

UNIVERSITY OF MANCHESTER

Joint Regulation and Labour Market Policy in Europe during the Crisis

Comparative project report

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November 2014



European Work
and Employment
Research Centre

Project: Social dialogue during the economic crisis: The impact of industrial relations measures on collective bargaining in the manufacturing sector (incorporating social dialogue in manufacturing during the sovereign debt crisis)

Employment, Social Affairs and Inclusion DG 'Industrial Relations and Social Dialogue'
VS/2013/0409

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1. Executive summary of the project report

1.1 Introduction

Against the background of a profound economic crisis in Europe, wide-ranging labour market changes are radically transforming the national systems of collective bargaining in a number of EU Member States. A research project, funded by the European Commission and coordinated by academics in the University of Manchester with the collaboration of teams from European universities, sought to understand how the crisis-driven policy measures translate into changes in collective bargaining in manufacturing. Specific questions included: What have been the effects of the measures for the process and content of collective bargaining at the national, industry and company level? How do employers and trade unions respond to the new regulatory framework and what have been the implications for the outcomes of collective bargaining on issues such as wages, employment conditions and gender equality? How can the comparison of the measures, their respective effect and social partners' strategies be used for EU and national policy-making as well as cross-national learning and knowledge exchange for social partners?

The research took a comparative approach to examine the ongoing changes in seven of the countries most affected by the crisis and which had undergone major labour market measures: Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain. The focus of the research was on manufacturing because, being an important sector in the business structure of all the countries, it was also an industry with a long tradition of collective bargaining, enduring industrial relations institutions and good practices of multi-level bargaining. The research in each country involved the collection and analysis of primary and secondary data on the social partners' approach (employers, trade unions and the state) and strategies to the measures in collective bargaining. A number of company case studies were also carried out in sub-sectors of manufacturing, including metal but also food and drinks, textiles and footwear, medical devices and chemical and pharmaceutical. This executive summary synthesizes the main issues, reports key findings and discusses their policy implications for national and EU policy-making in the area of social policy and industrial relations.

1.2 The supranational pressures and the national response to the economic crisis

Against the context of a deepening economic crisis exposing the structural weaknesses of certain Member States but also the Eurozone governance, the response at supranational level has been multi-faceted. In the case of Greece, Ireland, Portugal and Romania, they became subject to economic adjustment programmes, consisting of loan agreements and accompanying Memoranda of Understanding (MoU) outlining a range of fiscal policies and structural measures in labour market regulation. While Italy, Slovenia and Spain were not the subject of such assistance (with the exception of the financial sector in the case of Spain), they were still subject to reinforced EU monitoring of public deficit and macro-economic imbalances, whilst at the same time being the recipient of more informal means of influencing domestic developments in the labour market (including secret letters from the ECB in the cases of Italy and Spain).

In terms of subject-matter, the above-mentioned interventions were aimed at a policy of 'internal devaluation', seen as the only feasible route to the restoration of the

competitiveness of the national economies in terms of unit labour costs. The promotion of such measures has challenged the pre-existing consensus on the European Social Model, which was characterised by its uniqueness in including a high coverage rate of collective agreements and a designated role to trade unions and employers (European Commission, 2010). In this context, the measures are inconsistent with previous judicial, legislative and constitutional acknowledgement of the role of freedom of association, trade unions and collective bargaining in the 'European Social Model'. In terms of regulatory instruments, the institutional response to the crisis at supranational level has meant an increase of harder forms of intervention, marking a significant departure from the previous approach of the EU largely limiting itself to making more or less non-binding recommendations on national wage and labour market policies as part of its economic and employment policy guidelines. On the basis of these developments, there is evidence of transfer of decision-making from the national to the supranational level, accelerating as a result the process of European integration in the area of social policy and industrial relations.

At the national level, the measures of collective bargaining and labour relations systems have been exhaustive. The move to unilateral actions by the state was a response to a specific set of externally led conditions being placed on these nations, and thus allowed governments to transfer culpability and legitimate the lack of social dialogue in terms of these measures. There have been moments where social partners have attempted to address the outcomes of such measures in terms of the high levels of precarious work amongst younger people and those effected by the crisis, but these have been less than effective at the national level and restricted by the state focus on collective bargaining and austerity measures. The role of the social actors in the adoption of the measures is a complex issue, as in some cases the state has been reluctant to engage with them; and even when there has been involvement of social partners the focus has been on specific types of minor measures of a piecemeal nature (with the exception of Portugal) with very few concessions in the way of worker rights or social support. Many of these measures respond directly to the paradigm shift within MoU and the Troika, which extol the decentralisation of collective bargaining as a panacea and solution to both the crisis and the structural problems facing the European economy. They have also emerged in a context where the trade union movement has been politically challenged not just by the troika but the national governments forcing through measures.

1.3 The crisis-related labour market measures in the context of existing traditions of industrial relations

Collective bargaining and joint regulation in the seven countries were coordinated through various national and sector level arrangements. However, there was more flexibility and room for manoeuvre than at first meets the eye. There were relatively coordinated industrial relations systems in these seven countries, sustained by an element of renewal and change. In five of the seven cases (Greece, Portugal, Romania, Slovenia and Spain) these systems had been forged during difficult transitions from hierarchical and authoritarian political contexts during the 1970s or early 1990s. The notion of a static and dysfunctional system of collective bargaining prior to 2008 is an unfortunate - and in our view - incorrect stereotype which fails to outline the relatively mature development of social dialogue which included innovations on learning, training, equality and other agendas. The subsequent crisis of labour market regulation after 2008 was driven by agendas that deemed sector level and national level regulation as somehow problematic or anathema to economic efficiency. Much of this was driven by political interests and orthodox economic views.

At a broad level, the labour market measures were consistent with the commitments undertaken by the governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. As such, the provisions of the latter have been indeed very intrusive, albeit to varying extent, to national systems of labour law and industrial relations. In summary, national labour market measures have taken place with respect to four main pillars of the employment relationship: a) they challenge the role of full and open-ended employment and promote instead flexible forms of employment, b) they encourage working time flexibility that is responsive to the companies' needs; c) they mitigate employment protection against individual and collective dismissals; and d) they modify the pre-existing configuration in the systems of collective bargaining and wage determination. In terms of the latter, the measures included first restricting/abolishing extension mechanisms and time-limiting the period of which agreements remain valid after expiry; secondly, measures related to the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation; and, finally, weakening trade unions' prerogative to act as the main channel of worker representation (Marginson, 2014: 7-8). In introducing these changes in all four pillars the measures have substantially increased the scope for unilateral decision making on the part of the management and have undermined the support for joint regulation of the terms and conditions of employment. Overall, the measures have shifted the regulatory boundaries between state regulation, joint negotiation and unilateral decision-making by management, with significant implications for the role of the industrial relations actors.

1.4 The impact of the measures on the structure of collective bargaining

Overall, the impact of the measures on industrial relations and social dialogue has consisted in a crisis of collective bargaining at different levels, including not only national but also sectoral and company levels. However, the degree to which different EU Member States have been affected at different levels is not the same. The research findings from the project suggest that three types of systems of collective bargaining have emerged following the emergence of the crisis and the implementation of labour market measures: systems in a state of collapse, systems in a state of erosion and systems in a state of continuity but also reconfiguration (see also Marginson, 2014). Rather than these being clear-cut types, they represent points in a spectrum ranging from systems in a state of continuity at the one extreme and systems in a state of collapse at the other extreme.¹ On the basis of this, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent as Romania and Greece, they still face significant obstacles in terms of disorganised decentralisation, withdrawal of state support and as such experience erosion (i.e. Spain, Ireland, Portugal and Slovenia). Finally, the Italian system of bargaining could be seen as being closer to a state of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

Three key factors may explain the differences and similarities in terms of the impact of the measures on the bargaining systems. The first factor accounting for the similarities and differences in terms of the impact is the extent of the economic crisis and in particular of the measures adopted in light of the crisis. Whilst the measures targeted both employment protection legislation and bargaining systems, the extent to which they were far-reaching and wide-ranging was different (e.g. compare Greece and Romania with Italy and Portugal). The second explaining factor is the extent to which the measures were introduced on the basis of

dialogue and deliberation between the two sides of industry and the government. There is evidence to suggest that where the measures have been introduced on the basis of consultation with the social partners and are less influenced by the Troika, the effects are less destabilising rather where the measures are introduced unilaterally (e.g. compare Italy and Portugal with Greece and Romania). Finally, the pre-existing strength of the bargaining systems, including how well articulated and coordinated they were pre-crisis (e.g. compare Italy with Spain, Greece and Romania), was crucial. The extent to which the procedural innovations introduced by the measures were incremental or radical in nature was here important (Streeck and Thelen, 2005). In cases where the measures departed completely from the pre-existing norms of bargaining, such as in Greece and Romania, the measures have led to the breakdown on existing arrangements. In cases where the measures were rather incremental, Italy being a case here, the risk of conflicts leading to a breakdown has been minimised.

1.5 The impact of the measures on the content and outcomes of collective bargaining

As the economic downturn led to extensive restructuring processes in manufacturing that had an immediate and significant impact on employment, trade unions in the seven countries became increasingly concerned with minimizing job losses. While these circumstances led to a general downward pressure on wages, their actual impact depended on a number of factors that varied across countries. These included firstly, the breath and magnitude of labour market measures, namely the extent of decentralization of collective bargaining and of the reduction in coverage as well as the degree to which they enabled downward wage flexibility at the firm level. These processes appeared less pronounced in Italy and Slovenia - where the social partners were able to retain to considerable extent their role in wage setting, than in Greece, Ireland and Spain - where the changes enabled individual employers to use wage reductions as part of their responses to the crisis, with trade unions unable to avoid them and in some cases even agreeing to them in an effort to minimize job losses. In Romania, the dismantlement of national and sectoral bargaining also severely constrained unions' ability to achieve wage increases and to protect workers from low pay in a country where wages were already extremely low.

A second factor was how these processes interacted with developments in national minimum wages. In some cases, such as Greece and Ireland, cuts in the minimum wage contributed to aggravate a downward trend with the most extreme example being Greece, where the 22% reduction in the national minimum facilitated reductions in firm-bargained and individually contracted wages. This effect was the opposite in Slovenia, where a significant increase of the minimum wage played a protective function on bargained wages. In some cases, other forms of state intervention in pay setting, as in the case of Portugal where a statutory reduction of overtime pay superseded collectively agreed higher rates, negatively affected the earnings of manufacturing workers. Finally, the pre-existing system of collective bargaining and the way the social partners responded to the measures was pivotal in mediating their impact on wages. For instance, in Italy, unilateral state intervention facilitating derogations was counteracted by a bilateral inter-sectoral agreement that contributed to limit the impact of the derogations. In both Italy and Slovenia, the impact on wages was also mitigated by the responses of employers, who used new derogation opportunities for increasing working time flexibility at the firm level but refrained from doing so for reducing or avoiding increases in wages.

Our country cases support the idea that the measures contributed to the adaptability of firms mostly by facilitating their ability to adjust working time, employee numbers and above all, quickly and drastically reduce labour costs. In this sense, the governments' objective of greater wage flexibility at the firm level has been achieved. However, the extent to which they helped resolving the problems of the countries most afflicted by the crisis is contested on the basis the path of crisis-exit strategy focused on internal devaluation and downward wage flexibility rather than productivity gains may not lead to long term competitiveness and sustainable economic growth. In addition, as the measures weakened trade unions and constrained joint regulation, the social costs of these changes were not duly considered. Indeed, there is evidence to suggest that they led to increasing divisions and inequities in the workforce such as differences in pay and working conditions between existing and new employees, along gender and age lines and between those in permanent contracts and those in atypical employment. In addition, in some countries such as Greece and Romania, the measures led to unintended negative outcomes, such as the growth of the grey market and undeclared payments that reduce the state's revenue from taxes and social security contributions. It turns, in line with Marginson's et al. (2014) argument that collective bargaining can address the negative externalities generated by the market, a number of cases from the countries studied illustrate how collective bargaining helped achieving improved responses that minimized costs not only for employers but also for employees.

1.6 Employers, trade unions and the state in the new panorama of labour relations: Responses and perspectives

Overall, the response by trade unions and employers to the changing landscape of collective bargaining reveals a range of issues and tensions in terms of the decentralization and changes to collective bargaining. The responses illustrate that there is no clear paradigm shift in the manner in which collective bargaining change is being engaged with. Instead, what we are experiencing is a process of change and fragmentation which is uneven and ambivalent in terms of its outcomes. The measures are being used in many cases to undermine and change the role of joint regulation: in some cases they are being used to bring compliance and change without the actual measures being directly used. There is a growing pattern of employer strategies which are premised on bypassing the roles of collective worker voice. There is also a state role which has facilitated this at various levels.

However, the extent of these changes varies. There are signs that in some cases there is a greater caution in undermining the legacies of social dialogue and the roles they have played. Social dialogue – albeit truncated and limited – has sustained itself in many organisational spaces. There are also visible signs of unease from many employers. There is concern with the risk of greater fragmentation in terms of collective bargaining and the ability of personnel managers to systematically work through the labour related questions. There is also the risk of a growing politicisation and change – especially the undermining of those trade unions with a culture of social dialogue in some cases as in Spain and 'realistic' bargaining. There is an increasing space for worker responses which may challenge management in more direct forms. Human Resource managers are also concerned with the ability of local management to cope with greater decentralisation and change. The pressure of local and site level management and Human Resource specialists appears to be growing.

Trade unions have been increasingly constrained in their ability to regulate and policy agreements although they have begun to formulate strategies of sustaining their role in core sectors, raising the awareness around low pay issues, and sustaining a combination of

mobilisation and negotiation strategies. The trade unions have referenced broader worker rights to representation in their responses and raised the impact on the democratic process of such measures. A real problem appears to be the growing dysfunctional features of the state and the failure of the state to work in tandem with social partners on the implementation of worker rights in terms of enforcement. The state is being brought into the management and support for new forms of bargaining in more direct and interventionist ways yet this is occurring just as the ability of the state to respond is being tested by the impact of austerity measures on such areas as labour inspection, judicial processes and state mediation services.

1.7 Conclusion and policy recommendations

The evidence from this study suggests that the policy approach promulgated by supranational institutions and adopted by national governments, has achieved the intended objective of internal devaluation, which was geared towards reducing labour costs, directly via straightforward cuts in wage levels but also indirectly via wide-ranging and radical measures in the systems of collective bargaining. But despite the impact of these interventions on labour costs and the fact that some Member States have exited the assistance programmes (e.g. Ireland and Portugal), the extent to which national economies have become more competitive, the prime objective behind internal devaluation policies, can be highly disputed, as the experience of depressed growth in the EU Member States so far suggests. Instead, significant externalities have emerged, ranging from increasing social divisions and inequalities, lower tax revenues due to high unemployment, growth of the grey market and undeclared payments to increasing discontent, social unrest and the rise of extremist movements. From an industrial relations perspective, a real concern becomes how the social actors and their capacity to respond and regulate is being undermined with serious long terms effect.

Against this context, it becomes necessary to reconsider at both European and national governance levels the role played by multi-employer collective bargaining in acting as a mechanism of ‘beneficial constraint’ minimizing the externalities of market and policy-driven adjustments. Central in this is a re-adjustment at national level of public policies in the area of labour market regulation towards viewing social dialogue and collective bargaining as part of the solution steering EU Member States out of the crisis and not as part of the problem. The establishment and support, via arbitration and mediation and enforcement of labour standards, of institutional mechanisms for greater coordination and articulation of bargaining at multiple levels should be considered. To that end, the evidence of continuing support for social dialogue and collective bargaining by employers, especially at sectoral level, is significant. Combined with trade unions efforts to improve the coordination of their bargaining strategies within their respective organisations and movements, there would be an increase in the scope for deliberation and consensual agreements on terms and conditions of employment. In turn, these policies would not only counteract but would also reduce any incentives for unwarranted intervention on the part of the state.

At European level and following the European elections and the signs of global economy recovery, there can be still scope for strengthening the social dimension of the EU with a particular focus on promoting social dialogue and collective bargaining. In order to do this, there needs to be a move away from the current promotion of ‘regulated austerity’ under the current institutional conditions of the ‘Six Pack’ and the Treaty on Stability, Coordination and Governance, but at the cost of depressed growth in certain Member States. Instead, measures for the promotion of an alternative concept of a European ‘solidaristic’ wage policy

(Deakin and Koukiadaki, 2013; Schulten and Müller, 2014), which is based on strong collective bargaining institutions and equitable wage developments should be promoted by both EU institutions and EU social partners. These would then provide a basis for a more sustainable economic development across different EU Member States.

2. Introduction

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

Given that social dialogue has been one of the key institutional features of the European social model, it is crucial to provide a detailed comparative analysis of the process, content and outcomes of collective bargaining, as influenced by the measures and in light of the EU’s 2020 goals of high levels of employment and social cohesion (EC 2010a). Earlier comparative studies have illustrated the positive impact of social dialogue in periods of crisis (Ghellab 2009). However, the majority of research on the impact of the crisis fails to address the specific question of the role of the structural labour market adjustments in reconfiguring the space for the articulation of management and employee interests and the development of social dialogue in a fragmented context. An important issue, thus, is to understand how the policy and legislative changes influence the form of collective bargaining at different levels and shape the content and outcome of collective agreements with respect to specific issues such as wages, employment conditions and prospects, quality of work, work-life balance and gender equality.

In focusing on a key sector of economic activity, i.e. manufacturing, the research project focused on three central themes. The first theme involved a critical assessment of the nature and scope of measures in collective bargaining. Building upon prior research by team members that stresses the processes through which the effects of the crisis, which began in financial markets, were transmitted to labour markets through the interventions of the Troika (e.g. Fernández Rodríguez and Martínez Lucio 2013; Koukiadaki and Kretsos 2012; Trif 2013), the research addresses the ‘context’ aspect of the labour market measures. Two key dimensions are investigated here: the labour market dynamics, as influenced by the worsening of the sovereign debt crisis, and the national politics and regulatory frameworks for the response to the crisis, as influenced by the approach of supranational organisations, e.g. the ‘Troika’ of creditors, and recent developments in the European economic governance, including the Fiscal Compact.

The second theme involved a critical assessment of the actors’ responses and the process and character of collective bargaining. The introduction of wide-ranging measures in social dialogue had the potential to lead to radical rather than incremental forms of innovation

(Streeck and Thelen 2005). In the manufacturing sector, this could involve the destabilisation of multi-employer collective bargaining and other forms of co-ordination with negative implications not only for trade unions, but also for employers' associations and central government/regional authorities. Against this context, it would be useful to develop a typology of the character of measure-driven agreements with respect to their procedural provisions and the factors influencing the pattern of responses by the social partners. It would also be interesting to assess whether a new model of bargaining is emerging with clear reference points for employers and unions – albeit different in nature – or whether the developments are ad hoc with no clear ideological or isomorphic underpinning. The third theme focused on the impact of the changes on the content and outcomes of collective bargaining. The measures involve a radical shift of the regulatory boundaries between statutory regulation, joint regulation by the social partners via bargaining and unilateral decision-making by management. On the basis that the terms of the trade-offs between the social partners may in turn shift as well, the research collected and analysed qualitative data, including case studies, at national, sectoral/regional and company levels. It then integrated the effects of changes in some key dimensions, including, for instance, wage-setting, employment conditions and prospects, quality of work, work-life balance and gender equality.

The present report synthesises the findings from the national reports and provides an assessment of the developments across the three themes identified above. Having provided the executive summary in the beginning of the report, the structure of the rest of the report is as follows. Chapter 3 provides an overview of the research methodology for the study. In this context, the rationale for the selection of the manufacturing sector as well as the specific EU member States is provided. The chapter also outlines the main research questions and the research methods for the conduct of the studies at national level. As will be seen, these included not only interviews with key actors, but also cases studies at company level and the organisation of workshops with the purpose of testing and validating the design/results of the research project. The state of collective bargaining pre-crisis constitutes the focus of Chapter 4. In doing this, the analysis provides a critical evaluation of changes and continuities in the national systems of bargaining up to the point when the crisis emerged. Attention is also paid to the conceptualisation of the bargaining systems in terms of rigidities, inefficiencies etc., as identified by supranational institutions but also domestic actors. Chapter 5 then deals directly with the institutional response to the economic crisis. As the response evolved at different levels and different stages, the analysis focuses on both the developments at European and national levels, including respectively the introduction of economic adjustment programmes and the operation of the European Semester, but also measures promulgated and adopted at domestic level. Following this, Chapter 6 then goes on to provide a detailed analysis of the substance of the measures to labour market regulation that took place in each of the seven countries. In doing this, the analysis pays attention not only to the labour market measures targeted directly at collective bargaining but changes in other areas as well that may indirectly influence the scope for joint regulation, including employment protection legislation and working time. The impact of the measures on the structure and character of bargaining is then assessed in Chapter 7; the analysis provides a typology of the impact of the changes and identifies factors explaining the differences and similarities between the EU Member States. Chapter 8 then goes on to discuss the impact of the measures on wage determination and other terms and conditions of employment. It also evaluates how the measures impacted on the role of different actors in determining these developments and critically analyses their significance. Chapter 9 provides a reflective discussion of the measures and their significance, while Chapter 10 concludes with a summary of the main findings and policy implications.

3. Methodology: Comparing changes and developments in industrial relations measures

With the overarching objective of investigating the impact of the labour market measures that took place in Europe during the crisis, the research takes a comparative approach to examine the process and outcome of these changes in collective bargaining in seven countries: Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain. These are countries that have developed more co-ordinated systems of regulation (especially Greece, Portugal, Slovenia, Romania and Spain) at a time when the organised and more co-ordinated system of labour relations in the 1980s and 1990s was being challenged. Hence, they represent a specific part of the Europeanisation project, which has attempted to develop more thorough and systematic approaches to regulation in what are more difficult circumstances. The national case studies were conducted by the following teams of academics: Ireland: Tony Dundon and Eugene Hickland (NUI Galway, Ireland); Italy: Sabrina Colombo and Ida Regalia (Università degli studi di Milano, Italy); Portugal: Isabel Tavora (University of Manchester) and Maria do Pilar Gonzalez (University of Porto, Portugal), Greece: Aristeia Koukiadaki and Charoula Kokkinou (University of Manchester, UK); Romania: Aurora Trif (Dublin City University, Ireland); Slovenia: Aleksandra Kanjuo-Mrčela and Miroslav Stanojević (University of Ljubljana, Slovenia); Spain: Carlos Jesús Fernández Rodríguez and Rafael Ibáñez Rojo (Universidad Autónoma de Madrid, Spain) and Miguel Martínez Lucio (University of Manchester).

The rationale for the selection of these countries was twofold. Firstly they were amongst the European countries most affected by the economic crisis. These are national cases which have borne the brunt of the austerity measures and which are closest in theory to seeing paradigmatic changes in their systems of industrial relations. This is the closest Europe is coming to a post-regulated context: in theory as our project based research reveals more complex and curious outcomes from the point of view of social dialogue. Secondly, their labour markets regulations had undergone major measures associated with assistance programmes or recommendations of European and other supranational institutions. The extent of ‘measure’ within these cases has been extensive and reveals a very challenging legacy and tendency within the European Union. They also in the main represent a key constituency within the ‘new’ Europe that have come into the European Community at later stages and which have not been always at the centre of core decision making apart from Italy.

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

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

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

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

The study took place in two main stages:

- First stage: From January to March of 2014 each of the teams conducted a systematic review of the prior regulatory traditions, of the process of measure and of the substantive measures to the legal framework regulating employment and collective bargaining in each of the countries. This phase of the research, which was mostly based on secondary sources, also examined the potential implications of the labour market measures for the national systems of social dialogue and especially collective bargaining.
- Second stage: This phase involved the collection and analysis of primary empirical data and mostly focused on understanding the impact of the measures on collective bargaining in manufacturing in each of the countries. This phase of the research took place between April and September 2014. This phase involved a range of activities. In each country the data gathering included three components:

Research interviews with relevant labour market actors that would be key informants about the impact of the changes on collective bargaining. These included political and organisational leaders, officers and legal experts from employers' associations and trade union structures that were involved in policy and practice of collective bargaining at the national and sectoral level. In addition, in some countries government official from the ministry of labour and other relevant departments were also interviewed: in some cases this involved former ministers. The data from interviews were complemented with reports and documents provided by the social partners and government interviewees and with the collective agreements when these were accessible. Experts within the university and social partners were also interviewed in some cases.

National workshops took place with representatives from social partner organisations and served as platforms for the exchange of views and establishment of dialogue between the social partners' institutions and the academic teams with a view to promoting learning about the impact of the measures on collective bargaining. Some of these workshops also involved government officials from the ministry of labour or other relevant departments. In most of the countries this workshop took place in the beginning of the empirical phase and fulfilled the

additional role of opening a path of access to relevant interviewees that could be key informants and to companies that would constitute relevant case study organisations. In Slovenia and Ireland the workshop was conducted at a later stage and in these cases it provided an opportunity to obtain additional data, clarify issues and validate the findings from the earlier stages of the research. In the case of Spain, the workshop consisted of competing employer views and allowed the event to become a detailed focus group in its own right. Some of the workshops were recorded and provided rich empirical data.

Company case studies in the manufacturing sector involved interviews with company representatives including senior management and HR managers as well as workers' representatives from trade unions and other representative bodies. The interview data at this level was also complemented documentary evidence, including the collective agreements in the cases where these existed and were made available. In some cases management and worker representatives were interviewed in any one company whilst in others it was sometimes only one dimension that was interviewed. Much depended on the extent of access however the project yielded a substantive set of data from cases overall.

In order to both enable the comparability of the research and capture the specific issues particular to each country, we sought to combine one industry that was common to all country contexts with other industry(ies) chosen by each academic team based on context-specific relevance and accessibility criteria. The chosen common industry was metal manufacturing due to its strong tradition of collective bargaining. The table below displays information on the sectors of the case studies in each of the seven countries. These were in the main manufacturing sectors and displayed strong traditions of social dialogue and collective bargaining activity. There were strong sector level bargaining traditions and highly organised social partners.

Table 3.1 – Company case studies and industries in each country

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

Based on these two phases of the research, the academic teams for each country produced a national report that summarized their findings regarding the process and substance of the regulatory changes and how these affected their respective collective

bargaining systems in practice. The comparison carried out in this report is based on the data provided by each of these seven reports. These reports were in the main based on interviews with the different levels of actors outlined earlier. However, in some reports the cases were presented in a case by case manner whilst in others the reports used the cases to outline key themes, outcomes and narratives with regards to the developments in terms of the measures.

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

4. The state of collective bargaining and industrial relations pre-crisis

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

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

These may not have been some of the strongest or more articulated systems of collective bargaining in Europe compared to some of their north European counterparts, somewhat contrary to the views of those who have criticised the rigidities of the systems of labour relations within these seven national cases studies. The systems did appear to have a positive and constitutional underpinning to the processes of collective bargaining except for Ireland which relied on a more voluntarist tradition as does Italy to an extent. Still even in such cases national dialogue managed to frame the existence of a social partnership tradition even if as in Ireland strong legally based systems rights regarding the recognition of trade unions are not apparent due to the influence of the British colonial legacy (Dundon and Hickland, 2014). Yet overall, most of the countries in the research have exhibited significant activity in the manner in which joint regulation operates and consist of institutional relations that reproduce some - at least - of the aspects of a co-ordinated market economy (Hall and Soskice, 2001).

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

Trade Union membership as an average of the national workforce in 2008²

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

We see these cases clearly in the second tier of trade union membership levels in Europe. However, except Spain they are all above 20% and in some cases closer to 50% as in Romania. What this data reveals is two things.

First, that if one accounts for the fact that in most of these countries there is also a tradition of state sanctioned works council or workplace representative elections: through these mechanisms regarding representativeness and the right to bargain, trade unions are considered to be the legitimate voice for the vast majority of workers even if membership is below 50% on average. Even in Spain, which is below 20% in terms of trade union membership, over 80% of the workforce participate in workplace representative and works council elections. This means that trade unions are important state sanctioned and legally recognised points of representation for the workforce of their countries especially in relation to the purpose of collective bargaining.

Secondly, that in the seven countries under analysis we see that such membership figures are actually quite high if we account for the political background of five of these countries especially. Greece, Portugal and Spain emerged from authoritarian contexts in the 1970s and had to construct liberal democratic system of government and governance in a short period of time. They had to move from state corporatism or the direct state control of labour relations to societal or liberal corporatism in a very short period of time (Schmitter, 1974). In the case of Portugal and Spain, these military authoritarian legacies ran from about a third to half a century. Hence trade unions had to create independent structures in a very short time phase (see Martínez Lucio and Hamann, 2009). Independent trade union representation in Romania and Slovenia was prior to 1990 dominated by the state and state oriented parties with very little autonomy and tradition of bargaining and trade union activism of an independent nature. The nature of social dialogue was symbolic and enforced (Trif, 2014). Why is this relevant? What we need to appreciate is that these countries have had to build up a system of independent collective bargaining - and systems of social dialogue in general - in a shorter period of time and in a context where workers and employers have not had the time to create traditions of social dialogue and reciprocal relations. Furthermore, relatively lower levels of membership means that the onus for organising the activity and resources of the worker side of representation falls on much weaker and more vulnerable national and sectoral organisations. What is more, in relation to Spain it has been argued that the actors of industrial relations have had to construct a system of *organised* labour relations and state intervention within the labour market, work and society at the very point in time (the 1980s and 1990s) when these 'post-war' systems are becoming *disorganised* through neo-liberal economic policies and changes to the notion of the Keynesian welfare state (Martinez Lucio, 1998). This argument is relevant to those five national cases in particular as well.

In this respect, the achievements of these countries are notable. The representation of worker interests – and even employer interests - is much broader in terms of bargaining functions and this leads to the key issue of how joint regulation has been structured in such contexts prior to 2008. In fact, in 2013 research by the EIRO pointed to quite significant roles for coordinating sector bargaining in such countries as Spain³ where higher tiers of the social actors played an important role compared to other contexts. Even in Ireland we saw national negotiations prior to 2008 having evolved to deal with national wage related issues. Yet whilst these traditions varied, all the countries studied had some degree of sectoral and/or state co-ordinating element in terms of wage increases and collective bargaining activity during the 1990s and the 00s. Many of these cases had state level support for the

regulatory coverage of workers through sector or national level agreements, and higher tier agreements in most cases were extended beyond those companies with company or workplace level agreements of their own. In some cases, there were national agreements on pay to frame the negotiations whilst in others such as Portugal national state level negotiations were more recently mainly about broader social issues and the minimum wage although tended not to deal with wages.

We can summarise the basic characteristics of collective bargaining at various levels in the following table:

Table 4.1 Main features of the collective bargaining systems pre-crisis

Country	Inter-sectoral level	Sectoral level	Company level
Greece	National general collective agreement (EGSEE)	-Predominance of sectoral bargaining -Statutory extension procedure	-Terms and conditions on top of those set at higher levels -Union representation in companies employing more than 20 employees
Ireland	Framework of a series of national agreements (National Social Partnership Agreements)	-Some industry level agreements (e.g. construction) -Extension procedure (REAs)	Single-employer model of bargaining with limited intervention by the state
Italy	National general agreement between the two sides of the industry on the rules of collective bargaining	-Predominance of sectoral bargaining	-Absence of great coverage of company agreements -Concentrated in medium and large companies
Portugal	Social pacts (mostly tripartite) for employment and social issues but not on income policies since the 1990s except NMW	-Predominance of sectoral bargaining -Quasi-automatic extension	Relative rarity of such agreements, if existing, improved on sectoral ones
Romania	National general collective agreement setting down floor of rights	-32 branches eligible and 20 branches with CAs - Statutory extension procedure	-Terms and conditions on top of those set at higher levels - Union representation if membership $\geq 33\%$
Slovenia	Practice of social pacts and consensually accepted income policies	Implementation of income policies by sectoral agreements	-Several thousand collective agreements at company level -Possibility for derogation in pejus from higher agreements
Spain	Loose social pacts and general national agreements of pay	- Principle of statutory extension -Ultra-activity period	Fairly articulated bargaining and sector level frameworks for company bargaining but questions of implementation

In terms of establishing minimum working conditions and wages the higher tier in Greece could be extended to all workers and this pre-crisis approach allowed for unions to negotiate beyond their particular areas of strong and embedded representation. This extension principle meant that lower level agreements were underpinned and regulated by multi-employer agreements. In many respects, this was the case in Spain and other national cases as well. Sectors such as metal and chemical manufacturing in particular were known for such forms of co-ordination. In the case of Ireland, where multi-employer bargaining was more complex and less developed, Joint Labour Committees as independent committees established minimum pay for a range of less organised sectors, although national negotiations were important. In Italy, sector level agreements have been an important platform for regulation in terms of wages and conditions backed up by periodic engagement with social dialogue at the national level depending on the political contingencies of the time (Colombo and Regalia, 2014). The removal through dialogue of the *scala mobile* in 1992 and the move towards a more concerted attempt at social dialogue based on competitive economic criteria had generated - even during the volatile political period of the 1990s and 00s - moments of social participation. However as in various countries such as Spain although wages were seen to be significantly regulated by this multi-employer focus, the rigidities in terms of employment and redundancies were being seen as a major impediment by the OECD and others for significant competitive based change in terms of labour mobility.

Throughout these countries what we experience is a curious framing of lower level collective bargaining. It was primarily located and supported through the national and/or sector level of activity: and the importance of sector level trade union structures and employer associations was reinforced through such periods in the past thirty years or so. This southern European model reflected specific types of organisation and state traditions linked to the importance of sector level activity (Molina and Rhodes, 2007). In some cases, they reflect previous state corporatist structures (Lehmbruch, 1985; Schmitter, 1975) where previous authoritarian contexts had intervened through establishing higher tiers or sector focused activities which mutated during democratic periods after the 1940s or the 1970s: in some cases into more robust voice mechanisms and spaces for coordinating workers.

In the case of Portugal we see such mechanisms developed for example in a similar way to Italy and Spain. The role of the social dialogue driven national forums and the importance of establishing a national reference point for wage negotiations – even if wages were not always explicitly discussed - and basic working conditions underpinned the sectoral frameworks. However, what is notable in the case of Portugal and to a great extent this is mirrored in Spain and some other cases too, is the emergence of a politics of social dialogue and in particular stable collective bargaining policies through the increasing prevalence of more moderate trade unions with a social democratic heritage or inclinations towards social dialogue, and the steady institutionalisation of the more radical majority left trade unions. This development was important in creating in countries such as Portugal and Spain a tradition of social pacts and discussion which, whilst contingent on specific themes and aspects of social measure, managed to create a less conflictual system of industrial relations: one needs to recall the political context of Greece, Italy, Portugal and Spain in the 1970s for a true appreciation of the extent of labour relations ‘normalisation’. In fact, here rests an irony when discussing the pre-2008 labour relations panorama in these contexts. Whilst certain forms of labour market rigidities remained in terms of internal and external labour markets, and whilst wages were determined through relatively regulated systems, the extent of social dialogue and the manner in which social pacts and sector level discussions took place had

evolved significantly – rightly or wrongly depending on one’s point of view – from the expectations of the 1970s and 1980s where social conflict appeared a more likely outcome.

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

Throughout these national contexts – especially those in southern Europe – the larger companies have been able to develop their own frameworks and structures with respect to setting wages and conditions – cushioned by the minimums established at the higher levels through sector level arrangements. Smaller and medium sized companies have been able to rest on higher tier agreements be they at the sector or sector regional level to assist in the process of regulation and labour management: in some cases this leads to local sector agreements which are more relevant for such firms. This principle of extension in the content of higher tier agreements was common in all these contexts especially the southern European contexts within the project. This has also been supported, as in the case of Spain and Portugal, through the development of agreements that cover training and are able to link into new themes of collective bargaining which are framed by new tripartite commitments and structures.

In the case of Romania and Slovenia we saw these higher tiers play an important role with sector level agreements - in the former – existing in 20 of the 32 sectors eligible for collective bargaining (Trif, 2014). In Romania trade unions played an active part in sector level activity and there was statutory extension of such sector level agreements to all workers in a sector. In fact, this is an important feature of the European context where representativeness be it through works council elections of membership rates are a formal and state sanctioned basis for the regulation of working conditions through higher tier mechanisms. In fact according to Stanojevic and Mrcela (2014) Slovenia can be considered during the pre-2008 phase to have been a relatively coordinated market economy due to such factors unlike other post-communist nations. The replacement of general agreements for the

private and public sector with sector level agreements in Slovenia suggests that the system – which had 90% coverage – was indicative of how the sector became the prevalent and accepted space for regulation in the European Union. Whilst membership fell from 43 percent in 2003 to 26 percent in 2008 due to changes in legislation amongst other factors, collective bargaining in Romania and Slovenia is present within workplaces but it has been guided by national and sector level dialogue.

Within these national cases we have seen that prior to 2008 some further changes in terms of content of collective bargaining. The notion that they were static (something the next section confronts) is questionable. In the case of Spain the emergence of equality legislation under the Zapatero government (2003-2011) meant that firms had to develop equality plans within their collective bargaining frameworks. In many of the national cases studied colleagues found examples of training and development entering the content of collective agreements in terms of right to training and time off for training as in Portugal. As in Italy and Spain this was normally sustained by national and regional social dialogue mechanisms on learning (e.g. continuous learning, new forms of skills, and employability) (Stuart, 2007). In Portugal there was a bipartite agreement on training in 2006 to improve the education qualifications of the population, promote skills development, life-long learning with a view to improve working and living conditions, productivity and competitiveness. The social partners also committed to make training a bargaining priority. All the union and employer confederations signed the agreement and invited the government to associate to it in the last point (Social and Economic Council of Portugal, 2006). In the case of Greece, there were attempts, albeit with mixed results, to widen the set of issues discussed within the framework of the National General Collective Employment Agreement (EGSEE). The driving force behind this was in many cases developments at EU level, either in form of the recommendations provided to Greece under the European Employment Strategy (e.g. on employment and vocational training) or in the form of autonomous agreements concluded between the European social partners in the case, for instance, of stress at work and telework.

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

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

What patterns or characteristics existed prior to the 2008 period? Can we speak of an articulation of bargaining in such a set of national contexts? The first is the importance of multi-employer collective bargaining backed by varying degrees of social dialogue at the level of the state. In Ireland and Spain for example social partnership developed as key features of the national system of labour relations although one could not argue that they mirrored Austrian or Finnish approaches. Secondly, agreement at the higher level were often extended as a cushion of support for the lower levels which were more exposed or had less regulatory strength. The sector became the metaphor and platform for organisation and regulation. In terms of manufacturing this was common in almost all countries studied. The sector is the space within which the ‘common’ terms and conditions of work and the ‘shared’ experiences of work and activity can be co-ordinated.

This has evolved steadily in these countries since the 1970s forming a backbone of support for the ever diversifying and fragmenting nature of production. Thirdly, there has emerged a culture of regulation and a sharing of expectations – albeit in varying ways – between the social partners. In many of the cases studied there was a sense of a shared history and struggle as different challenges such as external competition, European Integration and industrial change have been responded to through formal and informal agreements. Whether these factors constitute a system of coordinated market economy is another matter. There is no doubt the state has been assisting trade unions in playing these roles through training and institutional supports – which in some cases have led to controversial experiences of proximity. However, there was by 2008 a system of flexible social dialogue and strategic corporatism which was responding to new social and economic changes and to an extent modernising to varying degrees (Martinez Lucio, 2000).

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

Thirdly, critical voices to the right of the political spectrum began – even prior to the 2008 crisis - to undermine the partial social partnership consensus that had been generated in the European Union's 'periphery'. In some respects, the critique of excessive institutionalisation was an emergent feature of countries such as Spain although this sometimes came from the new forums of the left as well which were disillusioned with the proximity between the state and labour (see Fernandez Rodriguez and Martinez Lucio 2013 for a discussion). There was the sense that organised labour were primarily focusing the source of their influence on the sector and national level, relying less on the workplace as in Ireland and Spain. The debate in key parts of Europe was that trade unions were not present in a systematic way in various arenas and levels of the economy.

This was a concern emanating from various political quarters on the centre and the right, which argued that the focus on the sector level was also a sign of growing weakness and lack of regulatory reach in real and effective terms. Sector agreements allowed templates for discussion and local agreements to be developed locally which did not bring to the negotiating table any significant measures on structural issues and labour market challenges. That is to say – it was argued that trade unions were using such regulatory processes to ensure some influence amongst a diversifying set of organisations and workforce that was not

always developing its own robust social dialogue and collective bargaining mechanisms and business oriented involvement (see Ortiz 1998 in his comparison of the UK and Spain in the 1990s on the presence of workplace systems of representation).

Finally, and unfortunately in the eyes of the authors, much of this critique has been led by the Anglo-Saxon press in the form of *The Economist* and *The Financial Times* which has increasingly depicted the inflexibility of such countries in terms of national stereotypes in a racist nature. The use of the terms PIGS (Portugal, Italy, Greece and Spain) is a racist term which denotes undeveloped characteristics in its political systems and an inability to measure (see Dainotto, 2006 and for a use of the term which raised formal complaints Holloway, 2008). Much of this discussion comes at quite an early stage of the crisis and even before in some instances. In the case of Spain the labour market rigidities are seen as part of a perspective on Spanish laziness and immobility – a link to a darker Spain that plays on the notion of the ‘black legend’ (see Fernandez Rodriguez and Martinez Lucio 2013 for a discussion).

5. The institutional response to the crisis at European and national level

5.1 The institutional response to the crisis at European level

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

From a labour law and industrial relations perspective, there is evidence to suggest that even with the gradual implementation of the programme of the EMU from the Treaty of Maastricht onwards, and the deepening of internal market reforms, labour law at member state level did not undergo a fundamental change before the crisis. Part of the reason for this was a fundamental compatibility of labour law protection with the competitiveness agenda which came to influence national and European policy making at that time and which recognised the ‘beneficial constraints’ effect (Streeck, 1997) of social policy on economic development and competitiveness. However, labour law regulation was unable to reverse the trend towards weaker collective bargaining systems and falling union density, and these developments, as they weakened the force of labour law protections on the ground, were responsible, at least in part, for the increase in inequality experienced in the large EU economies, as well as in the US, during the period leading to the crisis. When the crisis of 2007-8 emerged first in the US, connections between labour and financial markets meant that regulatory mismatches were transmitted from one market context to another, reinforcing and deepening the crisis (Deakin and Koukiadaki, 2013).

Against the context of a deepening crisis affecting different EU Member States and challenging the European integration project, the institutional response at EU and at EU Member State level evolved in different timeframes and diverse ways. First of all, a number of EU Member States received financial assistance programmes. The programmes can be divided in the following categories:

1. Non-eurozone programmes: these have been introduced on the basis of article 143 TFEU.⁴ This option has been used in the case of non-Eurozone Member States, namely Hungary, Latvia and Romania.⁵
2. Eurozone programmes:

- a. Bilateral (Eurozone Member States set up bilateral loans complemented by an IMF stand-by arrangement): provided financial assistance in the case of Greece I (2010);⁶
- b. European Financial Stabilisation Mechanism (EFSM) (on the basis of article 122(2) TFEU):⁷ provided financial assistance in the cases of Ireland and Portugal;
- c. European Financial Stability Facility (EFSF) (international agreement for the establishment of a private company under the control of the Eurozone member states):⁸ provided financial assistance to Ireland, Portugal and Greece II;
- d. European Stability Mechanism (ESM) (intergovernmental Treaty):⁹ provided financial assistance to Cyprus.

On top of the financial assistance programmes that are directed towards individual states, the EU Member States' coordinated response was a new set of rules on enhanced EU economic governance. These include the European Semester, the Six-Pack Regulations¹⁰ and the 2011 Fiscal Compact,¹¹ denoting a new and challenging stage in the process of European integration and the direction of European social policy (Ioannou, 2012). The European Semester – a mechanism according to which the Member States, after having received EU-level recommendations, then submit their policy plans ('national measure programmes' and 'stability or convergence programmes') to be assessed at the EU level, constitutes a 'complex, multi-layered, multi-institutional process, which encourages, inter alia, significant measure to labour law systems in some countries' (Barnard, 2014: 7). This is because within the framework of the European Semester, the Country-Specific Recommendations (CSRs) relating to economic policy and employment under the European Semester procedure are adopted.¹² As a result, EU Member States become committed to economic policy coordination and are dissuaded from implementing policies that could endanger the proper functioning of the EMU. In addition, employment is brought to the centre of the EU economic policy and Member States are required to submit regular reports on their employment situation.¹³ The European Semester mechanism was then followed in 2011 by the so-called 'Six-pack' of five Regulations and one Directive, reinforcing the Stability and Growth Pact even further. In March 2012, the intergovernmental Fiscal Compact (Treaty on Stability, Coordination and Governance in EMU (TSCG) was signed by 25 of the 27 EU Member States, with the exception of the United Kingdom and the Czech Republic. The aim is to reinforce the SGP and to introduce new control mechanisms. It requires national budgets to be in balance or in surplus and the rule has to be incorporated into national law within one year of the entry into force of the Treaty.

5.2 The implications of the EU's institutional response for social dialogue and collective bargaining at national level

In the context of the financial assistance programmes received by specific Member States, policies of 'internal devaluation' have been promulgated by supranational institutions. As we shall see also in chapter 6, the policies involve, among others, a set of structural measures in the area of labour law and industrial relations for the EU Member States most affected by the crisis. In the absence of exchange rate flexibility, internal devaluation has been presented as the only feasible route to the restoration of the competitiveness, in terms of unit labour costs, of the southern European member states in relation to Germany and other Eurozone states, including Austria and Finland, which are closely integrated with the German economy (Deakin and Koukiadaki, 2013). This competitiveness gap is in part the result of the social pacts which depressed wage growth in the northern member states, as well as the high

productivity achieved in part through the institutionalisation of workplace cooperation in those countries, and not replicated elsewhere (Johnston and Hancké, 2009).

Yet, the focus of measures has been exclusively on the labour law regimes of the EU Member States mostly affected by the crisis (Deakin and Koukiadaki, 2013). From a substantive point of view, an examination of the accompanying Council Decisions and Memoranda of Understanding (MoU) to the financial assistance programmes received by the Member States in crisis reveals indeed that their provisions have been very intrusive to national systems of labour law and industrial relations. An important aspect of the intrusiveness lies in the fact that they promulgate policies in a wide range of issues: these include entail restrictions on social security benefits and cuts to state education and health provision, as well as minimum wage reductions, extensions to the working week, the removal of legal support for multi-employer collective bargaining, and the encouragement of fixed-term and temporary employment through changes to employment protection legislation. As Bruun (2014) has identified, the Troika has consistently focused not only on cutting wage costs but also on the mechanisms and institutions for wage-setting. As we shall see in greater detail in chapter 6, a number of measures deal with extension mechanisms and derogations from higher-level agreements (see Table 5.2).

With respect, in particular, to wage determination and collective bargaining, the DG ECFIN's report on 'Labour Market Developments in Europe 2012' is illustrative of the objectives of the European Commission behind the structural measures in return for financial support. Under the heading 'Employment-friendly Measures', DG ECFIN presented a long list of required 'structural reforms' which, apart from various issues of labour market deregulation (such as decrease in unemployment benefits, reduction of employment protection legislation and increase of retirement age) also includes a sub-section on the 'wage bargaining framework' that includes the following suggestions: decrease statutory and contractual minimum wages; decrease the bargaining coverage; decrease (automatic) extension of collective agreements; reform the bargaining system in a less centralised way, i.e. by removing or limiting the favourability principle; introduce/extend the possibility to derogate from higher level agreements or to negotiate company-level agreements; promote measures which result in an overall reduction in the wage-setting power of trade unions' (see also Schulten and Müller, 2013). In a similar vein, the ECB noted in its 2012 working paper on the *European Labour Markets and the Crisis*: 'More recently, the ongoing labour market reforms in countries such as Greece, Ireland, Portugal, Spain and Italy include some important measures to increase wage bargaining flexibility and reduce excessive employment protection, and constitute appropriate first steps to improve labour market and competitiveness performance in these countries and in the euro area as a whole.'

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

From a procedural point of view, the degree to which due respect is paid to the outcomes of social partners' agreements, if any, at domestic level is also significant.¹⁴ There is evidence to suggest that the conditionality required by the Member States does not respect in some cases the diversity of national systems, including the role ascribed to social partners and the principle of democracy.¹⁵ This can be illustrated when one examines the cases of Portugal, Greece and Romania. On a positive note, the MoU in the case of Portugal stipulated that 'measures in labour and social security legislation will be implemented after consultation of social partners, taking into account possible constitutional implications, and in respect of EU Directives and Core Labour Standards.'¹⁶ In the case of Greece, no such provision was incorporated in the first programme for Greece¹⁷ but the 2012 MoU that accompanied the second financial assistance programme for Greece included a similar provision to that of the Portuguese MoU. But while consultation rights were recognised in the case of Portugal and in the case of the second adjustment programme for Greece, the MoU in both cases fell short of explicitly stipulating that consultation should be with a view to an agreement or that negotiation should take place between the social partners or with the government with respect to the extent and nature of the measures.

Further, when also examining the process of social dialogue in practice, there is evidence to suggest that even in cases where consultation provisions were included in the MoU (e.g. Portugal), the extent to which this took place was limited in some cases. To take the example of Portugal, discussions were held between a delegation of IMF, Commission and ECB officials with the employers' and trade union confederations soon after Portugal requested financial assistance.¹⁸ Two agreements with the social partners were reached in Portugal, but importantly without the participation of the General Confederation of Portuguese Workers (CGTP). The first, on 22 March 2011, contained a wide range of measures including: the reduction of severance payments to 20 days per year of service; the 12-month limit to benefits with the maximum payment equivalent to 20 times the minimum wage and the creation of a fund to manage the benefits.¹⁹ These measures were then included in the MoU that was concluded in May 2011. Importantly, the MoU introduced a number of additional measures in the areas of working time and the industrial relations system, including the application of sectoral collective agreements and the conclusion of collective agreements by works councils. On January 18, 2012 and following extended negotiations, the Portuguese government reached a second agreement with the social partners, which addressed a series of structural measures.²⁰ The agreement contained a series of measures concerning the revision of the Labour Code, as foreseen by the MoU, and substantially increased labour market flexibility by lowering severance pay, unemployment benefits and duration, easing the definition of fair dismissals, making working hours more flexible and facilitating collective agreements at company level. But, there was also evidence to suggest that no social dialogue took place between the Portuguese government and the social partners with respect to the introduction of certain measures, most notably the introduction of new regulations on the criteria for extension of collective agreements (Tavora and Gonzalez, 2014).²¹

In the case of Greece during the negotiations for the second financial assistance programme, the cross-sectoral social partners came to an agreement in February 2012.²² In a letter sent to the domestic political actors but also the EU institutional actors, they outlined their agreement concerning the preservation of the thirteenth and fourteenth salary and the minimum wage levels, as stipulated by the national general collective labour agreement, and the maintenance of the after-effect of collective agreements. However, there was absence of due regard to the agreement by the Troika. On the basis that the outcome of the social

dialogue to promote employment and competitiveness ‘fell short of expectations’ (Ministry of Finance, 2012: 25) the 2012 MoU stipulated a number of further amendments to labour law that were incorporated in subsequent domestic legislation. Similarly to Greece, a protocol was concluded in Romania by the union leaders of the five confederations and the main opposition party in 2011 that involved a promise by the latter to reverse the labour market measures in exchange for the unions’ political support for the 2012 elections. However, as outlined in the national report for Romania (Trif, 2014) the EC and IMF objected to the draft law prepared by the union confederations on the basis of the process used for the modification of the legislation and ‘strongly urged the authorities to limit any amendments to Law 62/2011 to revisions necessary to bring the law into compliance with core ILO conventions’.²³

Aside from the issues of the substantive nature of the measures and the procedures for their adoption an examination of the availability or not of potential impact evaluation or follow-up mechanisms in order to assess and correct any possible problems arising out of the measures provides some interesting findings. In the case of Portugal, a modification in the MoU was introduced in 2012, which provided that, in carrying out its monitoring duties, the Commission, together with the ECB and the IMF, was to ‘review the social impact of the agreed measures’ and to recommend necessary corrections in order to ‘minimise harmful social impacts, particularly on the most vulnerable parts of the society’.²⁴ This provision was added, as it was not present in their original version, to Council Implementing Decision 2011/77/EU²⁵ and Council Implementing Decision 2011/344/EU²⁶ concerning respectively Ireland and Portugal (Costamagna, 2012). This kind of provision cannot be found in the decisions addressed to Greece with respect to the first financial assistance programme. Neither was such a provision included in the Council Decision addressed to Greece concerning the second economic adjustment programme.

While Spain, Italy and Slovenia were not the direct recipients of financial assistance programmes, there is evidence to suggest that other forms of intervention from supranational institutions, notably the CSRs under the European Semester procedure, have steered labour market measures in these countries as well.²⁷ In the case of Spain, the ESM was the source of an assistance programme that was provided only to the financial sector.²⁸ Importantly, the programme was accompanied with a set of requirements regarding structural measures that was broadly similar to those of EU Member States in receipt of financial assistance programmes.²⁹ Further, the insertion of limitations to public deficit levels in article 135 of the Constitution was attributed to pressures from other EU Member States and the ECB (Miranda Boto and Rodriguez Contreras, 2012: 132). In this context, a secret letter by the ECB was sent to the Spanish Central Bank that outlined the nature and extent of measures, including in the labour market (De Witte and Kilpatrick, 2014).

Both developments highlight important issues with respect to the implications of the conduct of supranational institutions during the crisis for democratic dialogue and transparency in the process for the adoption of the measures. Further, the 2012 measures in labour law were precipitated partly by the European Semester Programme and the CSRs for Spain. These included, among others, recommendations for decentralisation of collective bargaining by facilitating company-level derogations from higher labour standards, reducing the ‘after-effect’ period of collective agreements and introducing possibilities for concluding company agreements by non-union groups of employees (Schulten and Müller, 2013). But, as Barnard explains, neither the Spanish Parliament, nor trade unions were involved in the discussions and engagement was confined to civil servants and advisers (Barnard, 2014: 7).

Similarly, despite the fact that it not so far received any financial assistance programme, there was evidence of significant pressures exerted by the ECB and the European Commission with a view to introducing similar measures in the domestic labour market in Italy as well. First of all, Italy has also been the recipient of CSRs for promoting labour market flexibility in individual labour law and called for changes in the collective bargaining system in order to promote productivity. Among those, recommendations were made for decentralisation of collective bargaining by facilitating company-level derogations and moderate development of wages in general. A number of policies that have been introduced since 2011 bear also strong resemblance to a ‘secret letter’ to the then Italian Prime-minister that was signed jointly by both the incoming and outgoing presidents of the ECB and outlined structural measures similar to those in the CSRs.³⁰ Finally, Slovenia, which was also struggling in the crisis, did not become the subject of a complete financial assistance programme but has still also received important EU instructions with a social focus. For instance, the 2010 Exit Strategy prepared by the Slovenian government was significantly influenced by the EC Recovery Plan (Stanojević and Aleksandra Kanjuo Mrčela, 2014). On top of these, the CSRs included proposals on minimum wages and moderation of wage developments. Consistent with the latter, the 2010 plan defined a set of structural measures, including in the area of labour law and social security.

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

Whilst one would expect that the emergence of the crisis would halt, even temporarily, the project of European integration, the evidence from the research project suggests otherwise, at least in the area of EU social policy and industrial relations. First, in terms of subject-matter, the economic adjustment programmes for those EU Member States mostly affected by the crisis touch ‘upon many key aspects of national welfare regimes in a way that seems to go far beyond the limits imposed by the Treaties to the EU capacity to intervene in this field’ (Costamagna, 2012: 15). Importantly, Article 153(5) of the Treaty for the Functioning of the European Union rules out any EU intervention with the intention to harmonise issues on wages and collective bargaining. The exclusion of competence in the TFEU on wage policy can be posited against the observation that a recurring theme in MoU is the enforcement of wage moderation, imposed on national social partners in ways that may resemble, as the ILO points out, an undue invasion of collective autonomy, as well as a violation of core labour rights (ILO, 2012a). In a similar vein, the role of supranational institutions (mainly the ECB and the Commission) was instrumental in the adoption and implementation of labour market measures in the rest of the countries (i.e. Italy, Spain and Slovenia). In response to these developments that challenge both the scope of EU competence in the area of social policy, ‘legal mobilisation’ strategies have been developed, albeit with some limitations. First, the challenges concern predominantly the measures directed at public sector workers. Secondly, the judicial review applications to the Court of Justice of the European Union have not been successful so far.³¹

At the same time, the approach of the supranational institutions vis-à-vis the normative elements of the policies promulgated at national level challenges the pre-existing consensus on the European Social Model. The latter was traditionally characterised by its uniqueness in having dual focus on economic and social principles, including a high coverage rate of collective agreements and a designated role to trade unions and employers. In its 2010 Industrial Relations in Europe Report, the Commission noted that voluntary collective

bargaining plays a key role in industrial relations and is a defining element in social partnership within and beyond the EU (European Commission, 2010). This can be contrasted with the view of the ECB President Mario Draghi, who pronounced the European Social Model dead in a February 2012 blog for *The Wall Street Journal*: ‘The European social model has already gone when we see the youth unemployment rates prevailing in some countries’. He later resurrected it in *Die Zeit*: ‘Competition and labour markets have to be reinvigorated. Banks have to conform to the highest regulatory standards and focus on serving the real economy. This is not the end, but the renewal of the European social model’ (Draghi 2012).

Equally important, in terms of regulatory instruments, there has been an increase in harder forms of intervention, including, for instance, placing Member States under EU ‘multilateral surveillance procedure’ and imposing sanctions in case of non-compliance. This marks a significant departure from the previous EU approach of largely limiting itself to making more or less non-binding recommendations on national wage and labour market policies as part of its economic and employment policy guidelines. As Busch et al. suggest, ‘at most, it [the EU] sought to influence national developments within the framework of ‘soft’ forms of governance, such as the ‘Open Method of Coordination’, by propagating international best practices’ (Busch et al. 2013). However, the decision-making and coercive sanctions powers that the Commission has acquired in the context of the European Semester process and the fact that EU Member States may face financial sanctions if they are made subject to the Stability Pact’s Excessive Deficit Procedure (EDP) and the Excessive Imbalance Procedure (EIP) points to the adoption of ‘harder’ forms of regulation and governance with significant implications both for the national systems of labour market regulation and for the process of European integration. Still, in relation to issues of process, there was evidence of lack of transparency and conduct of dialogue in the MoU negotiations. In a recent study, Eurofound (2014) also reported that the ongoing pressures of globalisation and the economic crisis have created a tendency for governments to decide and implement interventions very quickly, often without properly consulting the social partners. This was recently criticised in the resolution on the role of the Troika by the European Parliament, which stressed the possible negative impact of such practices on the stability of the political situation in the countries concerned and the trust of citizens in democracy and the European project.³²

On the basis of these substantive and procedural issues, it can be argued that the economic crisis has actually accelerated the process of European integration. On the one hand, there is evidence of a transfer of decision-making process in the area of labour law and industrial relations from the national to supranational level. At the same time, there is a re-orientation of the normative goals of European social policy in the field of industrial relations moving away from the pre-crisis European Social Model into a logic of neoliberalism, which requires flexibility in labour markets to compensate for rigidities elsewhere, including, in this case, the effects of a strict monetary policy.

Table 5.1 Commitments and recommendations over wage policy in the EU Member States, 2011-2014³³

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

Country	Euro plus Pact Commitments in 2011	European semester recommendations for 2011/2012	European semester recommendations for 2012/2013	European semester recommendations for 2013/2014	Financial assistance programmes
Slovenia	Wage setting mechanisms	-	Ensure wage growth supports competitiveness and job creation	Ensure wage growth supports competitiveness and job creation	No

5.4 The role of social actors at the national level in the adoption of the measures: the questioning of social dialogue and solidarity

The measures of collective bargaining and labour relations generally within these systems and cases have been exhaustive. The section will look at the way the adoption of the measures has involved various actors and to what extent the process of social dialogue within collective bargaining which emerged and was outlined earlier has influenced such developments. The process of labour relations measure has been driven by all manner of direct and indirect relations and influences – and the actual role of social dialogue has been limited to say the least. The gains in terms of social dialogue in previous years have been marginalised although there have been some curious ironies.

Within each context there has been a recalibrating and de-stabilisation of the social and political dimensions of labour relations due to the manner in which the crisis has been used to push through labour measures as pointed out earlier. These have been based on the narrative that labour market measures in terms of the nature of collective and individual regulation measures are necessary as an exchange for economic financial support and supranational co-ordination. The question of economic ‘solidarity’ between and within nation states has been developed – or shall we say redefined - within a neo-liberal framework on the basis of a need to remove ‘antiquated’ labour systems. That is to say that labour is constituted as the obstacle of measure and modernisation such that measures which lower the general costs of labour are considered the way in which long term economic development and renewal can be constituted: this is a basic productivity model approach to economic development based on orthodox notions of competition. Hence, labour becomes the object of measure and of the disciplinary processes in order for there to be future income generation capable of stabilising the European economy. That labour may not be the source of the economic crisis and financial difficulties of the European Union is a matter for discussion but it has been constituted as an object for intervention in the response to the European crisis.

Throughout the various cases the role of supranational institutions has been key although one must recall that these have worked through national organisations and national ‘allies’ of the Troika. The manner in which political alliances are constructed for the purpose of labour market measure and the way traditional forms of social dialogue are engaged with need careful discussion. At the heart of these developments is the formal discussion and negotiation around the Memoranda of Understanding (MoU) which mainly focused on how national states will measure internally in relation to external support from international bodies. These are seen as political facades by some critics for a further neo-liberal shift in policies.

In the case of Greece, initial attempts at dialogue were forged in relation to the loans developed for the country. The initial focus of the Troika was on pay freezes and this was very much the case in Spain as well. The initial developments in terms of quantitative constraints which did not undermine the basic form and content of the agreements were common in many cases. The use of direct reductions in the public sector pay was also an initial point of excursion for the national governments when responding to the Troika. Public sector pay and minimum wages were a focus of such measures due to the ease which they could be made in relative terms and in some cases due to the distinct collective bargaining traditions within such contexts. In Ireland the cutting of the national minimum wage was one of the first acts of measure and this reflected once more the more cost based and short term

view of measure. The MoU were a focus for measure within the state yet initially these were played out in terms of wage levels and wage containment and within a discourse of panic and crisis. The state reverted to direct intervention in terms of the content of collective bargaining. These changes were not in the main sought through national agreement. However, in some cases there were attempts to include a wide set of social partners in discussions around labour market measures yet in the initial stages these were driven by climate of national emergency and related discourses of national salvation.

The move to unilateral actions by the state were seen as a response to a specific set of externally led conditions being placed in the nation and thus allowed governments to transfer culpability and legitimate the lack of social dialogue on the first wave of emergency measures. In Italy, the initial discussions focused on measures to support those effected by the crisis in the first instance and there were signs of social dialogue for a short while in terms of labour market alleviation measures (Colombo and Regalia, 2014). The crisis of the state in Italy linked to controversy surrounding the Prime Minister Berlusconi compounded the extent of social dialogue and its evenness.

In Portugal, the MoU was seen to require the support and legitimacy of the main political parties and political dialogue seemed to be extensive during the initial period although concrete measures were not that forthcoming at that stage. Central to Portugal has been a desire to have a consistent cross party response to the Troika and clear negotiations. This was a requirement of the troika because the negotiation of the assistance programme took place during a caretaker government after the fall of the socialist government and before the elections – in order to secure implementation of the programme irrespective to which party won the elections (Tavora and Gonzalez, 2014). These led to specific agreements on the need for competitive based changes and revisions of the labour code in exchange for various social and employment provisions for support in 2012: although not all trade unions signed. What emerges in the case of Portugal is how the emergence of a divided labour movement facilitates a truncated form of social dialogue throughout the crisis. It is possible that this can be explained by the specific ways in which the Portuguese state has created a more complex form of alliances and tacit agreements with most of the social partners and political actors through a *discourse of equivalence* (Laclau and Mouffe, 1984) whereby the nation is besieged and requires a degree of unity in the face of the external threat. Whilst the far left has not been central to this political process and discourse, as it has been forged around other actors in the main, the Portuguese situation contrasts with Greece where many trade unions and social movements have moved in greater opposition to a state which has been less able to create popular alliances around labour market measure and change – and the crisis generally.

Yet in the case of Eastern Europe we see a more extreme approach which basically denies and questions the role of social dialogue. The two national loans in 2010 in Romania were based on a similar set of agreements. The centre-right government had already developed a discourse of antagonism towards labour relations and, similar to Spain which we will discuss below, has engaged with a more market facing agenda. As with other countries the initial engagement with the crisis was based on restricting public sector salaries by 25 percent (Trif, 2014) and changes in a range of social benefits. This initial quantitative stage of the response which focused on the questions of income was premised on controlling those aspects of the labour relations system which were directly accessible. It required as in Spain a language based on the stigmatising of public sector workers and their supposed privileged status within the labour market. Hence, the policies rested on a political discourse of stigma

similar to that of the New Right in the UK and the USA in the 1980s where labour was seen as a problematic and inward looking entity (Hall, 1988). Labour and the state are seen as the barriers to progress: this immediate flipping of political discourse means that measures have been legitimated by drawing an ideological line with those who are seen unable or unwilling to ‘sacrifice’ in the current context.

This antagonism towards labour relations was never really a major source of concern in Romania before (Ban 2014 as quoted in Trif 2014) and in the case of Slovenia has played less of a role although elements are present. However, as the crisis developed, the antagonistic political discourse towards the system of labour relations also developed in cases such as Romania, very much led by the centre-right government, who calls for a radical decentralisation of the system of bargaining and the transformation of labour rights. This was done in terms of the amendment of the Labour Code and making it easier to remove workers and the undermining of sector agreements based on questions of union and employer representativeness. This shifting of the levels of legitimacy for representativeness means that it is harder for legitimate sector agreements to be signed. The change in government in 2012 did not bring any major reversal of the measures and the extent of social dialogue has been seriously limited and undermined. The latter phases of the post 2008 period appear to follow the Romanian path although within a context of some social engagement and public dialogue in countries such as Greece, Italy, Portugal and Spain. In general one can see a pattern emerging within these contexts which is important for any understanding of how dialogue about change has emerged especially after the first stage of ‘quantitative’ responses.

The role of the social actors in the adoption of measures is a complex issue as in some cases they have been reluctant to engage and even when they have focused on specific types of measures of a piecemeal nature with very few concessions in the way of worker rights or social support. Firstly, there have been increasing provisions for employers to opt out of agreements in the light of their economic circumstances and in the main the governments of national states have driven this in explicit or covert alliance with employers. That is not to say employers in the main and on the whole have agreed with these measures, and not expressed concern with them as we show in later sections. However, this aspect of measure has tended to involve the trade union movement much less and has been based on using direct legislative means to develop the relevant legislation. As we saw earlier in most cases there has been a substantial containment in public sector pay but in relation to the private sector the politics of measure of policy making has been apparent in relation to the role of sector agreements. In Ireland and Spain, the ability to opt out of pay clauses for example was challenged in court but the challenges have not been successful. In Portugal during March 2011 some tripartite discussions did manage to find an element of agreement on decentralising in bargaining and reduction in dismissal costs but this involved one part of the trade union movement and reinforced an element of division in Portuguese industrial relations. Yet these agreements and the attempt at social dialogue were unable to create a general framework of support and consensus as further austerity measures were adopted. In fact as previous measures which were deemed temporary remained in place and the austerity path intensified, the minor consensus that had previously generated collapsed. Much may be due to the fact that social dialogue requires stable processes and reciprocal arrangements across time. The manner in which the measures have taken place – given that they are in such a compressed and short period of time – means that establishing a more comprehensive approach to gains and concessions is structurally limited.

Many of these measures respond directly to the paradigm shift within MoUs and the Troika which extol the decentralisation of collective bargaining as a panacea and solution to both the crisis and the structural problems facing the European economy. This extolling of the values of the more liberal market systems is based on a belief that workplaces and firms need to develop more internally flexible labour markets and a greater flexibility to hire and fire. Hence secondly, a range of major rights for the compensation of labour market change and restructuring have been removed from systematic national dialogue in most cases. The basic rethinking of resources or representative thresholds has not been the subject of any significant social dialogue and debate. In Italy trade unions were actually critical of not being able to debate the measures with the Monti government in 2011-12 and there was sense that the progress made in previous years in reforming the system of redundancy payments and pensions – for example - had not been built on but instead pushed to one side.

Third, we have seen that in addition to collective bargaining measures there has been erosion in trade union rights. Questions of representative thresholds for the purpose of collective bargaining have been developed and changed in various countries such as Romania as we will discuss later. What is more there has been a systematic questioning of labour representation with campaigns in countries such as Spain where ideologically the trade union movement have been presented in highly negative terms and where previous forms of trade union legislation prohibiting limited picketing type activities have been evoked and used leading to the arrest of trade union representatives.

Fourth, that is not to say that there have not been some negotiations at the state level with the social partners across a range of issues. In Spain we have seen partial agreements on pensions and it has been common for some type of training agreements and funds to be released. In Portugal there have been partial negotiations on developing some forms of alleviating supports for workers in relation to the effects of unemployment. The key issue in Portugal was that social partners were involved in the decision making process leading to the measures although the two unions had different responses: the UGT signed agreements that paved the way to the measures whereas CGTP opposed and organized protests, strikes and demonstrations throughout the crisis period. As the government progressively reneged elements of the agreements UGT joined CGTP in these protests. Employers at some points also protested against exaggerated austerity and accused the government of renegeing on agreements which covered a range of issues, including measures to stimulate growth and commitments to support social dialogue and collective bargaining itself. In Greece the second loan agreement saw some attempt to involve the social partners but this was not as successful: although it was agreed to keep certain aspects of the wages systems such as the thirteenth and fourteenth payment, and minimum wage levels, although the pressure from the Troika continued and there was eventually a move towards legal mobilisation and pressures as social dialogue faded. Challenges to the decision of the government have led to trade unions to refer to the ILO and other supranational bodies beyond the core reforming institutions: this has been done to gain support for the arguments that many of the measures undermine basic ILO conventions: this is picked up in more detail in later sections.

Fifth, the resources available for worker training and development have been limited in all cases given the nature of the crisis and fiscal deficit, which means that the developing role of social partners in this area has been steadily eroded even if some funds have been targeted for younger workers in countries such as Italy and Spain: although this could be due to the alarming levels of unemployment amongst younger people in those countries. Yet

negotiating specific types of 'alleviating' policies - and be seen to legitimate the national politics of austerity - is a high risk manoeuvre for many trade unions.

The political and social pressure on the trade union movement has emerged from various sources and not just the troika or the national governments forcing measures through. As time has gone by the effects of the measures and the ongoing inability of the trade union movement to effectively respond to them politically and in practice, to an extent, this has meant that the legitimacy of trade unions has been called into question.

6. Substantive measures in the area of labour law and industrial relations

An essential aspect of the economic crisis in Europe and its management is wide-ranging, sometimes dramatic, amendments to labour market regulation, including importantly the national systems of collective bargaining and wage determination. All the EU Member-States included in the present study have adopted significant labour market measures since the start of the economic crisis. As illustrated in the analysis in chapter 4, the majority of these EU Member-States were subject to specific conditions set out in the loan agreements and accompanying Memoranda of Understanding (MoU): Greece, Ireland, Portugal and Romania. While Italy, Slovenia and Spain were not the subject of such assistance (with the exception of the financial sector in the case of Spain), they have been though subject to reinforced budgetary rules, reinforced Excessive Deficit Procedures and a Macro-Economic Imbalance Procedure. Moreover, the secret letters from the ECB to Italy and Spain were instrumental in the nature and extent of labour market measures later promulgated at domestic level (see the analysis in chapter 5).

Against this context, the present chapter identifies the most important changes in the areas of employment protection legislation and collective bargaining. In doing this, particular attention is paid to the measures that had the potential to alter the existing configuration between managerial prerogative, joint regulation by management and unions and state intervention through, for instance, replacing contractually agreed terms with statutory ones. The analysis then goes on to provide a critical assessment of the scope of the measures, their nature and their potential implications for the domestic systems of wage determination and collective bargaining.

6.1. Changes in employment protection legislation, atypical employment and working time³⁴

In order to promote a competitive climate through increasing labour market flexibility, youth employment and creating new forms of work, wide-ranging changes were introduced in the national labour law systems. The measures in this area were consistent with the critique advanced against some EU Member-States concerning labour market rigidities, with a particular emphasis on dismissal protection and atypical employment. This meant that the amendments targeted a number of issues related to employment protection legislation, including dismissal protection, flexible forms of employment and working time.

First, on the basis of the need for reduction of labour costs, significant regulatory alterations took place in the regulation of individual and collective dismissals. In Greece, Spain and Portugal the notification period for individual dismissals and dismissal compensation was reduced.³⁵ Further, the grounds for dismissal were extended in Spain and Portugal.³⁶ In Italy, recent legislation provides for the replacement of reinstatement with the provision of compensation in the case of unlawful dismissals due to economic or other objective reasons; caps were also introduced with respect to dismissal compensation in certain cases.³⁷ With respect to collective dismissals, changes were introduced concerning the thresholds applicable to collective dismissals in Greece.³⁸ In other EU Member States, amendments were made to the procedures governing redundancies by reducing advance notice (Spain and Portugal) and by removing the requirement for authorisation of redundancies by the public authorities (Spain).³⁹ In Slovenia, the 2013 Employment Relations

Act (ZDR-1) reduced the notice periods for dismissals and simplified the dismissal procedure. In Ireland, the Social Welfare Act 2012 removed the entitlement of an employer to claim a redundancy rebate for any statutory redundancy payments made after 1 January 2013. The rebate had been reduced from 60 per cent to 15 per cent in the Social Welfare Act 2011, but now has been entirely removed.

Further, a number of changes were introduced in atypical forms of employment. In Greece, the probationary period of employment contracts without limit was increased from 2 to 12 months, and as such introduced into the labour market a new form of fixed-term employment contract of one year's duration.⁴⁰ Similarly, in Spain a new type of contract that provides social security benefits (tax breaks and reductions in social security contributions) as well as labour law benefits (one-year probationary period with the possibility to end the contract at will during that time) was created with the aim of encouraging companies to recruit certain categories of employees (unemployed and women).⁴¹ In Romania, the probationary period was also extended from 30 to 90 days for workers and from 90 to 120 days for managers.⁴² Changes also took place with respect to fixed-term work.⁴³ In Greece, the maximum duration of fixed-term contracts was extended from two to three years. In Portugal, the 2012 and 2013 measures provided greater scope for additional, extraordinary renewals of fixed-term contracts.⁴⁴

In Spain, Act 3/2012 stipulated the conversion of fixed-term contracts to open-ended ones if employment exceeds two years of service under successive contracts. In addition, Royal Decree 1796/2010 laid down provisions for the operation of private placement agencies. In Italy, Act 92/2012 stipulates that there is no need for the specific indication of an objective business need in the case of first fixed-term contracts, for a maximum period of 12 months. In Romania, the maximum length of fixed-term contracts was also extended from 24 to 36 months.⁴⁵ Further, as a result of the changes in Article 96(2) of the Labour Code, the minimum wages of temporary workers are no longer the wages received by the employees of the user, but the national minimum wage.⁴⁶ In Slovenia, recent changes focused on limiting the use of fixed-term employment, although that was simultaneously combined with the increasing (external) flexibilisation of the 'rigid' forms of employment in terms of dismissal protection (Stanojević and Kanjuo Mrčela, 2014).⁴⁷

Managerial prerogative was reinforced by amendments in the regulation of working time. In turn, this may imply a shift in the role of collective bargaining/consultation with employee representatives (unions or not) on such issues. In Portugal, Act 23/2012 provided for the reduction of additional overtime by 50 per cent and the elimination of compensatory time-off and a number of public holidays. It also expanded the legal regime of 'working time account' by allowing the conclusion of agreements between the employer and individual employees and the application of the scheme to employees not covered by collective agreements.⁴⁸ In addition, the legal framework concerning the temporary reduction of working time and suspension of employment due to business crisis was extended to allow more flexibility for the employer.⁴⁹ In Italy, the Stability Act 2012 provided for the possibility to include flexibility clauses in part-time contracts empowering the employer to modify the duration of the working time or its distribution.⁵⁰ In Spain, Act 3/2012 introduced a number of measures designed to promote working time flexibility, including the abolition of the prohibition of overtime in part-time work; the extension of the scope for flexible allocation of working hours over a year;⁵¹ and the abolition of a requirement on employers to obtain permission from the public authorities in order to temporarily reduce working hours or to implement temporary lay-offs. In addition, employers acquired the right to move

employees within professional groups, if this can be justified for technical or organisational reasons.⁵²

In Greece, the period of short-time work was extended to nine months per year and the scope for the conclusion of agreements between employers and unions on working time arrangements at company level was extended.⁵³ In addition, new possibilities were provided for the determination of working time arrangements, including the extension of the time period for the calculation of working time from four to six months and the provision of compensatory time off instead of pecuniary payment for overtime.⁵⁴ In Romania, employers were provided with the scope to reduce unilaterally the working week and the corresponding wages from five to four days.⁵⁵ Furthermore, the reference period for calculating the maximum weekly working time – which cannot exceed 48 hours – has been extended. Until now, Romanian law stipulated a reference period of only three months, which was a more favourable legal norm than that stipulated in Directive 2003/88/EC. Accordingly, the new law extends the reference time period to four months.⁵⁶ The employer is also now able to compensate for overtime not within 30 days (as it was before March 2011) but within 60 days. Finally, it has become possible to grant free days in advance, in order to compensate future overtime.

6.2 Changes in wage-setting and collective bargaining systems

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

In terms of wage moderation, interventions were first made in the content of collective agreements and directly at the statutory wage levels. In Greece, legislation was introduced in 2010⁵⁷ providing that arbitration awards issued by the Organisation for Mediation and Arbitration (OMED) would be of no legal effect in so far as they provided for wage increases for 2010 and the first semester of 2011. In 2012, an immediate realignment of the minimum wage level, as determined by the national general collective agreement, was introduced resulting in a 22% cut at all levels based on seniority, marital status and whether wages were paid daily or monthly.⁵⁸ Later, a freeze in minimum wage levels was prescribed until the end of the programme period in 2015. In addition, clauses in the law and in collective agreements that provided for automatic wage increases dependent on time, including those based on seniority, were suspended, until such time as unemployment falls below 10%.⁵⁹

In Portugal, Act 23/2012 imposed restrictions on collective bargaining, prohibiting the provision of more favourable terms (e.g. concerning overtime pay) through collective agreements for two years but was partially overturned by the Constitutional Court.⁶⁰ In addition, the NMW was frozen at 485€ in 2011, breaching a historical tripartite agreement with all the social partners to increase the NMW up to 500€ in 2011. In Ireland, the 2009 recovery plan included a suspension of the private sector pay agreement negotiated under the so-called ‘Towards 2016’ social partnership agreement, except in certain defined circumstances. However, the 12.5% cut in the minimum wage for new hires, which had become applicable in February 2011, was reversed when the Fine Gael Labour coalition came to power in March 2011. In Spain, Act 3/2012 also introduced the possibility for employers to opt out from collective bargaining, if the enterprise records a drop in its revenues or sales

for six consecutive months. In Romania, the tripartite agreement on the evolution of the minimum wage and on the minimum wage/average salary ratio over the period 2008–2014 was abolished.⁶¹

A range of measures were also introduced with the objective of moving wage-setting closer to the company level. In Greece, recent legislation provided that all firms have the capacity to conclude firm-level collective agreements that derogate *in pejus* from sectoral-level agreements.⁶² In addition, during the application of the Medium-Term Fiscal Strategy Framework, a temporary suspension took place of the application of the principle of favourability in the case of the concurrent implementation of sectoral and firm-level collective agreements. In Italy and in line with the ECB recommendations, as outlined in the ‘secret letter’, legislation provided for the first time the possibility for the so-called ‘proximity agreements’ at company and territorial level to derogate from the statutory provisions on ‘all aspects of labour organisation and production’, including among others: working hours, fixed-term work contracts, part-time work contracts, temporary agency work, hiring procedures and dismissals.⁶³ While the resulting agreements still have to conform to the Italian constitution, EU norms and international requirements, the changes represented a radical shift concerning the role of legislation in setting down labour standards.⁶⁴

In Portugal, the commitments of the government to the Troika foresaw major changes in the collective bargaining system, including the creation of a possibility for collective agreements to define conditions under which works councils can negotiate functional and geographical mobility, working time arrangements and remuneration. Similarly, in Spain, the government enacted a series of labour laws that modified collective bargaining rules. The most recent decentralised collective bargaining to a greater degree than the previous measures brought in by the previous government. Similar to the previous legislation (Royal Decree 7/2011), the new legislation (Act 3/2012) gives precedence to company-level agreements over sectoral and provincial-level agreements in areas such as pay, working time, work organisation and work-life balance.⁶⁵ In Slovenia, the 2013 Employment Relations Act introduced possibilities for derogations from the statutory provisions via bargaining on a number of issues including overtime work, working time organisation, minimum notice periods and employment conditions related to fixed-term and agency workers. The act does not define any time limits on such derogations or need to any particular justification that the employers need to show when introducing the derogations.

Aside from promoting company-level bargaining, there were changes with respect to the state support for the extension of collective agreements at sectoral level. In some of the EU Member States, the changes related to the criteria for the extension. In Portugal, changes were introduced in 2012 in the representativeness criteria used for the extension of collective agreements. In this case, a collective agreement could only be extended if the firms represented by the employers’ association employ at least 50% of the workers in the industry, region and occupation to which the agreement applied. In 2014, further changes were announced that were intended to reflect more accurately the national economy, paying attention to the nature of the membership of the employers’ associations, i.e. if they include SMEs. The case of Greece represented a rather extreme case in this category, as there was suspension, during the application of the Medium-Term Fiscal Strategy Framework, of the extension of sectoral and occupational collective agreements.⁶⁶ Similarly, in Romania, changes included the replacement of branches with economic sector and the introduction of new criteria for the extension of sectoral agreements: under the new provisions, agreements can be extended only if the members of the employers’ associations that signed the agreement

employ more than 50% of the labour force in the sector (Trif, 2014). In Ireland, a review of the framework of Registered Employment Agreements (REAs) and Employment Regulation Orders (EROs) took place later by the Ministry for Enterprise, Trade and Innovation.⁶⁷ On the basis of the recommendations in the ‘Duffy-Walsh review’⁶⁸ and the case-law developments, the Industrial Relations (Amendment) Act 2012 set stricter conditions for the establishment and variation of EROs and REAs.⁶⁹

Beyond promoting company-level bargaining, changes were recorded with respect to the criteria for employee representation. In Greece, so-called ‘associations of persons’ were given the capacity to conclude enterprise-level collective agreements that can derogate *in pejus*.⁷⁰ In Italy, it was originally planned that ‘proximity agreements’ could be signed by ‘union representation structures operating in the company’. The ambiguity in the term used created the risk that weak enterprise-level unions could enter into agreements with employers, contributing thus to different levels of employment protection depending on the socio-economic situation of the region in which the enterprise was located (Loi, 2012: 268). Article 8 of Act 148/2011 now provides that ‘proximity agreements’ should be signed by ‘trade union organisations operating in the company following existing laws and inter-confederal agreements’, including the national agreement of 28 June 2011.⁷¹ In Portugal, the 2012 changes included decreasing the firm size threshold to 150 workers for unions to delegate power to conclude collective agreements to works councils. In Romania, the 2011 Social Dialogue Act introduced limitations in a number of collective rights, including the right to organise, strike and bargain collectively. First, changes were introduced at company level, including a requirement that only unions with more than 50% union density can negotiate company-level agreements and a minimum of 15 workers from the same company is required in order to form a union. Further, only one trade union may be representative at the level of a certain unit. In addition, the 2011 measures reduced the protection of union leaders against dismissal after the termination of their mandate, together with the suppression of the right to paid time off for performing union activities and introduced obligatory conciliation before industrial action.

Substantial changes were also introduced in some EU Member States regarding the length of collective agreements and their ‘after-effect’ period. Under the new legislation in Greece, all collective agreements can only be concluded for a maximum duration of three years. Collective agreements that have expired will remain in force for a maximum period of three months.⁷² If a new agreement is not reached, after this period remuneration will revert back to the basic wage, as stipulated in the expired collective agreement, plus specific allowances until replaced by those in a new collective agreement or in new or amended individual contracts.⁷³ In Portugal, the 2009 measures provided clarification regarding the expiry and after-effect period of agreements, limiting the latter to the period of conciliation, mediation and arbitration or a minimum of 18 months after which any of the parties could require the termination of the agreement; measures in 2014 reduced further the after-effect period. Act 3/2012 in Spain provided that the ‘after-effect’ period of collective agreements should be limited to one year.⁷⁴ In Romania, collective bargaining agreements can only be concluded now for a period of between 12 and 24 months.⁷⁵

In certain EU Member States, measures in the area of mediation and arbitration also took place. The 2012 measures in Greece allowed for the first time recourse to arbitration only if both parties consent and arbitration is to be confined solely to the determination of the basic wage/salary. However, the prerequisite for an agreement between the two sides was declared later unconstitutional by the Council of State.⁷⁶ In Spain, Act 3/2012 introduced

compulsory arbitration regarding the application or modification of collective agreements in the absence of voluntary bilateral application by the parties concerned. In Portugal, the 2009 revision of the Labour Code created the possibility of ‘necessary arbitration’ (in addition to voluntary and compulsory arbitration), which can be requested by any of the parties when they fail to reach a new agreement 12 months after the expiration of the previous agreement.⁷⁷

More radical changes that affected the nature of national-level collective bargaining were also promoted. In the case of Greece, it was intended that the government, together with social partners, would prepare a timetable for an overhaul of the national general collective agreement. Law 4093/2012,⁷⁸ which was adopted at the end of 2012, provides now a process of fixing the statutory minimum wages and salaries for workers employed under private law. The national collective labour agreement continues to regulate non-wage issues, which are directly applicable to all workers. However, if the agreement also stipulates certain wage levels, then these are only valid for workers, who are employed by members of the contracting employers’ federations. Similarly, in Romania, the 2011 Social Dialogue Act abolished the legal obligations of the representative employers’ associations and trade unions to get involved in collective bargaining at cross-sectoral level, which used to determine the national minimum wage. Finally, in Ireland, the consensus/corporatist approach embodied in social partnership was ended in 2010, as the government pursued unilateral policies rather than negotiated ones, signalling a shift from national to enterprise-level bargaining. In Slovenia, the so-called ‘Golden fiscal Rule’ and measures to overhaul the referendum legislation were adopted in 2013, with implications, as we shall see later, for the model of neo-corporatism in social dialogue (Stanojević and Kanjuo Mrčela, 2014). In line with a principle adopted in many EU Member States in response to the Eurozone crisis, the general government budget will now have to be balanced, with exceptions possible only under ‘extraordinary circumstances’.

6.3 Critical assessment of the labour market regulation measures

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

Following Gazier’s (2009) conceptualisation of the impact of the crisis, it is possible to distinguish between three types of interaction between the crisis and labour market measures. The first is a *shock* effect: there was evident that in some EU Member States the measures destabilise well-established norms and institutions of collective bargaining that were accepted and supported by the majority of stakeholders. The case of the amendments in the Italian legislation providing scope for derogations from statutory standards provides a good example of this. The second is a *revelation* effect: this is where there is a broader affinity between the direction of the labour market measures and the industrial relations context and approach adopted by at least some actors before the crisis. In this context, the changes in the systems for the national inter-sectoral agreements in Greece and Romania represent an example of this. Whilst such measures had not been promulgated in the pre-

crisis period by any of the stakeholders publicly, there was evidence to suggest that they were consistent with the approach of some employers' organisations. The third is an *acceleration* effect: in this case, there will be a direct relationship between the measures and the industrial relations context and approach adopted by the actors before the crisis. The most prominent example arguably here is the relaxation of rules concerning individual and collective dismissals in, among others, Spain and Greece and the collective bargaining measures in Portugal that were a continuation in some ways of those that took place in 2003.

A second common trend was further identified in terms of the nature and scope of the measures. The majority of the EU Member States concentrated during the initial stages of the crisis (2008-2010) on intervening directly in the regulation of wages, by, for instance, reducing minimum wage levels and declaring void any collective agreements providing wage increases, the objective being to reduce directly the costs of labour. In conjunction with these, new ways for introducing greater flexibility in the organisation of work, including, among others, working time and dismissal protection were also introduced during the first period. In line with the conceptualisation of labour market regulation pre-crisis, these measures were aimed at removing some of the labour market rigidities associated with high dismissal costs and lack of flexibility in employment contracts (see chapter 4 of the report). In this context, some of the measures, such as company subsidies for working time reductions and support for workers being made redundant, were temporary in nature (see, for instance, the measures in Slovenia and Romania).

In contrast, the second phase (2011-2014) was focused predominantly on more structural issues, including importantly the collective regulation of terms and conditions of employment via collective bargaining. According to Marginson (2014) it is possible to distinguish three categories of measures. The first refers to the reduction of the coverage of collective bargaining, including restricting/abolishing extension mechanisms and time-limiting the period of which agreements remain valid after expiry. The second concerns bargaining decentralisation and includes any measures related to the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation. The third category refers to weakening trade unions' prerogative to act as the main channel of worker representation (Marginson, 2014: 7-8). In most of these cases, the measures were permanent and paradigmatic in nature, as they sought to restructure the landscape of collective bargaining. However, there were also measures that were temporary, such as the temporary suspension of the favourability principle and extension mechanisms in the case of Greece. However, the extent to which such measures are truly temporary in nature is questionable. In light of the new landscape of industrial relations in Greece, it difficult to predict how the industrial relations actors will respond to lifting of the temporary suspension of the extension mechanisms once the Medium-Term Programme has been completed.

Another dimension of the measures is the degree to which they were consistent with the commitments undertaken by the national governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. There is evidence to suggest that a number of the national measures were aligned with the recommendations of supranational institutions. As discussed in chapter 5, a key objective of DG ECFIN's catalogue of 'structural reforms' has been the radical decentralisation of collective bargaining and reduction of the regulatory power of collective agreements and hence of the power of trade unions. In conjunction with this, the European

Semester has been particularly influential in the area of wages and collective bargaining. As Schulten and Müller have pointed out, ‘a comparison with the measures that have been implemented in the southern European countries suggests that DG ECFIN’s catalogue served as the blueprint for the changes in the collective bargaining systems in Greece, Spain and Portugal’ (Schulten and Müller, 2014: 103). In addition, the rationale for introducing the measures at national level was influenced by the DG ECFIN’s approach advocating the promotion of company-level bargaining on the basis that it reflects best the new economic and social circumstances of companies (see, for instance, the national reports in the cases of Greece and Romania). A large number of these measure initiatives were also among the ‘Going for Growth’ policy recommendations of the OECD (2012a).

But related to this, there is evidence to suggest that in some cases these pressures were curtailed to some extent by joint initiatives between the social partners. The Italian case illustrates this succinctly. As analysed above, the government attempted to intervene in the regulatory framework governing collective bargaining by law.⁷⁹ In reaction to this, the social partners concluded an inter-sectoral agreement on productivity in November 2012, which further specifies the derogatory potential of decentralised bargaining and assigns ‘full autonomy’ to second-level agreements on specific and important topics, such as work organisation and working time. These positions were in line with the traditional voluntarism of Italian industrial relations system, strongly based on practices and customs in the relationship between representative organizations. Similarly, in Ireland, there was some evidence to suggest that efforts were made to place safeguards on the extent of measures in the labour market. In this context, a national protocol for the orderly conduct of industrial relations and local bargaining in the private (unionised) sector was concluded by IBEC and ICTU in 2011, which has since been renewed in November 2012. The protocol was symbolic, and served as a mechanism to show the dispute resolution agencies of the State that ICTU and IBEC still recognized one another (Regan, 2013: 15).⁸⁰ In contrast, in Portugal, two agreements were also concluded between the social partners, except CGTP, which strongly opposed the measures. . However, as we saw in the previous chapter, both the MoU and national legislation went further than the scope of the agreements by the social partners.

From a legal perspective, what is certain is that ‘the measures have reached deep into the national systems’ (Barnard, 2014: 25). It can be argued that in some respects they are inconsistent with previous judicial, legislative and constitutional acknowledgement of the role of freedom of association, trade unions and collective bargaining in the ‘European Social Model’ (Koukiadaki, 2014). An important aspect here is the recourse of different actors to legal mobilisation in order to challenge the measures. In some cases, there was evidence that the absence of processes of social dialogue led to increasing ‘legal mobilisation’. This was for instance in the cases of Greece, Romania and Spain. However, legal mobilisation was not confined to EU Member States where social dialogue did not take place. The case of Portugal illustrates this very well. Despite the fact that some of the measures relied on the agreements between the majority of the social partners, a number of those (especially those related to public sector workers) were challenged before the Constitutional Court. Legal mobilisation has taken place at two levels, domestic and international. At domestic level, applications for judicial review have been made against government decisions that provided for wage cuts and measures in the bargaining systems, albeit with mixed results (see, for instance, the cases of Greece and Portugal). At international level, a number of international organisations have emphasised the non-compatibility of the austerity measures with fundamental rights, including the ILO Committee on Freedom of Association, the European Committee of Social

Rights, the UN Committee on Economic, and Social and Cultural Rights.⁸¹ Other applications before the European Court of Human Rights and the EU courts have been less successful.⁸²

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

7. The impact of the measures on the structure and character of collective bargaining

As illustrated in chapter 6, all EU Member States included in the project proceeded to extensive labour market measures affecting directly and indirectly the system of collective bargaining. Among others, the measures included restricting/abolishing extension mechanisms and time-limiting the period of which agreements remain valid after expiry; secondly, measures related to the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation; and, finally, weakening trade unions' prerogative to act as the main channel of worker representation (Marginson, 2014: 7-8).

Against this context, the introduction of such wide-ranging measures in social dialogue had the potential to lead to radical rather than incremental forms of innovation (Streeck and Thelen 2005). However, the degree of policy mismatch between higher formal levels and lower informal ones has been a longstanding and ongoing feature of a number of EU Member States affected by the crisis (Regini 1995). Thus, a critical issue concerns the extent to which the labour market measures have actually initiated a process of systemic change in collective bargaining and what the intended or unintended consequences have been of the measures.⁸³ The analysis below will concentrate on how the labour market measures have affected the incidence, structure and character of collective bargaining during the crisis. The analysis distinguishes between collective bargaining at (a) national, central or inter-industry level, (b) industry, branch of sector level and (c) the company or enterprise level. The analysis also assesses whether new models of bargaining are emerging with clear reference points for employers and unions – albeit different in nature – or whether the developments are *ad hoc* with no clear ideological or isomorphic underpinning. A typology of the state of the national systems in light of the measures is then developed. In doing this, a number of factors will be identified as influencing the cross-country and cross-sector patterns in terms of the incidence, structure and character of bargaining, including the range of the measures, the pre-existing strength of the systems and the extent to which the measures were introduced following consultation with the social partners.

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

In all EU Member States, there was evidence of social dialogue at inter-sectoral level pre-crisis (see chapter 4), albeit in different forms (e.g. collective agreements, social pacts and framework or partnership agreements), and with different levels of articulation with lower levels of bargaining, i.e. sectoral and company levels. However, partly as a result of the economic crisis but partly as a result directly of the labour market measures, the scope for consensual decision-making at national level has been reduced in a number of EU Member States, as we shall see.

The extent of reduction of social dialogue and bargaining at inter-sectoral level is varied. Greece, Romania, Ireland and Slovenia were among the EU Member States most affected at this level. In the first two (i.e. Greece and Romania), the reduction was arguably the direct effect of the labour market measures. In Greece, the 2012 legal measures that overhauled the national system of collective bargaining directly influenced the rounds for negotiations between the social actors for the conclusion of a new agreement in mid-2012. On the basis that an agreement, under the new regulatory framework, would have no effect on the regulation of the minimum wage outside the group of workers who are employed by

members of the contracting employers' federations, SEV refused to become party to the agreement and called for the signing of a protocol instead. However, following social pressure and a continuing decline of consumer demand, SEV became again a party to the 2014 agreement. Importantly, the 2014 national agreement provided some evidence of renewed support for the inter-sectoral social dialogue and bargaining, as it reaffirmed the intention of the social partners to support the institution of collective bargaining despite the crisis and the restrictive legal framework (Koukiadaki and Kokkinou, 2014). Similarly in Romania and following the measures by the SDA in 2011, the collective labour agreement at national level was not renewed following its expiry in 2011 (Trif, 2014), depriving all employees in companies with fewer than 20 employees of the protection afforded by the national agreement (Ciscu et al. 2013: 15). Further, there was no evidence that the establishment of a new Tripartite Council under the SDA 2011, whose membership is dominated by state representatives, stepped in to fill the gap left following the abolition of cross-sectoral bargaining.

Significant developments also took place in Ireland and Slovenia that destabilised the pre-existing configuration between management and labour at inter-sectoral level. In both cases, the developments were influenced by broad economic developments affecting other parts of the economy, e.g. the public sector in Ireland, rather than by the labour market measures *per se*. In Ireland, wage setting had traditionally allowed a much larger role for central or national agreements, both in the 1970s and again between 1987 and 2009, when the central organisations negotiated eight social pacts or so-called partnership programs. When during the crisis (in late 2009) the negotiations over a severe cut in public sector pay broke down, the employers, who had called for the agreed pay increases under the last agreement to be deferred, ended formally central negotiations. But in March 2010 IBEC and the ICTU agreed a voluntary protocol 'for the orderly conduct of industrial relations and local bargaining in the private sector.' This did not set any pay norms, but it provided that both sides would encourage their members 'to abide by established collective agreements' and ensure that 'local negotiations ... take place on the expiry of existing agreements'. The protocol was initially only valid during 2010 but it was extended in February 2011 and again in October 2013 (Dundon and Hickland, 2014). Similarly, in Slovenia coordination at national level was traditionally maintained pre-crisis through social pacts at first and then through consensually accepted income policies. Against this context, there were some attempts in 2009 to revive the institution of social pacts during the crisis, albeit with no success due mainly to employers' resistance (Stanojević and Kanjuo Mrčela, 2014).

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

company bargaining on issues other than wages (Molina and Miguélez, 2013: 23). But it has to be stressed that the 2012 labour market measures actually bypassed the agreement on a number of issues between the two sides and introduced important modifications to certain areas covered by collective bargaining. The case of Spain provides a useful comparison with the case of Portugal. As discussed in chapters 5 and 6, there were two agreements at inter-sectoral level concluded between some of the social partners in Portugal. But in contrast to the case of Spain though, the agreements between the Portuguese social partners provided actually the basis for the majority of the measures (Tavora and Gonzalez, 2014).

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

7.2 The state of sectoral collective bargaining

As analysed in chapter 6, an important component of the labour measures in a number of EU Member States concerned the institutional arrangements for sectoral-level bargaining. With respect to the measures regarding restricting/abolishing extension mechanisms and time-limiting the period of which agreements remain valid after expiry, different countries relied pre-crisis on different rules and practices and as such differed in terms of the significance of sectoral-level bargaining. In terms of rules and practices of extension particularly, Schulten (2012) identifies Portugal, Greece and Romania as countries with very widespread use of extension mechanisms. Italy and Spain also had functional equivalents ultimately corresponding to very widespread extension mechanism use. On the other hand, there was a group of countries in which extension mechanism were available in principle, but their use in practice was uncommon or downright rare and was often concentrated in just a few sectors, such as in Ireland. The use of extension mechanisms was also uncommon in Slovenia, but in this case, this is because functional equivalents existed. In terms of the significance of sectoral bargaining, countries with a clear dominance of sectoral-level bargaining pre-crisis

included Greece (company bargaining accounted for 20% of private sector coverage rate), Italy (<15%), Spain (<15%) and Portugal (declining from 15% in 1985 to 7% in 2005) (Visser, 2013: 27).

Since the emergence of the crisis and in light of the adoption of the measures, the state of sectoral bargaining in different sectors, including manufacturing, has undergone fundamental change. The most extreme cases here were those of Greece and Romania. In Greece, empirical evidence pointed to a significant decline of sectoral and occupational collective agreements overall. Only 23 sectoral and occupational agreements and 6 local occupational were registered in 2012 (in comparison to 103 sectoral and national occupational and 21 local occupational in 2010). The number of higher level agreements (sectoral and national and local occupational) was further reduced in 2013, with 14 sectoral and occupational agreements and 10 local occupational being concluded and during 2014 there have been so far only 12 sectoral agreements, 5 occupational and 247 enterprise-level agreements. The developments in manufacturing reflected these broader trends in sectoral bargaining. Following the temporary suspension of sectoral agreements, the reduction of the 'after-effect' period and the abolition of the right to unilateral recourse to arbitration, employers' federations in manufacturing became extremely concerned that sectoral agreements would expose their members to unfair competition from those employers not covered by the agreements. As a result, bargaining completely been stalled in metal manufacturing (with the exception of the agreement applicable in the case of SMEs in metal production and repair). Neither was there any new agreement concluded in food and drinks manufacturing.

The case of Romania resembles in a number of ways the case of Greece. The replacement of economic branches by economic sectors for the purpose of bargaining, the resulting requirement for re-registration and the abolition of extension mechanisms under the Social Dialogue Act 2011 reduced dramatically the incentives for employers to participate in sectoral bargaining. Overall, while 57 union federations applied to re-register, only 7 employers' associations did the same (Trif, 2014). As a result, trade union federations have no longer counterparts from the employer side to negotiate sectoral collective agreements. The case of automotive indicated the strong disincentives of employers to be bound by sectoral agreements, which are not extended, even when the latter contain significant scope for company derogations. In addition, problems were reported regarding the lack of clarity regarding the new procedure for the extension of agreements (Trif, 2014). In March 2014, there were 24 multi-employer collective agreements valid in March 2014 and out of those, 7 were defined as sectoral collective agreements. 3 of these agreements were in the private sector and all 3 were concluded in manufacturing (glass and ceramic products; food, drinks, beverages and tobacco; electronics and electrical machinery). But it is important to note that all 3 agreements were originally negotiated under the pre-existing regime and extended through additional acts until 2015. In contrast to the collapse of sectoral agreements, the number of collective agreements for groups of companies actually increased from four in 2008 to 16 in 2013.

Similar to the cases of Greece and Romania, statistical evidence in the case of Spain suggests that the number of higher-level collective agreements collapsed in the recent years. By 2013, the number of higher-level collective agreements across sectors dropped to 706 (from 1113 in 2012), with approximately 6,496,400 workers covered. In 2014, the decrease was even more pronounced and the number stood at only 361 agreements with 3,620,000 workers covered. Much in some cases was arguably due to delays and greater uncertainty in relation to local company agreements but a trend of declining coverage overall was observed,

especially as a result of a number of administrative and arbitration issues. The developments with respect to the favourability principle were interesting here. The 2011 law inverted the favourability principle as between sector or provincial agreements and company agreements, according priority to the latter for negotiations on basic wages and wage supplements. However, employers and trade unions had the option to re-establish the favourability principle under the relevant sector or provincial agreement, if they so wished. This possibility was removed by the subsequent 2012 law introduced by the incoming government, thereby also invalidating the intention of the 2012 cross-sector agreement. But employers and trade unions in some sectors, including chemical, subsequently concluded agreements reverting to the favourability principle (Marginson and Welz, 2014).

While in Slovenia the measures did not resemble in respect of their scope the ones adopted in southern Europe countries, there was evidence of pressure on sectoral agreements, which had traditionally played a significant role in regulating terms and conditions of employment pre-crisis. First of all, the status change of two chambers from obligatory to voluntary membership (the Chamber of Commerce and Industry in 2006 and the Chamber of Craft and Small Businesses in 2013) affected the membership rates of employees and led to a change in the direction of policy proposals towards greater flexibility in company-level bargaining. While the intensity of bargaining increased, the length and scope for sectoral agreements was reduced. On top of this, certain agreements, including in the chemical and rubber industry, were terminated on the initiative of the employers. In contrast to Slovenia, sectoral level bargaining was not traditionally of much significance in the pre-crisis period in Ireland. There were few industry level agreements – the most important in construction. Since 2011, only three REAs, covering the construction industry, overhead power line contractors and contract cleaning, have been revised.⁸⁴ However, there was evidence at the same time of an emergent sectoral strategy focussing on the coordinated activity of multiple and separate localised level bargaining units in key parts of manufacturing (see chapter 8 for an analysis of the impact of this on company-level agreements).

Portugal is arguably situated somewhere in the middle of the spectrum in terms of the impact of the measures on sectoral bargaining. Pre-crisis, collective bargaining was characterised by the dominance of sectoral bargaining but with low levels of articulation. The 2009 measures built on and expanded the scope of those in 2003 with respect to the expiration of agreements and in turn provided greater scope for flexibility in bargaining at sectoral level. Empirical evidence suggests that the blockages in most manufacturing sub-sectors were rather long-standing and where agreements were reached these had been concluded with UGT on the union side. The only exception was the case of textiles and footwear, where the blockages were attributed to the suspension in 2011 and subsequent introduction of representativeness rules for the extension of collective agreements. Overall, the number of industry agreements declined consistently and fell drastically in 2012, when only 36 agreements were published, in contrast with the 173 collective agreements reached in 2008. However, Tavora and Gonzalez (2014) stress that as not many agreements expired, the proportion of workers affected in terms of coverage rates may be over-estimated. Very interestingly, there has been a reversal of the declining trend of sectoral agreements in 2014 and the latest data suggests a degree of resilience of the sectoral-level bargaining. This data has to be read against the changes in the legislative framework, i.e. the lifting of the suspension of the extension mechanisms and the introduction of new criteria for representativeness of the parties.

In contrast to the cases of collapse and corrosion discussed above, the case of Italy represented an example of a bargaining system in continuity. Despite the acceleration in the

pre-existing trend towards decentralisation from industry-wide bargaining and the increase in tension between the sectoral social partners, the sectoral agreements in manufacturing still constituted the main reference point for the regulation of wage levels and other terms and conditions of employment, especially for SMEs. There was actually evidence of increased bargaining coverage in the case of sectoral agreements, which was partially driven by the introduction of the possibility of derogations by the 2009 inter-sectoral agreement. While employers favoured greater bargaining flexibility, there was a shared understanding of the need to maintain sectoral bargaining as the key regulatory framework for the determination of terms and conditions of employment. Notwithstanding the exit of Fiat from the industry-wide bargaining, there is no evidence of significant spill-over or copy-cat effects (Colombo and Regalia, 2014; Pedersini and Regini, 2013).

7.3 Company-level bargaining and decentralisation trends

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

The decentralisation trend was particularly strong in Greece. During the period 2010-2013, there was a significant increase of company-level bargaining to the detriment of sectoral bargaining, with some signs though of slowing down since 2014. The manufacturing sector had the highest percentage of enterprise-level agreements throughout 2012, 2013 and 2014, i.e. 34.3% in 2012, 32.2% in 2013 and 30% in 2014.⁸⁵ Despite the absence of renewal of collective agreements at sectoral level, there was company case study evidence to suggest that management continued to respect tacitly in some cases the expired agreement. However, this was only the case with respect to existing and not newly recruited employees, increasing thus the scope for the development of a two-tier workforce. From the union side, there was evidence that some local trade unions in metal manufacturing sector tried to implement a policy of promoting the conclusion of the same, in effect, collective agreement in different companies, albeit with different rates of success. Aside from an increase of company-level bargaining, there was also an increase in individual negotiations between management and employees, involving usually unilateral or ‘consensual’ wage reduction and/or short-term/part-time work, temporary lay-off etc. This was especially the case in micro companies, where trade union structures were traditionally absent and where associations could not be formed, as the companies employed less than five employees.

Despite the similarities between Greece and Romania with respect to the objective of the measures to promote company-level bargaining, the incidence of collective agreements at company level was more erratic in the case of Romania. The number of collective agreements declined rapidly from 11,729 in 2008 to 8,726 in 2013. The greatest decline took place between 2008 and 2010, when the number of agreements was reduced by approximately 3,000. However, an increase took then place in 2013 and the number of company agreements stood at 4,659, still well below the pre-crisis levels of around 12,000. In the absence of national general and national sectoral agreements, there was no reference point for the negotiations at company level, impacting thus upon the level of protection afforded to employees (Trif, 2014). As such, while the Romanian system can no longer be characterised as relying on multi-employer bargaining, there was no evidence that the gap left by sectoral bargaining in terms of coverage was filled by company-level bargaining.

In the case of Spain, while there were mechanisms pre-crisis for organized decentralization, there were in practice long-standing issues regarding articulation around the provincial and sectoral agreements. While the space of sectoral level bargaining was maintained during the crisis, the scope to derogate in local agreements increased. A significant number of companies were left without agreements or suspended arrangements following the measures in the 'after effect' duration of collective agreements and the possibilities to employers to opt-out from higher-level agreements. The most dramatic effect was reported in 2013, with 2,515 cases of derogations, involving 2,179 companies and affecting 159,550 workers. In 2014, there were 1,627 cases of opting out from agreements that involved 1,474 companies and affected 53,123 workers (Rodriguez et al, 2014). Nonetheless, the requirement for an opt-out agreement with employee representatives acted as a break in introducing opt-outs in companies affected by the crisis, albeit not so much in SMEs (compare this to Greece, where a number of company-level agreements are concluded by associations of persons). In cases where agreements were concluded, those did not stipulate in some cases any limit on the 'after-effect' period of the agreements or at least stipulated a longer period of 'after-effect' than this set out in the legislation. There was also evidence that trade unions still relied on sectoral/provincial agreements to underpin at least the basic terms and conditions of employment.

In Ireland, company bargaining used to account for 92% of the coverage in the private sector (Visser, 2013: 26). When national partnership ended many companies had agreed to abide by the pay terms of the last agreement '*Towards 2016 Ten-Year Framework Social Partnership Agreement 2006-2015*', often referred to as T16. Individual company agreements often covered different periods of time from the actual dates of the partnership agreements. It was not unusual in 2010 and onwards for companies to have finished T16, or opted out of by way of inability to pay, and for there to be no agreements on pay generally in manufacturing sector companies. Despite this, there was some evidence of reliance of the actors on an informal network of social dialogue that allowed them to preserve bargaining in some cases (i.e. the 2% wage increase strategy developed by SIPTU). In total SIPTU have estimated that the '2%+ campaign has resulted in over 220 collective agreements (made between 2010 and 2014) covering upwards of 50,000 workers (for an analysis of the 2% strategy, see chapter 8). The success of this strategy also meant the return of localised bargaining for the first time in over 25 years in Ireland and a sustained durability of robust collective bargaining in different parts of manufacturing.

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

In Italy, even though the measures and the approach of employers favoured the development of company bargaining, there was evidence of a trend towards a decrease of annual collective bargaining intensity. However, it has to be noted that the decline had actually started before the start of the crisis. In the metal sector, the contractual intensity decreased from almost 30% of companies in 2003 to 10% in 2009, while in the chemical sector the intensity decreased from 43% in 2003 to 17% in 2009. Even in the metal sector, where the relations between the two sides were considered conflictual, there was no evidence from the case studies of increase in company-level bargaining. In cases where agreements were concluded, these were of defensive character (see chapter 8 for details). The case of the new plant agreements in Fiat unilaterally imposed by management in 2011 stood out here. The agreements included provisions on working time, which went beyond the standards specified in the metalworking sector agreement.

7.4 Changes in the direction of pressure and character of bargaining

Different trends in terms of the direction of pressure and character of bargaining were observed at different levels. In terms of the direction of the pressure, there was a common trend in all countries, i.e. from the unions to the employer. For instance, in the case of Portugal the changes introduced from 2003 and onwards changed the balance of power in favour of employers and severely constrained the bargaining position of unions. In the case of Spain, bargaining continued to exist but increasingly it was coerced or now forced by employers in more cases. In the countries where the industrial relations systems traditionally relied on the legal system for the adjudication of labour disputes (e.g. Spain, Greece and Portugal), the measures were used as a kind of threat in the negotiation process, even if they were not necessarily invoked. In this context, the legal uncertainty arising out of specific measures was also used to frame the process of negotiation to the benefit of the employer side. Aside from this, the measure of the ‘after-effect’ period of agreements was seen as another tool for putting pressure in negotiations rather than something really useful for employers. The role of the legal measures as a means to put pressure on the worker side was not confined to negotiations for the conclusion of collective agreements but was also instrumental in challenging industrial action and other forms of worker mobilisation (e.g. Spain and Greece).

In relation to collective action, the research project confirmed some of the findings in the recent study of the ETUI on strikes in times of crisis.⁸⁶ In terms of strike volume, there was a marked increase of strike activity in the beginning of the economic crisis, between 2008 and 2010 in all EU Member States discussed in the project. In terms of the nature of the action, a shift took place towards political mass strikes, either generalized public sector strikes or general strikes in certain regions or for the whole economy, but often occurring in the public sector. Importantly, the shift was observed in both single-employer and multi-employer bargaining systems (e.g. Ireland and Italy, respectively).

In terms of the character of bargaining, there was wider variation between the different systems. In a number of EU Member States, the character of bargaining was adversarial at higher levels, i.e. inter-sectoral and sectoral, but cooperative at lower levels, i.e. company (e.g. Italy, Slovenia and Romania). In Italy, even in cases where sectoral agreements continue to provide the basis for the regulation of main terms and conditions of employment, there was still evidence of conflictual relations, resulting in increases in the average renewal time of the collective agreements. This was, for instance, the case in the Italian metal sector, where Cgil had refused to sign the sectoral agreement (Colombo and Regalia, 2014). In a small number of EU Member States, a rather opposite trend was observed, i.e. some cooperation at inter-sectoral level but adversarial at sectoral and company

levels. The case of Greece illustrates this: relationships were largely adversarial at sectoral level, leading to the complete breakdown of sectoral dialogue between the social partners in manufacturing. Further, at company level the renewal of collective agreements was in many cases an outcome of industrial action. In Portugal, industrial relations became also largely adversarial at sectoral level. In Ireland, the system of bargaining went through a process of ‘structural change’ with ‘process continuity’ (Dundon and Hickland, 2014). Even though structural platform for social dialogue witnessed major change, from a national corporatist model to new local and enterprise-based bargaining, the ‘process’ of collective bargaining continued to add value by achieving agreement, consensus and wider understanding for change. In this context, differences between sub-sectors of manufacturing emerged. While in some EU Member States, metal manufacturing was characterised by adversarialism, there was evidence of a more cooperative ethos in the chemical sector (e.g. Italy and Spain), indicating hence the preservation of pre-crisis differences between different segments of the manufacturing sector.

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

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

The analysis above indicates that the impact of the labour market measures on industrial relations and social dialogue has consisted in a crisis of social dialogue and collective bargaining especially at different levels, including not only national but also sectoral and company levels. When assessing the impact of the measures on the structure of sectoral bargaining, a very important issue is that of bargaining coverage. Traxler (1998) suggested that there are two sets of conditions that lead to high bargaining coverage. The first, which is only found in Northern Europe, relies on sectoral or national bargaining and a high level of unionisation. The second set, which is also the most relevant for the EU Member States examined in the project, is based on combination of three institutional variables, including sector or national bargaining, a high level of employer organisation and a frequent use of administrative extension of agreements.

In respect of the first variable, sectoral or national bargaining, the empirical evidence pointed to significant contraction of bargaining in a number of EU Member States. The

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

In relation to the use of administrative extension of agreements, extension mechanisms have traditionally been seen as a means of supporting the collective bargaining system without interfering in the autonomous decision-making of the contracting parties (Schulten, 2012). In this way, the State can increase its own powers of guidance without – as, for example, in the case of legal minimum wages (Schulten 2012) – having to take responsibility for the substantive content of the settlements. As Marginson (2014: 2) has also pointed out, 'multi-employer bargaining arrangements bring benefits for the state, as well as advantages for the bargaining parties (Sisson, 1987), delegating the regulation of key terms and conditions of employment to private actors and the maintenance of social peace'. In the majority of the European countries, the most important variable explaining the high agreement coverage pre-crisis was the existence of state provisions supporting the collective bargaining system (Traxler et al. 2001: 194). However, as analysed in chapter 6, a number of countries removed extension mechanisms.

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

union agreement), the restrictions on extension were less severe than in Greece and Romania, so too were the restrictions on 'after effects', and whilst the favourability principle was suspended as between the law and collective agreements, this was time limited and did not extend to the relationship between different levels of collective agreements. Quite a lot depends on how one interprets the freeze in bargaining activity (i.e. whether it is temporary or will prove to be more permanent) and hence the current sharp drop in coverage.⁸⁷ In conjunction with increased company bargaining, there was also in some cases a reduction of the substantive content of higher-level agreements, which were thus limited in many cases to establishing only a core of terms and conditions of employment (e.g. Greece, Spain and Slovenia).

On the basis of these trends, it is possible to suggest that three types of bargaining systems emerged following the crisis and the labour market measures. These were the systems in collapse, the systems in corrosion and the systems in continuity with elements though of reconfiguration (see also Marginson, 2014). Rather than these being clear-cut types, they represent points in a spectrum ranging from systems in a state of continuity at the one extreme and systems in a state of collapse at the other extreme. On the basis of this, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent as Romania and Greece, they still face significant obstacles in terms of disorganised decentralisation, withdrawal of state support and as such experience erosion (i.e. Spain, Ireland, Portugal and Slovenia). Finally, the Italian system of bargaining could be seen as being closer to a state of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

What factors account for the different trajectory of the bargaining systems following the crisis and the measures? A first factor accounting for the similarities and differences in terms of the impact was the extent of the economic crisis and more importantly the different nature and extent of the measures adopted in light of the crisis. While, as explained in chapter 6, most of the measures targeted both employment protection legislation and bargaining systems, the extent to which they were far-reaching and wide-ranging was different. To illustrate this, the amendments in the regulatory framework for bargaining in Romania and Greece were very different in terms of both their scope and extent than those in Ireland and Italy. The European Commission in fact recognised recently that 'Greece was at the top of the countries in adopting measures that decreased the stringency of labour market regulations' (European Commission, 2014: 49). While decentralisation was promoted in the case of Italy and Portugal, the introduction of procedural safeguards, in the form of restrictions and controls if the local agreements did not respect the favourability principle, meant that the decentralisation was not completely disorganised. Ireland was also faced with significant challenges in terms of the economic crisis, but the measures adopted were arguably not as wide-ranging as those in Greece and Romania. While the extent of measures in Slovenia was not extensive either, the changes in the cornerstone of sectoral bargaining, i.e. the compulsory membership of employers in chambers of commerce, contributed significantly to the significant corrosion of the system.

A second explaining factor was the pre-existing strength of the bargaining systems. As Marginson recently suggested, there were important differences pre-crisis in terms of articulation and coordination between different EU Member States (Marginson, 2014). In terms of articulation specifically, i.e. coordination at vertical level, well-articulated mechanisms were in operation in Italy and Slovenia but not in the rest of the Southern Europe Member States (Marginson, 2014: 2). In terms of coordination by the peak organisations of

employers and trade unions, again differences were existent pre-crisis between different EU Member States in terms of the 'capacity of higher-level employer and trade union organisations to act strategically and deliver comprehensive regulation of wages and conditions' (Marginson, 2014: 3). When faced with the economic crisis and the measures that were directly concerned with the patterns of articulation, the systems that were better articulated pre-crisis fared better than those that were not.

The case of Italy is illustrative of the importance of articulation in the collective bargaining system. In this case, the Italian social partners were able to manage the process of decentralisation by providing safeguards at sectoral level. When Italy is contrasted with the cases of Greece and Romania (the systems most affected by the crisis), a related factor that emerged and could further explain the differences in terms of the impact concerned the different extent of the unions' reliance on the state for institutional support. Systems where unions had taken for granted a certain level of institutional support that – whilst desirable for an enabling bargaining environment – could be withdrawn at government will (e.g. Greece and Romania) were characterised by weaker attempts of union renewal and mobilisation. When state support in the form of extension mechanisms and the favourability principle were withdrawn, unions were not able to draw on other resources to re-balance the structure of bargaining.

Finally, the third explaining variable was the extent to which the measures were introduced on the basis of dialogue and agreement between the two sides of industry and the government or there were co-ordinated attempts by employers and union to contain the impact of unilaterally adopted measures by the government. There was evidence to suggest that where the measures were introduced or their intended outcomes were contained on the basis of an agreement between the social partners, the effects were less destabilising rather than where the measures were introduced unilaterally and no attempt was made by the partners for 'damage limitation' (e.g. contrast Italy with Greece and Romania). In participating in the adoption of the measures or in attempting to contain their potential impact, social actors were able to limit the extent to which the measures were radical in nature (Streeck and Thelen, 2005). In cases where the measures were rather incremental, Italy being a case here, the strengthening of decentralized bargaining was generally considered a necessary step to making the regulatory framework more adaptable to local conditions, in a way that can contribute to mutual gains and economic growth (Pedersini and Regini, 2013: 22). As a result of the incremental nature of the changes, the risk of conflicts leading to a breakdown was minimised. Instead, in cases where the measures were not subject to consultation or where there was no attempt by the actors to coordinate a strategy to contain the impact of the measures by subsequent agreements (e.g. Greece and Romania), the measures were radical in nature, which then increased the risk of breakdowns in bargaining.

Table 7.1 The state of collective bargaining following the labour market measures

Country	Inter-sectoral level	Sectoral level	Company level
Greece	<ul style="list-style-type: none"> - Limited cross-sectoral bargaining: withdrawal of SEV in 2013 - No minimum employment standards across sectors 	<ul style="list-style-type: none"> - Significantly reduced number of sectoral collective agreements (across different sectors) - Reduction of length of collective agreements - Arbitration mechanisms falling into disuse 	<ul style="list-style-type: none"> - Rapid increase of company-level bargaining (especially in the first period) - Increased use of ‘associations of persons’ - Increase of individual negotiations
Ireland	<ul style="list-style-type: none"> - Break down of negotiations at national level - Later conclusion of a voluntary protocol “for the orderly conduct of industrial relations and local bargaining in the private sector” 	<ul style="list-style-type: none"> - No update of pay rates in majority of cases - Only 3 agreements have been revised since 2011 	<ul style="list-style-type: none"> - Clear decentralisation trends in manufacturing - More direct process (no use of third parties)
Italy	Inter-sectoral agreements setting out the framework for bargaining, union representation criteria and limitations on derogations	<ul style="list-style-type: none"> - Renewal of most sectoral agreements - No defection of employers from associations (with the exception of FIAT) 	<ul style="list-style-type: none"> - Decrease of company agreements - No increase in coverage - Conclusion of ‘pirate’ agreements by non-representative employee bodies
Portugal	Tripartite agreements in 2011 and 2012 (with the exception of CGTP)	<ul style="list-style-type: none"> -Blockages to bargaining and reduced number of new CAs -Reduced coverage of new agreements 	<ul style="list-style-type: none"> - No evidence that the firm agreements are replacing sectoral agreements - No evidence of new agreements concluded by worker committees
Romania	Termination of cross-sectoral bargaining following the abolition of inter-sectoral bargaining by the 2011 Social Dialogue Act	<ul style="list-style-type: none"> - Employers opting out/threatening to opt-out from associations - Only 5 (out of 13) employers’ associations were representative in 2013 	<ul style="list-style-type: none"> - 25% reduction of company agreements between 2008 and 2013 - Lack of expertise of ‘elected representatives, where union is not

Country	Inter-sectoral level	Sectoral level	Company level
		<ul style="list-style-type: none"> - Collapse of sectoral agreements - Increase of multi-employer agreements 	present
Slovenia	Attempts to conclude a new social pact but employers' strong reaction against social pact and failure to reach an agreement	<ul style="list-style-type: none"> - Termination of collective agreements in the chemical and rubber industry sectors on the employers' initiative - Reduction of scope of collective agreements - Intensification of bargaining rounds 	<ul style="list-style-type: none"> - Divergent views between different employers - Replacement of old rule-makers with new - Signs of cooperation between the two sides
Spain	Inter-confederal agreements between the social partners but overtaken by legislation providing great scope for derogations	<ul style="list-style-type: none"> - Steep decline of sectoral agreements and decline of bargaining coverage - Conclusion in some cases of sectoral agreements (e.g. chemicals) reverting to the favourability principle 	<ul style="list-style-type: none"> - Adoption of more 'realistic positions' by the parties - Use of after-effect measures to rush the revision of agreements without much dialogue

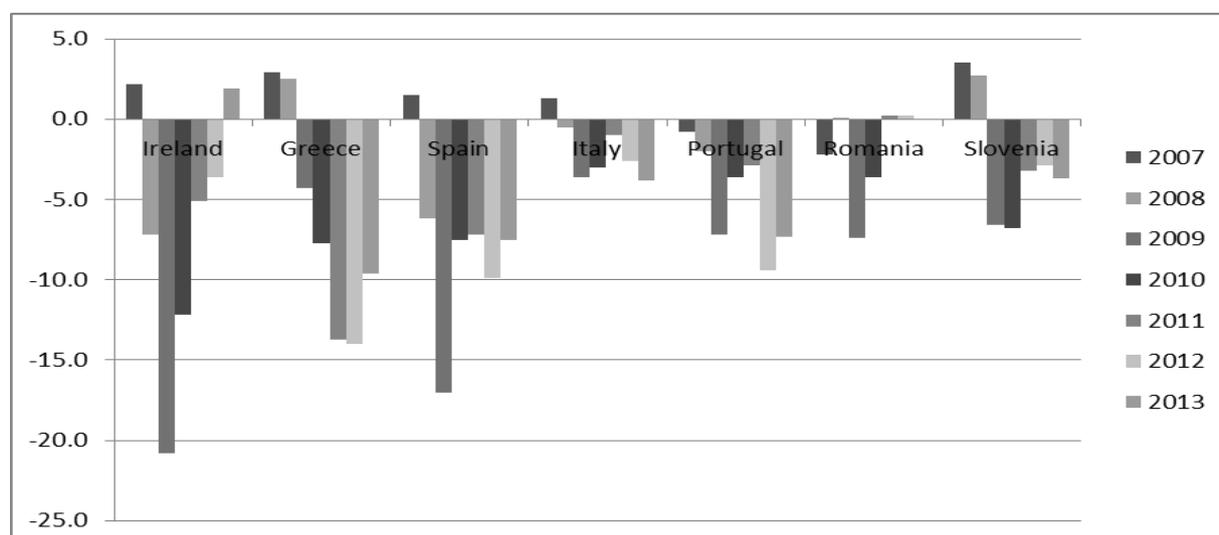
8. The impact of the measures on the content and outcomes of collective bargaining

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

8.1 Emerging patterns of collective bargaining in wages and working time

The responses of employers to the crisis in all the seven countries included restructuring and redundancies to different degrees as well as working time adjustments. However, while industry employment decreased in all the seven countries during the crisis (as shown in table 8.1 below) the extent of job losses varied from country to country, with these being more pronounced in Ireland, Greece and Spain than in Italy, Portugal Romania and Slovenia.

Figure 8.1 – Employment growth in industry (%)⁸⁸



While all the countries reformed their labour market regulations and wage setting mechanisms during the crisis, the severity and impact of the changes varied. Overall, real wages fell in all the seven countries but nominal wages also fell, especially in Ireland, and Greece, either as a result of wage cuts or working time adjustments (OECD, 2014; Trif, 2014).. In manufacturing, nominal wages fell in Ireland, Greece and Romania (Figure 8.2 below). The impact on wages appeared milder in Slovenia and in Italy than in the other five countries where the changes have to varying degrees undermined joint regulation at national,

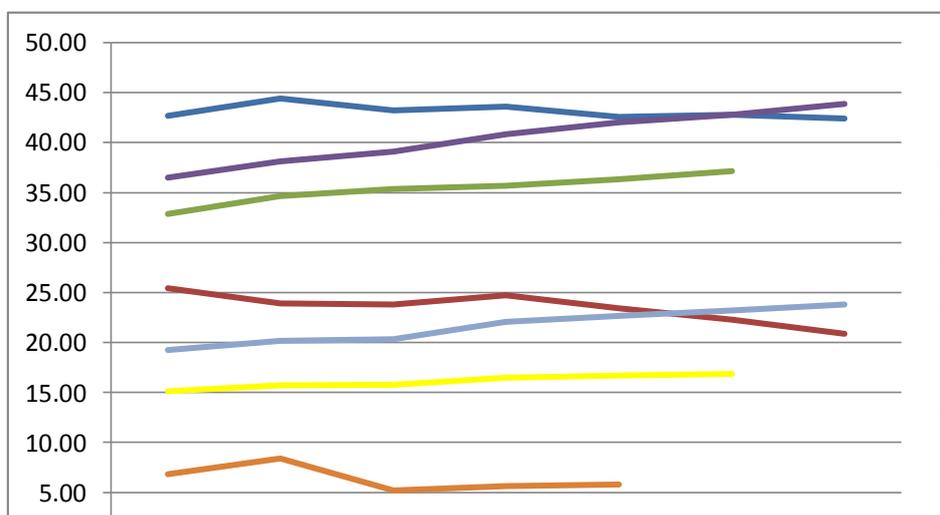
inter-sectoral and/or sectoral levels and led to a process of disorganized decentralization (see chapter 7). This process led to a decline of collective bargaining coverage, with a detrimental effect for the wages and working conditions of those not covered. In turn, the measures also had a negative effect on the ability of trade unions to protect the wages and working conditions of workers through collective bargaining at the sectoral and firm levels (see also Broughton and Welz, 2013). Indeed, data gathered by the Eurofound also indicate a decline in bargained real wages for the total economy in 2011 and 2012 in a number of the European countries for which data is available, including Spain, Portugal and Italy (data for Greece, Romania and Slovenia not provided) (Eurofound, 2013). Nevertheless, in manufacturing, at least in the case of chemical and metalwork industries, the analysis by Schulten and Müller (2014) suggests that impact of the crisis was less severe on real bargained wages than real actual wages.

To start with the less dramatic cases, while the initiative to measure collective bargaining in Italy came from a unilateral move from the government, the social partners reacted with bargained responses setting their own rules that limited the impact of the legal measures (Colombo and Regalia, 2014). Case-based evidence from manufacturing in Italy suggests that firms refrained from taking advantage of the measures to evade the wage standards set in the sectoral agreement although derogations were activated to enable greater flexibility in the management of labour, especially with regard to working time (Colombo and Regalia, 2014). Nevertheless, even in Italy, where the overall capacity of collective bargaining to regulate employment and wages has been mostly maintained, trade unions found very difficult to negotiate improvements on wages and productivity rewards at the firm level (Colombo and Regalia, 2014).

The National Report for Slovenia indicates that, similarly to what has happened in Italy, the impact on wages has been limited by employers' apparent tendency to respect statutory and jointly agreed wage standards, with the use of derogations mostly confined to working time flexibility (Stanojević and Kanjuro-Mrčela, 2014). Yet, the employers' unilateral termination of sectoral agreements – namely in chemicals manufacturing as discussed in chapter 7, and reported cases of informal firm agreements temporarily reducing pay in order to save jobs may signal a lesser degree of resilience of sectoral bargaining in this case. However, the effect on workers of the vulnerabilities of collective bargaining in Slovenia may have been cushioned by developments in the statutory national minimum wage, which was increased by 18.6% between August 2009 and March 2010 and continued to be subject to more modest increases throughout the crisis (Stanojević and Kanjuro-Mrčela, 2014, p.32). This extraordinary increase – which came about in response to workers' discontent and rise in industrial action in 2009 and was met with significant employer dissent – had an influence on bargained wages as it legitimised union demands for sectoral wages to be set above the statutory minimum. This effect is well illustrated by the steel and electronics industry where after a strike called by the sectoral union in 2013, the pay for all job grades in the sector was set above the minimum wage. Nevertheless, the number of employees receiving minimum wage increased from 20,000 before the crisis to 50,000 in 2013 (Stanojević and Kanjuro-Mrčela, 2014), indicating that the national minimum wage also has had a direct effect on the wages of workers during the crisis – or that collective bargaining has lost some of its capacity for setting floors for wages above the statutory minimum. While employers' calls and government attempts to constrain the impact of the minimum wage on firms through opt-out options have so far been successfully resisted by unions, these reveal simultaneously the pressures facing this mechanism for protecting workers from low pay.

Compared to Italy and Slovenia, the effects of the measures appear more severe in the other five countries and of these the most dramatic case appears to be Greece, particularly with regard to wages (see figure 8.2 below). The breadth and magnitude of the measures carried out to wage setting mechanisms in this country enabled the widespread use of wage cuts a key strategy to respond to the crisis amongst Greek firms. The wage reductions have been mostly driven by enterprise agreements, the great majority of which was concluded by the new non-union worker representation structure – ‘associations of persons’ (Koukiadaki and Kokkinou, 2014). The introduction of wage reductions was also made possible by legal changes introducing the possibility of derogations from sectoral agreements at firm level and the temporary suspension of the favourability principle and the extension of sectoral agreements. These developments in Greece were also greatly influenced by, at a first moment, statutory wage freezes that spilled over into the negotiation of the 2010-2012 national agreement and also, in a second stage, by the extraordinary 22% reduction by government decree of the national minimum wage, which was no longer to be jointly agreed and became statutory from 2012 (Koukiadaki and Kokkinou, 2014). The research in Greece revealed that manufacturing employers took advantage of the new legal tools both to introduce wage cuts unilaterally and through collective agreements with workers’ union and non-union representative structures. While firm level agreements gained relevance during the crisis and were the main vehicle for introducing wage reductions, these have also been attempted – though unsuccessfully at the sectoral level. As unions in metal and food and drinks manufacturing did not accept the proposed wage cuts by the sectoral employers’ federations, sectoral bargaining was stalled. As sector agreements expired, many employers introduced, with even greater ease, wage reductions at the firm level (Koukiadaki and Kokkinou, 2014).

Figure 8.2 - Nominal compensation per employee in manufacturing (thousands of euros)



Source: Ameco, European Commission (online database).⁸⁹

A direct reduction in the value of the national minimum wage also took place in Ireland, where wage reductions were an important part of the repertoire of manufacturing employers’ strategies in dealing with the economic downturn (Dundon and Hickland, 2014). While the reduction of the minimum wage in Ireland was temporary and the previous rate was reinstated only four months after its reduction, the introduction of possibilities for derogation based on employers’ ‘Inability to pay’ and the collapse of national

bargaining enabled firms to reduce the compensation of employees. While the main approach has been cutting the variable components of pay, there was also evidence of a large minority (25%) of firms cutting basic pay in 2009 (IBEC, 2009 in Dundon and Hickland, 2014). Though this was introduced in some firms with the agreement of unions that tried to minimize job losses, the strategy of union concessions is progressively giving way to a new coordinated strategy of ‘adapted bargaining’. The 2% strategy, as it became known, appears to be leading to sustained wage increases in a growing number of companies in manufacturing (Dundon and Hickland, 2014).

The research conducted in manufacturing in Spain revealed that wage reductions were also taking place in Spanish companies (Fernandez Rodriguez et al 2014) even though this is not (yet) visible in comparative data on manufacturing nominal wages (as displayed in Figure 8.2). From the beginning of the crisis the measures created a downward pressure on wages, namely through reducing the after-effect period of collective agreements, introducing possibilities for opt outs and giving priority to firm agreements. Subsequent legislation in 2012 introduced ‘flexibilization of wages’ within firms giving employers the prerogative to unilaterally reduce wages, though subject to arbitration (Fernandez Rodriguez et al, 2014). Case study work conducted in Spain revealed that employers’ organisations in the metal and chemicals sectors strategically used the new rules limiting the ultra-activity periods of agreements to extract concessions from unions, whereas at the firm level, employers are using opt outs, company agreements and managerial prerogative to introduce wage cuts (Fernandez Rodriguez et al, 2014).

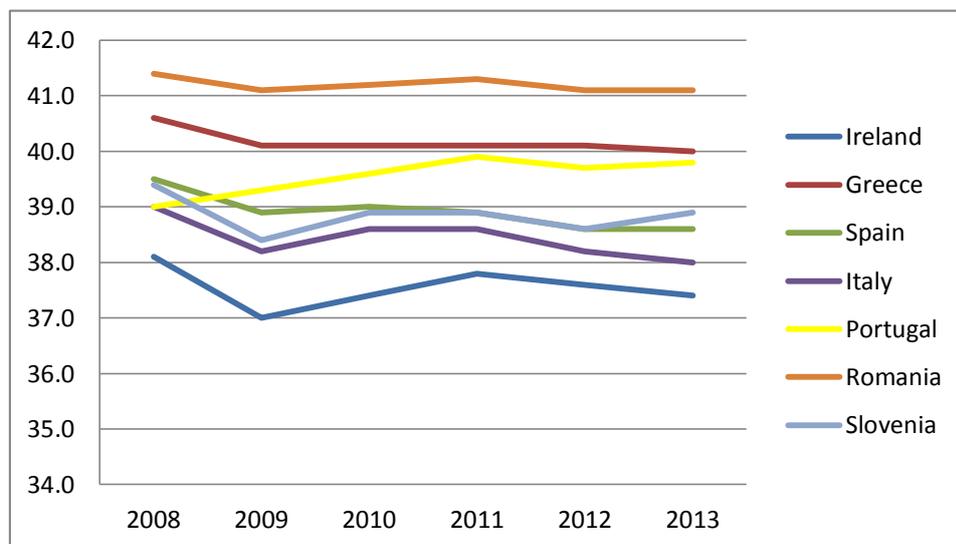
Romania has been one of the countries with the most radical change of the pay setting system, and, after the measures (discussed in previous chapter) that undermined national and sectoral bargaining, only three sectoral agreements remain valid in manufacturing, all of which were negotiated before the legal changes in 2011 but due to the suspension of extensions these only cover the employers who are members of the signatory associations (Trif, 2014). The research in Romania also shows how the sectoral agreements that are still valid have lost much of their relevance. This is illustrated by the case of the collective agreement for food manufacturing, which is still valid but the pay rates set for the lowest grades have been surpassed by – and so are now the same as - the minimum wage. Also, in the automotive industry, the employers’ association and union negotiated an addendum to the 2010-2012 sectoral agreement providing for more flexible arrangements at the local level but this did not prevent many firms to opt out of the association to avoid increasing wages. In 2012 the employer association negotiated a multi-employer agreement that applies to 40 firms (less than 10% of the firms that were covered by the sectoral agreement in 2010). Even though specific cases of direct cuts to basic wages were not reported in the Romanian national report, aggregate data indicates a decrease even in the nominal compensation of manufacturing workers (as shown in figure 8.2 below). Case-based evidence from Romania indicates that the labour market measures had a very negative impact on the ability of trade unions to negotiate pay increases for manufacturing wages in a country where wages were already extremely low (Trif, 2014). Under the circumstances of pronounced decentralization and fragmentation of bargaining, the terms of conditions of employment at the firm level became contingent to three interdependent conditions: (1) the pre-existing industrial relations in the firm, (2) the managers’ attitudes to union representation and participation and (3) the local labour market and bargaining developments in neighbouring companies.

While the changes to collective bargaining were not as radical in Portugal as in Greece, Romania and Spain, they contributed to blockages in bargaining that prevented wage

increases in manufacturing during the crisis. The non-extension of agreements affected pay in two ways. Firstly, this led to a reduction in the coverage of bargaining and secondly they contributed to blockages due to the reluctance of employers' associations to conclude sectoral agreements in some industries, which also happened in Greece and Romania. This reluctance was reportedly related to concerns that the non-extension might lead to unfair competition from employers who did not belong to the signatory association and might promote disaffiliation of existing members, particularly in the case of low wage sectors such as textiles, clothing and footwear in Portugal. As a result of these blockages, the majority of textile workers did not have pay increases between 2011 and 2014 (Távora and González, 2014). In addition, the restrictions to the after-effect period of collective agreements introduced in this country, increased the leverage of employers and their pressures on unions, in a parallel with what happened in Spain. As revealed by the experience in metal and automotive manufacturing, the restrictions to the after-effect periods meant that the threat of the expiration of the existing agreements pressured Portuguese manufacturing unions to agree to terms that they had not until then considered acceptable, particularly with regard to flexibility arrangements. Even though bargained real wages decreased in metalwork industries in Portugal during the crisis (Schulten and Müller, 2014), the reduction in labour costs in manufacturing was to a great extent achieved through the introduction of working time flexibility regimes that reduced the need for premium paid overtime coupled with a statutory reduction of overtime pay that superseded jointly agreed higher rates (Távora and González, 2014). As reported by the interviews with the social partners, this resulted in a significant cut in the total earnings of many manufacturing workers for whom overtime pay had become an important way of topping up relatively low manufacturing wages (Távora and González, 2014). The freeze of the minimum wage between 2011 and 2014 further contributed to deteriorate real wages of the workers in lower grades and in manufacturing and in low paid sectors such as some segments of food manufacturing and in textiles.

The data displayed in Figure 8.3 below show that except for Portugal, working time decreased in all countries, especially between 2008 and 2009 suggesting that arrangements that reduce working time such as short-time working and temporary lay-offs were widely used by firms to respond to the crisis when it first hit. As this schemes are often associated with a loss of earnings, their use also helps understanding the fall in nominal compensation that are shown in figure 8.2 for Greece, Ireland and Romania.

Figure 8.3 – Average number of actual weekly working hours of manufacturing employees



Source: Eurostat Labour Force Survey database⁹⁰

The national reports confirmed that employers in the manufacturing industries made extensive use of working time adjustments to respond to the initial fall and subsequent fluctuation in demand during the crisis. These adjustments included short time working schemes - including reduced working week and temporary layoffs, which were reported in the cases of Greece, Portugal, Ireland and Romania; increasing use of part-time workers and conversion of full-time into part-time contracts in the case of Greece (Koukiadaki and Kokkinou, 2014); reducing overtime pay was a major strategy in Portugal whereas this strategy was also observed in Greece along with reducing the use of overtime (Koukiadaki and Kokkinou, 2014; Távora and González, 2014); the use of time banks was reported to be used by some Slovenian employers and emerged as a widespread strategy in manufacturing in Portugal (Távora and González, 2014). The widespread use of time banks, the variation of overtime work to respond to demand fluctuations and the reduction of the cost of overtime work may help understanding why, in contrast with the other six countries, working time did not decrease in Portugal during the crisis. Whilst working hours decreased as a measure to deal with the crisis, a more flexible approach to working hours and the requests of management for greater temporal flexibility did increase not just in Portugal but also in Spain, where, despite the overall fall in working hours, management's ability to raise them has increased. The extent to which these working time adjustments were negotiated at the sectoral or the firm level or whether they were implemented by managers unilaterally varied widely and was not always clear. In Italy and Portugal there was evidence of these schemes being introduced in the industry agreements, although in the case of Italy these included dispositions for greater flexibility at the firm level. While in Portugal time banks were introduced in the sectoral collective agreements from 2009, there was evidence of informal time banks in manufacturing firms even before they were regulated and of working time regimes that were not aligned with the dispositions of the applicable industry agreement (Távora and González, 2014). These informal arrangements at the firm level were also reported in the case of Slovenia (Stanojević and Kanjuo-Mrčela, 2014).

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

The crisis and the associated measures also created or exacerbated other inequities and divisions in the workforce, namely between existing workers and new entrants – with the latter in some cases being excluded from certain benefits and offered lower wages than those stipulated by collective agreements for existing workers, which was reported in the cases of Greece and Ireland. In the case of Greece, inequities in pay based on age are also enabled by national policies, namely the significantly lower rate of the minimum wage for younger workers (Koukiadaki and Kokkinou, 2014). Another source of inequality was increasing in Slovenia where temporary agency workers are not covered by collective bargaining and therefore their wages and working conditions are below the collectively agreed standards (Stanojević and Kanjuro-Mrčela, 2014). Even though equal opportunities and work-family reconciliation policies in Portugal have been safeguarded during the crisis, the implementation of austerity and labour market measures without consideration of their potential impact on equality led to negative outcomes from a gender perspective (Távora and González, 2014). In particular, the freezing of the minimum wage in the context of bargaining blockages resulted in no wage increases for many workers in the lowest paid manufacturing sectors where women are over-represented - such as textiles and some food subsectors. This may certainly have contributed to the increase of the gender pay gap that was observed during the crisis in Portugal (Távora and González, 2014). More generally, evidence from the different countries suggest that the measures have particularly weakened the protection of the most vulnerable workers, particularly the low skilled and those in low wage sectors.

The focus of trade unions in defending jobs and wages has also led to the narrowing of the bargaining agenda. This was particularly the case of the metal industry in Slovenia where a whole section on education was dropped from the sectoral agreement and of Spain

and Italy where a decline of issues of skills development was also reported (Stanojević and Kanjuro-Mrčela, 2014; Fernandez Rodriguez et al, 2014).

Collective bargaining at the firm level during the crisis focused to a great extent on company responses to the crisis, including restructuring and flexible adjustments to prevent relocations and company closures. Where these proved unavoidable, the negotiations focused on the terms of these processes that affected large numbers of workers (Stanojević and Kanjuro-Mrčela, 2014). The national reports provided some examples where collective bargaining contributed to identify solutions that avoided relocations and minimized job losses. In Italy, solidarity contracts have been a way of supporting flexibility in firms while at the same time preventing or minimizing job losses. In one case, industrial action and collective bargaining contributed to prevent a white goods manufacturer from relocating, even though the process of bargaining was supported by local and national government mediators (Colombo and Regalia, 2014). In Ireland, social dialogue over an 18 month period in a drinks manufacturer avoided job losses and, despite the loss of fringe benefits there were no wage cuts and the union had moved its bargaining agenda towards the 2% strategy (Dundon and Hickland, 2014). In another Irish manufacturing company producing medical devices, collective bargaining succeeded in finding cost savings and minimized (though not prevented) wage cuts; plus it improved the redundancy compensation of the 200 workers that were made redundant (Dundon and Hickland, 2014).

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

Table 8.1 below summarizes the key bargaining outcomes in terms of wages, working time, skills development and equality and work life balance, relating to the labour market measures during the crisis in the different countries studied.

Table 8.1 – Summary of bargaining outcomes in manufacturing relating to the labour market measures

Country	Wage reductions	Working time and other forms of flexibility	Skills and training	Equality and WLB
Ireland	Yes, including basic wages	Short time working and temporary lay off		
Greece	Yes, including basic wages	Short time working and temporary lay off Reduced use of overtime Increased use of part-time work Greater flexibility in contracts with lower security for workers		Extension of parental leaves to fathers in national agreement
Spain	Yes, including basic wages	Cases of longer hours with the same pay and ability in some cases to use time banking	Lower training	Less resources for equality
Italy	No	Different forms of working time flexibility widely used by firms as key responses	Lower training in firm agreements	WLB and equality covered in two firm and one sector agreements.
Portugal	Mostly overtime pay	Time banks and other flexible arrangements as major responses. Short time working and temporary layoff in metal and automotive industries		Childcare subsidy for fathers in textile agreement but greater gender pay gap
Romania	Not specified	Different forms of working time flexibility widely used by firms as key responses		

Country	Wage reductions	Working time and other forms of flexibility	Skills and training	Equality and WLB
		Greater flexibility in contracts with lower security for workers		
Slovenia	No	Different forms of working time flexibility widely used by firms as key responses	Dropped from some agreements	Temporary reduction in parental leave pay Equality excluded from the bargaining agenda

8.2 The interaction between the developments in the content and outcomes of bargaining and the role of the social partners and the state

In all countries the state has sought to intervene in areas that have been traditionally left to the social partners to agree freely between them. In Italy and Slovenia these attempts were circumscribed to changing some bargaining rules to promote greater flexibility at the firm level. In the case of Italy, the government's unilateral intervention was counteracted by the reactions of the social partners reasserting their collective bargaining roles in alignment with the voluntarism tradition of the system of industrial relations in this country. However, even in the cases of Slovenia and Italy where encompassing employer and union organizations have retained much of their influence in the regulation of employment and wage determination, individual firms increased their prerogative to set their own terms at least with regard to the organisation of work and working time. As discussed in chapter 7, the increase of the regulatory role for the state and the rise of managerial prerogative of individual firms to the detriment of trade unions and employers' organizations were more pronounced in the other five countries. Where unions retained a role at the sectoral level, such as in Portugal, they have had to temper their demands and standards. Increased scope for managerial unilateral decision making also led to a reduced role for unions in firms. In the context of lower institutional and legal protections for unions and lower state support for collective bargaining, the role of unions and the maintenance of their influence during the crisis was to some extent dependent on the employers' willingness to engage with them. Therefore, the unions that were prepared to engage in concession bargaining and avoided a confrontational stance appeared in some cases more successful in retaining a role during the crisis even if, at least at a first stage, this involved accepting wage cuts or freezes and greater flexibility, particularly with regard to working times. This is well illustrated by the case of Ireland where, after the initial shock of the outbreak of the crisis and the collapse of national partnership, trade unions recalibrated their stance from concession bargaining to a call for modest wage increases through approaching employers individually in a low profile, non-confrontational but well-coordinated approach (Dundon and Hickland, 2014). This 2% strategy, as it became called, appears to be achieving success and leading to sustained wage increases in manufacturing and to enable unions to reassert their role as 'a player in the economy' (as articulated by a union respondent in Dundon and Hickland, 2014).

Another example of successful non-confrontational union approaches is provided by the case of metal industries in Portugal, where a more collaborative union structure replaced that that was more representative but confrontational thereby becoming the most prominent union actor in sectoral bargaining in those industries, despite having to agree to terms that had been until then considered unacceptable. However, this process also intensified the resentment between the two union factions in Portugal. Indeed, except for Ireland and Italy, there was little evidence that the crisis and the threats to the labour movement contributed to a greater cohesiveness within trade unions. While in Portugal the aggravation of fragmentation was mostly expressed by the continued competition and resentment between the two ideologically divided union structures, in Romania this was mostly manifested by increasing tensions between local and central union structures (Trif, 2014). In the absence of a sectoral agreement that provided a framework and a basis to negotiate from, Romanian local unions increased their status within the union structure and started claiming and actually retaining a higher proportion of membership fees. In turn, this led to financial difficulties of federations and strained the relations between union structures in the different levels of the union hierarchy. The case studies of Romania also provided two examples of company

unions that disaffiliated from the union federation and created a regional structure to better coordinate bargaining at the local level (Trif, 2014).

While cooperative approaches emerged as relatively successful in some cases of sectoral bargaining in Portugal and in a context of union coordination such as Ireland, in Slovenia militant trade unions at the national level were able to protect and improve on minimum standards of workers. However there was evidence of Slovenian trade unions losing some ground at the sectoral level by not being able to prevent the denouncement of agreements by employers whereas at the firm-level union structures lost much of their capacity to protect members and were adopting flexible and cooperative approaches in relation to management responses to the economic crisis. Nevertheless, in general, union strategies at firm level varied widely and the extent to which these led to positive outcomes when defending wages depended on equally variable factors both within and across countries. In addition to the economic situation of the firm, there were two common themes that were identified across countries and company case studies as important determinants of union's success in defending workers and wages.

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

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

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

prerogative enabled flexibility in the responses to the crisis mostly through cost savings and, as reported by the employer side in the interviews in the different countries, this enabled some firms to restructure or readjust and cope with the international crisis, particularly the sudden fall in demand in 2008-2009. However, there was some evidence of opportunistic use of the new legal tools to reduce costs or implement change in firms that were not under significant pressure. This is exemplified by the generalized adoption of the reduced overtime pay rate by Portuguese firms – which was viewed by unions and workers as a breach of the collective agreement (Távora and González, 2014) and by the fact that in Slovenia some collective agreements were cancelled by employers in sectors that were in a good economic situation (Stanojević and Kanjuo-Mrčela, 2014).

As individual firms increased their role in setting employment rules in the workplace, employers' associations may have lost some of their status and relevance but only in Romania there was evidence that this trend was significant. In this country, with the dismantlement of national and undermining of sectoral bargaining, employer associations lost much of their ability to influence the regulation of employment at those levels and the suspension of extensions led to disaffiliation and fragmentation of employers' organization (Trif, 2014; see chapter 7 for a more detailed discussion). Even though some of the measures – particularly the changes to the extension processes and criteria - were not favourable to employer associations and were implemented without their involvement in Spain, Portugal, Greece and Romania, other measures clearly favour their standing in bargaining in relation to trade unions – such as more limited after-effect periods of collective agreements in Spain and Portugal. In addition, many of the changes that reduced employment protection legislation and increased the scope for flexibility corresponded to longstanding demands of employers' through their associations but these had been until then resisted by trade unions. To the extent that the crisis provided the opportunity to introduce labour market measures that had long been desired by employers and their associations it is difficult to argue that these reduced their influence, except for the case of Romania due to the exceptional circumstances that led to the disintegration of employer organization capacity.

Under the pressure of supranational institutions, the state's increased role was mostly expressed in the implementation of legal measures to employment regulation that led to profound changes in the structure of bargaining that, as discussed in chapter 7, enabled decentralization and downward flexibility in wages in firms. The state also intervened more directly to reduce private sector wages – either by freezing or even reducing the national minimum wages, as in the case of Greece and Ireland, or by reducing the legal pay rates for overtime work while annulling clauses in collective agreements that set higher rates as in the case of Portugal.

While the governments' aim of providing firms with downward flexibility in labour costs may have been achieved, disorganised decentralisation led in a number of cases – namely Greece and Romania, to unintended negative outcomes such as the growth of the grey market and undeclared payments that reduce the state's revenue from taxes and social security contributions. Indeed, the extent to which the measures helped resolving the problems of the countries most afflicted by the sovereign debt crisis is contested and will be discussed in the next section. Table 2 below provides a summary of the key implications of the labour measures for the role of the state, employers and trade unions.

Table 8.2 – Significance and implications of the measures for the state, employers and trade unions

Country	State	Employer associations	Individual employers	Trade unions
Ireland	Withdrew support for central collective bargaining Intervention by reducing the NMW	Reduced role due to the collapse of national bargaining	Increased role Greater managerial prerogative in work organization and pay setting.	Reduced influence but emerging coordinated ‘adapted bargaining’ strategy
Greece	Increased state unilateralism and intervention in employment regulation and wage setting Withdrew support for sectoral and national bargaining	Some loss of influence due to state unilateralism and the undermining of national and sectoral bargaining.	Increased role Greater managerial prerogative in work organization, contractual arrangements and pay setting.	Reduced role and influence
Spain	Increased state unilateralism and intervention in employment regulation and wage setting Questioning systematic support for sector and national bargaining	Continued role but greater internal differences in employer interests	Increase role. Greater managerial prerogative in work organization and pay setting.	Reduced influence and challenges to regulatory influence
Italy	Increased state unilateralism and intervention in employment regulation counteracted by social partners	Continued relevant role.	Increased role. Greater managerial prerogative in working time but not so much in pay setting.	Some loss of influence but role in manufacturing was mostly maintained. Union involvement in unemployment benefit applications leading to membership increases.
Portugal	Increased intervention by	Continued relevant	Increased role. Greater	Loss of influence but

Country	State	Employer associations	Individual employers	Trade unions
	reducing support for sectoral bargaining, greater regulation and freezing the NMW	role despite pressures related to non-extension of sectoral agreements.	managerial prerogative in working time but not so much in pay setting except overtime pay.	maintained bargaining role at sectoral level.
Romania	Increased state unilateralism and intervention in employment regulation and wage setting Withdrawing support for sectoral and dismantlement of national bargaining	Reduced influence and non-extension leading to disaffiliation and fragmentation.	Increase role. Greater managerial prerogative in work organization, contractual arrangements and working time.	Loss of influence and increased fragmentation.
Slovenia	Increased state unilateralism and intervention in employment regulation to some extent counteracted by trade unions	Continued relevant role	Increased role. Greater managerial prerogative in working time <u>but not</u> in pay setting.	Some loss of influence at firm and sectoral level but maintained capacity to protect workers at national level.

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

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

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

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

The legal measures that reduced employment protection legislation and facilitated different atypical contractual arrangements further aggravate these dualisms.

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

An OECD analysis shows that real wages during the crisis lagged behind labour productivity which resulted in a higher proportion of profits going for firms and a lower share for workers (OECD, 2014). This is consistent with AMECO data that reveals that the wage share in manufacturing decreased during the crisis in all the countries under study except in Italy.⁹¹ Even though OECD argues that this is typical and part of firms' recovery path after a period of labour hoarding (OECD, 2014), the labour income share had been decreasing long before the crisis in most developed countries, including Ireland, Italy, Spain, Portugal and Slovenia though not in Greece (data not available for Romania) (OECD, 2012b). These trends were explained in the OECD (2012b) analysis by technological development and increasing international competition but also by the erosion of collective bargaining institutions and of the bargaining power of the trade unions. Unless there is a change of trajectory of erosion of collective bargaining institutions, these trends are unlikely to be reversed.

Despite the high social costs and unfair distributional outcomes of the measures, the extent to which they effectively contributed to resolve the economic troubles of the countries studied was questioned by the social partners in our study. Their concerns echoed the analysis by Schulten and Müller (2013) that suggest that not only the interventionist focus on reducing labour costs is ineffective to correct the macro-economic imbalances in Europe but even aggravates the debt and competitiveness problems of the deficit countries. Their argument is mostly based on the fact that wage freezes and cuts can depress domestic demand more than they increase exports. Moreover, while austerity contributed to the increase unemployment (Schulten and Müller, 2013) wage cuts did not necessarily translate into more jobs because, while they may have helped restoring profitability of troubled firms, they did not help overcoming their lack of competitiveness in product markets (OECD, 2014). For similar reasons, the ILO Global Wage Report (ILO, 2012b) also argues that the path to economic recovery should move away from wage cuts and instead promote a better link between wage developments and productivity that not only promotes fairness but also stimulates domestic demand. In turn, this would involve a more enabling and supportive environment to collective bargaining and the strengthening of wage setting institutions that protect the most vulnerable workers. Additionally, the report calls for increasing efforts to raise the levels of

education and to develop the skills needed to productive transformation likely to lead to the growth of labour productivity (ILO, 2012b). Though not without challenges, raising labour productivity would be mostly beneficial to the different parties: the employers, because it would lead to increased output and profit; the workers, because it would improve firms' ability to raise their wages and the government, because it would increase tax revenues and social contributions from firms and workers. Therefore, productivity growth is a theme likely to unite rather than divide the social partners. Moreover evidence from our study indicates that employers– and not only trade unions – are supportive of collective bargaining and understand its role in gaining workers' cooperation for implementing change. A policy shift towards productivity-based growth coupled with the re-establishment or reinforcement of national social dialogue and of a supportive environment for collective bargaining would configure a better alternative path out of the crisis. Employers and trade unions are well placed to contribute to the design of such a strategy at national, sectoral and firm level and their involvement on an issue likely to benefit both sides would in turn contribute to industrial peace and social cohesiveness.

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

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

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

The measures to collective bargaining in the seven countries can be defined as a substantive attempt to transform the panorama of labour rights since the mid to late 20th century. They form the basis for a major re-landscaping of the regulation of the employment relation, with the voice of trade unions and the reach of collective bargaining as a joint form of regulation being systematically undermined. Many see these developments as the extension of the neo-liberal project of the New Right in the United Kingdom and the United States of America which, since the early 1980s, have limited the voice of trade unions and removed many of the legislative supports for collective bargaining processes in those national contexts (Howell, 2005). The critics of these current labour relations measures see them being similarly driven by a range of transnational regulatory actors that are using the crisis to create greater labour market flexibility and mobility but on employer terms. The current climate of anti-trade unionism, which is apparent in such countries as Greece, Romania and Spain for example, is seen to be directly related to the political networks of the right and the Anglo-Saxon facing elites of those countries with their interest in privatisation and free markets.

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

9.1 Employers and collective bargaining change

In terms of employers and their organisations, we have seen in all the national cases a desire to use the measures for the purpose of reducing labour costs and the supposed burdens on corporate innovation and development. The decentralisation of bargaining and the ability to opt out of agreed procedures and outcomes is seen as a way of reducing wages and salaries. In all the countries we have seen significant erosion in the levels of pay brought by the indirect use of unemployment and draconian social policy, but also through more direct reductions in labour costs in the form of new types of collective bargaining agreements based

on what many see as being more coercive employment legislation. Employers have not been slow to use the legislation – in the words of one Spanish employer – to ‘correct’ the balance between labour and capital, allowing for pay to be linked to the ‘reality’ of the firm and the economy and not some ‘political criteria’ (Fernandez Rodriguez et al, 2014). The notion of exceptional economic circumstances allows employers to by-pass agreements and to directly lower or change some of the key aspects of collective agreements. The notion of automatic increases through links with inflation, automatic adjustments to pay, and through the extension of agreements across time and across groups of workers is being challenged. The question in many cases such as Spain and Portugal is whether some employers see this as an interim measure – a short term corrective to the ‘imbalance’ against them that they consider emerged in the previous years. The other question is whether after a specific period of time this will lead later to a resuming of organised labour relations and the return to more negotiated bargaining arrangements. As it stands it is unclear what the longer term engagement with such practices will be: in Greece for example it is not clear whether such suspensions in extension mechanisms will be long term.

In terms of substantive worker rights, we have also seen legislation in countries such as Greece and Spain being used that reduces the amount of compensation a worker receives when they are dismissed for economic reasons. This is an outcome which has been emerging from the pressure that is exerted by supranational institutions that view the labour market of Spain as ‘rigid’ and unable to correct itself in efficient terms. In the Italian labour market the cost of labour market exit has been an ongoing target for the liberal market politics of the OECD as pointed out by Colombo and Regalia (2014). Many of the current measures in the national cases appear to show that there is a push to less ‘costly’ forms of labour market exit for employers: the question of whether they are easier though will be discussed later due to the fact that the juridical dimension of the state has increasingly to play a central and an important role in overseeing redundancies and dismissals and attempting to ensure some degree of consistency although we will return to this matter later.

These employer strategies – which we will refine and discuss later – have also been engaging in some quarters with a more critical attitude towards the trade union movement as a whole; using state legislation to undermine worker representation and voice. This can clearly be seen in Romania where the representative basis for what is a recognised trade union has changed: the thresholds are much more problematic to reach for a trade union seeking to play a role in collective bargaining. In fact this is also the case for employer organisations as they also have to represent a larger constituency for the purpose of collective bargaining. In Greece we have seen the development of ‘associations of persons’ as an alternative to trade unions, which breaks with broader forms of worker representation. In Spain, certain draconian legislation has been re-invoked to curtail the aspects of the strike activities of worker representatives as stated elsewhere. In some of the cases studied in Spain, this dormant legislation on picketing and collective action which emerged from the previous Francoist dictatorship has been used to curtail and arrest trade union activists during specific disputes – one of which was the subject of an interview in the work of the Spanish research team. So the extent, nature and space for union activity is being challenged in some way or another by the cases colleagues have studied.

We are therefore seeing not just a reduction in labour standards but a critique of the nature and form of the labour movement. In this respect we see that employers have not been slow to take up the changing measures and laws linked to labour relations. The cases of Romania, Spain and Greece are clear in this respect whilst in Ireland the employers have

pointed to a new strategy – ‘a future way’ – which seems non-unionism as a preferred feature of any future strategies (see Dundon and Hickland, 2014): although the extent to which it is taken up will depend on the labour relations traditions of different firms (ibid). The employer response has been to engage with the legislation to substantially weaken trade unionism and social dialogue.

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

Whilst trade union decline has been at its most extreme in Slovenia in the past ten years, trade unions have not been the straightforward object of measure as in the previous cases. In some respects, there appears to be a legacy and culture of social dialogue alive in various aspects of the local labour relations systems there. Then we come to Italy and Portugal where the state and employer critique of trade union rights as social and political organisations has been less profound. The role of trade unions at the level of the state in both these cases appear to have been greater and the social consensus in the past twenty years more significant. The labour market measures have brought change to the process of collective bargaining but it has not quite brought the direct political challenge seen in other cases and this may be due to the way trade unions have engaged with the state and social dialogue. This is important for our study because it reveals that there is no systematic liberal market project being developed and that much depends on the extent of the crisis, the correlation of political forces, and the culture of negotiation and coordination within and between trade unions. The strategic and occasional bypassing of trade unions through the labour market measures does not always mean a systematic political and ideological undermining of them and this was the case in some of the national contexts where there was a more embedded tradition of social dialogue in terms of collective bargaining and a different national consensus on the role of organised labour. It was also the case where Anglo-Saxonisation and neo-liberal practices were less common.

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

of compliance, and not the use of the legislation as such and the fundamental measure of labour relations.

There appeared to be a quid pro quo running through larger Spanish firms - and even in those organisations dealing with smaller firms - that changes to substantive terms and conditions of work could be made providing the basic elements and structures of collective bargaining were sustained and not wholly bypassed. To this extent it was often clear that whilst various firms did not automatically implement sector level agreements they did use the measures and the potential to do so as a resource in their negotiations armoury. In Greece, the use of 'associations of persons' in small but also large firms enabled management to reduce substantially wage levels, whilst use was made of new forms in the legislation promoting functional and numerical flexibility. In Ireland there were cases where the changes were used and the economic circumstances referenced to enforce quite systematic forms of restructuring but this was not generalizable and the collective bargaining structures remained to some extent. The real irony was that in Italy, Portugal and Spain for example there was amongst the employer organisations in the metal sector and other sectors such as chemicals a real demand for the preservation of sector level bargaining and its remit. This was seen as essential for various reasons.

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

Secondly, there was a sense in which any change to the agreements and any further decentralisation would risk placing the burden of regulation and negotiation on smaller firms. For the larger multinationals this was not a problem. Many of the larger companies in metal and chemicals were clear they would be able to sustain the more complex bargaining changes and could forge a way ahead in terms of the way they worked with trade unions: in some cases their systems of social dialogue were robust enough to ignore the legislation and the political resources it offered the firm. This was the case in Portugal, Spain and Greece for example where discussions around works councils and other established forums continued – and where the structures of committees in terms of health and safety for example still operated. However, for smaller firms there was a risk that doing more work in the area of bargaining and going beyond implementation pacts and actually bargaining directly with the workforce could upset the political relations in the workplace. The argument was clear: decentralisation could politicise labour relations further and create a new era of instability which the last twenty years had to some extent overcome (this echoes the debate by Fairbrother, 1994). There was a sense in which the memory of social dialogue and the manner in which the agreements and reciprocal actions had been made would be lost. This reflects a growing tension in employer organisations. In Slovenia it was apparent there were growing signs of a lack of consistency amongst employers in their relation to social dialogue: there were competing points of view and no shared 'neo-liberal' consensus of change. In Romania and Portugal legal changes to the representativeness required of employers had led to real concerns as to how employers were meant to organise and represent the broader and

longer term interests of their constituencies. In the case of the latter the employers had joined mobilisations against laws and proposals on this matter.

We must therefore be cautious of assuming that there is a simple neo-liberal path to a post-labour relations agenda and context as employers begin to realise the risks of the measures for their representation and the safeguarding of social consensus within industry. In many respects there were clear signs that in manufacturing there was a distance between the employers' organisations and the new market leaning think tanks and consultancies that were emerging and who propagated further change: in Spain this was explicitly visible in many forums and may reflect the emergence of a new business school led management culture over a previously law and economics traditions within the constituency.

9.2. Trade unions and their responses

In terms of trade unions, the responses also reveal the complexity of the measures. The measures in all seven countries have presented the most serious challenge to the DNA of employment regulation since the mid to late 20th century. Trade unions have also found themselves in a broader crisis of legitimacy derived from a large part of the workforce which sees itself outside the regulatory reach of collective bargaining and trade union representation. The differences in the workforce in terms of generational and gender factors have meant that in Greece, Italy and Spain nearly half the younger workforce is unemployed. So trade unions have found themselves in a difficult position balancing the defence of their core representatives and the structures of joint regulation on the one hand and the need to create some kind of bridgehead for the more excluded workforce outside of those structures. The governments of Italy and Spain for example have been clear in the way they have linked the reduction of labour dismissal costs to the supposed increased opportunities this will bring for younger people as employers are induced to hire more staff. The argument is that the removing the barriers to not being able to dismiss workers due to the costs will engender employment. This has created a new set of tensions which both the right - and the new left that is not linked to the main stream labour movement - have not been slow to exploit. The way trade unions are seen to defend the 'insiders' has compromised the trade unions ability to generalise its opposition to collective bargaining measures.

In the initial period 2008-12 one saw throughout the cases – especially Greece, Italy, Portugal, and Spain, mass mobilisations with regards to labour market measures and broader reductions in state expenditure – with collective bargaining measure being a secondary feature of these mobilisations. Defending the question of collective bargaining has been linked to many of these mobilisations but such is the scale of social and economic measures that the measures are part of an overall tapestry of trade union responses to much wider issues.

To that extent, the national cases show a more realistic strategy – rightly or wrongly – within the trade union movements, especially those from a social democratic and centrist heritage. The objective has been to maintain and sign agreements where possible, even when conditions have been changed for the worse. There has been a, sometimes, unwritten objective to maintain bargaining and to sustain the rituals and processes linked to it so that trade unions remain involved in some way in the politics of the firm in the longer term. This has brought in countries such Italy, Portugal and Spain a great deal of criticism from smaller and/or more radical trade unions, which have seen trade unions as having accepted the measures. In terms of medium to smaller sized firms within Spain the strategy has been to

sustain the body of rights and relations at any cost so as not to lose access to firms who could easily isolate their individual representatives: this could be called process-focused concession bargaining. Hence, this has placed trade unions, which deal with bargaining, in a compromised position in relation to other competitor trade unions: and over time, trade union and work council elections may see a further fragmentation of organised labour. This is an issue the more 'progressive' employers are concerned with as it may bring a more complex bargaining process.

Whilst many of the legal measures require that firms justify any non-implementation of agreements or bypassing of them in economic terms - through the juridical spheres of the state - this is all premised on the assumption that they will be challenged by trade unions: the reality is that this is unlikely to happen as trade unions are increasingly stretched in terms of their personnel and general resources. There has been a systematic restructuring in many trade unions, which have had to scale back on legal services and their field based staff. Challenging decisions to bypass or change agreements in legal terms requires a highly resourced and trained body of trade unionists.

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

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

In the case of Slovenia, whilst some of the terms and conditions may still be partially regulated by trade unions through social dialogue there is the problem of 'self-exploitation' (Stanojevic and Mrcela, 2014). This builds on the studies of labour relations which point to the myriad of practices management have developed that have intensified work and employment relations through quality management, direct surveillance, and outsourcing (Stewart et al, 2008). That is to say workers are working more hours and more intensely to keep their jobs, and in such a way that their work is nominally regulated but in fact much of what they do undermines those regulations. This becomes a problem as the trade unions try to sustain the core and the visible aspects of regulation as part of a defensive strategy and response to the crisis and the subsequent measures, but fail to control the actual workplace and working activities of the workforce (partly due to the weaker presence of trade unions but also the more difficult challenge of negotiating these types of new working practices). What workers are doing to sustain employment and within more authoritarian workplaces will be breaching many collective agreements in relation to wages and working time. The trade union movement will be in a more vulnerable position in terms of being able to enforce agreements and monitor them.

A risk for the trade unions is that they lose not just the physical and resource-based capacity to control and regulate the labour market and work through bargaining systems, but that they also lose the necessary knowledge and relations required to sustain a strategy of regulation (see Martinez Lucio et al 2012 and 2013). This issue of organisational memory is fundamental for any understanding of collective bargaining processes and the manner in which firms operate, especially at the more local provincial level where HRM functions are undeveloped.

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

Yet there are responses emerging. Alliance building with more ‘progressive’ employers and employer associations in many cases may only occur in the more organised and already stable sectors but it is visible in some context. In Ireland, the trade unions are positioning themselves around national political and bargaining campaigns to raise the income levels of the workforce: the focus on the ‘2%’ campaign (see Dundon and Hickland 2014). There is a growing awareness of the losses to workers of real living standards and the unfair way the crisis has fallen in the salaried and waged classes. The need to use concerted mobilisations and focused demands around bargaining issues extends what was a previous strategy (an ‘organising’ strategy as in Ireland). In countries like Ireland these strategies prior to 2008 were mainly focused on reaching difficult and hard to organise workplaces which employed migrants and vulnerable workers: yet these are being deployed to wider groups of workers more recently. The development of what were targeted strategies for the population as a whole shows how unions are drawing from what they have learnt from organising vulnerable workers pre-2008 across to the overall population post-2008. In Spain, the highly acclaimed focus on information centres for migrants in the CCOO and UGT trade unions is now being broadened to include all workers such that we now see how the organisational learning of the 1990s onwards with respect to minority workers has become a template for broader trade union strategies of renewal. There is also an internal set of reflections as to how trade unions need to maintain a balance between social dialogue and a broader social role. That is to say, how it maintains a broader set of roles which underpin their independence and legitimacy.

9.3 The question of the state

In terms of the state it is tempting to see the state as a simple transmission mechanism for these supranational interests that have been driving the national measures. In many respects, the role of the state is changing and we need to focus on the role it has played. However, to appreciate this we need understand that the state plays many roles and that these do not form a consistent whole or unity. Jessop (1982) points to the state as an institutional ensemble of forms of representation and intervention. The state at the national level of these seven countries has, due to the nature of the economic crisis and financial context, undermined its resource base to the point where it has seen its autonomy from dominant socio-economic interests (relative or otherwise) fundamentally compromised. The ‘size’ of the window of opportunity for it to intervene has been eroded as we pointed out earlier in the report. In the context of Greece and Romania there have been significant interventions to halt any autonomous social and labour market policy of a progressive nature: the governments have

been transmission mechanisms for supranational interests. Some of these interests were shaped and reflected the interests and prerogatives of domestic actors, e.g. the American Chamber of Commerce in Romania and certain large companies in Greece.

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

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

This means that the state is focusing much less on the propagation of social dialogue and consensus generating processes. The role of the state is not just to represent and intervene in quantitative or legal terms but to also establish benchmarks of good practice (Martinez Lucio and Stuart, 2011). The emergence of the ‘benchmark’ or ‘organisational learning’ state is important to the generation and extension of social dialogue, yet within all seven cases this kind of activity has become almost non-existent. The conciliation services are mainly focused on resolving problems and not proactively engaging with changes and new ways to bargain. The training budgets for collective bargaining, labour law and consensus-generating activity have been reduced to the extent that there is little public investment in longer term social dialogue issues. This means that the measures are very much in the hands and ideological frames of the social actors. The state has withdrawn from a consulting role and in effect not guided such measures with any proactive ideational policies. This will contribute to an even greater level of fragmentation within regulatory processes, and within smaller to medium sized firms a reliance on external organisations and actors such as consultancies. It may actually politicise relations and tensions even more. The reduction of public sector budgets means that the state personnel are under great pressure to service basic state functions let

alone these more strategic functions. It is likely we will see a more liberalised management mind set emerge with a declining understanding of regulation.

This problem is clearly also relevant in terms of labour standards enforcement. All the seven countries have seen significant decline in the way the state monitors the application of collective agreements and dealt with questions of non-implementation. This has placed a further burden on the trade union movement who in some cases such as Italy and Spain have worked closely with the labour inspectorate in the past even in areas such as housing (Martinez Lucio et al 2012). The emergence of a more inclusive and social partner-based approach to inspection in the face of a fundamental shift in the nature of work in major sectors due to the use of undocumented workers and ruthless employment measures is being undermined. In manufacturing, smaller firms are being inspected less, and health and safety issues appear to be increasingly ignored. This brings a new set of challenges as monitoring the nature and implementation of collective agreements declines and allows unregulated spaces within the workplace and the labour market to develop where workers are routinely exploited to ever greater degrees.

Furthermore, in most of the seven national cases we are seeing the erosion of resources for the juridical and legal apparatus of the state. There is an increasing crisis in how labour cases are being dealt with in terms of time and quality of decision making. This is ironic in that many cases are seeing a greater use of the labour courts and greater reference to labour inspection, yet resources for such activities have been declining. The irony of the political push away from joint regulation in terms of the measures is that it leads to a greater degree of individual conflict and direct state intervention through the labour courts. This engenders a low trust environment and a more direct role for the state. The state is drawn into labour relations in a more systematic yet primary (cruder) manner.

The question of the way the state responds cannot be understood unless we view the state as an ensemble of institutions. Such an ensemble does not respond in a coherent manner to what are elite driven labour measures. Instead the onus will fall on different features of the state to resolve and respond to issues as they emerge. What we are seeing is that the longer term strategic dimensions of the state are declining in significance as the shorter term and more immediate aspects of the state are directly drawn into the space of employment relations. In fact the increasing use of the police and coercive strategies have become an important feature of many aspects of the state's repertoire of actions in terms of collective disputes (that are additionally creating serious employment issues within these structures as well) as in Greece, Portugal and Spain. In Portugal, for example, this has begun to worry the trade unions of the police force in terms of the effects on their terms and conditions of service. The raising of constitutional labour rights has become a major area of contention and concern: a curious outcome of the 'liberal' nature of the measures.

9.4 Summary

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

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

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

10. Conclusion

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

More specifically, add firstly, at a time of an emerging system of labour relations, social actors including the agencies within the state did not deem it wise to overload the measure or transitional agenda by putting too many rights – or their removal - on the table for discussion just as these systems were emerging and taking form. Hence, these political imperatives are important for understanding why industrial relations developed as it did. Secondly, many of these rights in countries such as Portugal and Spain were seen as hard won victories or concessions from the previous authoritarian contexts as noted earlier. This historical act seems to be ignored in much of the political aspects of the measures. Thirdly, these employment protections were maintained in order to compensate for the lack of a systematic and inclusive welfare protection in all the seven countries studied in the project. Hence, rigidities in terms of labour market rights can only be understood if they are historically contextualised – absence of Nordic or Germanic style welfare arrangements means that worker rights in labour relations need to balance some of these gaps.

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

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

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

When the economic crisis emerged, the response at European and national levels was multi-faceted. At European level, measures aimed directly at the EU Member States most affected by the crisis were developed, in the form primarily of economic adjustment programmes. These were then supplemented by a new set of rules on enhanced EU economic governance, including the European Semester, the Six-Pack Regulations and the 2011 Fiscal Compact. As illustrated in the analysis, all instruments were informed by the objective of promoting a series of structural measures in the labour and product markets with a view to internal devaluation. From a procedural point of view, the project findings illustrated both the limited scope for dialogue with the social partners in promoting such responses at EU level as well as the limited impact evaluation or follow-up mechanisms in order to assess and correct any possible problems arising out of the measures promoted by the EU institutions (see also Eurofound, 2014). From a substantive point of view, the promotion of structural labour market measures became associated with a radical shift in the policy on collective bargaining, i.e. from supporting collective bargaining during the 1990s and even later (in Central and Eastern Europe) to dismantling long-established structures of collective bargaining. There has been as a result a re-orientation of the normative goals of European social policy in the field of industrial relations moving away from the pre-crisis European Social Model into a logic of neoliberalism, which requires flexibility in labour markets to compensate for rigidities elsewhere, including, in this case, the effects of a strict monetary policy. In doing this, the process of European integration has actually accelerated, as there has been first an *ad hoc* expansion of the nature of social policy issues dealt with at EU level as well as increase in harder forms of intervention. Moreover, the focus of economic renewal has centred on crude concepts of economic and labour costs without really understanding and engaging with a more qualitative agenda that critically assesses the impact of the measures on living and working conditions.

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

and in practice, to an extent, this meant that the legitimacy of trade unions was called into question.

When examining the national labour market measures, it becomes apparent that they were consistent with the commitments undertaken by the governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. As such, the provisions of the latter were indeed very intrusive, albeit to varying extent (compare for instances the case of Greece and Romania with those of Italy and Ireland), to national systems of labour law and industrial relations. In terms specifically of wage determination and bargaining, the measures concerned all aspects of the functioning of the institutional arrangements, including restricting/abolishing extension mechanisms and time-limiting the period of which agreements remain valid after expiry; secondly, measures related to the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation; and, finally, weakening trade unions' prerogative to act as the main channel of worker representation (Marginson, 2014: 7-8). In doing this, the measures had the potential to shift the regulatory boundaries between state regulation, joint negotiation and unilateral decision-making by management, with significant implications for the role of the industrial relations actors. They could also generate greater uncertainty with firms and with the economy as to the question of regulatory responsibility and purpose.

Against this context, the impact of the measures on industrial relations and social dialogue has consisted in a crisis of collective bargaining at different levels, including not only national but also sectoral and company levels. However, the degree to which different EU Member States have been affected at different levels is not the same. The research findings from the project suggest that three types of systems of collective bargaining have emerged following the emergence of the crisis and the implementation of labour market measures: systems in a state of collapse, systems in a state of erosion and systems in a state of continuity but also reconfiguration (see also Marginson, 2014). Rather than these being clear-cut types, they represent points in a spectrum ranging from systems in a state of continuity at the one extreme and systems in a state of collapse at the other extreme. On the basis of this, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent as Romania and Greece, they still face significant obstacles in terms of disorganised decentralisation, withdrawal of state support and as such experience erosion (i.e. Spain, Ireland, Portugal and Slovenia). Finally, the Italian system of bargaining could be seen as being closer to a state of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

Three key factors may explain the differences and similarities in terms of the impact of the measures on the bargaining systems. The first factor accounting for the similarities and differences in terms of the impact is the extent of the economic crisis and in particular of the measures adopted in light of the crisis. Whilst the measures targeted both employment protection legislation and bargaining systems, the extent to which they were far-reaching and wide-ranging was different (e.g. compare Greece and Romania with Italy and Portugal). The second explaining factor is the extent to which the measures were introduced on the basis of dialogue and agreement between the two sides of industry and the government. Where the measures were introduced on the basis of consultation with the social partners and were less influenced by the Troika, the effects were less destabilising than where the measures were

introduced unilaterally (e.g. compare Italy and Portugal with Greece and Romania where the politics has been much more one of imposition). As Meardi also stresses, the differences in this respect between some of the Southern EU Member States challenge stereotypical visions of an undifferentiated ‘Mediterranean model, i.e. ‘associational governance is still much stronger in Italy, while state influence and government power are more powerful in Spain’ (Meardi, 2012: 75). Hence, we see a variety of approaches to the question of regulatory change even if this is all contained within a relatively negative scenario. The third and equally important factor is the pre-existing strength of the bargaining systems, including how well articulated and coordinated they were pre-crisis (e.g. compare Italy with Spain, Greece and Romania). In this context, the corrosive/destabilising effects of the measures were greater in cases where unions had not failed to address issues of membership, inclusiveness and renewal (compare for instance, Greece and Romania with Italy).

In terms of the impact of the measures on the content and outcomes of bargaining, evidence from the project suggests that the crisis and the labour market measures were associated with negative developments in wages and employment conditions in all the seven countries. They also resulted not only in a fall of real wages in all the countries (and of nominal wages in Romania, Greece and Ireland) but also in increasing dualism, divisions and inequities in the workforce such as differences in pay and working conditions between existing and new employees, along gender and age lines and between those in permanent contracts in relation to those in atypical employment. These effects were stronger in countries where existing national and sectoral bargaining arrangements were most disrupted by state intervention, especially Greece, Romania, Ireland and Spain as crisis responses became more decentralized and dependent on local imbalances (see also Marginson et al, 2014). The negative impact of the measures was less pronounced in Italy where encompassing institutions counteracted state intervention and vertically articulated bargaining helped containing the negative impact of the measures and placing most of the burden on workers. Minimum wages also emerged as an important wage setting institution that, while supposed to protect workers from low pay, freezes or even reductions in the minimum wages mean that it failed to fulfil this function during the recession and contributed to aggravate a downward trend in both bargained and individually contracted wages, with Greece being the most extreme example. Slovenia was the exception to this rule – where a significant increase of minimum wages played a protective function that limited the impact of the crisis and of the collective bargaining measures.

Overall, the measures were being used to undermine and change the role of joint regulation. From the employers’ side of view, there was a growing pattern of employer strategies which are premised on bypassing the roles of collective worker voice. The role of the state in facilitating and supporting such patterns at various levels was here significant. However, as the research evidence suggests, the extent of these changes varied. There were signs that in some cases there was a greater caution in undermining the legacies of social dialogue and the roles they have played. There were also visible signs of unease from many employers. There was concern with the risk of greater fragmentation in terms of collective bargaining and the ability of personnel managers to work through these issues. There was the risk of growing politicisation and change – especially the undermining of unions with a proclivity towards social dialogue and ‘realistic’ bargaining as well. On the part of trade unions, the latter were increasingly constrained in their ability to regulate and policy agreements. The culture of bargaining changed and there was less legitimacy for written texts and negotiated conditions. Yet trade unions began to formulate strategies of sustaining their role in core sectors, raising the awareness around low pay issues, and sustaining a

combination of mobilisation and negotiation strategies. However, the real problem was the growing dysfunctional features of the state and the failure of the state to work in tandem with social partners on questions of implementation of worker rights. The state was unable to directly manage and intervene and there was not the tradition of mediation and arbitration developed to support many of these measures. This lack of synergy between the social actors may ultimately be the major challenge as the labour relations field fragments further. There are serious risks and dysfunctional qualities emerging in these new panoramas of regulation.

In light of these developments, it becomes necessary to re-consider at both European and national governance levels the policy objectives in the area of industrial relations and collective bargaining. First, our country cases support the idea that the measures contributed to the adaptability of firms mostly by facilitating their ability to adjust working time, employee numbers and above all, quickly and drastically reduce labour costs. In this sense, the governments' objective of greater wage flexibility at the firm level has been achieved. However, the extent to which they helped resolving the competitiveness problems of the countries most afflicted by the crisis is contested. This is firstly because the path of crisis-exit strategy focused on internal devaluation and downward wage flexibility rather than productivity gains. In relation to this, there are concerns that this is not leading to long-term competitiveness and sustainable economic growth (e.g. Schulten and Müller, 2013; ILO, 2012; OECD, 2014). Instead, significant externalities emerged, ranging from increasing social divisions and inequalities, lower tax revenues due to high unemployment, growth of the grey market and undeclared payments to increasing discontent, social unrest and the rise of extremist movements. From a labour process point of view, the measures also contrast with core features of the production systems in all EU Member States studied in the project, increasing transactions costs for SMEs and undermining the core informal resources of logic production systems that relied on informal trust relations (Meardi, 2012: 77).

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

At national level, central to this should be a re-adjustment of public policies in the area of labour market regulation towards viewing social dialogue and collective bargaining as

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

From a procedural point of view, it would be vital to consider the introduction of a requirement to establish more rigorous impact assessments, especially in the context of macroeconomic adjustment programmes and bail-outs (see also Barnard, 2014). The recent resolution of the European Parliament, which criticised the role of the Troika and pointed to the significant lack of transparency, is also important as it stressed the possible negative impact of such problems on the stability of the political situation in the countries concerned and the trust of citizens in democracy and the European project. In this context, there are signs of support by the new President of the European Commission concerning the introduction of social impact assessments for support and reform programmes and replacing the Troika 'with a more democratically legitimate and more accountable structure, based around European institutions with enhanced parliamentary control both at European and at national level' (Juncker, 2014: 8). In this respect, attention should be paid to the involvement of a wider set of EU actors and institutions in the design, implementation and monitoring of assistance programmes and other forms of supranational intervention (e.g. through Council-Specific Recommendations) in national social policy issues. With respect to the European social partners, compliance should be sought with the explicit requirement in the Treaty for the Functioning of the European Union (TFEU) for consultation (Articles 152 and 154 TFEU). The participation of social partners in the ESM advisory board would also provide a counter-balance to the pursuit of an obsessive policy of austerity that does not consider issues of living standards and long-term sustainability of the national economies. With respect to the European Parliament, greater attention should be placed on monitoring measures that may contravene the EU social *acquis* and ensuring that the Commission and the ECB act in accordance with their duties. The involvement here of other non-EU international organisations, such as the ILO and the Council of Europe would be significant in emphasising the social dimension in issues of national and European competitiveness.

At national level, the participation of all key actors and social partners increases the likelihood of bringing about sustainable solutions, especially in times of crisis (Eurofound, 2014; ILO, 2010). In particular, social dialogue provides the institutional means to manage

conflicts triggered by a crisis, and to facilitate consensus on measure programmes and measures for containing the economic and social consequences. Much also depends on the way the questions of enforcement and state involvement in defending working conditions within a framework of rights and social justice are developed. As the space beyond collective bargaining increases, then this requires a greater degree of attention to the social dimension and capacities of the social partners in overseeing a broader and more complex industrial relations space. In this respect, a greater attention to detail regarding representation and organisational capacity is required in this new context.

¹ The authors would like to thank Paul Marginson for this suggestion.

² Source (Carley, 2009), EIRO <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm#hd2>, accessed 28th October 2014

³ [Http://www.eurofound.europa.eu/eiro/cwb](http://www.eurofound.europa.eu/eiro/cwb).

⁴ This provision concerns the situation where a Member State which is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the internal market or the implementation of the common commercial policy.

⁵ Council Decision of 4 November 2008 providing Community medium-term financial assistance for Hungary (Decision 2009/103/EC). Council Decision of 20 January 2009 providing Community medium-term financial assistance for Latvia (Decision 2009/290/EC). Council Decision of 6 May 2009 providing Community medium-term financial assistance for Romania (Decision 2009/459/EC) amended by Decision 2010/183. See also http://ec.europa.eu/economy_finance/eu_borrower/balance_of_payments/index_en.htm.

⁶ Greece was given a loan of 110 billion EUR by means of bilateral loans from the other Eurozone states (80 billion EUR) and 30 billion EUR from the IMF.

⁷ The EFSM was an emergency funding programme reliant upon funds raised on the financial markets and guaranteed by the European Commission, using the budget of the EU as collateral. Article 122(2) was used as the legal basis for Council Regulation 407/2010 ([2010] *OJ* L118/1), which stipulates the details of the mechanism.

⁸ Decision of the Representatives of the Governments of the Euro Area Member States Meeting Within the Council of the European Union, Council Document 9614/10 of 10 May 2010. The European Financial Stability Facility (EFSF) was created by the euro area Member States following the decisions taken on 9 May 2010 within the framework of the Ecofin Council.

⁹ The ESM was preceded by an amendment of Article 136 TFEU to provide an explicit authorisation for the Member States to have a funding mechanism. At present, the ESM has been the main instrument to finance new programmes. The ESM borrows a number of EU institutions, such as the Commission, for certain tasks. For instance, the signature of the agreement is the task of the Commission, on behalf of the ESM (article 13(4)).

¹⁰ European Council Mar. 24/25, 2001, Conclusions, where it was agreed 'Providing a new quality of economic policy coordination: the Euro Plus Pact'.

¹¹ European Council, Dec. 9, 2011, Statement by the Euro Area Heads of State or Government, where it was agreed acting for 'a new fiscal compact and strengthened economic policy coordination'.

¹² The recommendations referring to the Stability and Growth Pact are based on Council Regulation 1466/97 (OJ L 209, 2.8.1997) and those referring to the Macroeconomic Imbalance Procedure on Council Regulation 1176/2011 (OJ L 306/25, 23.11. 2011).

¹³ Importantly, the Semester is underpinned by a Treaty-based system of surveillance and ex-post monitoring and recognises specific roles for the European Commission, the Council and the European Parliament.

¹⁴ With respect, in particular, to the role of the social partners, Article 152 TFEU reads ‘the Union recognises and promotes the role of social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.’ See also Articles 11(2) and (3) TEU.

¹⁵ The lack of transparency and conduct of dialogue in the MoU negotiations was recently criticised in the resolution on the role of the Troika by the European Parliament, which stressed the possible negative impact of such practices on the stability of the political situation in the countries concerned and the trust of citizens in democracy and the European project (European Parliament, 2013, at point 30).

¹⁶ http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf, page 21.

¹⁷ Section 4 of the MoU states that ‘measures in labour legislation will be implemented in consultation of social partners as a rule, and in respect of EU Directives and Core Labour Standards.

¹⁸ The first meetings were held on 19 and 20 April 2011.

¹⁹ The agreement, entitled ‘Tripartite Agreement for Competitiveness and Employment’ was signed by the government, the confederations of employers, and just one of the trade union confederations (the União Geral de Trabalhadores (UGT)).

²⁰ This was the so-called ‘Commitment for Employment, Growth and Competitiveness’.

²¹ Resolution No. 90/2012.

²² Letter from the three employers’ organisations (SEV, GSEVEE and ESEE) and the GSEE to Prime Minister Loukas Papademos, 3 February 2012, Athens.

²³ Joint Comments of European Commission and IMF Staff on Draft Emergency Ordinance to Amend Law 62/2011 on Social Dialogue (October 2012), at <http://www.ituc-csi.org/IMG/pdf/romania.pdf>. Among others, the EC and the IMF opposed proposed changes concerning industrial action and the legal protection of employee representatives involved in collective bargaining but agreed to the proposals concerning changes in the representativeness criteria for unions at local level and the number of members required to form a union.

²⁴ The paragraph reads: ‘In order to ensure the smooth implementation of the Programme’s conditionality, and to help to correct imbalances in a sustainable way, the Commission shall provide continued advice and guidance on fiscal, financial market and structural measures. Within the framework of the assistance to be provided to Portugal, together with the IMF and in liaison with the ECB, the Commission shall periodically review the effectiveness and economic and *social impact of the agreed measures*, and shall recommend necessary corrections with a view to enhancing growth and job creation, securing the necessary fiscal consolidation and minimising *harmful social impacts*, particularly on the most vulnerable parts of Portuguese society’ (emphasis added).

²⁵ Article 3(9).

²⁶ Article 3(10).

²⁷ It has to be noted here that Greece, Ireland and Portugal did not receive any additional recommendations under the European Semester procedure but were in general recommended to implement their respective MoU (see table 5.1).

²⁸ The ESM disbursed a total of €41.3 billion to the Spanish government for the recapitalisation of the country's banking sector. On 31 December 2013, the ESM financial assistance programme for Spain expired.

²⁹ The structural measures were implemented under the Excessive Deficit and Macroeconomic Imbalances procedures.

³⁰ See http://www.corriere.it/economia/11_agosto_08/lettera-trichet_238bf868-c17e-11e0-9d6c129de315fa51.shtml.

³¹ See, among others, Case T-541/10, *ADEDY and Others v Council*, OJ C 26/45, 26.1.2013; Case T-215/11, *ADEDY and Others v Council*, OJ C 26/45, 26.1.2013; C-128/12, *Sindicato dos Bancários do Norte and Others v BPN — Banco Português de Negócios, SA*, OJ C 151; C-434/11 *Corpul Național al Polițiștilor*, Order of 14 December 2011; C-134/12 *Corpul Național al Polițiștilor*, Order of 10 May 2012; C-462/11 *Cozman*, Order of 14 December 2012. For an analysis, see Koukiadaki (2014).

³² European Parliament resolution of 13 March 2014 on the enquiry of the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277(INI)), point 30.

³³ Source: Marginson and Welz, 2014.

³⁴ The section here does not discuss the measures in the public sector, as the latter is outside the scope of the present research project.

³⁵ In Greece, see Act 3863/2010. In addition, during negotiations in autumn 2012, the Troika demanded further changes, namely the reduction of the notification period from six to three months, and the reduction of dismissal compensation from 24 months to 12 months maximum. In Portugal, the amendments in dismissal legislation aimed specifically at aligning (by reducing) dismissal compensation to the average levels in the EU and providing for a common legal framework for open-ended and fixed-term contracts alike (see Act 53/2011 and Act 23/2012). In Spain, see Royal Decree 10/2010 and Act 3/2012.

³⁶ But in Portugal, after one year of these measures being in place, the Constitutional Court partly revoked the changes facilitating dismissals of workers on grounds of unsuitability and job extinction (Acórdão do Tribunal Constitucional n.º 602/2013, 22/10/2013).

³⁷ See Act 92/2012. The judge can still decide for reinstatement when the economic reasons were found 'patently non-existent'.

³⁸ Act 3863/2010.

³⁹ Act 3/2012 and Act 76/2013.

⁴⁰ Act 3899/2010.

⁴¹ This type of contract can be used only by companies that employ less than 50 employees and provides the benefit of lower social security contributions on the part of the employers (see Act 3/2012). The possibility for concluding such contracts will remain in force until the unemployment rate falls to under 15%.

⁴² Article 31(1) of the Labour Code.

⁴³ In Italy, Act 92/2012 aims to limit the improper use of flexible contracts (for an analysis, see Ales (2012)).

⁴⁴ Act 3/2012.

⁴⁵ In addition, the list of accepted justifications to conclude fixed-term contracts has extended. For

instance, the employer is now able to conclude such contracts not only in the case of increased activity, but

also in the case of decreased activity, or indeed, of any structural modification to the activity (for an analysis, see Chivu et al. 2013).

⁴⁶ Chivu et al. 2013: 29-30.

⁴⁷ Employment Relationships Act 2013 (ZDR-1).

⁴⁸ For a discussion, see Canas, 2012: 86.

⁴⁹ See Act 23/2012.

⁵⁰ Art 22(4).

⁵¹ Royal Decree 7/2010 had initially provided that collective agreements should identify a minimum and maximum limit of working time that could be distributed irregularly throughout the year.

⁵² Act 3/2012.

⁵³ It is important to note that so-called ‘associations of persons’ acquired the right to negotiate working time arrangements.

⁵⁴ Act 3986/2011.

⁵⁵ According to Article 52(3) of the Labour Code, ‘in case of temporary reduction of the activity, for either economic, technological, structural or any similar reasons, for periods exceeding 30 working days, the employer shall have the possibility to reduce the working time from 5 to 4 days per week, and to reduce wages accordingly, until the cause that led to the reduction of the working time disappears, after prior consultations with the representative union at company level or with the representative of the employees, as the case may be.’

⁵⁶ The Labour Code provides that collective bargaining agreements can derogate by providing reference periods of time longer than 4 months, but not exceeding 6 months. With the requirement of complying with the regulations regarding health and safety protection of employees, for objective reasons, either technical or related to work organization, collective bargaining agreements can even derogate for longer reference periods than 4 months but not exceeding 12 months (Chivu et al. 2013: 32).

⁵⁷ Article 51 of Law 3871/2010 on ‘Financial Management and Responsibility’, FEK 152 A/1-7-2010.

⁵⁸ A further 10% decline for youth, which applies generally without any restrictive conditions (under the age of 25) was stipulated as well, and with respect to apprentices, the minimum wage now stands at 68% of the level determined by the national agreement.

⁵⁹ Act 6 of 28.2.2012 of the Ministerial Council.

⁶⁰ The Court against the restrictions to collectively agreed pay rates for overtime work after the duration of the 2 year temporary period, which was due to end in 31st July 2014. Responding to the employers’ demands, the government has recently approved in parliament a new law (48-A/2014) extending the suspension period till the end of that year. It is useful to add that the 2009 and 2012 labour measures provided that collective agreements could only set more favourable conditions than legislation in certain specified areas, many of which related to equality and discrimination.

⁶¹ The agreement was signed on 25 July 2008 by the government of Romania with all 13 employer confederations and all 5 national trade union confederations that were representative at the time.

⁶² Act 4024/2011.

⁶³ With some exceptions (such as discriminatory dismissal, pregnant workers, mothers with babies under the age of one, dismissal during maternity leave, or dismissal of employees who have requested parental or adoption leave). The 2009 agreement signed by Confindustria, Uil and Cisl introduced the possibility for ‘opting-out clauses’ from the national agreements in order to cope with territorial or economic crises or to foster economic growth.

⁶⁴ For an analysis of this as well as the Fiat agreements that made use of this option, see Loi, 2012: 268-270.

⁶⁵ Royal Decree 10/2010 provided that in the absence of workers’ legal representatives at company level and for the purpose of concluding collective agreements at that level, employees would be able to confer representation on a commission made up of a maximum of three members belonging to the most representative trade unions of the sector.

⁶⁶ Act 4024/2011.

⁶⁷ In July 2011 the High Court declared sections of the legislation governing the ERO system unconstitutional.

⁶⁸ Ministry for Enterprise, Trade and Innovation (2011). The review found that the maintenance of the framework of the Joint Labour Committees and the REAs was necessary and justified but concluded that the system needed a radical overhaul and made a number of recommendations in order to make it more responsive to changing economic circumstances.

⁶⁹ JLCs will be more restricted in the extent to which they can award changes in rates of pay and companies will be able to derogate from EROs in cases of financial difficulty. The Act also provides for Ministerial and Parliamentary oversight of the ERO/REA system and for clarifying the definition of ‘participating parties’ (i.e. employers and trade unions, or groups thereof).

⁷⁰ Act 4024/2011.

⁷¹ The inter-confederal agreement of 28 June 2011 defined the criteria for union representativeness, provided for the general binding character of company agreements approved by a majority of unions/works councils and extended the possibilities for company-level derogations from the national collective agreements. In contrast to the 2009 agreement, the 2011 agreement provides that derogation *in pejus* can only take place if there are no restrictions in place in the national collective agreement (Loi, 2012: 274-275).

⁷² Act 6 of 28.2.2012 of the Ministerial Council.

⁷³ The allowances covered include those based on seniority, number of children, education and exposure to workplace hazards.

⁷⁴ Legislation that was passed earlier (Royal Decree 7/2011) had also introduced the requirement that all collective agreements should introduce specific time limits for the negotiation of a new agreement. Until then and according to article 86(3) of the Workers’ Statute, a collective agreement that had expired would remain in force until a new agreement would be concluded.

⁷⁵ Under the old law, a collective bargaining agreement could be concluded for a minimum term of 12 months; there was no maximum duration provided.

⁷⁶ Council of State, 2307/2014 decision.

⁷⁷ Law 7/2009 of 12 February, articles 510 and 511.

⁷⁸ ‘Ratification of Mid-term Fiscal Strategy 2013-2016 – Urgent Regulations relating to the Implementation of L.4046/2012 and the Midterm Fiscal Strategy 2013-2016’. FEK 222/A, 12.11.2012.

⁷⁹ Article 8 of Law 148/2011.

⁸⁰ See also national report on Ireland.

⁸¹ This concerned measures in Spain (Koukiadaki, 2014).

⁸² For an analysis, see Koukiadaki (2014).

⁸³ For an analysis of the impact of the recent austerity measures on industrial relations in central public administration see, Lethbridge et al. (2014).

⁸⁴ In total, there are 75 REAs although in the majority of cases the pay rates have not been updated.

⁸⁵ Company-level agreements were a feature of the manufacturing sector pre-crisis (Koukiadaki and Kokkinou, 2014).

⁸⁶ ETUI Strikes in Europe Infographic, <http://www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-infographic>

⁸⁷ The authors would like to thank Paul Marginson for the insightful comments regarding the case of Portugal.

⁸⁸ Source: Eurostat Labour Force Survey. Data extracted on 05/11/2014 from Eurostat online database at http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

⁸⁹ Nominal compensation includes employees' wages and salaries and employers' social contributions. Ameco database accessed 07/11/2014 at

http://ec.europa.eu/economy_finance/ameco/user/serie/SelectSerie.cfm

⁹⁰ Data extracted on 05/11/2014 from Eurostat online database at http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

⁹¹ Adjusted wage share in manufacturing industry (Compensation per employee as percentage of nominal gross value added per person employed). Accessed 24/11/2014 at

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