

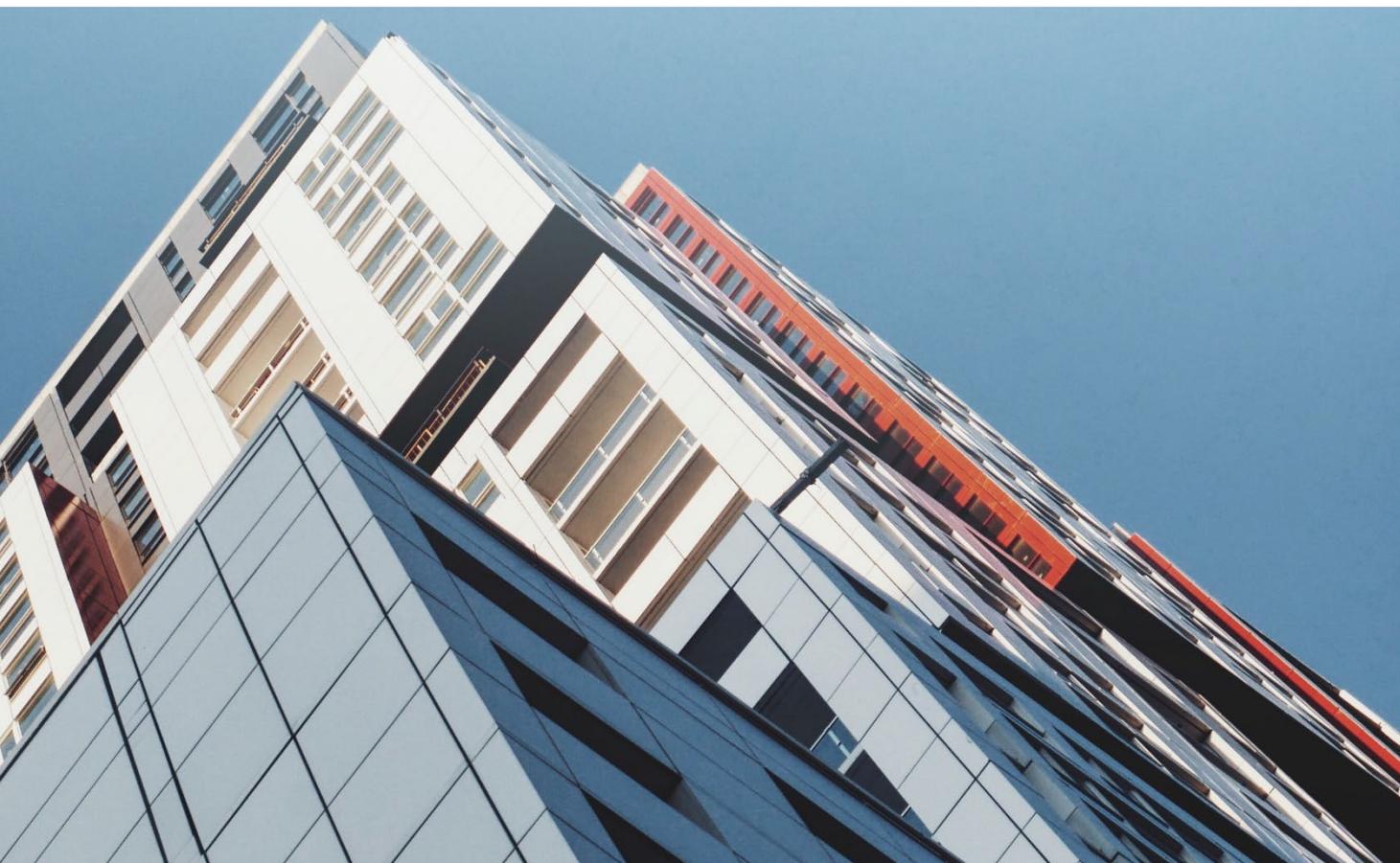


A Fragile Triangle

Collective Bargaining Systems, Trade Unions and the State in the EU

Steffen Lehndorff
University of Duisburg-Essen

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ABOUT US

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About the Authors

Steffen Lehndorff (steffen.lehndorff@uni-due.de)

Steffen Lehndorff is a research fellow at the University of Duisburg-Essen's Institute for Work, Skills and Training (Institut Arbeit und Qualifikation/IAQ).

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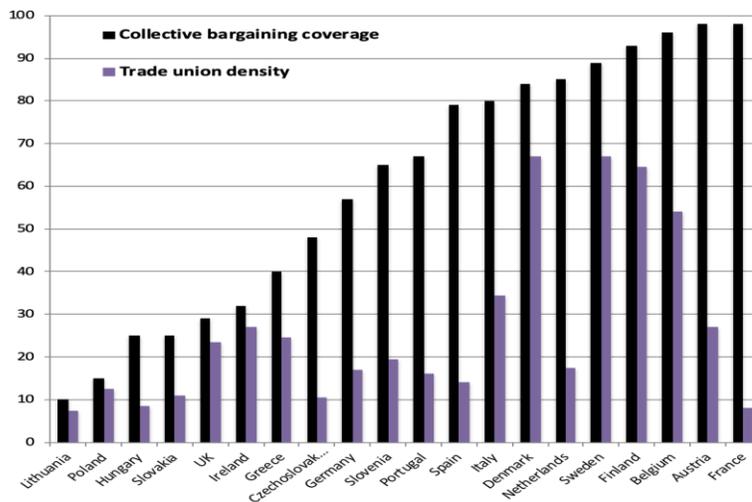
Introduction

The situation of the trade unions in Europe is complicated. Unemployment, precarious employment, the increase in social inequalities and the rise of right-wing nationalist parties pose serious challenges for them in most countries. It is true that their possible courses of action at national level have evolved very differently in the wake of the crisis management policies adopted within the EU since 2008, so that many of them must have gained the impression that they are battling in different worlds. However, in this increasingly disjointed European trade union landscape, there are at the same time some very striking transnational challenges. One of the most important concerns collective bargaining systems. This crucial basis of trade unions' institutional power is at increasing risk of being hollowed out and being driven into a precarious state of dependency on changes of political direction. Consequently, there is a need to underpin the unions' institutional power by intensifying efforts to strengthen their organisational and societal power in order to stabilise the triad of trade unions, collective bargaining system and state specific to each country.¹

Just how fragile this triangle has become in many EU member states can be shown by a comparison of trade union density with the share of employees working in an establishment covered by a collective agreement ([Figure 1](#)).

*Figure 1: Coverage by collective agreement and trade union density in selected EU member states (as a % of all dependent employees) **

¹ The country analyses on which this assessment and the following observations and deliberations are based can be found in Lehndorff et al. (2018). On the concept of trade union power resources cf., among others, Gumbrell-McCormick/Hyman (2013) and Schmalz et al. (2018).



* Data on coverage by collective agreement from 2013; data on trade union density from 2015/2016 except for Greece (2013) and Poland (2014).

Source: OECD / ILO (ICTWSS Database)

This comparison reveals a possibly surprising discrepancy in a number of countries. The relative stability of the collective bargaining systems compared with the rate of union density, which has fallen considerably in most countries, is linked to a large extent to the design of the collective bargaining systems. The entire structure is attached to just a few anchor points. One of them is the so-called favourability principle: employers bound by collective agreements do not have the right to enter into agreements with workforce representatives in which the conditions for employees are less favourable than those laid down in the relevant national or industry-level agreement. If the favourability principle is abolished in labour law, the rate of coverage by collective agreements may initially remain unchanged but the collective bargaining system may erode from within. The second anchor point in many countries is the practice of declaring collective agreements generally applicable (extension mechanism); this may be done either by the government or virtually automatically through labour legislation. The starkest example of the importance of this anchor point is France, where the rate of union density is one of the lowest in the EU but the rate of coverage by collective agreements is one of the highest (cf. Pernot 2018).

This discrepancy makes two things clear. On the one hand, it shows how fundamentally important the state guarantees for the collective bargaining systems are, particularly the practice of extending collective agreements. On the other hand, however, it indicates how dependent the unions' institutional influence can be on the benevolence of governments when it is not underpinned by other power resources, such as their organisational power, their leverage in the labour market



(due to low unemployment or the certain occupational groups' potential for exerting targeted pressure) and, last but not least, the political power generated by their capacity for extra-parliamentary mobilisation and the weight they carry in the political sphere. It is this vulnerability that became glaringly obvious in the past decade, particularly at the peak of the euro crisis – now only seemingly resolved – and especially in the Southern European countries.

In what follows, I draw on the examples of Greece, Spain and Italy to give, firstly, a summary of three of the particularly extensive attacks on the collective bargaining systems and to show the different effects they have had in each of these countries. This summary shows the possibilities the trade unions have exploited in order to defend their institutional power resources as well as how limited the effects of such efforts can be. On the basis of these experiences, I conclude by putting forward some proposals for strengthening collective bargaining systems from the EU level which, in view of the startling uncertainty and disunity among the EU elites, may be easier to push through than was the case just a few years ago.

An Attack on the Collective Bargaining Systems

The coordination of economic policies across the EU takes place within the framework of the so-called “European Semester” – a process that involves analyses of national budget and economic policies by the EU Commission and, inevitably, gives rise to disputes about the infringement of agreed “rules”. These latter are based on the principles set out in the Maastricht and Lisbon Treaties and the Stability and Growth Pact and were further strengthened during the euro crisis. There are two priority objectives. The first is to reduce public debt, the second to strengthen international competitiveness, with a particular emphasis on low labour costs and “flexible” labour standards.

With regard to the collective bargaining systems, this second priority was spelled out by the Directorate-General for Economic and Financial Affairs in its strategy of “adjusting wages more closely to the economic conditions at establishment level” it is explicitly geared to “an overall reduction of the wage-setting power of trade unions”. To that end, the following so-called “structural reforms” of collective bargaining systems were declared to be urgent: reduction of coverage by collective agreements, reduction in the practice of (automatically) extending collective agreements, decentralisation of the collective bargaining system, e.g. by abolishing or restricting the favourability principle, introduction or extension of the possibilities for diverging at company level from industry-wide collective agreements and/or for negotiating company agreements, and cuts of statutory or collectively agreed minimum wages (European Commission, 2012: iii f., 51, 103 f.). This approach was adopted with particular emphasis in those countries



under the diktat of the EC-ECB-IMF troika or subjected to closer supervision by the EU Commission and the ECB as they attempted to weaken or even virtually destroy their collective bargaining systems.²

That we are indeed dealing with a blueprint here is shown by the spotlight turned on the legal so-called “reforms” of collective bargaining systems introduced between 2010 and 2012 in the analyses of three Mediterranean countries contained in our edited volume (Lehndorff/Dribbusch/Schulten 2018). In *Greece*, the favourability principle was abolished and the possibility created of concluding agreements with non-union workforce representatives in small firms. Once the term of a collective agreement has expired the agreement itself becomes null and void after three months. The previous widespread practice of extending collective agreements was made legally more difficult and virtually stopped. The national minimum wage was no longer to be set through collective bargaining but by the government (whereupon it was reduced by 22%). In *Italy*, company agreements can undercut the labour standards agreed at industry level if they have been signed by a majority of the representative trade unions in the company (which would indirectly terminate the practice of automatically extending collective agreements, hitherto guaranteed by judgments establishing a principle in labour law). In *Spain*, employers have been given the option of withdrawing from a collective agreement for economic reasons. Collective agreements that are not renewed become null and void after a year. Company agreements take precedence over industry-level agreements and can undercut them (here too the “erga omnes” principle of almost automatically extending collective agreements is quashed).

Even though deregulation policy everywhere adhered to the same blueprint, its immediate effects were very diverse.

...With Limited Effects in Some Cases

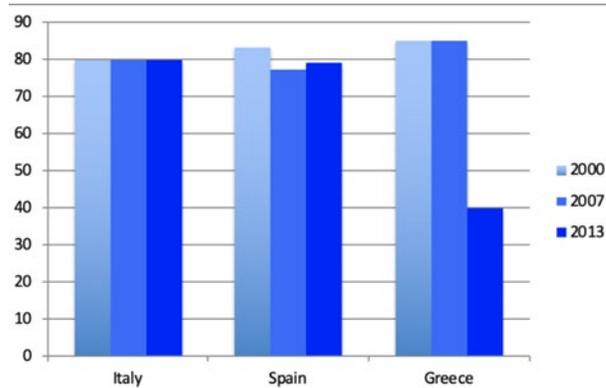
The differences leap to the eye when the evolution of coverage by collective agreements is considered (Figure 2). In Italy and Spain, the share of employees working in companies bound by collective agreements was just as high following deregulation as it had been prior to the crisis, while in Greece there was a dramatic drop.³ How is this to be explained?

² For analyses of this policy cf. van Gyes/Schulten (2015) and Lehndorff (2015).

³ It should be noted that in all three countries unemployment in 2013 was significantly higher than in 2007. When—as was obviously the case in Spain—job losses were greater than average in the minority



Figure 2: Coverage by collective agreements before and after deregulation *



* As a % of all dependent employees in companies covered by general or industry-level collective agreements. Note: ILO estimates of coverage by collective agreement in Greece in 2014/2015 total a mere 10% (Koukiadaki/Grimshaw 2016: 75).

Source: ILO/ICTWSS

Let us turn first to *Greece*. Since the 1990s, the country's collective bargaining system had been resting on a small number of pillars (cf. Karamessini 2015), namely trade union membership and bargaining power in a small number of sectors (e.g. public utilities), the practice of extending collective agreements and the setting of minimum standards through the negotiation of a national minimum wage, which the government then turned into the statutory minimum wage. The leadership of the trade union umbrella association for the private sector was firmly ensconced in this setting and relied on the system continuing to function as it always had, not least because of its close ties with the conservative and social democratic parties. Unlike in other countries, trade union revitalisation initiatives were not regarded as necessary and young members were rare birds indeed. What then happened is summarised by Koukiadaki et al. (2016: 79 f.) as follows: "when state support in the form of extension mechanisms and the favourability principle was withdrawn, unions were not able to draw on other resources to rebalance the structure of bargaining". And Viatzoglou (2018: 129) encapsulates the situation pithily as follows: "employers no longer need trade unions to secure labour peace". As a result, 2013 saw a regular upsurge of company agreements below sector level, most of which were concluded with non-trade union representatives, while the system of industry-level collective agreements practically collapsed. Only after the Syriza-led government had announced in the summer of 2018 that it intended to re-establish the collective bargaining system following the end of the third troika memorandum and to restore

of firms not covered by collective agreements, then the rate of coverage could, in purely statistical terms, actually rise slightly.



the practice of extending collective agreements did collective bargaining recover somewhat (Bosch 2018). The newly elected right-wing government has already announced that it will restrict the favourability principle again and allow firms in financial difficulties to withdraw from industry-level collective agreements.

In *Spain*, on the other hand, both (!) of the parties to collective bargaining demonstrated a pronounced capacity for inertia or resilience. Before the crisis, particularly in larger firms the practice of conducting company-level negotiations had led to the modest minimum standards negotiated at industry level being exceeded, not undercut (cf. Banyuls/Recio 2017). The deregulation of the collective bargaining system by the Rajoy government in 2012 did little to change that. In some sectors, indeed, bargaining was revived as part of deliberate bilateral efforts to preserve the collective bargaining system, while company agreements undercutting the collectively agreed minimum standards tended to be the exception. In the manufacturing sector at least, the employers had no interest in opening the gates to wage dumping below the sector's already low minimum standards. Koukiadaki et al. (2016: 111) describe the approach adopted by the parties to negotiations at both industry and company level as "process-focused concession bargaining". The objective of the trade unions in particular is said to have been "to maintain and conclude collective agreements wherever possible, even if the general conditions for doing so had deteriorated". As a result of this process, both collectively agreed and actual incomes declined, it is true, but the structure of the collective bargaining system remained largely intact in practice despite the legal deregulations. It has been eroded by concession bargaining, but can be activated again if or when economic conditions improve.

The current left-wing coalition minority government, whose socialist predecessor already increased the minimum wage and revitalised tripartite agreements at national level, has declared its intention of reversing the legal dismantling of the collective bargaining system. However, some observers do not exclude the possibility that at least parts of the leadership of the two major trade unions might once again allow revitalisation initiatives to fall by the wayside while waiting hopefully for such improvements to materialise (cf. Vincent 2017; Köhler/Calleja Jiménez 2018).

Developments in *Italy* were particularly unusual and instructive (cf. Leonardi 2018). As early as 2009, the second- and third-largest trade unions had already concluded a framework agreement with the employers' association – to the acclaim of the Berlusconi government — that was intended to facilitate the decentralisation of collective bargaining and, under certain conditions, to open the gate to firm-level derogations from the regional collective agreements (abolition of the favourability principle). The largest union (CGIL) was to be isolated but it did not cave in. It launched a campaign against this agreement and brought a number of actions



before the labour courts. This led two years later to a new agreement that restored the favourability principle with less significant restrictions and fewer detailed definitions. After some internal debates and arguments, it was signed by the CGIL. This prompted the Berlusconi government, now in its dying days, to enact legislation shortly afterwards abolishing the favourability principle – absolutely in accordance with the admonitory letter that it had received in August 2011 from the ECB (cf. Simonazzi 2015). In response, however, the employers' associations and trade unions strengthened the agreement they had reached earlier. Leonardi (2018: 103) quotes a leading CGIL official as saying: "I've spent my life negotiating the enforcement of the law and now I find myself having to negotiate against the law, or act as if it didn't exist".

For all their differences, these three Southern European cases show how rickety the supports on which the widespread impact of the collective bargaining systems rests can be. The problem is that the state certainly bears a great responsibility for "strengthening the negotiating position of the weaker side of the labour market, i.e. employees and their trade unions" (Bosch 2019). Yet in a number of countries, the trade unions now lack the strength to force the state into assuming this responsibility if it wishes to shirk it. Consequently, more and more collective systems are becoming dependent on government decisions and political circumstances. How might trade unions deal with this dependency?

Collective Bargaining: Dependent on the Government or Should the State be Forced into Assuming Responsibility?

The collective bargaining systems' dependency on the state has been reinforced by the euro crisis and the neoliberal policies that have further aggravated it. This has left the unions vulnerable to falling headlong into a precarious situation. If they rely primarily on their traditional political allies in the government, as they did in Greece, they are exposed – virtually without defence – to a change of political direction. True, there were initially many strikes and massive demonstrations; understandably, however, exhaustion soon set in and where the struggle continued, in workplaces and social initiatives, the trade union leaders were often regarded as part of the establishment. There was no discernable interest on the part of the trade union umbrella association in preparing jointly with the Syriza-led government for the time after the end of the troika diktat; rather, it adopted a wait-and-see approach that distanced it very much from the government but made no detectable effort to tackle the structural weaknesses in its own organisation that had become evident long before the crisis. As a result, the trade union leadership has also been ill prepared to meet future challenges which may pop up under the new right-wing government.



In Spain too, the unions had “neglected to maintain and develop independent sources of union power” in the years before the crisis, while being “overconfident about their growing institutional power” (Köhler/Calleja Jiménez 2018: 70). And they too initially protested against government policy with general strikes and mass demonstrations and then had to face up to the fact that such tactics soon reach their limits. And as far as the simultaneously burgeoning Occupy movement was concerned, most of the trade unions were regarded as part of the establishment. What then emerged was a balancing act – which certainly gave rise to disputes within the union movement – between, on the one hand, concession bargaining with the aim of maintaining wage structures and, on the other, attempts to revitalise the unions.

One of the most important innovations was the public service unions’ contribution to the partially successful citizens’ movements against privatisation and cutbacks in the social services, which were sustained by a broad network of civil society organisations. The unions’ collaboration with the women’s movement took a similar course on the occasion of the national days of action on 8 March 2018 and 2019: “the increased presence of women in the trade unions is a valid asset for establishing solid cooperation with feminist groups in terms of broadening the social base and political reputation of trade unions» (ibid., p. 81). At the same time, a number of grass-roots strike movements emerged at local level, some with the active involvement of plant-level union branches, others independently of the large trade union federations, which tended to be regarded as “toothless”. Fernández Rodríguez et al. (2019: 579) consider these contradictory trends as a “curious form of historical irony in which industrial relations finds itself between the vestiges of a coordinated model, on one hand, and a more social or mobilising model, on the other”, which has “to some extent politicised collective bargaining”.

Last but not least, the Italian example best highlights the possibilities for active trade union resistance. The mobilisation led by the CGIL was crucial to the survival of the collective bargaining system. The CGIL is still one of the strongest trade unions in Europe and the density rate for all Italian trade unions taken together has remained more or less unchanged over the last 20 years at almost one third of all dependent employees.⁴ Furthermore, the CGIL has been involved in various aspects of trade union revitalisation for years, from recruitment drives among young, precarious employees to a major campaign for a thoroughgoing reform of Italian

⁴ The reference here is to the so-called net union density rate, in which the unemployed and pensioners, a particularly high share of whom are trade union members in Italy, are not counted. The net union density rate in Italy is almost twice as high as in Germany and is to date one of the highest and most stable in Europe.



labour law. All this meant that the existing collective bargaining system could be defended against attacks by the state.

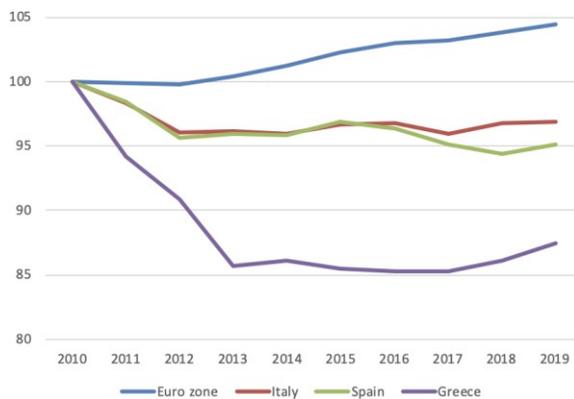
And yet what it has been possible ultimately to achieve in practical terms with this collective bargaining system is limited.

Sociopolitical Autonomy

To stay with the case of Italy, Salvo Leonardi (2018: 111) comes to the conclusion that trade unionism in this country has been “resilient” and “capable of resisting the onslaught of the crisis”, but he also points to the “gap between the power resources Italian trade unions can still formally rely on – members, financial resources, bargaining coverage, ability to mobilise—and the results they have been able to achieve over the past 25 years. Results have been poor in the key areas of wage dynamics, employment rate, workers’ participation, universalism in social protection, lifelong learning, gender issues and work–life balance, all indicators in respect of which the Italian workforce is at the bottom in Europe.”

It stands to reason that, in the light of such limited “structural”, i.e. labour market-based power resources, the practical opportunities for realising their policy objectives are also limited, even for relatively strong trade unions. This is reflected, for example, in the evolution of real wages since 2010, which were only very slightly higher in Italy than in Spain, which suffered significantly higher unemployment and even greater neoliberal pressures (Figure 3).

Figure 3: Evolution of average real wages 2010-2019* (Italy, Spain, Greece and Euro zone)



* Private consumption deflator; 2019: EU Commission estimate Source: Ameco



In such circumstances, trade unions obviously have to extend their sphere of action and concern themselves with the entire labour market far beyond their core clientele and with the future of the economy as a whole. They must become independently active without continuing to place their trust in parties they have traditionally befriended but have become increasingly weak. In Italy, the decline of the left and – at least until recently – of the social democrats as well has created a political vacuum that is forcing the trade unions to act autonomously.

For Leonardi (2018: 98), the Italian trade unions are largely without partners in the party system and are suffering from “progressive marginalisation by the political system”. This is becoming a particularly pressing problem in Italy and other countries, where this political vacuum is being filled by the nationalist right. This is demonstrated by, among other things, the examples of Poland and Hungary (cf. Bernaciak 2018, Neumann and Tóth 2018). A representative survey is telling here in which participants in large-scale social protests of recent years were asked which party they inclined towards. In Portugal and Spain a clear majority indicated they would vote for left-leaning parties, while in Poland and Hungary the majority declared their sympathy for right-wing parties (Campos Lima/Artiles 2018).

As a consequence, it is fair to assume the trade unions’ traditional core activities and even more broadly based social protest will not be sufficient to lessen the threats posed by the nationalist right. In short: *The trade unions have no other option than to make considerably greater efforts to become independent socio-political actors.*

Of course, socio-political independence does not mean that trade unions could or should replace political parties (Deppe 2012: 53). However, it is becoming increasingly essential for them to be able to set the socio-political agenda if they are to be able to conduct routine union business, such as the defence and improvement of working and employment conditions, with any prospect of success.

The implications for collective bargaining systems are twofold. On the one hand, the unions need to strengthen their own capabilities in order to be able to exert greater societal pressure on the state and force it to assume its responsibility to protect and strengthen inclusive collective bargaining systems with the broadest possible impact. On the other hand, they need to take advantage of the leeway thus obtained in order to adopt a more aggressive policy approach in collective bargaining. This could also be regarded as an attempt to establish a win-win situation that would significantly stabilise the triad of trade unions, collective bargaining system and state.

A mutual strengthening of this kind could also be promoted at EU level to good effect, particularly because many of the destructive forays against collective bargaining have emanated from or been supported by the EU Commission. This would create an opportunity to establish toeholds for a countervailing social power



within the hitherto dominant EU economic policy, which has virtually acquired constitutional status.

Planting a Social Foreign Body in the European Semester

In the debate on wages policy within the EU's economic governance framework, Schulten and Müller (2017: 48) have highlighted the significance of two reform projects that could strengthen national wages policies and the collective bargaining institutions through which they are implemented. They are, firstly, a European minimum wage policy (on the respective levels of national living wages) and, secondly, a political strengthening of collective bargaining systems through the setting of EU-wide targets for a high rate of coverage by collective agreement, to be achieved in particular through the greater use of extension mechanisms. As they suggest, the European Semester, with its analyses and recommendations for the individual EU member states could constitute the political framework for the implementation of both projects.

Now of course there is, as the authors point out, "thoroughly justified scepticism about any reorientation of European economic governance". And indeed any thought of pushing through fundamental progressive reforms in the foreseeable future must be regarded as unrealistic (Seikel/Truger 2019). This is why I regard proposals for selectively "extending" the European Semester, such as those highlighted by Schulten and Müller, as all the more interesting. There are two reasons for this.

Firstly, they are issues around which campaigns can be organised. For all their difficulties, the European trade unions – frequently prompted by their industry associations at EU level – have been able to acquire significant experience with relatively effective Europe-wide campaigns (such as that against the so-called Bolkestein Directive on the "liberalisation" of services, the mass movement against the neoliberal free trade agreement (TTIP), the European citizens' initiative against water privatisation and, finally, the transnational series of strikes at Ryanair that were also effective as good publicity). In some cases, a broad spectrum of social actors in a number of countries were encouraged to negotiate jointly with the trade unions. This could be further encouraged by linking up with other initiatives. Thus incorporating binding targets for reducing the gender pay gap into the European Semester would impart additional momentum to the drive for a high level of coverage by collective agreement. The same applies to the proposal to make compliance with collectively agreed standards a condition for public procurement at EU level (Müller et al 2019: 664). This proposal also raises an issue around which a campaign could be organised. Implementation of it would give the authorities at



regional and municipal level greater scope to take action. It would constitute a significant shift of emphasis in the unclear and contradictory case law at EU level and make an important contribution to strengthening the collective bargaining systems (on this question cf. Jaehrling et al. 2018).

And secondly, these proposals are in effect intended to plant a foreign body in the European Semester. Even relatively small shifts of emphasis within EU economic policy in favour of the protection or strengthening of social standards are not likely to be achievable unless more and more cause for conflict is built into the process itself. Basic workers' rights, such as a gender-equitable collective bargaining system covering a broad spectrum of employees that is supported by a minimum wage on which one can live, are obvious pegs on which such conflicts could be hung. This could become germane to our purpose provided that such elements do not simply remain non-binding add-ons in the European Semester, as is the case with the "social pillar" proposed by the previous EU Commission (and is also evident in the fact that country-specific recommendations continue to press for deregulation of the collective bargaining systems; cf. Müller et al. 2019). They would have to be made equally as binding as the core elements of the annual monitoring process. In view of the uncertainty and disunity among the EU elites, which has become even more evident since the European elections, this is something that is perhaps more feasible than it was a few years ago.

If this is made a matter for trade union cooperation at EU level, then the outcome might be similar to what happened in the trade union campaigns in Italy and Spain already mentioned above. It is the linking of members' interests with broader societal concerns, the combination of core trade union activities with socio-political agenda setting and the mobilisation of unions' own powers in combination with those of other societal actors that are the core elements of trade union revitalisation. Depending on how successful trade unions acting independently to set the socio-political agenda at both European and member state levels are in forcing the state to take its social responsibilities more seriously, they will be able to take advantage of the room for manoeuvre they create at both levels in order to pursue a more aggressive collective bargaining policy.

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