

6

The Collective Bargaining Directive in Disguise – How the European Minimum Wage Directive Aims to Strengthen Collective Bargaining

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I. Introduction

At the outset, the goal of the European Commission's initiative for a European framework on minimum wages was to create 'a legal instrument to ensure that every worker in our Union has a fair minimum wage'.¹ In early 2020, the Commission started the first stage of the Social Partner Consultation under Article 154 TFEU 'on a possible action addressing the challenges related to fair minimum wages'.² The Commission has consistently stated that its initiative is not about harmonising minimum wage-setting, but rather to fully respect national practices and the autonomy of social partners. Therefore, its initial considerations focused almost exclusively on the adequacy of minimum wage levels.

It was only through the intervention of the European trade unions that the European minimum wage initiative also became an initiative to strengthen collective bargaining in Europe. In its official statement to the Commission, the European Confederation of Trade Unions (ETUC) emphasised that 'the best tool to achieve the objective of fair wages is through the safeguarding, strengthening and promotion of autonomous sectoral and cross-sectoral collective bargaining'. Thus, according to the ETUC, 'any EU initiative in this field must strengthen national collective bargaining models'.³ More specifically, the ETUC demanded that 'Member States should be required, when their collective bargaining coverage is below

¹ Ursula von der Leyen, 'A Union that Strives for More. My Agenda for Europe. Political Guidelines for the Next European Commission 2019–2024' (Publication Office for the European Union, 2019) 9.

² European Commission, First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages, Consultation Document, Brussels, 14 January 2020, C(2020) 83 final.

³ European Trade Union Confederation (ETUC), 'ETUC Reply to the First Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages', (ETUC, 26 February 2020) 3.

70 per cent of the national workforce, to take positive actions, in consultation with the social partners, to promote collective bargaining and to bring the level of collective bargaining coverage to that threshold as soon as possible.⁴

Accordingly, in the second phase of the Social Partner Consultation, the Commission expanded the goal of its initiative from the promotion of adequate minimum wage levels to also include the strengthening of collective bargaining.⁵ In its proposal for a draft Directive, the Commission finally included a separate article on the ‘promotion of collective bargaining on wage setting’⁶ which contained the decency threshold of 70 per cent proposed by the ETUC as a target for adequate collective bargaining coverage. Later, the European Parliament even extended this target to 80 per cent⁷ and succeeded in retaining this decency threshold in the final Directive.

As a result of the demands and pressure of European trade unions and the European Parliament, we argue that Directive 2022/2041 (the AMW Directive) turned into a collective bargaining directive in disguise: the strengthening of collective bargaining was a goal in its own right, alongside the promotion of adequate minimum wage levels.

In this chapter we will focus on the possible impact of the AMW Directive on collective bargaining in Europe. We will first present the key provisions of the Directive regarding collective bargaining. Second, we will give a comparative overview of collective bargaining coverage in Europe in order to identify the potential impact of the Directive. This also includes a methodological review of existing data and different measurements of collective bargaining coverage. Third, we will give a systematic assessment of possible tools and instruments to promote collective bargaining. Fourth, we will discuss some national examples in which the Directive is already being used as a reference point in debates about national initiatives to promote collective bargaining. Finally, we draw some conclusions on the potentials and problems related to the implementation of the Directive in the area of collective bargaining.

II. Key Provisions on the Promotion of Collective Bargaining in the AMW Directive

As laid down in Article 1 of the AMW Directive, its ‘subject matter’ is threefold. It aims to establish a framework for:

⁴ *ibid* 15. In contrast, the employers rejected the Directive on constitutional grounds, arguing that the EU has no competence to introduce legally binding instruments in the area of minimum wages and collective bargaining. This fundamental opposition of the employers essentially meant that they took themselves out of the game entirely; they played no significant role in the ensuing discussions about the concrete content of the Directive. For more information see BusinessEurope, ‘Response to First Phase Social Partner Consultation on a Possible Action Addressing the Challenges Related to Fair Minimum Wages’ (BusinessEurope, 19 February 2020), https://www.businesseurope.eu/sites/buseur/files/media/position_papers/social/2020-02-19_response_first_stage_consultation_minimum_wages_final.pdf.

⁵ European Commission, Second Phase Consultation of Social Partners under Article 154 TFEU on a Possible Action Addressing the Challenges Related to Fair Minimum Wages, Consultation Document, Brussels, 3 June 2020, C(2020) 3570 final.

⁶ European Commission, Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, Brussels, 28 October 2020, COM(2020) 682 final.

⁷ European Parliament, Report (A9-0325/2021) on the proposal for a Directive of the European Parliament and of the Council on the adequate minimum wages in the European Union, Committee on Employment and Social Affairs (Rapporteurs: Dennis Radtke and Agnes Jongerius), adopted at the EP plenary sitting on 18 November 2021.

1. adequacy of statutory minimum wages with the aim of achieving decent living and working conditions;
2. promoting collective bargaining on wage-setting;
3. enhancing effective access of workers to rights to minimum wage protection where provided for in national law and/or collective agreements.⁸

The inclusion of the promotion of collective bargaining in the Directive is justified in the recitals by the fact that ‘sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened.’⁹ In accordance with well-established research findings,¹⁰ the Directive emphasises that ‘Member States with a high collective bargaining coverage tend to have a small share of low-wage workers and high minimum wages’,¹¹ so that encompassing collective bargaining has to be regarded as essential for adequate minimum wage protection. Since many EU Member States have been faced by an erosion of traditional collective bargaining structures and a decline in bargaining coverage, adequate minimum wages require a reversal of that trend. Thus, the promotion of collective bargaining became an integral part of the Directive.

The key provisions on collective bargaining are laid down in Article 4 of the Directive which – ‘with the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting’ – calls on the Member States:

- to promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;
- to encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;
- to take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and
- to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting.¹²

In addition, the Directive requires ‘each Member State in which the collective bargaining coverage rate is less than a threshold of 80 per cent ... [to] provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them.’¹³ The Member States concerned shall ‘establish an action plan to promote collective bargaining’ which ‘shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage.’¹⁴

⁸Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, Official Journal of the European Union L 275/33-47, 25 October 2022, Art 1.

⁹Recital 16.

¹⁰For most recent research results see H Haapanala et al, ‘Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?’ (2023) 33(4) *Journal of European Social Policy* 421.

¹¹Recital 25 of the AMW Directive.

¹²ibid Art 4(1). On this provision cf Ch 13 below by Lo Faro.

¹³ibid Art 4(2).

¹⁴ibid.

The action plan should be regularly reviewed and updated at least every five years and should be made public and notified to the European Commission. The Commission should analyse and monitor the action plans and report to the European Parliament and the Council.¹⁵

While the core instruments and initiatives to strengthen collective bargaining are largely left to the autonomy of the Member States, the Directive does provide at least some substantive and procedural requirements. As regards substance, it mainly calls for a strengthening of the capacity of trade unions and employers' organisations as well as for a better protection of trade union representatives which are engaged in collective bargaining. Moreover, the Directive contains a separate article on public procurement, which underlines that in accordance with the EU Public Procurement Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, 'Member States shall take appropriate measures to ensure that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting.'¹⁶ With this article, the Directive refers to the possibility of awarding public contracts only to companies that comply with certain collectively-agreed labour conditions.

In procedural terms, Member States are required – in cooperation with trade unions and employers' organisations – to define concrete action plans to strengthen collective bargaining. However, this obligation only applies to countries with a collective bargaining coverage of less than 80 per cent. In the recitals of the Directive, it is explicitly stated that 'the threshold of 80% collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan.'¹⁷ Although the Member States are not legally obliged to reach the 80 per cent threshold, in practice it is likely to serve as a decency threshold for the adequate collective bargaining coverage which is necessary to provide adequate minimum wage protection.

III. The State of Collective Bargaining in the EU

There exists a great diversity of collective bargaining regimes across the Union.¹⁸ The most striking difference at first glance concerns the collective bargaining coverage which, according to the OECD/AIAS Database, varies between 100 per cent in Italy and 6 per cent in Estonia (Table 1). Although there are some important methodological challenges in measuring bargaining coverage accurately (see below), the existing data very clearly shows that there are significant differences regarding the extent and importance of collective bargaining. Of the 27 EU Member States, only eight currently meet the threshold of 80 per cent which is laid down in the AMW Directive. Accordingly, 19 Member States need to take action in order to promote collective bargaining.

¹⁵ *ibid* Art 10(3).

¹⁶ *ibid* Art 9. On this provision, *cf* Ch 18 below by Davies.

¹⁷ *ibid*, recital 25.

¹⁸ T Müller et al, *Collective Bargaining in Europe: towards an Endgame* (ETUI, 2019).

Table 1 Collective Bargaining Coverage, Negotiation Level and State Support in the EU

Country	Collective bargaining coverage (in %)*	Dominant level of collective bargaining	Forms of state support
Italy	100	Sector	Constitutional obligation to pay fair wage with reference to collective agreements
Austria	98	Sector	Chamber System
France	98	Sector	Frequent Extension
Belgium	96	Sector	Ghent System/Frequent Extension
Finland	89	Sector	Ghent System/Frequent Extension
Sweden	88	Sector	Ghent System
Denmark	82	Sector	Ghent System
Spain	80	Sector	Frequent Extension
Slovenia	79	Sector	Frequent Extension
Portugal	77	Sector	Frequent Extension
Netherlands	76	Sector	Frequent Extension
Luxembourg	57	Sector/Company	Frequent Extension
Croatia	53	Sector/Company	Rare Extension
Germany	52	Sector	Rare Extension
Malta	50	Sector/Company	
Cyprus	43	Sector/Company	
Czechia	35	Company	Rare Extension
Ireland	34	Sector/Company	Rare Extension
Bulgaria	28	Sector/Company	Rare Extension
Latvia	27	Company	Rare Extension
Lithuania	27	Company	Rare Extension
Slovakia	24	Sector/Company	Rare Extension
Hungary	22	Company	Rare Extension
Estonia	19	Company	Rare Extension
Romania	15	Sector/Company	Rare Extension
Greece	14	Company	Rare Extension
Poland	13	Company	Rare Extension

* 2019 or most recent available data.

Source: Collective bargaining coverage: OECD/AIAS ICTWSS Database; Bargaining level and state support: own categorisation based on Müller et al (n 18).

The reasons for the large differences in the collective bargaining coverage are manifold. However, there are two principal factors which seem to determine collective bargaining coverage (Table 1). The first factor is the dominant level of collective bargaining. All countries

with a collective bargaining coverage of 80 per cent and more have sectoral bargaining as the dominant level of collective bargaining, while all countries with a coverage of 50 per cent or less are characterised by a dominance of company-level bargaining. The AMW Directive, therefore, must be understood as a call to establish and strengthen sectoral bargaining.¹⁹

The second decisive factor for high collective bargaining coverage is the comprehensive support of collective bargaining through the state. There are different instruments for this. The most widespread is the frequent use of extension mechanisms which ensure that sectoral agreements apply to all companies of the respective sector;²⁰ examples include Belgium, France and Spain. Although the majority of EU Member States have the legal possibility to declare sectoral agreements generally binding, in most cases this only rarely happens. Italy has a more indirect form of extension, as collectively agreed wages are guaranteed through the constitutional right to a 'fair remuneration'.²¹

There are also some countries which strongly support the organisational capacity of trade unions and employers' organisations and in doing so indirectly promote collective bargaining. In Denmark, Finland and Sweden, and to a lesser extent in Belgium, high union density is institutionally underpinned by the so-called 'Ghent System', defined as a state-subsidised but voluntary unemployment insurance system administered by trade unions, which in turn provides a strong incentive to join a union.²² In Austria, the *Kammersystem* (or 'Chamber System') provides for compulsory membership of (almost) all companies in the *Wirtschaftskammer* (Chamber of the Economy), which assumes the role of an employers' organisation in negotiating collective agreements. Compulsory membership ensures that all sectoral agreements signed by the chamber automatically apply to all companies in the respective sector.²³ By contrast, all the other countries with a collective bargaining coverage of 50 per cent or less lack a comprehensive institutional framework and state support for sectoral bargaining. The evidence of collective bargaining systems in the EU shows very clearly that a comprehensive collective bargaining coverage of 80 per cent or more can only be achieved through a system of sectoral bargaining with adequate support by the state.

The measurement of collective bargaining coverage, however, is not as straightforward as it might seem. The AMW Directive defines 'collective bargaining coverage' as 'the share of workers at national level to whom a collective agreement applies, calculated as the ratio of the number of workers covered by collective agreements to the number of workers whose working conditions may be regulated by collective agreements in accordance with national law and practice'.²⁴ With this definition, the Directive refers to the so-called 'adjusted bargaining coverage', which takes into account only those groups of employees who may potentially be covered by a collective agreement. However, there is neither a generally recognised method of measuring collective bargaining coverage nor a generally accepted database.²⁵

¹⁹ D Madland, 'Historic New EU Law Part of Growing Push for Sectoral Bargaining', *onlabor* 19 January 2023, <https://onlabor.org/historic-new-eu-law-part-of-growing-push-for-sectoral-bargaining/>.

²⁰ S Hayter and J Visser (eds), *Collective Agreements: Extending Labour Protection* (ILO, 2018).

²¹ See Ch 33 below by Razzolini.

²² K Vandaele, 'A Report from the Homeland of the Ghent System: The Relationship between Unemployment and Trade Union Membership in Belgium' (2006) 12(4) *Transfer* 647.

²³ S Zuckerstätter, 'Kammern als Kollektivvertragspartner im österreichischen Arbeitsleben' (2020) 73(1) *Recht der Arbeit* 45.

²⁴ Art 3(5) of the AMW Directive.

²⁵ For an overview see International Labour Organisation, *Quick Guide on Sources and Uses of Collective Bargaining Statistics* (ILO, 2018).

The most widely used data source for collective bargaining coverage is the OECD/AIAS ICTWSS database, which covers the largest number of countries in Europe and beyond, providing time series data for most of them going as far back as the 1960s. The disadvantage of this database, however, is that it is based on very different non-harmonised national data sources coming from administrative or survey data.²⁶ An alternative data source is the European Company Survey (ECS) carried out by Eurofound every four years since 2004.²⁷ Covering all EU Member States plus the UK, the total number of 20,000 surveyed companies is rather limited, however. The ECS only covers companies with more than 10 employees in the private sector and includes less long time series. Finally, a third data source is the Structure of Earnings Survey (SES), which is based on company surveys conducted by national statistical offices coordinated by Eurostat.²⁸ The SES includes enterprises with at least 10 employees operating in all areas of the economy except public administration and is carried out every four years. It covers all EU Member States plus eight further European countries. While both the ECS and the SES have the advantage of providing largely harmonised data, their major drawbacks are that neither of them cover smaller companies with less than 10/11 employees, they exclude certain sectors (particularly the public sector), and they do not provide longer time series.

There are also differences regarding the concrete measurement of collective bargaining coverage. The broadest concept would be to include any kind of collective agreement. However, this may raise a number of issues: first, there might be significant differences in the bargaining coverage depending on whether the 'stock' or the 'flow' of agreements is considered.²⁹ Stock data usually covers longer-term framework agreements while flow data usually refers to regularly adjusted wage agreements. The fact that the AMW Directive explicitly aims to promote collective bargaining on wage-setting suggests that the coverage of wage agreements should be the decisive reference value. Second, as many countries have a multi-level bargaining system, bargaining coverage usually differs depending on the bargaining level considered. National agreements, for instance, have a broader coverage than sectoral or company agreements.

There are also some differences in the legal concepts of coverage. While most EU countries provide that all workers in a company with a collective agreement are automatically covered by that agreement, in some countries this holds true only for members of the union which signed the agreement, even if, in practice, companies usually do not differentiate between members and non-members.

Considering the different concepts for measuring of collective bargaining coverage, the AMW Directive refrains from specifying a uniform measurement method and instead accepts the respective national approaches of data collection and calculation.

²⁶ OECD and J Visser, 'OECD/AIAS ICTWSS Database. Note on Definitions, Measurement and Sources' (OECD, 2021) <https://www.oecd.org/employment/ictwss-database.htm>.

²⁷ Eurofound, 'Collective Agreements and Bargaining Coverage in the EU: A Mapping of Types, Regulations and First Findings from the European Company Survey 2019' (Eurofound, 2020).

²⁸ For the latest available data see Eurostat, 'Structure of Earnings Survey 2018; Number of employees by sex, economic activity and collective pay agreement (earn_ses18_01)', https://ec.europa.eu/eurostat/databrowser/view/EARN_SES18_01/default/table?lang=en.

²⁹ OECD, *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work* (OECD Publishing, 2019) 48.

IV. Measures and Instruments to Increase Collective Bargaining Coverage

There has been a long discussion in both the academic and political world on how to promote sectoral bargaining as the essential prerequisite for high collective bargaining coverage.³⁰ More systematically, one can distinguish between measures and instruments which strengthen the organisational capacity of trade unions and employers' organisations, and measures which support the establishment and stability of sectoral bargaining (Table 2).

A key precondition for sectoral collective bargaining is strong and representative organisations on both sides of industry. Considering the structural power imbalance in the capitalist labour market, strong unions are of particular importance in order to bring employers to the negotiation table. One important way to increase collective bargaining coverage is, therefore, to strengthen the trade unions' organisational power resources, which rest on a comprehensive and active membership base. Over the last 20 years, however, trade union density has declined in the majority of EU countries.³¹ Since direct contact of union representatives with workers at their workplace is the most effective way to recruit new and retain existing members, providing unions with the right of access to companies and more effective penalties against union-busting activities are important measures to strengthen collective bargaining. In light of the proliferation of new forms of work, such as platform or remote work leading to an increasingly dispersed workforce, this should also include the right to digital access. In this new world of work, online communication and networking technologies are increasingly important tools for trade unions to contact, interact with and recruit workers.³²

Table 2 Instruments and Measures to Increase Collective Bargaining Coverage

Strengthening unions' organisational capacity	Strengthening employers' organisational capacity	Establishing and supporting sectoral bargaining
Right of access to companies	Supporting the establishment of employers' organisations at sectoral level	Promotion of multi-employer bargaining
Measures to prevent union busting	Introduction of a chamber system with compulsory membership	Effective extension of collective agreements
Time and facilities for union representatives	Obligation for employers to engage in collective bargaining	Collective bargaining clauses in public procurement

(continued)

³⁰ See for instance the contributions in Y Ghellab and D Vaughan-Whitehead (eds), *Sectoral Social Dialogue in Future EU Member States: The Weakest Link* (ILO, 2003) and in Müller et al (n 18).

³¹ K Vandaele, *Bleak Prospects: Mapping Trade Union Membership in Europe Since 2000* (ETUI, 2019), <https://www.etui.org/publications/books/bleak-prospects-mapping-trade-union-membership-in-europe-since-2000>; J Waddington et al (eds), *Trade Unions in the European Union – Picking up the Pieces of the Neoliberal Challenge* (Peter Lang, 2023) <https://www.etui.org/publications/trade-unions-european-union>.

³² K Vandaele and A Piasna, 'Sowing the Seeds of Unionisation? Exploring Remote Work and Work-based Online Communities in Europe during the Covid-19 Pandemic' in N Countouris et al (eds), *The Future of Remote Work* (ETUI, 2023) 103.

Table 2 (Continued)

Strengthening unions' organisational capacity	Strengthening employers' organisational capacity	Establishing and supporting sectoral bargaining
Right to collective redress		Continuation of collective agreement after spin-offs
Financial incentives for union members (eg tax depreciation for membership fees)		Extending the scope of collective agreements to excluded groups of employees

Source: Authors' own compilation.

Providing trade unions with the right to access is only the first step. Once unions have established a presence at the workplace, it is equally important to provide them with the means and resources necessary to carry out their duties in representing workers' interests. This involves the protection of union representatives from discrimination, dismissal, blacklisting and other union-busting measures. Employers should also be obliged to provide the time and facilities needed for them to properly perform their tasks as worker representatives. Another important measure to strengthen the enforcement of collective agreements is the right to collective redress or class action. All too often, employers systematically refuse to apply collective agreements or apply them differently, to the detriment of workers. In such situations, it is difficult for individual workers to go to court to assert their rights. The right to collective redress would ensure that the union can initiate legal action on behalf of individual workers. Finally, trade union membership might be increased by providing financial incentives, for instance, by making union membership fees tax deductible.

In addition to strong unions, the existence of encompassing employers' organisations and their willingness to enter into negotiations is another important factor promoting bargaining coverage. In general, there seems to be a stronger correlation between bargaining coverage and the employers' association rate than that between coverage and union density.³³ Especially in many central and eastern European countries, the weakness and fragmentation of employers' organisations and their hostility towards negotiating sectoral agreements is an important explanation for low bargaining coverage. Organisational weakness and a reluctance to negotiate can take different forms.³⁴ In Estonia and Poland, for instance, trade unions in many private sector industries simply lack a sector-level negotiating partner on the employers' side. In other countries, such as Hungary and Slovakia, employers' associations are primarily lobbying organisations and companies are reluctant to join employers' associations or to authorise them to negotiate sectoral agreements.

An increasing hostility towards sectoral bargaining is by no means limited to central and eastern European countries. Germany is a case in point, where employers began to withdraw from collective bargaining after reunification in the 1990s. Over the past 30 years, a substantial number of companies have decided to opt out from sectoral collective bargaining by disaffiliating from employers' associations or, in the case of newly-established firms, by not joining employers' associations in the first place. And even where they remained a

³³ J Visser, 'Wage Bargaining Institutions – From Crisis to Crisis' *Economic Papers No 488* (European Commission, 2013), https://ec.europa.eu/economy_finance/publications/economic_paper/2013/pdf/ecp488_en.pdf.

³⁴ T Müller et al, 'Conclusion: towards an Endgame' in Müller et al (n 18) 625.

member of the respective employers' organisation, the introduction of a special so-called 'OT membership' further contributed to the erosion of bargaining coverage. 'OT' stands for '*ohne Tarifbindung*', which means that such members do not have to apply the sectoral agreement signed by the respective employers' association.³⁵

Against this background, in many EU countries the strengthening of sector-level employers' organisations is essential for promoting sectoral bargaining. Here, the state plays a decisive role in defining certain framework conditions which create incentives for capacity-building on the employer's side.³⁶ The instruments range from financial and logistical support to the opening of political channels of influence and the possibility of flexible implementation of legal provisions through sectoral collective agreements. The most far-reaching approach would be the introduction of a chamber system with compulsory membership for all companies. Such a system exists in Austria, where it guarantees a collective bargaining coverage of almost 100 per cent.³⁷ After 1990, the *Gospodarska Zbornica Slovenije* (Chamber of Commerce and Industry) with compulsory membership was also established in Slovenia to serve as the collective bargaining party on the employer's side.³⁸ The abolition of compulsory membership in the mid-2000s contributed to a drop in bargaining coverage from almost 100 to 79 per cent because many companies took the opportunity to withdraw from the Chamber.³⁹ Nonetheless, Slovenia still has by far the highest collective bargaining coverage in central and eastern Europe. Another possibility to promote sectoral employers' organisations is a legal obligation to regularly engage in sector-level collective bargaining as exists, for instance, in France.⁴⁰

While the strengthening of trade unions and employers' associations tends to indirectly promote collective bargaining, other measures can contribute more directly to an increase in collective bargaining coverage. First, there is the possibility to promote multi-employer collective agreements as an intermediate stepping-stone to sectoral bargaining.⁴¹ The idea behind this is that in a situation in which there is no sectoral employers' organisation – or if there is one, it is not willing to negotiate – it may still be possible to conclude an agreement with key companies in the sector. In particular in sectors in which there are only a limited number of 'big players', this would mean that a majority of the workers in the sector are covered by a collective agreement – and it would create pressure on the rest of the companies to agree to negotiate a sectoral agreement. The Romanian banking sector is an illustrative case in point: first a multi-employer agreement was signed for some larger banks in 2018; this provided the basis for a sector-wide agreement signed in 2022.⁴²

³⁵ T Müller and T Schulten, 'Germany: Parallel Universes of Collective Bargaining' in Müller et al (n 18) 239.

³⁶ C Welz et al, 'Capacity Building for Effective Social Dialogue in the European Union' (Publication Office for the European Union, 2020).

³⁷ Zuckerstätter (n 23).

³⁸ H Kohl, 'Slowenien: Funktionierendes Flächentarifvertragssystem mit offener Zukunft' (2004) 57(7) *WSI-Mitteilungen* 381.

³⁹ M Stanojević and A Poje, 'Slovenia: Organised Decentralisation in the Private Sector and Centralisation in the Public Sector' in Müller et al (n 18) 545.

⁴⁰ J Freyssinet, 'France: Social Partners' Search for Autonomy alongside State Intervention' in Ghellab and Vaughan-Whitehead (n 30) 143.

⁴¹ For an overview of the concept of multi-employer collective bargaining see D Ceccon et al, *LEVEL UP! Support and Develop Collective Bargaining Coverage* (CELSI, 2023).

⁴² S De Spiegelaere, 'Back on Track: Are We Seeing a Renaissance of Collective Bargaining in Romania?' (2023) 27 *HesaMag* 8.

Another important measure to promote sectoral bargaining is to ensure that public contracts are awarded only to those companies which provide collectively agreed wages and respect workers' right to bargain collectively. The use of public procurement for the promotion of collective bargaining has a long tradition in several EU Member States.⁴³ Public procurement is also explicitly mentioned in Article 9 of the AMW Directive as a possible instrument to support collective bargaining.⁴⁴ Without a labour clause referring to collectively-agreed standards, public tenders might favour companies not covered by collective agreements, as they often have lower labour costs and, therefore, can submit cheaper offers. Compliance with collectively-agreed employment conditions as a mandatory criterion in public procurement is an indispensable precondition to provide fair competition and to prevent discrimination against companies covered by collective agreements.

Furthermore, the most widespread and effective way to support high collective bargaining coverage is the frequent use of extension mechanisms which ensure that a sectoral agreement applies to all workers and enterprises of a certain sector, even where these are not organised in one of the contracting parties. As shown above, almost all countries with a collective bargaining coverage of 80 per cent and more have comprehensive extension mechanisms or functional equivalents. In some countries, effective extension mechanisms also provide an incentive for companies to join the respective sectoral employers' association; if a company is covered by a collective agreement anyway, it might as well join the employers' association signing the agreement in order to have a say in the negotiations.⁴⁵ In other countries, extension mechanisms have proven ineffective because the extension criteria are too restrictive, or employers' organisations have a strong veto power which enables them to prevent an extension. The latter is the case in Germany, for instance, where employers' organisations take a very restrictive stance on extensions and usually make use of their veto power. As a consequence, less than 2 per cent of all sectoral agreements have been declared generally binding.⁴⁶

Further measures that strengthen the regulatory capacity of collective agreements aim to prevent avoidance strategies by employers. One such measure could be to ensure the continuing validity of a collective agreement for parts of a company concerned by organisational restructuring measures such as spin-offs, transfers of undertakings or outsourcing. All too often, such measures are used by companies to circumvent existing collective agreements or to change to a sectoral collective agreement that provides for worse conditions. Another measure would be to ensure that a collective agreement remains in force even after its expiration until a new agreement has been negotiated. This should also apply to new employees hired after an agreement has expired; they should be covered by the agreement in the same way as other workers.

Finally, an important measure to increase bargaining coverage would be to extend the scope of collective agreements to previously excluded groups of employees, in particular

⁴³ ETUC, 'Social Clauses in the Implementation of the 2024 Public Procurement Directives' (ETUC, 2021), https://www.etuc.org/sites/default/files/2021-12/Public%20procurements%20directive_Final.pdf.

⁴⁴ See Ch 18 below by Davies.

⁴⁵ T Schulten et al, 'The Role of Extension for the Strength and Stability of Collective Bargaining in Europe' in G Van Gyes and T Schulten (eds), *Wage Bargaining under the New European Economic Governance – Alternative Strategies for Inclusive Growth* (ETUI, 2015) 361.

⁴⁶ T Schulten, 'The Role of Extension in German Collective Bargaining' in Hayter and Visser (n 20) 65.

by ensuring the right to bargain collectively for solo self-employed workers. A first step has been done with the European Commission guidelines on the application of EU competition law that removes legal barriers to collective bargaining for solo self-employed workers.⁴⁷ The Directive's action plans could be a tool to ensure that these guidelines are properly applied at national level.

Given the diversity of different systems across Europe, it is evident that the various measures included in the action plan have to be geared towards the specific situation in the respective country. There is no 'one size fits all' solution. For instance, in countries in which sectoral negotiations are the dominant form of collective bargaining, the key objective would be to strengthen the existing system and to improve the regulatory capacity of collective agreements. By contrast, the key objective in countries in which company-level bargaining dominates would be to establish sectoral bargaining structures. While the significance and priority of specific measures may vary according to the national situation, most measures contribute to strengthening collective bargaining in both models.

V. Recent Initiatives to Strengthen Collective Bargaining at National Level

Although the Member States have until October 2024 to transpose the AMW Directive into national law, its provisions already shape policies in many EU countries. This holds true, in particular, for the setting and adjustment of national statutory minimum wages,⁴⁸ but is also valid for national debates and initiatives aiming at strengthening collective bargaining.

An illustrative example in this respect is Ireland, where in March 2021 – when the Directive was still at the draft stage – the government set up a tripartite High-level Working Group 'to review collective bargaining and the industrial relations landscape in Ireland',⁴⁹ 'so that Ireland is well-positioned to meet its obligations under EU law'.⁵⁰ In its final report published in October 2022, the Working Group explicitly recognises that 'the EU context (particularly proposed EU legislation) was of paramount importance to the Group's work'.⁵¹ Thus, in the shadow of the Directive, the key focus of the Working Group lay on exploring different ways to strengthen collective bargaining to fulfil the Directive's obligation to gradually increase coverage from its current level of 34 per cent towards the adequacy threshold of 80 per cent.

The key problem identified by the Working Group for collective bargaining in Ireland is the employers' increasing reluctance to engage in negotiations with trade unions – both at sectoral and at enterprise level. Against this background, the Working Group's

⁴⁷ European Commission, *Communication from the Commission: Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022 C 374/02, (European Commission, 2022).

⁴⁸ T Müller and T Schulten, 'The European Directive on Adequate Minimum Wages: A Milestone for EU Social Policymaking' in B Vanhercke et al, *Social Policy in the European Union – State of Play 2023* (ETUI, 2023).

⁴⁹ LEEF, 'Final Report of the LEEF High Level Working Group on Collective Bargaining' (LEEF High Level Working Group, 2022) 2, <https://enterprise.gov.ie/en/publications/publication-files/final-report-of-the-leef-high-level-working-group-on-collective-bargaining.pdf>.

⁵⁰ *ibid* 6.

⁵¹ *ibid* 5.

recommendations to strengthen sectoral bargaining aimed at ending the employers' de facto veto power on the establishment of new sectoral agreements by creating incentives and soft pressure for employers to participate more actively in the negotiation of so-called 'Employment Regulation Orders'. In effect, these represent a form of sectoral bargaining which sets out legally enforceable employment conditions and minimum rates of pay in particular in low-paid sectors where collective bargaining is limited or absent.⁵² Similarly, the Working Group seeks to improve collective bargaining at the enterprise level by obliging employers to engage with trade unions in a 'process of good faith'.⁵³ The wording 'good faith engagement' essentially boils down to an obligation of the employer to engage in collective bargaining – not to reach an agreement – if requested to do so by a trade union with meaningful membership within the company.

Germany is another country where an intensive debate about the need to strengthen collective bargaining is currently taking place. During recent decades, Germany has seen a continuous decline in collective bargaining coverage, so that currently only every second worker is still covered by a collective agreement.⁵⁴ Against this background, many proposals have been made to reverse this negative trend, including various measures to strengthen trade union power, a ban on 'OT memberships' in employers' organisations which enable companies to avoid coverage by the sectoral agreement negotiated by the respective employers' organisation, and finally, a reform of the extension mechanism in order to abolish the employers' veto power.⁵⁵ The AMW Directive's threshold of 80 per cent collective bargaining coverage has become a major point of reference in these debates. Since the adoption of the Directive, representatives from trade unions and political parties have called on the German government to immediately set up an action plan to strengthen collective bargaining and not to wait until the formal implementation of the Directive. The German Ministry of Labour has announced a legal package for the promotion of collective bargaining to be presented in autumn 2023 which, among other measures, will include a draft for a new public procurement law. Such a '*Bundestariftreugesetz*' aims at ensuring that public contracts at national level will only be awarded to companies that apply the provisions of collective agreements. With this initiative, the Federal Government follows the example of many regional governments of the German Federal States which already use public procurement rules for the promotion of collective bargaining.⁵⁶

The AMW Directive is likely to have the most far-reaching consequences in central and eastern Europe, where collective agreements, with the exception of Slovenia and Croatia, cover only one third of the workforce – or even less. A strong influence of the Directive can already be observed in Romania, where a new law on social dialogue was passed in December 2022 – just two months after the adoption of the Directive. Romania is a particularly interesting case because these recent legal changes reversed many of the reforms introduced in 2011 which actually aimed to decentralise and weaken collective bargaining.⁵⁷

⁵² For further details see Ch 32 below by Bell and Eustace.

⁵³ LEEF (n 49) 20.

⁵⁴ Müller and Schulten (n 35).

⁵⁵ For an overview see M Behrens and T Schulten, 'Das Verhältnis von Staat und Tarifautonomie. Ansätze zur Stabilisierung des Tarifvertragssystems' (2023) 76(3) *WSI-Mitteilungen* 159.

⁵⁶ T Schulten, 'Social Clauses in German Public Procurement – Towards a Post-Rüffert Regime?' in ETUC (n 43) 26.

⁵⁷ For an overview see A Trif and V Paolucci, 'Romania: From Legal Support to Frontal Assault' in Müller et al (n 18) 505.

By contrast, the recent reform aims to strengthen collective bargaining at all levels and to promote unionisation. In order to do so, the new law on social dialogue includes a range of measures.⁵⁸ First, while the reforms in 2011 prohibited cross-sectoral agreements, the new law allows the negotiation of national agreements if the negotiating employers' association covers at least 20 per cent of the workers. Second, the requirement for the extension of a sectoral collective agreement is less restrictive: the signatory employers' association only needs to represent at least 35 per cent of the employees, rather than at least 50 per cent as was the threshold before. Third, bargaining at company level is mandatory in companies with at least 10 employees, instead of 21 employees as stipulated in the 2011 law. Fourth, the representativeness criteria for trade unions for bargaining purposes have been lowered from at least 50 per cent to 35 per cent at company level and from 7 per cent to 5 per cent at sectoral level. Fifth, the new law reduced the minimum threshold for the establishment of a trade union from at least 15 members to 10 members. In addition to promoting collective bargaining at all levels and to facilitating unionisation the new law furthermore extended the right to strike and broadened company-level information and consultation rights. It is interesting to note that both reforms – divergent as they are – were triggered by pressure from EU level. While the neoliberal reforms in 2011 were imposed by the Troika consisting of the European Commission, the European Central Bank and the International Monetary Fund as a precondition for financial assistance in the context of the financial crisis in 2008–2009, the recent reforms were the result of a social conditionality imposed by the Commission. This time, the reforms which actually strengthen social dialogue and collective bargaining were linked to receiving financial support from the resilience and recovery fund in the context of the Covid-19 pandemic.⁵⁹

VI. Conclusion

Despite its name, Directive 2022/2041 on adequate minimum wages is not only about minimum wages; it is as much about strengthening collective bargaining across the EU. This represents a fundamental paradigm shift in the EU's policymaking, by recognising the principal role of comprehensive collective bargaining systems for a sustainable and inclusive economic and social development.⁶⁰ In addressing the fallout from the financial and economic crisis since 2008–2009, the EU had by the early 2010s essentially embarked on a neoliberal restructuring strategy and pushed for a far-reaching decentralisation of collective bargaining systems that has de facto led to a significant decline in bargaining coverage, as the cases of Greece and Romania illustrate in particular.⁶¹ By contrast, with specific instruments and benchmarks which aim to increase and maintain high collective bargaining coverage, the EU is now focusing on the development and enhancement of strong sectoral collective bargaining systems.

⁵⁸ S Guga, 'Directiva Europeană Privind Salarile Minime: Ce Inseamna Pentru Romania?', Presentation at the industriAll Europe Workshop, 26 April 2023, Bucharest (Syndex, 2023).

⁵⁹ De Spiegelaere (n 42).

⁶⁰ Müller and Schulten (n 48).

⁶¹ T Schulten and T Müller 'European Economic Governance and Its Intervention in National Wage Development and Collective Bargaining' in S Lehdorff (ed), *Divisive Integration: The Triumph of Failed Ideas in Europe – Revisited* (ETUI, 2015) 331.

In implementing the AMW Directive and its implicit target of a collective bargaining coverage of at least 80 per cent, many EU countries are now tasked with enacting a fundamental reform of their industrial relations regimes. This holds more true for some countries than others. For example, the traditional 'Anglo-Saxon' industrial relations regime in Ireland, which relies mainly on company bargaining, may well undergo a fundamental shift to a more continental-European type of multi-employer, or even sectoral, collective bargaining.⁶² Interestingly, there have recently been some noteworthy initiatives and debates to promote sectoral bargaining in other countries outside the EU which practise the 'Anglo-Saxon model' of industrial relations. Examples include the adoption of the 'Fair Pay Agreements Bill' in New Zealand in December 2022⁶³ and the adoption of the 'Secure Jobs, Better Pay Bill' in Australia, also in December 2022.⁶⁴ Further debates about ways to encourage sectoral bargaining are also currently taking place in the USA⁶⁵ and the United Kingdom.⁶⁶ What unites these different legislative and political initiatives in these four 'Anglo-Saxon IR model' countries is the recognition that it is sectoral bargaining rather than mere adjustments to the existing enterprise bargaining systems which is needed to not only address the increasing power asymmetry between capital and labour, but also to address the increasing problems of wage stagnation, economic inequality and low productivity.

The most far-reaching consequences of the implementation of the AMW Directive can be expected to be seen in central and eastern European countries, however. In Poland, for example, where only around 10 per cent of workers are covered by a collective agreement, a substantial increase in bargaining coverage would require far-reaching measures in order to establish a system of sectoral bargaining. Proposals for such a reform have been made and have been discussed among trade unions, employers' organisations and the Polish government.⁶⁷ However, it stands to reason that resistance to more fundamental reforms came not only from employers and politicians but also partly from the unions, since their internal organisational power relations are closely linked to the current system of company bargaining.⁶⁸ It should be noted that these internal power dynamics notwithstanding, the trade unions from central and eastern Europe were among the strongest supporters of the Directive and have high hopes that it will serve to strengthen their collective bargaining systems.⁶⁹

⁶² T Turner et al, 'Changing the Nature of the Anglo-Saxon Industrial Relations Regime in Ireland? Implications of the European Directive on the Extension of Collective Bargaining Coverage' Working Paper 011/1/2023 (Department of Work and Employment Studies, Kemmy Business School, 2023).

⁶³ Ministry of Business, Innovation and Employment, 'Fair Pay Agreements', <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/fair-pay-agreements/>.

⁶⁴ Australian Government Department of Employment and Work Relations, 'Major Workplace Relations Reform Bill is now an Act', <https://www.dewr.gov.au/newsroom/articles/major-workplace-relations-reform-bill-now-act>.

⁶⁵ D Madland, *Re-Union – How Bold Labour Reforms Can Repair, Revitalize and Reunite the United States* (ILR Press, 2021).

⁶⁶ Institute of Employment Rights, 'Labour Party Adopts IER Sectoral Collective Bargaining Plan' (25 September 2021), <https://www.ier.org.uk/news/labour-party-adopts-ier-sectoral-collective-bargaining-plan/>.

⁶⁷ Ł Pisarczyk, 'Towards Rebuilding Collective Bargaining? Poland in the Face of Contemporary Challenges and Changing European Social Policy' (2023) 54(2) *Industrial Relations Journal* 186.

⁶⁸ *ibid* 197.

⁶⁹ S Adamczyk and B Surdykowska, 'Naïve or Realistic? The Approach of Polish Trade Unions to the Strengthening of the Social Dimension of the EU Integration' (2021) *Hungarian Labour Law E-Journal* 1/2021, https://hllj.hu/letolt/2021_2_a/A_02_Adamczyk_Surdykowska_hllj_uj_2021_2.pdf. See also Ch 34 below by Florczak and Otto.

It is clear that the implementation of the AMW Directive will lead to difficult debates in many EU Member States, which will by no means automatically result in stronger collective bargaining systems. In the end, it all depends on the political struggles at national level, because the Directive does not provide for binding rules and regulation for EU Member States. However, it supports all those political and social actors which are engaged in favour of a more fundamental strengthening of collective bargaining. Furthermore, in light of the very different bargaining systems in place, the necessary reforms and measures to be enacted will vary widely. Specific measures and instruments must be considered together in their respective contexts. But our analysis shows that despite the wide variety of starting points, sectoral bargaining and government support are the two key means to ensure a fundamental strengthening of collective bargaining across the Union.