 18 October 2019). Trade union representatives also mentioned polarization as an evolving problem in the Estonian labour market as a result of the new forms of working: platform companies, such as Wolt and Bolt, are creating low-paid unskilled work (EAKL representative, 18 October 2019).

There are significant differences in labour market developments in different sectors as a consequence of digitalization and automation. For example, the Latvian Ministry of the Economy notes that the highest job growth can be observed in ICT services and construction, which together accounted for a quarter of total employment growth in the third quarter of 2018. High job growth was also observed in professional and technical services, health care, administration and support services. Research shows that automation is less likely to take over in fields that require creativity and social intelligence, and jobs that require higher education, as well as those in which employees need to collaborate with one another. People will still be superior to technology in areas where they need to be able to navigate difficult situations, respond to non-standard challenges and deal with unprecedented circumstances (Ādamsons 2019). Also, owing to centralization and digitalization of financial services, the number of jobs in the financial services sector has decreased by 14 per cent, especially in insurance services (by 38 per cent). Significant job losses were also observed in public administration, education and some sectors of manufacturing (Ekonomikas Ministrija 2019). In future, the biggest job losses owing to automation are expected in professions with a high proportion of manual and repetitive activities. The demand for labour in the low-skilled professions is projected by the

Latvian Ministry of the Economy to fall by about 36 per cent (more than 40 000 jobs) by 2035 (Ekonomikas Ministrija 2019).

The sectoral structure of the workforce will also change: according to the analysis of Estonian labour market needs in 24 sectors, labour demand will increase in ICT, wood working, and social and health care services (Kutsekoda 2017). Recent OECD analysis finds that in 32 OECD countries the probability of the automation of median work stations is 48 per cent, with Estonia at just under that (47 per cent) (Nedelkoska and Quintini 2018).

According to the Latvian Ministry of the Economy, by 2023, the largest increase in employment is expected in commercial services, manufacturing and construction sectors. A decline in employment is expected in the primary sector, mainly in agriculture and forestry, but also in public services. The decrease in labour demand in the agricultural sector is mainly related to increased efficiency, including implementation of more sophisticated technological solutions in production (Ekonomikas Ministrija 2019). In the medium to long term, the ageing of the workforce will have the biggest impact on the availability of medium-skilled workers. The number of economically active people with vocational secondary education could decrease by about 18 per cent (almost 52 000 people) by 2025, while the shortage of qualified labour could increase to 31 000. The shortage of medium-skilled workers will be felt most in sectors such as construction and manufacturing, where the share of medium-skilled jobs is close to 60 per cent and the share of pre-retirement workers is high (Ekonomikas Ministrija 2019).

2.2 Emergence of New Forms of Work in the Baltic States

The most important driver of new working forms is the rapid development of ICT, which began at the end of the twentieth century. However, technological developments, in addition to the creation of new working forms also affect traditional jobs. A good example is telework: in many jobs, the flexibility of working time and place has changed considerably over the past decade. Digitalization influences workers in relation to data protection, monitoring of workers, their availability to employers (techno-stress), workplace health and safety, and workers' health (interview, representative of the LBAS, 30 October 2019). Employers in Latvia have expressed the opinion that current labour regulations are not in accordance with these developments: for example, the employer must keep records on working time and is responsible for health and safety issues, but this is increasingly difficult when employees work some or most of the time outside the office. In Estonia, policy-makers have discussed with the social partners how to change the law, but so far without success. The problems thus remain and in practice employees tend to have to accede to employers' demands without being eligible for additional pay or other benefits. Therefore, the government is hoping to find a solution in close discussions with the social partners in the near future (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019). The social partners interviewed in Latvia admit that recognition of risks associated with automation and digitalization is not very high at government level; although they are mentioned, there has not been much action (interviews, representatives of the LBAS, 30 October 2019 and 8 November 2019). This is partly because digitalization and automation are often seen as a positive development, improving productivity and the quality of jobs in the long run. However,

many of the new working forms are outside the reach of labour law, and this creates problems. Representatives of the Ministry of Welfare (interview, 13 November 2019) note that in Latvia the tradition has always been to strictly follow the law and therefore laws need to be as well-defined as possible. The government hopes to receive more guidance from the EU, as these matters concern all countries and are often transnational in character.

One outcome of technological development is digital platform work. The collaborative economy, which includes crowdworking and on-demand platform work, is growing. According to Eurobarometer data, Estonia is one of the countries in which collaborative platforms are most prevalent (according to a recent study by the Estonian Foresight Centre, in Estonia 8 per cent of workers are engaged regularly in platform work; Arenguseire Keskus 2018); in Latvia about 50 per cent of the population are at least familiar with collaborative platforms, as are less than 40 per cent in Lithuania. According to the latest data on 14 European economies, in Lithuania 9 per cent of adults have worked on platforms, and 5.9 per cent do so at least each month (about average for EU countries). However, they rarely spend more than 10 hours per week in this kind of employment (5.6 per cent) and it makes up 50 per cent or more of total income for only 1.6 per cent (European Commission 2018a).¹

Of the new working forms, flexible ICT-based mobile work is the most widespread in Estonia, and to a lesser extent in Lithuania and Latvia. Research by Eurofound (2017b) identified the following groups of workers as engaged in telework or ICT-mobile work (T/ICTM): regular home-based teleworkers; occasional T/ICTM workers, with mid-to-low mobility and frequently working outside the employer's premises; and highly mobile T/ICTM, very frequently working in various locations, including home. The data from the Sixth European Working Conditions survey shows that Estonia takes seventh position in the EU based on the incidence of telework and ICT-based mobile work: approximately one in four (24 per cent) Estonians have experience of this form of working. In Latvia and Lithuania, by contrast, just 12 per cent have experience of telework/ICT-mobile work, and generally have only worked like this occasionally (Eurofound 2016b).

Automation is another development that is expected to affect thousands of jobs. According to Lordan (2018; cf. European Commission 2018a), around 60 per cent of jobs in Lithuania and Estonia could be automated, given the technologies now available. Moreover, approximately 30 per cent are fully automatable. While automation and robotization cost jobs mainly in manufacturing (European Commission 2018a), computers are expected increasingly to replace people in customer services, too. Customers are increasingly being expected to use self-checkouts at supermarkets or self-check-in options at airports or hotels in the Baltic states, as elsewhere in Europe. The outsourcing of customer service to automated solutions is also being tested by the largest banks in Latvia. In general, the debate about automation and digitalization in Latvia has been overwhelmingly positive. Digitalization and automation are commonly seen as part of the solution to increasing productivity (interview with a representative of the LDDK, 31 October 2019; Viksna and Pone 2019), allowing employees to work more productively and thus either earn a higher income or devote more time to leisure (Krasnopjorovs 2017). The executives of Swedbank point to many positive aspects of automation, such as enabling employees to dedicate more time to customers, and helping customers to obtain service and resolve their problems more quickly. Employees' work is also supposed

to become more interesting and less routine (Ādamsons 2019). The Ministry of Welfare shares the opinion that there are advantages to automation, including for job quality (interview, 13 November 2019). It is well known that digitalization and automation can both reduce the need for labour (which is not necessarily an adverse development considering the demographic prospects), but also create new, better quality jobs elsewhere, even though the number of jobs created is generally lower (Mickevica 2017). Viksna and Pone (2019) argue that the effects of digitalization in jobs will largely depend on the extent to which the opportunities offered by digitalization are used to create new products and mass-market them to a wider public, as opposed to optimizing the production of existing goods and services. Similarly, a representative of the LDDK (interview, 31 October 2019) notes that, while the digital transformation of the economy, society and the world of work will bring benefits for employers, workers and jobseekers alike, the gains should not be taken for granted. There is a need to adapt labour markets, education and training systems and work organization for this to happen. Enterprises need to be supported to ensure that technology is well diffused across the economy and across regions. This includes having access to infrastructure and relevant research. Specific approaches are needed for small and medium-sized enterprises (SMEs) to enable them to embrace digitalization in ways tailored to their limited means. The dynamic and heterogeneous nature of digital transformation requires flexibility in developing and deploying digital applications. Finally, governments and policy-makers need to take an active role in ensuring that the framework conditions for education and training, labour markets and in social protection systems enable employers and employees to grasp the opportunities of the digital transformation (interview, representative of the LDDK, 31 October 2019).

Automation and digitalization go hand in hand with the need to requalify and constantly to learn new skills. The LDDK and the LBAS agree that the social partners need to take an active role in requalification (interviews with a representative of the LDDK, 31 October 2019, and the LBAS, 30 October 2019). Learning from the experience of other countries, they conclude that skills funds that employers in a given sector contribute to and that are used to re-qualify workers before they become unemployed would be the best and most cost-efficient solution, effectively alleviating the problem of unemployment. The social partners argue that these funds could be included in collective agreements (interview, representative of the LDDK, 31 October 2019). Also, as noted by the representative of LDDK (interview, 31 October 2019), the introduction of skills funds would require a change in mind-set, with the government granting sectoral employers and employees more autonomy to make decisions about their sector. Also, as noted by the LBAS representative (interview, 30 October 2019), there need to be regular forecasts about which sectors can expect automation, in order to enable preparations. However, for many tasks it will not be possible and/or desirable to replace human work (interview, representative of the LDDK, 31 October 2019).

The exacerbation of existing inequalities, the risk of increasing job insecurity and other job-related risks should also be acknowledged (Mickevica 2017). According to the representative of the Ministry of Welfare (LDDK 2020), a significant concern is that technological progress will lead to higher unemployment, especially among the less qualified, and to labour market polarization through the automation of jobs in mid-skilled occupations. This can lead to greater inequalities in the labour market, and to lower pay

for less-skilled jobs, and hence the quality of jobs. As noted by employers' representatives, these changes affect employers as well as employees, and employers should plan employee training as an integral component of the introduction of new technologies (interview, representative of the LDDK, 31 October 2019; LDDK 2020).

A survey commissioned by Swedbank shows that the Latvian population has noticed the changes brought about by technology in the labour market, but many still think that they will not be affected. While around 63 per cent agree that the introduction of new technologies, automation and robotization will completely replace people in several professions, 65 per cent of respondents continue to expect that their occupation is not in danger of disappearing, and only 21 per cent believe that it may disappear after more than five years (Ādamsons, 2019). Furthermore, 57 per cent of respondents said they planned to acquire new skills within the next five years in order to remain competitive in the labour market. However, one-third do not plan to learn anything new. More than half of Latvian respondents are ready to change their occupation if necessary (Ādamsons 2019).

Higher flexibility need not necessarily serve only employers' interests. For example, there is also employee-friendly flexibility, where workers have more control over where and when to work (Chung and Tijdens 2013). According to the European Quality of Life Survey 2016 (Eurofound 2017a), workers in Lithuania have some of the least flexible working conditions, and in Latvia and Estonia, workers enjoy less flexibility than the EU average (Eurofound 2017b). The growth of flexible working occurred a great deal more quickly in Estonia during 2009–13 compared with the EU average, and Estonia has a larger share of the workforce (almost one-third) with some schedule control (Chung 2018). About 65 per cent of companies in Estonia said that they provide flexitime (enabling workers to control their schedules to an extent), and on average it is more flexible than elsewhere in Europe (based on a European company survey). A shortcoming of this is that flexible hours tend to be used to achieve performance goals rather than to align work and family life (household composition and parental status have no influence on the use of flexible work practices, in contrast to the rest of Europe). Flexible working has only mixed results for work–life balance. The share of respondents who reported that it had been difficult to meet family responsibilities because of work is 40–41 per cent in Estonia and Lithuania, but as high as 67 per cent in Latvia (Janta et al. 2019). The lack of positive effects of flexibility on work–life balance in Estonia is also explained by the spillover effects of work to other spheres of life (Chung 2018), and flexible working-time arrangements, teleworking and working-time autonomy are most problematic in that respect.

The extent of teleworking is similar in Estonia to the EU level (around 18 per cent of all workers; Chung 2018). While Estonia ranks relatively highly in respect of teleworking, and has experienced a notable rise in this indicator since 2008, in Latvia and Lithuania very few employees (less than 5 per cent) worked from home before the outbreak of the COVID-19 crisis. Looking at various indicators of teleworking (mainly working from home, using ICT outside work premises, a broader definition of mobile workers), Estonia has a higher share of teleworkers than the EU average, on all indicators (Holts 2018). Compared with the high use of flexi-time (21 per cent in 2005, the EU28 average of 18 per cent), the use of working time autonomy is at a relatively low and stable level (4 per cent in 2015 cf. the EU28 average of 6 per cent) (Eurofound 2016b;

Chung 2018). In contrast to the rest of Europe, the presence of worker representatives in the workplace is positively associated with the use of teleworking, but negatively with the use of flexible schedules (Chung 2018). In the context of the largest gender pay gap in the EU, more flexible working in Estonia might help to increase female work intensity after childbirth and so reduce the gender pay gap (Chung 2018). While according to the Estonian survey of working life the percentage of workers teleworking has not changed since 2015, the percentage of workers wishing to telework grew from 18 per cent in 2009 to 34 per cent in 2015 (Kaldmäe 2017). In Estonia, access to flexible working differs by job position and is motivated by the need to hire and keep valuable workers. The education level and job position are important: in leadership jobs telework is eight times more widespread and time-flexible working four times more widespread than among sales persons; employees with higher education are 1.5 times more likely to work time-flexibly and twice as likely to telework than those with only secondary education (Chung 2018).

Although it has been predicted that new working forms will prevail in the future, currently it is difficult to estimate the extent to which new working forms will replace traditional forms and how rapidly digital and social changes will influence the future labour market (Eurofound 2016a). The Estonian Parliament's Foresight Centre has developed four labour market scenarios up to 2035: 'Talent hub Tallinn', 'Global village of travellers', 'New world of work' and 'Self-reliant Estonia'. According to the analysis, the main factors influencing developments in the Estonian labour market are openness to work migration and the impact of technological change on job creation and destruction, as well as working conditions in general (Arenguseire Keskus 2018). The main challenges that Estonia has to address in the coming decades will be:

- diversification of employment types affecting the regularity and stability of employment and income earned from traditional employment relationships;
- polarization of skills that influence employability and quality of working life;
- increasing inequality of income with an impact on poverty and material well-being; and
- emigration and immigration, influencing the supply and demand of labour (Masso et al. 2018b).

Similarly, the emergence of non-standard forms of work will raise challenges in tax systems, for example, efforts to ensure equal tax treatment across different employment forms may create tax arbitrage opportunities (Milanez and Bratta 2019). By contrast, some of the increase in non-standard forms of work may be driven by tax considerations, such as the tax treatment of the self-employed relative to regular employees. That may also explain some of the increase in non-standard employment in the Baltic states, although the overall increase in self-employment has been moderate in Estonia and Latvia, according to OECD data during 2005–16 (Milanez and Bratta 2019). According to Eurostat data, the increase in self-employment from 2008 to 2018 in Estonia is remarkable, especially among self-employed without employees (39 per cent), but also those with employees (29.8 per cent) (see also, Table 17.2). Against that background, dependent self-employment has so far, arguably, been relatively moderate in Estonia, at around 2 per cent of total employment, compared with 9 per cent in several Southern

Table 17.2 Self-employment in the Baltic states, 2008 and 2018 (000s)

Indicator	Country	2008	2018	Percentage change 2008–18
Self-employed persons	Estonia	48.7	65.8	35.1
	Latvia	87.4	96.0	9.8
	Lithuania	141.6	143.1	1.1
	EU15	24 070.8	23 594.2	–2
	EU28	31 179.5	30 313.8	–2.8
Self-employed persons without employees (own-account workers)	Estonia	26.9	37.5	39.4
	Latvia	52.5	58.0	10.5
	Lithuania	111.7	111.7	0
	EU15	15 935.4	16460	3.3
	EU28	21 488.7	21 710.5	1
Self-employed persons with employees (employers)	Estonia	21.8	28.3	29.8
	Latvia	34.8	38.1	9.5
	Lithuania	29.9	31.5	5.4
	EU15	8 135.4	7 134.2	–12.3
	EU28	9 690.9	8 603.3	–11.2

Source: Eurostat.

European countries (Eurofound 2016b; Williams and Lapeyre 2016). As regards the social guarantees of the self-employed, they are not entitled to unemployment benefits in the Baltic states.

Platform work is a special type of new employment.² According to the Eurobarometer survey, Estonia has one of the largest segments of sharing-economy services in Europe, and also the share of people using it is high, at 20 per cent (around 70 per cent had heard of it, with Latvia and Lithuania demonstrating much lower numbers, below the EU average). The share of service-economy services underwent significant growth of around 80 per cent annually during 2011–15 (Eljas-Taal et al. 2016), even though the share of total turnover is still negligible (in transportation around 0.1 per cent). Estonia has also been at the forefront of introducing the relevant legislation: in 2017 the parliament passed the Public Transport Act (also known as the Uber Act), relaxing the rules on providing transportation services. Minimum standards were implemented for providers of ‘transportation by agreement’ services and related electronic systems (Masso et al. 2019b). This legislation did not solve the issue of the social protection of sharing-economy employees, but arguably the latter is not necessarily acute since most people provide these services as a side job. In future, however, these issues are likely to become more topical, although some developments, such as opening business accounts in 2018 (unions participating in active social dialogue) might be of some help (Masso et al. 2019b). Also, some Estonian platforms, such as Bolt, have successfully expanded internationally, where they are also having effects on host country labour markets. For example, Bolt has been involved in labour disputes abroad, such as the strike by online taxi drivers in Kenya over price rates (The East African 2019).

3. SOCIAL DIALOGUE AND CHANGES IN THE WORLD OF WORK

3.1 Representativeness of the Social Partners: Challenges and Opportunities

The Estonian Trade Union Confederation (EAKL) represents the interests of the employees and the Estonian Employers' Confederation (TKL) those of the employers in national-level social dialogue. One of the main features of industrial relations systems in the Baltic states has been low representativeness on both sides: union density and collective agreement coverage are below 10 per cent (Visser 2019). While some positive trends have supposedly emerged, that is not reflected in the aggregate collective-bargaining coverage dynamics (Visser 2019): in Estonia the rates were 23 per cent in 2005, 18.5 per cent in 2014 and 18.5 per cent in 2018; in Lithuania, the rates in the same years were 8.8, 8.1 and 7.1 per cent, respectively; while in Latvia they were 34.2 per cent in 2006 and 24 per cent in 2014. Other sources may include higher numbers for Lithuania, such as 19 per cent according to the European Company Survey 2013 (Eurofound 2013). Although the Nordic countries have stable and high trade union membership because, via trade unions, workers can obtain social guarantees, the Ministry of Social Affairs in Estonia does not see increasing trade union membership as a goal per se, and therefore has no plans to pursue similar developments. However, outsourcing some services to the social partners if they are capable of doing them more effectively would be possible (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019).

Membership of the EAKL has decreased during the past decade, slowing down in recent years: there were 33 031 members in 2010, 20 326 members in 2015 and 19 215 members in 2018. The EAKL says that there is still a long way to go to strengthen the trade unions, but that the potential is there. One of the EAKL's strategic goals is to increase the number of trade union members. It has also developed an action plan, including activities in companies (conversations with employees, information days and other events), among trade unions (recruitment of new members and incentives for representatives and activists, gathering information on jobs and sectors that are not unionized, providing members with information, including trade union success stories, introducing trade unions to students at vocational schools and including them in trade union activities), and at confederation level (supporting and advising trade unions and training union representatives, organizing campaigns, and analysing the situation in new sectors). Another goal is to increase trade union organizing capacities (EAKL representative, 18 October 2019).

Over the past decade, the TKL's membership has increased by 10–15 per year. From autumn 2019, there were 137 members, 125 of them are enterprises and 22 craft unions. New types of enterprises are joining, for example, IT companies, banks, universities, vocational schools, medicine firms and new manufacturing enterprises, changing the organization's image as a representative of large old-style manufacturing firms. During the past decade, the TKL's strategic plan has been to diversify membership and include all important Estonian economic sectors, especially larger enterprises from different sectors. It has also tried to be topical and invite enterprises to join that are at the centre of the debate. The TKL believes that it has achieved these aims. Its future plans remain the same, that is, to include members from different sectors and increase membership.

The current focus is on IT companies, representatives of the new economy and enterprises that have grown beyond being start-ups (representative of the Estonian Employers' Confederation, 18 October 2019).

In interviews, representatives of both the EAKL and TKL expressed the feeling that the role of the social partners has increased considerably during the past decade. This was also confirmed by a representative of the Ministry of Social Affairs: their involvement in creating legislation has now become the norm, and no legislative changes pertaining to the labour market are made without consulting them. The social partners have also managed to get the government to contemplate reforms. Also, for a year there have been regular tripartite meetings with the prime minister. At these meetings, every party (employers, employees and the state) can bring to the table two issues for discussion. Both EAKL and TKL representatives interviewed find this form of cooperation useful, although they also admit that little has been achieved so far. The Ministry of Social Affairs acknowledges the topics raised by the social partners, but merely includes them in next year's work plan. Most successful have been discussions on creating a lifelong learning scheme: according to an EAKL representative (interviewed 18 October 2019), a new body has been formed to coordinate the different agencies involved in lifelong learning (the Unemployment Insurance Fund and the Ministry of Education and Research).

During the past decade there has been a shift from conflictual to cooperative social dialogue between the EAKL and the TKL (Masso et al. 2019a). An example of this is the various agreements, although these are not always collective agreements. This shift has not entirely resolved the problems, however. The practice of trying to achieve consensus between the social partners for every important regulatory change for employment has also had some significant drawbacks in recent years. In 2018, the social partners blocked several regulatory changes planned by the government: the EAKL blocked an initiative to increase flexibility in labour relations and the TKL blocked reform of job-related accident insurance. Discussions need a serious reboot (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019).

For the employers, the unions' low representativeness is a large problem because it makes little sense to conclude an agreement with them as opposed to going their own way (representative of the Estonian Employers' Confederation, 18 October 2019). This is also seen as a problem by the Estonian Ministry of Social Affairs, especially in the context of sectoral collective agreements (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019). The sectoral social dialogue in Estonia is limited to a very small number of sectors, which does not ensure a level playing field for companies (Masso et al. 2019a). Estonia has not implemented the system used in some countries, whereby an expert board and a council, for example, have to approve a collective agreement before it can be expanded to the whole sector. Under the current system, in which collective agreements can be extended only if the statutory conditions are met (that is, the collective agreement includes wage and/or working and rest time conditions), the Ministry has no right to refuse to extend. Whether this is in accordance with the Constitution (primarily from the perspective of business freedom) is questionable. To date, no unreasonable sectoral agreements have been signed in Estonia (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019). In general, discussions about individual and collective industrial relations are everlasting in Estonia. Since the Estonian government's activity plan includes changes in the law on collective

agreements, in spring 2020 it is planned to start discussions with the social partners on the topic (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019). As to the other Baltic states, positive developments can be noted in Lithuania, including the signing of many sectoral agreements in 2017–18, but that has not changed wage bargaining, which still takes place mainly at the company level (Eurofound 2019).

As regards the future representativeness of the social partners, the employers do not believe that the unions will be in a position to represent, for example, platform workers along similar lines to other European countries. The ETTK has become increasingly important as a social partner, possibly owing to EU influence (representative of the Estonian Employers' Confederation, 18 October 2019). Relations between the confederation and member organizations are also important when it comes to tackling future challenges. The central trade union confederation (the EAKL) is critical of the ETTK's inability to convince its members in the energy sector to take appropriate steps in response to the Paris climate agreement. This led to difficulties in the sector and employment losses in 2019 (EAKL representative, 18 October 2019) owing to the sudden increase in the price of the carbon dioxide (CO₂) quota. This is seemingly also a governance issue between the different levels of the social partners. Similar problems may subsequently manifest themselves elsewhere.

Arguably, social dialogue is inhibited on both sides by the lack of capabilities, which is also essential for building trust between the social partners (EAKL representative, 18 October 2019). It has sometimes been difficult to reach a compromise, for example, by combining higher flexibility with the introduction of work accident insurance (EAKL representative, 18 October 2019). While there was a great deal of evidence of a dismantling of social dialogue during the Great Recession, a tight labour market may not necessarily favour social dialogue either, as workers may find it easier to change employer than try to resolve problems at their current workplace (Masso et al. 2019a). Both employer and employee representatives have argued that workers' attitudes should change and that they should be more active in problem-solving instead of merely trying to evade difficult decisions (Masso et al. 2019a). It has been argued that the volume of social dialogue may change in the future owing to the generational differences of generations Y and Z. However, this remains uncertain, as does whether the topics and formats or forms of social dialogue may change (Masso et al. 2019a).

In 1993 the Latvian government adopted the Concept on the Principles of Developing a Tripartite Partnership in Latvia. Following this decision, in December 1993, the tripartite consultative body of employers, state and trade unions – the National Tripartite Cooperation Council (NTCC) – started work. It is currently the main body of social dialogue in Latvia in which the government, the Latvian Confederation of Employers (LDDK) and the Free Trade Union Confederation of Latvia (LBAS) are represented. Each have nine representatives. The LDDK and the LBAS are involved in ensuring social dialogue at national, regional and sectoral levels. The government also consults other partners, including Latvian municipalities, the Latvian Association of Local and Regional Governments and the Foreign Investors' Council in Latvia (FICIL). The NTCC consists of several sub-councils, each of which has a coordinator, a protocol and by-laws. They include the Sub-council of the Tripartite Cooperation in Labour Affairs (STCLA), which is attached to the Ministry of Welfare and aims to facilitate social dialogue on labour protection, regulation of legal work relationships and ensuring equal

opportunities. In recent decades, Latvia has experienced a dynamic development of tripartite social dialogue structures and of the topics they are concerned with. From 2019, the work of the Ministry of Welfare focused on the new EU directives concerning, for example, posted workers, predictable working conditions and work–life balance (interview, representative of the Ministry of Welfare, 13 November 2019).

In order to coordinate interdepartmental cooperation in the planning, elaboration, implementation and monitoring of necessary labour market reforms, and thus to reduce distortions in the Latvian labour market, an Employment Council consisting of the Minister of the Economy, the Minister of Education and Science and the Minister of Welfare has been established. The Employment Council has paid particular attention to investment in human capital and labour (in particular, the low-skilled workforce). Changes in labour law are discussed with the LBAS and the LDDK, and are often suggested by them. Each side argues for and tries to defend their own position. The representative of the Ministry of Welfare (interview, 13 November 2019) acknowledged the importance of dialogue: ‘The documents prepared by the ministry do not move forward without being agreed with the social partners. The impact is quite significant, and we value insights from them; it is important to us what the organizations think.’

The final outcome of social dialogue, as all our interviewees admitted, is always a compromise. In addition to the tripartite social dialogue, the LBAS and the LDDK are also involved in bipartite social dialogue. The tripartite consultation mechanism is considered a success by all parties. Nevertheless, the mechanism itself does not guarantee that suggestions will be taken into account. As the representative of the LBAS notes (interview, 30 October 2019), it often runs into the argument that ‘there is no money’, and an overall lack of understanding of social dialogue among politicians and some ministries. Similar to Estonia, it was mentioned in interviews that the effectiveness of social dialogue is conditional on the coalition government and the ruling parties, and the state often does not consider the limited apparatus of the union and employer organizations (Masso et al. 2019a). The LBAS has been educating new politicians about social dialogue; the European Semester is helping to advance social dialogue in Latvia, too. In Estonia, by contrast, the social partners indicated that not all of them were aware of European Semester activities and that the process was unclear to some of them (Masso et al. 2019a). The European Commission (EC) provides member states with assessments and recommendations, and for four years EC representatives have visited Latvia and talked to social partners and the government. One recommendation is to involve the social partners more in dialogue (interview, representative of the Ministry of Welfare, 13 November 2019). All partners in the tripartite council learn a great deal from the experience of other countries, combining their approaches and adjusting them to local circumstances.

The LBAS comprises 20 partner organizations from all sectors, public and private, and represents more than 10 per cent of employees in Latvia, although its membership has fallen (interview, representative of the LBAS, 30 October 2019). Partly this is owing to structural issues, including the predominance in Latvia of small and micro companies in which it is difficult to establish a trade union and conclude collective agreements, and the digitalization of workplaces: platform workers are, for example, very rarely represented in unions. An increase in online or platform work and general trends of the individualization process present challenges for representing interests in a collective manner

through the organizations that represent collective interests (interview, representative of the LDDK, 31 October 2019). The public sector (education, railways and health care) is historically more unionized and the private sector is less organized (the same applies in the other two Baltic states). One challenge facing the LBAS as regards the effective representation of workers is to boost the membership, particularly in sectors dominated by the small companies that are typical in Latvia. This would require improvements in union recognition and the public understanding of the benefits of participation, and adjusting union services to what workers want and expect. The LBAS sees the trade union as an insurance mechanism in the event of individual and collective labour disputes or occupational health and safety risks, where, for example, legal help is needed. Unions can mediate disputes at the workplace without the need to go to court. Unions can also liaise with employers to improve workplace health and safety. A third area of concern is wages and collective bargaining representing workers' interests at all levels, national, sectoral and enterprise (interview, representative of the LBAS, 30 October 2019).

The LDDK, established in 1993, is the largest national employers' organization in Latvia. It brings together and represents 112 sector leaders, companies that employ more than 50 employees, and 64 sector-based and regional business associations and federations. Members of the LDDK employ 44 per cent of Latvia's labour force. The LDDK's membership has been increasing over the years, and has been stable over the past decade. Even the smallest companies can be represented and exert some influence. A company can join an association, and the association can join the LDDK. It is possible to get involved in working on labour law in a special working group at the LDDK, which meets regularly. There is a long process before legislation goes to the Cabinet of Ministers and then to the Parliament, but, as the representative of LDDK notes, there is logic behind it all and ways of influencing these processes. There are 67 sectoral members of the LDDK. Nevertheless, representation is seen as something of a problem by the Ministry of Welfare, which believes that some suggestions that affect everyone are too often driven by the interests of a small group of companies. In particular, in the LDDK, larger companies, with the involvement of the state and municipalities, have a huge influence, while export companies with foreign capital are not very active, and small companies have too little time to get involved. As the Ministry wishes to address systemic problems, broader representation would ensure better representation of needs. The Ministry has invested considerable resources in trying to strengthen the unions, their membership and knowhow (training and public relations campaigns). The LDDK considers the Latvian labour market to be overregulated (a legacy of distrust), which makes it less efficient, and would like the government to entrust more responsibilities to the industry partners, that is, more self-regulation. However, enterprises' incentives to devise and implement autonomous solutions at sectoral level also need to be strengthened: 'The fact that employers and employees can agree on something themselves is not an established culture yet' (interview, representative of the LDDK, 31 October 2019). According to the representatives of the Ministry (interview, 13 November 2019), over-regulation is a myth: 'There are no legislative barriers to concluding collective agreements. Most regulation is EU and international minimum standard. Social partner organizations sometimes favour more regulation. For example, explaining certain time frames, definitions and so on.'

3.2 Social Protection Systems in the Baltic States and the Role of Social Dialogue in Them

The Baltic states spend relatively little on social protection: Estonia spends 16.5 per cent of GDP, Latvia 14.7 per cent and Lithuania 15.1 per cent (the EU average is 30 per cent). Total expenditure on social protection per capita is among the lowest in Europe (only Bulgaria and Romania rank lower). The limited social protection coverage has caused a number of issues. In Latvia, for example, the minimum level of protection guaranteed to everyone is negligible and does not cover basic needs (for example, the minimum pension of €70.4, or a gross monthly income of €53, was successfully contested in the Constitutional Court by the Ombudsman in 2019). The financing of social protection system relies mainly on payroll taxes, more specifically on taxes earmarked for social protection (in Estonia this is 79.4 per cent, compared with 54 per cent for the whole EU). Estonian social protection is in most areas provided by a layered system, which provides minimum protection for everyone and greater protection depending on individual contributions. That is, there are both universal benefits and employment-based benefits. Coverage is low with regard to unemployment insurance and health insurance (respectively, 43 per cent and 14 per cent are not covered). The Estonian social protection system is characterized by relatively low redistribution: in the EU as a whole the system has managed to reduce the average relative poverty rate from 25 per cent before transfers to 16.8 per cent after transfers, while in Estonia the corresponding reduction has been from 29.9 to 21.9 per cent in 2018 (Eurostat 2021f, 2021g).

In the Baltic states social protection systems are administered by the government with almost no private insurers providing supplementary coverage. The interviewed Estonian Employers' Confederation representative (18 October 2019) argued that many people might simply be unaware of the possibility of buying voluntary health insurance. Given the small size of the Baltic states insurance market and low competition between the few potential providers, replacing the state-organized social protection system with private insurance is probably not a cost-effective solution (Masso et al. 2018b), also given that the current administrative costs are low (1.2 per cent in Estonia, compared with 3 per cent for the whole EU).

The Estonian commercial sector social partners have acknowledged that new forms of work, such as platform-based working and rental workers, raise questions of how to include social rights, social insurance and protection in them (Masso et al. 2019a). In Latvia, up to 2018, the self-employed could choose to make their own social contributions, but most did not. Those working as micro-entrepreneurs have made only the very small social tax contributions laid down in the law. This situation has created a risk of a growing part of the population not being adequately covered for retirement, illness or disability, childbirth or unemployment. As a consequence, in 2018 the law was changed to ensure increased social contributions even among these groups, although the contributions are still very low compared with employees on permanent work contracts.

The sustainability of the Estonian social security system depends on several factors, the most prominent of which are changes in employment and in labour productivity in general. Changes in population structure and technology can affect both the overall number of employed and how people work, which in turn can result in changes in the sustainability of social protection. All four labour market development scenarios that

the Estonian Foresight Centre has developed operate with the assumption of a declining workforce, the effect of which may not be offset by increases in labour productivity. In order to keep the system sustainable in the long run, some alternative sources of financing need to be considered (Masso et al. 2018b). Active employment measures are very important in the context of demographic changes and other labour market challenges, too. Some changes have been designed in these measures to address these challenges; for example, in Latvia, labour market support measures are also being developed to maintain the employability of older workers (over 50 years old) (Ekonomikas Ministrija 2019).

The Baltic states' labour markets are characterized by a limited role for collective agreements and high wage inequality. Minimum wages play a relatively important role. The minimum wage is not important for trade union members who earn above the median wage, but it is relevant for a few sectors in which workers are not permitted to strike (EAKL representative, 18 October 2019). The minimum wage is also an issue on which the interests of EAKL and their member organizations diverge somewhat (EAKL representative, 18 October 2019). Employers argue that the conditions for receiving unemployment benefits could be made more flexible to allow working for the small amounts characteristic of the gig economy (interview, representative of the Estonian Employers' Confederation, 18 October 2019).

In the area of lifelong learning, the creation of a centre to coordinate the activities of the Estonian Unemployment Insurance Fund, education, and so on, has made significant progress (EAKL representative, 18 October 2019). For the employers, lifelong learning has always been on the agenda (for example, apprenticeships for older employees as well as for younger ones).

The unions argue that the current challenges cannot be addressed without social dialogue (EAKL representative, 18 October 2019). They have proposed abolishing privileged retirement pensions (*sooduspensionid*), inserting reform of unemployment insurance into the government's action plan and modifying the law to enable agreements different from those currently envisaged (EAKL representative, 18 October 2019). On the employers' side, unemployment insurance of board members is an issue, while for IT companies, the issue of on-call time is crucial, as well as teleworking and simplifying the use of fixed-term contracts (interview, representative of the Estonian Employers' Confederation, 18 October 2019). The unions are not necessarily against the latter, but argue there should be, for example, some compensation mechanism (see the case of academic employees, EAKL representative, 18 October 2019).

The other aspect of the institutional setting that might be incompatible with foreseen changes in the world of work concerns the tax system. The Baltic states generally have lower tax rates, which is reflected in their lower social protection expenditure (Masso et al. 2015). There are also distinct features in the structure of the tax system: (1) a relatively high share of indirect taxes; (2) relatively high payroll taxes earmarked for finance social (pension and health) expenditure; and (3) relatively low capital taxes (the Baltic states have the lowest tax burden on capital among the EU27 countries), introduced, for example, to attract foreign direct investment (Vörk et al. 2007). A special feature of the tax systems of the Baltic states is the flat income tax (Masso et al. 2015). Many have argued that this may not be the optimal approach in the region: perhaps an equal flat tax rate on both personal and corporate income would have increased welfare (Azacis and Gillman 2010). The low taxation of capital was further reinforced by Estonia's 2000

tax reform, which excluded reinvested earnings from taxation. Latvia followed suit in January 2018. Although the Estonian corporation tax reform at the time of its implementation had positive effects on company performance (Masso et al. 2013), it has been argued that in the current economic situation competitiveness on labour taxes is more important. For instance, there has been a discussion in Estonia as to whether introducing an upper level for social tax (payroll taxes) would help IT companies to recruit the staff from abroad to relieve the acute labour shortages. Its introduction in Latvia was not very successful, however.

3.3 Social Partners and Changes in the World of Work in the Baltic States

At the national level in Estonia, social dialogue involves ongoing discussions about new and changing forms of employment, such as platform-based working and temporary workers. This raises questions about how to include social rights, social insurance and protection, as well as generational differences and changes in expectations as regards work (Masso et al. 2019a). In Estonia's education sector, for example, the use of new technologies in teaching and learning, development of digital skills (digital literacy) and smart youth work have entered social dialogue (Masso et al. 2019a). Similarly in commerce, new industrial relations topics include the introduction and use of new technologies (for example, self-service and online sales), changes in required skills, automation and digitalization, the potential and developments in e-commerce, environmental and sustainability issues (Masso et al. 2019a). Estonian representatives have also sometimes been active in initiating topics in the future of the world of work at the EU level. For example, the representatives of the Ministry of Education and Research initiated the topic of digital skills and developing digital youth work (Masso et al. 2019a). In the view of union representatives, the topics raised, for example, by the OECD concerning new forms of work are covered in the Estonian social dialogue (EAKL representative, 18 October 2019). The representative of the Estonian Ministry of Social Affairs (interview, 12 December 2019) divided new forms of work into two groups. The first relates to traditional working, where technological change provides more flexibility on where and when to work. This poses challenges to the provision of flexibility, on the one hand, and guaranteeing social protection, on the other. The discussions with social partners are active and will continue (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019). The second group covers the non-traditional types, such as platform work. Trade unions do not represent these workers and the TKL does not represent the relevant employers. From the industrial relations perspective, people are on their own and the Ministry has no dialogue on these topics with the EAKL or the TKL. The European Commission has launched an initiative related to platform work. Estonia is waiting for the results to see how to proceed and further develop the policy in the new world of work (interview, representative of the Estonian Ministry of Social Affairs, 12 December 2019).

An EAKL representative has emphasized four topics affecting the future of the labour market: technological change, globalization, climate change and demographic ageing. These topics are at the heart of the ILO (2019) declaration. In relation to climate change, the EAKL's main aim is to motivate its members to deal with this issue, as, to date, acknowledgement of the problem has been low among sectoral representatives and the

response has been reactive rather than proactive. When discussing technological innovations, automation, digitalization and related issues, union representatives were concerned that since in Estonia wage growth has exceeded productivity growth for a number of years, Estonian industries with high wages and non-automated technology would be very vulnerable if a recession occurred (EAKL representative, 18 October 2019). In the view of the union representative, all three social partners – the state, the EAKL and the TKL – are needed to promote these opportunities, otherwise there is a risk that Estonian companies will lose their competitiveness by failing to modernize. The unions also believe that in the course of technological transformation a balanced development of the regional labour market is important (EAKL representative, 18 October 2019). Economic policy has to help rural companies to modernize themselves; otherwise, people will leave rural areas and move to the cities, but the jobs in cities may be low-productivity, gig economy jobs (in Estonia, Bolt jobs and Wolt jobs). Similarly, in Latvia, social partners emphasized the importance of the regional dimension in being able to modernize manufacturing enterprises in remote regions, whose failure could lead to political radicalization similar to the regional problems in Finland (interview, representative of the LBAS, 30 October 2019).

As to whether the current institutional setting of the labour market supports structural changes in the economy and the emergence of new forms of work, Estonian social partners find that the current Estonian Labour Code, though updated in 2009, is not well aligned with labour market needs and expectations (Masso et al. 2019a). For instance, younger people prefer flexibility, temporary arrangements and diversity to traditional, long-term, stable and monotonous work relationships. It is now common to have several jobs and several work relationships under multiple employers (Masso et al. 2019a). Employers strongly support that view; for example, the younger generation do not necessarily want to attach themselves to just one employer and would prefer more fragmented work with different employers, with more responsibility, so that working converges more with the entrepreneurship (interview, representative of the Estonian Employers' Confederation, 18 October 2019). Trade union members were more sceptical that the new generation is so different and that it has less motivation to work in the old way. For example, the Internet giants work with conventional labour agreements (EAKL representative, 18 October 2019). The increased entrepreneurialization of work, whereby workers have more control over their work, can naturally lead to higher work intensity (Chung, 2018). In Estonia, the particular types of flexibility of interest to the social partners include the flexibility of fixed-term contracts and variable hour contracts, flexibility of teleworking, flexibility of independent employees (self-employed) and the issue of minimal social tax obligation (limiting the use of temporary contracts). As to facilitating flexibility, the unions argue that this is needed in many occupations and sectors, not just in a few. Nevertheless they may be hard to identify, thus instead of trying to solve particular sectors' problems one by one by legislation, sectoral collective agreements should be the solution (EAKL representative, 18 October 2019). The unions argue that sometimes it seems easier for labour market participants to break the law rather than trying to conclude collective agreements (EAKL representative, 18 October 2019). Employers argue it is the lack of flexibility that encourages labour market participants to conclude civil law contracts instead of labour contracts, thereby losing labour contract guarantees (interview, representative of the Estonian Employers' Confederation, 18 October 2019). One

argument is that employees prefer their main job to be rigid and side-jobs to be flexible (EAKL representative, 18 October 2019).

In interviews with the Latvian social partners, both the LDDK and the LBAS (interviews on 31 October and 30 October 2019, respectively) mentioned that they have a profound role in reviewing and suggesting changes to labour law, for example, concerning wages and collective bargaining. Sectoral collective bargaining and social partner autonomy are of primary importance in Latvia. In one sector it is important to raise pay for overtime work, in another to increase wages. To account for these different needs, the social partners have recommended a number of changes in the labour law. They say that there must be the possibility to bargain about some aspects of work in sectoral agreements. One goal is a different minimum wage and different rules and standards in different sectors, considering the large discrepancies in pay and contents of work. Among recent successes are changes made in 2019 to Article 68 of the Labour Code regarding the possibility for the employers and employees to negotiate a lower level of overtime pay (from 100 to 50 per cent) if an *erga omnes* collective agreement exists in the particular sector and a significantly higher minimum wage has been set. Recently, this type of collective agreement was concluded in the construction sector, the first of its kind in Latvia. The legislative process to adopt amendments to the Labour Code was not easy, since the agreement on amendments among the tripartite social partners has been much criticized by ministers and the ombudsman, and even sent back to review by the president, setting the legislative process back a few years. As a compromise, the social partners included the condition that the minimum wage in sectoral collective agreement needs to be increased by at least 50 per cent. As a consequence, many employees and sectors lost interest. Nevertheless, in November 2019 the first of this type of sectoral agreement in Latvia came into effect, representing a significant shift in industrial relations. It motivated employers in this sector to significantly increase wages and is expected to reduce the shadow economy. This will be a learning experience, and hopefully more sectors will sign collective agreements in the future (interviews, representatives of the LDDK and the LBAS, 31 October 2019 and 30 October 2019, respectively).

Collective agreements are currently among the main topics of interest of the LDDK and the LBAS, as they aim to achieve more collective agreements in various sectors of the economy, following the example of the Nordic countries (interviews, representatives of the LDDK and the LBAS, 31 October 2019 and 30 October 2019, respectively). In addition to agreements on the minimum wage and overtime, there are many other potential issues, such as skills funds and sectoral pension funds owned by employers and unions. The LDDK is an advocate for collective agreements and argues that their reach should be wider: 'By giving more autonomy of decision-making you also give more co-responsibility ... But changes would require a change in mind-set. LBAS and LDDK are trying to change things though positive examples' (interview, representative of the LDDK, 31 October 2019). Conferring more autonomy and responsibility on employers' organizations would also increase their motivation to participate. Coverage would increase and the unions would become a great deal stronger, with increased capacity to engage in social dialogue and collective bargaining. With collective agreements, the social partners can take control and responsibility for their sector. There can be a productive dialogue between employers and employees, in which transparency is the most

important thing. As noted by the LDDK (interview, representative of the LDDK, 31 October 2019), both employees and employers need to know that there are clear benefits from being covered by sectoral agreements. Then there will be pressure from employees to join in. The LDDK believes that all companies, when registering, should be required to enter the relevant collective agreement and accept the common rules. That would also reduce the shadow economy and make competition fairer. Thus, Latvia, among other EU countries, has set a course towards facilitating collective agreements. The representative of LDDK notes: 'There is no other way to build the welfare state. But we need the policy-makers to help us, not to police us' (interview, 31 October 2019).

Demographic ageing and its effects on the labour market are important to both the EAKL and the TKL. Both confederations actively participate in discussions of this issue in the Töötukassa (Estonian Unemployment Insurance Fund) as board members and in discussions with the Ministry of Social Affairs and the Ministry of Education and Research, and they organize training for their members. However, there is room for improvement, as representatives of both the EAKL and the TKL declared in interviews. The EAKL emphasized the importance of changing the management culture so that companies start to value older workers and indicated that the Ministry of Social Affairs has so far developed no strategy to achieve this (EAKL representative, 18 October 2019). Another problem is the system's lack of unity: several parties are involved in the lifelong learning system, but they work in bubbles and somehow it needs to be brought together. One problem, in his opinion, is the attitude of the employers, who often do not support lifelong learning among their employees unless there is a clear direct benefit for the company.

In Estonia, both the EAKL and the TKL representative interviewed expressed the view that the role of the social partners will increase in the future. The EAKL considers it important to encourage more regulation of flexibility in sectoral agreements (EAKL representative, 18 October 2019). Their argument is that it is much more effective than trying to enshrine everything in law. The world of work will become increasingly diverse and it is impossible to create laws that cover sectors' every need. The main counterargument for the employers is that trade union membership is so low in Estonia that employers have no real partner to make these agreements (interview, representative of the Estonian Employers' Confederation, 18 October 2019). The EAKL also acknowledges the problem and capability shortages of trade union representatives. Both the EAKL and the TKL mentioned that the role of the confederation is changing. Members of the EAKL and the TKL are more successful compared with the labour market average (larger companies for the TKL and trade unions in better-paid sectors for the EAKL) and issues such as the minimum wage are not that relevant for them. Therefore, as representatives of both admitted, there is pressure from members that confederations should not deal with all topics but should instead focus on those relevant for members. However, confederations clearly acknowledge their broader role in society and find it important to act as a constructive social partner at national level, too. Since it is likely that in future trade union membership will continue to fall, the EAKL (as well as the TKL) need to take on this broader role. Similarly, the interviewed Latvian social partners expected their role to increase in the future, as currently the Latvian state is receiving a great deal of criticism that legislation is not suited to the needs of employers and workers in sectors with significant issues (for example, the shadow economy in the building sector, and extremely

low wages and low public financing in health and education). To solve these issues, they will need to start listening and involving the social partners more. Both the LBAS and the LDDK see their role as mitigating the risks of automation and digitalization by, for example, creating skills funds for retraining workers and proposing legislative changes to better address the new realities, such as platform work (interviews, representatives of the LDDK, 31 October 2019, and the LBAS, 30 October 2019).

4. CASE STUDY 1: PLATFORM WORK IN ESTONIA

4.1 Introduction

The Estonian sharing economy sector was covered in Masso et al. (2019b) but this case study further develops the issue, focusing on a specific part of the sharing economy, crowd work platforms. The case study is based mainly on document analysis, including recent studies and interviews with representatives of the Estonian Sharing Economy Union from GoWorkaBit, Uber in the Baltic states and the Work and Pension Policy Department of the Ministry of Social Affairs.

In Estonia, crowdwork platforms entered the market later than in some other European countries, but have grown rapidly since then and are operating in a number of different areas: ride-sharing, food delivery and service work provided in person. Bolt (formerly Taxify), a local ride-share platform, was founded in Estonia in 2013. From winter 2019, Bolt operated in more than 150 cities in 35 countries and had 500 000 drivers and 25 million customers (Browne 2019). Bolt's revenue increased fourfold from €21.1 million in 2017 to €79.7 million in 2018 (BNS News 2019). By comparison, Uber, the largest ride-sharing company, was operating in 65 countries and more than 700 cities as of 2019 (Okun 2019), and had revenue of US\$11.3 billion in 2018 (Zavieri and Bosa 2019). Wolt, a Finnish food delivery platform, was launched in Tallinn in 2016. Its turnover in Estonia increased from €0.38 million in 2016 to €1.23 million in 2017. GoWorkaBit, an Estonian crowdwork platform focusing on service work provided in person, was founded in 2013. Its turnover was estimated at €1.72 million in 2017 compared with €1.1 million in 2016, that is, 35 per cent growth (Inforegister 2021). There are currently 110 000 workers registered on the platform, a figure that has doubled in recent years and is expected to grow further given the current 500–600 new registrations every week. On average, 700–800 tasks a week are offered to the pool of workers (Holts 2018). The crisis owing to the COVID-19 pandemic is expected to bring significant changes to the sector in relation to these developments.

In Estonia, there is also an umbrella organization in this sector, the Estonian Sharing Economy Union (ESEU), established in 2016 by 11 companies. As the sector is developing fast, the actors in the sector are changing, as new platforms emerge and others exit; currently the ESEU has eight members. The ESEU's main aim is not to include all platforms active in Estonia but for ESEU representatives to remain updated about market players and keep them informed about activities (representatives of GoWorkaBit and Uber in the Baltic states, 11 December 2019).

The exact size of the crowd work economy and the sharing economy in general is hard to measure. This was also noted by the representative of the Ministry of Social Affairs,

who said that platforms are not eager to share data about people working via platforms, pay and so on, mainly because they do not want competitors to know (representatives of GoWorkaBit, Uber in the Baltic states, the Work and Pension Policy Department of the Ministry of Social Affairs, 12 December 2019). According to a recent study, there has been a rapid increase in recent years in the use of application (app)-based transport services: during 2017–19 the share of those who used a website or app to arrange transport from another individual increased from 22 to 33 per cent (Statistics Estonia).

4.2 Who are Platform Workers in Estonia?

In 2019, the Estonian Foresight Centre published its first study (Digital Footprint 2019),³ which shed light on the extent of crowdwork. In this section we briefly summarize the survey's most important findings, which enable us to better understand the extent of platform work in Estonia, who are the platform workers and what kind of platform work they do. According to the results of the study (an online survey of 2000 Estonians between ages 18 and 65), 8.1 per cent of Estonians worked at least once a week, 10.2 per cent at least once a month via online platforms and 20 per cent had undertaken this type of work at some time, that is, are part of the gig economy. Almost 40 per cent claimed that they had tried to find work via platforms, but not all were successful. This problem is also noted on various Internet forums in which job-seekers complain that they have applied for jobs but were not selected (Joost 2018). In comparison to other countries included in the study, Estonians are more likely to seek and undertake platform work (for example, in 2016 in the UK about 20 per cent were seeking platform work but less than 10 per cent had undertaken any; in the Netherlands, the figures were around 18 per cent and 9 per cent, respectively). This may be owing to global changes since in other countries surveys were implemented earlier (from 2016). As to gender, 26 per cent of men but only 13 per cent of women had ever tried platform work in Estonia. Platform workers could be found in all age groups but are more frequent in younger groups (29.5 per cent of platform workers are aged 18–24 years, 36.1 per cent are aged 25–34 years, 15.4 per cent are aged 35–44 years, 9.1 per cent are aged 45–54 years and 9.8 per cent are aged 55–65 years). Platform work is not evenly spread in Estonia; platform workers are concentrated in the north and north-east of Estonia (the former being the capital region).

One striking feature of platform work in Estonia is that many respondents mentioned more than one type of work. This indicates that many platform workers try to gain an income from several sources: 15.5 per cent of platform workers (around 2.9 per cent of the working-age population) reported that they carried out office work, click work on their own computer or other online device at least once a week; 20.3 per cent of platform workers (3.9 per cent of the working-age population) carried out high-skilled online work, for example, design, editing, software development or translation at least once a week; 13.6 per cent of platform workers (2.6 per cent of the working-age population) had run tasks or carried out routine office-type work on other people's premises; 12.1 per cent (2.3 per cent of the working-age population) carried out occasional work on other people's premises, such as plumbing or household repairs at least once a week; 12 per cent had undertaken regular, scheduled work in other people's homes, such as gardening, cleaning or babysitting at least once a week; and 11.9 per cent had carried out professional work, such as legal services or accounting, at least once a week. A similar share of

platform workers had taken on taxi work via an app or website (such as Uber) (11.4 per cent of platform workers, 2.2 per cent of working-age population) and personal service work, such as hairdressing or massage (12.4 per cent of platform workers, 2.3 per cent of working-age population) (Digital Footprint 2019).

4.3 Industrial Relations and Social Security Issues Related to Platform Work

From an industrial relations perspective, the representation and organization of platform workers is not actively debated or a priority for the social partners and the Ministry of Social Affairs. As platform workers are not seen as a workforce of the particular platform, but instead as a pool of workers not connected to each other in any way (they often do not know each other), this is understandable. The EAKL also has no role in representing platform workers (EAKL representative, 18 October 2019). However, the nature of the platform work is in many instances similar to traditional work, as the representatives of the Estonian Sharing Economy Union (representatives of GoWorkaBit and Uber in the Baltic states, 11 December 2019, and of the Ministry of Social Affairs, 12 December 2019) emphasize. For example, GoWorkaBit is an example of traditional work achieved via platforms since Estonian legislation sets strict limits on temporary working contacts: these can be entered into twice by the parties for the same work tasks, after which the contract is automatically regarded as permanent from the beginning (representative of the Ministry of Social Affairs, 12 December 2019).

There are different groups of platform workers as regards social security coverage. The first are those who have a main job and their main motivation when taking on platform work is to provide their labour as work bites, that is, short-term work relationships. They choose the timing of their work, which enables them to fit this activity with family and other work obligations. These people receive work-related social protection from their main employer. Some platform workers do this as their main or only job. For these workers the issue of social protection may also arise. If they work under contract to provide services, they are covered by social protection; if not, they are responsible for this themselves. For most people doing platform work in Estonia, it provides supplementary income: for 76.4 per cent of platform workers this represents less than half of their income, for 4.2 per cent it is their only source of income. About 49 per cent of platform workers were employed full-time, 6.7 per cent part-time, 9.4 per cent were self-employed, 3 per cent were retired and 14.8 per cent were students. For intensive platform workers (those who do platform work at least once a week), the figures are similar (Digital Footprint 2019). Some platforms operating in Estonia, including GoWorkaBit, also provide platform workers with social security coverage as they sign a contract for services with people providing their labour via platforms. However, other platforms do not operate this way and platform workers themselves have to register as self-employed or private limited liability companies, and pay labour taxes themselves to get social security coverage. Since January 2019 one possibility for declaring income and getting social security coverage has been to use an entrepreneur account (*ettevõtthuskonto* – see also Masso et al. 2019b) that the Tax and Customs Board offers as an appropriate solution for new forms of entrepreneurship, such as ride-sharing service platforms.⁴ An entrepreneur-account owner has the right to receive health insurance benefits if social tax in a calendar month is at least the minimum social tax requirement (in 2019 this was €165 per month).

If a person is operating only through an entrepreneur account to obtain health insurance, they must earn at least €1375 per calendar month for the provision of services or for the sale of goods. However, the entrepreneur account has been used less than expected for several possible reasons, the most important probably being that it is not possible to deduct costs or expenses from taxable income when using this type of account (representatives of GoWorkaBit and Uber in the Baltic states, 11 December 2019). Therefore, an entrepreneur account is useful for people who provide services to other persons in areas of activity that do not involve any direct expenses (such as babysitting or housekeeping), or for a person who sells self-produced goods or handicraft goods or goods with low material costs, or if the customer pays the costs (Estonian Tax and Customs Board 2019).

When it comes to platform work, the Ministry of Social Affairs is most concerned by the division of responsibility for occupational health and safety issues of platform workers between the platform and the platform worker. For example, when a Wolt worker has a traffic accident, it is their own responsibility, as are the costs related to damage to work equipment (bicycle or car). To date there have been no court cases. As stated by the Ministry of Social Affairs representative (12 December 2019), ‘from the Ministry’s point of view, as a state we have to guarantee that we do not have masses of people who are excluded from work incapacity benefits or pensions even when the people themselves and platforms are not concerned about this issue.’

The same concerns were expressed by Katre Pall, former head of the social security department in the Ministry of Social Affairs in 2018. She commented that platform work is the new reality, but platforms are often used for less skilled work (Pall 2018).

From another perspective, platform work can form part of the grey economy with a lack of social security and job-related security. It is exploitation in a new form. Platform workers have no job or employer, they only have assignments. Providers of work, that is, the platforms, are often not interested whether the job-taker has health insurance or how they will cope in old age when they have insufficient pension rights to get a state pension, or other benefits. When platform work expands and becomes huge, it may pose a challenge to the whole of social security. Platform work is often related to small and/or non-predictable income, unusual working time and short timelines. It offers good opportunities to reconcile work and family life, on the one hand, and isolation and limited contact, on the other. Platform work may be flexible, but also routine and stressful. It is easy to enter, but the opportunities to move into traditional work are limited. In most instances, platforms provide no training (Pall 2018).

4.4 Conclusion

In Estonia, crowdwork platforms have grown rapidly in the past five to six years. About one in five working-age Estonians has worked via a platform, and 8 per cent do so regularly. Most platform workers do this as a side-job in the form of job bites; three-quarters of platform workers also have a main job. Platform work has several advantages, the most important probably being the flexibility to choose working time and the possibility to earn money during free time. However, there are serious concerns about social security risks for platform workers who do not work under a contract for services. The Estonian Ministry of Social Affairs sees this as the most important issue for the future. As most platform workers do this work as a side-job in Estonia, this is not yet an urgent issue, but

is likely to become more important in the future. Despite these drawbacks, the Ministry is not against platforms. On the contrary, since new working forms are emerging and the new world of work is dynamic, the regulations should also be flexible enough to accommodate them. The risk is that regulation may lose relevance before being implemented, or shortly thereafter. Estonia needs to work out regulations at the appropriate level of generalization that do not become outdated and are beneficial to the parties involved (representative of the Ministry of Social Affairs, 12 December 2019).

5. CASE STUDY 2: NON-STANDARD EMPLOYMENT CONTRACTS AND THEIR CONSEQUENCES IN LATVIA

5.1 Introduction

While flexibility of working hours and part-time work is not very popular in Latvia in general, many workers – especially in sectors such as media, culture, transport and intellectual services – have irregular contracts (authorship agreements and micro-enterprise contracts) that are likely to become even more popular as the need for flexibility in the labour market increases, for example, owing to technological changes. This poses several risks for workers, including insufficient coverage in case of illness, childbirth, disability, unemployment and retirement, as well as safety at work. This case study explores the causes of the popularity of these contracts, including in new forms of work, recent policy developments and the opinions of social partners on possibilities for mitigating the risks.⁵

The interviewees provided their opinions in their expert capacity, and they may not always reflect the opinion of the institution as a whole.

5.2 Emergence of Non-standard Employment Contracts during the Crisis, and their Problems

Some of these forms of employment were introduced during the crisis to serve a particular purpose; for example, the micro-enterprise law – to facilitate entrepreneurship in difficult times, temporary public works – was to ensure at least a minimum subsistence for the unemployed without other social benefits (Masso et al. 2018a). The situation has changed but some of these forms of employment which had been intended to be just temporary now appear hard to abandon and have remained (although some in a modified form). The biggest problem with this is that these forms of employment are often misused (for example, bogus self-employment) and hide regular employment with a view to paying less tax. Sometimes it is not easy to distinguish who is an employer and who is an employee, which creates an additional reason to choose self-employment even in a situation which would require a normal work contract. Concerning the micro-enterprises law, the representative of the Ministry of Welfare notes that it was initially meant to revitalize the economy, to help new businesses, and seemed very good at first glance (interview, 13 November 2019). However, in reality it is more often used to transform the existing contract and save on taxes. The Ministry of Welfare is in favour of fewer exceptions to the rule, so that people may obtain social security and contribute to the system equally. Recently, the government tried to limit the use of micro-enterprise contracts and

avoid their abuse by adding extra conditions. Still a large number of people are employed in micro-enterprises, especially in the countryside, and now it is difficult to switch, as they would feel the impact of higher taxes.

The state has recognized the problem and since 2019 the self-employed and voluntarily insured persons have to pay social contributions from a freely selected sum, but at least the minimum wage (€430 per month), as well as a 5 per cent contribution from the difference between actual earned income and the freely chosen taxable sum for pension insurance. If the income in a calendar year is lower than a minimum wage per month, only the 5 per cent pension contribution has to be made (unless the income is lower than €50 per month in a calendar year, in which case no contributions have to be made). For many people on authorship agreements or micro-entrepreneurs, social contributions are even smaller. They may choose to make larger contributions, but usually choose to contribute the minimum.

The consequences are best described by the LBAS representative (interview, 30 October 2019). First, social guarantees depend on social contributions. If the income of a self-employed person is low and consequently so are their social contributions, they have low social guarantees (old age and disability pension, maternity protection and unemployment benefits) and a general risk of poverty, especially where social support networks are weak and state-guaranteed minimum income is low. Second, the person would have no protection if they lost their job (the client), and health and safety at the workplace (including health and injury risks) is the obligation of the self-employed. Third, a self-employed person does not have certain labour rights (maternity and annual holidays). There are some instances of abuse of the system, for example, by a well-known local taxi company mentioned by several respondents. In some instances larger companies split into many micro-enterprises. As noted by the representatives of the LBAS (interview, 30 October 2019) and the Ministry (interview, 13 November 2019), if someone does not pay social contributions, eventually society will need to take care of them regardless, so this is a problem that will affect everyone. The LDDK acknowledges that employers are also affected as weak social security is one of the reasons people leave the country to work abroad, causing in labour shortages (interview, representative of the LDDK, 31 October 2019).

The bogus self-employment issue has not been sufficiently addressed by the unions, partly owing to lack of capacity and difficulties identifying workers involved in it (interview, representative of the Ministry of Welfare, 13 November 2019; Svirski, 2019). Interviews show that the main reason why these forms of employment are still so prevalent and misused is that (1) people themselves, particularly those on low incomes, want to evade taxes, and realize the drawbacks only when a problem occurs; and (2) imbalances in power relationships between employees and employers (employees have few other job options). Another reason for low tax morale is that people do not receive the expected benefits from the state (free health care, education, quality infrastructure, and sufficient old age pensions): Latvia is one of the EU countries with the highest out-of-pocket contributions for health-care services and very low public financing for health care (interview, representative of the LBAS, 30 October 2019). According to the LDDK representative (interview, 31 October 2019) social contributions need to be tied even more closely to, for example, access to some forms of planned health care (health insurance). In the EU some countries choose to provide social benefits to those working in the grey

economy, which can create an incentive to work there. If people do not see any difference regardless of whether they pay social contributions, they have no motivation to pay them. Pressure from employees is the best way of combating bogus self-employment. As noted by the LDDK representative (interview, 31 October 2019), people need to understand that they are stealing from themselves, otherwise all attempts to control the problem will be very expensive and inefficient. Finally, the sanctions are perceived by employers as probably not strict enough or not sufficiently enforced by the government. The discussion on increasing sanctions has been problematic as employers tend to argue that tough punishment can lead to bankruptcies, and the state is always blamed and distrusted, which hinders effective application of sanctions. As noted by the LDDK, it is important to ensure a level playing field for employers so that every player in the industry is under the same conditions or requirements, without distorting competition. The law on a micro-enterprise tax rate in particular, currently creates unequal competition because of different tax regimes (interview, representative of the LDDK, 31 October 2019).

5.3 Emergence of New Forms of Work in Latvia

Bogus self-employment is also facilitated by the increase in new forms of work. As noted by the representative of the LBAS (interview, 30 October 2019), and the representative of the Ministry of Welfare (interview, 13 November 2019), telework is becoming an increasingly important issue. In platform work, in law, who is an employer and who is responsible for what is not well defined. In theory, every worker can turn to the Labour Inspectorate and ask them to check whether their work can be considered self-employment or not, in accordance with the relevant criteria (subordination to the employer, use of the employer's resources and whether the worker can determine their own working time) (interview, representative of the LBAS, 30 October 2019). The Labour Inspectorate can make the employer change the contract to a permanent one for employer agreements and authorship agreements. However, the Ministry representative admits that there are no specific regulations for platform work in Latvia (interview, 13 November 2019). People are unlikely to seek help and the authorities are increasingly cautious about issuing decisions unfavourable to employers as representatives of the enforcement authorities can be held accountable if their decision is deemed unlawful and has harmed the employer's financial interests. Thus, the Ministry representatives think that the law needs to be as clear as possible (interview, 13 November 2019). Better solutions and clearer rules are needed to determine whether a worker is self-employed. The Ministry hopes that some common ideas and solutions will be developed at the EU level. The platforms, by their very nature, are also difficult to regulate. As soon as a country tries to regulate platforms, for example, they tend to move to another country (interviews with representatives of the Ministry of Welfare, 13 November 2019, and the LBAS, 30 October 2019).

Platform work can be truly supranational: a platform may be registered in one country, while people from any country in the world can work for it. The institutions responsible might not even know that a person is working like that, if and where taxes and contributions are paid, what laws they follow and how that affects social security (interview with representatives of the Ministry of Welfare, 13 November 2019, and the LBAS, 8 November 2019). If a person worked in this way their whole life, at the end they would have no pension and no other social guarantees. Most platforms typically claim

that they are not employers, just intermediaries, an information board, and the persons working for it are self-employed (interview, representative of the LBAS, 8 November 2019). Another issue is how people pay tax if they work on particular online platforms. Some countries check incomes more carefully than Latvia does, for example, via banks. Thinking about the future of work, the Ministry representative also mentioned the possible use of bitcoin as a payment option, but how to tax this type of payment (e-payment) is unclear (interview, 13 November 2019).

Another issue raised by the representatives of the Ministry of Welfare and the LBAS (interviews, 13 November 2019 and 30 October 2019, respectively) is the representation of platform workers. Is union participation possible for them? How can they learn about unions? It is much less likely that they will be able to organize to collectively defend their interests unless innovative digital approaches are used to unite workers. However, the main problem, as noted by respondents, is the people themselves. There is enough information about how to protect their rights, but people usually choose not to complain. They do not report bogus self-employment, as they are probably afraid of losing their job or, in rural regions, risking the closure of the few companies that operate there and not being able to find another job in that region (interview, representative of the Ministry of Welfare, 13 November 2019). As noted by the LBAS representative (interview, 30 October 2019): 'They sometimes prefer not to risk losing a low-quality workplace to fighting for their rights.' In Riga, employers perhaps are more wary of involving employees in various schemes, as they have a choice to go somewhere else, especially recently with the tightening of the labour market. It is important to educate people and organize them in unions to combat this problem. Indeed, both the LBAS and the Ministry of Welfare note that unionization and stronger trade unions are an important element in dealing with this problem (interviews with representatives of the Ministry of Welfare, 13 November 2019, and the LBAS, 30 October 2019).

The paid temporary public works programme (NVA 2019)⁶ is another form of employment that provides few social guarantees. Pension contributions are made on the €200 received by unemployed persons involved in the temporary public works programme, and they are also insured against accidents. The programme was based on experiences in other countries and the entitlement criteria were set in order to avoid labour market distortions and encourage a rapid return to the primary labour market (the financial support provided is below the net minimum wage) (interview, representative of the Ministry of Welfare, 13 November 2019). People involved in the programme can be employed only in community jobs outside the private sector, and it is targeted towards the long-term unemployed. Some employers complain that the programme may lure away potential workers, but the Ministry representative argues that in these cases the employer probably does not offer even the minimum wage and working conditions are poor. In some instances this programme seems to have functioned as an instrument for enforcing minimum wages and working conditions. 'If this programme can compete with normal employment, something is wrong' (interview, representative of the Ministry of Welfare, 13 November 2019). Despite its shortcomings, the OECD has evaluated the programme positively, and similar programmes are being implemented in other countries (OECD 2019b).

5.4 Conclusion

In conclusion, this case study illustrates the risks associated with atypical forms of work in Latvia, mainly their consequences for social security coverage and old-age poverty. The widespread misuse of micro-enterprises or (bogus) self-employment contracts and their persistence is partly driven by employees' own willingness to reduce their taxes owing to the paucity of government-provided services, fear of causing businesses to close, lack of understanding of the consequences of low social security contributions, and a number of other factors. While the authorities have taken steps towards limiting such practices, more needs to be done in light of the changing labour market, in particular the growth of telework and platform work, which make atypical forms of work even more tempting and difficult to control. Ministry of Welfare representatives argue that in recent years understanding has grown that a highly productive economy cannot be developed based on only very basic social standards (interview, 13 November 2019). Latvia is following the goals set at EU level, and the largest EU member states (for example, France and Germany) want social standards and guarantees to be improved in the EU. There is still a lot to be done, but some progress has been made in Latvia.

6. CONCLUSIONS

We have highlighted some of the main challenges facing social dialogue systems in the Baltic states in tandem with changes in the world of work: the emergence of new forms of work, changes in existing occupations and a growing need for more flexibility. The general context in the Baltic states is limited social dialogue, albeit with a number of recent positive developments. The issue then is to what extent achieving better social outcomes hinges on the activation of social dialogue. One measure emphasized repeatedly by the interviewees in different countries concerns the more active use of collective agreements to take into consideration, for example, the needs of specific sectors in relation to flexibility. Positive cases in Latvia include the possibility of reducing overtime pay if a sectoral agreement is concluded. However, social dialogue and, in particular, the use of collective agreements is seriously hampered by the low density of both employee and employer organizations in the Baltic states. While social partner representativeness seems to be an issue throughout the EU, it is particularly acute in the Baltic states because their coverage rates are the lowest in the EU, especially the conclusion and extension of collective agreements. As demonstrated by our study and earlier studies, a stable economic environment would be the most favourable in which to do something about this. During the financial and economic crisis, social dialogue was dismantled. The very tight labour market in the 2010s was also unfavourable from this standpoint. Sometimes organizations (for example, the LDDK in Latvia) have explicit membership or representation targets. The social partners have argued that effective social dialogue requires a change in workers' attitudes, for example, that they should be more active in problem-solving rather than trying to escape difficulties by changing employer.

Developing social dialogue is crucial in order to be able to respond to changes in the world of work. Furthermore, in the Baltic states, similar to many other countries, a high proportion of jobs are vulnerable to automation. Stakeholders envisage a number of

positive outcomes from automation and digitalization; however, governments, workers and even trade unions have yet to address the risks likely to arise from automation and digitalization. In the Estonian energy sector, for example, the rise in price of CO₂ quotas is endangering jobs. It is generally agreed that the social partners need to take a more active role in the re-qualification of workers likely to be affected by these changes. For example, there is an important role for skills funds in Latvia. Of all the Baltic states, it is Estonia in which platform working is most prevalent, but the trade unions have not yet addressed this phenomenon. The case study of Latvia in this chapter illustrates the risks associated with atypical forms of work, mainly their consequences for social security and old-age poverty risk of workers.

NOTES

1. Work on digital platforms has several advantages, but also some risks. Platforms portray themselves as service intermediaries, not employers, and take this opportunity to treat those who provide the services as independent contractors. This deliberately conflates and confuses the definition of employee and employer, facilitates competition on the basis of cost-cutting, creates problems with recording working time and reconciling work and family life, puts safety at work at risk and, in many cases, leads to down-skilling. Finally, in many instances platform workers are self-employed and tend not to be covered by social protection (European Commission 2018a).
2. Drahokoupil and Fabo (2016) argue that the term ‘collaborative economy’ is misleading as it is an extension of the market mechanism; the same line of argument can seemingly be applied to the concept of sharing economy. There has been a rise in Internet labour market matching (Askitas and Zimmermann 2015), but even the platforms that do not enable self-employed workers to provide services but instead facilitate access to goods have important labour market effects (Drahokoupil and Fabo 2016).
3. In this study, the term ‘platform work’ was used in a broad sense to refer to paid tasks that are found via a website or app accessed via a laptop, smartphone or other Internet-connected device. The renting of rooms via Airbnb (or similar) and buying or selling goods online were excluded.
4. The entrepreneur account is promoted by the state of Estonia as a new, simple and affordable way of doing business. The business income tax rate is 20 per cent of the total amount received on the entrepreneur account if the amount does not exceed €25 000 per calendar year and 40 per cent of the amount exceeding €25 000 received on the entrepreneur account per calendar year. Signing written contracts, issuing invoices and accounting and tax reports are not required when using an entrepreneur account as the Tax and Customs Board calculates the tax liability on the basis of payments into the account.
5. As part of this case study, representatives from the following government departments and confederations were interviewed by Inta Mierina: the Ministry of Welfare, the Latvian Confederation of the Employers (LDDK) and the Free Trade Union Confederation of Latvia (LBAS).
6. Active employment measure for the unemployed to enable them to acquire and maintain job skills through public work carried out in municipalities, associations or foundations, with no intention of making a profit. This is aimed at people who do not receive unemployment benefits, those who are registered with the public employment service for more than six months or who have not been working for at least 12 months.

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