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# **DIALOGUE FOR ADVANCING SOCIAL EUROPE - DIADSE (VS/2014/0530)**

(Funded by the European Commission - Industrial Relations  
and Social Dialogue Program)

## **Overview Report DIADSE**

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**DIALOGUE FOR ADVANCING SOCIAL EUROPE, DIADSE –  
(Funded by the European Commission - Industrial Relations and Social  
Dialogue Program, VP/2014/004 - VS/2013/0037).**

**Project Overview Report**

**‘Clustering Labour Market Reforms and Social Dialogue in Nine EU  
Countries: Comparing Responses to the Economic Crisis.’**

(2016)

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# 1 Introduction

The main questions addressed in this overview report are: how has the social dimension of Europe been affected by the reaction to the financial and economic crisis since 2008? and how might the EU social model be reconstructed and advanced through Social Dialogue (hereafter also: SD)? In order to answer these two crucial questions the national country reports of the DIADSE project have been summarised and compared. These country reports have covered all the following issues:

- (a) What has been the involvement of social partners (SP's) in the reforms in the field of labour and social security?
- (b) What have been the consequences for collective bargaining systems and Social Dialogue?
- (c) What have been the effects of the reform measures?
- (d) How may SD be advanced?

## 1.1 Introduction

This report presents the comparative findings from research carried out within the international project 'DIADSE – Dialogue for Advancing Social Europe'. This project is funded by the European Commission DG Employment, Social Affairs and Inclusion, Social Dialogue, Industrial Relations. Its main aims are to carry out a comparative analysis of labour law reforms and social dialogue; examining the initiatives in nine EU Member State regarding structural measures reforming the labour market; investigating how the social dimension of Europe has been affected by the latest socio-economic adjustments and how the EU social model might be re-constructed and advanced through social dialogue.

To explore the latest labour market legislation and the current state of employment protection legislation and social dialogue in the investigated EU Member States, the research group members have examined developments in the Netherlands, Belgium, Germany, France, Ireland, Poland, Hungary, Spain and Portugal with regard to macroeconomic and fiscal policies, employment, social dialogue, industrial relations, and labour law reforms. When examining the reforms undertaken in the different countries, we have in particular focused attention on the themes of enhanced employability, reduced labour market segmentation, and flexibility in the labour force. The main focus of this research is on the effects of the socio-economic adjustments undertaken in the period of 2008 to 2015 on social law and social dialogue and the involvement of social partners in designing and implementing reforms in the nine EU Member States.

## 1.2 Research questions, design and methodology of the project

The main themes explored during the DIADSE project research were: How has the social dimension of Europe been affected by the latest socio-economic adjustments to the economic crisis? To what extent and in what way have policies in member states been directed at the objectives of enhancing flexibility and employability, reducing labour market segmentation, and maintaining the quality of work and employment protection? What has been the effect of

policy reforms on social partnership and industrial relations? What has been the involvement of social partners in structural reforms including collective bargaining systems and labour protection legislation? What have been the effects and to what extent have the aims of these reforms been achieved? How to advance the contribution of social dialogue to the EU social model?

The aims of this research are:

- Shed light on the developments in several EU Member States with regard to social dialogue and labour law;
- Describe the structural reforms started in the examined countries in the period of 2008-2015;
- Evaluation of the effects of the socio-economic adjustments undertaken in this period;
- Examine the role of social partners in designing and implementing the addressed reforms.

The project follows a mixed-method approach. The methodology of this project is interdisciplinary, involving a legal analysis of the reforms of employment protection legislation in the relevant EU Member States since the beginning of the economic crisis in 2008 and a qualitative research based on interviews with social partners and policy makers at both national and EU level on the role of social dialogue in the reform of labour market institutions, social protection systems and industrial relations in these EU Member States. The DIADSE project team have provided:

- analyses based on desk research on available literature, current legislation, collective agreements, reports published by national authorities or independent bodies (ministries of employment, economic and social councils, observatories, etcetera), and relevant case law at several levels;
- limited quantitative analysis based on publicly available labour market data, from official sources, Eurostat, national statistical offices and ministries;
- qualitative research based on semi/structured interviews with representatives from the social partners, policy makers, legal practitioners and experts.

The research is designed to setting the context for explaining the reforms. Identifying the socio-political factors triggering the reforms and analysing the positions of the social partners or other socio-economic organisations in the reform processes (involvement - consultation - opposition) are key issues to evaluate if the labour market effects of the reforms are the expected and targeted results or not. Moreover, the position of several stakeholders and, in particular, of social partners in the delineation of the actual structural measures adopted provides interesting insights in the trends to legitimization and public acceptance or rejection of the reforms.

### 1.3 Selection and classification of the nine countries

Visser (2008)<sup>1</sup> has provided us with a helpful categorization of industrial relations systems, mainly based on four factors: the organisational density, the collective bargaining coverage, the fragmentation of actor organisations, and the level of interaction between social partners and the state. In terms of the typology of Visser the industrial relations systems in three of the countries selected in this project may be classified as ‘social partnership’ (BE, DE and NL), three others as ‘state-centred’ (ES, FR, PT), one should according to Visser’s scheme be classified as ‘liberal’ (IE) and two as ‘mixed or transitional’ (HU, PO). If we look at industrial relations in Ireland between the 1990’s and 2008, described in terms of ‘social partnership’, the classification of the Irish as a ‘liberal’ industrial relations system seems somewhat problematic.<sup>2</sup>

Relevant to the current project is a second categorization that cuts through the first one, regarding the level of external pressure on countries following from EU surveillance of fiscal budget shortages. In this respect a distinction can be made between hardly any pressure (DE, HU, PO), medium level pressure (BE, NL)), a somewhat higher pressure resulting from explicit recommendations by the European Commission (ES, FR), and high pressure resulting from a country’s need of financial support, more in particular from requirements of the European Central Bank or of the ‘Troika’ (IE, PT). Combining these categorizations, we propose to use, in this report, a threefold one:

- (SP) **Social partnership:** Belgium (BE), Germany (DE) and the Netherlands (NL). We note that the position of Germany differs in that it has been hit by the crisis but had hardly any fiscal problems, while Belgium and the Netherlands have had to deal with a medium level pressure to realize austerity measures because of a threat of budget deficits exceeding the EU criteria;
- (SC) **State-centred plus Ireland:** France (FR), Spain (ES), Portugal (PT) as well as Ireland. In this category France and Spain constitute a sub-category in that they had not to deal directly with instructions from the ECB or the ‘Troika’. Ireland is, as mentioned above, somewhat hard to classify, but has been added to this category because of the existence of an initially more developed system of ‘social partnership’ than is common in ‘liberal’ countries and a somewhat higher level of interaction of SP’s with the state, though not high enough to include it in the first category;
- (TI) **Transitional:** Hungary (HU) and Poland (PO) characterized by a relatively low level of union density and a (temporary) breakdown of social dialogue.

A further distinction can be made in the *time period* after the crisis, by dividing it in two, with a break somewhere around the year 2011. In most countries such a break can be observed, although the exact timing may differ.<sup>3</sup> The reasons to mark the break may differ: in a number

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<sup>1</sup> Included in European Commission (2008): 49.

<sup>2</sup> DIADSE Country Report on Ireland, p. 5.

<sup>3</sup> In Belgium: December 2011 (start of federal government-Di Rupo I); in Hungary: May 2010 (new conservative government); in Ireland by 1 December 2010 (first Memorandum of Understanding with the Troika); in Poland: 2011 (refusal of the government to approve of the minimum wage negotiated by social partners effectively ending tripartite dialogue); in Portugal by 17 May 2011 (Memorandum of Understanding with the Troika),

of countries it may be characterized as the transition from a hope for a transient demand crisis to the realization that the crisis were deeper and might continue for some while, in some countries it is acute financial problems and the dependency on supranational institutions that marks the start of a new period in which public expenditure to compensate consequences of the crisis fall prey to a rigid austerity policy and/or there is a political turn that initiates a new period of social-economic policies and their consequences for social dialogue.

The following chapters are based on a comparison of the results of the nine national studies, as they have been reported in the country reports. They are therefore partly based on quantitative data, as comprised in these reports, and partly on evaluations of the consequences of the crisis and of reform measures, as given by the respondents during the interviews. The final chapter includes some references to data and evaluations to be found in the research literature regarding the field.

#### **1.4 Socio-political context for labour law reforms**

A trend common to all of the EU countries examined is that labour and social regulation have been identified by politicians and policy makers as a major cause of the rigidities in the labour market and of high-rising unemployment rates. Many so-called ‘structural reforms’ amending labour law of several EU Member States have been passed under pressures from international institutions. The “mantras” of flexi-security and austerity have inspired and have been mentioned in the preambles/motivations of many new labour law texts all over the EU. In several cases, the renewed legislations have profoundly altered existing domestic industrial relations structures. In the process of adopting these reforms, ideological approaches have often been left aside (ie. the 2010 labour law reform in Spain and the liberal reform adopted in 2016 in France, both diminishing employment protection legislation and undertaken by socialists governments). The prevailing paradigm inspiring most reforms in the social field has been ‘regulating the labour market *most efficiently*’. Due to the harsh economic context in which these reforms were passed, they pursue primarily labour market efficiency objectives, while fundamental rights approaches are frequently ignored. Moreover, the function of counterbalancing the unequal bargaining power and the protection of the vulnerable party of the employment contract (the employee), which traditionally informed labour legislation in continental European countries, has suffered a diminishing relevance in the legal discourse. The legal changes introduced by the reforms have been labelled as “economic efficiency and labour market flexibility” drivers, while the labour rights as fundamental rights approach has been broadly ignored, when adopting and implementing them.

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although the ‘fiscal stage’ had in fact already started with the ‘PEC I’ measures of March 2010; in Spain: June 2011 (pressure of ECB leading to unilateral Decree reforming the collective bargaining system).

## 2. Clustering Labour Market Reforms

This report includes a clustering of countries based on the socio-political factors triggering the reforms, drawing a distinction from imposed structural adjustments in bailed-out States (IR, PT); changes responding to enhanced recommendations by the EU institutions (SP, FR); adaptations of labour legislation in 'social partnership' countries (DE, NL, BE), and transformations of employment law and rebuilding of industrial relations in Central and Eastern EU Member States (PL, HU).

### 2.1 Structural reforms in the shadow of the Troika: IR, PT

In this category we included the 'bailed out' countries, Ireland and Portugal. In the reform packages adopted in both countries the governments accepted to implement structural reforms following the terms of the IMF/EU Programmes of Financial support applicable to these two Member States. The interviews have confirmed that the Memorandums of Understanding, agreed with the European institutions, were setting the guidelines for labour market reforms that needed to be adopted. The social partners in these countries argue that, in their involvement in the reforms they have had no room for manoeuvre, that the terms of the legislative changes were mainly imposed on them. The priorities of the legislator were keeping up employment levels and stimulating economic growth. There was little room and lack of effective power for the social partners to influence the reform processes and to negotiate with macroeconomic level concerns that were dominating employment/labour market decision making.

#### 2.1.1 Ireland

In Ireland, since 1987, six successive national programmes of Social Partnership had been adopted by the social partners. Before the latest economic crisis, social partnership was seen by many as a significant factor in achieving a positive investment climate, near full employment, relatively low inflation, high growth levels, major reductions in the national debt, record low levels of industrial disputes and the creation of a stable labour relations environment. When the crisis burst out in 2008, social partnership quickly collapsed. As talks were under way between employers (both private and public) and the trade unions over a new national wage agreement, it became obvious that Ireland was facing an extremely tough economic crisis. Then, the government decided to guarantee the Irish bank system, covering extensively both customer deposits and the bank's own borrowings. The Financial Emergency Measures in the Public Interest Acts 2009 were quickly enacted providing for a pension levy and reductions in public sector salaries of between 5 and 15%.

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

Before the Troika recommendations to adopt several structural measures affecting the system of wages fixation, there were a range of sectoral wage mechanisms which had been



established under the Industrial Relations Act 1946 - Joint Labour Committees (JLC) and Registered Employment Agreements (REA) - which prescribed statutory minimum rates of pay in excess of the national minimum wage. These mechanisms operated in sectors such as agriculture, contract cleaning, catering, retail grocery, security, construction, and electrical contracting.

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

The Programme also sought to strengthen competition law enforcement to avoid sectoral exemptions. Accordingly, the Memorandum of Understanding required the government to ensure that no further exemptions to the "competition law framework" would be granted unless they were "entirely consistent" with the goals of the Programme and the needs of the economy. Consequently, the commitment given by the previous Government to amend the Competition Act 2002 to allow voice over actors and freelance journalists to exercise their right to engage in collective bargaining was vetoed by the Troika on the basis that, according to "settled EU case law", such self-employed individuals were "undertakings". Despite the current government's support for a Private Members Bill which will enable vulnerable self-employed workers, such as journalists, actors, and musicians, to engage in collective bargaining, that Bill, as currently drafted, appears to infringe Article 101 TFEU and that government amendments would be introduced to address the policy objectives of the Bill in a more targeted way consistent with EU competition law.

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

Following a general election in early 2011, a new government came to power and one of the first steps taken was to reverse the reduction in the national minimum hourly rate of pay. Section 22 of the Social Welfare and Pensions Act 2011 required the restoration of the rate to €6.65 which was achieved, following some discussion with the Troika, with effect from the 1st July 2011. The rate has now been increased to €9.15 with effect from the 1st January 2016.

Before any action could be taken to give effect to the independent review's recommendations on reforming the sectoral wage determination mechanisms, there were two interventions by the Courts dealing with this issue. In decisions delivered in July 2011 and May 2013 the High

Court and Supreme Court respectively, on applications by employers, declared as unconstitutional the relevant parts of the Industrial Relations Act 1946 establishing the two sectoral wage determination mechanisms.

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

Accompanying the collapse of the system of sectoral wage bargaining in 2009, the Social Partnership model lost trust and legitimacy to respond to the unfavourable economic situation. That is not to say that the social partners have lost their influence as lobby groups but it is acknowledged by all interviewees that, during the recession, there was little room for negotiation or discussion with macro fiscal concerns dominating employment/labour market decision making. Trade union interviewees conceded that their main goal during this period had been to keep their members in employment. Both acknowledged that it was hard to argue for a pay rise with zero percent inflation. Employer interviewees, however, welcomed increased bilateral discussions with government departments which enabled them to advise government "on how to create a more pro-business environment" in an efficient manner. However, neither the previous nor the current government has engaged with the trade unions as a social partner in any structured way.

Once Ireland left recession, the deficit in social dialogue has undoubtedly led to more conflictual relationships. To some extent this conflict has been institutionalised. One legacy of the previous government is the Low Pay Commission - a body established in July 2015. Its principal function is to examine the national minimum hourly rate of pay and to make recommendations as to whether, and if so by how much, that rate should be increased. In its most recent report, published in July 2016, the Commission recommended an increase in the national minimum hourly rate of pay of 1.1% to €9.25. Three members of the Commission, including two trade union representatives, considered this limited raise on the minimum wage insufficient. The trade union Minority Report went so far as to express the concern that wage competitive arguments predominate over the actual socio-economic effect of low pay on workers and that "parity of esteem" was not applied to those conflicting interests.

In June 2016, the Minister for Public Expenditure and Reform announced that the government had decided to agree the principle of a new structure for dialogue between representatives of employers and trade unions to be known as the Labour Employer Economic Forum (LEEF). The forum would discuss economic and social policies insofar as they affect employment and the workplace. Areas it might consider would be competitiveness, sustainable job creation, labour market supports and widening occupational pension coverage. However, the forum is not designed as a social partnership institution. The members would not discuss or determine wage levels or wage increases within the public or private sectors and the Workplace Relations Commission/Labour Court would remain the key dispute settling industrial relations institutions.

As Ireland emerges from recession and enters a period of growth, a new and inclusive mechanism is required to facilitate constructive social dialogue. From the interviews it can be deduced that a streamlined and more effective form of social dialogue would be a welcome and effective medium to mitigate industrial relations chaos and improve the workers' quality of life. The suggestion is developing a new form of social partnership derived from: an analysis of the old form of social partnership; a revision of the inefficiencies in this mechanism; a review of the changes in legislation and industrial relations issues in a post-recession Ireland; and the examination of international examples of best practice in social partnership. This further research would support the design of a new model of social partnership based on a participative co-design including inputs from the government, the trade unions and employer organisations. This would encourage social partner participation in this new mechanism furthering the ultimate goals of achieving relative industrial peace in an effective and fair labour market which functions through inclusive dialogue.

The main reforms recommended by the European Commission in Ireland related to the existence of bargaining systems for the set out of sectoral minimum wages that were seen as a distortion of the labour market function. No demands were made to impose general reductions in statutory employment rights, reflecting no doubt the lack of any rigidity in the Irish labour market caused thereby.<sup>4</sup>

### **2.1.2 Portugal**

Policies and orientations at the European level determined to a great extent the successive reform packages implemented in Portugal since 2008. In the last quarter of 2008, the Portuguese government adopted the Initiative to Strengthen Financial Stability with the aim of consolidating financial institutions. In January 2009, in line with the turn of the European response to the global crisis from a financial to an economic focus, the government launched the Initiative for Investment and Employment. The 'economic stage' of policy reform was replaced by the 'fiscal stage' in March 2010 with the Stability and Growth Programme, the so-called PEC I, followed by three new versions, the last of which would be rejected by the national parliament on 23 March 2011 leading to the fall of the Socialist Party (PS) government.

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<sup>4</sup> See A. Kerr, *DIADSE Policy Paper Ireland*, (2015).

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

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

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

Labour market and social policies in Portugal changed very significantly in 2011. The requirements of the Economic Adjustment Programme and the agenda of the centre-right coalition in office from 2011 until 2015 were to a large extent aligned with one another, and the publicly disseminated scenario of emergency and imminent bankruptcy of the state provided favourable conditions for the government to impose a continuous reduction of

labour costs both in the public and the private sectors. In other words, the new European Interventionism (Callan et al., 2011; Schulten and Müller, 2013) and the ‘politics of exception’ (Clauwaert and Schömann, 2012) were welcomed and pushed further by the centre-right government in Portugal.

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

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

In practice, the reforms favoured the institutional conditions for internal devaluation through wage depreciation and deregulation of social legislation (Degryse, 2012; Pochet and Degryse, 2013) while eroding the institutional foundations of inclusiveness in four ways: reducing employment protection; reducing unemployment benefits protection; undermining sector collective bargaining and collective agreements coverage; and limiting the effectiveness of minimum wage provisions. The changes in these four domains represented a reconfiguration of the Portuguese employment regime towards the liberal employment regime (Gallie, 2013; Campos Lima, 2015).<sup>5</sup>

## **2.2 Facing explicit EC-recommendations to adopt structural measures: the cases of Spain and France**

The case of Spain is quite peculiar as non-official bail out applies to this country but it has received substantial financial aid (specially for restructuring banking sector) from the EU. In this case, we could talk about ‘monitored structural reforms’ which has included, broad labour market legislation amendments, reduction of severance payment, decentralisation of collective bargaining, important reforms of social protection and social security systems. In the case study of France also pressures by the EU institutions to introduce more comprehensive structural reforms can be noticed. Both in France and Spain, labour and social regulation has been identified by politicians and policy makers as a major cause of the high unemployment rates. Even while no direct commands from the EU institutions have been imposed on these two countries, governments have closely followed the recommendations issued by the EU institutions - aiming to develop a flexicurity approach when dealing with amendments of

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<sup>5</sup> See M. Abrantes and M. Campos Lima, *DIADSE Policy Paper Portugal*, (2015).

legislation in the social field. The main policy approach informing the structural reforms has been the lifting of regulations which have been argued to produce rigidities on the labour market. In the French case, the reforms have been partially influenced by the European Commission's considerations that changes in social legislation were implemented too slowly and no sufficient progress was made in flexibilization of the French labour market. The stagnation of the rates of economic growth and the persisting relatively high unemployment rate were seen by the Commission as growing concerns (naming the country as "the malade from Europe").

### 2.2.1 Spain

In Spain, before 2008 the labour market was profoundly segmented and characterized by abuse of fixed-term contracts, rigidity to modify working conditions (including wage adjustments) and lack of coordination of collective bargaining processes. As a consequence, during the first years of the economic crisis, while unemployment was rising dramatically, real wages were still increasing. The strong impact of the economic crisis in Spain, the problems affecting the labour market (in particular the high unemployment level, with youth unemployment in maximum rates), and the lack of effective mechanisms of wage bargaining and internal flexibility, stimulated a discussion on the urgent need of a labour market reform.

In Spain, the intense economic crisis is a relevant factor in order to understand the failure of the tripartite social dialogue between the government, unions and business associations. During the analysed period, labour market reforms have been passed without the support of social partners, due to curtailment of labour rights introduced by the reforms. While the Socialist government attached more importance to social dialogue, the conservative government has paid little attention to it. It should be noted that while the 2010 and 2011 labour market reforms were preceded by negotiations between the social partners and the Socialist government. However, no form of social dialogue took place for the 2012 reform passed by the conservative government. Furthermore, the then government ignored the agreement reached by the social partners some weeks before the adoption of major labour law legal changes and approved a very aggressive reform instead (in the words of the Minister of Economics affairs).

In contrast, *bipartite* dialogue has been reinforced between unions and business associations since the adoption of the 2012 labour market reform. In fact, a main strategic response of the social partners to the failure of tripartite social dialogue has been to strengthen and develop bipartite social dialogue at all levels: sectoral and enterprise. Social partners have signed relevant agreements regarding the maximum period of collective agreements and wage moderation, among other issues. The 2012 Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 (AENC II) clearly represents these trends. In particular, this agreement seems to have produced some positive effects on collective bargaining coverage since it has encouraged social partners to renegotiate collective agreements. At enterprise level, though, serious doubts have risen as to the freedom of unions or work councils to negotiate the working conditions, as agreements (for example, on a reduction of wages) have sometimes been signed merely to avoid more dramatic consequences such as layoffs.

The opposition of the unions to the imposed labour law reforms, especially to the legislations adopted in 2012 and 2013, has increased the judicialization of the labour conflict. Not only have there been more general strikes over the period, but also a significant growth in litigation and collective disputes. In particular, unions have expressed their disagreement with the labour market reform, calling for general strikes, bringing judicial actions, and negotiating against the spirit of the labour market reform. Despite the increased number of strikes during the last period, the economic impact has not been particularly high in comparison with previous years. In 2012 the number of participants in collective actions increased (33.8%; the highest number since 2009). However, the economic impact of the actions decreased to 14.8% and strikes had shorter duration.

For decades, employment protection legislation and the duality of the labour market have been major concerns for policy-makers. High temporary rates and a wild volatility of employment have been explained by the costs-gap between permanent and temporary workers. International and EU institutions, as well as internal lobbying groups, have pressured successive governments to pass reforms in order to address this problem.

From the perspective of the social partners, even if there has been consensus on the need to fight the sharp labour market segmentation, the optimal strategy to tackle that problem remains controversial. While employers' associations aim to reduce labour costs (including redundancies costs, severance payments and procedural charges), the main objective of workers' representatives has been the maintenance of the protection of employees against unfair dismissal, and therefore, severance payment levels constitute a red line.

The labour market reform of 2010 (by a socialist government) tried to preserve the existing equilibrium. Therefore, it raised the cost of terminating temporary employees, but it facilitated redundancies and clarified the consultation procedure. In 2012, the new reform (under the conservative government) made a clear commitment to the reduction of judiciary control over redundancies, and unlawful dismissal and redundancy costs were reduced. Two general strikes followed the 2012 labour market reform.

These measures not only heightened tensions and hindered collective bargaining, but also led to an imbalance in labour relations and working conditions renegotiation. As currently redundancies are now easier to be carried out, worker representatives are frequently compelled to accept almost every internal flexibility measure proposed by the employer.

The impact of this reform on reducing the duality of the labour market has been quite limited. As soon as unemployment began to scale down, Spanish firms again began hiring temporary workers instead of permanent employees. From the employers' perspective, temporary work is still perceived as a useful flexibility tool. Obviously, lower costs for terminating permanent employment relationships could theoretically increase the use of open-ended contracts. Nevertheless it remains cheaper and easier to terminate temporary employment, while this option also reduces the strength and prerogatives of the workers' representatives.

Concerning collective bargaining, the social partners achieved a pre-agreement on the main points of the reform of the system at the end of 2011. Nevertheless, the 2012 labour law

reform was approved without paying much attention to that agreement of the social partners. The latter reform attempted to decentralize collective bargaining and to grant more power to employers at the bargaining process. From the perspective of unions this reform has undermined their position. The reform enhances the role of the company agreements, while the unions' strength has traditionally lied at the sectoral level of collective agreements.

The purpose of decentralization has been achieved to a certain extent, but not to the level desired by the government. Figures show that the number of employees covered by firm-level agreements has not risen dramatically. Decentralization has proven to be difficult in a country with so many small and medium size companies, most of which lack the necessary employee or union representatives to initiate a formal process of collective bargaining.

Regarding the effect of the reform on wages, they have decreased for the majority of the workforce, especially in the lower ranks of the labour market. Wages began to decrease in 2008 and in 2010. Nonetheless, internal devaluation is not a direct result of the 2012 Labour Reform. A more likely explanation relates to the high level of low-skilled workers and those in low-paid occupations. At company level, it has been very common to negotiate agreements in which workers agreed to work fewer hours with a corresponding reduction in pay in an effort to minimize labour shedding and preserve human capital. In return, employers promised to resort to layoffs only as an extreme measure, when all other possibilities (for example internal flexibility, training) have been exhausted. When it comes to opt-out agreements at the firm level (deviating from the sectoral agreed wages), statistics also show that they have not had a big impact on the structure of collective bargaining.

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

The desired effect of the latest labour market reform, as recognised by social partners, is not to encourage redundancies, but to avoid them by compelling workers' representatives to accept poorer working conditions. As redundancies constitute a credible threat, the alternative (e.g. lower salaries, more working hours) could be easily perceived as the best option. The effects on social dialogue are also clear, as the law gives more power - also because of the change in collective bargaining - to the traditionally considered "strong side" of the bargaining table: the employer.

Furthermore, the labour law reforms have got an strong impact on the working patterns in Spain. During the economic and financial crisis, part-time work has grown and become mainly involuntary. In Spain, two out of three part-time workers would like to have a full time job, one of the highest rates in the European Union. The number of small part-time jobs of temporary nature has increased exponentially, which has led to a growing phenomenon which legal experts named as 'accumulation of precariousness'.



Some judicial interpretations of the 2012 reform have also watered down the effects of the reform. For instance, the jurisprudence on the rule setting forth the end of the automatic continuation of collective agreements beyond their expiring date while they are re-negotiated. The controversial Supreme Court decision of December 2012 guarantees that employees continue to enjoy the same employment conditions (including wages, working hours, etc.) while a new collective agreement is being negotiated. Thus, the Court guarantees a floor of working conditions that allows unions to request improved conditions at the renewal of agreements.

The most serious drawback of the 2012 Reform (apart from some technical problems) is probably the lack of any consensus regarding it by the social partners. It was clearly an externally imposed reform (ECB, European Commission, IMF etc.), more than one that was internally-generated. The lack of social and political support explains the opposition to the Reform by the “progressive” association of judges immediately following its approval. This judicial opposition to the renewed labour law (or “judicial activism”, as it has been called by some experts) has served to deploy its effects in different aspects of the reform.

Regarding welfare state reforms, after an initial period (2008-2010) in which the Spanish government avoided plans to reduce public social expenditure, from 2010 cuts have affected the most important schemes of the statutory social security system. Social security reforms may be divided in two main types. On the one hand, retirement pension reform. On the other hand, unemployment benefits amendments.

Statutory retirement pensions rely heavily on public expenditure. Therefore, their sustainability is crucial for achieving the objective of healthy public finances, especially in the context of economic depression. A complete and systematic reform of old age pensions, divided in two main parts, has been adopted. The first reform period is marked by Law 27/2011. The main lines of the reform of public pensions were the outcome of a negotiation between the social partners and the then socialist government. The final result was an ambitious reform of the public pension system, increasing the retirement age from 65 to 67 years, the pension calculation period, and the number of years of contribution required to be entitled to a full pension. The second period began in 2013. This reform of the pension system was initiated by the new conservative government, which imposed various legal changes without negotiating them with the social partners. This new regulation makes access to early retirement more difficult and creates two different mechanisms that reduce public expenditure on pension over the middle and long-term: the annual revaluation of the pensions index (in force since 2014) and the sustainability factor (in force from 2019).

As for the unemployment system reform, it draws special attention to the reduction of the expenditure on unemployment subsidies, the promotion of part-time and self-employment, and strengthens control mechanisms of the unemployed.<sup>6</sup>

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<sup>6</sup> See J. R. Mercader Uguina, F. J. Gómez Abelleira, P. Gimeno Díaz de Atauri, A. B. Muñoz Ruiz, D. Pérez del Prado, *DIADSE Policy Paper Spain*, (2015).

### 2.2.2 France

The labour market in France has been relatively resilient in the face of the global financial crisis of 2008 and 2009 and the sovereign-debt crisis in 2011. On average, GDP declined slightly more in the rest of the Eurozone than in France. Unemployment rates have been rising in the eight year period under study. Between 2008 and 2009, there was a massive rise in unemployment to its highest level since the late 1990s. After stabilizing for a while, from 2011 a second wave of the crisis led the unemployment rate up to 10.4 per cent in 2013 and has remained stagnant since then.<sup>7</sup> While having been hit sooner by the economic crisis than most of the Eurozone countries, France was more efficient in limiting the output decline in 2010, and again in 2012 and 2013.

The French labour market tempered relatively well the initial impact of crisis compared with other EU neighbour countries. However, France has begun to lag behind other European economies in terms of its per capita GDP in the last decade. The main drivers of that change have been the low labour force participation of seniors and young people, as well as relatively high unemployment rates.

As regards the impact of the economic crisis, France's policy management during the crisis is widely recognized for its efficiency in cushioning the main effects of the crisis, both on output and the labour market. Indeed, France benefited from powerful automatic stabilizers (in particular Unemployment Insurance and poverty allowances, RSA). As a consequence, France has experienced only a moderate decline in output despite negative fiscal impulses and tight fiscal austerity during the examined period. (Coquet, 2015)

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

In France, in recent years, labour law has been identified by many policy makers as one of the major determinants of the high unemployment rates in the country. This idea has served as justification for the adoption of several structural reforms of labour protection legislation. The French administration was not compelled by the European institutions to adopt those reforms, as it has not received any financial direct aids from the EU. However, the French legislators and policy makers followed the recommendations issued by Brussels, which clearly reflected a labour market flexicurity approach. Examples of this trend are the Law on "secured employment", adopted on 14 June 2013, -following the signing of the national inter-

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<sup>7</sup> INSEE, January 2016, <<http://www.insee.fr/fr/themes/info-rapide.asp?id=14>>

professional agreement of 11 January 2013-; the 2015 Macron Law and the 2015 Law on Social Dialogue and Employment.

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

#### 1. Law to securing employment 2013

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

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

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

#### 2. Macron Law on Economic Growth and Activity 2015

The Law on Economic Growth and Activity, so-called “Macron bill”, was adopted on 6 August 2015. This bill comprises several measures on the labour law field, including

removing working time restrictions and a reduction in employment protection. The most relevant reforms in the social field are: amendment of the rules on employee's savings plans, Sunday and nightshift working hours, new redundancies procedures, and new rules on profit-sharing and employee share-ownership incentives.

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

The Macron law includes an attempt to reform the labour procedural law. In France, proceedings before the labour courts are lengthy and the time needed to arrive at a ruling is quite substantial. The Macron law introduces several improvements, namely to better train labour court judges; impose more stringent ethical obligations and overhaul the disciplinary procedure; shorten the timeframes and better regulate the various stages of the proceedings, - including from the conciliation stage-; provide that the labour court's adjudication panel should sit in small committed panels (one judge elected by employers and one by employees) and render their decision within a period of three months; consolidate proceedings when this is in the interest of good administration of justice, to adjudicate together cases pending before several labour courts within the same jurisdiction of a court of appeals; further encourage amicable proceedings, such as conventional mediation; and introduce the "défenseur syndical" (i.e., a union's legal defender) who could represent employees not only before labour courts but also before courts of appeals in labour disputes.

### 3- Law on social dialogue 2015

On the heels of the Macron Law, which aims to provide more flexibility to employers, the French government enacted the Rebsamen Law n°2015-994, dated 17 August 2015, on social dialogue and employment, reforming collective bargaining and employees' representation at the workplace. Thus, the so-called Rebsamen Law changed the criteria for which boards members representing the employees must be appointed in large public companies. This Law reforms the system of staff representation with the aim of improving performance in French companies. France has a complex system of employees' representation institutions at the workplace level (elected personnel representatives - IRP), directly elected by the entire workforce.

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

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

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

The main aim of the French government when adopting this legislation is to stimulate social dialogue in companies with fewer than 11 employees and eliminate the rigidities of staff representation rules. This Law introduces an obligation for companies with fewer than 11 employees to set forth a Joint Regional Inter-Professional Commissions ("CRPI"), consisting of members elected by employees' organisations and professional management bodies.

The Law also aims to simplify the process for consulting and informing the Works Council and reduce the frequency of the meetings, which may be adapted by a company agreement signed with the trade unions. This Law has further strengthened the protection of trade union delegates and employee representatives, whose time off for duties associated with their representative role amounts to 30 percent or more of their contractual hours.

The Rebsamen Law has also introduced new measures related to overtime, fixed-term contracts, arduous work and prevention of burnout. These measures make the renewal and duration of temporary agency work assignments, as well as fixed-term contracts, more flexible. Furthermore, this Act allows to making changes to the definition of jobs or work situations that may be consider 'arduous labour' via sectoral agreements.

#### 4. Other legal amendments of labour law legislation

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

The regulatory framework for the apprenticeship contract and internships has also been recently reformed. By the adoption of Decree No. 2014-1420, 27 November 2014, related to the supervision of training periods in professional environments and of internships, the French government implements Law No. 2014-788 of 10 July 2014, promoting the development, internship supervision, and improvement of internships. This Decree pursues three main objectives: integration of interns in training courses, supervision to limit abuses, and improvement of internship quality and of the status of interns by registering them in a special personal register.

Another vulnerable group which has received the attention of the employment policy reforms in France are persons with disabilities. The Decree No. 2014-1386 dealing with disability quotas was adopted on 20 November 2014. This Decree implements the obligation to employ disabled workers based on Article L.5212-18 of the Labour Code applicable to companies with more than 20 employees. According to the Decree, for collective agreements concluded after 1 January 2015, the annual or multi-annual employment program must contain a plan for hiring persons with disability, a company retention plan in case of collective dismissals, and a plan for integration and training persons with disability.

Among the other measures adopted to fight labour market segmentation and employment precariousness, it is worth noting the reform of atypical part-time contracts. The main aim of the legal changes was to limit involuntary part-time work. The bill on 27 May 2015 ratified Ordinance No. 2015-82 of 29 January 2015 on the simplification and guarantee of modalities of the application of rules on part-time work. This legislation establishes a minimal threshold of 24 hours of weekly work to fight involuntary part-time work. However, this legislation has not been very effective, as the limit of minimum working hours for part-time work contracts can be derogated by collective agreement and that possibility is used extensively.

Finally, it worth noting that due to the moderate effects of the reforms mentioned above in boosting economic growth and employment creation, and due to the pressures from international institutions, a more comprehensive and aggressive labour law reform has been passed in summer 2016. The Parliament has passed a controversial labour proposal, which gives companies more power to dismiss workers and extend working hours. The trade unions are strongly opposing this new legislation and have organised several protests against the new legislation.<sup>8</sup>

### **2.3 Low external influence in social partnership countries: Germany, the Netherlands, and Belgium**

In the group of traditionally neo-corporatist/social partnership countries different experiences in the involvement of social partners in adopting and designing labour market reforms have been noticed. Some of these reforms have been related to the influence of external factors and in particular to the economic austerity plans and employability indicators/recommendations deriving from the EU level. However, in these three cases the national socio-political context and the preferences of the domestic constituencies have played a major role in the extent of the structural reforms adopted. In Germany, the agreed measures on flexibilisation of working

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<sup>8</sup> See Ramos Martin, N. and Bennaars, H., *DIADSE Policy Paper France*, (2015).

time have been a major factor explaining the so-called “German miracle”. Other labour law legislation, such as the Minimum Wage Act, seems not be related to the economic climate and divergent attitudes of the social partners can be noticed regarding its implementation. In the Netherlands, the economic downturn seems to have helped breaking the existing barriers for the adoption of a social partners’ agreement on a profound reform of labour law, in particular in order to flexibilise and modernise dismissal law. In the Dutch case, the crisis and the flexibilisation of the labour market affected the way social partners look at the labour market and changed their strategies. Nevertheless, even when the economic crisis might have got an influence in the achievement of the Social Agreement of 2013, the peculiar internal circumstances affecting the unions and employers’ organisation have also played a determining role in that process. Finally, in Belgium, the national political instability has not prevented the government from adopting several unilateral employment law reforms. Moreover, the confrontation of the trade unions with the government’s policies concerning the fixation of wages has been escalating, specially in the last years of the examined period.

### **2.3.1 Germany**

At the beginning of the crisis, because of its strong export orientation, Germany’s economy was more affected by the economic and financial crises in 2008/2009 than other European countries (the gross domestic product decreased by 6.5%). The reaction of the German labour market to this recession was - compared to other countries - relatively mild, and different in comparison to former recessions. This had largely to do with the fact that, in contrast to other EU countries, such as Ireland which faced a slump in domestic demand combined with a real estate crisis, Germany had to deal with a world demand shock that mostly affected economically strong firms (Rinne and Zimmermann 2011; Schneider and Gräf 2010).

Moreover, various flexibility instruments at the firm level, combined with discretionary adjustments of the institutional framework by policy makers (i.e. enhancement of short-time work schemes), enabled firms to adjust their working hours during this crisis almost solely along the intensive margin by reducing hours per worker (Burda and Hunt 2011). But also numerous arrangements in conjunction with collective labour agreements (job security contracts, mutable working hours) opened possible courses of action. This rather unusual reaction, compared to previous recessions, was often depicted in the media as the ‘German Miracle’.

This development, however, has to be placed into the context of two interdependent aspects: the previous labour market reforms and other flexibility instruments. Before the crisis hit Germany, major labour market reforms fostering flexibility of workers and their integration into the labour market as well as loosening institutional restrictions were undertaken in the years 2003 to 2005 (Hartz Reforms). After several years of wage restraint, in early 2008, real unit labour costs had experienced a substantial decline, especially in comparison to Germany’s main competitor countries. The main macroeconomic variables looked favourable: The budget consolidation was well under way, the inflation tamed, German exports of machinery, equipment, and automobiles were growing, employment was rising, and there was neither a sign of a stock market nor of a housing price bubble. Positive signals could be observed with respect to a decline of long-term unemployment, an improved matching

process between labour demand and supply and the convergence process in East Germany regained momentum (Gartner and Klinger 2010). The eruption of the world recession caught the German economy by surprise and at a time when the dominant theme of the economic policy debate was a shortage of skilled workers.

With respect to further measures and instruments implemented when the economy went into recession, the Federal government not only allowed the stimulation of the decreased aggregate demand by passive automatic stabilizers (such as the unemployment aid system), but also pursued more controversially discussed active stabilization policy measures, such as two economic stimulus packages. The most important measures - apart from certain direct fiscal policy measures (e.g. car scrapping subsidies) - were a large amount of labour hoarding and the use of short-time work foremost by the large export-oriented manufacturing sector. The approach worked well because its use was based on expectations by employers of a short recession. Many of the most affected companies correctly anticipated to have a fundamentally appropriate structure of their products to meet the future demand in global markets as well as within Europe and Germany (Paesler 2011). The extent of the German stimulus programs in the EU were among the largest in the EU, and empirical evidence showed the effectiveness of the 2009/2010 recovery packages in overcoming the crisis (Brügelmann 2011).

Tripartite national social dialogue was one of the main responses to the financial crisis in Germany. This took place only at a consultative level. Nonetheless, the union involvement was considerable, particularly at the sectoral/subnational level -e.g. social dialogue response via sectoral agreements and not via a national pact- (Baccaro and Heeb 2011). When the crisis hit the German labour market, the government invited the social partners to several meetings between 2008 and 2009 to find solutions to discuss the economic situation, the two stimulus packages and further measures. All of these consultations focused on protecting employment levels as a major shared concern. The purpose of those meetings was to build upon the expertise of unions and employer associations and to secure their support in implementing new measures (Zagelmeyer 2010). For example, lengthening entitlement periods for short-time work at the national level was complemented by collective agreement clauses (negotiated during the crisis) in the metal and electrical industry.

Other post-crisis measures were the support for companies training their short-time workers, and a reduction of employers' social security contributions for short-time workers under certain circumstances.

The so-called "German miracle" has to be attributed to the interaction of several factors (Bellman et al. 2014). First, Germany experienced favourable conditions prior to the crisis. As elaborated, when the crisis hit Germany in 2009 a high level of employment stability, along with low labour productivity, could be observed. This can only be understood in relation to efforts undertaken from the early 1990s onwards to flexibilize working time in Germany: almost half of Germany companies had already in the early 1990s introduced working time accounts. Moreover, with the use of 'opening clauses', which has also been stressed by several interviewees, all industry-wide collective agreements have given the actors at firm-level the opportunities to reduce collectively agreed working time temporarily in order to



avoid dismissals, with accompanying wage losses. These within-firm flexibilities allowed reasonable employment adjustments and the use of schemes such as short-time work, working time accounts, and opening clauses including company-level pacts for competitiveness and employment. Additionally, the Hartz reforms (2003-2005) restructured the labour market, thereby facilitating flexibility. During the crisis, efficient government interventions (such as prolonging short-time working entitlement periods and introducing two rescue packages) set the right framework for social partner action and helped strengthen the German economy. It seems that part of the fast and effective German answer to the crisis can be attributed to these pre-established instruments. This allowed the social partners to extend the existing range of instruments for implementing temporary working time reductions.

The reforms introduced after the crisis have to be seen independently from the experiences during the crisis. In this regard, the Minimum Wage Act and the related reforms can rather be seen as a result of a positive and supporting political, economic and societal climate rather than of the positive collaboration experiences during the crisis. The findings of the report confirm that the social partners have very strong and divergent attitudes when it comes to the Minimum Wage Act. While the trade unions - although from the beginning supporters of the minimum wage - are now concerned with how the minimum wage can be increased over the different sectors and branches and over time, the BDA and the employers' associations are in a very clear position of rejection and scepticism. In this context, there are still doubts whether the minimum wage will hold a further crisis.<sup>9</sup>

### 2.3.2 *The Netherlands*

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

The labour market in the Netherlands responded slowly to the crisis, partly due to the shortages on the labour market in the years before the crisis. The retarded response is further due to the relatively high level of employment protection. Reform of dismissal law used to be urged for by economists, but has been for a long time a highly contested issue, reform being firmly rejected by the unions. The crisis has turned out to be the lever to reach an agreement on reform.

The crisis strengthened an already slightly visible trend towards flexibilisation of employment relations. Although the background of some of the developments on the labour markets is not clear and even still highly debated, there seems to be a general understanding that the permanent employment contract is considered to be heavily loaded with obligations to the employer, for instance, in case of illness of the employee, of continued wage payment during

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<sup>9</sup> See Steinmetz, S. and Koot, E., *DIADSE Policy Paper Germany*, (2015).

a period of 104 weeks (2 years). The use of flexible contracts would be an attractive way to escape these obligations. The percentage of self-employed workers, in 2002 about 7%, has doubled in ten years. According to researchers half of this increase can be attributed to government policies promoting self-employment.

One of the major political threats due to the financial and economic crisis was the impact it had on the state's deficits. Although once a fervent proponent of the 3-percent-norm of the Stability and Growth Pact, The Netherlands turned out to be unable to comply with it for the years 2013 and forward. Although the Commission has made no direct recommendations, still a severe austerity program was considered to be required. A cabinet formed by the liberals and christen-democrats (Rutte I), lacking a majority in Parliament, collapsed when in spring 2012 no agreement could be reached on an austerity program. In November 2012 a new cabinet, composed of liberals and social-democrats, took office. The austerity program of this cabinet comprised a restructuring of the unemployment benefit scheme and a radical change of the dismissal law.

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

The March 2009 Crisis Accord ('Crisisakkoord'), reached in the Labour Foundation, prioritizes the need to conserve productive power above wage increases. Measures are announced to combat youth unemployment. The unions agree, besides to a smooth development of wages, to a reopening of the discussion on the pension age, that then dominates social dialogue and public attention in the period that follows, at the cost of other important themes. June 2011 the Pension Accord ('Pensioenakkoord') is reached between social partners and the cabinet, opening the door to a gradual raising of the statutory pension age while at the same time giving some guarantees on the level that retirement pay should keep. The crisis has acted as a lever to open this issue to discussion and to decision-making on this issue.

The tripartite Social Accord of April 11, 2013 marks a new phase in the social dialogue and in the struggle against the crisis. The Accord is presented as a proof of the blessings of the "polder model". Based on this agreement a new Act on Work and Security ('Wet Werk en zekerheid'), was enacted in June 2014 (amended several times in 2015 and 2016). The aim of the new legislation is to 'strike a new, modernized balance between flexibility and security on the labour market'. Main reforms adopted by the new law deal with the following issues: (a) partly restoring social partners in their responsibility for the unemployment benefit funds, (b) avoiding unemployment by making incentives for 'work-to-work'-transitions (c) revising the

law on dismissals, reducing costs of employers (d) improving the legal position of flexible workers by further restricting the number and duration of consecutive fixed-term contracts, (e) gradually reducing the duration of public unemployment benefits (from 3 to 2 years maximum) and (f) creating jobs.

The first reform realized, on short-time working, had started from the supposition that the crisis would be short and vehement. It has (according to unions and AWWN) actually succeeded in keeping a lot of people on their jobs. The most important initiative for increasing the level of employment has been the introduction, in 2013, of sectoral funds that stimulate regional activities to increase employment. Initiatives to counter labour market segmentation have been taken at a sectoral level, in agreement between unions and employers' organizations. Some results have been booked, but recently the employers' position has tended to become more confrontational (f.i. in construction). As from 2011 union confederations raise the issue of the 'excessive flexibilisation' ("doorgeschoten flexibilisering") and the question where and how to put 'healthy' limits to it. According to employers' organizations the increased use of flexible work forms by employers is actually a consequence of the unions' lack of willingness to discuss a reform of the system of collective agreements. While federation CNV is not completely insensitive to this criticism, the FNV rejects it and points out that where room in collective agreements has been created, employers turn out not to use it to a significant extent. FNV's strategy is not just to see to it that more jobs are created, but to see to it that the jobs created, are fair and decent jobs.

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

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

be gained by such an agreement, which made for a strong negotiating position. The result has been the Social Accord of April 2013, that was hailed by all parties, although they all, but in particular employers' organizations, had a lot to explain to their constituencies.

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

According to the unions, the short-time working measure has clearly contributed to the preservation of employment and of professional skills in companies. Research reports a minimal positive effect on unemployment rates. The Social Accord's goals are welcomed by employers' organisation AWWN but it points to problems in their implementation: for instance the rules on the maximum number of temporary contracts after which a contract would automatically become permanent, might turn out to be counterproductive.<sup>10</sup>

### 2.3.3 Belgium

The examined period (2008-2015) has been characterised by significant political instability in Belgium. The period 2010-2011 for example contained the longest governmental formation in world history. It took 541 days before a government was formed. During this period the interim government adopted several measures concerning employment policy and labour law, with employability and flexibility as a motto. A reform of dismissal Law took also place in 2009 and in 2011 a major reform of pension system was passed (turning point in social dialogue). Later on 2015, the new government passed a reform of wage setting mechanisms which has been strongly contested by the unions.

#### 1. Period 2008-2010

During this period, the impact of the Lisbon Strategy was the most evident. The Lisbon Strategy promoted in 2005 a different form of employability aiming to reduce the skill gaps between the different member states by investing in jobs and learning opportunities. The European Council desired to improve the employability rate from 61 to 70 percent by 2010 and to improve the employment rate of women from 51 to 60 percent.

Belgium developed a recovery plan which intended to improve the rather low employability rate. One of the priorities concerned cutting down the wage costs for companies in order to improve the competitive position of enterprises in Belgium. The second crucial element concerned a reform of the labour market aiming at improving the employability of older

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<sup>10</sup> See Knecht, R. and Verhulst, E., *DIADSE Policy Paper the Netherlands*, (2015).

employees. The aim was to reach in 2010 an employability rate of 70 percent. In the end, this aim was not reached as the employability rate remained at 67 percent.

A limited shift towards more flexicurity on the labour market had been made in the Economic Recovery Act. Employers were given the possibility to get the status of a company in restructuration without the beforehand long-existing duty to apply for a reduction of the age limit with regard to earlier retirement. The bare announcement that the company had been restructuring had become sufficient to be considered as such. The employer, though, also has to fulfil some important duties by the creation of an employability unit and by the payment of reclassification compensations.

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

The role of the social partners in this setting was clear. Their agreements were translated (with some budgetary adjustments) into legislation. Trade unions indicated that they had the feeling that the specific role of government as facilitator had already shifted to a different approach.

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

## 2. The period 2010-2011

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

For the first time, social partners could not agree on an inter-professional agreement and in order to avoid budgetary issues, federal government took the initiative to underpin the original draft of the inter-professional agreement with regulation. The federal interim government decided to initiate itself the procedure for a reform and to put aside social dialogue. A legislative basis for governmental intervention was provided by article 7 paragraph 1 of the Act of 26 July 1996 to improve the employability and the preventive safeguarding of the competitiveness (Act of 26 July 1996). This article provides that the government can set by

Royal Decree the minimal margins for the development of the wage costs. A Royal Decree of 28 March 2011 executed this competence and provided the possibility for a wage increase in the period 2011 and 2012. The Royal Decree stipulated a wage increase of 0% for the year 2011 and an increase of 0,3% for the year 2012.

Furthermore, the Constitutional Court declared, on 7 July 2011, the existing distinctions between labourers and employees unconstitutional with regard to the notice periods and the first sick leave day. The Constitutional Court decided that there existed no objective ground to install a distinction between blue and white collar workers with regard to the notice period. However, the Constitutional Court furthermore decided that the Belgian legislator should be granted some time to eliminate the statutory distinction between blue and white collar workers. The consequences of the distinction therefore could be kept until the 8 July 2013.

### 3. The period 2011-2014

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

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

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

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

#### 4. Period 2014-2015

The improvement of employability in Belgium played a role behind the scenes of pending debates. The draft inter-professional Agreement 2015-2016 proposed a so-called index jump (of 2%) and an index block. The index block ensures that the index jump remains because otherwise an increase of the index would wipe out the index jump. Therefore, the index mechanism needed to be blocked and could only restart on the moment that the two percent limit is exceeded. Social partners disagreed on the opportunity and the usefulness of such an index jump. Employers' organisations defended the view that an index jump was absolutely necessary to improve the competitiveness of the Belgian companies. Trade unions strongly opposed the idea of an index jump. Their criticism based itself on the conviction that the index jump would lead to an impoverishment of the poorer classes.

Eventually, Parliament adopted an Act to introduce a so-called index jump. Article 2 of the Act of 23 April 2015 installed a jump and a block of two percent with regard to indexation. The index jump means that the automatic indexation of the wages is frozen for a certain period. All trade unions set up a procedure before the Constitutional Court with regard to the index jump and the index block. The Constitutional Court rendered a decision on 13 October 2016 stating that the Act of 28 April did not violate the Constitution. However, this procedure indicates that the relationships at national level are very tensed. Social dialogue though does take place but mainly at sectoral and company level. At national level, social dialogue suffers from a lack of mutual confidence.<sup>11</sup>

#### **2.4 Re-building social dialogue structures in Central and Eastern Europe PL and HU**

The analysed period, 2008-2015, Poland has been a period of relative political stability with a floating interest of the government in cooperation with social partners: quite effective in the first years, through total collapse of the tripartite dialogue in 2013, followed by the adoption of a new legislative framework and re-opening of social partners' meetings in 2015. Since 2010, in Hungary, the new government has applied a neo-liberal and statist agenda to labour law reforms and social dialogue has been seen in this context as "superfluous". The elimination of former tripartite forums has been accompanied by unilateral decisions of the

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<sup>11</sup> See De Becker, A., *DIADSE Policy Paper Belgium*, (2015).

government on reforming strike laws and public sector employment relations. The new 2011 Labour Code, which decreases guarantees for employees and further decentralize collective bargaining, has been passed with a mere consultation of the social partners. All these developments have led to the erosion of transparency of social dialogue in the last half decade. Moreover, public policy sources and social dialogue institutional role are suffering from serious deficits in both countries.

#### **2.4.1 Poland**

The global financial crisis had a limited impact on the Polish economy. However, in 2009, the European Council recommended a correction of the excessive public deficit by 2012. This deadline has been further extended to 2015. Several measures were taken to counteract that deficit, such as a pension reform, freezing of salaries in the public administration, and freezing the resources of the labour fund (aimed at counteracting unemployment).

The Polish constitution enshrines the respect for social dialogue in art. 58 of the Constitution and regulates the function of trade unions in an Act. On the one hand, Union density has remained relatively stable in the last years and amounts to 17 percent of the employees with an employment contract. In 2015, the Constitutional Court ruled that the provision according to which trade union membership is only open for those working on the basis of an employment contract is unconstitutional. Therefore, the legislation has been changed to make it possible for all people who provide paid labour (including self-employed) to unionize. On the other hand, employers organizations counted 16.3 thousand members in 2014. The principles of creation and functioning of these organizations are laid down in the Act on organizations of employers.

Although not directly motivated by the crisis, some changes in labour market legislation were introduced in the period examined. The Polish labour market is characterised by growing figures of non-regular employment and poor employment law protection for a large group of workers. From 2009, several Labour law amendments were adopted to tackle the economic crisis. The main domestic labour and social law reforms are:

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

In August 2009 an Anti-crisis law entered into force -due to expire in 2011-. This legislation introduced provisions on working time arrangements and access to public aid. The main measures adopted were:

- o extending working hours calculation period to 12 months (annualisation of working time);
- o increase flexibility of daily working time;
- o fixed-time employment contracts and unlimited number of renewal of such contracts allowed for up to 24 months.

Additional measures were open only for entrepreneurs in 'temporary economic difficulties':

- o Working time reduction
- o in case of economic downtime, forms of public aid for such entrepreneurs were available.



## 2. Act on specific measures aiming at work-places protection

The Act on Protection of October 2013 also has the purpose to support employment in temporary economic difficulties. The Act opens up the possibility to apply for a temporary halt in the operations of working time reductions, provided that consultation with Trade Unions or employees' representatives at enterprise level takes place. If these provisions apply, the employee is entitled to a salary financed by the Guaranteed Employee Benefits Fund and the employer.

## 3. Amendments of the Labour Code

In July 2013 working time provisions were made more flexible. The possibility of annualisation of the calculation of working time and the flexibilisation of daily working time that were introduced by the Anti-Crisis Act, are permanently included in the provision of the Labour Code. Later on, in July 2015, provisions were adopted to limit the unjustified use of temporary contracts. At the same time uniformity with respect to notice periods for fixed term contracts and permanent contracts was introduced.

## 4. Reform of the Public Employment Services

An amendment of the Act on employment promotion and labour market institutions in 2014 introduces a major reform of the public employment services to improve its functioning.

As it has been mentioned, the recession which started after 2008 in many EU countries, did not have a very strong impact in Poland. The Polish economy has benefited from relatively low labour costs and medium level of labour market flexibility. Nevertheless, the impact of the adopted anti-crisis policy measures in the labour market was not completely satisfactory. Financial aid has been requested in a very limited number of cases. A relatively more successful measure was the extending of the working time calculation periods. It is also worth mentioning that one of the most important recommendations for the trade unions was to gradually increase the national minimum wage up to a level of 50% of the national average pay. Although this aim has not been reached, significant progress has been made on raising salaries: the minimum wage between 2005 and 2014 has doubled and the relation of the minimum wage to the average monthly wage is also increasing.

When assessing the position and role of the social partners in the structural reforms adopted the period 2001-2015, an evolution can be noticed. At the beginning of the crisis, the institutional social dialogue was vibrant, efficient, and intensive, but it was followed by a period of visible slowdown and even crisis. Therefore, the initiatives of the social partners during the examined time frame can be divided into four periods:

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

The anti-crisis strategy of the government, presented as Plan for Stability and Development, did not satisfy any of the social partners and therefore they took upon autonomous talks themselves. The social partners, although driven by different reasons, were able to reach consensus on significant issues. In March 2009, the social partners presented a list of 13 proposals on which they have achieved consensus and submitted the list to the government. The proposals can be divided into three main themes: Pay and social security; Labour market and employment relations and Economic Policy. The Anti-crisis Law directly adopted half of the social partners' proposals, being: 12 month working hours calculation period, the rationalization of the daily working time, the flexibilisation of working hours, stabilization of employment by reducing the use of fixed term contracts, start-up capital fund training and subsidized employment as an alternative to redundancies.

After the completion of the package, the active involvement of the social partners has diminished. The government was criticized for taking over only initiatives of the social partners that were consistent with its own policy. The Anti-crisis Package was the last agreement signed in the tripartite commission. After that the dialogue was suspended in 2013, the main three trade union confederations criticism grew, stating that "they did not intend any longer to legitimize the social dialogue which actually does not exist."

The withdrawal of the trade unions from the Tripartite Committee has led to a serious crisis in the social dialogue. In Mid-2015 a new Act on the Social Dialogue was passed. The draft of the act was prepared in bilateral negotiations of the social partners. The new act introduces the Council of Social Dialogue. This new formula of dialogue differs from the previous tripartite commission in several ways:

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

The establishment of the Council should be perceived as a great success of social partners. Nevertheless, whether the Council will prove to be effective remains uncertain.<sup>12</sup>

#### **2.4.2 Hungary**

On the whole, the direct economic effects of the global crisis have been limited in Hungary, as the post-2010 government's policies have had a more fundamental transformative impact on politics, including labour issues. The post-2010 government has had a parliamentary majority which allowed the government to create a 'strong state'. Marginalization of social dialogue, abandoning of established tripartism, re-shaping the institutional foundations of collective bargaining and flexibilization of employment contracts law have been part of this endeavour. A new Labour Code (Act I of 2012) fitted well into this concept. It puts an

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<sup>12</sup> See Kurus, M. and Wroblewski, M., *DIADSE Policy Paper Poland*, (2015).

overwhelming emphasis on quantitative concerns, specifically on the overriding objective of job creation. Therefore, the quality of jobs and the concept of ‘decent work’ were not issues informing this labour market reform. In any case, it is very difficult to talk about crisis-related legislative reforms in Hungary and the crisis has not been rigorously discussed from a labour law point of view.

The new Labour Code is definitely the central piece of labour market reforms in Hungary during the study period (2008-2015). The adoption of the new Labour Code was coupled with a relatively selective and low-profile consultation process, together with a great extent of informality.

The general revision of labour law and the new Labour Code have turned the whole world of labour law upside down, as several fields of labour regulation are affected by significant changes. The new Code, in general, offers more flexible regulations and reduces, to a certain extent, the labour law risks and burdens for employers, while on the other hand, a decrease of employees’ rights can be noticed. From a technical point of view (the clarity of the regulations), the Code shows a positive progress and it provides a far more detailed, elaborated and transparent system of rules. In general, the new Labour Code increases the parties’ autonomy and significantly reduces any legislative intervention. As such, labour law in Hungary belongs to the civil law domain and it is not conceptualized as a field of purposive social law anymore.

In the new Labour Code the five essential reformative trends have been identified:

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

One of the main goals of the labour law reform has been to revitalize the contractual sources of labour law. The main aim is to strengthen the role of the collective agreement as a contractual source of labour law. This new regulatory concept significantly enlarges the role and influence of employers (employer interest representations) and trade unions on the labour market, while it simultaneously increases their responsibility and reduces the regulative functions of state regulation. This new regulatory context poses an enormous challenge for Hungarian trade unions. It is yet to be seen whether they can live up to the increased expectations and to become effective bargaining partners of employers within an even more autonomous and contractualized system of labour regulation. As early experiences show, bargaining parties are rather reluctant and cautious in innovatively using the increased scope for bargaining.

The passing of a completely new Labour Code was much more a result of the political will of the Government than the direct effect of the crisis on labour law reforms. In general, the new Labour Code seeks to increase the parties’ autonomy and significantly reduces any legislative intervention. Some negative unwanted side-effects and consequences of the reform are:

Firstly, the intended job-creating effect of the Code can't be proved. Secondly, the Code does not seem to practically intensify collective bargaining processes (in contrast with its aim). Thirdly, the re-regulation of trade unions and works councils have not brought about a meaningful revitalization of industrial relations, but has caused quite a lot of uncertainties and tensions. Fourthly, the new Code might undermine labour law compliance in general by leaving a large number of unlawful terminations without any meaningful sanction. On the whole, it would still be a misleading simplification to blame the current Government and the new Labour Code for all problems of the labour market in Hungary and especially for ineffective social dialogue processes. Only the time will tell if social dialogue will revive or not in Hungary and legislation as such has a limited capacity in this context.

With regard to employment indicators, some years ago Hungary still belonged to the tail-enders of the EU, while by now the country has become a top performer concerning the pace of improvement on the labour market. According to the latest data, a positive trend regarding growth in the number of people in employment has remained intact over the last couple of years. However, it is hard to construe a direct link between labour law reforms and improving employment indicators.

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

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

Consistently, the revitalization and the unification of the fragmented trade union movement are still pressing needs. Pleas for a united and strong trade union movement have been on the agenda of nearly all confederations for decades now without noticeable advancements so far.

The recent labour Code amendments have broadly disregarded the purposive protective functions of labour law. The measures adopted focus on pursuing extreme flexibility to reach the objective of improved competitiveness and applying the much debated strategy of enhancing job creation through extensive liberal labour law reforms. The assessment of the

new labour legislation shows that it is intensively implementing “flexibility” approaches, but neglects the “security” part from the flexicurity concept. Therefore, labour reforms have not helped so far to improve the quality and decency of jobs. The new provisions of the labour code, in particular the regulation of unlawful dismissal, do not provide for a fairer, sensible equilibrium of rights, duties and risks between employers and employees. In general, a slightly more ‘user-friendly’ labour regulation, as well as an improved level of compliance with existing labour laws are needed in the Hungarian context. Meaningful promotion of collective bargaining and facilitation of the conclusion of collective agreements would be a much desired policy-direction in the realm of labour law.<sup>13</sup>

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<sup>13</sup> See Kun, A. and Neumann, L., DIADSE Policy Paper Hungary, (2015).

### 3 Pre-crisis involvement of Social Partners and their relation to the State

In order to chart the impact of the financial and economic crisis on Social Dialogue as from 2008, it is necessary to make a succinct inventory of the character of the relations between trade unions, employers' organizations and governments in the period before the outbreak of the crisis. It is also required to take stock of variations in the way countries have been hit by the crisis. In most, but not all, the crisis created or worsened a fiscal crisis, in some countries the effects have been more vehement than in others. Basis of this inventory is the threefold classification introduced above between countries characterized by (SP) 'social partnership', (SC) 'state-centred' (plus IE) and (TI) 'transitional' systems of industrial relations.

#### 3.1 Involvement of Social Partners

##### 3.1.1 Social partnership countries

In all three countries characterized by 'social partnership' industrial relations systems there has been a well-established, traditionally strong system of tripartite social dialogue. Belgium and the Netherlands have a central council for tripartite dialogue on social and economic affairs. Collective negotiation is considered to be a fundamental right and collective agreements (hereafter: CA's) are concluded at national, sectoral and company levels. In Belgium negotiations take place within a rather hierarchical institutional structure, in which CA's at sectoral level are concluded in bipartite committees, instituted by Royal Decree, and are subordinated to CA's concluded at the national or inter-sectoral level.<sup>14</sup> In all countries CA's at national and sectoral level can be declared generally binding. In Germany, however, due to the requirement of a 50 percent quorum, its use had seriously declined (but is now as of 2014 being revitalized).<sup>15</sup> In all countries there is a high level of interaction between SP's and the state.

##### 3.1.2 State-centred countries plus Ireland

The Spanish Constitution guarantees a right to collective bargaining and the binding force of agreements, implemented in de *Estatuto de los Trabajadores* (1980). Agreements reached by a certain majority of representatives of employers and employees work *erga omnes*; most workers are covered by sectoral CA's, that are also binding after their expiry till a new CA has been reached. Portugal introduced in 2009 a new Labour Code, based on a tripartite agreement signed in July 2008 by almost all social partners. Portugal has known a system of extension of collective agreements that was seriously reformed by increasing the requirements for extension. Just after the former economic crisis Ireland established in 1987 a system of 'social partnership': in agreements between SP's and government consecutive three-year programmes were concluded on a range of social and economic issues, including significant pay increases.<sup>16</sup>

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<sup>14</sup> DIADSE Country Report on Belgium, p. 7-8.

<sup>15</sup> DIADSE Country Report on Germany, p. 10.

<sup>16</sup> DIADSE Country Report on Ireland, p. 39.

### 3.1.3 Transitional countries

In Poland the Constitution guarantees social dialogue; in 2001 a Tripartite Commission for Social and Economic Affairs has been instituted. Unions cover 11 percent of the workers and are operating more in the public than in the private sector. The latter also applies to Hungary where the distance between unions and workers is still considerable. Coverage of workers by CA's is low. In the years before the crisis there have been relatively intense tripartite negotiations, in particular in the public sector, but due to diverging standpoints, also between unions, without results.<sup>17</sup>

## 3.2 Relation of Social Partners to the state

### 3.2.1 Social partnership countries

In Belgium, Germany and the Netherlands the state is deeply involved in tripartite structures of social dialogue. Institutional structures at national, and often also at somewhat lower levels, provide for regular consultation or negotiations over issues of social and economic policies. The triangular structure allows for changing coalitions between parties, depending upon the relative power positions of unions, employers' organizations and governments. The political composition of governments is often of great importance for the nature of the process of social dialogue, and for the level to which it is actually functioning. The recent trend towards more right-wing composed governments has sometimes allowed employers' organisations to withdraw from social dialogue because they were able to realize their goals without participating in it. Both in Belgium and the Netherlands there have been periods during which this constellation undermined the regular intensity of social dialogue.

Both in Belgium and the Netherlands the crisis hit during a phase of political instability. In Belgium the state reform and internal divisions between regions resulted in an extremely delayed process of government formation, an intermediate period during which Social Partners got a chance to fill in the gaps. In the Netherlands governments without, or with a very narrow majority in Parliament were forced into negotiations, with opposition parties as well as with Social Partners, to be able to pursue social and economic policies. Compared to this, the political situation in Germany has been rather stable.

### 3.2.2 State-centred countries plus Ireland

In France, Portugal, Spain and in Ireland there has traditionally been a relatively larger distance between a more bipartite form of social dialogue and the state, that is allowing and making room for negotiation between social partners but is itself less involved in the process. In Portugal and in Ireland, however, for some time before 2008 there were regular forms of tripartite consultation. In most cases within this category, if there had been involvement of the state in social dialogue, this typically did not stand the consequences of the crisis.

Portugal shifted in June 2011 from a socialist to a liberal-conservative government, Spain also from a socialist to a mainly conservative government. Governments in France and Ireland

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<sup>17</sup> DIADSE Country Report on Hungary, p. 25.

were (also) after 2011 composed of parties in which left-wing parties participated. The relations between Social Partners and the state were in Portugal, Spain and Ireland heavily influenced by interventions of the ECB or the ‘Troika’.

### **3.2.3 Transitional countries**

In Hungary there is not only a distance between unions and the state, but also between workers and unions; the union coverage is low, a grassroots institutional network is lacking and there is hardly any social dialogue going on. In Poland social dialogue has been anchored in the Constitution, there is a tripartite advisory commission at national level, but as in Hungary the union coverage is low and concentrated in the public sector.

In Hungary (2010), as well as in Poland, conservative-right governments took over. Poland has tried to control its national debt situation by introducing internal disciplinary rules on debt limits, also for local governments.

## **3.3 Variations in how the crisis has affected the economic situation**

### **3.3.1 Social partnership countries**

Germany was mainly affected by the crisis because of the high export-oriented character of its economy. The demand shock affected economically strong firms, the GDP decreased by 6,5 %, but there was no real estate crisis. In fact, economic prospects had been bright up to 2008, full employment had become a realistic perspective. Because it was not a structural but purely a demand-driven crisis, recovery has been fast. In the Netherlands too, a pending shortage of workers was being discussed in 2008. In both Belgium and the Netherlands, the financial crisis was also a banking, and in the Netherlands also a real-estate crisis, urging governments to take severe austerity measures. In the Netherlands, the economic impact in terms of employment effects had a slow start, but was significant as from 2011, raising the unemployment rate from about 5 to 10 percent. A recovery only set in in 2014.

### **3.3.2 State-centred countries plus Ireland**

France recovered rather quickly (mid 2010 GDP was back at its pre-crisis level) but still faces a relatively large national debt. In Spain the crisis hit deep and long, in particular because of the construction sector that came to an almost stand-still. A total of 2,1 million jobs were lost and the unemployment rate rose to 20 percent. Spanish GDP is still significantly below its pre-crisis level. The National report point out that, although Spain has often been criticized by international institutions for its heavy regulation of the labour market, this market has actually been functioning very well, Spain occupying a second place among EU member states in employment creation in 2006.<sup>18</sup> The Portuguese GDP fell by 6 percent between 2008 and 2014, causing a decline in employment from 5,1 to 4,5 million jobs. Its public debt increased from 71,7 to 130 percent of GDP. The unemployment rate rose from 8,8 (in 2008) to 16,4 percent (in 2013), youth unemployment from 21,6 to 38,1 percent, despite a significant level of emigration that reached a 110 000 people per year.<sup>19</sup> Ireland went from the height of its

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<sup>18</sup> DIADSE Country Report on Spain, p. 1.

<sup>19</sup> DIADSE Country Report on Portugal, p. 33.



greatest economic boom into the lowest recession of its history: GDP dropped from 40,7 (2007) to 36,4 billion (2010); the national gross debt increased more than fourfold. The Irish government was forced to recapitalise Ireland's three biggest banks.<sup>20</sup> Unemployment rose from 4,4 (in 2004) to 14,7 percent (in 2011).

### *3.3.3 Transitional countries*

In Hungary half a decade of debt creation fuelled an illusionary economic growth, a process that ended in 2006. Since then Hungary was stumbling from crisis to crisis, the financial crisis only intensified this 'home-made' crisis. By 2011 Hungary had become one of the most economically vulnerable countries outside of the euro zone. Policy makers regard the low participation rate as one of its main problems. The situation in Poland is quite different, its banking system is stable, GDP even continued to grow after the crisis and internal mechanisms of debt control guarantee a relatively low level of public debt. Nevertheless the unemployment rate has risen, in particular among young workers. Polish workers have a high level of acceptance of flexible working conditions. Hungary refused to apply for IMF loans, Poland did not need to.

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<sup>20</sup> DIADSE Country Report on Ireland, p. 7-9.

## 4 Involvement of the Social Partners in the first reactions to the crisis

The financial and economic crisis interfered in a, more or less, already existing relation between social partners and governments. It had its impact on processes of reform already going on, as well as on new policies to answer the consequences of the crisis. In this chapter we look at processes that were already going on, as well as new measures, focusing on the involvement of social partners in these processes and measures.

### 4.1 Social partnership countries

Policies, partly inspired by EU programmatic goals such as the Lisbon Strategy, had in the decade before the crisis led to significant adaptation of labour law regulations. In the Netherlands, the Flexibility and security Law, in force since 1999, had opened up possibilities of flexible contracts, while trying to compensate increased flexibility by providing a heightened level of security to workers on flex contracts. In Belgium the Lisbon Strategy had inspired the adoption of the National Reform Plan of 2005, directed at competitiveness (by cutting down on wage costs), growth and employability.<sup>21</sup> In Germany the wide-ranging Hartz Reforms had reformed the regulation of the labour market, among others by allowing for much more temporary agency work (its volume doubled between 2004 and 2008). Already since the 1980's collective bargaining had been affected by a transfer of topics from sector to establishment-level (through 'opening clauses'), originally introduced to be used for adaptations in times of economic trouble, nowadays used to enhance competitiveness. This had induced a counter-movement, initiated by opposition parties in Parliament, of revitalizing the extension of collective agreements, in order to stop a process of erosion of collective bargaining that can be read from the declining coverage rate of collective agreements.

In *Belgium* the social partners have initially been involved by the government in the policy reactions to the crisis. The government agreed on a recovery program on 4 October 2008, in which social partners were accorded a crucial role: they were invited to conclude an *Inter-professional Agreement*, as they actually did 22 December 2008, that included a ceiling for wage increases of €250 net over two years, such a net amount being a novelty in Belgian law. It was implemented in the Economic Recovery Act of 27 March 2009 that clearly tried to reconcile flexibility with a certain employment security for employees (reclassification compensation, duty to set up employability units in restructuring companies). An Act of 19 June 2009, concerning employment measures in times of crisis, introduced short-time working options for companies in trouble, and explicitly accorded the social partners the important role of concluding sectoral agreements that would open up these measures. An increase in the number of meetings between social partners indicates that social dialogue has been vivid till 2010. The political vacuum during the extremely long cabinet formation left social partners a certain liberty. In the meantime, the introduction, by March 2010, of the Horizon 2020 targets urged the caretaker government to propose on 8 January 2011 an Inter-professional Agreement leaving very limited room for wage increases. After the socialist and

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<sup>21</sup> DIADSE Country Report on Belgium, p. 11-12.

liberal trade unions had judged a 0,3 percent increase to be too low in view of the fiscal position of companies, and declined the proposal, the government enacted it 12 April 2011, thereby actually putting social dialogue aside. Shortly afterwards, the new Di Rupo I-government avoided negotiations with social partners on the pensions and early retirements reforms and unilaterally enacted them 28 December 2011. This has been regarded by the unions as a turning point in, and an infringement on social dialogue.

In *Germany* in line with the strong system of tripartite social dialogue frequent meetings took place between government and social partners to discuss measures suitable to the common major concern of protecting employment levels, both building upon the expertise of social partners and securing their support for the measures to be taken.<sup>22</sup> The unions claim to have proposed the extension of short-time work, one of the measures that through a reduction of working time has succeeded in keeping levels of employment high. The unions criticized the in their eyes too hesitant approach of the German government in that they provided for insufficient fiscal stimulation to keep up the internal demand. Employers' organisations called for a reduction in social security contributions and non-wage labour costs. Social partners have, by their cooperation in particular at establishment and sectoral levels, successfully managed to mitigate the effects of the crisis and they know it.<sup>23</sup>

In the *Netherlands* the intensity of social dialogue had been diminishing due to the political composition of government that allowed employers' organization much more direct voice at the ministries and allowed them to withdraw to a certain extent from social dialogue. Prior to the crisis, the Consultation Group, in which social partners and ministry participated, was working on agreements on reduction of unemployment, in particular of low-skilled workers. Themes like employability and outplacement strategies ("from work to work") were prominent issues in the social dialogue. The crisis has taken all of us by surprise and that makes it hard to say whether government should have consulted social partners more often or more intensely. Shortly after the outburst of financial crisis there has been an initial initiative to broaden the possibilities of short time working, based on the supposition that the crisis would be vehement but short. It is not quite clear whether employers took the initiative (they were divided on the value of the measure) or that the unions, as they claim, clearly wanted this themselves and even have put great pressure on government to realize it. To the union CNV the measure was particularly important as a sign that SP's were willing to come to agreements on measures to face the crisis. Employers' organizations were longing for peaceful relations, the unions wanted to regain their position in the social dialogue.

#### **4.2 State-centred countries plus Ireland**

In *France* social partners have often been initiating measures to compensate for the consequences of the crisis. Not all the reforms that have been decided by the French government have been subject of negotiations with social partners, and these are also not satisfied with how the reforms that they had proposed are implemented in legislation.

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<sup>22</sup> DIADSE Country Report on Germany, p. 3, 20.

<sup>23</sup> DIADSE Country Report on Germany, p. 17-18.

In *Spain* there had already been initiatives to counter labour market segmentation. On 9 May 2006 social partners signed an agreement that among others included rules on the automatic transformation of temporary in open-ended contracts.<sup>24</sup> At the start of the crisis, the Spanish government expressed the will to renew the labour relations system through a process of social dialogue. In spite of a deadlock in the negotiations in January 2009 and an official breakdown in Spring 2010, the government continued to engage in social dialogue until pressure of the ‘Troika’ led government to a unilateral decree in June 2010, answered by the unions with a general strike (September 2010).

In *Portugal* several reforms of labour market regulation were already underway at the moment of the outburst of the crisis, a new Labour Code providing for a right to training, limitations on fixed-term contracts and on dismissal compensation, more room to company agreements, etc. Initially measures were based on tripartite consultation, but as from 2008 the Portuguese governments displayed a mixed strategy of social dialogue and unilateral measures. A lot of the measures taken after 2008 had actually been prepared before; the crisis is therefore hailed by employers’ organizations as a catalyst of the realization of these reforms.<sup>25</sup> Social partners agree that the government had a more outspoken key role in determining the available spaces of intervention that were accessible to social partners. Unions differ in strategies in response to this, the CGTP-IN choosing non-involvement while the UGT stresses what has been prevented by keeping participating in concertation.<sup>26</sup>

In *Ireland* a period of ‘social partnership’ continued in intensive discussions between social partners, and between public sector trade unions and the government. The government invited the negotiators to reach agreement on a one billion euro reduction in the public sector. When the employers withdrew from the social partnership process and social partners thus failed to reach an agreement, unilateral measures in 2009 reduced public sector salaries by 5 – 15 percent. Threats of further cuts led to a four-year agreement on protection of the pay-level and reduction in personnel.

### 4.3 Transitional countries

In *Hungary* there were in the early years (2006-9) relatively intensive tripartite negotiations, in particular in the public sector. Several packages of measures have been proposed by the government, but due to a lack of consensus, also among unions, a general agreement could not be reached. Unions tend to be divided among themselves. During the years 2008-10 unions have not made innovative proposals, the employers’ associations have been somewhat more active and probably contributed to flexibility-oriented policies.<sup>27</sup>

In *Poland* the crisis led to a significant activation of the social dialogue immediately after the outbreak of the crisis. In a second phase, as from late 2009, the impact of social partners weakened; there was increasingly unilateral decision-making by the government, ending up with a withdrawal of the unions from the Tripartite Commission.

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<sup>24</sup> DIADSE Country Report on Spain, p. 3.

<sup>25</sup> DIADSE Country Report on Portugal, p. 21-22, 25.

<sup>26</sup> DIADSE Country Report on Portugal, p. 27.

<sup>27</sup> DIADSE Country Report on Hungary, p. 25.

## 5 Involvement of the Social Partners in the second phase of the crisis and its consequences for Social Dialogue

In almost all countries involved in the current project, it is possible to discern a second phase of involvement of social partners in dealing with the consequences of the crisis, on the timeline roughly as from 2011. The boundary with the preceding phase may be marked by a shift in the political colour of government, by an intervention of the ‘Troika’, by a breakdown of social dialogue, by a reassessment of the depth and probable duration of the crisis, or by a combination of these markers. More clearly than in the first phase, during which one tends to hold on to, and build upon existing institutional arrangements, in this phase social dialogue itself may be affected.

### 5.1 Social partnership countries

In *Germany* social dialogue contributed efficiently to the way the consequences of the demand shock, that was predominantly what hit the German economy, could be dealt with. All parties had a common analysis of the crisis situation and correctly believed that the measures to be taken should be restricted to a particular time frame (and could not have been continued if the crisis would have lasted more than two years). Government and employers’ organisations alike welcomed the unions’ willingness to scale back their demands. There is some disagreement whether the Hartz reforms have really contributed to meeting the consequences of the crisis; some argue that they have only facilitated dismissals. But generally the communality of the positions of those involved led to a temporary suspension of conflicts, but not to structural changes in the relations between parties. The crisis did have an impact on the course that social partners chose, it reinforced tripartite social dialogue, led to closer cooperation in most affected industries and an increased use of ‘opening clauses’ in negotiations at the establishment level.

In *Belgium*, however, the initially strong tripartite system of social dialogue broke down as the government, under pressure of EC demands, decided to unilaterally legislate (Act of 28 Dec. 2011) reforms of the pension system and of early retirement systems, without negotiating with social partners. The unions have regarded this as a turning point in social dialogue and have refused to sign Inter-professional Agreements in the years 2013 and 2014. A new government as from June 2014 took more distance from social dialogue. The last enactment of wage measures, one of the matters that were previously considered to be the monopoly of social partners, has been countered by unions starting a procedure at the Constitutional Court, claiming the unconstitutionality of the last Act of 28 April 2015. All of social partners regard this as an internal conflict, though it is recognized that EU-measures have influenced it.<sup>28</sup>

In the *Netherlands* the context of political instability at the outburst of the crisis has had a significant impact on the social dialogue. For some years the political composition of cabinets had not been favourable to initiatives to consultation of the Social Partners; rather employers’

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<sup>28</sup> DIADSE Country Report on Belgium, p. 37-41.

organisations were able to influence policies directly, without involvement of unions. The crisis, on the one hand, shifted the balance of power to the employers' side, on the other hand it has given an impulse to the social dialogue. The institutional result of the crisis was that social partners were brought to the negotiation table again. As it became clear, at the end of 2009, that the financial crisis was turning into an economic crisis, employers' strategies turned to an adaptation to falling demand by a greatly extended use of flexible work. This development resulted in a loss of influence of the unions. In the meantime the Federation of Dutch Trade Unions (FNV) as an organization had been weakened by internal conflicts between participating unions and between more radical 'organizers' and leaders traditionally oriented towards social dialogue. The peculiar outcome of these developments has been that the restoration of consultation practices has also been favoured by employers' organizations. This has resulted in the remarkable Social Accord of April 2013, in which employers' organisations made substantial concessions in order to prevent two evils at the same time: a threatening collapse of the FNV and thus the loss of a dialogue partner essential to the functioning of social dialogue, and a political defeat of the then governing cabinet if no Accord would be reached. Now that both seem to be warded off, the support of employers' organizations for the Social Accord turns out to be decreasing.

## 5.2 State-centred countries plus Ireland

In *France* an Inter-professional Agreement has been signed 11 January 2013 which intends to establish 'a new economic and social model in supporting competitiveness and to secure employment and careers of employees', implemented by the adoption of the Law on Secured Employment of 14-06-13. Social partners criticize new governments' ways of implementing new initiatives without proper consultation and without thoroughly evaluating reforms measures that have been taken before. For instance, some of the Macron Law 2015 reforms have been criticised by the social partners as rushed, and as an attempt to destabilise the joint nature of the procedures on labour disputes. Unions in particular have claimed that these reforms were not urgent and more time should have been allowed for consultation, specially in the employment related measures (for example, the provisions allowing greater scope for shops to open on Sundays). However, unions have welcomed other measures, such as the strengthening of the employee defender's role and the new training obligation (EUROFOUND 2015a). The 2015 bill on modernising social dialogue was launched by the government after social dialogue at national level failed. The new bill heralds many changes for consultation bodies and collective bargaining at company level. Unions are divided on the bill. The French Democratic Confederation of Labour (CFDT) said the creation of the bipartite regional committees would help give representation to employees in very small businesses. However, the General Confederation of Labour (CGT) denounced plans to relax the system of worker representation and opposed the possibility of merging the information and consultation bodies and the weakening of the health and safety committees. Force Ouvrière (FO) denounced 'the decline of workers' rights and resources' contained in the bill. Meanwhile, the main employers' organisation, MEDEF, has also criticised the bill. MEDEF considers the reforms inconsistent and opposes the creation of bipartite regional committees, which it says will cause a new administrative burden for SMEs. (EUROFOUND 2015b) Finally the unions have been campaigning against the enactment of the 2016 law on

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

In *Spain*, after an initial period of negotiations between social partners and government, the government announced that reforms should be negotiated by social partners, designing a roadmap for the negotiations by February 2010. After several deadlines missed by social partners, the socialist government issued June 2010 a Royal Decree that, among others, tried to reduce the distance in employment protection between workers with open-ended and with temporary contracts. On collective bargaining reform a preliminary agreement between social partners was reached in January 2011, suggesting that social dialogue could be recovered, but in the end the employers' organisation CEOE refused to sign. The intervention of *EC Recommendation SEC[2011] 817* of June 2011 put pressure on the government to realise structural reforms. The unilateral reform of the collective bargaining system in June 2011 was substantially a compromise between the position of social partners and 'Troika' demands. A changed political constellation November 2011 urged social partners to reach a social pact, that was however ignored by the new conservative Rajoy-government that unilaterally decreed in 2012 further changes in dismissal law. This caused a general strike in March 2012 and the end of tripartite social dialogue in Spain for a few years. One of the strategic responses to the failure of tripartite social dialogue has been to strengthen and develop bipartite social dialogue at sectoral and enterprise levels. Unions tend to see recent reforms as rather ideologically than economically motivated and tend to oppose them by concluding sectoral agreements. In 2012 an Inter-confederal Agreement on Employment and Collective Bargaining 2012-2014 has been concluded. At company level agreements on reduction of working hours and pay in exchange for restrictions on layoffs have been very common. The unilaterally imposed reforms have had only few effects, unions have started a judicial battle against them.<sup>29</sup>

In *Portugal* the government since 2010 follows a mixed strategy of social dialogue as well as unilateral decisions. The intervention of the 'Troika' in 2011 has reduced concertation to a purely formal process, according to the unions, but employers welcome a quickening of the implementation of a number of labour market measures that had already been discussed for some time. These measures include a new regime as to the survival of collective agreements after their expiry date and create more room for company agreements: sectoral agreements may define that mobility, working time or wages are regulated by company agreement. The 'Troika' intervention led to a blockade of extension ordinances and consequently to a sharp decline of the number of new and renewed collective agreements and to a dramatic decline of the coverage of workers by collective agreements, which is now recovering but still only a quarter of the coverage in 2008.<sup>30</sup> Government control of initiatives in the field of social dialogue is far from new, but gained momentum under influence of the crisis, so it has been government that determined the space available to social partners. Social partners, however,

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<sup>29</sup> DIADSE Country Report on Spain, p. 3-5, 11, 26-29.

<sup>30</sup> DIADSE Country Report on Portugal, p. 35.

succeeded commonly in stopping a change in social security contribution rates, a proposal withdrawn by the government in 2012. Since 2014 social dialogue to some extent revives, for instance leading to a tripartite agreement on minimum wages (September 2014).<sup>31</sup>

In *Ireland* “social partnership emerged in response to an economic crisis and collapsed in the face of one.”<sup>32</sup> The ‘Troika’ already intervened the 1<sup>st</sup> of December 2010, among others requiring a substantial reduction of minimum wages. Their intervention left social partners little room to influence policies.<sup>33</sup> Overall European fiscal rules have been dominant, and these are not fostering partnership. In Ireland the High Court intervened by two decisions that declared the attribution of ‘law-making’ powers to social partners ‘unconstitutional’; this has been repaired by legislation. Since the dissolution of ‘social partnership’ in 2009, there is a lack of coherent and inclusive dialogue, which becomes apparent now that an economic recovery is leading to an increase in industrial disputes. Government focuses on legislation and tends to regard social dialogue as an instrument of implementation. Employers’ organisation object to a revival of social dialogue, but apparently mainly to the burdensome format it had in the pre-recession era.<sup>34</sup>

### 5.3 Transitional countries

In *Hungary* the political change of the new government-Orbán in 2010 has been a major factor, even more than the crisis, in the developments regarding employment relations and social dialogue. The government’s program can be characterized as a combination of a radical neoliberal and a statist agenda, that presupposes that government is already representing and uniting the interests of workers and employers and that social dialogue is thus superfluous. It meant a major redesign of the welfare state into a workfare state. A new Labour Code, in force since 2011, intends to align labour law with civil law, decreasing guarantees to employees in the hope of thus raising the currently low employment rate.<sup>35</sup> The unions, normally divided among themselves, found themselves campaigning together against the new Code, but without success. The highest tripartite body of social dialogue (the National Interest Reconciliation Council) has been disbanded in 2011, and replaced by a consultative body of unequal composition. The new Code has further enhanced the already existing decentralisation of collective bargaining, rights have shifted partly to Works Councils. At sectoral level, there is no real cooperation between social partners.<sup>36</sup> Negotiated responses to the crisis are to be found only in some specific sectors or multinational companies in which trade unions were present and took the lead.

In *Poland* the enactment of anti-crisis legislation (end 2009) put an end to a period of significant activation of social dialogue directly after the outburst of the crisis. In the second phase, until mid-2013, the influence of social partners weakened significantly and government resorted increasingly to unilateral decisions, among others raising the retirement age, till finally social partners withdraw from the Tripartite Commission. In the third phase, until

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<sup>31</sup> DIADSE Country Report on Portugal, p. 20-22, 25.

<sup>32</sup> DIADSE Country Report on Ireland, p. 46.

<sup>33</sup> DIADSE Country Report on Ireland, p. 14, 31, 40.

<sup>34</sup> DIADSE Country Report on Ireland, p. 46-47.

<sup>35</sup> DIADSE Country Report on Hungary, p. 3-6, 20.

<sup>36</sup> DIADSE Country Report on Hungary, p. 10, 14, 34.



March 2015, social dialogue has been suspended. In February 2014, however, social partners had a meeting and in March 2015 they reached an agreement on a draft law that has now been adopted as the Act of 24 July 2015, instituting a Council of Social Dialogue.

## 6 Involvement of Social Partners in measures regarding specific labour market issues

In reaction to the crisis measures have been taken regarding different labour market issues. They have partly built upon policies that had already been started before, and were taken either with or without involvement of the Social Partners. This chapter presents a concise comparative overview of these measures as to working time, employability, wages, flexible working, countering labour market segmentation, employment protection, quality of work, social security & pensions, and collective agreements.

### 6.1 Working time

In several countries short-time working schemes have been mobilized to counter the consequences of decreasing demand on product markets, by allowing enterprises, confronted with a significant decrease in demand, to reduce the working time for a limited period. In some of them this meant extending already existing arrangements (DE), in others the scope of exceptional provisions was extended for these purposes (NL), in still others this has been introduced by way of new arrangements (BE, ES, FR, PO). In most of these cases Social Partners have been involved in these measures or are even claiming to have initiated them (DE, NL).

Apart from these schemes, reduction in working hours could also be favoured by provisions for collective bargaining at company level, for instance by ‘opening clauses’ in sectoral agreements (DE). They have regularly been used in ‘concession bargaining’, in the context of which, for instance, a reduction of working time is accepted in exchange for a company’s guarantee of preservation of employment (DE, ES, HU<sup>37</sup>). Some governments have connected short-time working measures with a scheme to promote further training of workers (NL, PO).

Employers’ flexibility in the organization of working has in several countries been increased by the introduction or extension of ‘settlement periods’, allowing employers much more unilateral space in organizing working time, without rules on overtime becoming applicable. This has happened either with (PO, PT) or without consultation of SP’s (HU).

### 6.2 Employability

Employability had been an issue of tripartite dialogue before the crisis, partly inspired by the ‘Lisbon Strategy’ (BE, DE, NL, PT). It has, as a consequence of the crisis, tended to get a low priority on agendas. Nevertheless it is to be noted that in France personal training accounts have been created by law, and that in Ireland the ‘Action Plans for Jobs’ include the promotion of skills.<sup>38</sup> In some cases short-time working schemes have been accompanied with measures to promote training of workers during the spare time, created by the schemes.

### 6.3 Wages

In some countries governments have, under external pressure of the Troika or of EU measures, put aside social partners in their traditional, and often constitutionally grounded

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<sup>37</sup> In Hungary in particular in the automotive sector (DIADSE Country Report Hungary p. 32).

<sup>38</sup> DIADSE Country Report on Ireland, p. 25-26.

right to decide collectively on wage issues (BE, PT). In Portugal the national minimum wage was frozen, in the face of strong opposition from the unions. In other countries restrictions on the levels of wages have been accorded in tripartite social dialogue (DE, NL). In cases of ‘concession bargaining’ at company level, unions have waived claims to wage increases in exchange for companies’ promises to abandon, or be restrictive in, redundancy plans.

Wages in the public sector tend to be a first aim of austerity measures (BE, IE, NL, PT); in Ireland, for instance, a reduction of salaries by five to fifteen percent has been one-sidedly realized. This has been putting significant strain on social dialogue in the sector. (European Union 2013)

#### **6.4 Flexible working arrangements**

During the last decades, in most countries the possibilities for the use of flexible working arrangements have been enlarged, either in consultation with social partners (BE, DE, NL) or without them (HU, PO). In some of them measures had already been taken to reverse the trend towards the large-scale use of flexible work (ES, PT). The crisis has often led to an extension of possibilities to make use of flexible contracts (DE, ES, FR, HU, PO), and usually also to an increase in the use of them, a trend that some national governments have subsequently tried to reverse (NL and PO in 2015).

#### **6.5 Countering labour market segmentation**

On the one hand, measures taken to allow for flexible forms of work are reported to have generally increased the segmentation of labour markets (ES, PT). On the other hand, measures taken with the aim of reducing labour market segmentation have targeted both young and older workers. France introduced a bonus/malus-system on social security contributions for young workers with open-ended contracts vs. short-time fixed-term contracts. Ireland has a ‘JobBridge’ program aiming at improving transitions to work for young people and ‘JobPath’ for long-term unemployed workers. In Poland activation vouchers and benefits were introduced as an incentive for employers to hire parents who return to the labour market.

#### **6.6 Employment protection**

Following on from neoliberal policies, in most countries the level of employment protection, and in particular regulations as to dismissal, have been an important issue of discussion, also in the framework of social dialogue. In several countries the requirements of ‘due cause’ for unilateral termination have been softened (ES, PT) and the severance costs been lowered, either on the basis of SP’s involvement (NL, PT though under pressure) or without it (ES).

In *Belgium* the Constitutional Court played a role, urging government to do away, within two years after its decision, with the blue / white collar division in its regulation. Curiously, a change of the Belgian system that used to lean exclusively on the costs of dismissal, now urged to the introduction of legal requirements as to employers’ motivation of dismissals. *France*, on the contrary, facilitated conciliation in dismissal procedures by the way of allowing for paying a lump-sum compensation to the dismissed worker. In the *Netherlands* a discussion on dismissal law that lasted for half a century without any significant change of

legislation, came due to the crisis to a conclusion in the form of a tripartite compromise that was consequently enacted.

There is a general concern about the difference in protection between workers with open-ended as against flexible contracts, and usually a policy preference to lower a bit the protection of the first and to level up that of the latter. However, in some countries the possibility of pre-expiry termination of fixed-term contracts has been newly introduced (HU, PO). General trends are that reinstatement, as a remedy to unfair dismissal, is quickly disappearing from the catalogue of legal sanctions (HU, PT), and that levels of financial compensation in case of dismissal are decreasing (ES, HU, NL, PT). In Spain an increase of flexibility was tried to be realised by a reform of the dismissal compensation system.

### **6.7 Quality of work**

Hardly anything is to be reported on measures to increase the quality of work. Only In Portugal some limited initiatives have been taken.

### **6.8 Social security and pensions**

The level of public unemployment benefits has been lowered in several countries, either with consultation of SP's (NL) or without it (ES, HU). In Portugal the first reaction of the government to the crisis has been to extend rights to unemployment benefits, which has been reversed when austerity was considered to make that necessary. Portuguese social partners succeeded in 2012 to force the government to withdraw proposals to change the social security contribution rates, but under Troika pressure the benefit system has been reduced in conformity with demands of the Memorandum of Understanding. In several countries benefits are increasingly linked to compulsory public work (ES, HU, NL).

In many countries raising the statutory pension / retirement age has been on the agenda. In the Netherlands the issue dominated for several years the discussion on reforms, ending with a tripartite Accord in 2011. In other countries the age has been raised without proper consultation of social partners (BE, ES, PO). Possibilities of early retirement have been restricted (BE, NL).

### **6.9 Collective agreements**

In some countries decentralisation of collective bargaining had already been a trend before the crisis (DE, FR, PT), in Germany politics had even already initiated a reverse trend of again strengthening the extension of collective agreements. In several countries decentralisation has been initiated in response to the crisis (ES, PT). In some countries derogation of collective agreements in individual contracts has been made possible, also to the detriment of the employee (FR, HU) or already existing possibilities have been used more often (DE). This has also involved 'concession bargaining' resulting in company agreements in which pay or other claims have been scaled back in exchange for limited no-redundancy guarantees (DE). The automatic continuation of collective agreements has been limited in Spain, the conditions of extension of agreements been made heavier in Portugal. In Portugal the Constitutional Court has declared unconstitutional a number of reforms that were deemed to interfere with the right to collective bargaining.



## 7 Effects of reforms

What have been the effects of the reform measures that have been taken after the financial crisis? It is difficult to gauge the effects of reform measures, certainly at the current stage. It is hard to isolate effects of specific measures, and some measures may only be justly evaluated after more time than has now passed since they have become effective. But it is possible to evaluate some effects by looking at some of the main figures that indicate developments at labour markets, and we have also been in the position to ask those involved in Social Dialogue for their evaluations of measures taken. Their evaluations of the effects turn out to be rather different as to the category to which countries, in the framework introduced before, have been assigned. Roughly, evaluations are to a certain extent positive in the social partnership(SP)-type-countries, predominantly negative in the state centred (SC)-type-countries, and critical in the transitional (TI)-type-countries – but note that measures in the latter category of countries have not substantially been related to the crisis.

### 7.1 Effects of reform measures

#### 7.1.1 Social partnership countries

As to the countries in our SP-category (Belgium, Germany, The Netherlands), the conclusions on the effects are positive regarding those measures that have been taken to mitigate the immediate negative impact of the crisis in terms of loss of jobs. In *Germany* the working-time measures have been to a large extent successful, partly due to the strength of the German economy and the fact that the crisis consisted overwhelmingly only in a temporary drop in demand, partly due to pre-established instruments providing for within-firm flexibilities (working-time accounts). The measures succeeded in preventing a significant decline of employment, by diverse kinds of reductions of working hours. Reckoned in hours worked, however, there has nevertheless been a significant fall of more than thirty percent (by June 2009). Short-time working has accounted for only a third of this reduction, the pre-existence of working-time accounts (that were allowed to become negative during the period of the crisis) has also contributed to realising this reduction. Further helpful was the fact that firms appeared to be very reluctant to dismiss personnel, partly due to their remembrance of an earlier stage at which they had had a hard time finding skilled workers. The latter appears to apply also to the *Netherlands*, where just before the crisis labour market shortages had been predicted, and where the dismissal law system helped to keep the number of dismissals relatively low. However, more than half of the dismissals in 2009-2010 resulted from the bankruptcy of enterprises and therefore fell outside of the scope of normal rules on dismissal procedures. At a later stage of the development of the crisis, austerity measures have had a significant impact upon the level of unemployment. The drawback of this has been that when employment recovered as from 2014, a majority of the jobs again added were in the form of flexible jobs. That means that the overall developments have neither contributed to the quality of jobs, nor to reducing the segmentation of labour markets. In all three countries social dialogue used to be strong enough to face the challenges of a crisis, but in *Belgium* social dialogue temporarily collapsed.

The positive effects of liberal economic reforms in the German experience have served as a guideline for national reform efforts in some of the crisis countries of the Euro area. The German policy approach based on the conventional economic wisdom, that “reckless’ national fiscal policies have to be monitored and sanctioned in a more credible and effective way” (Funk 2012) have been clearly influencing some of the structural reforms adopted in other EU Member States. The actual results of these reforms as a step in the right direction for more efficient labour markets is still under debate, while its effects on increasing flexible/non-standard forms of employment has been remarkable.

### 7.1.2 *State-centred countries plus Ireland*

As to the four countries comprising our SC-category (France, Ireland, Portugal and Spain), the conclusions on the effects of the reform are predominantly negative. In *France* measures to push back the use of short-term fixed contracts have not resulted in a decrease and neither has the minimum of 24 hours/week for part-time contracts. Short-time working, however, has been successful. In *Portugal* none of the proclaimed goals of labour market reforms have been reached: facilitation of dismissals did not diminish labour market segmentation, reduction of entitlements to unemployment insurance did not reduce long-term unemployment, changes in the framework of collective bargaining did not promote decentralisation but resulted in a dramatic erosion of sector bargaining and of the coverage by collective agreements. The result has been an erosion of the institutional foundations of inclusiveness, perceived by unions as a ‘severe break’, while employers’ confederations consider their position and influence to have been preserved or strengthened.

In *Spain* the reform of the collective bargaining system, unilaterally decreed by the new conservative government, had very few effects; as a primarily externally imposed reform it lacked any support. Two years later the number of employees covered by firm level agreements had hardly grown, the number covered by sectoral agreements had hardly decreased. The possibility of an opt-out has been used in 2512 firm level agreements but these covered only 1,5 percent of workers. The percentage of workers not covered by a collective agreement has risen by 3 points to 12 percent. Decentralisation of collective bargaining has proved difficult because in Spain there are so much very small companies without a representation of workers.<sup>39</sup> The reform was imposed from above and lacked any social support, which partly explains the opposition it has met from judges. In both Portugal and Spain decisions of higher courts have partly reversed reform measures, in Portugal on dismissal law (selection criteria for redundancies, obligation to try to find alternative suitable job), in Spain on the continuation of employment conditions after expiry of a collective agreement.<sup>40</sup> Generally, developments have had a negative impact on job quality and contributed to an increase in labour market segmentation.

In *Ireland* the macroeconomic figures indicate a recovery of the economy, also in terms of a reduction of unemployment, but do not go along with improved working conditions for employees. An increased use of flexible forms of labour and a hollowing out of middle income jobs contribute to a higher risk of income inequality. In spite of “the discontent,

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<sup>39</sup> DIADSE Country Report on Spain, p. 14, 34-37.

<sup>40</sup> DIADSE Country Reports on Portugal, p. 13 and on Spain, p. 13.

inequality and democratic deficit which has emerged as a result of the recession in Ireland”<sup>41</sup>, government has not stimulated social partnership again.

### **7.1.3 Transitional countries**

In Hungary and Poland, the countries that comprise the TI-category, the measures taken since 2008 are not much defined by the consequences of the crisis and much more to be seen in relation to political change. In *Hungary* the employment rate first dropped to 54,5 percent (1<sup>st</sup> quarter 2010), then rose again to 63,9 percent (2015) but the relation of these developments to the legal reforms is unclear. The new code has increased inequality and distorted the balance in favour of employers. In Poland, not hit heavily by the crisis, the actual use of subsidized short-time working was very restricted but the extension of working time settlements has been extensively used. Legislative changes have mainly increased the flexibility of work forms.

## **7.2 Effects on Social Dialogue**

Initially the impact of the crisis and the perceived need for urgent action have brought social partners somewhat closer together in looking for a common basis for measures to be taken. As the depth of the crisis became clear, around 2011, they tended to return to their own home ground and to retire to their respective interest positions. (EUROFOUND 2012) At the same time it has been shifts in the political composition of governments that have led in some countries to a (further) restriction of the significance of social dialogue (BE, ES). In the end, in all countries, except to a large extent the ‘transitional’ ones, the financial and economic crisis has put pressure on social dialogue. The effects of this pressure have been different, and can be classified again according to the threefold categorization of countries.

### **7.2.1 Social partnership countries**

Typically, in the countries belonging to the SP-category (Germany, Belgium and the Netherlands) an established institutional structure of social dialogue has proven to be strong, in Germany and the Netherlands strong enough to stand up to the disturbances of an economic crisis (ETUI 2010). Between unions and employers’ organisations there seems to be a rather strong mutual commitment to keep in dialogue, but the consequences of the crisis have put significant strain on the parties. In Germany and the Netherlands representatives of both unions and employers’ organizations judge positively on the tripartite cooperation in the first reaction to the crisis, but admit that this effect has been restricted to a particular time frame and that relations afterwards may tend to become worse than before. This is partly due to a perception of unions that employees have been disproportionately bearing the costs of the crisis, that the crisis has mended the pace by which the labour share in GDP has been diminishing, significantly lagging behind productivity growth since the 1980’s (ILO & OECD 2015). In Belgium the combination of the strain with political developments has led to a temporary suspension of dialogue, in a reaction to measures taken unilaterally by the government. The Belgian unions have appealed to the Constitutional Court to redress government’s unilateral wage stops, but unsuccessfully.

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<sup>41</sup> DIADSE Country Report on Ireland, p. 36.



### *7.2.2 State-centred countries plus Ireland*

In the countries belonging the SC-category (France, Ireland, Portugal and Spain) there is anyhow a greater distance between social partners and government. In these cases the dialogue between government and social partners, as well as that between social partners, has been more heavily affected, resulting in deadlocks in negotiations<sup>42</sup> and governments deciding to pass by social partners and legislate unilaterally. Reform measures that have been introduced, have tended to decentralise collective bargaining and to restrict the possibilities of their extension. In Portugal social partners agree on the detrimental impact of these measures, distrusting the government to be aiming at reinforcing its own decision-making powers at the cost of collective bargaining. In Portugal and Spain there has been an upsurge of social conflict, issuing in a number of general strikes. In these countries the Constitutional Court was, partly successfully, approached to declare some unilateral measures of governments unconstitutional, while in Ireland such a verdict affected social dialogue institutions. In France, there is also a lasting trend towards decentralisation. Deviation in peius by company agreements in certain circumstances has been made legally possible since 2008. The Rebsamen Law on labour relations and employment of 2015 goes further in that trend, aiming to simplify relations between social partners and to promote employees' representations at small and medium size enterprises.

As soon as a gradual economic recovery takes away some of the forces behind conflict in these countries, there is again a sense of the need for reviving social dialogue, often paired by the recognition that pre-crisis arrangements have in some respects been defective and that a new set-up of social dialogue will be needed. In Ireland, for instance, both sides agree that the old model of social dialogue did no more meet the complexity of issues, that there were 'too many pillars to see the hall', but that the reestablishment and the reinvention of a reformed version of 'social partnership' is also a matter of an effective labour market and of economic growth.<sup>43</sup>

### *7.2.3 Transitional countries*

In the third, TI-category (Hungary & Poland) sectoral social dialogue has broken down, as a consequence not so much of the financial crisis, as of political change of government. In Poland a gradual recovery of social dialogue seems underway. In Hungary after the inauguration of the new conservative government in 2010 the regular consultation of social partners came to an end. All new measures were unilaterally introduced by the government. Hungary has been criticized for not promoting and encouraging the conclusion of collective agreements.<sup>44</sup>

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<sup>42</sup> In Spain in February 2012, after the new government had neglected the social pact concluded January 2012 by social partners.

<sup>43</sup> DIADSE Country Report on Ireland, p. 34, 38, 43-44.

<sup>44</sup> DIADSE Country report on Hungary, p. 35-37.

## 8 How to advance the contribution of social dialogue?

The financial crisis has thus had serious drawbacks on Social Dialogue, particularly in countries that have been urged to take all kinds of austerity measures, under the pressure of the Troika or of European budgetary norms. In several countries this has caused Social Dialogue to have come to a standstill or even to have broken down. In C-category countries this has been a consequence of political changes of government.

Social dialogue is considered to be a key element of the European social model and a crucial factor for a well-functioning social market economy, particularly in changing economies and societies. The promotion of social dialogue as a common objective of the EU is established in Article 151 TFEU. Besides, Article 152 TFEU recognises the relevant role of social partners as drivers of EU social law and policy, while acknowledging the diversity of national systems of social dialogue. Therefore the EU institutional system embraces social dialogue as a key tool for promoting job creation and developing fair working conditions. Social dialogue practices at EU and national levels have the potential to contribute to foster economic growth and social progress, by setting the dynamics and mechanisms for well-operating labour markets. However, for social dialogue systems to be able to deliver effective results some essential conditions need to be fulfilled: autonomy and independence of the social partners; representativeness of the actors involved in the process and legitimacy of their agreements; and sufficient strength and resources within the institutional framework for producing and implementing their decisions.

Before the crisis, the European Commission had an at least verbal commitment to the promotion of Social Dialogue as well as to the Charter of Fundamental Social Rights, incorporated in the Maastricht Treaty in 2009 (European Commission 2002 and 2004). The crisis has apparently given it reason to change its views and even to promote, since 2011, a decrease of collective bargaining (Keune 2015 and Dukes 2014). This turn has been criticized, not only as a break away from eighty years of wise policies of industrial democracies (Visser 2016), but also because a persistent line of research shows that a decrease of collective bargaining coverage causes larger inequalities of income, and that larger inequalities of income are detrimental to long-term economic growth (IMF 2014 and Keune & Tomassetti 2016). The European Commission not only changed its view but has actually taken part, for instance by way of its participation in the Troika, in interfering in Member States, requiring economic measures that could be expected to be prejudicial to Social Dialogue and to infringe on fundamental social rights, (Fischer-Lescano 2014). In Member States under Troika or ECB pressure, but also in other countries (Visser 2016), measures have been taken that – even if they only claimed to promote decentralisation of collective bargaining - have resulted in much lower levels of collective bargaining coverage. Since 2008 collective bargaining coverage has diminished by 66 percent in Romania, by 41 percent in Greece, by 28 percent in Slovenia, and by roughly ten percent in Hungary, Portugal and Slovakia (Visser 2016).

During the interviews conducted for this study, not only representatives of unions, but sometimes also of employers' organisations criticised the lack of progress in social dialogue

at European level. Unions criticise the fading away of the social agenda which guided the discourse of European institutions in the 1990's (Dukes 2014). Although the unions are well organized at the European level, as employers' organisations admit, it is not easy to reach results because the issues to be discussed are restricted and it appears difficult to align standpoints. The EU has initiated several research projects on precarious work, has issued a Green Paper, but consequently has failed to do something about it. The EU could, for instance, have invited social partners to try to do something about precarious work, but it has not. As a Dutch union representative remarked, any part of an agreement on employment conditions that reaches above a EU-wide minimum level is currently being disqualified as 'gold-plating' (European Commission 2015), so that unfortunately nothing may in this respect, realistically, be expected from an EU that still gives almost absolute priority to neoliberal economic principles of market integration and of individual freedom of movement above collective labour freedoms. A decent EU, it is argued, would have more respect for the legal position of workers. One way to further this would be that the ministers of Social Affairs develop an independent agenda on the quality of labour relations.

The success of social dialogue is highly dependent upon its support by governments (EUROFOUND 2012). More generally, an important condition for Social Dialogue is the presence of institutional arrangements that keep up an interdependency between the parties involved: unions, employers' organizations and national state. A balanced interdependency, stage-managed by the state, may urge them to get to an agreement. This is a condition that applies not only to national Social Dialogue but also to supranational Social Dialogue. In the first period after the Treaty of Maastricht, for instance, the European Commission provided for structural arrangements in the framework of which European social partners concluded several cross-sectoral agreements that resulted in Council Directives on parental leave, part-time work and fixed-term work. Soon, however, the restrictions of the resources that the Commission, compared to national states, did possess to keep up such a 'negotiate or we will legislate' strategy, have become apparent (Dukes 2014).

At least in the SP-category countries, but also in some of the others, unions and employers' organisations agree that if occasional attacks from politics on the system of collective agreements would, unfortunately, ever be successful, this would have disastrous effects on the system of social relations. 'The impact of a good social dialogue is potentially fabulous, it can make an enormous contribution to productivity', it has been argued from employers' sides. It has also been noted that the value of social dialogue is not only restricted to agreements being actually reached on a topic, but may also be present if it turns out to be possible to reach agreement on a *common analysis* of a problem (DE, NL). And social dialogue may significantly contribute to innovation: in those cases where innovation is perceived as affecting acquired rights, a good dialogue is a precondition for success.

The Portuguese report is pleading for a revival of the spirit that guided the creation of the ILO, to get back to a real social dialogue. In his guidelines for the European Commission, president Juncker has recognized that social dialogue has suffered during the crisis, and has announced a 'new start for social dialogue' that is to 'be resumed at national and especially at European level' (Juncker 2014). Social dialogue is to be regarded as "a fundamental feature of

the European Social Model, which has no parallel elsewhere and of which all European citizens can be proud” (European Commission 2016b).

In the Eastern European countries that have been examined, a need for an advancement of effective national level social and civic dialogue would also be highly important (not necessarily by resuming former institutions, but achieving meaningful participation anyhow), in view of improving the general quality, computability and legitimacy of policy making.

The Hungarian experts highlight the need for a meaningful promotion of collective bargaining and facilitation of the conclusion of collective agreements as the best policy-direction in the realm of labour law. In line with international practices, such promotion by direct (and indirect) state intervention could be developed, both through legislation (effective incentives in labour laws itself) and through supporting measures (extensively available mediation-arbitration services; catalysed sectoral social dialogue and well-working extension procedures; and efficient training of employees and employers, especially in the SMEs-sector). Promotion of collective bargaining should embrace supporting the development of social partners organisations via transparent, impartial mechanisms (instead of ad hoc grants) in order to substantially improve their capacity and professionalism.

Meanwhile problems of representativeness of the established organizations participating in social dialogue, as well as the gradual surge in the number of non-employed but ‘employee-like’ workers (i.e. within the category of self-employed) may require a reassessment of the structure of social dialogue at national level. Other ways of legitimating the representativeness of negotiating organisations or the participation in the process of presently excluded categories of workers might be required as a part of the effort to restore and reinvent the social dialogue.

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