

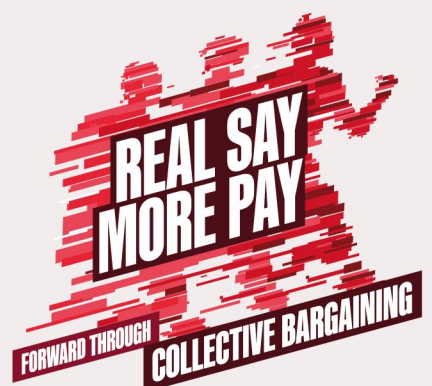


# REPORT ON THE TRANSPOSITION OF THE MINIMUM WAGE DIRECTIVE

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## 1. Introduction

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A [‘watershed moment’](#), [‘gamechanger’](#), [‘break with the past’](#), [‘important step forwards’](#) and even [‘history in the making’](#). When the European Union Directive on Adequate Minimum Wages passed in 2022, there was widespread optimism about its effects. Not only because the Directive puts forward procedures and indicators for what adequate minimum wage are, but mostly because it mandates countries to take action in the promotion of collective bargaining.

And rightly so. After decades of willfull destruction, the European Union now seems to be in favour of strengthening collective bargaining as the main instrument in ensuring decent minimum wages.

All EU countries are henceforward obliged to promote collective bargaining, and countries where collective bargaining is weak (coverage < 80%), need to make a special effort through the adoption and implementation of national action plans to promote collective bargaining.

Now, two years later, the deadline for the transposition passed and it is time for a first stock taking on what’s happening. For this reason, UNI Europa asked four experts from different regions to draft a short report on the ongoing discussions regarding the **promotion of collective bargaining** in their region.

These reports fed directly into regional workshops organized by UNI Europa in the fall of 2024 in the four different regions.

The different chapters are input for discussions and do not reflect an official position of UNI Europa.

### 1. Sectoral Bargaining Model with High Coverage (by Prof. De Becker)

The first chapter focuses on countries with a high level of collective bargaining coverage (> 80%). While these countries need to transpose the Directive, there’s no obligation for them to draft specific national action plans to promote collective bargaining. This section thus focuses on countries like Austria, Belgium, Denmark, Finland, France, Sweden, and Spain. These countries illustrate a variety of approaches, ranging from statutory minimum wages supported by collective agreements (as seen in France and Spain) to decentralized sectoral agreements that

do not include statutory minimum wages (notably in Nordic countries). Despite their robust coverage, they face challenges such as addressing deficiencies in public sector agreements, ensuring wage adequacy, and adapting to emerging labor market trends like platform work and digitalization.

## **2. Single Employer Bargaining Model with Average Coverage (by Prof. Doherty)**

This section focuses on nations characterized by single-employer bargaining frameworks and moderate levels of coverage, including Croatia, Ireland, Czechia, Cyprus and Malta. These countries typically depend on agreements made at the company level, with minimal coordination at the sectoral level. Significant challenges include fragmented union representation, limited employer involvement, and ineffective enforcement mechanisms.

## **3. Single Employer Bargaining Model with Low Coverage (by Prof. Kun)**

This section examines countries exhibiting low levels of collective bargaining coverage, such as Hungary, Poland, Romania, and the Baltic States. These nations encounter both structural and cultural obstacles to collective bargaining, which arise from fragmented union structures, low union membership, and insufficient social dialogue mechanisms. Recent reforms, particularly Romania's comprehensive revision of its social dialogue framework, provide valuable insights into revitalizing bargaining systems.

## **4. Sectoral Bargaining Model with Medium Coverage (by Prof. Franca)**

The concluding section investigates countries with sectoral bargaining systems and medium levels of coverage, such as Germany, Slovenia, Portugal, Luxembourg, and the Netherlands. While these nations benefit from sectoral agreements, they encounter challenges in achieving full compliance with the Directive's target of 80% coverage. The report examines potential avenues for enhancing sectoral bargaining, addressing coverage gaps, and utilizing collective agreements as instruments to address emerging labor market challenges.

## **2. Report on the transposition of the minimum wage Directive in countries with at least 80% coverage (Austria, Belgium, Denmark, Finland, France, Italy, Spain and Sweden). Alexander De Becker (UGent)**

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The aim of this research is to carry out an initial analysis of eight countries with collective bargaining coverage of over 80% in order to examine the role that trade unions can play in the transposition and implementation of national legislation in relation to the Minimum Wage Directive. It will briefly focus on the regulation contained in the Directive, which contains obligations for Member States. The focus will lie on the collective bargaining part of the Directive and not on the minimum wage part.

The Directive starts with the objective of providing the possibility of setting a legal framework for minimum wages, but also the possibility of setting minimum wages through collective bargaining. Both are possible. The vast majority of countries with a high degree of collective bargaining coverage deal with minimum wages through collective agreements. Article 1 also indicates that the Member States should be free to decide how to set a minimum wage. The social partners are explicitly invited to play their role in this process.

The scope of the Directive only covers employment contracts covered by collective agreements, as defined by the Member State itself. However, this poses a difficulty, as Article 3 states that the minimum wage directive includes the public sector. This is important as many of the countries surveyed (e.g. Belgium, France, Spain) do not have full collective agreements in the public sector. Moreover, almost all the countries surveyed (Austria, Belgium, France, Spain and, to a lesser extent, Denmark) still have a special status for civil servants who are not employed on a contract basis. This leads to the conclusion that in some sectors, such as education and health, it is necessary to keep an eye on the remuneration of these groups of civil servants. They are unlikely to be paid below the minimum wage scale, but pay remains an issue in these public sectors. However, they do not seem to be covered by the minimum wage directive as a whole.

From article 4 on, we will make a more profound analysis of the content of the article and its impact on the social partners.

## 2.1. Article 4

Article 4 – first paragraph stipulates the following: *“With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:*

*(a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;*

*(b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;*

*(c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;*

*(d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers’ organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration”.*

This article is difficult to tackle, even for countries with a high level of collective bargaining coverage. Austria and Belgium have a highly institutionalised system where employers’ organisations and trade unions are spread across the national, sectoral and company levels. At the other end of the spectrum, France is very often seen as a country with a very decentralised approach to collective bargaining. In reality, however, we believe that there are reciprocal influences. It is the French government that takes the lead on minimum wages, followed by a non-institutionalised but existing interplay between the industry level and the company level, where there seems to be an increasing influence of the company level. The impact on the inter-industry or sectoral level is thus a constant working point for French collective bargaining. However, given

the legal underpinning of the minimum wage, there is a basis for the minimum wage in general, but it remains important for the social partners to keep an eye on decentralisation.

The Nordic countries do not have a strong institutionalised system. However, in Sweden there is a strong interplay between the sectoral and the company level. The interplay between companies and sectors is strong with regard to the regulation of minimum wages. Sweden has a high degree of self-regulation as well as a high density of trade unions. The system is in place, but not in a formal or regulatory way. Denmark even has a more decentralised system with regard to wage setting and thus the limits of minimum wages. In reality, however, the sectors play their part in controlling wage-setting, including minimum wages. This is because the organisation of workers' organisations and trade unions is centralised. Finland has seen a decentralisation of its collective bargaining system since 2008 with the withdrawal of an employers' organisation. However, due to the existence of framework agreements at national level, it remains to some extent centrally controlled.

Spain has a system where much of the bargaining process takes place at industry level. This means that this should be maintained even if there is a statutory minimum wage. Italy is under greater pressure because it does not have a statutory minimum wage, but it does have many sectoral minimum wages and a programmatic basic right to a decent wage, enshrined in Article 36 of the Constitution. However, it will be important for trade unions to remain aware of the fact that they should look at the developments where the sectoral level really provides and continues to provide minimum wages that can guarantee what is foreseen in Article 36 of the Constitution.

## 2.2. Article 8

Article 8 of the Directive stipulates the following:

*“Member States shall, with the involvement of the social partners, take the following measures to enhance the effective access of workers to statutory minimum wage protection as appropriate, including, where appropriate, strengthening its enforcement:*

*(a) provide for effective, proportionate and non-discriminatory controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages;*

*(b) develop the capability of enforcement authorities, in particular through training and guidance, to proactively target and pursue non-compliant employers”.*

This is new for many Member States. It means that the social partners should be involved in the organisation and training of labour inspectors and in developing the capacity of enforcement authorities.

Moreover, it is pointed out in the preamble that the social partners should be involved in the regulatory process in order to avoid people being excluded from the scope of a minimum wage.

Belgium has tackled bogus self-employment through the Labour Relations Act of 27 December 2006, which defines when a person should be considered an employee or self-employed. Trade unions can refer potential violations of this law to an administrative commission. This means that the authorities can intervene through the intervention of a trade union. In addition, and apparently, trade unions can complain to the Labour Inspectorate about violations of the minimum wage.

Austria has a specific law to combat social fraud, including bogus self-employment (which can be seen as a real problem in Austria). The role of trade unions with regard to violations that can be investigated by the Labour Inspectorate could be to provide information. The Austrian trade unions have set up a website ([www.undok.at](http://www.undok.at)) where they follow up major violations of working conditions, including minimum wage violations. This could help in providing information to labour inspectorates.

France also provided for legislation on bogus self-employment in its Labour Code. It dealt mainly with platform work in general, but it remained a difficult dialogue between legislation and jurisprudence. The role of the social partners could be based on what exists in the fight against undeclared work, where the social partners are involved through the anti-fraud committee in defining guidelines and priorities. It could therefore be useful to set up a similar initiative with regard to the legal framework on minimum wages.

Italy has a provision in the Civil Code dealing with bogus self-employment. However, trade unions are again involved in the labour inspectorate's monitoring of this issue. The Italian authorities inform the Italian and French social partners, on the basis of a bilateral agreement from 2020, about bogus self-employment under French and Italian



law. The Italian trade union confederation (CISL) has set up (online) facilities to deal with complaints and monitor abusive behaviour by employers. This includes the possibility for trade unions to collect information that could lead to a complaint to the labour inspectorate.

Law 10/2021 provides for stricter penalties in the case of bogus self-employment. The role of the social partners in this issue is important for how the labour inspectorates can carry out their task.

The Spanish legal framework provides for compulsory consultation and participation of the social partners in defining the objectives and programmes of the labour and social security inspection system. This also applies to the formulation of proposals for the objectives and programmes of the labour and social security inspectorates. The social partners are consulted by the General Council on matters relating to labour inspection. The General Council has a tripartite composition, consisting of representatives of central government, regional governments, the most representative business organisations and trade union organisations.

In the Nordic countries, most countries do not have to deal with a lot of bogus self-employment. Denmark has some legislation on this, but given the specific issue that Danish labour law values the role of the social partners, it is imperative that the social partners are involved in setting up labour inspectorates. They should be involved in the training and education of labour inspectors. In Sweden the social partners have been involved in drafting legislation on bogus self-employment. However, the role of trade unions in carrying out labour inspections remains relatively low. This is a strong point for Sweden. A similar conclusion can be drawn for Finland, where there is no real partnership between the authorities and the social partners to combat bogus self-employment or to define the role of trade unions in labour inspection. The social partners do play a role in monitoring collective agreements, but not outside the scope of these agreements.

### 2.3. Article 9

Article 9 of the Directive focuses on the role of the social partners (including trade unions) in relation to public procurement.

The article stipulates the following:



*“In accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, Member States shall take appropriate measures to ensure that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting, in the field of social and labour law established by Union law, national law, collective agreements or international social and labour law provisions, including ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949)”.*

This seems to be a provision that covers social legislation but does not fully include a role for the social partners. However, the social partners can play their role in the development of this legislation. This article must be read in the context of the forthcoming reform of public procurement rules at EU level.

It is worth addressing the issue at EU and national level. Most public procurement legislation does not yet include a provision on the coverage of wages, collective bargaining and the right to organise. So far, the directives only provide for the possibility of adapting the legislation so that Member States provide that contractors have to comply with rules laid down in collective agreements.

In Belgium, it is not yet possible to exclude a candidate who does not respect these fundamental rights. Trade unions could raise this in negotiations at national level.

Austrian legislation provides that bidders can be excluded if they violate the wage and social dumping law (Lohn- und Sozialdumping-Bekämpfungsgesetz - LSD-BG). This means that trade unions have a strong interest in monitoring the issue and informing labour inspectors of potential violations. However, there are no complete exclusions. Unions should try to initiate the preparation of new legislation to ensure that bidders have to comply with this issue.

In France there is no legislation on this issue. It should therefore be adapted. However, the role of trade unions in enacting legislation is rather limited. Given the decentralised nature of the system, it seems appropriate to include the obligation to comply with this issue in collective agreements at sectoral level in order to meet this need. The same conclusion can be drawn for Spain.

Italy has a regulation, Article 110 of the Public Procurement Act, which provides for exclusion if the tenderer does not comply with the minimum wage regulation. However, it remains to be seen how the Italian authorities can find this out. Again, trade unions could play an important role in informing the authorities (the Labour Inspectorate) about this issue or even in being consulted when a particular company is bidding.

Denmark explicitly provides that companies can be excluded if they do not comply with collective agreements. This is a sound basis, but information needs to be shared. It may be worthwhile to consult trade unions when a bid has been made by a bidder. Sweden may be the best example, as its legislation explicitly provides for labour law requirements. This includes that a supplier can be forced to adapt its execution if it does not comply with wage regulations. Trade unions could play a crucial role in ensuring this. It could also be useful to include such a check in the invitation to tender. Finland may have a similar check at the time of awarding the contract. If a bidder does not respect collective agreements, it could be excluded. Again, the trade union could play a role in ensuring this follow-up.

### 2.4. Conclusion

One could consider that the minimum wage directive does not lead to any fundamental changes in the existing legal framework or collective agreements in countries with more than 80% coverage.

However, this does not mean that there is nothing countries should or could do. As this article indicated there is scope for action on a number of domains, at least regarding the promotion of collective bargaining (article 4), the role of social partners in the inspection services (article 8) and the role of collective bargaining in public procurement (article 9).

### **3. Report on the transposition of the minimum wage Directive in countries with Single-employer bargaining systems and medium coverage (Croatia, Czechia, Cyprus, Ireland and Malta). Michael Doherty (Maynooth University)**

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This report brings together existing policy proposals on how to strengthen collective bargaining in anticipation of the transposition of the Adequate Minimum Wage Directive (Directive 2022/2041) and the preparation of National Action Plans (NAPs). It looks at five countries characterised by **single-employer bargaining and average coverage**: Croatia, the Czech Republic, Cyprus, Ireland and Malta.

In doing so, this report builds on the 2024 report by De Spiegelaere<sup>1</sup> and others, which identified five areas of intervention that could help to increase collective bargaining coverage: (1) Strengthening **trade union bargaining capacity** (e.g. protection against anti-union practices, granting tax benefits; greater resources for trade union representatives; compulsory membership); (2) **Enabling employer organisations** (e.g. enterprise benefits (credits, tax breaks); compulsory membership). protection against anti-union practices, granting of tax advantages; more resources for union representatives; compulsory membership); (3) Promoting **effective collective bargaining processes** (e.g. better provision of data; good governance). e.g. better provision of data; good faith bargaining rules/charters; financial support for bargaining / mediation; government standard-setting in the event of collective bargaining failure); (4) using **collective agreements as effective regulatory instruments** (e.g. 'erga omnes' extension mechanisms; establishing favourable policies; restricting opt-out clauses; using public procurement); and (5) **culture** (e.g. acceptance of collective bargaining through monitoring mechanisms to track the extent and content of collective bargaining; establishing bipartite or tripartite monitoring structures; publicity campaigns).

This report follows up on that work by examining what, if any, policy proposals have been implemented or debated in the five Member States that could serve as examples/incentives for others. At the time of writing (September 2024), very few concrete measures relating to collective bargaining (legislative or social partner initiatives) have been implemented in any of the countries in relation to the transposition of the Directive (which was due to be transposed by 15 November 2024).

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<sup>1</sup> De Spiegelaere, S. *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

In a way, this is not surprising, as the European Commission has indicated that National Action Plans (NAPs) will only have to be prepared by the end of 2025. However, in many countries the debate on how to strengthen collective bargaining is certainly 'live' (and in some countries, such as Ireland and Malta, trade unions and employers have taken quite different positions on what is required).

Eurofound points out that any analysis of the measures discussed so far in the EU Member States must take into account the fact that the measures are heterogeneous and have generally been taken in the context of reforming aspects of existing legislation<sup>2</sup>. Understandably, most of the measures respond to country-specific issues that hamper collective bargaining and may not seem easily transferable to other countries. However, if we try to think about the measures in terms of overall objectives (e.g. increasing employers' willingness to engage in collective bargaining or strengthening trade union capacity) rather than focusing on national specificities, we may be able to see ways of adapting them to different contexts. We can aim to compare countries and look for similarities and dissimilarities in the current context.

### 3.1. Croatia<sup>3</sup>

Some 53% of workers have their rights and working conditions covered by collective agreements. However, current institutions are relatively weak and the legal framework is subject to constant change, leading to legal uncertainty<sup>4</sup>. The BEFORE project synthesis report estimates that about half of the workers formally covered by collective agreements have wages that are not precisely defined in the agreement. As a result, the formal coverage rate overstates the true impact of collective bargaining in Croatia and does not fully capture the lack of stability that the collective bargaining system creates in terms of working conditions and workers' rights. However, the material rights and working conditions of employees covered by collective agreements appear to be better than those of those not covered.

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<sup>2</sup> Eurofound (2024), Minimum wages in 2024: Annual review, Minimum wages in the EU series, Publications Office of the European Union, Luxembourg.

<sup>3</sup> This section draws significantly on the contribution of Dragan Bagić to the report noted above; *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

<sup>4</sup> Vandekerckhove, S. & Lenaerts, K. (2023). *Synthesis report* (Deliverable 4.2). Leuven: BEFORE project VS/2021/0209 (section on 'Croatia').

Although the majority of collective agreements in force are concluded exclusively at company level, the majority of workers covered by collective agreements come from a small number of sectoral/multi-employer agreements. Given the large differences in union density and collective bargaining practices (i.e. company level vs. sectoral), there are significant differences in the coverage of employees by collective agreements depending on the sector of activity. In the construction, hotel and tourism sectors, for example, coverage is 100%, thanks to the administrative extension of the collective agreement to all employees and employers in these sectors.

Within the framework outlined above, we can highlight a number of proposals/suggestions for increasing collective bargaining coverage in Croatia (highlighting those that could be more widely applied).

### 3.1.1. Strengthening Trade Union capacity:

**Funding** from national and EU sources could be used to support organising efforts, particularly among workers in sectors with low union density. This is a problem faced by trade unions everywhere, and so transnational projects (with mutual learning) can be beneficial. Specifically in the Croatian context, it was noted that there is a need to strengthen **strike capacity** and mobilisation potential (including raising awareness among trade union leaders of how and when to use this strategy), which could be part of such projects.

Unions could also consider changing internal structures. If the aim is to promote sectoral bargaining, trade union movements in all countries could look at the potential for organising at the sectoral level, either by setting up sectoral union structures or by looking at ways of coordinating action by different unions at the sectoral level.

Another measure that could be considered with a view to a more coherent and coordinated trade union approach is for trade unions to adopt some form of 'collective bargaining charter'<sup>5</sup>. This would involve trade unions at national (and/or sectoral) level drawing up a set of principles, for example defining

- the primary level of collective bargaining (company or sectoral)
- the objectives sought at each level;

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<sup>5</sup> See Dragan Bagić; *How to Improve Collective Bargaining in Croatia* (2022; report for the Friedrich-Ebert-Stiftung and the Association of Independent Trade Unions of Croatia).

- the policy/reference points for negotiating pay (e.g. linked to inflation/pattern bargaining, etc);
- referred bargaining cycles (i.e. setting a regularised timeframe for when bargaining should start);
- The dynamics and duration of collective bargaining;
- the scope of bargaining (e.g. issues beyond pay and core working conditions).

Such a charter could be similar to a code of practice in the Irish context (codes of practice are not legally binding but have a certain moral force and are intended to guide best practice).

### 3.1.2. Enabling/ Incentivising employers:

Collective bargaining cannot take place without a willing partner on the employer side. In countries like Croatia, where sectoral bargaining mechanisms are not well established, the absence of such partners can be a real obstacle. Two very different approaches could be considered.

A soft approach would be to use national and EU funding sources to support networking and the establishment of sectoral employers' associations.

A more contentious approach would be to use sectoral collective agreements to allow more flexible regulation of industrial relations. In particular, sectoral agreements can be used to allow derogations from general labour law standards or to set sector-specific standards, for example in areas such as working time or work permits.

### 3.1.3. Enabling Effective Collective Bargaining Processes:

An issue for all trade union movements to consider in terms of bargaining coverage is the scope of the collective bargaining **agenda**. In some countries, such as Croatia, wages are not always covered by collective agreements (at company or sectoral level), which is an important aspect to address in terms of strengthening collective bargaining. However, beyond pay and core working conditions, there is a need to broaden the scope of collective agreements, particularly in relation to the **digitalisation** of the workplace. There is a real need to involve workers' representatives in the early stages of any digital transition (including negotiations on training and upskilling). This is an issue of systemic importance for the economy that needs to be brought home to employers and public authorities.



As noted above, the issue of **bargaining cycles** is also important. In Croatia there are regular cycles of sectoral bargaining in some key sectors (such as tourism and catering; every two years), but in others there are no fixed periods. Limiting collective agreements to maximum periods (and requiring renegotiations to start before that) can provide stability and certainty for all actors. In Croatia, the normalisation of regular wage growth (through collective bargaining) and a clear, transparent and stable collective bargaining system would be good for trade unions and would make collective bargaining part of the general macroeconomic policy structure.

In Croatia, there remains a difficulty related to the lack of **hierarchical relationships between different sources of labour regulation**, in particular collective agreements, which needs to be addressed. There also remains a related issue of clarifying representativeness; as Bagić noted in the 2024 report, one possible option here is that the union that is representative for the sectoral collective agreement should automatically receive the status of representativeness for company-level collective bargaining in all companies operating in that sector.

### 3.1.4. Using Collective Agreements as Regulatory tools:

Two issues can be highlighted here that are relevant to Croatia, but also more generally. The potential for using **public procurement** to support collective bargaining exists everywhere. Article 9 of the Directive explicitly refers to this possibility (which already exists under the 2014 Public Procurement Directives). Although legally complex, states can certainly aim to spend public money in a way that incentivises bidders to respect established collective bargaining processes and sectoral standards.

Second, it is important to emphasise the **benefits of sectoral collective bargaining** as a means of regulating, detecting, monitoring and eliminating 'bogus self-employment' or 'hidden' payrolls; again, this should be emphasised as a benefit for state actors in particular.

### 3.1.5. Promoting a Collective Bargaining culture:

National tripartite institutions and informal lobbying of the government are essential for the (relatively) weakly organised employers' and trade union confederations in Croatia. However, **access** through lobbying etc. should only be available to employers'



organisations and trade unions engaged in bipartite social dialogue and collective bargaining.<sup>6</sup>

Softer initiatives can also be useful (e.g. initiatives such as the 'Fair Hotels' activity in the tourism sector).<sup>7</sup> Bipartite or tripartite sectoral publicity or promotional **campaigns** can help to build mutual trust and cooperation between the social partners.

## 3.2. Cyprus<sup>8</sup>

About 43% of employees (in the southern part of Cyprus) have their rights and working conditions regulated by collective agreements. The most significant multi-employer bargaining agreements are in the hospitality and construction sectors, particularly in medium and large hotels and medium and large construction firms. In the absence of erga omnes clauses and extension mechanisms in the Cypriot system, collective bargaining coverage tends to be closely related to union density. Therefore, policy initiatives to promote collective bargaining need to pay particular attention to measures to increase union density.

### 3.2.1. Strengthening Trade Union capacity:

Two main avenues were suggested. First, measures to **increase workplace unionisation**. At present, unions can trigger the statutory compulsory recognition procedure if they represent at least 25% of employees in a company (this triggers a secret ballot in which more than 50% must support union representation). Unions have found it difficult to 'trigger' the process, particularly where employers are reluctant to share information on workforce numbers. Lowering the 'trigger' threshold could ease this problem<sup>9</sup>. Additionally, there is the related issue of unions gaining **access** to the

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<sup>6</sup> Some employers organisations do not engage in bargaining at all, and some trade unions focus almost exclusively on service provision to members, and not collective bargaining; see contribution of Bagić in *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

<sup>7</sup> <https://fairhotels.com.hr/en/index.html#:~:text=Fair%20hotels%20is%20an%20initiative,of%20social%20dialog%20between%20trade>.

<sup>8</sup> This section draws significantly on the contribution of Gregoris Ioannou and Sertac Sonan to the report noted above; *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

<sup>9</sup> For example, in the UK, the new Labour government has proposed an Employment Rights Bill, which could reduce the membership requirement required to trigger the statutory recognition process to 2% (<https://www.gov.uk/government/publications/employment-rights-bill-factsheets>).

workforce in circumstances where the employer is opposed. A change in the law to facilitate access would make it easier for unions to make their case.

Secondly, one could look at **tax/financial incentives**, in particular subsidies for annual trade union subscriptions.

### 3.2.2. Enabling/ Incentivising employers:

With regard to employers, **fiscal/financial incentives** have also been proposed in the form of a subsidy (calculated on the basis of the size of the workforce) for establishing and maintaining collective bargaining arrangements. Ioannou and Sonan have suggested that this could have two elements: firstly, to cover the cost to the enterprise of membership of the relevant employers' associations; secondly, to cover part of the additional costs of establishing and maintaining collective agreements.<sup>10</sup>

### 3.2.3. Collective Agreements as Regulatory tools:

Policy proposals have been made in relation to **public procurement** (as described above), with suggestions that bidders for public contracts, or any expenditure on services with public money, should in some way be linked to compliance with collective agreements.

As 'erga omnes' **extension of collective agreements** is somewhat alien to the Cypriot system, one option is to consider where and how such a system could be introduced. This could be done in a phased manner (e.g. starting in sectors where coverage is very low and/or labour law violations are widespread), and employer participation in collective bargaining could initially be linked to, for example, obtaining or maintaining operating licences, and/or included as an item in application procedures and inspection and review processes.

The need for action in Cyprus is highlighted by two disputes in key sectors in 2024. A new three-year collective agreement in the construction sector was finally signed in August 2024 after employers resisted wage increases and unions threatened industrial action. The agreement was finally reached after mediation by the Minister of Labour

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<sup>10</sup> Ibid; the authors describe a scheme of social security and provident fund premiums refund as a reward for collective bargaining agreements, in the Northern part of Cyprus, as a practical example.

and includes provisions to combat undeclared work<sup>11</sup>. Secondly, the unions have renewed and intensified calls for the legal extension of existing collective agreements in the hotel sector. Again, the Ministry of Labour was asked by the unions to intervene.<sup>12</sup>

### 3.3. Czechia<sup>13</sup>

Current collective bargaining coverage in the Czech Republic is around 34%. There is a limited number of sectoral agreements; around 20 agreements are registered, of which four are extended 'erga omnes' (construction, paper processing, glass processing and clothing and textiles). Extension takes place if both parties agree and the Ministry of Labour approves the extension. Sectoral agreements, however, rarely regulate wages. They generally serve as a framework for setting minimum standards for collective bargaining at company level, but these usually do not differ significantly from the standards guaranteed by legislation. Company level bargaining is the dominant form.

#### 3.3.1. Strengthening Trade Union capacity:

As noted above, **funding** from national and EU sources could be used to support organising efforts. In addition, the Slovak system of an employer contribution to the salary of union representatives (based on the number of representatives) could be adopted.

Increased **protection** against union busting was also discussed; in particular, it was suggested that the use of whistleblowing legislation to protect against union busting could be an avenue to explore.

#### 3.3.2. Enabling Effective Collective Bargaining Processes:

Czechia is one of the few countries where legislative changes have already been introduced in anticipation of the Directive's transposition deadline. In July, the Labour

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<sup>11</sup> <https://in-cyprus.philenews.com/insider/new-collective-agreement-in-cyprus-construction-sector-to-benefit-workers/>.

<sup>12</sup> <https://in-cyprus.philenews.com/insider/hotel-industry-collective-agreement-negotiations-reach-critical-point/>.

<sup>13</sup> This section draws significantly on the contribution of Monika Martišková to the report noted above; *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

Code was amended to introduce a procedure that will lead to the removal of the blockade of collective bargaining by small trade unions in the situation where there are several trade unions in one company. Previously, if there was more than one union in an enterprise, the employer had to conclude a collective agreement with all the unions concerned. The new approach will allow an employer to conclude a collective agreement with the union (or group of unions) that represents the largest number of employees, and other unions will have the right to be informed about the collective bargaining process. Employees will have the opportunity to challenge this new approach. If a majority of all employees disagree, they can declare their opposition to the employer and specify which union or unions should be involved in the collective agreement<sup>14</sup>. The idea is that this change will make collective bargaining at company level less cumbersome and complex.

The amendment also introduces the possibility of a state contribution to social partners who negotiate at the sectoral level.

Czechia is somewhat unique in that it has no specialised labour courts (most European countries have specialised labour courts, often organised in some form of tripartite configuration). The establishment of such courts would be an important means of improving the resolution of industrial disputes.

The Czech system does allow for 'erga omnes' extensions of collective agreements, and indeed applies a strict principle of non-derogation (i.e. lower levels of collective bargaining can only **improve** on the provisions agreed at the higher level). At present, however, extensions can only be approved by the Ministry of Labour at the request of both sides of industry; one proposal is to allow extensions at the request of only one party.

### 3.3.3. Collective Agreements as Regulatory tools:

As elsewhere, greater use of labour and social clauses in **public procurement** has been identified as a means of strengthening collective bargaining.

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<sup>14</sup> <https://www.wolftheiss.com/insights/czech-republic-july-2024-labour-code-amendment-whats-new/#:~:text=On%2031%20July%202024%2C%20a,implement%20by%2015%20November%202024>

Sectoral collective bargaining and sectoral extension mechanisms do exist in the Czech Republic, but, as noted above, they tend to be rather limited in scope and 'framework' in nature. One suggestion was to allow for a modification of the **'favourability' principle**, so that limited and defined derogations from sectoral agreements are allowed; this could encourage more employer interest in bargaining at company level (and perhaps also at sectoral level, as there will be more interest in setting the basic 'framework').

### 3.3.4. Promoting a Collective Bargaining culture:

Tripartite dialogue forums do exist in the Czech Republic, but they tend to be dominated by the government of the day. It would be useful to use national and EU funding to set up independent **data centres** and **labour rights monitoring mechanisms**, involving researchers and civil society (NGOs, journalists, etc.) to raise awareness of the benefits of collective bargaining.

### 3.4. Ireland<sup>15</sup>

Collective bargaining coverage in Ireland is currently estimated at around 34%. Company level bargaining is predominant, but there are sectoral extension mechanisms which operate in certain sectors (e.g. construction; security) and are subject to Labour Court and then Ministerial approval to take effect. In some sectors (notably construction), Sectoral Employment Orders (SEOs) set statutory minimum rates of pay, sick pay and pension entitlements; such orders can be applied for jointly by representative employers and unions in the sector, or by one party alone. Joint Labour Committees (JLCs), made up of representative union and employer representatives with an independent chair, set minimum rates of pay (above the national minimum wage) and terms and conditions of employment in certain sectors through Employment Regulation Orders (EROs). These are important in sectors such as contract cleaning and security. JLCs exist in other sectors (notably retail, hotels and catering) but do not operate because employer representatives do not participate and so EROs cannot be negotiated and proposed.

However, given the relatively limited role of extension mechanisms in Ireland, collective bargaining coverage tends to be closely related to union density. Policy initiatives to

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<sup>15</sup> This section draws significantly on the contribution of Vincenzo Maccarrone in the report noted above; *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

promote collective bargaining must therefore pay particular attention to measures to increase union density. The Irish government established a tripartite High Level Group (HLG) on collective bargaining under the auspices of the Labour-Employer Economic Forum (LEEF), a social dialogue forum. The HLG delivered its final report in October 2022, with recommendations that could have a positive impact on both sectoral and enterprise bargaining and union density.

### 3.4.1. Strengthening Trade Union capacity:

Some measures could focus on internal union organisation, in particular the potential for **organising at sectoral** level. This was a strategy outlined by the Irish Congress of Trade Unions (ICTU) in 2013, but has not yet been implemented.

At company level, it is difficult for unions to gain access to the workforce, particularly where the employer is opposed to union representation. A change in the law to facilitate **access** would make it easier for unions to make their case to potential members. For example, union officials could be given rights of access to workplaces, and employers could be required to provide information about unions to employees (at least where the union has some existing membership in the workplace).<sup>16</sup>

In Ireland, there are currently no legal provisions to enable/allow workplace union representatives to **carry out their duties** (e.g. paid time off to carry out representative duties, access to office facilities, etc.). Similarly, while there is **protection** against unfair dismissal for trade union activity or membership, there is limited legal protection against forms of mistreatment short of dismissal.

Policymakers could also look at **fiscal/financial incentives**, in particular tax relief on trade union subscriptions.

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<sup>16</sup> In the UK, from where Ireland derived its system of (largely) company level bargaining, the 2024 Employment Rights Bill proposes a number of changes in relation to access to the workforce. The Bill proposes to enable any union to request access to a workplace "to meet, represent or organise workers (whether or not they are members of a trade union)" or to "facilitate collective bargaining." The Bill's proposals are underlined by three 'access principles'; access should not "unreasonably interfere with the employer's business"; an employer should take reasonable steps to facilitate access; and access should only be refused entirely where it is reasonable to do so. The Bill also proposes that employers will be required to notify workers new to the company of their right to join a union (<https://www.gov.uk/government/publications/employment-rights-bill-factsheets>).

### 3.4.2. Enabling/ Incentivising employers:

Collective bargaining cannot take place without a willing partner on the employer side. In countries such as Ireland, where sectoral bargaining mechanisms are not well established outside a limited number of sectors, the absence of such partners can be a real barrier. Two very different approaches could be considered.

A soft approach would be to use national and EU funding sources to support networking and the establishment of sectoral employers' associations.

A more contentious approach would be to use sectoral collective agreements to allow more flexible regulation of industrial relations. The HLG report recommended that consideration be given to other policy/legislative changes that could be made to incentivise participation in JLCs by providing certain benefits to those operating in regulated sectors; the report suggested that these could include commitments to engage on specific issues, for example on labour supply issues in particular sectors.

### 3.4.3. Enabling Effective Collective Bargaining Processes:

The HLG report made a number of recommendations:

- The development of a (legally non-binding) code of practice on enterprise bargaining;
- The provision of technical assistance to sectoral bodies (and training for JLC chairs);
- Improving the operation of the JLC system by removing the de facto employer veto on the operation of the ERO system; the report proposes a procedure for proceeding with an ERO where employers have been given every reasonable opportunity to engage in accordance with fair procedures, but refuse to do so.
- As in other countries, the **scope** of the collective bargaining agenda in Ireland (particularly in relation to sectoral mechanisms such as SEOs) tends to be quite limited to core pay issues. However, there is a need to broaden the scope of collective bargaining beyond pay and core terms and conditions, particularly in relation to the digitalisation of the workplace.



The HLG also recommends the introduction of a '**good faith engagement**' process at company level, which would oblige the parties not to reach an outcome or agreement, but to engage (currently employers can simply choose not to engage with unions at all).

### 3.4.4. Collective Agreements as Regulatory tools:

In this respect, the HLG report pointed to the need to clarify and refine the **scope of sectors in which JLCs could be established in the future**. This would require careful work to identify the sectors that are appropriate for JLC-type structures. For example, the (now repealed) Fair Pay Agreement process established in New Zealand in 2022 referred to factors that might justify sectoral standard-setting, including workers who have little bargaining and/or no pay progression in their employment, workers who work long or unsocial hours or have contractual insecurity, including short-term seasonal work, or work on an intermittent or irregular basis. Other factors could also be considered, such as historical sectoral patterns of labour law violations, evidence of systemic health and safety problems, and a high proportion of vulnerable workers (such as migrant workers).

JLCs tend to operate in traditionally low-paying sectors, but there is also scope to explore whether the **Sectoral Employment Order process could be extended to other sectors** (where it might be desirable to take 'wages out of competition').

As in the other countries, it was noted that Ireland has not traditionally made significant use of labour clauses in **public procurement**.

### 3.5. Malta<sup>17</sup>

Collective bargaining coverage is around 50%. Bargaining is predominantly at local or company level. Multi-employer bargaining is not popular or widely known in Malta, nor is it part of the political agenda of either local employers or unions. As the only two general unions in Malta, the GWU and the UHM, sign over 90% of all collective

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<sup>17</sup> This section draws significantly on the contribution of Godfrey Baldacchino and Manwel Debono in the report noted above; *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe* (2024).

agreements, this concentration of union activity can lead to both 'pattern bargaining' and 'bargaining co-ordination' across industries.

### 3.5.1. Strengthening Trade Union capacity:

The most prominent proposal in Malta, and one that has generated considerable controversy in recent years, is that of **default union membership**, whereby workers would be enrolled as union members by default, with the option of opting out. If workers chose to opt out, their membership fees could be channelled into a fund for worker education and training, or a fund to support unions (to address the problem of 'free riders'). Another version of the idea is to automatically enrol only low-paid workers (or workers in certain sectors), i.e. to target the measure at those most vulnerable to exploitation at work.

### 3.5.2. Enabling/ Incentivising employers:

As in other countries, the proposals focus on the use of **financial incentives**, such as tax breaks for employers who agree to negotiate at industry level.

### 3.5.3. Enabling Effective Collective Bargaining Processes:

In Malta, there is some evidence (in practice) of collective bargaining arrangements being in place even where the legal criteria for union representativeness are not met. Formal recognition of this '**parallel system**' of **voluntary recognition** (again, perhaps supported by tax or regulatory incentives) would give official recognition to this practice.

### 3.5.4. Collective Agreements as Regulatory tools:

Malta (like Ireland) has inherited from the British system of Wage Councils the system of **Wage Regulation Orders**, which regulate the basic terms and conditions of employment of workers in some non-unionised sectors (e.g. cinema workers, cleaning staff). Orders generally operate as a result of historical factors, but an important recent addition that demonstrates the continuing relevance of this mechanism is the Digital Platform Delivery Wages Council Wage Regulation Order (2022). This gives platform delivery workers, for example, a presumption of worker status and aims to promote 'transparency, fairness and accountability in algorithmic management in relation to platform work and by increasing transparency, traceability and awareness of

developments in relation to this new form of work' (in many ways anticipating the EU's Platform Workers Directive).<sup>18</sup>

Given that multi-employer bargaining in general is largely unknown in Malta, it may be necessary to give some **legal status to multi-employer collective** agreements in order to encourage employers and trade unions to engage in such activity.

### 3.5.5. Promoting a Collective Bargaining culture:

Strengthening government support for the Department of Industrial and Employment Relations' dispute resolution processes and for industrial relations monitoring and evaluation (including data collection) could be beneficial in promoting a culture of social dialogue.

### 3.6. Concluding notes

As noted in the introduction, the policy options discussed above tend to focus on country-specific issues. However, there is considerable overlap in terms of objectives, particularly in terms of strengthening trade union structures, encouraging employers to negotiate at sectoral level, measures to increase union density at workplace level, broadening the scope of the bargaining agenda and the use of public procurement.

This seems an important moment for trade unions to be proactive, given the relatively positive EU-driven legislative agenda. Furthermore, issues such as ageing, migration, globalisation, digitalisation and the green transition are challenging the status quo; in the face of significant social upheaval, the role of the social partners as a force for stability and consensus can be crucial. More narrowly, labour shortages are acute across the EU, reaching crisis points for employers in some countries (e.g. Croatia, Ireland); crisis points are usually necessary to accelerate and enable change.

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[https://dier.gov.mt/en/FAQs/Documents/EN\\_FAQ%20Digital%20Platform%20Delivery%20Wages%20Council%20\(FINAL\\_FINAL\).pdf](https://dier.gov.mt/en/FAQs/Documents/EN_FAQ%20Digital%20Platform%20Delivery%20Wages%20Council%20(FINAL_FINAL).pdf)

## 4. Report on the transposition of the minimum wage with single employer bargaining and low coverage (Estonia, Lithuania, Poland, Greece, Romania, Slovakia, Hungary, Latvia, Bulgaria). *Prof. Attila Kun*

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### 4.1. Introduction, background

This report, as an update of previous UNI-Europa reports, maps existing and potential policy proposals to strengthen collective bargaining in anticipation of the transposition of the Adequate Minimum Wage Directive and the development of National Action Plans. It focuses on countries with single-employer negotiations and low coverage: (e.g. Estonia, Lithuania, Poland, Greece, Romania, Slovakia, Hungary, Latvia, Bulgaria).

The report recognises that national industrial relations systems are diverse and that existing policy proposals are path-dependent, often targeting technical aspects of legislation only. It is reasonable to assume that most reform proposals and measures respond to country-specific problems that hamper collective bargaining and may not be transferable to other countries.

By October 2024, few concrete measures relating to collective bargaining had been implemented in any of the countries in terms of transposing the AMWD (due by 15 November 2024). This is not surprising as the European Commission says the NAPs must be ready by the end of 2025. Some countries are only discussing ways to strengthen collective bargaining while some others are also preparing new laws.

### 4.2. General context

This group of countries includes new EU members and post-socialist countries (except Greece), who have similar industrial relations' traditions. Bercusson rightly summed that these countries' industrial relations systems will need to change to fit in with the EU. They have "heterogeneous and fragmented trade unions and employers' organisation, limited scope of collective bargaining, with collective bargaining systems more decentralised and operating mainly at company level, underdeveloped sectoral level bargaining, low levels of collective bargaining coverage and meagre content of collective agreements, the widespread absence of works councils, the absence of

social dialogue in the public sector, and an asymmetrical tripartism, with strong governments confronting weaker social partners.”<sup>19</sup>.

Some experts note that post-socialist societies are often individualistic, highly-segmented and lack a strong grassroots institutional network. This is not a good foundation for sound labour relations<sup>20</sup>. Bronstein notes that the main problem is that people have not had time to learn the behavioural patterns and a culture of collective action and to work together since communism ended”<sup>21</sup>.

Comparative research shows that a country's industrial relations affect how much state intervention is expected. In countries where collective representation is weak, these mechanisms can play less of a role in encouraging the autonomous development of a culture of bargaining and dispute resolution<sup>22</sup>. So, there might be a need for the state to get involved more intensively. These countries have a strong tradition of relying on laws. In general, they expect detailed, precise regulation, which might help bargaining. However, over-formalisation must always be avoided.

With the EU-accession, these countries have had a new momentum to reform their industrial relations and collective bargaining structures and practices to match European standards and the idea of European Social Dialogue<sup>23</sup>. The results have been mixed over the last few decades. The AMWD gives these countries and their industrial relations practices a new chance to get closer to the European Social Model. We hope the AMWD won't be trapped in the usual formal, “hyper-positivist”<sup>24</sup>, “ticking

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<sup>19</sup> Bercusson, Brian (2009): *European Labour Law 2nd edn.* (Cambridge, Cambridge University Press, 2009) 266, fn.17.

<sup>20</sup> Tóth, András; Neumann, László & Hosszu, Hortenzia (2012): ‘Hungary’s full-blown malaise’ In: Steffen Lehndorff (ed.) *A triumph of failed ideas. European models of capitalism in the crisis* (ETUI Brussels 2012) 137-154, 152. (the conclusion is about Hungary but seems to be apt for extrapolation for the region).

<sup>21</sup> Bronstein, Arturo (2006): ‘Trends and challenges of labour law in Central Europe’, In: John D. R. Craig and S. Michael Lynk (eds), *Globalization and the Future of Labour Law* (Cambridge: Cambridge University Press 2006) 191-224, 215.

<sup>22</sup> Koukiadaki, Aristeia (2020): *International Comparative Report on “Individual and Collective Labour Dispute Settlement Systems - A comparative review” (Volume II), Project “Supporting the transition from informal to formal economy and addressing undeclared work in Greece”* (International Labour Office in cooperation with, the European Commission’s Directorate-General for Structural Reform Support, DG REFORM, former SRSS July 2020), 28-30, 104.

<sup>23</sup> 2007: Bulgaria and Romania; 2004: Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia; 1981: Greece.

<sup>24</sup> Cf.: Muszyński, Karol (2020): Reform and oversight mechanisms are not enough - Access to justice for workers and employment standards in Central Eastern European countries (ETUI, Working Paper 2020.09. Brussels).

the box”-type<sup>25</sup> of legal culture. Social partners have an important role to play in this regard.

### 4.3. Country-specific examples (selection)

#### 4.3.1. Romania

Currently, Romania is going through a period of fundamental reform as regards collective bargaining and social dialogue. The previous Law No 62/2011<sup>26</sup> actively discouraged union association and social dialogue as a whole.<sup>27</sup> A new law on social dialogue has recently been adopted in Romania under the joint influence of ILO and EC recommendations, Law No 367/2022 on social dialogue<sup>28</sup> repealing the previous regulation, Law No 62/2011.

Overall, the reforms introduce more favourable provisions for unions and social dialogue, with a focus on collective bargaining. “Romania proves that radical innovation and renovation of social dialogue is feasible and realistic.”<sup>29</sup> The main reforms are the following<sup>30</sup>:

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<sup>25</sup> Kun, Attila (2024): Az uniós munkajog hatása a magyar munkajogi jogalkotáásra és joggyakorlatra, In: Pál Lajos; Petrovics Zoltán (szerk.): Visegrád 21.0 - *A XXI. Magyar Munkajogi Konferencia szerkesztett előadásai*, Budapest: Wolters Kluwer Hungary, 3-23.

<sup>26</sup> Published in the Official Gazette, Part I, No. 322 of 10 May 2011. Effective from 13 May 2011 until 24 December 2022.

<sup>27</sup> See for further details: Trif, Aurora and Paolucci, Valentina (2019): Romania, In: *Collective bargaining in Europe: towards an endgame*, edited by Torsten Müller, Kurt Vandaele and Jeremy Waddington, ETUI, 2019.

<sup>28</sup> Published in the Official Gazette, Part I, No. 1238 of 22 December 2022. In force from 19 January 2023.

<sup>29</sup> Roethig, Oliver and De Spiegelaere, Stan (2023): *Collective bargaining: Romania shows the way*, Social Europe, 12th September 2023, <https://www.socialeurope.eu/collective-bargaining-romania-shows-the-way> (Downloaded: 30. 09. 2024.)

<sup>30</sup> For a more detailed summary see: “The relaunch of social dialogue in Romania and its impact on employers”, Kinstellar, January 2023. <https://www.kinstellar.com/news-and-insights/detail/2068/the-relaunch-of-social-dialogue-in-romania-and-its-impact-on-employers> (Downloaded: 30. 09. 2024.); Romania: New regulations regarding social dialogue, Noerr, 22.12.2022 <https://www.noerr.com/en/insights/romania-new-regulations-regarding-social-dialogue> (Downloaded: 30. 09. 2024.); Roethig, Oliver and De Spiegelaere, Stan (2023): *Collective bargaining: Romania shows the way*, Social Europe, 12th September 2023, <https://www.socialeurope.eu/collective-bargaining-romania-shows-the-way> (Downloaded: 30. 09. 2024.).

- It is easier to set up trade unions. The new rules might help workers exercise their union rights in small units, which are the majority in Romania.
- The representativeness of trade unions is also reformed (reduction of the thresholds, the role of non-representative unions has been enhanced etc.).
- The new law prescribes that collective bargaining must be initiated at both the unit level (if there are at least 10 employees<sup>31</sup>) and the sector level. Any social partner can start collective bargaining. The law does not oblige employers to start collective bargaining or sign a collective labour agreement. But it does declare that negotiations must start. However, failure to provide proof of collective bargaining leads to the employer being penalised.
- The law sets out the steps for making a collective labour agreement. The new law sets out a lot of detailed procedural rules for collective bargaining. Such detailed regulation is only acceptable (in light of international labour standards) if it encourages collective bargaining and does not interfere with it. How much procedural regulation is needed depends on the country's legal culture.
- Collective bargaining at the national level is allowed again. The law also makes it easier to hold collective bargaining at the sector level.
- Rules on the structure of elected employees' representatives are also changed (mostly in technical terms, positively for employees). However, employee representatives can only act if there is no union. In short, Dimitriu believes that Romania's experience shows that elected representatives are fragile and ineffective at representing employees. However, she also notes that works councils help create an organizational culture of negotiation<sup>32</sup>. This is an important lesson for many countries.

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<sup>31</sup> The number of employees/workers employed has been reduced from 21 to 10 employees/workers for whom employers are obliged to engage in collective bargaining. The obligation itself predates even the Social Dialogue Act of 2011, but now it applies for more employers.

<sup>32</sup> Dimitriu, Raluca (2023): The case of Romania, In: *Workers' representatives in selected Central and Eastern European countries: Filling a gap in labour rights protection or trade union competition?* Edited by Cristina Mihes, International Labour Organization 2023, 106-116, 111.



- Employers must now inform and consult employee and trade union representatives in a greater extent than before. .
- The law broadens the scope of cases that can lead to collective labour disputes.
- The new law focuses on SMEs. It says that all sectoral or national-level collective labour agreements must include specific clauses for SMEs.
- The new law also covers workers who are not employed under standard employment contracts. It uses the terms 'employee', 'worker' and 'self-employed'.
- The new law makes penalties stricter.

Experts believe that the new law on social dialogue is a “true game changer” and expect a relaunch of social dialogue in Romania and an increase of the coverage of employees by collective labour agreements.<sup>33</sup> On the other hand, the “question is whether the new “collective umbrella” will be able to successfully combine the current needs of employers with those of employees, or whether it will only become an instrument of coercion against employers.”<sup>34</sup> Furthermore, the new law has just entered into force recently, so it is too early to predict the real impacts.

### 4.3.2. Hungary

A so-called “Shadow Report” on collective bargaining in Hungary was devised by researchers to make suggestions for an action plan to increase coverage<sup>35</sup>. In Hungary, fewer and fewer collective agreements are being made. Today, only about 18% of employees are covered by one. Collective bargaining is mostly at the workplace level. Also, most agreements don't cover wages. The proposals aim to reform the legislation to increase the number (and the quality) of collective agreements. For

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<sup>33</sup> “The relaunch of social dialogue in Romania and its impact on employers”, Kinstellar, January 2023. <https://www.kinstellar.com/news-and-insights/detail/2068/the-relaunch-of-social-dialogue-in-romania-and-its-impact-on-employers> (Downloaded: 30. 09. 2024.)

<sup>34</sup> Ibid.

<sup>35</sup> Shadow report on the regulation of collective agreements in Hungary: Proposals for the Hungarian action plan under EU directive 2022/2041, Budapest, Magyarország: Friedrich-Ebert-Stiftung (2024).

example, unions should be able to make collective agreements more easily in the private sector. The parties should be given a stake in concluding sectoral and national agreements. The legal rights of unions should be reviewed and backed by sanctions. And unnecessary obstacles to the right to strike should be removed. Some of the most important proposals are:

- The Central Statistical Office (KSH) should make data on collective agreements available each year. The government should also prepare an annual report on collective agreements. This should include data on current problems and trends, as well as government and legislative tasks related to them.
- Alternative methods of representativity: if there is no representative union, an agreement could be made with the votes of the employees.
- A credible register of members would be needed. The number of members of all trade unions at the employer should be added together.
- The regulatory scope of collective agreements should be extended at the expense of unilateral employer regulation and the employment contract, while also considering the question of what can be regulated at the workplace and what can only be regulated in a collective agreement at a higher (e.g. sectoral) level.
- Comprehensive overhaul of the legislation on sectoral social dialogue (Act 74 of 2009). The focus must be on making employers' representatives more interested in concluding sectoral collective agreements by way of allowing as many essential issues as possible to be regulated exclusively by sectoral collective agreements.
- It would be worth getting rid of the “guaranteed minimum wage” (which affects the pay of 730,000 workers). Sectoral wage and minimum wage agreements could replace it. The rules for extending collective agreements must be reviewed. They are not applied currently.
- The chambers of commerce could be given the right to conclude collective agreements at sectoral level (under specific conditions), as the employers' side is also very poorly organised.

- A public fund could be created to pay the wages of union officials and experts. Contributions would come from employers, employees and the government. A system of a “normative” union support should be developed. Trade unions could get money from the government like political parties do (transparently etc.).
- Trade unions should be able to take public interest (class action-type, strategic) legal action against employers for breaking the rules.
- Strike rules should not hinder collective agreements, but facilitate them. There should be better ways to settle disputes.

The “shadow” report aims to review the whole body of Hungarian collective labour law. However, the report only addresses some technical legal issues, not the promotion of collective bargaining in general. This report is a purely academic exercise; there is no guarantee it will be taken up by politicians or social partners.

### 4.3.3. Poland

Similarly to Hungary, experts formulated certain proposals<sup>36</sup>, and — in contrast to Hungary — the government discussed these proposals. In 2023 and 2024, two drafts of a new law on collective agreements were submitted by the government (still pending, and new versions are under construction). Some elements of these drafts have been strongly criticized by the social partners.

Experts state there is a crisis in collective bargaining. They note that changing collective bargaining requires a fundamental change in approach and strategy, as well as a change in the legal framework. The current legal framework does not create incentives. They also recognize that the social partners' current strategies and attitudes show that a big change to the collective bargaining system is currently unlikely<sup>37</sup>.

The main points of the drafts are:

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<sup>36</sup> Mądrzycki, Błażej & Pisarczyk, Łukasz: Expert opinion on the current situation and prospects for the development of collective bargaining in Poland (manuscript). Furthermore: Mądrzycki, B., & Pisarczyk, Łukasz. (2024): The Directive on Adequate Minimum Wages in the European Union and Its Potential Impact on National Law. *Acta Universitatis Lodziensis. Folia Iuridica*, 107, 67–81.

<sup>37</sup> Mądrzycki, B., & Pisarczyk, Łukasz. (2024) 79.

- The obligation to commence collective bargaining: employers with at least 50 workers must start collective bargaining.
- The right to conclude multi-company agreements by groups of employers (currently only employers' organizations have this right).
- Trade union delegates from outside companies could conclude company-level collective agreements.
- Collective agreements could be concluded only for a definite duration of 5 years (to be applied to existing collective agreements as well).
- Notification of agreement instead of bureaucratic registration by minister/Labour Inspectorate.
- A mediation procedure to help reach a compromise.
- Collective bargaining rights for civil servants.

Another issue is which acts should be treated as collective agreements: in other words, the dilemma of competition between collective agreements and other collective acts (autonomous sources of labour law).. There are three types of agreements in practice: typical collective agreements made according to the Labour Code, those made outside the procedures of the Code (without erga omnes effect, i.e. affecting everyone), and those internal regulations issued by employers (often in cooperation with trade unions if they exist). The government wants to recognise all these acts as collective agreements.

It seems that even if many of these proposals are rather original and innovative, they are rather “cosmetic” in nature and it is difficult to imagine that they would fundamentally change the current situation (even if they would be all properly enacted and implemented, which is also more than uncertain currently).

## 4.3.4. Bulgaria

The Economic and Social Council made a decision (opinion on own initiative) on the topic of: "Developing an action plan to promote collective bargaining in Bulgaria" (March 2023). The opinion says there is a crisis in collective bargaining and that the state must play a bigger role in promoting it. The document makes several important recommendations, including:

- Give civil servants the right to collective bargaining.
- Allow more bargaining opportunities, including through the principle of "everything that is not prohibited is allowed" at the level of the enterprise and at the level of the sector.
- To make it clear that national-level negotiations can happen on key collective bargaining issues and other matters related to collective bargaining that are within the scope of the social partners' competence.
- Extending the scope of collective labour disputes.
- Making sure that everyone involved in collective bargaining is acting in "good faith". Legislation could set out what is expected of employers, employers' organisations and trade unions. In some cases, not following the rules of "good faith" could be seen as an unfair labour practice and could be sanctioned.
- Create a good environment for sectoral collective bargaining.
- Supporting the social partners to build their capacity by identifying transparent, predictable sources of funding.
- New industry partnerships and more innovative topics for negotiation, like CLA models in digital and green transformation.
- Entering new sectors with new, non-standard types of employment.
- A new strategy for extending collective labour agreements.

- Monitoring collective bargaining with a new method and improving the system for labour agreements and disputes at the National Institute for Conciliation and Arbitration. The National Statistical Institute (NSI) must be given more funding to provide information on collective bargaining.
- Making available modern digital processes for negotiating and signing agreements and implementing them.
- Ratify ILO Convention No. 154.
- Making existing forms of tripartite cooperation stronger.
- Measures to improve trust between social partners.

#### 4.3.5. The Baltic countries<sup>38</sup>

**Lithuania** has low collective bargaining coverage. Most of the agreements are in the public sector. The option of extending collective agreements has never been used. The government agrees and acknowledges that achieving 80% coverage of collective agreements will require legal, social and political measures. Other legal tools could be used to extend collective agreements. One option is to apply them to all employees, not just union members. Some say works councils should have more power and be able to negotiate. Another way to promote collective bargaining is through public procurement. The Law on Public Procurement says that the contracting authority must make sure that workers comply with European collective agreements when they are doing procurement contracts (Article 17(2)). The current Law on Public Procurement only states a principle and recommendation to promote collective bargaining. According to experts, this could be made a more general, more precise requirement for public procurement ”<sup>39</sup>.

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<sup>38</sup> For more details, see: Petrylaite, Daiva & Petrylaite, Vida (2024): The Impact of the Directive in the Member States: Baltic States, In: *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories*, edited by: Luca Ratti, Elisabeth Brameshuber, Vincenzo Pietrogiovanni, Hart Publishing, 353-368.

<sup>39</sup> Petrylaite, Daiva & Petrylaite, Vida (2024) 363.



In October 2024, Lithuania changed its Labour Code<sup>40</sup>. Among other things, § 141 changes how the minimum wage is set. It also details the role of the tripartite council and the factors to be taken into account when determining the minimum wage. The changes are minor and rather “cosmetic”.

The Lithuanian government is trying to make sectoral bargaining stronger. One recent project is called “Developing social dialogue to create quality jobs and boost competitiveness.” It involves the Ministry of Social Affairs and Labour, trade unions, and employers' associations.

In **Latvia**, the involvement of social partners is minimal compared to the other Baltic States.<sup>41</sup> As reported by the ETUC “Wage-up” site, there are ongoing discussions on the transposition of the Directive and a draft law has been published. Meanwhile also a draft Action Plan has been proposed.

In **Estonia** the discussions on the transposition of the Directive have not started yet (as reported by the ETUC “Wage-up” site). As experts note, the country faces a challenge to promote collective bargaining. In order to implement the Directive and promote collective agreements, the Estonian government intends to take legal measures to allow collective agreements to cover also atypical employees, in particular platform workers and teleworkers. Another measure, which is more social and economic in nature, would be the promotion of collective bargaining at sectoral level. The government of Estonia has used and will continue to use financial instruments, in particular the EU Structural Funds, as well as project funds from the Norwegian government, to improve the bargaining capacity and increase the competence of social partners, etc.<sup>42</sup>

As experts observe in general concerning the Baltic states, the current “vacuum of debate and decision-making” regarding the AMWD seems like ‘the calm before the storm’ and, as is often the case, “gives rise to concern that political and legislative decisions will be taken in haste and in a process lacking social debate.”<sup>43</sup>

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<sup>40</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9171dec28d2511efaf94d67dd8b48a7c> (Downloaded: 26. 10. 2024.)

<sup>41</sup> Petrylaite, Daiva & Petrylaite, Vida (2024) 363.

<sup>42</sup> Petrylaite, Daiva & Petrylaite, Vida (2024) 364.

<sup>43</sup> Petrylaite, Daiva & Petrylaite, Vida (2024) 368.

## 4.3.6. Slovakia

The UNI EUROPA report lists several ways to improve multi-employer bargaining<sup>44</sup>. These include:

- Bargaining should be extended to non-organised sectors like platform work.
- Make collective bargaining more important, relevant by finding 'win-win' topics where both employees and employers can truly benefit.
- Change the law to stop employers' associations becoming business associations and no longer having to make higher-level collective agreements with unions.
- Discussions about the need for social partnership and collective bargaining. (e.g. training courses).
- Make it clearly, effectively illegal for employers to stop employees forming unions. This could include criminal penalties for managers involved in such practices. Additionally, the possibility of forming a trade union in secret and notifying the employer only after full registration should be explored.
- Make it easier to extend collectively agreed working conditions.
- A clear, unified method to measure bargaining coverage.

Some experts note that bargaining on 'soft' topics (like training and social benefits etc.) could facilitate more bargaining on traditional issues such as wages and working time in the future as well.

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<sup>44</sup> Šumichrast, Adam and Kahancová, Marta (2024): Slovakia, In: In: De Spiegelaere, Stan. (2024): Time for action! How policy can strengthen (multi-employer) collective bargaining in Europa. UNI Europa – The European Services Workers Union, 78-84.

The ETUC "Wage-up" site records that there are ongoing discussions on transposing the Directive. For example, there are plans to change the law on extending collective agreements.

### 4.3.7. Greece

In the UNI EUROPA report cited above, Katsaroumpas lists five key proposals for strengthening sectoral bargaining<sup>45</sup>:

- Eliminating administrative discretion in the extension of sectoral agreements when they are binding on employers employing 50% of workers in the sector and establishing a framework for other sectoral agreements.
- Introducing collective safeguards in the operation of existing exemptions (from extension and favourability) for companies facing financial difficulties.
- Abolishing the legal competence of associations of persons to conclude enterprise-level agreements.
- Restoring the possibility of unilateral recourse to arbitration for the party that accepts a mediation's proposal if the other refused.
- Prohibiting the declaration of a strike as 'unlawful and abusive' in application of the civil law doctrine of abuse of rights.

As reported by the ETUC "Wage-up" site, the Draft Action Plan for Collective Bargaining has been published. The discussions on the transposition of the Directive are ongoing. As noted here, the Ministry of Labour has excluded the representation of all national social partners, thus their participation, from the working group, settled by Ministerial Decision in April 2024, on the incorporation of the AMWD. No information is available as it concerns the process.

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<sup>45</sup> Katsaroumpas, Ioannis (2024): Greece, In: De Spiegelaere, Stan. (2024): Time for action! How policy can strengthen (multi-employer) collective bargaining in Europa. UNI Europa – The European Services Workers Union, 49-53.

## 4.4. General context

These countries have a lot in common, so we can make some general suggestions for increasing collective bargaining coverage in countries with single employer bargaining and low coverage. The focus is about the overall objectives of promoting collective bargaining, increasing employers' willingness to engage in collective bargaining, and boosting trade unions' capacity. Hereby, we don't focus on national specifics. However, there might be creative ways of adapting general policy-pointers to various contexts. This text does not discuss country- or sector-specific issues in depth. Proposals must always be adapted to the specific circumstances of the country in question (preferably via tripartite social dialogue) .

Three basic things seem to be especially important for any reforms in these countries.

Firstly, social dialogue and collective bargaining must be recognized as more important politically (as they are currently not a policy-priority in most of these countries). Social partners must have more influence on policymakers. One can't expect a breakthrough without strong political will. This is especially true in these, mostly post-socialist countries.

Secondly, these countries tend to focus on economic and competitiveness-oriented values over social and security-related ones in their socio-economic governance. The benefits of collective bargaining shall be particularly underlined in policy discourses (and in public campaigns), with specific emphasis on the potential economic values, efficiency gains of collective bargaining. Collective bargaining can help boost the economy and improve efficiency.<sup>46</sup> This could help convince

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<sup>46</sup> See for example: For instance: wage levels in Europe are tied closely to whether workers are covered by collective bargaining, official figures show. See the data of the ETUC <https://www.etuc.org/en/pressrelease/eu-countries-weak-collective-bargaining-have-lowest-wages> (Downloaded: 30. 09. 2024.) As the ETUC notes: In nine of the ten EU member states with the lowest average wages and minimum wages, just 7% to 30% of employees benefit from a wage level negotiated by trade unions. On the other hand, more than 70% of employees benefit from collective bargaining in seven of the ten countries where wages are highest. Similarly, the quality of the working environment is higher on average in countries with a large coverage of collective agreements. See: OECD (2019): *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 12.

policymakers of the importance of collective bargaining. The social partners should persuade governments to invest in social dialogue and collective bargaining.

Thirdly, governments should take tripartite social dialogue seriously because it is generally weak and asymmetrical in these countries. If governments recognise the value of high-level social dialogue, it could lead to a change in bargaining culture. Also, unions should work together to create strong, common positions.

De Spiegelaere<sup>47</sup> pointed out there are five ways to increase collective bargaining coverage. This is very relevant. Below, we list the most important proposals for this group of countries under these headings.

#### **4.4.1. Strengthening unions' bargaining capacity.**

The union landscape is becoming fragmented and this needs to be addressed. Some say that certain rationalisation, tightening of the regulations governing the status of social partners might also be sensible, by defining certain preconditions for the registration / establishment / representativeness / operation of unions and employers' associations. For example, unions and employers' associations should maintain a certain degree of bipartite social dialogue if they want to stay registered. Such measures must be designed carefully and in line with international labour standards on freedom of association.

The rules on representativeness could be made less strict, more flexible. The legislator must find a balance here.

There could be new, alternative ways of gaining representativeness. For example, if there is no representative union, collective agreements could be made based on the vote of employees or mutual recognition or certain presumption of representativeness. However, any risks of these special solutions must be fully understood and managed.

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<sup>47</sup> De Spiegelaere, S. (2024): *How Policy Can Strengthen (Multi-employer) Collective Bargaining in Europe*, Uni Europa.

A body or method that is independent, objective and expertise-based should determine representativity. Recognition procedures must be quick and effective. The same is true of registration procedures.

The state should be more open about how it gives money to trade unions. States could also think about setting up a central funding system for unions (on such a way that the independence of the social partners is not jeopardised).. A quasi-normative support for trade unions could be based on the idea that protecting workers' interests is a public good.

Making trade unions' institutionalised functions more widespread and intense could help them gain more respect. For example, trade unions could be involved in managing training funds, social security funds, industrial tribunals, the labour inspectorate and other policy-areas.

The relationship between trade unions and works councils is a complex and controversial issue. On the one hand, caution is warranted when policy options considered to facilitate non-union, elected forms of employees' representation, as usually it can only take place to the detriment of union representation. On the other hand, works councils could help create a culture of negotiation and a path to better industrial relations (including collective bargaining). The role and purpose of the two types of workers' representation must be clearly separated.

#### **4.4.2. Enabling/incentivising employers organisations**

It is an evergreen challenge, what creates the interest on the employer's side to conclude a collective agreement. Several possible and innovative measures can and should be contemplated in this regard.

Cautious, well-targeted and limited authorisation of derogations — above all in higher-level, sectoral agreements — from statutory standards that are disadvantageous for employees (“in peius”) to motivate employers for bargaining might be considered.

The importance of social dialogue for employers is rather weakly addressed. The idea that collective agreements can bring added value to both parties should be explored and promoted.

Preferences for employers covered by collective agreements could be considered (e.g. preferences in public procurement procedures; enterprise benefits —tax credits; training; subsidised employment —conditional on collective bargaining etc.).

As regards the sectoral classification of economic activities, there is a need to create a realistic match between the classifications and the actual organisation of social partners.

It must be made clear (both in legal and in policy terms) that Responsible Business Conduct (RBC), Corporate Social Responsibility (CSR), corporate sustainability due diligence (CSDD) — as increasingly promoted by the UN<sup>48</sup>, the OECD<sup>49</sup>, the ILO<sup>50</sup>, the EU<sup>51</sup> etc. — clearly include the promotion of collective bargaining. Governments play a key role in promoting RBC standards (amongst other, via relevant policies, including investment and trade policies, as well as bilateral and multilateral agreements etc.).<sup>52</sup> Governments should increasingly apply the expectation that businesses under the scope of these policies and agreements implement RBC standards, including an encouraging attitude towards collective bargaining.

The potential role of other actors than classic employers' organizations (such as chambers of commerce) in social dialogue, collective bargaining could be explored, discussed.

Employers' interest in collective bargaining could be increased if employers could only access certain rights and opportunities that are valuable to them by concluding a collective agreement (at company or sectoral level). In this regard, it would be useful to review labour laws in general with a view to identifying which rules could and should be made subject to collective bargaining authorisation.

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<sup>48</sup> UN Guiding Principles on Business and Human Rights (UNGPs).

<sup>49</sup> Guidelines for Multinational Enterprises (MNE Guidelines) of the Organisation for Economic Cooperation and Development (OECD).

<sup>50</sup> International Labour Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

<sup>51</sup> Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

<sup>52</sup> See for example: OECD Council: the Recommendation on the Role of Government in Promoting Responsible Business Conduct, 12 December 2022.



### 4.4.3. Promoting effective collective bargaining processes

The following ideas might be especially considered:

- Providing for the (enforceable) obligation to initiate collective bargaining in certain situations (to give bargaining a real, legally boosted chance).
- Removing some existing restrictions on collective bargaining (such as changing representativity thresholds and reviewing labour laws to give more room for bargaining).
- We can think about changing which matters can be agreed in workplace agreements and which only in sector-wide ones. Some "reserved" topics and options for derogation for sectoral agreements could help boost sectoral bargaining. To make sectoral collective agreements more relevant, some important matters could be reserved for sectoral agreements only.
- Facilitative procedures and institutional arrangements can be part of the collective bargaining framework (such as detailed procedural rules, charters, protocols, manuals etc.)..
- An enforceable duty to bargain in good faith could protect workers from bad practices by employers.
- No unjustified restrictions on collective bargaining in the public sector.
- Regulations can help social partners' smooth access to information and data they need to bargain.

### 4.4.4. Using collective agreements as effective regulatory instruments

Many of these countries also have problems with social dialogue at the sectoral level. But we could only boost coverage by collective agreements if we had more extensive multi-employer/sectoral bargaining.

- Effective, smooth mechanisms for the extension of the scope of collective agreements carries a lot of potential for increasing the coverage of collective agreements.

- In countries where it is not regulated, the legislator should consider introducing the institute of extended application (“after effect”) of the content of the collective agreement. This would prevent the existence of a legal vacuum, and the loss of rights caused by the fact that the bargaining parties have failed to start new collective bargaining process on time.
- It is important to consider the expansion of bargaining rights and the applicability of collective agreements to people who do not have a standard employment contract.
- Enabling, non-restrictive strike legislation is critical to successful bargaining.

### 4.4.5. Culture

The role and powers of tripartite forums should be strengthened. Social partners must be involved consistently, predictably, in a timely manner and in a meaningful way. "Social pacts" could be used to regularly confirm tripartite commitments.

- Increased use of various 'soft' forms of collective bargaining promotion is suggested. .
- Institutional mechanisms that support collective bargaining shall be promoted (e.g. ADR agencies that help with mediation, arbitration and settling disputes, and promoting bargaining in general). These agencies could have many different roles to improve bargaining culture.
- Collective bargaining must adapt to the changing nature of work.
- We need to monitor collective bargaining processes and run publicity campaigns about it.
- It would be good to make the promotion of collective bargaining a standard part of all public policies (“mainstreaming”).
- Tax credits and public procurement incentives for collective bargaining could be considered.
- The government can help social partners to grow their membership and improve their admin cpacities (training, etc.).

- The government could offer prizes or awards for good bargaining practices.

We need new ideas in social dialogue and collective bargaining to deal with real problems in the labour market. These include the precarization of working conditions for young workers and migrants, non-standard contracts, digital and green transitions, new types of work-related risks, data protection, and artificial intelligence etc. These topics could be less controversial than classic bargaining matters (like wages), offering a “win-win” position for the two sides. We need to move away from the idea (rather typical in the region) that collective agreements are just a symbolic, static thing and towards something more dynamic and responsive.

In conclusion, legal reforms and state policies are not enough. Social partners must also take action. It is their commitment, activity and engagement that can shape really collective bargaining. They must organise and revitalise themselves to stay relevant and attractive in the modern world of work.

### 5. Report on the transposition of the minimum wage in countries with sectoral Bargaining Model with Medium Coverage (Germany, the Netherlands, Portugal, Slovenia and Luxembourg). *Prof. Valentina Franca*

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This report focuses on countries with multi-employer bargaining, where there is no widespread mechanism for extending collective bargaining. In particular, the report analyses the situation with regard to current policy proposals aimed at strengthening collective bargaining in preparation for the implementation of the Adequate Minimum Wage Directive (Directive 2022/2041) and the preparation of National Action Plans (NAPs) in the following countries Germany, Slovenia, Portugal and the Netherlands. For each country, the system of multi-employer bargaining with the possibility of an extension mechanism is briefly presented, followed by the actual state of implementation of the Directive, the measures taken in each country and the possibilities for further activities.

#### 5.1. Germany

In Germany, collective bargaining primarily occurs at the company level, reflecting the structure of German labor legislation. Companies are central to organizing employment and labor relations, working closely with the system of co-determination (Mitbestimmung). However, this company-focused approach does not preclude the possibility of sectoral-level collective agreements, which can be declared generally binding. Such declarations can be made if at least half of the employees in the sector are covered by the agreement (*Tarifvertrag*) and if it is considered to be in the public interest.

In order to increase the number of employees covered by generally binding collective agreements, the Collective Agreements Act (*Tarifvertragsgesetz*) was amended in 2014. The amendment removed the requirement that half of the employees in the sector must be covered. Instead, Article 5 was revised to state that a collective agreement can be declared generally binding if it has become predominantly important for the organisation of working conditions within its scope, or if it contains provisions that protect the sector from undesirable economic developments. Despite these changes, the impact of the extension mechanism remains limited. In 2018, there were only 26 generally binding collective agreements.

The Minimum Wage Directive has attracted considerable attention in Germany, mainly due to its aim of establishing a minimum wage to address the growing number of working poor. The law regulating a general minimum wage, which was passed on 11 August 2014, came into force on 1 January 2015. The current minimum wage in Germany is 12.41 euros gross per hour.

The statutory minimum wage has had a significant impact on collective bargaining in various sectors. The increase in the minimum wage has affected existing collective agreements that set minimum wages for different sectors. Furthermore, the power to increase the minimum wage lies with the Minimum Wage Commission at national level. This commission is made up of three representatives each from workers and employers, as well as a president and two economists who act in an advisory capacity. However, this structure limits the role that the social partners can play in developing collective (sectoral) agreements on minimum wages.

The role of the social partners in setting wages at sectoral level in Germany remains limited compared to other countries. Companies can opt out of collective agreements, including those setting minimum wages for the sector. The declining influence of generally binding collective agreements is an important factor contributing to the limited role of the social partners above the company level. Collective agreements on minimum wages are often concluded at company level, setting wages higher than the statutory minimum wage.

As Germany does not meet the 80% collective bargaining coverage required by the Directive, a national plan to promote collective bargaining must be drawn up. However, it appears that this plan has not yet been drawn up. According to various data sources, collective bargaining coverage in Germany is between 50% and 60%, the second lowest in the multi-employer bargaining system, behind only Slovakia with just over 20%. According to the most recent data, trade union density in Germany is around 16%<sup>53</sup>. This figure has fallen over the past few decades due to a number of factors, including changes in the labour market and employment practices.

In order to increase collective bargaining coverage and strengthen union membership, it is recommended that employers who engage in union avoidance or union busting be

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<sup>53</sup> Goerke, L. & Huang, Y. 2022. Job Satisfaction and Trade Union Membership in Germany, <https://docs.iza.org/dp15459.pdf>.

tackled. <sup>54</sup> In addition, voluntary methods to reduce the impact of multi-employer agreements could encourage collective bargaining. One such method is the inclusion of legally permissible opt-out clauses, which allow companies to deviate from agreements under certain conditions, as is the case in Germany.

Some authors<sup>55</sup> suggest that strengthening collective bargaining requires political support and strengthening the power of trade unions and employers' organisations. They advocate supporting sectoral collective bargaining and improving access rights for unions and works councils. Key measures include combating union busting, banning OT membership status<sup>56</sup> and awarding public contracts only to companies that abide by collective agreements. Collective agreements should provide exclusive benefits for union members and remain in force during company restructuring. Unions should have the right to take legal action and collective bargaining should be extended to previously excluded groups. In addition, full tax deductibility of trade union dues should be allowed.

## 5.2. Slovenia

The predominant form of collective bargaining in Slovenia is at the industry level, where trade unions negotiate and conclude collective agreements with employers' associations. The Collective Agreements Act (2006) <sup>57</sup> sets out the conditions under which a collective agreement can be extended. According to Article 12, this extension is possible if the agreement is signed by one or more representative trade unions and

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<sup>55</sup> Schulten, T. & Muller, T. 202r in Time for action! How policy can strengthen (multi-employer) collective bargaining in Europe, ed. De Spiegelaere, [https://www.uni-europa.org/wp-content/uploads/sites/3/2024/04/uni-europa\\_ReportAnnex.pdf](https://www.uni-europa.org/wp-content/uploads/sites/3/2024/04/uni-europa_ReportAnnex.pdf).

<sup>56</sup> OT refers to "Ohne Tarifbindung" membership status. This means "without collective agreement binding," allowing companies to be part of an employers' association without being bound by the collective agreements negotiated by that association. This status can undermine the effectiveness of collective bargaining by allowing companies to opt out of sector-wide agreements.

<sup>57</sup> Official Gazette of Slovenia, Nos. 43/06, 45/08.

one or more representative employers' associations, so that it applies to all employers in the sector. Trade union representativeness is defined by the Trade Union Representativeness Act<sup>58</sup> (1993; Articles 8 and 9), which requires 10 per cent of employees in each sector to be affiliated to a trade union confederation, or 15 per cent if the union is not affiliated. For employers' associations, Article 12 of the Collective Agreements Act states that representativeness is achieved if their members employ more than half of the workers for whom the extension of the collective agreement is proposed.

Due to numerous legal inconsistencies, it is often difficult to determine whether a trade union or employer is representative in a particular sector, which makes the use of the extension mechanism difficult. According to the latest data from the Ministry of Labour, Family, Social Affairs and Equal Opportunities, there are 47 collective agreements with extended validity in Slovenia<sup>59</sup>, half of which are in the private sector, indicating that collective agreement coverage in the private sector is worryingly low.

Slovenia has paid little attention to the implementation of the Directive. As of December 2024, no formal steps had been taken towards its adoption. Based on the professional discourse, several factors could explain this situation.

Firstly, the minimum wage in Slovenia is regulated by law and applies universally to all workers with employment contracts, covering both the public and private sectors<sup>60</sup>. As a result, no one is left behind, which fosters a sense of security among workers. This perception is further reinforced by the recent increase in the minimum wage, which rose by 4.2% to €50.54 in January 2024. The current gross minimum wage is 1,253.90 euros.

Secondly, it is assumed that collective bargaining coverage in Slovenia is 78 per cent and, according to the interpretation of the Ministry of Labour, there is no need to prepare an action plan. There are no official statistics in Slovenia to accurately

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<sup>58</sup> Official Gazette of Slovenia, Nos. 13/93.

<sup>59</sup> Register of Collective Agreements, Ministry of Labour, Family, Social Affairs and Equal Opportunities, <https://podatki.gov.si/dataset/bcf359d7-af1c-4c98-9b8d-faed913ae76a/resource/f0e60b67-c716-4baa-94b9-83c29b895e37/download/evidencakp.docx>; 2/12/2024.

<sup>60</sup> Minimum Wage Act, Official Gazette of Slovenia, Nos. 13/10, 92/15 and 83/18.



determine collective bargaining coverage. It is therefore difficult to draw concrete conclusions based on estimates alone.

Thirdly, the issue has not been on the agenda of academics, with some minor exceptions. With regard to collective bargaining coverage and the consequences of the Directive, the issue was raised by the author of this report<sup>61</sup> (Franca 2024) during the National Conference on Labour and Social Security Law, but it did not evoke significant professional responses. Similarly, the social partners have not discussed the issue. In practice, the adoption of the directive has not prompted trade unions to launch campaigns or propose reforms to improve collective bargaining coverage. The issue remains undiscussed as the unions are waiting for the government to present the results of a recent survey to assess collective bargaining coverage. Nevertheless, they are considering two different approaches for their action plan: one tailored to the public sector<sup>62</sup>, which has 100 per cent coverage, and another for the private sector, where coverage is much lower. A key concern for the unions is the lack of clearly defined sanctions in the directive, which casts doubt on the effectiveness of the whole initiative.

According to the Directive, two key points require special attention: 1) a consultative body and 2) an action plan.

Ad 1) At the national level, social dialogue takes place within the Economic and Social Committee, a tripartite organisation consisting of the social partners and the Government of the Republic of Slovenia. This committee serves as a platform for discussing economic and social policy issues, as well as other issues mutually agreed upon by the partners. The Economic and Social Committee in Slovenia, although institutionally and financially supported, is largely ineffective due to its inactivity and the withdrawal of key social partners. Its shortcomings highlight a deeper problem within the Slovenian industrial relations system - a failure to fully understand and use social dialogue as a democratic tool for promoting agreements and ensuring social

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<sup>61</sup> Franca, Valentina. 2024. Pričakovanja in izzivi implementacije Direktive 2022/2041 o ustreznih minimalnih plačah. *Delavci in delodajalci*: 24(2/3): pp. 269-287. Also: Bobovnik, Andraž, Franca, Valentina. 2023. How to regulate minimum wage in light of contemporary social change: a case study of Slovenia. *Stanovništvo* 61(2), pp. 145–166.

<sup>62</sup> It is important to highlight that 2024 was marked by long and challenging negotiations among trade unions and the government regarding the reform of the public sector pay system. The agreement was reached in November 2024 and will take effect on January 1, 2025. Given the limited capacities of Slovenian social partners, a lack of interest and time may have contributed to their failure to focus on the implementation of the Directive.

peace. With regard to the Directive, the Ministry of Labour, Family, Social Affairs and Equal Opportunities has submitted a formal proposal to the Economic and Social Council (ESC) to establish a permanent consultative body to deal with the requirements of the Directive, but this has not yet been established.

Ad 2) As Slovenia does not reach the required collective bargaining coverage of 80 per cent, the national plan for the promotion of collective bargaining has to be prepared in accordance with the Directive. According to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, this will be developed once the Slovenian Statistical Office has completed the collection and analysis of relevant data.

Indirectly, measures such as the conclusion of a general collective agreement for the commercial sector, the introduction of new content in agreements, the promotion of social dialogue, capacity building for the social partners and the extension of agreements to non-contract workers could promote collective bargaining.<sup>63</sup>

### 5.3. Portugal

Sectoral agreements are the most common form of collective bargaining in Portugal. These agreements are negotiated between employers' associations and trade unions and cover a significant number of workers in a given sector. Through an extension mechanism, the terms of these agreements can be applied to all workers in the sector, including those who are not members of the negotiating unions. This process is facilitated by a government extension act.

Initially, the criteria for extending collective agreements were almost automatic. However, between 2012 and 2017, renewals depended on the representativeness of the employers' organisations involved<sup>64</sup>. Since mid-2017, more inclusive criteria have been adopted, emphasising the principle of "equal pay for equal work". This approach aims to uphold fair labour standards and prevent wage dumping.

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<sup>63</sup> For a more detailed analysis of these measures see Franca, Valentina in Time for action! How policy can strengthen (multi-employer) collective bargaining in Europe, ed. De Spiegelaere, [https://www.uni-europa.org/wp-content/uploads/sites/3/2024/04/uni-europa\\_ReportAnnex.pdf](https://www.uni-europa.org/wp-content/uploads/sites/3/2024/04/uni-europa_ReportAnnex.pdf).

<sup>64</sup> Ana Teresa. 2016. The extension of Collective Agreements by State Intervention: The Portuguese Regime and the Protection It May Offer to SMEs, in Employment Relations and Transformation of the Enterprise Globally, Edoardo, A. et al. (eds), Modena: Fondazione Marco Biagi.

According to Article 514 of the Labour Code, the purpose of an extension order is to extend the subjective scope of a collective agreement or arbitration decision to employers and workers who were not originally covered by such instruments. The decision to issue an extension order, as outlined in RCM 82/2017, should be preceded by an analysis of several indicators: the impact on the wage mass of workers covered and to be covered, the wage increase for workers to be covered, the impact on the wage range and the reduction of inequalities within the collective regulatory instrument to be extended, the percentage of workers to be covered (both in total and by gender) and the percentage of women to be covered. Given the proliferation of extension orders, the question arises as to which of these should be applied, as noted in the Supreme Court decision of 10 May 2023 (in which the Court attempted to provide criteria for this effect). There is also an ongoing doctrinal debate as to whether workers affiliated to unions other than the signatory parties to the extended agreement should also be covered by extension orders. The Portuguese Supreme Court has taken a stance on this issue in rulings of 20 June 2018 and 22 June 2022, stating that these workers should not be included in the scope of the extension<sup>65</sup>.

The implementation of the minimum wage directive in Portugal is a joint effort by the government and the social partners to improve wages while maintaining economic stability. According to Portuguese national data, collective agreements covered 76.7% of workers in 2021<sup>66</sup>, while the OECD reports a slightly higher coverage of 77.2%<sup>67</sup>. As in Slovenia, where coverage is also just below 80%, the government is required to draw up an action plan in accordance with the Directive. It is important to emphasise that pay issues are central to collective bargaining in Portugal, as highlighted by Article 488(1). This provision emphasises that the parties should prioritise pay issues in negotiations, alongside working time and health and safety at work.

There have been no tangible results in terms of the National Action Plans. However, the government has recently announced that it intends to introduce legislative changes

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<sup>65</sup> For more see Ribeiro, Ana Teresa. 2019. Recentes desenvolvimentos legislativos e jurisprudenciais no domínio das portarias de extensão, in *Prontuário de Direito de Trabalho*, da Silva Miguel, J. M. (ed), Lisboa: Centro de Estudos Judiciários.

<sup>66</sup> Centro de Relações Laborais. 2023. Relatório anual sobre a evolução da negociação coletiva em 2022, [https://www.crlaborais.pt/documents/10182/490256/RNC\\_2022/4b814a06-e8a7-4790-aa5e-0f1d43d87589](https://www.crlaborais.pt/documents/10182/490256/RNC_2022/4b814a06-e8a7-4790-aa5e-0f1d43d87589)

<sup>67</sup> <https://stats.oecd.org/index.aspx?DataSetCode=CBC>.

to the Labour Code and the legal regime for civil servants to ensure the implementation of the Directive<sup>68</sup>.

In order to achieve the desired coverage of collective agreements, several solutions can be considered.

First, government intervention should be strengthened. In Portugal, collective agreements currently have a limited personal scope. They apply only to workers who are members of the signatory unions and to employers who have either signed the agreement themselves or are members of the employers' organisations that have done so (Article 496 of the Labour Code). Consequently, the government must play a very active role in ensuring the extension of collective agreements, known as "*portarias de extensão*". This process significantly extends the coverage of agreements to include many more workers and employers than were originally covered. The aim is to extend the coverage of collective agreements to a much larger number of workers and employers than originally covered. But the problem remains that there are no criteria for extending collective agreements. This means that any union can terminate an agreement and any agreement can be extended. This can lead to a situation where a marginal union concludes a collective agreement which then applies to a much larger number of workers than originally intended, which does not necessarily improve workers' conditions and can even make them worse (in Peius). At present, the Ministry of Labour lacks the tools to curb this, which should be addressed by legislation to prevent marginal unions and/or companies from dominating larger ones with greater legitimacy.

Second, union membership is estimated at 9%<sup>69</sup>, which is relatively low for active and strong union activity. More efforts should be made to revive the idea of trade unionism, worker solidarity and the importance of collective values. In addition to active efforts by trade unions to recruit and retain members, the government could also promote union membership and the importance of social dialogue through various activities. Although beyond the scope of this report, the lack of assessment of the representativeness of the social partners also affects high-level social dialogue, as

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<sup>68</sup> República Portuguesa, 2024. <https://www.portugal.gov.pt/pt/gc24/governo/comunicado-do-conselho-de-ministros?i=650>

<sup>69</sup> Ministério do Trabalho, Solidariedade e Segurança Social (2018), *Atualização do Livro Verde sobre as Relações Laborais 2016*, available at: <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3d%3dBAAAAB%2bLCAAAAAAABAAzMTA3AgDOpLYiBAAAAA%3d%3d>.

CPCS members are named without assessment. Both the ILO and the ECSR have urged Portugal to revise this regulation, but no changes have been made.<sup>70</sup>

Thirdly, and related to the previous point, there is clearly room for improvement in the capacity of the social partners and their access to information. This could be achieved by providing more training for those involved in these activities. In addition, increasing trade union resources could play a crucial role, especially in sectors where union density is lower and resources are scarce<sup>71</sup>. Incentives provided by the state could significantly strengthen this phenomenon and lead to improved working conditions.

### 5.4. The Netherlands

The Dutch industrial relations system is not highly centralised or institutionalised. Collective bargaining takes place mainly at sectoral level, covering both the private and public sectors. Sectoral collective agreements are often declared generally binding. This occurs when social partners at the sectoral level request the Minister of Social Affairs to declare a collective agreement generally binding. No additional conditions are required.

As of 1 January 2008, there were a total of 658 collective agreements registered with the Dutch authorities, covering some 6.2 million employees. These agreements have a significant impact on working and employment conditions, including wage standards. A significant number of these agreements have been declared generally binding by the Dutch government, thereby extending their scope within various sectors.

Historically, the Netherlands has been one of the countries with the highest coverage of employees by collective agreements, consistently above 80%. However, collective agreement coverage has declined in recent years. The current coverage rate is 71.8%, down from 80%<sup>72</sup>. The decline is largely attributed to the reluctance of larger companies to conclude such agreements, which has affected the total number of generally binding agreements. The same applies to union membership. In 2023, trade

<sup>70</sup> Observation (CEACR) – adopted 2022, published 111st ILC session (2023); ECSR, Conclusions Portugal, 2022.

<sup>71</sup> Ribeiro, A. T. 2024. Portugal and the Minimum Wage Directive: what really changes? Marco Biaggi Conference, Modena, March 2024.

<sup>72</sup> <https://opendata.cbs.nl/statline/#/CBS/en/dataset/85663ENG/table?ts=1733155618131>

union membership in the Netherlands will be around 15% of the workforce<sup>73</sup>. This figure has been declining in recent years, falling from 18% in 2018.

The Dutch government initiated the transposition of the Directive on 19 April 2024. However, due to a change of government in the summer, the bill remains pending and no further progress has been made. The bill contains only three articles implementing the Directive, focusing on the adjustment of the minimum wage solely.

The Netherlands must develop an action plan to address the coverage of collective agreements, which has fallen to 71.8% by 2022. The transposition law includes a provision for research to determine the reasons for this significant decline and to discuss possible measures to increase coverage. The unions have asked for an action plan and the government has promised to assess coverage at the time of implementation. If coverage falls below 80%, an action plan will be initiated.

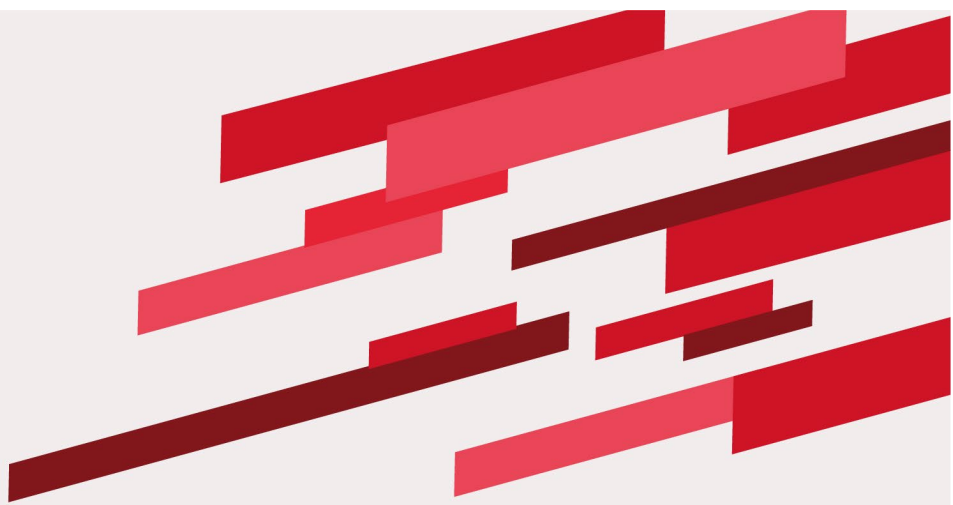
Several measures could be considered to increase collective bargaining coverage in the Netherlands<sup>74</sup>. These include making membership of employers' organisations compulsory and enforcing collective bargaining on terms and conditions in larger companies. Ensuring that all public and semi-public employment is covered by collective agreements and making such coverage a condition for public funding can also help. Making trade union membership automatic or free and introducing semi-dispositive legislation to make collective agreements more attractive to employers are also suggested. Information campaigns on the benefits of collective bargaining, eliminating precarious jobs, promoting socially responsible employers and ensuring compliance through inspections are also important. Finally, the introduction of a national minimum collective agreement could set a baseline for the labour market, negotiated by the social partners.

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<sup>73</sup> <https://www.cbs.nl/en-gb/news/2024/37/decline-in-trade-union-membership-continues>

<sup>74</sup> Keune, M. & Been, W. 2024. Netherlands, in Time for action! How policy can strengthen (multi-employer) collective bargaining in Europe, ed. De Spiegelaere, [https://www.uni-europa.org/wp-content/uploads/sites/3/2024/04/uni-europa\\_ReportAnnex.pdf](https://www.uni-europa.org/wp-content/uploads/sites/3/2024/04/uni-europa_ReportAnnex.pdf).





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