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TANULMÁNYOK

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Dialogue for Advancing Social Europe – the DIADSE project*

This report presents the results (Summaries) of an interdisciplinary research project funded by the DG Employment of the European Commission, Project: DIADSE, Dialogue for Advancing Social Europe.

The research team of the project carried out a comparative analysis of labour law reforms and social dialogue initiatives in several EU Member States. The project investigated how the social dimension of Europe both at the supranational and national levels has been affected by the latest socio-economic adjustments and how the EU social model might be re-constructed and advanced through social dialogue. The research team examined the involvement of the social partners in labour and social reforms at EU Member States level – in the Netherlands, Germany, Spain, France, Poland, Hungary, Ireland, Portugal, and Belgium – in light of what have been the effects of those reforms.

The DIADSE research project investigated the role of the social partners in the reforms of collective bargaining systems and labour protection legislation occurring in several EU Member States and studied to what extent these reforms were efficient in achieving the objectives that they were aiming at: namely, enhanced employability, reduced labour market segmentation, and flexibility. The research covered the reforms taking place in the last years, since the economic crisis started (2008-2015).

The project applied a juridical analytical framework combined with a qualitative analysis.

* DIADSE: Supported by the European Commission - Industrial Relations and Social Dialogue Program, nr VP/2014/004 - VS/2013/0037, Project Management: Universiteit van Amsterdam (Hugo Sinzheimer Institute) See for more information: <http://hsi.uva.nl/en/diadse/information-on-the-research-project/information-on-the-research-project.html>

The research approach of this project was interdisciplinary, involving a legal analysis of the reforms of employment protection legislation in the relevant EU Member States since the beginning of the economic crisis in 2008 and a qualitative research based on interviews with social partners and policy makers at both national and EU level on the role of social dialogue in the reform of labour market institutions, social protection systems and industrial relations in these EU Member States. DIADSE aimed to promote cross-country share of knowledge and mutual learning on industrial relations and improve the capacity of the social partners to enhance their role in designing reforms of labour and social law that are effective in achieving the pursued objectives of reducing unemployment rates and tackling the duality of the labour market.

DIADSE was a pioneering comparative study covering a substantial number of EU countries (9) with different industrial relations traditions that considers the role of the social partners in the reforms of collective bargaining systems and labour protection legislation occurring in several EU Member States.

BELGIUM – Policy Paper (A. de Becker)

Introduction

The major research questions concerned the influence of the EU on the social dialogue in different Member States.

The direct interplay between the EU-level and the Belgian level remains rather limited with regard to the social dialogue. Belgium was mainly occupied with internal issues when it concerned the social dialogue. Our research, however, shows that there exists an (in)direct link between EU labour regulations and the evolution of the social dialogue in Belgium.

The summary shall be divided in four time periods. The impact of EU-regulations on the Belgian social dialogue is the most important in the period between 2008 and 2010. Later on, internal Belgian debates started to become the major topics in the Belgian debate with regard to the social dialogue.

The first part deals with the period 2008-2010, the second part deals with the time period 2010-2011, the third with 2010 till 2014 and the last one with the period 2014-2015. The different periods all deal with distinct periods of government in Belgian recent history. It needs to be underlined that the whole period researched interferes with a period of significant political instability. The period 2010-2011 for example contained the longest governmental formation in world history. It took 541 days before a government was formed. During this 541 days (which corresponds with the second time frame), a caretaker government had to govern pending affairs.

1. Period 2008-2010

1.1. EU-influence on Belgian social dialogue

During this period, the impact of the Lisbon Strategy was the most evident. The Lisbon Strategy promoted in 2005 a different form of employability aiming to reduce the skill gaps between the different member states by investing in jobs and learning opportunities.¹ The Lisbon Strategy concentrated on the important aspect of lifelong learning as a basic element of the European social model. More job rotation and more flexible management to reform the European social model were set as goals.² The European Council desired to improve the employability rate from 61 % to 70% by 2010 and to improve the employment of women from 51 % to 60%.

Belgium developed a recovery plan which intended to improve the rather low employability rate. One of the priorities concerned cutting down the wage costs for companies in order to improve the competitive position of the enterprises in Belgium. The second crucial element concerned the reform of labour market aiming to improve the employability of the older employees. The aim was to reach in 2010 an employability rate of 70%.³ In the end, this aim was not reached as the employability rate remained at 67%.

A limited shift towards more flexicurity on the labour market had been made in the Economic Recovery Act. The employers namely received the possibility to become a company in restructuration without the beforehand long-existing duty to apply for a reduction of the age limit with regard to earlier retirement. The bare announcement that the company had been restructuring had become sufficient to be considered as such. The employer, though, also has to fulfil some important duties by the creation of an employability unit and by the payment of reclassification compensations. One could deduce from this agreement that the aim to improve the employability and thus to create a more flexible (and secure) labour market was envisaged in this agreement.⁴

Flexibility was also increased because in case the employer were to licence its employees due to a restructuring, the employer since the enactment of the Economic Recovery Act of 27 March 2009 has the duty to set up a employability unit in its enterprise. Employees received the duty to inscribe themselves in this employability unit. In case they did not do it, they will be excluded from unemployment benefits. Furthermore, the employer needed to pay a (so-called reclassification) compensation for those employees who are employed since at least a year. The aim was to help them to find a new job rapidly.

The role of the social partners in this setting was clear. Their agreements were translated (with some budgetary adjustments) into legislation. It may be important to stress, at this stage of the report that trade unions indicated that they had the feeling

¹ Lisbon European Council on 23 and 24 March 2000 Presidency Conclusions, to be consulted at http://www.europarl.europa.eu/summits/lis1_en.htm

² Lisbon European Council on 23 and 24 March 2000 Presidency Conclusions, to be consulted at http://www.europarl.europa.eu/summits/lis1_en.htm

³ Nationaal Hervormingsplan België 2005-2008, *Meer werk, meer groei*, Brussels, vooruitgangsrapport 2006, 2006, 43 to be consulted at <http://ec.europa.eu/social/BlobServlet?docId=6080>.

⁴ M. VAN PUTTEN, "Onderzoek en evaluatie van het effect van het indienen van het concept "flexicurity" zoals bepaald door de Europese Raad in het Belgisch arbeidsrecht", Report FOD Belspo, 2010, 65.

that the specific role of government as facilitator has already shifted to a different approach.

1.2. The Belgian elements

The Interprofessional Agreement set out that the wage increase for workers had to be limited to 250 euro net spread over two years. This net-approach was novel in Belgian labour law. It concerned a claim of the employers' organisations to reduce the gross wage costs for the employers and thus to improve the competitive position of employers and enterprises in Belgium.⁵

2. *The period 2010-2011*

2.1. EU-influence

On 2 December 2009, the European Commission launched a procedure, based upon article 126 of the Treaty on the Functioning of the European Union (TFEU), against an excessive deficit in Belgium.⁶ The Commission clearly indicated that the pensions systems were considered to be inappropriate and it considered that a reform of the pension system was imminent. The caretaker government did not come with specific measures with regard to this topic. It was only the new government Di Rupo I which set up modifications in the pension system.

2.2. Belgian elements

For the first time, social partners could not agree on an Interprofessional Agreement and in order to avoid budgetary issues, federal government took the initiative to underpin the original draft of the Interprofessional Agreement with regulation. Federal caretaker government decided to initiate itself the procedure for a reform and to put the social dialogue aside. A legislative basis for governmental intervention was provided by article 7 paragraph 1 of the Act of 26 July 1996 to improve the employability and the preventive safeguarding of the competitiveness (hereafter also the Act of 26 July 1996). This article provides that the Crown (read the government) can provide by Royal Decree the minimal margins for the development of the wage costs. A Royal Decree of 28 March 2011 executed this competence and provided the possibility for a wage increase in the period 2011 and 2012. The Royal Decree stipulated a wage increase of 0% for the year 2011 and an increase of 0,3% for the year 2012.

⁵ Uitzonderlijk Akkoord voor de onderhandelingen op sector- en ondernemingsvlak in de periode 2009-2010, *Bijdrage tot het herstel van het vertrouwen*, 22 December 2008, Brussels, 2008, 4 to be consulted at <http://www.cnt-nar.be/INTERP-AKKOORD/IPA-2009-2010-NL.pdf>

⁶ Council Recommendation of 2 December 2009 to end the situation of an excessive budget deficit to be consulted at http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/104-07_council/2009-12-02_be_126-7_council_en.pdf

Furthermore, the Constitutional Court declared on 7 July 2011 the existing distinctions between labourers and employees unconstitutional with regard to the notice periods and the first sick leave day.⁷ The Constitutional Court decided that there existed no objective ground to install a distinction between blue and white collar workers with regard to the notice period. However, the Constitutional Court furthermore decided that the Belgian legislator should be granted some time to diminish the statutory distinction between blue and white collar workers. The consequences of the distinction therefore could be kept until the 8 July 2013.⁸

3. The period 2011-2014

3.1. EU-elements

During this period, Belgium dealt with the consequences of the budget deficit procedure. It took for the first time measures to reduce the pensions in the public sector. The reform of the pension system in the public sector was done by the Act of 28 December 2011. This Act was not negotiated with the trade unions since it was originated by a parliamentary proposal instead of a governmental initiative.

This example shows that an indirect (negative) impact of EU measures on the Belgian social dialogue existed.

A second EU-element concerned the transposition of the Directive 2008/104/EC. This directive obliged Member States to improve the social protection of atypical workers. They had to be treated equally as typical workers (with a permanent contract). Social partners reached an agreement on the transposition of this Directive by providing that the aim to enlarge the better social protection linked to a contract of employment with indefinite duration to the temporary agency worker. This reasoning constitutes the basic legal underpinning of article 24 of the collective bargaining agreement number 108 in the National Labour Council.⁹ The social partners thus allowed the use of temporary agency work as a way for enterprises to 'test' a worker before enlisting the worker with a fixed contract of employment. The goal is to limit the use of temporary agency work to a maximum of 6 months per 'tested' worker. Consequently, the worker could be transferred to a fixed contract of indefinite duration.

⁷ Constitutional Court, 125/2011, 7 July 2011, note M. Mahieu en G. Pijcke, «Aménagement dans le temps des effets des arrêts rendus sur question préjudicielle: la Cour constitutionnelle a franchi le cap», *JT* 2011, 717.

⁸ Constitutional Court, 125/2011, 7 July 2011, , note M. Mahieu en G. Pijcke, «Aménagement dans le temps des effets des arrêts rendus sur question préjudicielle: la Cour constitutionnelle a franchi le cap», *JT* 2011, 717.

⁹ Commentary of the social partners to article 24 of the collective bargaining agreement number 108 of 16 July 2013 in the National Labour Council, 22 to be consulted at [http://www.cnt-nar.be/CAO-ORIG/cao-108-\(16-07-2013\).pdf](http://www.cnt-nar.be/CAO-ORIG/cao-108-(16-07-2013).pdf)

3.2. Belgian elements

Belgian labour law was dominated by the question on the ban of discrimination between blue and white collar workers with regard to their redundancy payments and notice periods. Social partners had to negotiate on this topic but no solution was found for internal Belgian reasons. Government took the initiative over and this finally led to the Act of 26 December 2013. This was the most significant reform of dismissal law in Belgium. Notice periods for blue and white collar workers were equalized. Long notice periods (for white collar workers) were linked to the non-existence of a duty to motivate a dismissal. This equilibrium (the “power” to dismiss but with high costs) was modified. Therefore, social partners reached a collective bargaining agreement which provided that dismissed workers can ask the reasons why they are dismissed. The collective bargaining agreement number 109 (signed in the National Labour Council) also provides sanctions in case the motives are not granted or are not sufficient for a dismissal. It needs to be underlined that the collective bargaining agreement number 109 is only applicable in the private sector. In the public sector, a large debate on the duty to motivate (or the possibility to motivate) a dismissal of contractual employee is still pending. There thus exists no possibility in the public sector to demand the motives for a dismissal in order to use these motives during a procedure and there exists no other legislation demanding a motivation of a dismissal of a contractual employee in the public sector.¹⁰

Finally, once again no Intersectoral Agreement was reached. Therefore, federal government used the legal procedure provided by the Act of 26 July 1996 on the promotion and the preventive safeguard of the competitiveness. Articles 6 and 7 of this Act provide that in case the social partners do not reach an Interprofessional agreement on the development of the wages with regard to the wage development, government does a proposal to the social partners. In case this proposal does not lead to a consensus on the wage development for the period of the collective bargaining agreement, government has the power to enact itself regulation by issuing a Royal Decree. Article 1 of the Royal Decree of 28 April 2013 provided that the increase for wages was limited to 0%. Although, the index mechanism was kept which meant that a certain wage increase was ensured. It indicated that wage negotiations were one of the main barriers of the social dialogue in Belgium. Social partners still decide over the wages but the financial crisis provoked that social partners had major difficulties to agree on this topic.

¹⁰ During a certain period some authors defended the thesis that a special Act (the Act on the Formal Motivation of Administrative Acts) obliged employers in the public sector to motivate their dismissals. However, the Court of Cassation has decided that this Act may not be considered to be a Special Act obliging the employers in the public sector to motivate their dismissal decisions. Cass., 12 October 2015, nr. S. 13.0026.N to be consulted at <http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=nl>

4. Period 2014-2015

4.1. EU-elements

The improvement of employability in Belgium played a role behind the scenes of pending debates. However, no real direct influence of EU-measures could be identified.

4.2. Belgian elements

The draft of an interprofessional Agreement 2015-2016 proposed a so-called index jump (of 2%) and an index block. The index block ensures that the index jump remains because otherwise an increase of the index would wipe out the index jump. Therefore, the index mechanism needed to be blocked and could only restart on the moment that the 2% limit is exceeded. The index jump and the index block signified that during a period of a year the wages shall not be submitted to an indexation.¹¹ Social partners disagreed on the opportunity and the usefulness of such an index jump. Employers' organisations defended the view that an index jump was absolutely necessary to improve the competitiveness of the Belgian companies. They based their opinion on a report of the Central Council of Company life.¹² Trade unions strongly opposed the idea of an index jump. Their criticism based itself on the conviction that the index jump would lead to an impoverishment of the poorer classes. This measure, according to the trade unions, mainly affects the wages and the social benefits of these groups.

Eventually, Parliament adopted an Act to introduce a so-called index jump. Article 2 of the Act of 23 April 2015 installed a jump and a block of 2% with regard to indexation. The index jump means that the automatic indexation of the wages is frozen for a certain period. When the indexation of wages restarts, it is impossible to compensate with the new indexation the "old" index jump. To that extent, it should be understood as an index jump and a temporary index block. All trade unions set up a procedure before the Constitutional Court with regard to the index jump and the index block.¹³ The socialist trade union is the only one which has set up a procedure against the wage stop. With regard to the first procedure the Constitutional Court rendered a decision that the Act of 28 April did not violate the Constitution on 13 October 2016.¹⁴ The invoked legal means did thus not alter the situation for the trade unions.

However, this procedure indicates that the relationship at national level is very tensed. Social dialogue though does take place but mainly at sectoral and company level. At national level, social dialogue suffers from a lack of mutual confidence.

¹¹ *Parl. Doc.*, Chamber of Representatives, session 2014-2015, nr. 960/1, 6.

¹² Central Council of Company Life, *Technisch Verslag*, 22 December 2014, 3 to be consulted at http://www.ccecrb.fgov.be/txt/nl/report_nl.pdf

¹³ Belgian Official Gazette, 23 December 2015.

¹⁴ Constitutional Court, nr. 130/2016, 13 October 2016.

The labour market in France has been relatively resilient in the face of the global financial crisis of 2008 and 2009 and the sovereign-debt crisis in 2011. On average, GDP declined slightly more in the rest of the Eurozone than in France. Unemployment rates have been rising in the 8 year period under study. Between 2008 and 2009, there was a massive rise in unemployment to its highest level since the late 1990s. After stabilizing for a while, from 2011 a second wave of the crisis led the unemployment rate up to 10.4 per cent in 2013 and has remained stagnant since then. In 2009, output suddenly stalled in France as well as in most European countries, but companies reduced employment more slowly than during previous recessions. While having been hit sooner by the economic crisis than most of the Eurozone countries, France was more efficient in limiting the output decline in 2010, and again in 2012 and 2013.

The French labour market tempered relatively well the initial impact of crisis compared with other EU neighbour countries. However, France has begun to lag behind other European economies in terms of its per capita GDP. Until the 1990s, France was among Europe's leading economies in per capita GDP. By 2010, however, the country had dropped to 11th out of the EU-15. The main drivers of that change have been the low labour force participation of seniors and young people, as well as relatively high unemployment rates.

As regards the impact of the economic crisis, France's policy management during the crisis is widely recognized for its efficiency in cushioning the main effects of the crisis, both on output and the labour market. Indeed, France benefited from powerful automatic stabilizers (in particular Unemployment Insurance and poverty allowances, RSA). As a consequence, France has experienced only a moderate decline in output despite negative fiscal impulses and tight fiscal austerity during the examined period.

The country's major weaknesses, identified by the OECD, are the rigidity of its labour market and the high labour market duality. This organisation recommends taking measures to make employment contracts more flexible and simplify and shorten layoff procedures, while continuing to guarantee sufficient income protection for workers between jobs. The OECD believes the reforms already undertaken by the French government in the last years do not assure economic recovery and calls for more "ambitious" structural reforms. (OECD report: 'OECD Economic Surveys France 2015') The French response to this recommendation has been to present a proposal to adopt a second Macron Bill in 2016. The "Macron 2" bill continues the structural reform programme begun by "Macron 1," officially named the Growth and Economic Activity Bill, which aims to relax labour laws.

In France, in recent years labour law has been identified by many policy makers as one of the major determinants of the high unemployment rates in the country. This vision has served as justification for the adoption of several structural reforms of labour protection legislation. The French administration was not compelled by the European institutions to adopt those reforms, as it has not received any financial direct aids from the EU. However, the French legislators and policy

makers followed the recommendations issued by Brussels, which clearly reflected a labour market flexicurity approach. Examples of this trend are the Law on “secured employment”, adopted on 14 June 2013, -following the signing of the national inter-professional agreement of 11 January 2013-; the Macron Law and the Law on Social Dialogue and Employment.

A main feature of the recent labour law reforms has been to reinforce employees’ involvement procedures and collective bargaining at enterprise level. In order to strengthen the employees’ involvement in the company, a new system of sharing strategic information of the company in the economic and social fields for employees’ representatives is set up. This is done through the creation of an economic and social database. According to the national inter-professional agreement which inspired the Law on Secured Employment, access to shared economic information is central for the employees’ involvement; crucial for the viability of enterprise survival solutions and an essential condition for effective and quality of social dialogue. The same legislation law also stimulates the information and involvement of employees on enterprise strategies, by promoting the participation of employees’ representatives on the boards of large companies.

1. Law to securing employment 2013

In 14 June 2013 the law to “secure employment”, following the national inter-professional agreement of 11 January 2013, which intends to establish “a new Economic and Social model in supporting competitiveness and to secure employment and careers of employees.” The aim of the Law to secure employment of 2013 is to facilitate the adaptation to structural and cyclical economic change. This Law introduces innovative measures allowing companies to adopt ‘agreements on job retention’, which temporarily modify their employees working time, wages and other employment conditions. This legislation has also reformed collective economic dismissals procedures and facilitated conciliation in labour courts by allowing the payment by the employer of a lump-sum compensation based on the employees’ seniority.

This legislation follows the trend to decentralization of collective bargaining which has inspired the labour law reforms since 2004 in France. In an attempt to promote dialogue at company level, it streamlines and improves the quality of information provided to the employees’ representatives’ bodies by establishing a new unique database with the economic and social information on the company to which the employees’ representatives are granted access. On the one hand, this database facilitates the information and consultation procedures of the employees’ representatives’ bodies. On the other hand, in terms of HR management, it allows a better anticipation on the strategic orientations of the company.

This Law also promotes the mobility of employees. Several provisions on the Law to securing employment aim to assist the worker to acquire new skills and to change jobs through the secured voluntary mobility and the rule on the portability of rights. Therefore, the Law to securing employment aims to provide more protected occupational pathways for employees in France.

2. Macron Law on Economic Growth and Activity 2015

The Law on Economic Growth and Activity, so-called “Macron bill”, was adopted on 6 August 2015. This bill includes several measures on the labour law field, including removing working time restrictions and a reduction in workplace protection. The most relevant reforms in the social field include employee savings plans, Sunday and nightshift working hours, new redundancies procedures, new rules on profit-sharing and employee share-ownership incentives and the implementation of a scale of compensation for the employment tribunal may grant in cases of unfair dismissal.

The Macron Bill first drafts intended to impose on employment tribunals a fixed scale on the range of damages to be awarded to employees in cases of wrongful dismissal. The original idea was that the judge might order the payment of a higher amount in case of very serious violation of labour rights (harassment, discrimination, etc.). However, the provisions in the Macron Law relating to a maximum limit on damages for unlawful dismissal were censured by the Constitutional Council, which considered that the distinction by the size of the company was contrary to the principle of equality.

The Macron law includes also an attempt to reform the labour procedural law. In France, proceedings before the labour courts are lengthy and the time needed to arrive at a ruling is quite substantial. The Macron law introduces several improvements, namely to better train labour court judges, impose more stringent ethical obligations and overhaul the disciplinary procedure; shorten the timeframes and better regulate the various stages of the proceedings, including from the conciliation stage, provide that the labour court’s adjudication panel should sit in small committed panels (one judge elected by employers and one by employees) and render their decision within a period of three months; consolidate proceedings when this is in the interest of good administration of justice, to have cases pending before several labour courts within the same jurisdiction of a court of appeals be adjudicated together; further encourage amicable proceedings, such as conventional mediation; and introduce the “*défenseur syndical*” (i.e., a union’s legal defender) who could represent employees not only before labour courts but also before courts of appeals in labour disputes. In addition, in companies with less than 11 employees, the union’s defender would benefit from leave authorisations to perform his/her representation duties, with a system of compensation of his/her salary and related benefits (to be reimbursed by the State) of a maximum of 10 hours per month.

3. Law on social dialogue 2015

On the heels of the Macron Law, which aims to provide more flexibility to employers, the French government enacted the Rebsamen Law n°2015-994, dated 17 August 2015, on social dialogue and employment, reforming collective bargaining and employees’ representation at the workplace. Thus, the so-called Rebsamen Law changed the criteria for which boards members representing the employees must be appointed in large public companies. This Law reforms the system of staff

representation with the aim of improving performance in French companies. France has a complex system of employees' representation institutions at the workplace level (elected personnel representatives - IRP), directly elected by the entire workforce. In this complex system, where trade unions are present, the key figure is the trade union delegate.

There are a large number of structures which provide representation for employees in France, both for trade unionists and for the entire workforce. Trade unions present in a company are normally able to set up trade union sections, which bring together their members in the workplace and have specific legal rights. In addition, provided they have sufficient support, unions can appoint trade union delegates in companies with more than 50 employees. These union delegates can negotiate on behalf of all employees of the company.

Workers' representation is provided by two separate elected bodies, which have specific legal rights and duties. These are the employee delegates and the works council, elected either at company level or at plant level. In addition, there is a committee dealing with health and safety issues. In larger companies, the works council and the health and safety committee are usually separate, though the same individuals can be elected to both bodies. However, in companies with between 50 and 300 employees, the employer can decide that the functions of all three bodies should be combined in a single common representative body (DUP). In addition, in companies with over 300 employees, the employer and the unions (provided they represent a majority of the workforce) can agree that the three employee representative bodies can be combined in a way that best suits their needs. However, although the structures can be changed by agreement of the social partners, the legal rights and responsibilities of the bodies remain the same as set forth in the labour legislation.

The main changes introduced by the Rebsamen Law are: the reduction of the thresholds relating to the number of employees the companies should have to be under the scope of the workers' representation legislation; elimination of the condition requiring boards members to be works council representatives; the introduction of an exception for companies whose principal activity is to acquire and manage subsidiaries and interests.

The main aim of the French government when adopting this legislation is to stimulate social dialogue in companies with fewer than 11 employees, for which the law does not require the election of Personnel Representative Institutions; and eliminate the rigidities of staff representation rules. Before the adoption of the Rebsamen Law, companies with fewer than 11 employees did not have a system of employees' representation. This Law introduces for these companies the Joint Regional Inter-Professional Commissions ("CRPI"), consisting of members elected by employees' organisations and professional management bodies.

The Law also aims to simplify the process for consulting and informing the Works Council. There were 17 obligations of recurrent annual consultations of the Works Council. Besides, obligations to inform (without collecting the opinion of the Works Council) are reflected in many legal provisions. In order to rationalise information and consultation processes and facilitate dialogue between staff

representatives and management, the Rebsamen Law promotes an strategic accumulation of information exchanges and the elimination of some of the consultative obligations, i.e., employers will no longer be required to consult the Works Council on the renewal of profit-sharing agreements or employee savings plans. Therefore, according to the Rebsamen Law the minimum is set at 3 annual consultations dealing with:

- strategic orientations, the economic and financial situation
- social policy, working and employment conditions.

The Law also includes new rules simplifying the functioning of the Works Council. The Works Council has to meet each month or every two months depending on the number of employees in the company. According to the Rebsamen Law, the threshold above for Works Council meetings to take place monthly is raised from 150 to 300 employees. Additionally, the meetings frequency may be adapted by a company agreement signed with the trade unions. In any case, the law established a minimum of six annual meetings.

The Law on social dialogue and employment of 2015 has further strengthened the protection of trade union delegates and employee representatives, whose time off for duties associated with their representative role amounts to 30% or more of their contractual hours.

The Rebsamen Law has also introduced new measures related to overtime, fixed-term contracts, arduous work and prevention of burnout. The threshold of new employees' overtime is set at 1,607 hours per year (based on five weeks of paid leave annually) and it is considered a global one by the case law.

Article 55 of the Law on Social Dialogue and Employment introduces the possibility to renew temporary agency work assignments twice instead of only one time, as well as fixed-term contracts. Moreover, the maximum duration of fixed-term contracts and assignment contracts is extended to 24 months instead of 18 months. Moreover, temporary permanent contracts have been codified in the Labour Code. On July 2013 the legislation applicable to Temporary Work Agencies has already being reformed. This new legislation was based on a previous agreement by the social partners. One main change introduced by this new law is that workers of temporary work agencies can be hired by the agencies through a permanent contract. In this latter case, certain provisions applicable to the assignment contract (in particular, appeals, terms and duration of the contract, compulsory indications, probation period) would not apply.

Furthermore, the Rebsamen Act introduced some changes to arduous labour. Sectoral agreements will define jobs or work situations that may be arduous. In addition, agreements and plans of action on arduous work concluded before the Law of 20 January 2014 was agreed and entered into force on 1 January 2015 continue to apply until 1 January 2018. The aim is to avoid companies from having to renegotiate arduousness at every effective step.

4. Other legal amendments of labour law legislation

In addition, during the reference period of this study several reforms of employment protection legislation were passed in France. Many of these legal measures aim to stimulate youth employment and employability for groups at risk of exclusion. Among these measures are the Law adopting a contract of generation (“contract du generation”) which tried to promote the access of young workers to the labour market in combination with a mentoring system by senior workers and the Bill dealing with the Employment position of the future (“Emplois d’avenir”) which stimulate through public subsidies the creation of jobs for young workers in the public sector.

The regulatory framework for the apprenticeship contract and internships has also been recently reformed. By the adoption of Decree No. 2014-1420, 27 November 2014, related to the supervision of training periods in professional environments and of internships, the French government implements Law No. 2014-788 of 10 July 2014, promoting the development, internship supervision, and improvement of internships. This Decree supplements existing legal provisions and specifies the implementation of the three objectives of the law: integration of interns in training courses, supervision to limit abuses, and improvement of internship quality and of the status of interns. It applies for contracts concluded as of 1 December 2014. The decree reinforces the educational dimension of internships as it sets a minimum training time of 200 hours at least per year.

The aim of this legislation is to improve the protection of workers in an internship by providing for a designation and identification of each internship contract of a referring teacher and tutor in the company. This obligation is reinforced with the requirement that the definition of skills to be acquired or developed is described in each internship contract. Besides, the decree also strengthens the status of interns by registering them in a special personal register.

Internship contracts must mention the effective weekly working hours which may not exceed those of regular employees, authorisations of absence and rest periods and a list of benefits provided by the host organisation (payment of transport costs, access to the company restaurant or restaurant vouchers). Finally, the legislation increases the minimum monthly wages to be paid for any internships of duration longer than two months.

Another vulnerable group which has received the attention of the employment policy reforms in France are persons with disabilities. 20 November 2014, the Decree No. 2014-1386 dealing with disability quotas was adopted. This Decree implements the obligation to employ disabled workers based on Article L.5212-18 of the Labour Code. According to this provision any employer who employs at least 20 employees must also employ some workers with disabilities using several means. The decree of 20 November 2014 also amends Article R.5212-14 of the Labour Code, which specifies mandatory provisions for an employer to be exempt from this obligation. For agreements concluded after 1 January 2015, the annual or multi-annual employment program must contain a plan for hiring persons with disability, a company retention plan in case of collective dismissals, and either a plan

for integration and training persons with disability or a plan introducing technological changes which facilitate their integration.

Among the other measures adopted to fight labour market segmentation and employment precariousness, it is worth noting the reform of atypical part-time contracts. The main aim of the legal changes was to limit involuntary part-time work. The bill on 27 May 2015 ratified Ordinance No. 2015-82 of 29 January 2015 on the simplification and guarantee of modalities of the application of rules on part-time work. This legislation simplifies and guarantees provisions on part-time work introduced by the Law on Employment protection of 14 June 2013. These provisions are extracted from the inter-professional national agreement of 11 January 2013, which established a minimal threshold of 24 hours of weekly work to fight involuntary part-time work. Nevertheless, the legislation excludes from this rule very short contracts (less than 8 days), as well as contracts of replacement. For those employees whose working time is less than the threshold (those recruited before 1 January 2014 and those recruited after this date, but requested a derogation from the threshold), a priority of reemployment will apply in case of an available post with a duration which is at least equal to the threshold. The ordinance provides regulations for employees who request to work for a minimum duration, priority for being awarded a post in the respective occupational group or an equivalent job. However, the employer can reject the employee's request because the employer's only obligation is to bring the list of available jobs to the employee's attention. However, this legislation has not been very effective, as the limit of minimum working hours for part-time work contracts can be derogated by collective agreement and that possibility is used extensively.

Involvement of the social partners on labour market reforms

In France social partners have often been initiating measures to compensate for the consequences of the crisis. A clear example is the national inter-professional agreement of 11 January 2013, which led to the adoption Law on "secured employment", adopted on 14 June 2013. However, not all the important reforms that have been decided by the French government in the examined period have been subject of negotiations with social partners, i.e. the Macron Law 2015, and these are also not satisfied with some of the reforms passed unilaterally by the government, for instance, with the Law on Social Dialogue and Employment 2015.

Social partners criticize new governments' ways of implementing new initiatives without proper consultation and without thoroughly evaluating reforms measures that have been taken before. For instance, some of the Macron Law 2015 reforms have been criticized by the social partners as rushed, and as an attempt to destabilize the joint nature of the procedures on labour disputes. Unions in particular have claimed that these reforms were not urgent and more time should have been allowed for consultation, especially in the employment related measures (for example, the provisions allowing greater scope for shops to open on Sundays). However, unions have welcomed other measures, such as the strengthening of the employee defender's role and the new training obligation.

The 2015 Rebsamen bill on modernising social dialogue was launched by the government after social dialogue at national level failed. The new bill heralds many changes for consultation bodies and collective bargaining at company level. Unions are divided on the bill. The French Democratic Confederation of Labour (CFDT) said the creation of the bipartite regional committees would help give representation to employees in very small businesses. However, the General Confederation of Labour (CGT) denounced plans to relax the system of worker representation and opposed the possibility of merging the information and consultation bodies and the weakening of the health and safety committees. Force Ouvrière (FO) denounced ‘the decline of workers’ rights and resources’ contained in the bill. Meanwhile, the main employers’ organisation, MEDEF, has also criticized the bill. MEDEF considers the reforms inconsistent and opposes the creation of bipartite regional committees, which it says will cause a new administrative burden for SMEs.

Finally the unions have been campaigning against the enactment of the 2016 law on employment, the modernisation of social dialogue, and safeguarding. This significant labour law reform covers working time, social dialogue, and redundancies. Trade unions have been particularly opposed to the provision establishing that company agreements on working time take precedence over agreements made at branch level.

GERMANY – Policy Paper (Esther Koot-van der Putte, Stephanie Steinmetz)

Abstract

This report presents the findings from research carried out in the framework of the international project ‘DIADSE - Dialogue for Advancing Social Europe’. The report aims to shed light on the developments in Germany with regard to social dialogue and labour law reforms in the period of 2008-2015, with an emphasis on the effects of the socio-economic adjustments undertaken in this period and the greater or lesser involvement of social partners in designing and implementing the reforms. Using a mixed-method approach this report is based on various sources: available research literature, legislation, reports published by national authorities or independent bodies, and the most reliable and up-to-date quantitative data from official sources, such as Eurostat, the national statistical office in Germany and the WSI-Tarifarchiv. In addition, and to provide some in-depth views on the developments during this time, seven telephone interviews with 9 representatives from the social partners (8 representatives of the major workers’ and employers’ organizations and one with an external scientific expert) have been collected. The final report is divided in five sections starting with a description of the main reforms and an outline of the role of social partners throughout the period under study as well as evaluating the labour market effects of the reforms and the development of the social dialog in Germany over the last seven years.

A short reflection on the situation of Germany before and at the beginning of the crisis

To begin with, because of its strong export orientation, Germany's economy was more affected by the economic and financial crises in 2008/2009 than other European countries (the gross domestic product decreased by 6.5%). The reaction of the German labour market to this recession was - compared to other countries - relatively mild, and different in comparison to former recessions. This had largely to do with the fact that, in contrast to countries such as Ireland and the United States which faced a slump in domestic demand combined with a real estate crisis, Germany had to deal with a world demand shock that mostly affected economically strong firms (Rinne and Zimmermann 2011; Schneider and Gräf 2010). Moreover, various flexibility instruments at the firm level, combined with discretionary adjustments of the institutional framework by policy makers (i.e. enhancement of short-time work schemes), enabled firms to adjust their working hours during this crisis almost solely along the intensive margin by reducing hours per worker (Burda and Hunt 2011). But also numerous arrangements in conjunction with collective labour agreements (job security contracts, mutable working hours) as products of the social dialogue opened possible courses of action. This rather unusual reaction compared to previous recessions was often depicted in the media as the 'German Miracle'.

This, however, has to be placed into the context of two interdependent aspects: the previous labour market reforms and other flexibility instruments. For instance, the future prospects of the German economy seemed to be extraordinarily bright, in early 2008. For more and more German regions full employment was a realistic perspective. German products like machinery, equipment, and automobiles were in high demand on the world market. After several years of wage restraint, real unit labour costs had experienced a substantial decline, especially in comparison to Germany's main competitor countries. The main macroeconomic variables looked favourable: The budget consolidation was well under way, the inflation tamed, employment was rising and there was neither a sign of a stock market nor of a housing price bubble. The eruption of the world recession caught the German economy by surprise and at a time when the dominant theme of the economic policy debate was a shortage of skilled workers. In addition, before the crisis hit Germany, major labour market reforms fostering flexibility of workers and their integration into the labour market as well as loosening institutional restrictions were undertaken in the years 2003 to 2005 (*Hartz Reforms*). Although not all elements of the labour market reforms turned out to be well designed, they were on their way to changing the German labour market for the better during the upswing years 2006 to 2008. Positive signals could be observed with respect to a decline of long-term unemployment, an improved matching process between labour demand and supply and the convergence process in East Germany regained momentum (Gartner and Klinger 2010).

With respect to further measures and instruments implemented when the economy went into recession, the Federal government not only allowed the stimulation of the decreased aggregate demand by passive automatic stabilizers (such as the unemployment aid system), but also pursued more controversially discussed active stabilization policy measures, such as two economic stimulus packages. The most important measures - apart from certain direct fiscal policy measures (e.g. car

scrapping subsidies) - were a large amount of labour hoarding and the use of short-time work foremost by the large export-oriented manufacturing sector. The approach worked well because its use was based on expectations by employers of a short recession only that proved to be true. Many of the most affected companies correctly anticipated to have a fundamentally appropriate structure of their products to meet the future demand in global markets as well as within Europe and Germany (Paesler 2011). The extent of the German stimulus programs in the EU were among the largest in the EU, and empirical evidence showed the effectiveness of the 2009/2010 recovery packages in overcoming the crisis (e.g. Brügelmann 2011, p. 1). In addition, tripartite national social dialogue was one of the main responses to the financial crisis in Germany. This took place only at a consultative level. Nonetheless, the union involvement was considerable, particularly at the sectoral/subnational level (e.g. social dialogue response via sectoral agreements and not via a national pact, see Baccara and Heeb 2011). When the crisis hit the German labour market, the government invited the social partners to several meetings between 2008 and 2009 to find solutions. All of these consultations focused on protecting employment levels as a major shared concern. As Zagelmeyer (2010) notes, government, union and employer association representatives met to discuss the economic situation, the two stimulus packages and further measures. The purpose of those meetings was to build upon the expertise of unions and employer associations and to secure their support in implementing new measures. Lengthening entitlement periods for short-time work at the national level was, for example, complemented by collective agreement clauses (negotiated during the crisis) in the metal and electrical industry.

Major findings

Against this background, the findings of the report showed that it is important to distinguish between measures and instruments implemented to overcome the crisis and postcrisis measures which are not related to the experiences before. Besides the already mentioned stimulus packages, in particular the extension of short-time work schemes, the support for companies training their short-time workers during downtimes, and a reduction of employers' social security contributions in general and for short-time workers under certain circumstances had an impact on the course which the social partners chose in dealing with the crisis. In this context, it should however also be emphasised that not all labour law changes (in particular those after the crisis) can be seen in relation to or as an effect of the economic crisis (Vogel 2013).

To start with the crisis period, Bellman et al. (2014) pointed out that the German miracle has to be attributed to the interaction of several factors, which have also been confirmed through the findings in this report. First, Germany experienced favourable conditions prior to the crisis. As elaborated, when the crisis hit Germany in 2009 a high level of employment stability could be observed. This can only be understood in relation to efforts undertaken from the early 1990s onwards to flexibilize working time in Germany: almost half of Germany companies had already in the early 1990s introduced working time accounts (Gross and Schwarz 2009).

Moreover, with the use of ‘opening clauses’, which has also be stressed by several interviewees, all industry-wide collective agreements have given the actors at firm-level the opportunities to reduce collectively agreed working time temporarily in order o avoid dismissals, with accompanying wage losses. These within-firm flexibilities allowed reasonable employment adjustments and the use of schemes such as short-time work, working time accounts and most opening clauses including company-level pacts for competitiveness and employment which cumulated into relative employment stability coupled with low labour productivity. Additionally, the Hartz reforms (2003-2005) restructured the labour market, thereby facilitating flexibility, and finally during the crisis, efficient government interventions (such as prolonging short-time working entitlement periods and introducing two rescue packages) set the right framework for social partner action and helped strengthen the German economy. It seems that part of the fast and effective German answer to the crisis can be attributed to these pre-established instruments. In this regard the BDA representatives underlined that, given the nature of the industrial relations in Germany; it would have been unlikely that Germany could have reacted so fast in the reduction of working time if not beforehand the instruments had been already implemented. This allowed the social partners to extend the existing range of instruments for implementing temporary working time reductions - in particular with respect to short-time work.

The reforms introduced after the crisis have to be seen independently from the experiences during the crisis. In this regard, the heavily discussed Minimum Wage Act and the related reforms can rather be seen as a result of a positive and supporting political, economic and societal climate rather than of the positive collaboration experiences during the crisis. The findings of the report confirm that the social partners have very strong and divergent attitudes when it comes for instance to the Minimum Wage Act which is considered as a ‘state intervention’. While the trade unions - although from the beginning supporters of the minimum wage but cautious regarding their autonomy - are now more concerned with how the minimum wage can be increased over the different sectors and branches and over time, the BDA and employers associations are very clear in their rejection and scepticism. Even though the negative forecasts have not come true so far, a common notion is that ‘it is too early’ to draw conclusions, in particular due to the current good economic climate. There is a lot of doubt whether the minimum wage will hold a further crisis.

When it comes to the question about development of the industrial relations and the role of the social partners, the results show that overall the system is a strong one which can master a crisis. This can be attributed to the fact that on the one hand it offers room for conflicting interests with respect to wages and working conditions, while at the other hand strong collaborations are possible when required by the circumstances. Vogel (2013) concluded that social partners during the crisis have successfully managed to mitigate the effects of the crisis. The stabilization of the employment level, particularly in the most crisis hit industries is mainly an effect of the cooperative, solution-seeking behaviour of social partners at the establishment and sectoral levels. This achievement was also due to the relative flexibility of the German system of industrial relations. More specifically: the possibility to deviate from

collectively agreed standards by means of opening clauses, and the wage restraint and concessions negotiated during collective bargaining rounds.

In this context, the interviewees have underlined that the common goal of overcoming the crisis and saving jobs as well as the right and adequate instruments at hand increased the willingness of the social partners to collaborate and to put major conflicts temporarily at rest. However, as expected after the crisis the old conflicts remerged and the relation between the social partners returned to pre-crisis conditions and conflicts even increased in some sectors and branches. Overall, the interviewees also repeatedly stressed are that developments in the industrial relations in Germany and in particular of the collective bargaining system can hardly be generalised. It is rather necessary to differentiate between sectors, industries and branches. In the framework of this report, however, it was not the aim to dig deeper into those details but to provide rather an overview and an evaluation of the major trends.

HUNGARY – Policy Paper (Attila Kun)

The study intends to examine the effects of labour and social reforms in Hungary in the context of industrial relations. In this perspective, the study aims to put specific focus on two issues: to analyze how the great economic crisis has affected – directly and indirectly – these labour law reforms and how social dialogue and collective bargaining have played a role in these reforms.

On the whole, the direct economic effects of the global crisis have been limited in Hungary, as the post-2010 government's policies have had a more fundamental transformative impact on politics, including labour issues. The post-2010 government has had an overwhelming parliamentary majority which allowed the government to create a 'strong state'. Marginalization of social dialogue, abandoning of established tripartism, re-shaping the institutional foundations of collective bargaining and flexibilization of employment contracts law have been part of this endeavour. A new Labour Code (Act I of 2012) fitted well into this concept and it puts an overwhelming emphasis on quantitative concerns, specifically on the overriding objective of job creation (and the quality of jobs, the concept of 'decent work' etc. were not really issues from a labour law perspective). All in all, it is very difficult to talk about crisis-related labour law reforms in Hungary and the crisis has not been rigorously discussed from a labour law point of view. This fact is also a reason for focusing on the Labour Code (and its effects) itself in this paper.

The Hungarian DIADSE Report puts the new Labour Code (and its background, its effects, its transformative role, its context in industrial relations etc.) into the focus of the investigation, as the new Labour Code is definitely the central piece of labour market reforms in Hungary during the study period of the DIADSE-project (2008-2015).

The research particularly examines the role of the social partners in the reforms of labour law and social dialogue, albeit the adoption of the new Labour Code was coupled with a relatively selective and half-hearted consultation process, together with a great extent of informality and an atmosphere of governmental rigor. In

general, erosion of social dialogue has been a trend in the last half decade and one can have the impression that the very idea that public policy measures should be transparent and agreed on through the social dialogue institutions suffers serious deficit. Parallely, union actions in response to reforms in Hungary were fragile and imperfect.

The general revision of labour law and the new Labour Code turns the whole world of labour law upside down: all fields of labour regulation are affected by significant changes, alterations. The new Code, in general, offers more flexible regulations and reduces, to a certain extent, the labour law risks and burdens for employers, while on the other hand, a decrease of employees' rights is detectable (at the same time, the new Code contains a few improvements for workers too). From a technical, purely professional point of view (the clarity of the regulations etc.), the Code shows a rather good progress and it provides a far more detailed, elaborated and transparent system of rules (but on a very complex way). In general, the new Labour Code seeks to increase the parties' – collective and individual – autonomy and significantly reduces any legislative intervention. As such, labour law is mostly seen in the ambit of civil law (and basically as one instrument of economic and employment policy) and not conceptualized as a field of purposive social law anymore.

As it is impossible to comprehensively examine the new Labour Code in such a contribution, the paper focuses on some central conceptual changes. In our opinion, the following five analyzed tendencies are epitomizing the essence of recent labour law reforms in Hungary and might give an impression about the trend and regulatory style of the new Code:

- Conceptual shift in the idea of labour law;
- Rearrangement of the legal sources of labour law;
- Re-regulation of collective labour law and the structure of industrial relations;
- Conceptual change in the legal protection against unlawful dismissal;
- Some distinctive changes in individual employment contracts law.

After outlining the general economic, political context and objectives of labour law reforms (Chapter 1), the paper (Chapter 2) puts forward an elaborated analysis and discussion on these five above-mentioned particular labour law issues. Additionally, the paper (Chapter 4) highlights the related roles, positions, reflections and initiatives of social partners, paying attention to all standard and relevant levels of industrial relations (including national, sectoral and company-level social dialogue). The paper concludes with the exploratory analysis of the labour market effects of the reforms (Chapter 4).

One of the main goals of the labour law reform has been to revitalize the contractual sources of labour law. The main aim is to strengthen the role of the collective agreement as a contractual source of labour law. This brand new regulatory concept significantly enlarges the role and influence of employers (employer interest representations) and trade unions on the labour market, while it simultaneously increases their responsibility and reduces the regulative functions of state regulation. This new regulatory context poses an enormous challenge for Hungarian trade unions: it is yet to be seen whether they can live up to the increased expectations and to

become effective bargaining partners of employers within an even more autonomous and contractual system of labour law regulation. As early experiences show, bargaining parties are rather reluctant and cautious in innovatively using the increased scope for bargaining.

As it was already mentioned before, it is very hard to prove the direct effect of the crisis on labour law reforms in Hungary. The passing of a completely new Labour Code was much more a result of the strong-minded political will of the Government. In general, the new Labour Code seeks to increase the parties' autonomy and significantly reduces any legislative intervention. Although the new Code seems to be reasonably successful in general, some conceptual critiques might still be raised. The paper analyzes some critical cornerstones of the new labour law architecture of Hungary. In all fields there are some identifiable negative consequences – and/or possibly unwanted side-effects – of the reform. Firstly, the intended job-creating effect of the Code can't be proved. Secondly, the Code does not seem to practically intensify collective bargaining processes (in contrast with its aim). Thirdly, the re-regulation of trade unions and works councils have not brought about a meaningful revitalization of industrial relations, but has caused quite a lot of uncertainties and tensions. Fourthly, the new Code might undermine labour law compliance in general by leaving a large number of unlawful terminations without any meaningful sanction. On the whole, it would still be a misleading simplification to blame the current Government and the new Labour Code for all problems of the labour market in Hungary and especially for ineffective social dialogue processes. Only time will tell if social dialogue will revive or not in Hungary and legislation as such has a limited capacity in this context.

With regard to employment indicators, some years ago Hungary still belonged to the tail-enders of the EU, while by now the country has become a top performer concerning the pace of improvement on the labour market. According to the latest data, a positive trend regarding growth in the number of people in employment has remained intact over the last couple of years. Despite these promising trends, there is still much to do and several more measures are necessary to maintain this positive tendency. Furthermore, it would be hard to construe a direct link between labour law reforms and improving employment indicators.

According to various indexes and everyday experience, labour law in Hungary is less and less perceived as rigid and restrictive, and it is not a noticeably problematic factor, not a real issue when doing business. No doubt, the new Code has met its original aim of increasing flexibility, but the real social consequences of such a reform are to be seen in the future.

The DIADSE project aimed to investigate, among others, how the social dimension of Europe both at the supranational and national levels has been affected by the latest socio-economic adjustments and how the EU social model might be re-constructed and advanced through social dialogue. In relation to Hungary, the following general policy proposals might be formulated in order to re-construct the country's vision about labour law (and social policy issues more generally) through – and in 'tandem' with – social dialogue.

Social partners, especially trade unions, are obviously experiencing a weakening of their role in national-level policy-making; erosion of institutionalized social dialogue is detectable. This tendency is particularly remarkable and troublesome if one takes into account the fact that in post-socialist countries – mostly for historical reasons – the institution of tripartite social dialogue – and the articulation of interests on the political level – usually plays more important role than bipartite collective bargaining and other forms of social dialogue. For a long time, tripartism and participation in national level politics (including intensive formal and informal lobbying) somewhat compensated for weak bargaining capacity at sectoral and firm level. Now, for many reasons, it is certainly time for an explicit shift in focus for unions: renewal should start rather at shop-floor and industry level. Furthermore, in our opinion, unions should concentrate their – increasingly limited – energies more on definite issues, professional matters, potent bipartite bargaining and trust-building movements, actions, rather than on structures, positions, privileges, internal conflicts and politics. The combination of the above-mentioned – well-expected – changes of perspectives might bring them closer to the people.

Correspondingly, the revitalization and the real – much reasonable – unification of the trade union movement (especially that of fragmented national level confederations) are still pressing needs and open, potential issues in Hungary. Pleas for a united and strong trade union movement have been on the agenda of nearly all confederations for decades now, however, no effective, consensual actions have really followed.

As it is for social partners, it is also difficult to formulate simple – legal-technical – recommendations for the government of Hungary, as the labour law reform analyzed in this paper fits well to the complexity of various changes in the politics, economy and society carried out by the current governing party since 2010. No doubt, the government, or the Prime Minister himself, has a comprehensive and determined vision of the future, and ‘reforms’ of various policy-fields contribute to the accomplishment of this vision like pieces of a jigsaw puzzle. Therefore, the following recommendations might presume a sort of reconsideration (or amendment) of this overall vision. In other words, the following policy proposals are – to some extent necessarily – regardless to the political realities of implementation. Based on the lessons of the recent labour law reform, the recommendations below aim not only to mitigate unwanted negative consequences and minor side effects, they are rather formulated to help to restore the internationally recognized, original, purposive functions of labour law and disregard some of the initial objectives of the recent reform such as extreme flexibilization (in order to improve competitiveness) and the much debated idea of intended job creation through labour law reforms.

Conceptually, the following issues would certainly be highly important to be considered (and re-considered) in any future Hungarian labour law reform:

There would be a need to restore the basically social law nature of labour legislation, to implement not only the “flexibility”, but also the “security” part from the flexicurity concept (either in labour law, or within a wider, coherent system of

labour-related / labour market-oriented regulation) and to improve the quality and decency of jobs.

For the sake of expansion of employee protection legislation, the first steps could be to revise the regulation of the legal consequences of unlawful dismissal and to create a new, fairer, more sensible equilibrium of rights, duties and risks between employers and employees.

In general, there would be a need for a slightly more 'user-friendly', more transparent character of labour regulation. Accordingly, there would be a need to direct more attention on the improved level of compliance with labour laws and to create incentives for labour market actors to consciously comply with labour laws.

Fighting poverty and wage-depression also assumes measures beyond the reach of labour law, however for this purpose a permissive labour policy can rely on collective bargaining and social dialogue (for instance, the union confederations' recent 'living wage' campaign might meet employers relatively newborn strive to tackle emerging labour-force shortages).

Meaningful promotion of collective bargaining and facilitation of the conclusion of collective agreements would be a much desired policy-direction in the realm of the current, above-described regulatory structure of labour law. In line with international practices, such promotion by direct (and indirect) state intervention could be developed, both through legislation (effective incentives in labour laws itself) and through supporting measures (extensively available mediation-arbitration services; catalyzed sectoral social dialogue and well-working extension procedure; efficient education of employees and employers, especially in the SMEs-sector; exemplary 'role model' of employers in the public sector and / or in public ownership, etc.). In this respect, the overall and purposive revision of the regulation on trade unions' and works councils' workplace rights and conditions is to be reconsidered. The strike law also needs reforms, especially to help employees to be able to use the leverage of industrial actions in merit. On the other hand, promotion of collective bargaining should embrace supporting the development of social partner organisations via transparent, impartial mechanisms (instead of ad hoc grants) in order to substantially improve their capacity and professionalism.

The advancement of effective national level social and civic dialogue would also be highly important (not necessarily by resuming former institutions, but achieving meaningful participation anyhow), in the matching view of improving the general quality, computability and legitimacy of policy making.

In line with the above-mentioned flexicurity-concept, and in line with the expected idea of increased policy-coherency, complementary reform-steps should be added beyond the strict sense of labour law, on other related fields (such as labour market policies and social policies, public education, further training and life-long learning, income policies, industrial policies etc.), however, these issues are obviously beyond the scope of this paper.

IRELAND – Policy Paper (Anthony Kerr)

Introduction

In October 2005, I addressed a conference as part of a project promoted by the Agenzia Regionale per il Lavoro Regione Autonoma della Sardegna and funded by the European Commission. One of the aims of the project was to promote social dialogue as a "relational instrument" for the social partners involved and as "the driving force in economic and social innovation".

During the course of my presentation I said that, since 1987, six successive national programmes of Social Partnership had been seen by many as "a significant factor in achieving a positive investment climate, near full employment, relatively low inflation, high growth levels, major reductions in the national debt, record low levels of industrial disputes and the creation of a stable labour relations environment".

These programmes were not simply centralised wage agreements. The then current programme - *Sustaining Progress* - set out 10 special initiatives to be progressed during its lifetime focussed on key issues of economic and social policy which had been identified by the parties (which included, in addition to the social partners, various community and voluntary sector groups). These were housing and accommodation; cost and availability of insurance; migration and interculturism; long term unemployment; educational disadvantage; waste management; people with disabilities and older people; alcohol/drug misuse; information and communication technologies; and child poverty.

The programme envisaged that the social partners would engage at senior governmental level on each of the initiatives in a timely and focussed way to assess the relevant policies and arrangements already in place and to identify initiatives likely to contribute to achieving the desired results.

Three years after delivery of that paper, social partnership collapsed. As talks were under way between employers (both private and public) and the trade unions over a new national wage agreement, it became obvious that Ireland was facing "the most serious economic crisis in its history". The then government decided to guarantee the Irish bank system, covering both customer deposits and the bank's own borrowings, to an estimated total of €440 billion. The Financial Emergency Measures in the Public Interest Acts 2009 were quickly enacted providing for a pension levy and reductions in public sector salaries of between 5 and 15%.

Methodology of Approach

To explore the current state of social dialogue in Ireland, we examined developments with regard to macroeconomic fiscal policies, employment, industrial relations and labour law reforms. Our main focus was on the periods of recession and Ireland's emergence there from. We explored the effects of the socio-economic adjustments undertaken in these periods on social dialogue and the involvement of the social partners in designing and implementing labour market/labour law reforms in

Ireland. A key element in our approach was the series of in-depth qualitative interviews capturing the experiences of the social partners and others.

The main themes explored in the interviews were:

How has the social dimension been effected by the adjustments to the economic crisis?

To what extent, and in what way, have policies been directed at the objectives of enhancing flexibility and employability, reducing labour market segmentation and maintaining the quality of work and employment protection?

What effect, if any, have the reforms had on social dialogue and what role did the social partners play in designing and implementing those reforms?

How best to advance the contribution of social dialogue to the EU social model?

The arrival of the Troika

On the 28th November 2010, the then government accepted the terms of an IMF/EU Programme of Financial Support. The first Memorandum of Understanding dated the 1st December 2010 was focussed principally on measures relating to fiscal consolidation and financial sector reforms (such as legal costs). It did contain, however, various measures concerning "structural reforms" relating to the Irish labour market.

When the Troika arrived, the national minimum hourly rate of pay established by the National Minimum Wage Act 2000, was €8.65. In addition there were a range of sectoral wage mechanisms which had been established under the Industrial Relations Act 1946 - Joint Labour Committees and Registered Employment Agreements - which prescribed statutory minimum rates of pay in excess of the national minimum wage. These mechanisms operated in sectors such as agriculture, contract cleaning, catering, retail grocery, security, construction, and electrical contracting.

The IMF/EU Programme of Financial Support sought a commitment by the then government to a reduction in the national minimum wage of 11.7% and the establishment of an independent review of the JLC/REA systems with terms of reference and follow-up actions to be agreed with the European Commission. The concern was expressed by the Troika that there were distortions of wage conditions across certain sectors associated with the presence of sectoral minimum wages in addition to the national minimum wage.

Other than those, no demands were made to impose general reductions in statutory employment rights, reflecting no doubt the lack of any rigidity in the Irish labour market caused thereby.

The Programme also sought to strengthen competition law enforcement to avoid sectoral exemptions. Accordingly, the Memorandum of Understanding required the government to ensure that no further exemptions to the "competition law framework" would be granted unless they were "entirely consistent" with the goals of the Programme and the needs of the economy. Consequently, the commitment given by the previous Government to amend the Competition Act 2002 to allow voice over

actors and freelance journalists to exercise their right to engage in collective bargaining was vetoed by the Troika on the basis that, according to "settled EU case law", such self-employed individuals were "undertakings". It should be noted that the current government has recently indicated its support for a Private Members Bill which will enable vulnerable self-employed workers, such as journalists, actors, session musicians and voice-over artists, to engage in collective bargaining. The Minister for Jobs, Enterprise and Innovation has signalled, however, that the Bill, as currently drafted, appears to infringe Article 101 TFEU and that government amendments would be introduced to address the policy objectives of the Bill in a more targeted way consistent with EU competition law.

The reduction in the national minimum hourly rate of pay to €7.65 was mandated by s. 13 of the Financial Emergency Measures in the Public Interest Act 2010, with effect being given to that reduction from the 1st February 2011. The independent review carefully examined all of the suggested disadvantages of the two systems of sectoral wage determination and found none of them to be substantial. Nor did the evidence indicate any substantial difference in the degree of wage rigidity. The authors acknowledged, however, that both systems of sectoral wage determination needed to be reformed to render them fit for purpose and various recommendations were made in that regard.

Following a general election in early 2011, a new government came to power and one of the first steps taken was to reverse the reduction in the national minimum hourly rate of pay. Section 22 of the Social Welfare and Pensions Act 2011 required the restoration of the rate to €8.65 which was achieved, following some discussion with the Troika, with effect from the 1st July 2011. The rate has now been increased to €9.15 with effect from the 1st January 2016.

Before any action could be taken to give effect to the independent review's recommendations on reforming the sectoral wage determination mechanisms, there were two dramatic interventions by the Courts. In decisions delivered in July 2011 and May 2013 the High Court and Supreme Court respectively, on applications by employers, declared as unconstitutional the relevant parts of the Industrial Relations Act 1946 establishing the two sectoral wage determination mechanisms.

Legislation was eventually enacted re-establishing the two systems but with some significant variations. Joint Labour Committees, when formulating their proposals, are now required to take account of a variety of factors, such as the legitimate commercial interests of employers and levels of employment and wages in comparable sectors both in Ireland and within the European Union. The European Commission welcomed the legislation saying that it eliminated "any impediments to job creation/reallocation, while safeguarding basic workers' rights" and was essential "to ensure that the emerging recovery benefits all". The Commission also expected that orders emerging from the revised system would be "leaner and more employer-friendly". The revised Registered Employment Agreement legislation now applies only to enterprise level agreements but empowers the Minister for Jobs, Enterprise and Innovation to make "sectoral employment orders" regulating the terms and conditions relating to the remuneration, and any sick pay or pension scheme, of workers in a specific sector of the economy. The limited nature of such an order is

clearly a factor in the trade unions recently declining an employer request for such an order in the construction industry.

Emerging from the Troika's rule

Accompanying the collapse of Social Partnership in 2009 came a significant disavowal, in political circles and amongst employers, of the Social Partnership model. According to one interviewee, "it lost ideological legitimacy to respond to economic or social issues and therefore was not in a position to implement change". The brand had become "toxic". That is not to say that the social partners have lost their influence as lobby groups but it is acknowledged by all interviewees that, during the recession, there was little room for negotiation or discussion with macro fiscal concerns dominating employment/labour market decision making. Trade union interviewees conceded that their main goal during this period had been to keep their members in employment: "keeping people secure and ensuring that people knew they had a job was critical". Both acknowledged that it was hard to argue for a pay rise with zero percent inflation. Employer interviewees, however, welcomed increased *bilateral* discussions with government departments which enabled them to advise government "on how to create a more pro-business environment" in an efficient manner.

One employer interviewee went so far as to say that the traditional trade union model was outdated: social dialogue, she said, was the "language of yesterday's world". It is noteworthy that neither the previous nor the current government has engaged with the trade unions as a social partner in any structured way. As one trade union interviewee put it: "The trade union movement, as the biggest civil society organisation, should have some mechanisms by which to engage with the government".

Once Ireland left recession, the deficit in social dialogue has undoubtedly led to more conflictual relationships as exemplified by the long running dispute between the SIPTU trade union and TransDev Ireland Ltd - a dispute which was ultimately resolved through the Labour Court in June 2016.

To some extent this conflict has been institutionalised. One legacy of the previous government is the Low Pay Commission - a body established in July 2015. Its principal function is to examine the national minimum hourly rate of pay and to make recommendations as to whether, and if so by how much, that rate should be increased. The Commission consists of eight members, two of which are trade union representatives, and an independent Chairperson.

In its most recent report, published in July 2016, the Commission recommended an increase in the national minimum hourly rate of pay of 1.1% to €9.25. Three members of the Commission, including the two trade union representatives felt unable to endorse a 10 cent increase which they considered to be "completely inadequate" and did not respond to the needs of workers on the minimum wage. The trade union Minority Report went so far as to express the concern that wage competitive arguments predominate over the actual socio-economic effect of low pay on workers and that "parity of esteem" was not applied to

those conflicting interests. The Minority Report concluded by warning: "Persistence with this approach would, in our view, be a serious challenge for the future work of the Commission."

Conclusion

As Ireland emerges from recession and enters a period of growth, the authors of the Irish report are satisfied that some form of resurgent social dialogue is required. Our research, however, illustrates that there are radically different perspectives among the social partners. Independent observers, such as the recently retired Director General of the Workplace Relations Commission, suggest that a streamlined and efficient form of social dialogue would be a welcome and effective medium to mitigate industrial relations chaos in which those with the biggest muscle get the biggest settlements and those with little muscle get nothing.

Our conclusion was that a new and inclusive mechanism is required to facilitate constructive social dialogue. Our study suggests that there is an appetite among the social partners for a streamlined and more effective mechanism. The trade union interviewees accepted that a "lot of mistakes" had been made in the previous social partnership model. If there was to be a new dialogue "it should be open and transparent and support trade unions in setting out their vision as to what might make things better for workers' quality of life". The "continuous lobbying of political parties is not the way to go".

It is therefore the suggestion of our report that a new form of social partnership should be sought which is derived through: an analysis of the old form of social partnership; a revision of the inefficiencies in this mechanism; a review of the changes in legislation and industrial relations issues in a post-recession Ireland; and the examination of international examples of best practice in social partnership. This further research would support the design of a new model of social partnership based on a participative co-design including inputs from the government, the trade unions and employer organisations. This would encourage social partner participation in this new mechanism furthering the ultimate goals of achieving relative industrial peace in an effective and fair labour market which functions through inclusive dialogue.

Postscript

In June 2016, the Minister for Public Expenditure and Reform announced that the government had decided to agree the principle of a new structure for dialogue between representatives of employers and trade unions to be known as the Labour Employer Economic Forum (LEEF). The forum would discuss economic and social policies insofar as they affect employment and the workplace. Areas it might consider would be competitiveness, sustainable job creation, labour market supports and widening occupational pension coverage. The aim, he said, "would not be to reach agreement but to develop shared understanding and some level of consensus on key policies affecting employment and the workplace". It was a way for the government to be "inclusive and informed" and to enable it "plot a course for the future". The

Minister made it clear, however, that this was not Social Partnership. The forum would not discuss or determine wage levels or wage increases within the public or private sectors and the Workplace Relations Commission/Labour Court would remain the key dispute settling industrial relations institutions.

THE NETHERLANDS – Policy Paper (Robert Knegt, E. Verhulp)

The institutions of social dialogue provide the background for the very strong tradition of social dialogue in The Netherlands. By making recommendations, the bipartite *Labour Foundation* has an important influence on, in particular, the development of wages and employment. The government, strongly interested in making central agreements, is often involved in its process in order to get government interests represented in the recommendations. Some agreements are reached under strong government pressure. In 1996 a recommendation of the Labour Foundation has been the basis of the 'Flexibility and security law' of 1999.

After WW II the government, in order to permanently involve the business community in its socio-economic policies, established in 1950 the tripartite *Social and Economic Council (SEC)*. It has an advisory function and an administrative function for the organized business community. The SEC can establish committees on certain subjects to prepare a draft which is then discussed by employers' and employees' organisations respectively. After this "consultation of the rank and file" the draft is discussed in the plenary meeting, and in many cases finalized in an advice.

Along both paths the role of government in the making of the social accords is materially substantial. Since the 1980's, however, deregulation operations have emphasized the self-regulatory capacities of the social partners (SP's); the government leaves as much as possible up to the social partners and controlling bodies. Key words in this policy are decentralisation, flexibility, differentiation and individualisation. The government provides for a minimum level of protection by means of mandatory rules, among others as to minimum wages, wage payment, special conditions and dismissal. Decentralisation of government is accompanied by a concentration of the relationships between employers and employees at national level. From this perspective no decentralisation can be detected with regard to the *primary*, in contrast to the *secondary* employment conditions, where decentralisation appears to be a major trend. Employers and their organisations are increasingly expressing the desire to be able to form more tailor-made employment conditions.

In an enduring tradition of close consultation between SP's and government consultation takes also place at a down-to-earth level: in a permanent exchange of information, representatives of SP's and the Ministry of Social Affairs meet regularly in a room at the ministry on all kinds of regulatory issues, on occasions three times a week. Higher up, the SEC has, in the period since the crisis, hardly been able to reach agreements and was thus not able to exert much influence. It has rather been the (bipartite) Labour Foundation that has in a number of cases been successful in influencing policies. According to VNO/NCW both have hardly produced results,

partly because parties were, before the crisis, convinced that the important issues had been settled. That the system of close consultation has kept upright in the face of the crisis, is also by VNO/NCW seen as quite a performance.

All three parties recognize the importance of good relations of consultation. Social dialogue and consultation have a firm basis and are being supported by government, although – as in particular the unions stress - in different degrees according to the political composition of cabinets. It is only in the political context of Parliament that doubts are sometimes raised at the value of social dialogue; unions say this testifies to the often insufficient knowledge of politicians of relations at the workplace. The position that government takes, may be (dis)qualified as ‘instrumental’: too often the unions have simply been used by the government as bringers of bad news.

Economic and political context at the start of the crisis

Before the financial crisis started, the Dutch labour market had been very tight: policy analysts predicted full employment and even an upcoming lack of workers. As from 2007 the total labour force increased from 8,5 to 8,9 million workers, the active labour force decreased from 8,36 (2008) to 8,21 (2014) and only rose again to 8,29 million in 2015. The number of permanently employed workers remained stable, in absolute numbers, till 2009, then dropped from 5,57 (2009) to 5,01 million (2015). The number of flexible workers remained almost the same till 2010, but afterwards rose rather quickly from 1,57 (2010) to 1,90 million (2015). After 2011 the unemployment rate has grown fast to nearly 10 percent.

The labour market in the Netherlands responded slowly to the crisis, partly due to the shortages on the labour market in the years before the crisis and employers’ reluctance to dismiss employees that they had been at great pains to hire. The retarded response is further due to the relatively high level of employment protection. Reform of dismissal law used to be urged for by economists, but has been for a long time a highly contested issue, reform being firmly rejected by the unions. Nowadays even the OECD has changed its position on the issue. The crisis has turned out to be the lever to reach an agreement on reform.

The crisis strengthened an already slightly visible trend towards flexibilization of employment relations. Although the background of some of the developments on the labour markets is not clear and even still highly debated, there seems to be a general understanding that the permanent employment contract is considered to be heavily loaded with obligations to the employer, for instance, in case of illness of the employee, of continued wage payment during a period of 104 weeks (2 years). The use of flexible contracts would be an attractive way to escape these obligations. The percentage of self-employed workers, in 2002 about 7%, has doubled in ten years. According to researchers half of this increase can be attributed to government policies promoting self-employment.

One of the major political threats due to the financial and economic crisis was the impact it had on the state’s deficits. Although once a fervent proponent of the 3-percent-norm of the Stability and Growth Pact, The Netherlands turned out to be

unable to comply with it for the years 2013 and forward. Although the Commission has made no direct recommendations, still a severe austerity program was considered to be required. A cabinet formed by the liberals and christen-democrats (Rutte I), lacking a majority in Parliament, collapsed when in spring 2012 no agreement could be reached on an austerity program. After its resignation five political parties, including those forming the cabinet, agreed on a program that the resigned cabinet, facing elections in September 2012, started to execute. In November 2012 a new cabinet, composed of liberals and social-democrats, took office, that had to face a peculiar instability: it could count upon a majority in the Second, but not in the First Chamber of Parliament. The austerity program of this cabinet comprised a restructuring of the unemployment benefit scheme and a radical change of the dismissal law. Social-democratic Minister of Social Affairs Lodewijk Asscher brought back a regular consultation practice that has, at least initially, also been favoured by employers' organizations. More recently, however, the latter's support seems to be decreasing.

The crisis also had impact on the social partners, internally as well as externally. An earlier tendency of employers' organizations to withdraw from the social dialogue had, within union FNV, been answered by introducing an 'organizing' model, rather, it is said, to restore its role in the social dialogue than to radicalize. The crisis has indirectly contributed to a sense of urgency that resulted in a fusion of the participating unions. The crisis has also put pressure on employers' organizations. It accentuated different interests within VNO/NCW as well as differences between larger companies and MSE's.

Debates and reform measures

It takes until 2012 before a real austerity plan is even proposed. In the mean time, the public debate focuses on the question how the consequences of the crisis in terms of the threat of growing unemployment should be handled. A *Short Term Working Scheme* is introduced, first in November 2008 and confirmed in the Social Accord of Spring 2009, based on an agreement between social partners on the need to keep companies from rushing into redundancies. Their fierce cooperation succeeds in convincing the government to take this measure. It allows for reduction of the working time of employees, and of using the spare time for training. Urged by social partners, the government has prolonged the term during which the scheme has been operative several times; the last benefits have been paid in June 2011.

The March 2009 *Crisis Accord* ('Crisisakkoord'), reached in the Labour Foundation, prioritizes the need to conserve productive power above wage increases. Measures are announced to combat youth unemployment. The unions agree, besides to a smooth development of wages, to a reopening of the discussion on the pension age that then dominates social dialogue and public attention in the period that follows, at the cost of other important themes. June 2011 the *Pension Accord* ('Pensioenakkoord') is reached between social partners and the cabinet, opening the door to a gradual raising of the pension age while at the same time giving some guarantees on the level that retirement pay should keep. The Pension Accord is heavily criticized by unions within the federation FNV, causing its president to resign.

The *Social Accord* of April 11, 2013 marks a new phase in the social dialogue and in the struggle against the crisis. The Accord is presented as a proof of the blessings of the “polder model”. The Minister of Social Affairs announces, that same day, the proposal of a new Act on Work and Security (‘Wet Werk en zekerheid’, enacted 14 June 2014) in order to ‘strike a new, modernized balance between flexibility and security on the labour market’. Main issues of the proposal are: (a) partly restoring social partners in their responsibility for the unemployment benefit funds, (b) avoiding unemployment by making incentives for ‘work-to-work’-transitions (c) revising the law on dismissals, reducing costs of employers (d) improving the legal position of flexible workers by further restricting the number and duration of consecutive fixed-term contracts, (e) gradually reducing the duration of public unemployment benefits (from 3 to 2 years maximum) and (f) creating jobs.

The role of social dialogue and the impact of the Social Accord

In The Netherlands the socio-economic effects of the crisis were only gradually becoming apparent. That the crisis ‘has taken all of us by surprise’, makes it hard to say whether government should have consulted SP’s more often or more intensely. The context of political instability has had a significant impact on the social dialogue. The crisis, on the one hand, shifted the balance of power to the employers’ side, on the other hand it has brought SP’s to the negotiation table again. As the turn of the crisis into an economic one became clear, at the end of 2009, employers’ resorted to a greatly extended use of flexible work. This development resulted in a loss of influence of the unions, at the same time that union federation FNV was weakened by internal conflicts.

SP’s involvement in reforms

Issues in discussion before the outburst of the crisis (reduction of unemployment, in particular of low-skilled workers, employability and outplacement strategies) are reported to have disappeared from the agenda. First priority to the union FNV is now to ‘get back normal jobs’; only after that has been realized, employability will be back on the agenda. Others say these issues have even gained importance due to the crisis – but in consequence of the crisis results have failed to be reached, due to the consequences of the same crisis.

The first reform realized, on short-time working, had started from the supposition that the crisis would be short and vehement. It has (according to unions and AWWN) actually succeeded in keeping a lot of people on their jobs. The most important initiative for increasing the level of employment has been the introduction, in 2013, of sectoral funds that stimulate regional activities to increase employment. Initiatives to counter labour market segmentation have been taken at a sectoral level, in agreement between unions and employers’ organizations. Some results have been booked, but recently the employers’ position has tended to become more confrontational (f.i. in construction). As from 2011 union confederations raise the issue of the ‘excessive flexibilisation’ (“doorgeschoten flexibilisering”) and the

question where and how to put 'healthy' limits to it. According to employers' organizations the increased use of flexible work forms by employers is actually a consequence of the unions' lack of willingness to discuss a reform of the system of collective agreements. While federation CNV is not completely insensitive to this criticism, the FNV rejects it and points out that where room in collective agreements has been created, employers turn out not to use it to a significant extent. FNV's strategy is not just to see to it that more jobs are created, but to see to it that the jobs created, are fair and decent jobs.

The representative of CNV reports that the crisis has contributed to paying attention again to the 'emancipation of the worker' as a union goal. It has changed both members' perceptions of their position and the relation of the union to its members. The union is now trying to convince members that they have to be prepared for a changing world of work, of which flexible work is an integral part. The crisis has further pushed toward a breakthrough in the social dialogue on reform of dismissal law that has lasted, in The Netherlands, for over fifty years, without significant changes in the law having been realized, on this issue. The system of dismissal law, although smoothly functioning, was criticized for being too rigid (by OECD, organisations of larger enterprises and several political parties) and for its failing legal-systematic logic (by labour law scientists). During the negotiations in preparation of the Social Accord, this issue turned out to be one in which the unions finally had to give in, although they succeeded in keeping up the preventive testing of dismissals. The level of severance allowances was significantly reduced, while at the same time these allowances were made much more broadly available to dismissed workers.

An important issue in the discussions in the period after the crisis has been that on the statutory pension age. The crisis has acted as a lever to open this issue to discussion and to decision-making on this issue. Contradictions, already slumbering within the confederation FNV, were stirred up by the issue and led to considerable unrest, made its president resign, and initiated a restructuring of the internal organization.

Of great importance has been the conclusion of the Social Accord (Social Akkoord) of November 2013. This Accord is the result of a peculiar political constellation: employers' organizations, worried by a perceived radicalization of the FNV and by the fragile position of the new cabinet, strategically headed for a central agreement, even if they would find themselves urged to make concessions to the unions. Because of FNV's stabilizing role in Dutch industrial relations, a crisis in this union ought to be averted, by stealing a march on its radical wings. An agreement would significantly strengthen the cabinet's position and make it survive in the First Chamber. The FNV, referring to its own internal problems, had the least to be gained by such an agreement, which made for a strong negotiating position. The result has been the Social Accord of April 2013, that was hailed by all parties, although they all, but in particular employers' organizations, had a lot to explain to their constituencies.

Collective agreements (CA's) are an issue of debate, but there seems to be to employers no feasible alternative. Survey research repeatedly indicates a high level of employers' support for the CA-system. The financial position of companies in the

aftermath of the crisis severely restricted what could be negotiated (CNV). From employers' sides the change of atmosphere is stressed, as an indirect effect of the crisis, leading to a hardening of standpoints. The relation between SP's has, since the outburst of the crisis, gradually deteriorated. Opinions diverge on whether this is a cyclical (FNV) or a 'fundamental' (VNO/NCW) change. Both at central and decentral levels, SP's are now to a large extent occupied in reproaching one another, unions arguing that employers would be misusing the crisis to do away with all kinds of certainties, employers' organizations that the unions would be digging their heels in and would not be ready to innovate CA's.

One of the agreements reached in the Labour Foundation dealt with decentralization of collective bargaining to the company level as a way to strive to more flexible and tailor made bargaining deals. Already before the crisis employers' organisations tended to favour decentralization and modernization, pleading for agreements 'made to measure'. The unions' position is basically not to allow for competition on labour conditions. Although the call for agreements 'made to measure' is strong, it turns out that where they have been realized, only scant use of them is being made. Unions argue that it is in fact not attractive to employers; in particular for SME's there is much to be gained by a central agreement on wages. Unions sometimes favour sectoral agreements because it turns out that at sectoral level better agreements can be made.

Evaluation

According to the unions, the short-time working measure has clearly contributed to the preservation of employment and of professional skills in companies. Research reports a minimal positive effect on unemployment rates. The Social Accord's goals are welcomed by employers' organisation AWWN but it points to problems in their implementation: for instance the rules on the maximum number of temporary contracts after which a contract would automatically become permanent might turn out to be counterproductive.

Some union interviewees point out that for a long time after the crisis we have in fact been dealing with compensating the *consequences* of the crisis, instead of with its *causes* - which are strongly related to the now dominant market perspective on social relations. The effectiveness of the measures taken may suffer a drawback due to the peculiar power configuration under which the 2013 Social Agreement has been reached. Employers' organizations now tend to withdraw from the agreement. According to the FNV, there has been no structural change, though. We are familiar with cyclical variations that are mainly dependent on the extent that employers' organizations are in need of social dialogue to pursue their goals. According to AWWN, however, SP's are seized by a partly crisis-induced cramp, out of incertitude about all spectacular changes in society. After times of prosperity it now feels like the carpet is being pulled from under our feet. This cramp unfortunately prevents us from adjusting adequately to changed conditions.

As to social dialogue, not much is expected from the EU. Economic freedom has clear priorities over collective social freedoms. Unions argue that the EU ought to

have much more respect for the legal position of workers. The Ministers of Social Affairs ought to develop an independent agenda on the quality of labour relations. European legislation now makes it largely impossible to keep up labour protection. Besides it turns out that the impact of EU jurisdiction is decreasing: decisions of the European Court tend to be more often neglected and thus to have less preventative effects than they used to have. SP's have already for some time not been mobilized by the EU to provide for arrangements. According to VNO/NCW social dialogue at European level should get more body.

An important condition of social dialogue is the presence of institutional arrangements that keep up an interdependency that urges parties to get to an agreement. If occasional attacks on the system of collective agreements would, unfortunately, ever be successful, this would have disastrous effects on the system of social relations. According to employers' organization AWWN, the impact of a social good dialogue is potentially fabulous; it can make an enormous contribution to productivity. Initiatives are now being taken towards a New Agenda for social dialogue.

At the level of social dialogue institutions, the need to adjust the institutional arrangements to new developments is being stressed. Both SER and employers' organizations notice problems of representativeness of established participating organizations. Unions ought to modernize and attract more young members (VNO/NCW); the system would have to be open to new groups, for instance semi-independent workers, or to new ways of relating to its constituencies.

POLAND – Policy Paper (M. Wróblewski)

1. Introduction

The analysed period, 2008-2015, has been a period of relative political stability with a floating interest of government in cooperation with social partners: quite effective in the first years, through total destruction of the tripartite institutional dialog in 2013 and a new legislative framework and opening in 2015. The global financial crisis had a limited impact on the Polish economy with only a few negative effects. Nevertheless public finances were not consolidated and in 2009 the European Council decided on the existence of an excessive deficit and recommended its correction by 2012. This deadline has been extended to ultimately 2015. Several measures were taken to counteract the excessive deficit, such as a pension reform, freezing salaries in the public administration and freezing the resources of the labour fund (aimed at counteracting unemployment). In June 2015 the excessive deficit procedure was closed. Although not directly motivated by the crisis, some changes in the labour market were made. Non-regular employment is a common feature of the Polish labour market leading to poor employment law protection for a large group of workers. This trend has led to special measures taken by the Chief Labour Inspectorate.

2. *Main domestic labour and social law reforms*

2.1. Before the crisis: reduction of tax wedge

Before the crisis several decisions have been made to reduce tax wedge.

2.2. Labour law measures to tackle the crisis

2.2.1. Act on mitigating the effects of economic crisis on employees and enterprises

In August 2009 the Anti-crisis law entered into force due to expire in 2011. It introduced provisions on working time arrangements and access to public aid.

Measures that were addressed to all entrepreneurs:

- extending working hours settlement period to 12 months;
- Flexibility of daily working time;
- Fixed-time employment contract, and unlimited number of such contracts between the same parties, allowed for up to 24 months.

Measures that were open only for entrepreneurs in 'temporary economic difficulties':

- Working time reduction;
- Economic downtime, offering some forms of public aid for such entrepreneurs.

2.2.2. Act on specific measures aiming at work-places protection

The Act on Protection of October 2013 also has the purpose to support employment in temporary economic difficulties. The Act opens up the possibility to apply a temporary halt in the operations of working time reductions, provided that consultation with Trade Unions took place (or with employee representatives in case trade unions lack). If these provisions apply, the employee is entitled to a salary finance by the Guaranteed Employee Benefits Fund and the employer.

2.2.3. Amendments of the Labour Code

In July 2013 working time provisions were made more flexible. The possibility of extending working hours settlement period up to 12 months that has been introduced by the Anti-Crisis Act, is permanently introduced to the Labour Code as is the more flexible daily working time.

In July 2015 provisions have been adopted aiming at a limitation of unjustified use of temporary contracts. At the same time uniformity with respect to notice periods for fixed term contracts and permanent contracts is introduced.

2.3. Reform of the Public Employment Services

An amendment of the Act on employment promotion and labour market institutions in 2014 introduces a major reform of the PES that previously failed to adequately address the labour market performance.

3. *Position and role of the social partners in reforms*

3.1. Institutional structure

The Polish constitution is based on respect for social dialogue. Poland operates on a pluralistic model of union movement with a multitude of players and

based both on the sector professional and territorial structure. There is, next to art. 58 of the Constitution, an Act on Trade Unions. 17% of the employees working on the basis of an employment contract is unionized. Union density within recent years has remained relatively stable and - compared to the previous period - relatively low. In 2015 the Constitutional Tribunal ruled that the provision according to which trade union membership is only open for those working on the basis of an employment contract is unconstitutional. Legislation is changed to make it possible for all people that provide paid labour (thus including self-employed) to unionize.

Employers' organizations counted 16.3 thousand members in 2014. The principles of creation and functioning of these organizations are laid down in the Act on Organizations of Employers.

The most important national dialogue institution is the Tripartite Commission for Social and Economic Affairs. In the period 2001-2015 there have been periods of accelerated and intensive dialog, but also times of visible slowdown and even crisis. At the beginning of the crisis, the institutional social dialog was vibrant and autonomous dialog for the first time appeared to be efficient. Nevertheless social dialogue and its institutions are poorly known to Poles. There is a small role for social partners negotiations in the socio-economic system. Employers' organizations have little power to enforce the execution of decisions by their members and trade unions represent only as small number of employees.

3.2. Initiatives of national level social partners

The initiatives of the social partners during the research period can be divided into four periods:

- Activation of the social dialogue (late 2008 and 2009);
- Weakening impact of Social Partners, more unilateral decision making process within the government (late 2009-2013);
- Suspension of the tripartite dialogue (late 2013- first half of 2015);
- Hope for revival (from mid-2015).

The anti-crisis strategy of the government, presented as Plan for Stability and Development, did not satisfy any of the social partners and therefore they took upon autonomous talks themselves. The social partners, although driven by different reasons, were able to reach consensus on the most significant issues. The social partners followed two main principles: the final result must reflect a balance in the interest of capital and labour, and once it is adopted, it could only be implemented in its entirety. In March 2009 the social partners presented a list of 13 proposals on which they have achieved consensus and submitted the list to the government. The proposals can be divided into three main themes:

1. Pay and social security
2. Labour market and employment relations
3. Economic Policy

The aforementioned Anti-crisis Law directly adopted 6 of the 13 proposals, being: 12 month working hours settlement period, the rationalization of the provision on employee day, flexible working hours, stabilization of employment by reducing the

use of fixed term contracts, start-up capital fund training and subsidized employment as an alternative to redundancies.

After the completion of the package, the active involvement of the social partners has diminished. The government was criticized that it took over only initiatives of the social partners that were consistent with its own policy. The Anti-crisis Package was the last agreement signed in the tripartite commission. After that the dialogue was suspended. In 2013 on behalf of the three trade union centrals it was stated that they did not intend any longer 'to legitimize the social dialogue which actually does not exist, and is fake.'

4. Labour market effects of the reforms

Before describing the labour market effects of the reforms it should be brought into memory that Poland did not share the experience of many EU countries negatively impacted by the recession during 2008. The Polish economy has benefited from relatively low labour costs and medium level of labour market flexibility. The impact of anti-crisis policy measures were overall not satisfactory. Financial aid has been requested in a very limited number of cases. Furthermore, the amended provisions did not introduce significant changes in the practical functioning of employers. A relatively more successful measure was the extending of the working time settlement periods. It is also worth mentioning that one of the most important recommendations for the trade unions was to gradually increase the national minimum wage up to a level of 50% of the national average pay. Although this aim was not succeeded, significant progress has been made: the minimum wage between 2005 and 2014 has doubled and the relation of minimum wage to average monthly wage is moving towards the outcome much desired by the employees.

5. Concluding remarks

5.1. New formula of national social dialogue

The withdrawal of the trade unions from the Tripartite Committee marks one of the most dramatic decisions within the social dialogue in Poland and has led to a serious crisis in the social dialogue. Mid-2015 a new Act on the Social Dialogue and other institutions of Social Dialogue is passed, repealing the Act on Tripartite Commission of 2001. The draft of the act was prepared in a bilateral dialogue of the social partners. The new act introduces the Council of Social Dialogue, differing from the previous tripartite commission in several ways:

1. More competences, such as expressing opinions and presenting its positions;
2. Inspire the legislative process by submitting drafts of legal acts;
3. Conclude agreements and present common positions;
4. The possibility to approach the supreme Court in case of discrepancies in judicial interpretation of the legislation;
5. Present a plan of its activities on a yearly basis;
6. The possibility to establish social dialogue structures on a regional level.

The establishment of the Council should be perceived as a great success of social partners; whether the Council will prove to be effective remains to be seen. Within two years after instalment an evaluation will take place.

5.2. Flexible employment, less security – labour market segmentation

Precariousness of employment in Poland is influenced by several factors, such as the variety of measures aimed at putting pressure on wages, security and making employment more flexible in order to maintain economic competitiveness and weakness of industrial relations and other factors.

PORTUGAL – Policy Paper (Maria da Paz Campos Lima, Manuel Abrantes)

Data and methods

The country report on Portugal has been based on research carried out between February and December 2015. In consonance with the objectives of the international project ‘DIADSE – Dialogue for Advancing Social Europe’, we describe developments in policy-making and social dialogue in the period of 2008-2015 drawing on literature, legislation, reports by national authorities or independent bodies, and the most reliable and up-to-date statistical data.

In addition, first-hand evidence has been collected through interviews with representatives from the workers’ and employers’ confederations with a seat at the national body for social dialogue. We conducted interviews with a total of eight high-level officials from four of these organizations: the General Confederation of Portuguese Workers (CGTP-IN), the General Union of Workers (UGT), the Confederation of Portuguese Industry (CIP) and the Portuguese Confederation of Farmers (CAP); the two remaining organizations, the Portuguese Trade and Services Confederation (CCP) and the Portuguese Tourism Confederation (CTP), expressed their availability to answer our questionnaire only in writing. As far as the analysis of evidence is concerned, face-to-face and written answers have been taken as equivalent sources of information on the organization’s viewpoints and actions.

Domestic labour and social law reforms

Policies and orientations at the European level determined to a great extent the successive reform packages implemented in Portugal since 2008. In the last quarter of 2008, the Portuguese government adopted the Initiative to Strengthen Financial Stability (Iniciativa de Reforço da Estabilidade Financeira) with the aim of consolidating financial institutions. In January 2009, in line with the turn of the European response to the global crisis from a financial to an economic focus, the government launched the Initiative for Investment and Employment (Iniciativa para o Investimento e o Emprego). The ‘economic stage’ of policy reform was replaced by the ‘fiscal stage’ in March 2010 with the Stability and Growth Programme (Programa de Estabilidade e Crescimento), the so-called PEC I, followed by three new versions,

the last of which would be rejected by the national parliament on 23 March 2011 leading to the fall of the Socialist Party (PS) government.

A period of extreme international pressure ended up with the financial bailout under the terms of the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU). The MoU was signed on 17 May 2011 by the Troika institutions – the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF) – and the interim government of the PS, with the agreement of the centre-right parties Social-Democratic Party (PSD) and Democratic and Social Centre (CDS). It was the government which resulted from the following legislative elections, the centre right coalition PSD-CDS (coming into office on 21 June 2011), that was to implement the policy requirements of the MoU. Therefore, the new cycle of austerity coincided with a new political cycle in the country.

It is important to bear in mind that a number of labour market reforms were underway as the global financial crisis broke in. The new Labour Code set by Law 7/2009 was prepared on the basis of a tripartite agreement signed in July 2008 by all social partners with the exception of CGTP-IN, the most representative trade union confederation. It included major changes in labour legislation, such as those referring to relations between distinct sources of regulation (defining the areas in which collective agreements could not establish less favourable rules for the employees than those established by general law), vocational training, fixed-term contracts, working time adaptability and new working time arrangements, dismissal procedures, delegation on workers' representative structures at the workplace, and the validity and survival of collective agreements. This general reform was construed as the result of a compromise to promote negotiated forms of flexicurity with a clear preference for internal forms (Dornelas, 2011), changing the relative level of employment protection among the various labour market segments by slightly reducing protection against individual and collective dismissals and reinforcing the protection of temporary contracts (Pedroso, 2014). For the CGTP-IN, this trade off was not seen as a good deal considering that some of the positive measures were not enough to compensate for the increasing flexibility of dismissals and working time (Campos Lima and Naumann, 2011).

In 2009 and 2010, the government launched temporary measures to address raising unemployment and social crisis, among which amendments to the unemployment protection system reducing eligibility requirements and extending the period during which claimants were entitled to receive unemployment benefits. However, with the austerity policy turn in March 2010, those exceptional measures were withdrawn. Measures implemented in 2011 included for the first time nominal cuts (between 3.5% and 10%) in public sector wages above 1500 Euros. The remaining labour market reforms to reduce severance pay and decentralize collective bargaining, which were part of the 'Tripartite Agreement for Competitiveness and Employment' signed on the eve of the government's defeat, were suspended upon the resignation of the Prime Minister and the dissolution of the national parliament.

Labour market and social policies in Portugal changed very significantly in 2011. The requirements of the Economic Adjustment Programme and the agenda of

the centre-right coalition in office from 2011 until 2015 were to a large extent aligned with one another, and the publicly disseminated scenario of emergency and imminent bankruptcy of the state provided favourable conditions for the government to impose a continuous reduction of labour costs both in the public and the private sectors. In other words, the new European Interventionism (Callan et al., 2011; Schulten and Müller, 2013) and the ‘politics of exception’ (Clauwaert and Schömann, 2012) were welcomed and pushed further by the centre-right government in Portugal, as detailed below.

Position and role of social partners

Two important distinctions emerge from our analysis. First, the one between measures envisaged in the MoU and those in which the austerity agenda of the government has gone beyond the MoU guidelines. An overview of both types of measures is presented in the two tables at the end of this document. A second distinction should be made between measures supported by social dialogue and those adopted by unilateral governmental decision, as can be checked by consulting the column ‘Method of decision’ in the two tables.

The tables do not include the measures which, although adopted by the government – some of them with the legitimization of formal agreement in social concertation –, were overturned when the Constitutional Court deemed them unconstitutional. This was the case, among others, of extending the suspension of Christmas and holiday bonuses for the year 2013 (Judgment 353/2012) or extending cuts of wages to nominal wages above 675 Euros in the public sector in 2014 (Judgment 413/2014). A decision by the Constitutional Court in 2015 (Judgment 494/2015) also brought to a halt the blockade by the government of about 500 collective agreements in local administration establishing a weekly working time of 35 hours after the working time in the public sector had been increased to 40 hours.

Our interviews with officials from the national social partners corroborate the significant change in the conditions for social dialogue. The trade union confederations describe the transition in 2011 as representing a severe break with the efforts and advancements of social dialogue in the years before (UGT) and an intensification of the neoliberal offensive (both UGT and CGTP-IN). Employer confederations signal the same transition as the moment when it was finally possible to advance in an efficient manner with the necessary reforms, notwithstanding some difficulties or contradictions along the way.

The considerable mismatch between the viewpoints of union and employer confederations with regard to their involvement in designing the reforms reflects the different treatment given by the government to their claims. In the period of 2008-2015, and especially since 2011, employer confederations are inclined to conclude that their position and influence in decision-making has been preserved or even strengthened (except for some policy areas strictly predetermined in the MoU), while union confederations have seen their position and claims threatened and weakened. This is one of the key reasons to understand the action of the two trade union confederations, which retained their ideological and strategic differences while also

joining for three general strikes – in a total of five general strikes in four years (2010-2013), as many as during the 35 years before (1974-2009).

Still, the employer confederations emphasise that many of their claims and proposals aiming at economic growth and job creation were discarded or forgotten by the other actors in social concertation. Like trade unions, they were not ascribed a key role by the Troika institutions or the national government when designing the official policy response to the economic crisis, even if their influence would clearly increase along the way.

The novel adverse circumstances in which social dialogue took place should not bring us to neglect the observation – made by interviewees of both workers' and employers' confederations – that the reforms adopted in the period of 2008-2014, although presented as a response to the crisis, have not been entirely conceived in this period. To a considerable extent, the measures then implemented were on the table, or at least on the employers' agenda, well before the first signs of economic recession appeared; economic recession was the source of pressure to introduce such reforms more than anything else. This certainly makes it less surprising that the same period in which social dialogue is described by trade union confederation officers as a 'farce' (CGTP-IN), a 'sham' or a 'mere ritual' (UGT), is described by their counterparts in the employers' side as the period when much needed changes were finally undertaken (CIP, CAP, CCP).

The tripartite agreement in January 2012 can be seen as an example, and one of the most impressive heights, of this tumultuous process. What becomes clear, having in mind an objective assessment of the measures included in the tripartite agreement of 2012 and taking into consideration the social partners' views, is that the trade-off favoured undoubtedly the employers' and government's goals, or, to be more precise, represented a zero-sum game penalising labour. Trade union confederation officials signal that their influence in the tripartite agreement of 2012 was very limited (UGT) or inexistent (CGTP-IN), while employer confederation officials express the opposite view. Moreover, the UGT respondents claim that they were able to exert some influence only in the sense of preventing even worse measures from being adopted, rather than including new positive measures. In this context, even the use of the expression 'trade-off' seems inappropriate.

The developments of social dialogue in Portugal examined in our study have challenged not only basic principles of equality between the negotiating parties, but also rules established in the national Constitution regarding the power balance between workers and employers.

Labour market effects of the reforms

Evaluating the labour market effects of the reforms is a complex exercise insofar as a wide range of measures was launched in the period of 2008-2014, in particular since 2011. These measures pertain not only to labour market and social policy, but also to macro-economic and fiscal policy, domains which affect the labour market situation and dynamics too.

Still, a careful analysis of quantitative data produced by official sources shows that none of the goals of the labour market reforms as set out in the MoU have been achieved. Labour market segmentation, which the facilitation of dismissals was supposed to tackle, remained extremely high. The reduction of the amount and duration of unemployment benefits did not translate into a reduction of long term unemployment, which instead reached unprecedented levels. The changes in the collective bargaining legal framework did not promote organized decentralization, but rather a dramatic erosion of sector bargaining and collective agreements coverage. These findings are in consonance with the conclusions of previous studies on recent developments in employment and working conditions in Portugal (Observatório sobre as Crises e as Alternativas, 2013; International Labour Organization, 2014).

In practice, the reforms favoured the institutional conditions for internal devaluation through wage depreciation and deregulation of social legislation (Degryse, 2012; Pochet and Degryse, 2013) while eroding the institutional foundations of inclusiveness in four ways: reducing employment protection; reducing unemployment benefits protection; undermining sector collective bargaining and collective agreements coverage; and limiting the effectiveness of minimum wage provisions. The changes in these four domains represented a reconfiguration of the Portuguese employment regime towards the liberal employment regime (Gallie, 2013; Campos Lima, 2015).

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Table 1. Measures envisaged in the MoU and method of decision

Policy area	Measures	Method of decision
<i>Wages</i>	Freezing the minimum wage (2012, 2013, 2014)	Government unilateral decision
	Freezing wages and career progression in the public sector	Government unilateral decision
<i>Collective bargaining</i>	Derogation from higher level agreements, lowering of the firm size threshold above which it is possible to conclude firm-level agreements negotiated by non-union workers' representative structures	Tripartite Agreement March 2011 and Tripartite agreement January 2012 (both not signed by the CGTP-IN) – Labour Code (Law 23/2012)
	Introduction of stricter criteria for the extension of collective agreements:	
	2012 – Employer associations must represent 50% of employment in the sector.	Government Unilateral decision – Resolution 90/2012
	Amendment – Or in alternative employers' associations must include 30% of medium and small companies.	Ad-hoc tripartite consultation – Resolution 43/2014

	Shortening the survival of collective agreements that are expired but not renewed – reduced the period of caducity of collective agreements from 5 to 3 years, and their period of validity after expiring from 18 to 12 months.	Ad-hoc tripartite consultation – Labour Code (Law 55/2014)
<i>Working time</i>	Individual bank of hours to be negotiated between employee and employer	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
	Reduction of overtime payment	Tripartite agreement January 2012 – Labour Code (Law 23/2012)
<i>Protection in employment and unemployment</i>	Reducing severance pay	Tripartite agreement March 2011- Labour Code (Law 53/2011)
	Reducing substantially severance pay	Tripartite agreement January 2012 - Labour Code (Law 23/2012) Unilateral decision – Labour Code (Law 69/2013)
	Extending the conditions for individual dismissals based on unsuitability and extinction of job positions	Tripartite agreement January 2012 - Labour Code (Law 23/2012)
	Amendment on criteria for selection of workers in the case of extinction of job positions	Unilateral decision - Labour Code (Law 27/2014)
	Unemployment benefit reform	Tripartite agreement January 2012 – Decree-Law 64/2012 and Decree-Law 65/2012.

Source: own elaboration, based on legislation and fieldwork.

Table 2. Measures beyond MoU and method of decision

Policy area	Measures	Method of decision
<i>Wages</i>	Wage nominal cuts in the public sector (2011-2015)	Government unilateral decision
	Suspension of Holyday and Christmas bonus equivalent to two monthly wages in the public sector (2012)	Government unilateral decision

<i>Working time</i>	Increasing the weekly working time from 35 to 40 hours without compensation, in the public sector (2013, 2014, 2015)	Government unilateral decision (Law 68/2013 and Law 35/2014).
	Cut of vacancies by three days and cut of four public holidays, without compensation:	
	Private sector	Tripartite agreement January 2012 - Labour Code (Law 23/2012)
	Public sector	Unilateral decision (Law 35/2014)
<i>Collective bargaining</i>	Limitation of collective bargaining autonomy in local administration	Unilateral decision (Law 35/2014)
	Measures imposing labour law over collective agreements and individual contracts, by stipulating the nullity, the reduction or suspension of the provisions of collective agreements and of labour contracts (severance pay, overtime payment; compensatory rest for overtime and increase of holiday days) – private sector	Tripartite agreement January 2012 - Labour Code (Law 23/2012)
	Shortening the survival of collective agreements that are expired but not renewed – reduced the period of caducity of collective agreements, from 5 to 3 years and their period of validity after expiring, from 18 to 12 months – private sector	Ad-hoc consultation - Law 55/2014
<i>Protection in employment and unemployment</i>	Regime of dismissals in the public sector	Government Unilateral decision (Law 35/2014).

Source: own elaboration, based on legislation and fieldwork.

SPAIN – Policy Paper (Jesús R. Mercader Uguina, Francisco J. Gómez Abelleira, Pablo Gimeno Díaz de Atauri, Ana Belén Muñoz Ruiz, Daniel Pérez del Prado)

In Spain, the labour market was traditionally characterized by the abuse of fixed-term contracts, the tightness of the legal framework in order to modify the working conditions and the lack of coordination of the collective bargaining. As a consequence of the above, during the first years of the economic crisis, while unemployment was rising dramatically, real wages increased. The described situation stimulated a discussion on the urgent need of a labour market reform.

In our country, the serious and intense economic crisis is a relevant factor in order to understand the failure of the tripartite social dialogue between the government, unions and business associations. During the analysed period, labour market reforms have been passed without the support of social partners, due to curtailment of labour rights introduced by the reforms. While the Socialist government gave more importance to social dialogue, the conservative government has paid little attention to it. It should be noted that while the 2010 and 2011 labour market reforms were preceded by negotiations between the social partners and the Socialist government, no form of social dialogue took place for the 2012 reform (conservative government). Furthermore, the conservative government ignored the agreement reached by the Social Partners and approved a very aggressive reform. It shows that social dialogue was perceived as more of a drawback than an advantage.

In contrast, bipartite dialogue has been reinforced between unions and business associations. It is clear that in Spain, one of the strategic responses of the social partners to the failure of tripartite social dialogue has been to strengthen and develop bipartite social dialogue at all levels: sectoral and enterprise. Social partners have signed relevant agreements regarding the maximum period of collective agreements and wage moderation, among other issues. The 2012 Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC II) represents a clear step towards these trends. In particular, this agreement seems to have produced some positive effects on collective bargaining coverage since it has encouraged social partners to renegotiate the collective agreements. At enterprise level there are serious doubts as the freedom of unions or work councils in order to negotiate the working conditions because sometimes the agreement (for example, the reduction of wages) is signed to avoid more dramatic consequences such as layoffs.

The lack of agreement has increased the labour conflict in the judicial field as well as in the collective disputes. Not only have there been more general strikes over the period, but there have also been significant judicial conflicts. In particular, unions have expressed their disagreement with the labour market reform, calling for general strikes, bringing judicial actions and negotiating against labour market reform. Despite the increased number of strikes during the last period, the economic impact has not been particularly high in comparison with previous years. It should be noted that the impact appears to be higher during the PP stage than the Socialist period. In 2012 the number of participants increased (33.8%; the highest number since 2009). However, the economic impact decreased to 14.8% and there was shorter strike duration.

Over recent decades, employment protection legislation has been the focus of policy-makers' attention in Spain. High temporary rates and wild volatility of employment have been explained by the costs gap between permanent and temporary workers. International and Communitarian institutions, as well as internal Spanish lobbies and think tanks, have pressured successive governments to pass reforms in order to address this problem.

From the perspective of the Social Agents, even if the objective could be peacefully accepted, the optimal strategy remains quite controversial. While business associations pretended (and pretend) to reduce labour costs (including everything related to redundancies, such as severance payments and procedural costs), worker

representatives believe that the main objective must be the protection of employees, and therefore severance payment levels constitute a red line.

The labour market reform of 2010 –which provoked a general strike– attempts to preserve existing equilibrium. Therefore, it raised the cost of terminating temporary employees, but it tried to ease the causes for lawful redundancies and to clarify the consultation procedure. In 2012, the new reform under the conservative government made a clear commitment to the reduction of judiciary control over redundancies, and unlawful dismissal and redundancy costs were reduced. Two general strikes were called as a consequence of the 2012 labour market reform.

These measures not only heightened tensions and hindered social dialogue, but also led to an imbalance in all types of labour relations and working conditions negotiation. As redundancies were much easier to carry out, worker representatives are frequently compelled to accept almost every internal flexibility measure proposed.

The potential impact of this reform on reducing the duality of the labour market is reduced. As soon as unemployment began to scale down, Spanish firms again began hiring temporary workers instead of permanent employees. From the perspective of employers, temporary workers are still perceived as being the best tool to face uncertainty. Obviously, lower costs for terminating permanent jobs could theoretically increase the use of open-ended contracts. Nevertheless, temporary employment remains cheaper and easier to terminate while also reducing the strength of worker representatives.

In matter of collective bargaining, the social partners achieved a pre-agreement on the main points of the reform but the new CEOE chair refused it. So that the 2012 reform was approved without the agreement of social partners. The Labour Reform passed in 2012 attempted to decentralize collective bargaining and to grant more power to employers at the bargaining tables. From the perspective of unions this reform has undermined their position which is focused on the sectoral agreements. The legal modification enhanced the role of the collective agreements at enterprise level. The purpose of decentralization has probably been achieved to a certain extent, but not to the desired level, especially by the conservative government. Its practical results are not so clear and it is evident that the number of employees covered by firm-level agreements has not risen dramatically. On the one hand, decentralization has proven to be difficult in a country with so many very small companies, most of which lack the necessary employee or union representatives to initiate a formal process of collective bargaining.

Salaries have decreased for the majority of the workforce, especially in the lower ranks of the labour market. Salaries began to decrease in 2008 (for the lowest decile) and in 2010 (for the second and third lowest deciles). Internal devaluation is not a result of the 2012 Labour Reform, and a better explanation most likely relates to the less-skilled and those in the worse paying occupations. At a company level, it has been very common to negotiate agreements in which workers agreed to work fewer hours with a commensurate reduction in pay in an effort to minimize labour shedding and preserve human capital. In return, employers promised to resort to layoffs only as an extreme measure, when all other possibilities (for example internal flexibility, training) have been exhausted. When it comes to opt-out agreements at the firm level,

statistics also show that they have not had a big impact on the structure of collective bargaining. In 2013, which is the year having the highest number of opt-out agreements, there were 2,512 firm-level agreements opting out of some kind of working conditions (wages, for the most part) established by sectoral agreements. These firm level agreements covered only 159,550 employees.

The desired effect, as recognised by social partners interviewed for this report, is not to encourage redundancies, but to avoid them from compelling workers and their representatives to accept poorer working conditions. As redundancies constitute a true and credible threat, the alternative (e.g. lower salaries, more working hours) could be easily perceived as the best option. The effects on social dialogue are also clear, as the law gives more power –also because of the change in collective bargaining– to the traditionally considered “strong side” of the bargaining table: the employer.

Wage adjustment has probably taken place in the areas of the economy that are not covered by formal collective agreements or through the elimination or reduction of salary components that are unilaterally granted by companies and not established by collective agreements. One should also not rule out an important degree of informality in the Spanish labour market, which entails that a disproportionate number of employees are either misclassified (meaning they work in a position that is actually higher than the one formally recognized by the company for wage purposes) or work longer hours than those formally admitted by the company.

The legal uncertainty caused by some judicial interpretations of the 2012 Reform has also deterred companies from using all of the resources that were tentatively granted by the new legal framework. The best example of this may be seen with the end of the automatic continuation of collective agreements beyond their expiry date. The 2012 Reform wanted to limit the automatic continuation of collective agreements beyond their expiry date. This was an important legal development, which clearly agreed to provide more power to employers at the bargaining table. Although this change may seem important and should be expected to produce dramatic effects in the balance of power between labour and management, the real effects of the change are not so remarkable. It is due to the Supreme Court decision of December 2014, which is extremely controversial, guarantees that employees continue to enjoy the same employment conditions (including wages, working hours, etc.) while a new collective agreement is being negotiated. Thus, the Court guarantees a floor of working conditions that permits unions to request improved or increased conditions at the renewal negotiations.

Aside from the technical deficiencies of the 2012 Reform -especially concerning the expiration of collective agreements-, its most serious drawback is probably the lack of any type of consensus regarding this Reform. It was an externally imposed reform (ECB, European Commission, etc.), more so than one that was internally-generated: not only was it not endorsed by the social partners, it was probably not even fully understood by the political party that approved it in 2012. The lack of social and political support explains the opposition to the Reform by the “progressive” association of judges immediately following its approval. This opposition has had its opportunity to deploy its effects in different aspects of the

Reform, one of which is the mentioned Supreme Court decision of December, 2014 on the continuation of working conditions of an expired collective agreement.

After an initial period (2008-2010) in which the Spanish welfare state avoided austerity plans, more recently (2010-present) cuts have affected the most important programs of the welfare state and, particularly, social security. Social security reforms may be divided in two main types. On the one hand, retirement pension reform is doubtless the most well-known by the public. On the other hand, unemployment system reform has been developed more “quietly”, given that it has been implemented by successive and partial legal changes.

Retirement pensions are the social policy having the greatest weight in public expenditure. Therefore, their sustainability is crucial for achieving the objective of healthy public finances, especially in the context of economic depression. Although this is a complete and systematic reform, it may be divided in two main parts, from a chronological point of view.

The first chronological period is marked by Law 27/2011. A crucial factor related to its negotiation should be highlighted: the social partners and the socialist government at the time of agreement of its principal elements. The final result is a reform of the public pension system that should be considered rather ambitious by Spanish standards (it increases the retirement age from 65 to 67 years and the legal age of early retirement from 61 to 63 years and extends the pension calculation period from 15 to 25 years and increases the number of contribution years required to reach 100% of the regulatory base from 35 to 37).

The second period began in 2013 and was initiated by the new conservative government, which imposed various reforms without negotiating with the social partners. Focusing on main novelties, this new regulation makes access early retirement more difficult and creates two different mechanisms that reduce public expenditure on pension over the middle and long-term: the annual revaluation of the pensions index (in place since 2014) and the sustainability factor (which will go into force from 2019).

As for the unemployment system reform, it draws special attention to the reduction of the expenditure on unemployment subsidies (i.e., by reducing the percentage applicable to the regulatory base from 60% to 50% when calculating the amount of benefit after the sixth month of receiving it, increasing the so-called “subsidy for unemployed older than 55 years old” from 52 to 55 years of age and eliminating the “special subsidy for unemployed older than 45 years old”); the promotion of part-time and self-employment as employment policy and the strengthening of control mechanisms of the unemployed. Furthermore, the cause for workers accepting part-time work appears to be different in Spain as compared to the other EU members. During the economic and financial crisis, part-time work has become mainly involuntary. In Spain, two out of three part-time workers would like to have a full time job, one of the highest rates in the European Union and also one of the worst evolutions; in 2007, this was the case for only one out of three Spanish part-time workers.

Finally, the current political landscape (the caretaker government) and the announcement of new reforms (by the different party groups) have not contributed to improve the described situation.