2

Autonomous bargaining in the shadow of the law: from an enabling towards a disabling state?

Gerhard Bosch and Steffen Lehndorff

Introduction

In the years following the Second World War, income inequality in most developed countries was significantly reduced by strong trade unions and high rates of coverage by collective agreement. In 1957, even in the USA, where coverage in 2011 was only 13 per cent (Visser, 2016), Dunlop could still assume that ‘collective bargaining must be taken as the normal case’ (Dunlop, 1957: 125). Since the 1990s, job quality in many countries has deteriorated considerably as a result of increasing income inequality, the increase in low-wage work and the constant fear of loss of income, even among well-paid workers.¹

Jill Rubery has investigated these processes with us in several joint research projects with various thematic focal points (see, among others, Bosch *et al.*, 2009; Grimshaw *et al.*, 2014; Grimshaw and Rubery, 2015; Rubery, 2005). Rubery (2015) has concluded, on the basis of her wide-ranging experience, that the standard employment relationship must be strengthened and extended if we are to draw any closer to the goal of establishing ‘inclusive labour markets’.² She argues in favour of ‘re-regulation’, supported primarily by a ‘proactive state’ but combined with a strengthening of ‘opportunities for workers and citizens to exercise voice’. In what follows, we elaborate on these thoughts by examining a number of European collective bargaining systems.

Earlier research has shown that structural changes, such as the decreasing demand for low-skilled workers and the growth of the service sector, and external shocks, such as the deregulation of product markets, the privatisation of public services or the freedom to provide services in other countries with a company’s own workforce, are ‘filtered’ through national wage systems, thereby

producing different outcomes in different countries. The increase in low wages can be almost fully explained by the weakening of these institutions (Bosch *et al.*, 2010; Salverda and Mayhew, 2009). We also know that a high rate of coverage by collective agreements reduces the share of low-wage workers to a much greater extent than minimum wages. In the EU the correlation between the rate of coverage and the share of low-wage workers is 0.77 (Figure 2.1), while it is only 0.34 for minimum wages (Bosch and Weinkopf, 2013; Grimshaw *et al.*, 2014). This is hardly surprising, since the pay scales negotiated by collective bargaining are generally higher than the minimum wage and extend into the intermediate or even higher pay brackets well above the minimum wage. They set not only lower limits but also norms for fair pay that ensure that skills, additional responsibilities and, in particular, difficult working conditions and unsocial hours attract extra remuneration. Their influence on the income distribution is all the greater the more inclusive they are. Decentralised bargaining at company level may even support the growth of dualistic labour markets, since negotiations only take place in big companies. National or industry-wide collective agreements are significantly more inclusive than company agreements, since the collectively agreed standards are extended to employees in companies

Figure 2.1 Rate of coverage by collective agreement (2008/09) and share of low-wage work (2010)

Source: Bernaciak *et al.* (2014); Bezzina (2012); share of low-wage workers 2010; ETUI (2015); Visser (2016); authors' compilation.

with weak bargaining power, such as small firms in particular. Minimum wages, on the other hand, are generally below the low-wage threshold (less than two-thirds of the median wage) and therefore compress wages only in the lower deciles of the income distribution.

Research in many countries has produced similar results. In their survey of 49 studies on collective agreements and wage inequality in recent decades in both developed and developing countries, Hayter and Weinberg (2011) show that wage inequality in the economy as a whole is reduced by collective agreements.

Certainly it would be desirable if the trade unions were in a position to increase the rate of unionisation through active organising to such an extent that they were able, through their own autonomous bargaining strength, to bring the employers to the negotiating table again and thereby increase the rate of coverage by collective agreement. This would seem at present to be more than unlikely. Furthermore, completely autonomous bargaining systems without state support are very vulnerable. Periods of trade union weakness, such as those in which rapid structural change and job losses begin to undermine the bastions of trade union power, can be exploited by firms intent on revoking collective agreements and setting wages unilaterally. The UK, where coverage by collective agreement in the private sector was once very high, is an example of such a development. The collective bargaining systems in several other European countries are currently exposed to similar threats.

The conclusion we draw is that, although trade union organising is important and should not be neglected, income inequality cannot be reduced without additional support from the state. This support can of course take several very different forms and is by no means confined to direct interventions in the wage-setting process. However, it also follows from this that the reduction or withdrawal of this state support can cause serious damage to wage-setting mechanisms. These interconnections are examined more closely in the next section.

The role of protective and participative labour standards in wage-setting

The distinction Sengenberger (1994) makes between protective and participative standards can help us to understand more clearly the differing kinds of state influence on wage-setting and other labour standards. Protective standards, such as minimum wages or maximum working times, directly establish norms governing employment conditions. Participative standards confer consultation or co-determination rights on employees or their representatives and organisations, who are protected from discrimination when they seek to exercise those

Table 2.1 Statutory protective and participative labour standards in five national wage-setting systems (2010)

	Germany	Sweden	UK	France	Belgium	Greece	Spain
Statutory standards							
– protective	(X)*	–	X	XXX	XXX	XX	XXX
– participative	XX	XXX	–	X	XXX	–	X
Trade union density	19%	68%	27%	8%	52%	24%	20%
Rate of coverage	61%	91%	31%	92%	96%	64%	82%**
by collective agreement (employees)							
Share of low wage workers (<2/3 of median wage) 2010	22.2%	2.5%	22.1%	6.1%	6.4%	n.a.	14.7

Notes: * From 2007 with the introduction of industry minimum wage and 2015 with the statutory national minimum wage; ** 2009; State-imposed standards: none, X weak, XX moderate, XXX strong.

Source: Bernaciak *et al.* (2014); Bezzina (2012); share of low-wage workers 2010; Visser (2016); authors' compilation.

rights or equipped with resources (time and money). By establishing participative standards, the state can, as it were, enable others to influence working and employment conditions in its stead.³

Table 2.1 presents considerable differences between seven EU member states in the mix of these standards. In the two wage systems traditionally described as autonomous – those of Germany (before 2007) and Sweden – the state does not intervene directly in the wage-setting process with protective standards. Rather, the weaker side of the labour market is strengthened by means of strong co-determination rights at establishment and company level.

Sweden is one of the strong autonomous systems, since the state has also placed the administration of the unemployment insurance funds in the hands of the trade unions. The various funds cover largely the same territories as the unions' organising areas, which facilitates member recruitment (Lind, 2007). Consequently, trade union density in Sweden is 70 per cent. The parties to collective bargaining are able to conclude autonomous industry-level collective agreements that set effective wage floors at between 50 and 70 per cent of the average wage (Eldring and Alsos, 2012: 78), which is higher than the statutory minimum wages in most European countries. Consequently, the share of low-wage workers, at 2.5 per cent (2010), is lower than in any other European country.

The main threat to the system's stability comes from political and legal meddling with the union's power resources. In 2006, the conservative Swedish

government made membership of the unemployment insurance funds and the trade unions considerably more expensive. The extent to which contributions to the funds and union dues could be offset against tax was reduced and the level of contributions was made dependent on the unemployment rate in each sector. In Sweden, from 2007 to 2008, when these new regulations were introduced, trade union density fell by 6 per cent (Kjellberg, 2009: 502).

Germany used to be one of the weak autonomous systems. Even in the heyday of trade union strength in the 1970s, no more than 35.5 per cent of employees were trade union members in 1978 (Visser, 2016). Consequently, the German system was particularly dependent on the willingness of companies to become members of employers' associations. Until German reunification, the rate of coverage by collective agreements was around 85 per cent (Visser, 2016), several times greater than trade union density, since most companies belonged to an employers' association. The high levels of unemployment after reunification and the deregulation of product and labour markets gave companies in sectors and enterprises in which trade union density was low and where there were few elected works councils (creating a representation gap) an opportunity to change strategy. They left the employers' associations or, in the case of newly founded companies, simply did not join one. The Hartz legislation of 2003 was aimed at expanding the low-wage sector. By reducing unemployment benefits – previously means-tested – for the long-term unemployed to the lower social benefit level, and by resetting the 'reasonableness' criteria, the Hartz reforms stepped up pressure on the unemployed to accept work with pay as much as 30 per cent below the going rate for their locality. Deregulation of temporary agency work and of so-called mini-jobs made it possible to replace employees on standard contracts with workers on precarious contracts.

Coverage by collective agreement fell to 62 per cent, which led to the emergence of a large low-wage sector. However, the existence of strong works councils in key industries prevented the complete collapse of industry-wide collective agreements in the private sector, as happened in the UK. In important parts of the economy, the old autonomous collective bargaining system is still functioning, while in others employers set wages unilaterally. Since the low-wage sector, through its outsourcing strategies, is also increasingly exerting a strong knock-on effect on those segments of the labour market that continue to be regulated by collective agreement, in 2006 trade unions in the manufacturing sector joined the service-sector unions in calling for the introduction of a minimum wage. The introduction, firstly of industry-wide minimum wages (2007) and then a statutory minimum wage (2015), marked the transition from an autonomous to a hybrid wage system with direct state interventions in the

wage-setting process. The trade unions exerted considerable influence over the form taken by the statutory minimum wage that was agreed by the German Social Democratic Party (SPD) in the coalition talks at the end of 2013. As a consequence, the parties to collective bargaining are able to exert greater influence over the minimum wage than their counterparts in France or the UK, for example. The reference points for any proposed increases are to be the collectively agreed wage rises, so that collective bargaining takes precedence over political considerations in determining rises in the minimum wage. In the same vein, the unions' objective is to use the minimum wage as an *activating minimum wage* for strengthening free collective bargaining.

Belgium has a hybrid system with a combination of strong protective and high participative standards. The participative rights are based on rights of co-determination at establishment level and management of the unemployment insurance scheme, which is known as the 'Ghent system', after the Belgium model. In addition, the bargaining power of the Belgian trade unions is further strengthened by protective standards in the shape of a statutory minimum wage and a process for declaring collective agreements in most industries generally binding. The dual protection offered by this hybrid system results in a combination of high trade union density (50 per cent) and virtually universal coverage by collective agreement (96 per cent). In practice, the statutory minimum wage plays very little role, since the trade unions in most sectors are able to negotiate higher wages which, moreover, apply to all employees in an industry because the agreements are declared generally binding. As a result, the share of low-wage workers in Belgium is very low.

Until well into the 1970s, the UK was one of the countries with autonomous pay bargaining systems and had high trade union density and extensive coverage by collective agreement. However, there was no state support in the form of participative standards. Unlike in Germany, therefore, the unions had no legally safeguarded organisational base at establishment level. Further weakened by the major structural crisis in manufacturing industry, they had little in their armoury to counter the employers' associations' withdrawal from collective bargaining during the Thatcher years. The abolition in 1993 of the wages councils, which used to set minimum wages in several low-wage industries, shifted the balance of power in wage-setting further in favour of the employers. The sharp increase in the incidence of low pay and in-work benefits for low earners was the reason for the introduction of the statutory minimum wage in 1999, so that today the UK is one of the countries whose wage-setting systems are unsupported by statutory participative standards and in which the state grants only weak protective rights. However, the share of low earners has remained high because of this 'isolated minimum wage' (Grimshaw *et al.*,

2014). In the private sector, the strong negotiating parties who could have used the minimum wage as a starting point for agreeing higher wages simply did not exist. Instead, in some sectors, such as retailing, the minimum wage has actually exerted a downward pull on wages.

In France, on the other hand, the state intervenes very strongly in the wage-setting process. It not only sets a floor on pay through the statutory minimum wage but also declares virtually all collective agreements generally binding. Furthermore, the participation of trade unions and works councils has been strengthened, although the rights that have been granted are weaker than in Germany or Sweden. Unlike in Belgium, where the unions with their high membership rates are able to bring the employers' associations to the table without state intervention, the unions in France are weak, so that pay bargaining is usually triggered only when the state raises the minimum wage. Since the lowest collectively agreed rates in most industries are close to the statutory minimum wage (SMIC), the frequency of collective bargaining and increases in pay rates are determined largely by increases in the minimum wage. In November 2011, for example, the lowest pay grade in 86 per cent of all collective agreements was at the level of the minimum wage or slightly above (>105 per cent of the SMIC) and in 9.2 per cent of collective agreements it was actually lower than the SMIC. One month after the SMIC was raised, the share of collective agreements with pay rates below the minimum wage had risen to 49 per cent. This triggered a pay bargaining round in which most rates were again raised above the SMIC (DARES, 2012: 351). Thus, as a result of the increases in the lowest collectively agreed rates, the entire wage grids, with their percentage differences between the individual pay grades, are shifted upwards.

Since 2013 it has been possible, in the event of competitiveness problems, to negotiate changes to wages and working time at establishment level, although the minimum wage, statutory working-time regulations and industry-level collective agreements must not be undercut. At the same time, employees were for the first time granted the right to have a representative on the top-tier body (*conseil d'administration* or *conseil de surveillance*) of firms with at least 5,000 employees in France. While it is true that the state grants the unions rights to consultation, it has not strengthened the unions' organisational base by introducing the Ghent system, in contrast to the situation in neighbouring Belgium or in Sweden. Only a small number of employees are union members. Consequently, the French unions have little financial power and are unable adequately to support their representatives at company and establishment level. Thus the French unions, unlike their counterparts in Sweden, are very concerned – not without justification – that decentralised negotiations on derogation clauses in collective agreements or labour legislation would inevitably see them on the losing side.

These fears were further fuelled by the passing of a new French labour law in the summer of 2016, as we discuss in the next section.

The dismantling of protective and participative labour standards

The most bitterly disputed clause in the French labour legislation imposed by decree in July 2016 stipulates that a company agreement on working-time issues takes precedence over the relevant industry-level collective agreement, even if its provisions are less favourable for employees. The declared objective of abolishing the favourability principle is to create more room for manoeuvre for negotiations at company level in order that industry-wide regulations ‘can be adapted as closely to possible to conditions at establishment level’ (Assemblée Nationale, 2016: 9).

This new initiative in state support for the decentralisation of collective bargaining marks a paradigm shift. In the year 2000, when the legislation on the introduction of the 35-hour week in France was enacted, decentralisation was still intended to make it easier for the actors at establishment level to negotiate compromises on working-time organisation *within the framework* of the existing industry-level collective agreements. This *enabling state approach*, in which industry-level collective agreements continued to take precedence over agreements negotiated at lower levels, was reflected in a sharp increase in working-time negotiations at company level and a high satisfaction rate among employees with the outcomes (Lehndorff, 2014). The new legislation, on the other hand, adopts a *disabling state approach*. It is true that the new policy provides for a strengthening of participative standards in the shape of extended bargaining rights at company level. However, this explicit reversal of the standards hierarchy gives primacy to a bargaining level at which the power imbalance in favour of capital is usually at its strongest. This weakens the generalising effect of collective agreements just as much as a decline in coverage by collective agreement, but via a different route.

In principle, trade unions can counter strong pressure from employees or the state in favour of decentralised agreements that diverge from those concluded at industry level by massively strengthening their internal coordination and central monitoring of decentralised negotiations. This was the route, in conjunction with the reactivation of their membership base, that the two largest German trade unions went down with some success at the beginning of the 2000s (Haipeter and Lehndorff, 2014). The trade unions in Italy have to date also successfully resisted government pressure to negotiate similarly divergent

company agreements (Cruces *et al.*, 2015; Leonardi 2017). In France, on the other hand, the competition between the various trade union confederations, whose membership base at company level remains weak, means it is unlikely that such courses of action will be adopted in the near future (Pernot, 2017).

Thus the core of the disabling state approach is to deprive the trade unions of the legally guaranteed ‘institutional anchors’ (Grimshaw and Lehndorff, 2010) that underpin their negotiating power in the collective bargaining system. Since the beginning of the persistent European economic crisis, this approach has been taken furthest in several countries in the so-called European ‘periphery’.

Greece is the most prominent example of those countries whose labour markets have been deregulated in recent years at the behest of the so-called Troika (the European Commission, European Central Bank and the International Monetary Fund). In Greece’s case, it was not only the speed and rigidity of this process that were remarkable, but also the scale of the attack on protective labour standards.

The Greek collective bargaining system, which since the beginning of the 1990s and following the economic and political upheavals of the previous decades had been shored up by the three main actors involved – the employers’ associations, the trade unions and the state – was based essentially on just a few pillars (on what follows, see Karamessini, 2015; Schulten and Müller, 2015; Koukiadaki and Kokkinou, 2016). The most important were the periodic national general collective employment agreements, concluded between the employers’ umbrella associations and the private-sector trade unions, which stipulated a minimum wage for all dependent employees as well as other minimum standards. These agreements were given legal power by the government, so that the statutory minimum wage in Greece was in fact the result of a negotiating process involving the parties to collective bargaining. The second pillar comprised collective agreements for individual industries and occupational groups; these could be declared generally binding by the government, so that, until the crisis, collective bargaining coverage was estimated to be around 65 per cent. The hierarchy of standards was safeguarded by the favourability principle. Industry and company agreements – the latter being concluded only seldom – could only improve the conditions laid down in agreements negotiated at the higher level.

The underdevelopment of company-level bargaining reflects a typical characteristic of the constellation of powers on which the collective bargaining system was based. It is true that the multiplicity of company and occupational trade union organisations (trade union density was still 24 per cent in 2010) could bring their influence to bear in top-level negotiations – supported in disputes by general strikes and large demonstrations. However, besides the public service (in which there were no pay negotiations), this power base was founded

primarily on the public utility companies, the banks and some individual industries. In an economy in which small companies predominated, therefore, the unions' bargaining power rested on a very small number of supports, which were safeguarded essentially by protective labour standards.

This one-sidedness made the system extremely fragile in a situation in which the protective standards were abrogated by diktat in the years from 2010 onwards. The following changes were of crucial significance for the collective bargaining system:

- The statutory minimum wage was cut by 22 per cent (and by 32 per cent for the under-25s) and frozen. Moreover, it is no longer negotiated but fixed by statute (see Chapter 17).
- Collective bargaining in the large public utility companies was stopped and pay throughout the public sector was cut by government decree.
- Industry-level collective agreements were no longer declared generally binding and the favourability principle was abolished. Employers have the possibility of opting out of the national framework agreement and from industry-wide agreements, which now apply only to members of the employers' associations.
- These last measures and the three-month limit on the residual validity of collective agreements that are not renewed are intended to encourage the negotiation of company agreements that are less favourable (to employees) than the industry agreements; such agreements can also be concluded with so-called 'associations of persons' (i.e. employee representatives without a trade union mandate).

These measures had an immediate and wide-ranging effect. Since 2012, not a single national framework agreement has been concluded. The number of sectoral and occupational agreements at national level sank from 65 in 2010 to 12 in 2015, while the number of company agreements concluded in 2012 shot up from the previous norm of around 200 to almost 1,000 (Koukiadaki and Kokkinou, 2016). As a result of this sweeping destruction of the collective bargaining system, real wages fell by about 24 per cent between 2010 and 2014 (Schulten and Müller, 2015).

The importance of declarations of general applicability and the favourability principle as protective anchors of last resort is made clear by comparison with Spain (on what follows, see Banyuls and Recio, 2015; Köhler and Calleja Jiménez, 2017; Schulten and Müller, 2015). National framework agreements and regional and sectoral collective agreements became established practice there from the 1990s onwards. Besides pay, they also regulated an ever-growing

number of minimum labour standards and automatically applied to all employees in the relevant industry or region (*erga omnes* principle). This resulted in a traditionally high level of collective bargaining coverage of around 80 per cent of employees and a smaller share of low-wage workers than in Germany. In a similar way to their counterparts in Greece, the trade unions, operating in an economy made up primarily of small and medium-sized firms, concentrated their bargaining power on disputes over these multi-employer agreements and, if the disputes remained unresolved, used their power to mobilise workers to call general strikes. The same applied to occasional disputes over trilateral social pacts with the government.

Since these national, regional or industry agreements merely laid down minimum conditions with relatively low wage rates, more favourable agreements were agreed in many large companies. The *erga omnes* rule ensured that the favourability principle was upheld. In these circumstances, the favourability principle acted not only as a protective standard but also as an important participative standard, because it provided crucial support for the trade unions and interest representation bodies in medium-sized and larger companies and strengthened their bargaining power beyond the rights of co-determination on dismissal protection.

The deregulatory measures introduced in 2010 and, more especially, in 2012 resembled those introduced in Greece. Besides numerous radical changes, principally to dismissal protection, the following measures came into effect:

- the residual validity of collective agreements that are not renewed was reduced to one year;
- employers were given the possibility, under certain conditions, of opting out unilaterally from collective agreements; and
- the favourability principle was abolished for company agreements.

Thus the *erga omnes* principle, unlike the declarations of general applicability in Greece, was not abolished but punctured in order to set its erosion in motion. In some cases, the parties to collective bargaining tried to maintain the previous hierarchy of standards. Thus in some industry collective agreements the favourability principle was strengthened, and in one framework agreement the regional and industry actors were encouraged to conclude new collective agreements in order to prevent earlier agreements from expiring. The opt-out possibility is used primarily by larger companies, but to date to a much lesser extent than was initially assumed – in 2013, 160,000 employees were affected by opt-out agreements, compared with around 10.3 million employees in companies covered by collective agreements (see Ministerio de Empleo y Seguridad Social, 2017;

Fernández Rodríguez *et al.*, 2016), so that the expected drastic decline in collective bargaining coverage has not yet been observed.

Thus, unlike in Greece, the dismantling of protective and participative labour standards has not brought the edifice of the collective bargaining system tumbling down, but has significantly weakened its effectiveness, as is demonstrated by the evolution of collectively agreed wages and salaries. Agreed nominal wage increases at both industry and company level have declined massively, which has led to cuts in real wages since the beginning of deregulation (Eurofound, 2014, 2015).

This weakening of the collective bargaining system can also be observed in the narrowing of the range of topics addressed in collective bargaining (Fernández Rodríguez *et al.*, 2016). The main topic again today is pay, although the balance of power at both company and industry level is significantly less favourable for the trade unions than before the crisis.

The developments in Spain outlined above may well prove to be typical of the prospects for protective and participative labour standards in several European countries. As Schulten and Müller's (2015) comparative survey of changes in collective bargaining systems shows, the most widespread approach is not to destroy existing institutions completely but rather to weaken and hollow them out.

Conclusions

The state interventions in free collective bargaining systems outlined here demonstrate the urgency of Rubery's plea, cited in the introduction to this chapter, for a more highly regulated labour market based on a 'proactive state' and 'extended opportunities for workers and citizens to exercise voice'. A proactive state is important for collective bargaining systems because it can establish and uphold both protective and participative standards. The wage-setting systems described in the literature as 'autonomous' are actually not so autonomous at all. In reality, the 'shadow of the law' hangs over these autonomous negotiations. As an 'enabling state', the Swedish state has acted to compensate for the unions' structural inferiority by establishing strong participative labour standards. This makes it possible to delegate the negotiations to the social partners without the state having subsequently to intervene with corrective measures, such as minimum wages, because of high shares of low-wage workers. The counter-example is Greece where, at the behest of the 'institutions', the state was able in no time at all to rip out the few anchors that had kept the collective bargaining system in place over the previous 20 years. This underscores the importance of co-determination rights at establishment and company level which in several

countries stabilise the collective bargaining systems by establishing statutory rights to participation. When such rights do not exist, on the other hand, and the bargaining power of employee representatives at company level is weak, the entire edifice of collective agreements stands on very shaky ground.

Another important observation is that protective and participative standards can mutually support each other, as the Belgian example demonstrates. Thus statutory rights to participation make it easier to set up employee representative bodies in the workplace and to organise members, which in turn improves the opportunities for free collective bargaining. In France, on the other hand, where participative labour standards and trade union bargaining power at company level are weak, decentralisation of the collective bargaining system combined with the abolition of the favourability principle may set in motion a vicious circle at all levels of the collective bargaining system. This sort of decentralisation encourages pay to evolve pro-cyclically (Schulten and van Gyes, 2015). It widens the wage spread between companies and industries and is inimical to efforts to reduce income inequality.

Thus efforts to combat social inequality should not rely solely on direct state intervention in the wage-setting process but should also seek to develop participative standards. However, these will not have any effect in practice unless they have substance and extend the options and resources available to employee representatives. In contrast, the purely formal participation of ‘powerless’ trade unions in social dialogue, which is standard practice at EU level and in many member states (Meardi, 2012), serves only to provide political legitimisation for governments and has little to do with genuine participation. Sooner or later, however, the pendulum swings back against the state; the weaker the institutional backing for strong bargaining systems is, the more frequently employees require recourse to labour courts and other state institutions. The example of Spain shows that, as a result, ‘the state is brought back into labour relations in a more direct manner but without the necessary capacity to support labour relations’ (Fernández Rodríguez *et al.*, 2016: 551). This also makes plain the political peril that the disabling state may conjure up – it undermines employees’ trust in the state and democratic institutions.

Participative and protective labour standards arose out of social conflicts between capital and labour and reflect the balance of power at a particular point in time. However, this balance of power can change, such that the historic compromises are called into question (Pontusson, 2005). In virtually no other area can the balance of power shift as quickly as in the employment system, which is not without consequences for state action. While education and welfare systems, which are largely state-dominated, often exhibit considerable durability and path dependency, the same does not necessarily apply to

industrial relations. As a result of the deregulation of product and labour markets, free trade agreements, the privatisation of state activities, the transfer of functions from highly unionised plants to unregulated segments of the national or international labour market, economic crises and the rapid growth of new service industries with lower trade union density, the balance of power has shifted in recent decades in favour of employers, which can have significant negative effects on job quality.

This change has often taken place gradually as the various influencing factors have steadily accumulated, causing labour standards to be eroded slowly. The deregulation promoted by the economic governance framework of the European Union (EU) has accelerated this process. Jill Rubery (2015: 16) draws attention to this connection when she writes: ‘the complexion of the state may change or may be forced to change by international pressures.’ However, this is precisely what makes it so difficult to halt and reverse the prevailing trend in Europe away from the enabling towards the disabling state. National institutions can rapidly be weakened or even destroyed under pressure from EU-wide agreements, but it takes longer to build up new, enabling institutions and in today’s EU, with the priority now given to competitive regulations, this task is more difficult than ever. With Rubery, we have concluded from our European comparisons that ‘more emphasis on positive integration policies is needed by improving the capabilities of national actors to develop proactive policies and create new regulatory institutions at the European level’, but also that ‘this focus on the EU as a constraint on national actors does not and should not let national actors off the hook. There is still scope for national actors to take bold action to develop new and innovative institutional arrangements and indeed to promote these ideas at the European level’ (Bosch *et al.*, 2009: 51).

We are grateful to Jill Rubery for the inspiration and insights she has given us in our many years of collaboration and feel strengthened in our academic and, on occasions, also political commitment to strive for an ‘enabling state’ in our own country, which would greatly aid the process of ‘multi-level institution building’ in the EU and its member states.

Notes

- 1 Parts of this chapter are based on Bosch (2015).
- 2 ‘Instead of more flexible employment, policies are needed to extend and reinforce SER-type [Standard Employment Relationship] relationships, alongside new higher legal

minimum standards and mechanisms to reduce the penalties for not being on an SER-type contract' (Rubery, 2015: 15).

- 3 Sengenberger also identifies promotional standards, which increase the options open to individuals. They include family-friendly working times, employee rights to further training and the option to use certain wage components for specific purposes, such as old-age insurance.

References

- Assemblée Nationale (2016), *Projet de loi, présenté par Mme Myriam El Khomry, ministre du travail, de l'emploi, de la formation professionnelle et du dialogue social* (Paris).
- Banyuls, J. and Recio, A. (2015), 'A crisis within the crisis – Spain under the regime of a conservative neoliberalism', in Lehdorff, S. (ed.), *Divisive Integration: the Triumph of Failed Ideas in Europe – Revisited* (Brussels: European Trade Union Institute), pp. 39–68.
- Bernaciak, M. (2014), Gumbrell-McCormick, R. and Hyman, R., *European Trade Unionism: from Crisis to Renewal?* (Brussels: European Trade Union Institute).
- Bezzina, E. (2012), 'In 2010, 17% of employees in the EU were low-wage earners', *Eurostat Statistics in Focus*, 48/2012 (Luxembourg: Eurostat).
- Bosch, G. (2015), 'Shrinking collective bargaining coverage, increasing income inequality: a comparison of five EU countries', *International Labour Review*, 154:1, 57–66.
- Bosch, G., Lehdorff, S. and Rubery, J. (eds) (2009), *European Employment Models in Flux: A Comparison of Institutional Change in Nine European Countries* (Basingstoke: Palgrave Macmillan).
- Bosch, G., Mayhew, K. and Gautié, J. (2010), 'Industrial relations, legal regulations, and wage setting', in Gautié, J. and Schmitt, J. (eds), *Low-Wage Work in the Wealthy World* (New York: Russell Sage), pp. 147–82.
- Bosch, G. and Weinkopf, C. (2013), 'Wechselwirkungen zwischen Mindest- und Tariflöhnen', *WSI-Mitteilungen*, 66:6, 393–403.
- Cruces, J., Álvarez, I., Trillo, F. and Leonardi, S. (2015), 'Impact of the euro crisis on wages and collective bargaining in southern Europe – a comparison of Italy, Portugal and Spain', in van Gyes, G. and Schulten, T. (eds), *Wage Bargaining under the New European Economic Governance* (Brussels: European Trade Union Institute), pp. 93–138.
- DARES (2012), *Bilans et rapports – La Négociation Collective en 2011* (Ministère du Travail, de l'Emploi et de la Santé: Paris).
- Dunlop, J. T. (1957), 'The task of contemporary wage theory', in Taylor, G. W. and Pierson, F. C. (eds), *New Concepts in Wage Determination* (New York, Toronto and London: McGraw-Hill), pp. 117–39.
- Eldring, L. and Alsos, K. (2012), 'European minimum wage: a Nordic outlook', Report No. 16 (Oslo: Fafo).

- ETUI (European Trade Union Institute) (2015), 'National industrial relations, Brussels', <http://worker-participation.eu/National-Industrial-Relations>, accessed 19 February 2015.
- Eurofound (2014), *Developments in Collectively Agreed Pay 2013* (Dublin: European Foundation for the Improvement of Living and Working Conditions).
- Eurofound (2015), *Developments in Collectively Agreed Pay 2014* (Dublin: European Foundation for the Improvement of Living and Working Conditions).
- Fernández Rodríguez, C. J., Ibáñez Rojo, R. and Martínez Lucio, M., (2016), 'The reform of collective bargaining in the Spanish metal and chemicals sectors (2008–2015): the ironies and risks of de-regulating employment regulation', in Koukiadaki, A., Távora, I. and Martínez Lucio, M. (eds), *Joint Regulation and Labour Market Policy in Europe During the Crisis* (Brussels: European Trade Union Institute), pp. 499–554.
- Grimshaw, D. (2010), 'United Kingdom: developing a progressive minimum wage in a liberal market economy', in Vaughan-Whitehead, D. (ed.), *The Minimum Wage Revisited in the Enlarged EU* (Cheltenham: Edward Elgar and Geneva: International Labour Organization), pp. 473–508.
- Grimshaw, D., Bosch, G. and Rubery, J. (2014), 'Minimum wages and collective bargaining: what types of pay bargaining can foster positive pay equity outcomes?', *British Journal of Industrial Relations*, 52:3, 470–98.
- Grimshaw, D. and Lehnndorff, S. (2010), 'Anchors for job quality: sectoral systems of employment in the European context', *Work Organisation, Labour and Globalisation*, 4:1, 24–40.
- Grimshaw, D. and Rubery, J. (2015), 'Neoliberalism 2.0: crisis and austerity in the UK', in Lehnndorff, S. (ed.), *Divisive Integration: The triumph of failed ideas in Europe – Revisited* (Brussels: European Trade Union Institute), pp. 209–32.
- Haipeter, T. and Lehnndorff, S. (2014), 'Decentralisation of collective bargaining in Germany: Fragmentation, coordination and revitalization', *Economia & Lavoro*, 48:1, 45–64.
- Hayter, S. and Weinberg, B. (2011), 'Mind the gap: collective bargaining and wage inequality', in Hayter, S. (ed.), *The Role of Collective Bargaining in the Global Economy: Negotiating for Social Justice* (Cheltenham), pp. 136–86.
- Karamessini, M. (2015), 'Greece as an international test-case: economic adjustment through a Troika/state-induced depression and social catastrophe', in Lehnndorff, S. (ed.), *Divisive Integration: The Triumph of Failed Ideas in Europe – Revisited* (Brussels: European Trade Union Institute), pp. 95–126.
- Kjellberg, A. (2009), 'The Swedish Ghent system and trade unions under pressure', *Transfer* 15, 3:4, 481–504.
- Köhler, H. D. and Calleja Jiménez, J. P. (2017), 'Spain: a peripheral economy and a vulnerable trade union movement', in Lehnndorff, S., Dribbusch, H. and Schulten, T. (eds.), *Rough Waters – European Trade Unions in a Time of Crises* (Brussels: European Trade Union Institute), pp. 59–79.
- Koukiadaki, A. and Kokkinou, C. (2016), 'Deconstructing the Greek system of industrial relations', *European Journal of Industrial Relations*, <http://ejd.sagepub.com/content/early/2016/05/06/0143831X16643206.abstract>.

- Leonardi, S. (2017), 'Trade unions and collective bargaining in Italy during the crisis', in Lehnndorff, S., Dribbusch, H. and Schulten, T. (eds.), *Rough Waters – European Trade Unions in a Time of Crises* (Brussels: European Trade Union Institute), pp. 81–105.
- Lind, J. (2007), 'A Nordic saga? The Ghent system and trade unions', *International Journal of Employment Studies* 15:1, 49–68.
- Meardi, G. (2012), *Social Failures of EU Enlargement* (Routledge: New York).
- Ministerio de Empleo y Seguridad Social (2017), Estadística de convenios colectivos de trabajo, <http://www.empleo.gob.es/estadisticas/cct/welcome.htm>, accessed 10 March 2017.
- Pernot, J. M. (2017), 'France's trade unions in the aftermath of the crisis', in Lehnndorff, S., Dribbusch, H. and Schulten, T. (eds.), *Rough Waters – European Trade Unions in a Time of Crises* (Brussels: European Trade Union Institute), pp. 35–58.
- Pontusson, J. (2005), 'Varieties and Commonalities of Capitalism', in Coates, D. (ed.), *Varieties of Capitalism, Varieties of Approaches* (Basingstoke: Palgrave Macmillan), pp. 163–88.
- Rubery, J. (2005), 'The shaping of work and working time in the service sector: a 233 segmentation approach', in Bosch, G. and Lehnndorff, S. (eds.), *Working in the Service Sector: A Tale from Different Worlds* (London: Routledge), pp. 233–56.
- Rubery, J. (2015), *Re-regulating for Inclusive Labour Markets*, Conditions of Work and Employment Series No. 65 (Geneva: International Labour Organization).
- Salverda, W. and Mayhew, K. (2009), 'Capitalist economies and wage inequality', *Oxford Review of Economic Policy*, 25:1, 126–54.
- Schulten, T. and Müller, T. (2015), 'European economic governance and its intervention in national wage development and collective bargaining', in Lehnndorff, S. (ed.), *Divisive Integration: The Triumph of Failed Ideas in Europe – Revisited* (Brussels: European Trade Union Institute), pp. 331–64.
- Schulten, T. and van Gyes, T. (2015), 'Concluding remarks: a transnational coordinated reconstruction of collective bargaining as a precondition for inclusive growth in Europe', in van Gyes, G. and Schulten, T. (eds.), *Wage Bargaining Under the New European Economic Governance* (Brussels: European Trade Union Institute), pp. 401–12.
- Sengenberger, W. (1994), 'Protection – participation – promotion: the systemic nature and effects of labour standards', in Sengenberger, W. and Campbell, D. (eds.), *Creating Economic Opportunities: The Role of Labour Standards in Industrial Restructuring* (Geneva: International Labour Organization), pp. 45–60.
- Visser, J. (2016), *Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) in 51 countries between 1960 and 2014* (Amsterdam: Amsterdam Institute for Advanced Labour Studies (AIAS)), <http://uva-aias.net/en/ictwss>.