

# Wages and collective bargaining: light at the end of the tunnel?

## Introduction

For years, European crisis management in the field of wages and collective bargaining has been dominated by an interventionist approach aimed at putting pressure on wages, at decentralising collective bargaining systems, and at reducing workers' rights. In previous editions of the *Benchmarking Working Europe* report we illustrated the far-reaching consequences of this approach in the crisis countries in terms of real wage decreases and, in particular, dismantling of multi-employer collective bargaining arrangements. Against this background, one purpose of the current chapter is to review whether under the Juncker Commission – in office since November 2014 – there have been changes in how the Commission approaches the issues of wages, collective bargaining and workers' rights, and whether there is any light at the end of the tunnel.

The focus of analysis here will be the Country-Specific Recommendations (as the most explicit manifestation of the Commission's approach), the development of wages in relation to productivity, and the gender pay gap. The chapter will provide, furthermore, an update on the development of minimum wages and collective bargaining systems across Europe. It will conclude with a review of different forms of trade union action – such as strikes, litigation and alternative forms of action – waged to counter the interventionist crisis management and the continuing attacks on workers' rights

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## Wage developments

**Figure 3.1 Country-specific recommendations in the field of wages and collective bargaining (2015)**

	Recommendations	Justification
BE	Align wages with productivity	Unit labour costs too high: wage-setting should be more flexible to improve capacity for adjustment of economy
BG	More transparency in minimum wage setting	Current increases of minimum wages potentially distortive for labour markets
ES	Align wages with productivity	More sectoral and company agreements are needed to ensure that wages stay in line with productivity
FI	Align wages with productivity	Continue with moderate wage developments as agreed in 2013 agreement which improved cost competitiveness
FR	Align wages with productivity Reform of wage-setting system Moderate minimum wage development	wage-setting should be more flexible through more company level agreements and scope to derogate from branch agreements. Indexation of minimum wage was criticised as not conducive to competitiveness
HR	Align wages with productivity Reform of wage-setting system	wage-setting system not flexible enough to adapt to economic changes; in particular extension and after-effect of collective agreements criticised
IT	Reform of wage-setting system	Need for decentralisation of bargaining through improved scope for second-level bargaining
LU	Align wages with productivity Reform of wage-setting system	Problem of divergence of productivity across sectors: more flexible wage-setting so that sectoral real wages are in line with sectoral productivity
PT	Align wages with productivity Moderate minimum wage development	wage-setting should be more flexible to align wages with productivity at sectoral and firm level: increase scope to derogate from from sectoral collective agreements
RO	More transparency in minimum wage setting	Clear guidelines are needed to better take into account underlying economic and labour market situation to strike a balance between facilitating employment and competitiveness on the one hand and safeguarding labour income on the other
SI	Review mechanism for setting minimum wage	The inclusion of benefits and indexation of minimum wage leads to high minimum wage levels in relation to overall wage distribution.

Source: Authors' own compilation.

## CSRs 2015/2016: old wine in new bottles

While some observers see some signs of a 'socialising of the European Semester' (Zeitlin and Vanhercke 2015), others, such as Clauwaert (2015: 17), point out that the Commission is merely employing a window-dressing tactic in assigning greater importance to social objectives in the context of the European Semester. In the field of wages and collective bargaining a 'more social' approach would entail a serious recognition of the importance of wages for fostering social cohesion and domestic demand.

Since the proof of the pudding is in the eating, this should be reflected in more demand-side-oriented country-specific recommendations (CSRs) in 2015/2016.

As Figure 3.1 illustrates, eleven countries received recommendations in the field of wages and collective bargaining (for a detailed overview of the CSRs in the social field more generally, see Clauwaert 2015). These can be divided into three standard recommendations concerning (1) the alignment of wages with productivity, (2) the reform of

wage-setting systems, and (3) the review of the system of minimum wage-setting.

Following the Commission's new approach of issuing 'more focused' CSRs, most of the more detailed recommendations have been moved to the explanatory section that accompanies the recommendations. Close scrutiny of this section yields identification of few differences compared with previous years' CSRs on wages (ETUI and ETUC 2014: 70; Schulten and Müller 2015: 338). Concerning the recommendation to ensure that wages develop in line with productivity, the Commission's key concern is to improve cost competitiveness by making wage-setting systems more flexible as a requirement to adapt to changes in the economic framework conditions. Hence, all the recommendations concerning the reform of the wage-setting system are aimed at further decentralisation of collective bargaining. Even in countries like Portugal and Spain where the Troika policies already did a fairly comprehensive job of undermining the regulatory capacity of multi-employer bargaining (see section 3.7. below), the CSRs for 2015/2016 still call for further decentralising measures.

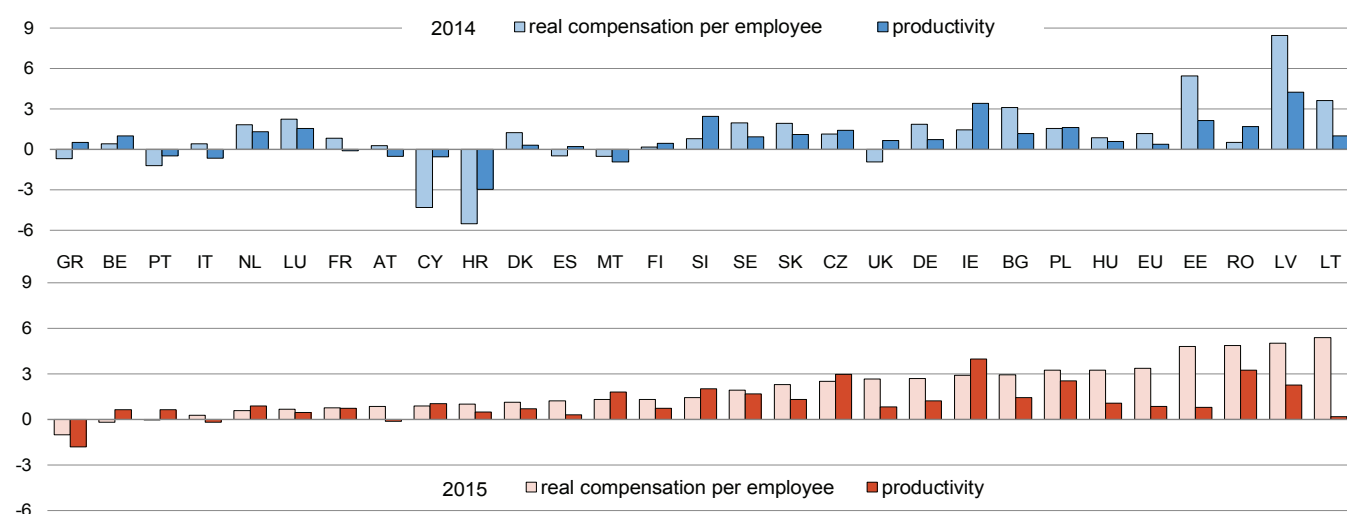
Minimum wages are another main target of CSRs. The key rationale underlying all recommendations concerning reform of the minimum-wage-setting mechanism is to ensure that minimum wages not only safeguard labour income

but also help to foster employment and competitiveness. Needless to say, from the Commission's point of view, in those countries that received a minimum wage recommendation, the pendulum has swung too far in favour of the former goal. It is therefore not surprising that, in all the countries that received a minimum wage recommendation (France, Slovenia, Portugal and Romania), the relative minimum-wage level is above 50% of the respective national median wage (see Figure 3.5).

Overall, the CSRs 2015/2016 suggest no general re-orientation of the Commission's policy in the field of wages and collective bargaining. In light of the new 'streamlined' approach to the European Semester, the CSRs are, essentially, old wine in new bottles.

## Wage developments

Figure 3.2 Real compensation and productivity 2014, 2015 (%)



Source: Authors' calculations based on AMECO.

## Real wage developments catching up with productivity growth

It is no surprise that the CSRs should have failed to adopt a new approach, as the 2016 Annual Growth Survey (AGS) (European Commission 2015a), which launches the European Semester process, also reiterates the message delivered by previous AGSs. In the field of wages and collective bargaining it is essentially a repeat of last year's message that in order 'to ensure high employment levels throughout the EU ... real wages must continue to move in line with productivity' (European Commission 2015a: 11). While, at first sight, this seems to suggest that the Commission finally acknowledges the important role of wages and aggregate demand for growth and employment, the statement is immediately qualified by the assertion that 'wage-setting frameworks, including collective agreements, should allow a certain degree of flexibility for differentiated wage increases across and within sectors (European Commission 2015a: 11). Not

only is this entirely in line with the decentralisation agenda pursued with the CSRs, but it means also that sectoral or even company-level productivity should, rather than national productivity, be the benchmark for wage increases. This approach could, however, lead to an increase in wage inequalities between workers in high-productivity sectors/companies and those in low-productivity sector/companies, and hence to a negative impact on growth and employment (ILO 2015). Such a policy of differentiated wage increases counteracts, to a certain extent, the Commission's aim of creating a high level of employment.

Another key message of the AGS concerning the field of wages and collective bargaining is that, in this process of aligning real wages and productivity, 'it is important that workers' representation is ensured and that there is effective coordination of bargaining modalities between and across the various levels' (European Commission 2015a: 11). Against this background, the decentralisation strategy pursued by the Commission in its CSRs is surprising because it undermines multi-employer bargaining as the most effective mode of bargaining coordination 'between and across the various levels'. Nor is it clear what the Commission means by the term 'workers' representation' since it avoids explicit mention of trade unions or trade union-related representation channels. This is suspicious in particular because the Commission, as part of the Troika,

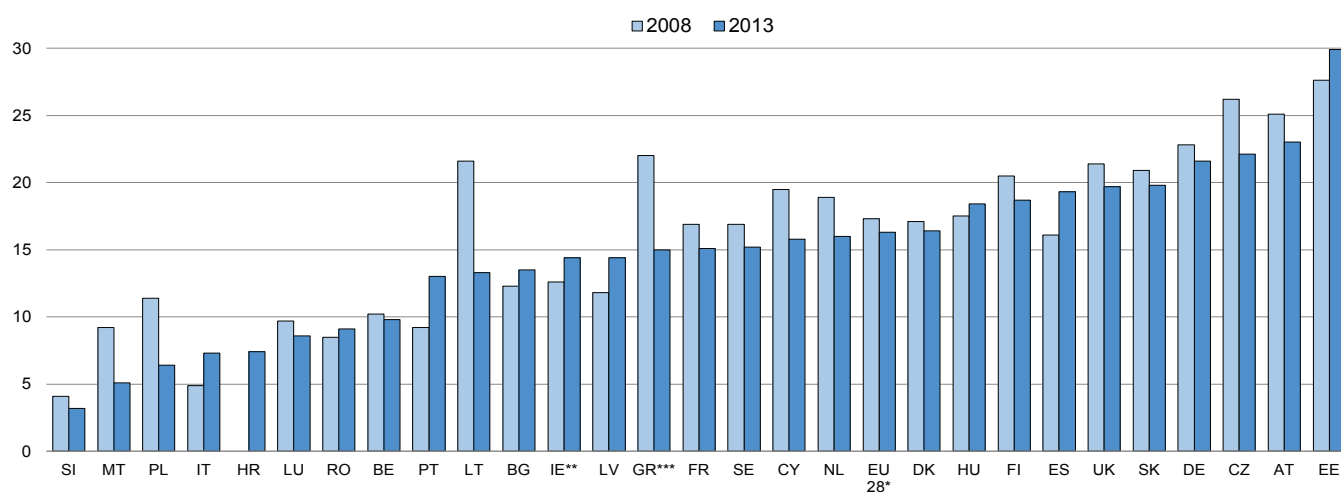
increased the scope for company-level agreements to be signed by non-union groups of employees which – in Greece, for instance – led to further wage cuts (see section 3.8).

As regards the main objective of ensuring that real wages develop in line with productivity, Figure 3.2. shows that this aim was fulfilled in the majority of cases in 2015. It should be mentioned, however, that Figure 3.2 compares real compensation per employee – which includes wages and salaries plus social insurance contributions payable by employers – with productivity defined as gross domestic product per person employed. In this context the terms compensation and wages are therefore used interchangeably. The comparison illustrates that, even though in 20 countries real wages grew faster than productivity, this was by only a small margin of below 2%. The only exceptions where real wages outstripped productivity increases by more than 2% are Hungary (2.2%) and the Baltic states – Latvia (2.7%), Estonia (4%) and Lithuania (5.2%).

Since between 2008 and 2014 average annual real wage developments lagged behind productivity growth (ETUI and ETUC 2015: 42), this catching up of real wages with productivity is good news for employees and for the economy as a whole, given that domestic demand is the key driver of growth and employment in Europe. For a sustained recovery, however, much more of the same will be needed.

## Wage developments

Figure 3.3 Gender pay gap in unadjusted form, 2008 and 2013 (%) - NACE Rev. 2 (structure of earnings survey methodology)



Source: Eurostat. \*Figure for EU28 in 2008 without Croatia. \*\*Ireland 2008 and 2012. \*\*\*Greece 2008 and 2010.

### Reform-driven increase in gender pay gap

The largely supply-side-oriented crisis management has an impact on equality and, in particular, gender pay inequality which – as Stiglitz (2016: 91-96) has shown for the US – is a major impediment to economic growth. Figure 3.3, which compares the non-adjusted gender wage gap in 2008 (before the crisis) with that in 2013 (during the crisis), illustrates two general developments: first, the gender wage gap actually decreased during the crisis in 19 out of 27 EU countries for which data is available. Yet the second main message of Figure 3.3. is that all the countries which at some stage during the crisis were in need of financial assistance and were, as a result, subject to surveillance by international institutions – such as, in particular, the Troika – show an increase in the gender wage gap since 2008. This applies to Romania, Portugal, Ireland, Latvia, Hungary and Spain, the only exceptions being Greece and Cyprus. For the former, the figures are to be treated with caution because the most recent Eurostat figures on the gender wage gap in Greece are for 2010 and

thus do not take into account the dramatic austerity measures implemented in the public sector after 2010.

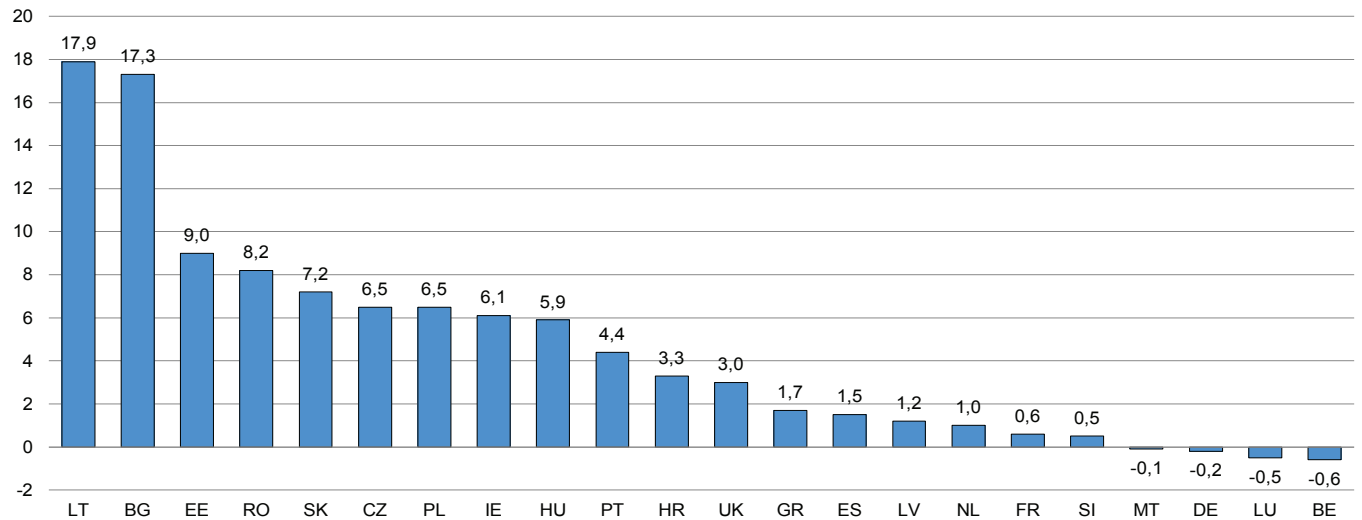
These divergent trends require further explanation. Why did the gender wage gap decrease in the majority of EU countries but not in the ‘crisis countries’? As Karamessini and Rubery (2014) have shown, the reasons are in each case multifaceted and highly country-specific in that they reflect national institutional and normative arrangements. However, with this caveat in mind, one explanation for the decrease in the gender pay gap is the strong link between the gap in the employment rate and the gender pay gap (Rubery 2015a: 729). At the beginning of the crisis in 2008 and 2009 most jobs were lost in construction and manufacturing which traditionally employ more men. Thus, the narrowing of the aggregate gender pay gap in the majority of EU countries is due more to a fall in men’s wages than to any improvements in women’s pay (Rubery 2015b: 62).

This applies equally to the countries in which the gender pay gap increased; but there the situation changed when the financial crisis turned into a sovereign debt crisis in 2010 and policies of austerity and neoliberal structural reforms replaced Keynesian policies in coping with the crisis. Three characteristics are shared by all the crisis countries with an increasing gender pay gap: first, all were forced by international institutions

to reduce public expenditure by cutting public sector services, employment and wages. Since public sector employment in most countries is dominated by women, and since, furthermore, the majority of higher-educated women work in the public sector, these cuts contributed to increasing the gender pay gap (Rubery 2015b: 63). The second characteristic is the decision to cut or freeze minimum wages in particular in those countries that were under Troika surveillance. Since women and young people are overrepresented among the minimum-wage-earners, these cuts and freezes also increased the gender pay gap. And the third characteristic is the policies to dismantle multi-employer bargaining by pushing for a decentralisation of wage negotiations to the company level. The resulting decrease in collective bargaining coverage negatively affects the gender pay gap because, as research has shown, pay equality correlates positively with the collective bargaining coverage levels (Hayter and Weinberg 2011; Oelz *et al.* 2013; Pillinger 2014).

## Minimum wage developments

Figure 3.4 Development of real minimum wage in 2015 (%)



Source: WSI minimum wage database.

### Dynamic real minimum wage development

2015 was another good year for minimum wages. After years of declining real minimum wages during the crisis, last year's edition of this report already alluded to the 'end of minimum wage restraint' (ETUI and ETUC 2015: 47); and the dynamic development continued in 2015. As Figure 3.4 illustrates, four different groups of countries can be distinguished. At the very top of the table are the two outliers Lithuania and Bulgaria with an increase in real minimum wages of more than 17%. The second group consists of ten countries with a real minimum wage increase ranging from 9% in Estonia to 3% in the United Kingdom. These fairly steep increases can be explained by the very low – or in the case of Lithuania and Bulgaria even negative – inflation rate in most countries. An additional factor stems from statistical effects in countries with a very low absolute minimum wage level (Schulten 2016a). What looks like a substantial increase in relative terms appears much less impressive when absolute values are considered. This applies in particular to the central and eastern

European countries that account for the majority of countries in both groups. In the light of the still comparatively low absolute level of minimum wages, the large real wage increases can be seen as a continuation of the general catching-up process which, in most countries at the bottom of the minimum wage table, began in 2013.

Another factor that contributed to substantial increases in real minimum wages is increasing political pressure and corresponding initiatives for higher minimum wages in an effort to curb the high levels of in-work poverty (Schulten 2016b). The most obvious examples are the living-wage initiatives that emerged in the UK and Ireland in response to the inadequacy of the comparatively low minimum wages for preventing in-work poverty and enabling workers to maintain an adequate living standard. In both countries, the increasing success of the living-wage campaign – together with trade union campaigns such as the TUC's 'Britain needs a pay rise' – played an important role in achieving the first substantial increase in real minimum wages after years of more or less stagnating or even falling real minimum wages.

Demands for increasing minimum wages have also repeatedly been raised by trade unions in many central and eastern European countries. In Poland, for instance, in 2011 Solidarnosc started a series of protests and other activities

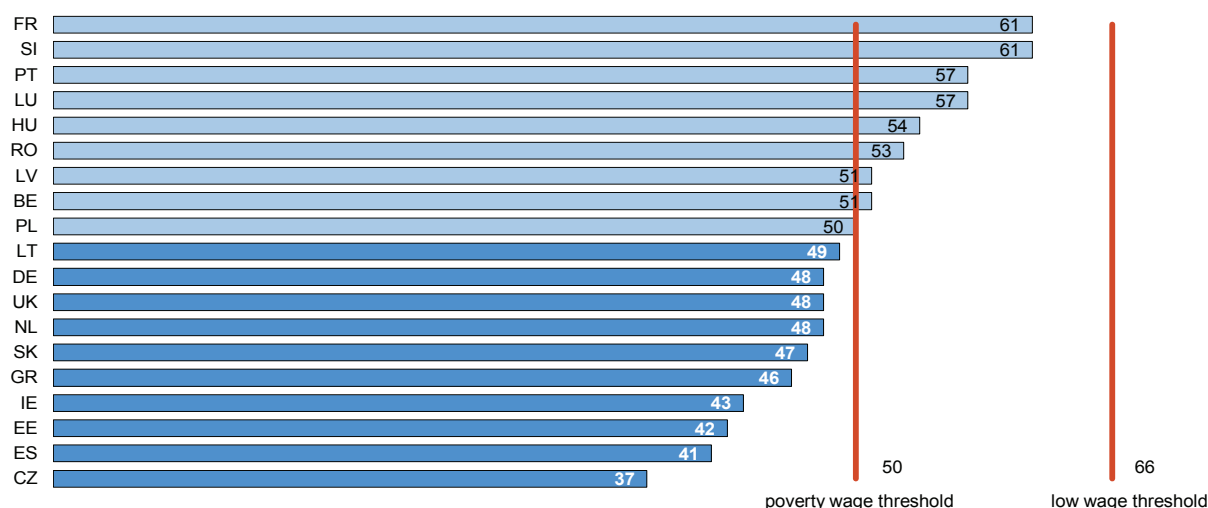
such as collecting signatures in support of its demand to raise the minimum wage to 50% of the national median wage – which was achieved in 2014 for the first time (Bernaciak 2015: 16).

The third group comprises six countries with modest real minimum wage increases ranging between 1.7% in Greece and 0.50% in Slovenia. In the cases of France, the Netherlands and Slovenia the moderate increase can be explained by the fact that these countries already have a high absolute or relative minimum wage level. In Greece and Spain the moderate increases are mainly the result of the deflationary environment with negative inflation rates, while in Latvia the moderate increase in 2015 follows two years of double-digit real minimum wage increases.

The fourth group of countries – consisting of Malta, Germany, Luxembourg and Belgium – show very moderate decreases in real minimum wages. In Germany, Luxembourg and Belgium this is because of the combined effect of inflation and a minimum wage freeze, whereas in Malta the 1% nominal increase was not enough to compensate for the inflation rate of 1.1%.

## Minimum wage developments

Figure 3.5 Minimum wage as % of national full-time median wages (2014)



Source: OECD.Stat. \*Germany: minimum wage in 2015 in % of the median wage estimated by the OECD for 2015.

### Minimum wages as poverty wages?

The more dynamic minimum wage development is reflected also in the so-called 'Kaitz Index' as a measure of the relative minimum wage level. This index sets minimum wages in relation to the overall wage structure as a percentage of the national full-time median wage. The median wage is, in turn, the wage that divides the overall wage structure into two equal segments and therefore marks the boundary between the highest paid 50% and the lowest paid 50% of employees. Figure 3.5, which is based on the OECD Income Database, shows minimum wages as percentages of national median wages.

Since the most recent OECD data was only available for 2014, Figure 3.5 does not yet take into account the most recent real minimum wage increases of 2015. It does however reflect the fact that, already in 2014, minimum wage development was more dynamic than overall wage development. Compared to the 2013 figures (ETUI and ETUC 2015: 46), the Kaitz Index grew in the majority of countries with the exception of Lithuania, where in 2014 the Kaitz Index decreased by three percentage points.

However, since in 2015 Lithuania showed the largest real minimum wage increase of all EU countries, this must be seen as a temporary phenomenon.

For the analysis of the Kaitz Index three definitions of wage thresholds are important. The first is the low-wage threshold which, according to the OECD and other international organisations, is set at two thirds of the national median wage (Grimshaw 2011: 4-5). The other definitions follow from the goal of ensuring that workers should not be dependent on the state – through tax credits or other in-work benefits – to ensure relief from poverty. Thus, in this respect, we define a wage that exposes employees to the risk of poverty at 60% of the national median wage and the poverty wage threshold at 50% or less of the national median wage. Against this background, Figure 3.5 shows that minimum wages in all EU countries apart from France and Slovenia lie below the 'risk of poverty' wage threshold of 60% of the national median wage. And in 10 out of the 19 EU countries for which data is available, the minimum wage fails even to top the threshold of 50% of the national median and must therefore be viewed as a poverty wage. In other words, in many countries the level of the minimum wage is insufficient to reduce the growing numbers of working poor (Schulten 2016a), though it must, of course, be remembered that the level of the minimum wage is not the only

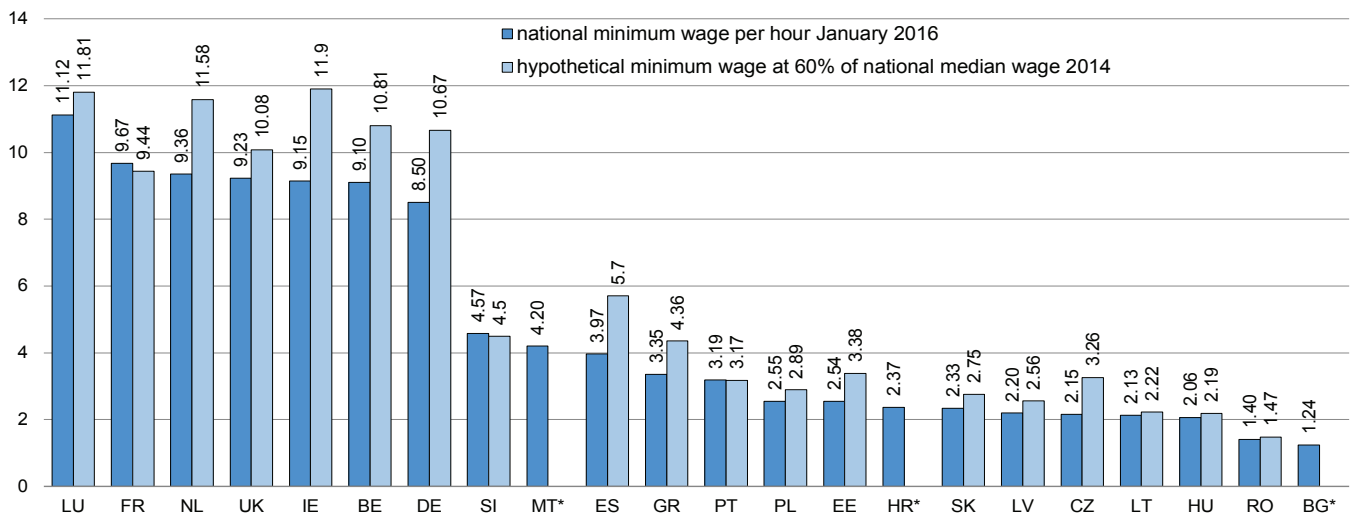
factor determining whether or not a person belongs to the working poor.

It should be stressed also that a high Kaitz Index may be attributable to entirely different reasons, as the six top runners in Figure 3.5 illustrate. It can, on the one hand, be an expression of an actually comparatively high minimum wage level, as is the case in France, Slovenia and Luxembourg. On the other hand, it may also be the (statistical) result of an extremely polarised income distribution with a high concentration of wage-earners at the bottom end of the wage scale – as in Portugal, Hungary and Romania (Schulten 2016a). Thus, even though the minimum wage is, in these last cases, almost 60% of the median wage, it still does not enable workers to make ends meet due to the low level of the median wage.

Figure 3.6 illustrates what it would mean in absolute minimum wage levels to raise the relative minimum wage levels in every country to 60% of the national median. Since the most recent information available on median wages was for 2014, the hypothetical minimum wage figures are for 2014.

## Minimum wage developments

Figure 3.6 National minimum wage per hour 2016 (in euros)



Source: WSI Minimum Wage Database; Schulten (2016b). \*no median wage data available.

### Diversity in absolute minimum wage levels persists

Figure 3.6 shows that only in France, Slovenia and Portugal was the current minimum wage level in January 2016 above the level of what would have been 60% of the median wage in 2014. In all other countries substantial increases would be necessary even just to reach the ‘risk of poverty’ threshold. In most western European countries, the hypothetical minimum wage would be well above ten euros. According to calculations by Eurofound on the basis of EU-SILC and SES data for 2010, up to 16% of all employees in the EU would benefit from such an increase of the national minimum wage to 60% of the national median (Aumayr *et al.* 2014: 82ff). It should be mentioned that, for the following reasons, this Eurofound calculation most likely overestimates the number of employees concerned: it assumes full compliance; it does not take into account potential exceptions to the minimum wage as they exist in many countries, for instance for young workers; and it does not take into account potentially negative employment effects. However, even subject to these

caveats, it is fair to suggest that the positive effect of such an increase for low-wage workers across Europe would be very substantial.

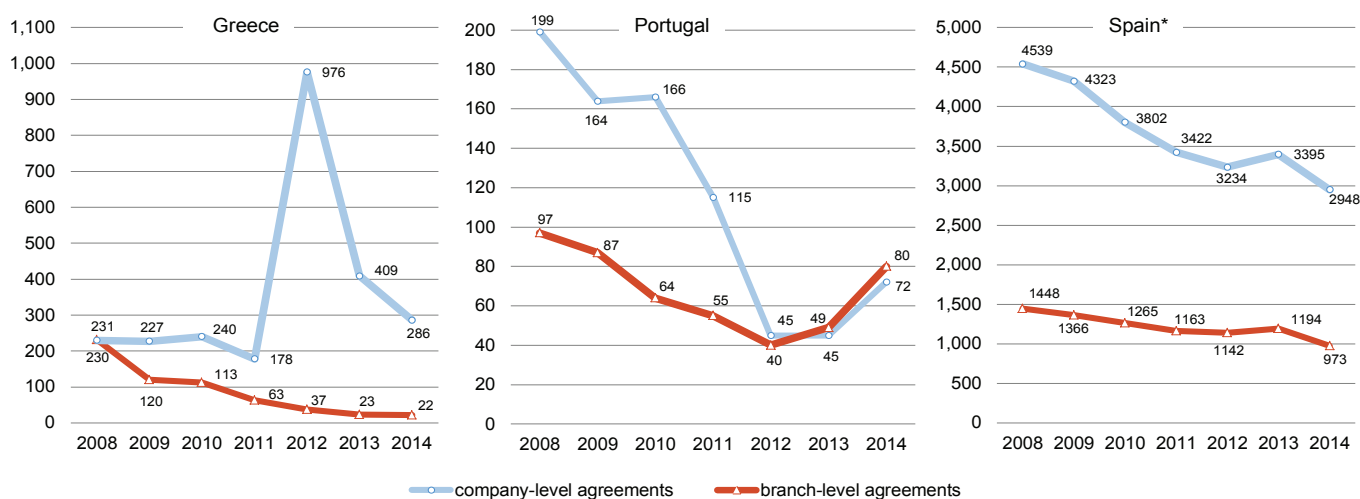
Right across Europe, initiatives to raise the minimum wage can be observed (Rieger 2016). The most prominent example was probably the announcement made by the Conservative UK government in July 2015 that the current minimum wage will be replaced by an obligatory ‘national minimum living wage’ for employees aged 25 and above to be set at £7.20 (9.50€) an hour from April 2016 rising to about £9 (11.90€) by 2020 – thus reaching the target of 60% of the median wage. Even though it would represent a considerable step forward, this initiative is problematic, first of all, because the exclusion of workers aged below 25 would further increase the age-related pay gap; and, secondly, because the new obligatory national living wage would still be far below the independently established voluntary UK living wage which currently stands at £8.25 (10.90€) (Sellers 2015).

Another major event influencing the minimum wage debate across Europe was the introduction of a national minimum wage of 8.50€ in Germany in January 2015. One year later, it is clear that none of the horror scenarios of up to one million job losses predicted by many economists actually materialised (Schulten and Weinkopf 2015). What we

see, on the contrary, is a strong increase in wages in traditional low-wage sectors such as hotels, restaurants and catering, temporary agency work, social services, and transport – and an above-average growth of jobs in particular in these sectors that benefited most from the minimum wage (Amlinger *et al.* 2016). There has been a loss of 133,000 ‘minijobs’, i.e. jobs with maximum monthly pay of 450€ and where there is no obligation for employees to contribute to any social security scheme. However, according to Vom Berge *et al.* (2016), approximately half of the lost ‘minijobs’ have been turned into proper jobs with employees contributing to the social security scheme. Hence, the German minimum wage can so far be seen as a success story. The key question now is its adjustment at the beginning of 2017. Since one central guideline for the recommendation of the minimum wage commission is the development of collectively agreed wages, which grew by a total of 5.5% in 2014 and 2015, it seems reasonable to expect the German minimum wage to be increased to approximately 9€ (Amlinger *et al.* 2016). However, as Figure 3.6 illustrates, in order to reach the ‘risk of poverty’ threshold of 60% of the median wage, it would need to rise significantly above 10€.

## Trends in collective bargaining systems across Europe

Figure 3.7 Newly concluded or renewed collective agreements in Greece, Portugal and Spain (2008-2014)



Source: Labour ministries of Spain, Portugal and Greece in Cruces *et al.* (2015), Schulten (2015); Schulten *et al.* (2015). \* Number of collective agreements registered in the year in question; provisional data for 2014.

## Continuing attacks on collective bargaining and union rights

Last year's *Benchmarking working Europe* already reported on the 'intensified decentralisation of collective bargaining' more generally and the 'de-collectivisation of labour relations in the south' more specifically (ETUI and ETUC 2015: 48-49). The new development in 2015 is that the attack on collective bargaining and union rights intensified in countries – such as the United Kingdom, Finland and Belgium – which are not subject to European interventions in the context of financial assistance programmes.

However, the most dramatic developments can still be found in the southern European countries that were exposed to the measures prescribed in the memorandums of understanding. Figure 3.7 illustrates the general trend of the decreasing significance of collective agreements as a regulatory tool and the break-down of multi-employer bargaining. In Greece, for instance, the number of newly concluded branch-level agreements decreased from 230 in 2008 to

merely 22 in 2014. At the same time, the number of company agreements stayed roughly the same with 230 in 2008 and 286 in 2014. The sharp increase in the number of newly concluded company agreements in 2012 and 2013 was a temporary phenomenon that can be explained by the new legislation introduced in October 2011. This essentially abolished the favourability principle and enabled companies to conclude company-level agreements with non-union workers' representatives in order to cut wages. As a consequence, more than 70% of the 976 company agreements in 2012 were concluded by non-union representation structures and more than three quarters of these agreements contained wage cuts (Koukiadaki and Kokkinou 2016: 176; Schulten 2015: 4).

In Portugal the number of newly concluded sectoral and multi-employer agreements virtually collapsed from 199 in 2008 to 45 in 2013 mainly due to more restrictive rules for the extension of collective agreements. Since the change to the extension rule in June 2014 in response to growing criticism from both trade unions and employers' associations, the number of newly concluded industry agreements increased slightly to 72 (Schulten *et al.* 2015: 380; Távora and González 2016: 365). However, even though the number of both company and higher-level agreements increased in 2014, the number of workers covered

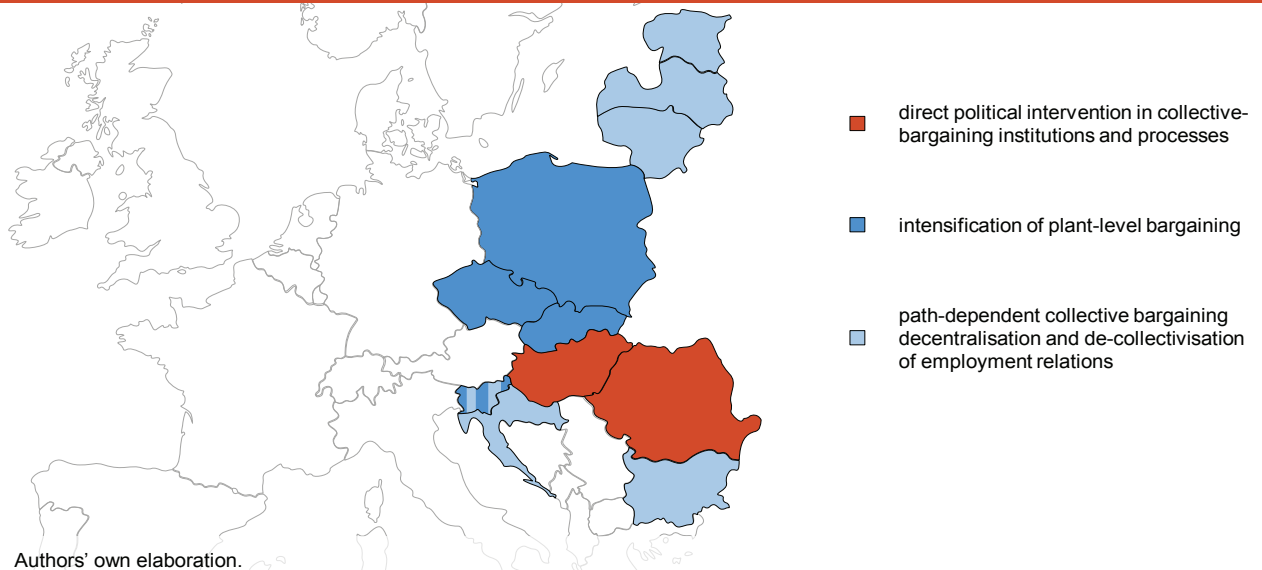
by these newly concluded agreements remained at an all-time low of 200,000 – compared to 1.7 million in 2008 before the crisis (Schulten *et al.* 2015: 376). While in Portugal there are weak signs of a recovery of collective bargaining, in Spain the number of registered collective agreements is still declining. Overall, however, the decrease since the beginning of the crisis has not been as dramatic in Spain as in Greece or Portugal. According to Cruces *et al.* (2015: 111), this can be explained by the manifest interest of the two sides of industry in maintaining collective agreements in exchange for substantial modifications in wages and working time.

Even though the attack on collective bargaining and union rights was most pronounced in the southern European crisis countries, what we can see is that the attacks have now spread to the UK, Finland and Belgium. Where next?



## Trends in collective bargaining systems across Europe

Figure 3.8 Collective bargaining developments in CEE EU member states, 2008–2015



### Collective bargaining in CEE: an endangered species?

Since the late 2000s, collective bargaining systems in Central-Eastern European (CEE) countries have followed very different trajectories. Changes observed are the reflection of national industrial structures and regulatory frameworks, long-term trends and path dependencies, as well as government policies implemented during the downturn.

In both Romania and Hungary collective bargaining institutions and practices were significantly altered as a result of direct political intervention. Romania's 2011 Social Dialogue Act abolished the single national agreement and redefined the sectoral bargaining level (Trif 2016), while in Hungary the Fidesz government restricted employee rights to stage industrial action, limited legal protection for trade union officials, and allowed collective agreements and employment contracts to deviate from labour law in favour of the employer (Krén 2013). Both countries introduced stricter representativeness criteria for social partners; they

also weakened national-level social dialogue by depriving their tripartite bodies of important consultative rights and extending their membership to civil-society organisations.

In the Czech Republic, Poland, and Slovakia, the incidence of plant- and sector-level bargaining increased during the crisis. Forced temporarily to cut back production in view of the declining export opportunities, employers and trade unions concluded special agreements on production stoppages, short-time working and increased working time flexibility. In all three countries plant-level bargaining was further encouraged by legislation stipulating that measures to increase working time flexibility had to be agreed with the trade unions or worker representation bodies at a given site. All in all, the agreements helped avoid large-scale dismissals and stimulated dialogue between unions and management. On the negative side, they cemented pre-crisis patterns of labour market segmentation by limiting employment protection to permanent workforces (Kahancová 2013; Myant 2013).

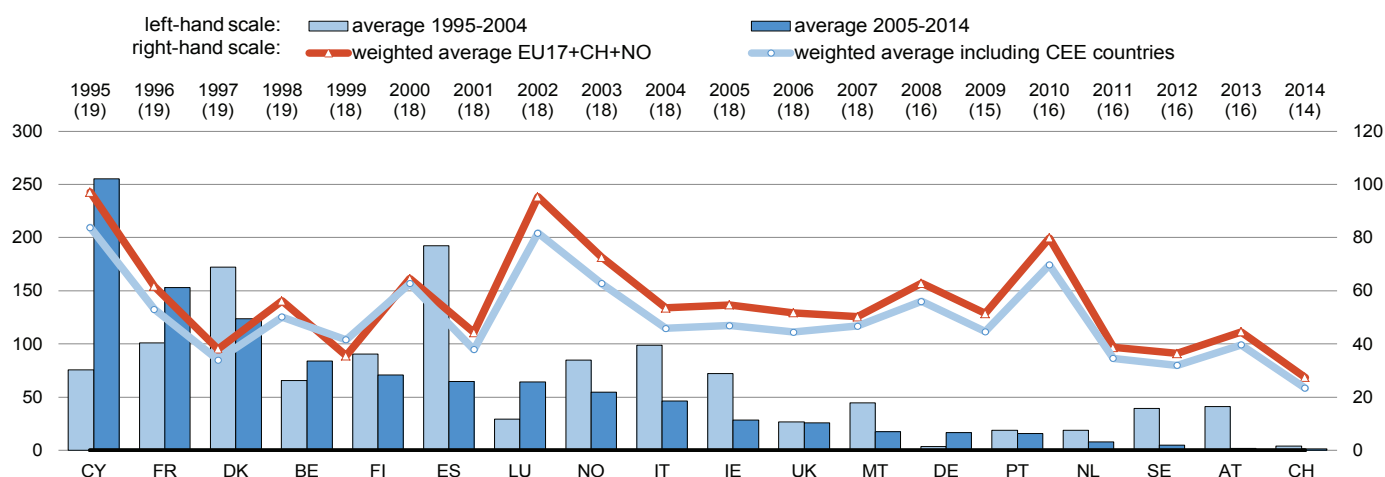
Despite the modest revival of company-level negotiations in the three Visegrád states, most CEE countries recorded a decrease in trade union density and collective bargaining coverage rates. In the Baltic states, the – already far-reaching – decentralisation and de-collectivisation of labour relations accelerated as a

result of tough austerity measures. While in Bulgaria union density rose slightly in 2010–2012, this seeming progress was due in fact to growing unemployment and a corresponding increase in the number of union members relative to the working population (Tomev 2014). In Slovenia, the crisis of collective labour relations was not driven by the crisis per se, but constituted part of an incremental process of liberalisation that had been underway for more than a decade. Even so, between 2007 and 2010, breaches in collective agreements increased more than fivefold (Krašovec and Luzar 2013) and the terms of agreements became less favourable (Stanojević and Mrčela 2016). In the neighbouring Croatia, where bargaining coverage seems to be returning to pre-crisis levels (Bejaković 2015, citing Bagić 2015), the bargaining climate is marked by recurrent conflicts between the government and the social partners.

The ongoing decentralisation of CEE industrial relations does not bode well for the future of collective wage determination in the region. It seems that, insofar as collective bargaining takes place at all in new EU member states, it will be mainly in the form of localised, plant-level deals based on concessions or deals between employers and their workers that are guided by the need for greater flexibility in view of competitive pressures and market fluctuations.

## Patterns of protest and worker action

Figure 3.9 Relative strike volume in Europe (1995-2014) and country comparison for two decades



Source: ETUI.

Note: Bar graphs sorted by 2005-14 data. Number of countries covered in EU17+CH+NO between brackets on horizontal axis above. No data available for GR (1999-2014), FR (2014), IT (2009-14), LU (2008-14), MT (2014) and PT (2008-9).

### Sustained cross-national diversity

The line graphs in Figure 3.9 depict the weighted average of strike volume in the EU17 and EU28, both together with Norway and Switzerland – or at least including those countries for which data is available. Using the most recent figures, the data series start in 1995 and end in 2004 – the latest year for which data is available for most countries. The bar graphs show countries' average volume in the 2005-14 period and compare their volume with the average of the previous decade.

Focussing on the weighted average volume and particularly its developments since the Recession, the line graphs show a relative peak in 2010, mainly resulting from 'national days of action' (including strikes) against pension reforms in France (Ancelovici 2011), after which the volume declines to a level lower than its pre-Recession level. This is also reflected in the bar graphs: the volume increased in only a limited number of countries in the last decade. It is instantly clear that Cyprus skyrockets to the top of the 'strike league' – largely because of an open-ended conflict that erupted in the construction industry in 2013. Compared

to the previous decade, the average volume rose in only four other countries: Belgium, France, Germany and Luxembourg. However, for the last three of these countries data issues might be entailed: for France and Germany the method for collecting strike data has changed and there is no data after 2007 for Luxembourg. Nevertheless, the new anti-austerity protest cycle appears barely visible; there is no overall pronounced upsurge. National-specific dynamics of contention (Bermeo and Bartels 2014; Ancelovici 2015) aside, two other reasons indicate that the strike picture at the European and country level is far more differentiated in detail than Figure 3.9 would suggest and that the domestic context is a significant factor.

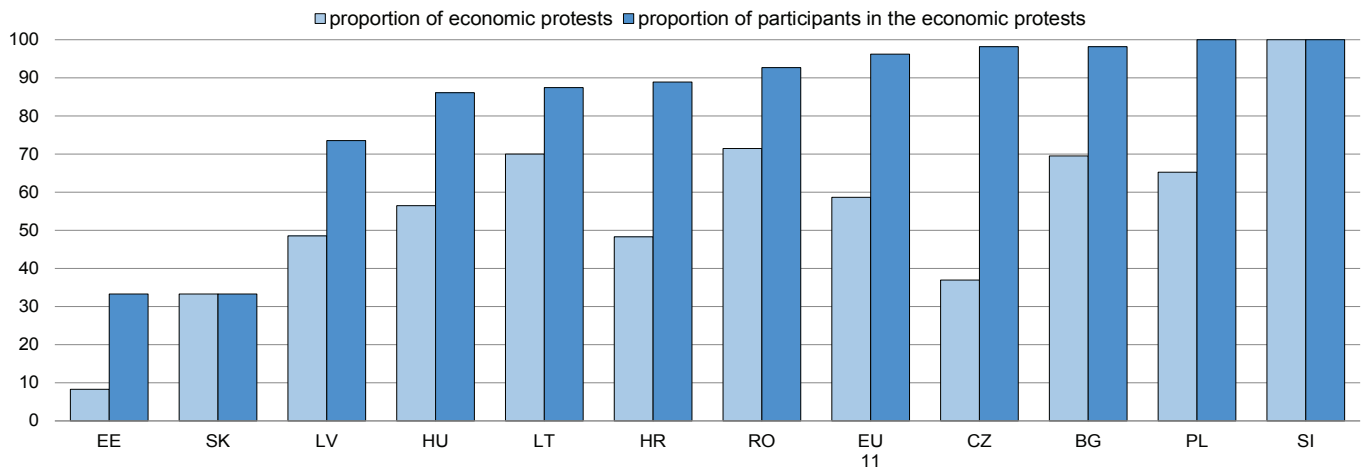
First, the number of countries covered by strike data has fallen since 2007/8. While under-estimation of strike activity is an old methodological problem, this remark is especially pertinent for the crisis-hit countries in southern Europe. Data is lacking since 1999 and 2009 for Greece and Italy respectively; while data has always been lacking for strikes in the public administration in the Portuguese case, there is no data at all for 2008 and 2009; and certain public sector and general strikes in Spain have been excluded in 2010, 2012 and 2013. It can thus be believed that the volume for these aforementioned countries is clearly underestimated, particularly since the

Recession, and that the weighted average of the European volume would rise if the missing data could be taken into account. This is especially the case as southern Europe can be labelled the geographical epicentre of social protest (Schmalz *et al.* 2015) since the Recession, and Greece, Italy and Spain were previously and consistently 'above-average countries' in the European 'strike league table' (Vandaele 2011).

Secondly, the 'workers' action repertoire' should be taken into account for explaining the continuing cross-national variations in volume. In particular, as this repertoire shapes types of social protest, general strikes are historically barely or not part of the repertoire in several countries since they are legally restrained or simply forbidden (Kelly 2015). In countries where political mass strikes are restricted, social protest will, in all likelihood, be expressed via types of collective action other than general strikes. The CEE countries in Figure 3.9 demonstrate this point: when these countries are taken into account, the European weighted average in volume is lower for nearly all years. Yet in several – though not all – of the CEE countries, governments' post-Recession neoliberal-inspired austerity measures put an end to quiescence and prompted demonstrations, a form of protest that now dominates the action repertoire (Beissinger and Sasse 2014).

## Patterns of protest and worker action

**Figure 3.10** Economic protests as a proportion of all protests (first column) and participation in economic protests as a proportion of total protest participation (second column) in EU CEE member states, 2007-2010



Source: Authors' calculations based on Beissinger and Sasse (2014: 342).

### A brave new world of economic protest in CEE?

The economic crisis brought important changes in respect of the intensity and forms of protest in new EU member states. Beissinger and Sasse (2014), analysing major protests that took place in CEE between 2007 and 2010, show, first, that 'hard times' brought a general decline of contentious action in CEE. Yet this trend was not equally pronounced across all spheres of activity. In particular, economic protests remained frequent, and their relative share in the overall pool of contentious events grew at the expense of protests addressing national political or ethnicity-related issues. As shown by Figure 3.10, economically motivated protests accounted for the majority of contentious events in most new EU member states and in CEE as a whole; they also attracted a lion's share of protest participants. Secondly, the above authors point to a shift in the form of protests motivated by economic grievances. While strikes and demands for the improvement of employment conditions became less frequent, demonstrations against government-led austerity

came to dominate the repertoires of contention in postcommunist countries.

In the literature of political economy, the increasing role of mass anti-austerity protests in CEE has been interpreted in different ways. Beissinger and Sasse (2014) view this trend as a sign of weakness of CEE pressure groups, a turn away from proactive action towards mere reduction of the social damage caused by the cutbacks. Greskovits (2015), by contrast, considers the shift to be a logical development, arguing that, in the absence of effective channels of employee interest representation, grievances in new EU member states are likely to be expressed with reference to citizenship rather than workers' rights, and to be voiced during public protests gathering together individuals, unions and civil society organisations.

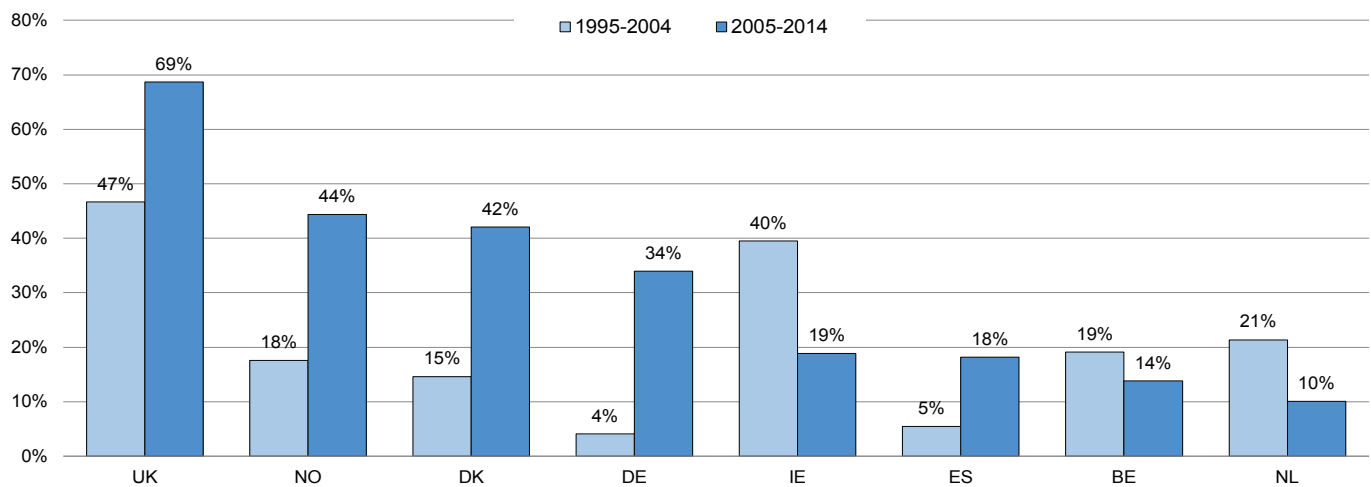
In more general terms, the growing extent of economically motivated societal discontent may signal the limits of the policy of belt-tightening, followed in the post-communist region since the outset of the systemic transition and presented by CEE politicians as an essential prerequisite for growth and 'catching-up' with Western European standards in the future (Šćepanović 2015). With the outbreak of the economic crisis in the late 2000s, it became clear that, despite far-reaching sacrifices, the long awaited 'upward convergence' towards West European social norms and employment standards would

not materialise in the foreseeable future. It is likely that, with this realisation, CEE societies have reached the limits of their 'collective patience'; demands for a change of the neoliberal policy paradigm have consequently become increasingly vociferous across the postcommunist region (Bernaciak, forthcoming).

Finally, even though the role of economic protests increased in CEE as a whole, there were important cross-country differences with regard to the frequency of economic protests and protest participation rates. As shown by Beissinger and Sasse (2014), states less affected by the crisis recorded fewer protests. Within the more affected group, contentious action was frequent in states that had been most zealously liberalising their economies before the crisis; those that had featured low levels of societal trust in government's effectiveness before the downturn; and those with a high share of public sector employment. Čísař and Navrátil (2015) point, additionally, to the relation between contentious politics and the dominant axis of political conflict, arguing that in countries in which socioeconomic issues do not constitute an important cleavage in political debate, citizens' grievances are more likely to be voiced through protest actions.

## Patterns of protest and worker action

**Figure 3.11** Average percentage distribution of strike volume in the public sector, 1995-2004 and 2005-2014



Source: ETUI.

Note: Public sector includes public administration and defence, compulsory social security; education; and human health and social work activities.

### A shift in locus

In the former social protest cycle of 1968-74 factory-level strike action in manufacturing industry was central (Dubois 1978). Today, the locus of social protest has undergone significant change. As most national governments in Europe are sacrificing the public sector on the altar of neoclassical fiscal orthodoxy, the prevalence of anti-austerity protest and resistance, including strikes, in this sector has, not surprisingly, clearly distinguished the current protest cycle (Bermio and Bartels 2014).

Not that this locus of protest is novel; it is part of a long-term trend, as public sector militancy emerged during the former cycle (Hyman 1978) and continued through the following decades (Gall 1999, 2013). As in the past, the current public sector strikes have been primarily defensive in nature, aimed at seeking a direct political exchange with governments. However, it is still an open question whether or not this action has been effective in moderating the austerity packages and challenging the political authorities in post-democratic societies, at least in the short run. In contrast with the previous cycle, when 'political unionism' (Gentile 2015) was in its heyday and contributed to strengthening

corporatist arrangements, in the present climate political exchange has been limited (Hyman 2015).

Figure 3.11 shows the average public sector share in the strike volume for two decades: 1995-2004 and 2005-2014. Unfortunately, since strike data and detailed sectoral data after 2007/8 are (far) less available, especially for the crisis-hit countries of southern Europe, the number of countries included in Figure 3.11 is limited. Even so, it displays some important findings. First, the average share of public sector strikes (further) increased in several countries during the 2005-14 period. Secondly, national variation in the share is also apparent, attributable perhaps in part to the interplay between different modalities affecting the right to strike in the public sector and adjustments in public employment regimes (Gottschall *et al.* 2015).

Thirdly, public sector strikes are clearly in the ascendant in the case of the UK. Such large-scale one-off strikes explain also the changed UK strike pattern (Lyddon 2015). The predominance of public sector strikes, involving large numbers of workers, is reflected in the strong increase in workers' propensity to strike and the average size of the strike, whereas the average duration of strikes decreased. Over time, strike frequency and volume in the UK has declined considerably and it remains at a historic low; and yet, incomprehensibly under the

circumstances, the Cameron government wants to further curb the right to strike via the controversial Trade Union Bill.

Admittedly, it cannot be denied that public mass strikes, particularly in public transport, can have a very disruptive capacity in affecting 'third parties', i.e. the users of public services (Bordogna and Cella 2002). At the same time, hinting at a substitution effect, a shift in the UK action repertoire has developed: the proportion of strikes has been reduced alongside a corresponding increase in demonstrations, a trend that has become even more pronounced since the Great Recession (Bailey 2013).

Given continuing adjustments in public employment regimes, it is very likely that industrial unrest will continue. The form that it will take is dependent on the statutory and/or institutionalised resources that workers have to hand (Gentile and Tarrow 2009). State strategies for suppressing these resources, particularly by introducing stricter strike regulation and minimum or guaranteed services in so-called 'essential' public services, might further serve to shape an action repertoire favouring other tactics and actions over strikes. At the same time, unions face an enormous task not only in seeking to overcome an internal (potential) private sector-public sector divide, but also in the effort to deploy a more virulent citizens' repertoire in terms of discourse and alliance-building strategies.

## Collective organisation and action of workers

### Efforts to protect trade union and workers' rights through litigation continue

In the wake of developments reported in previous editions of *Benchmarking working Europe*, over the past year once again both trade unions and individuals have continued to contest, before European and national judicial or non-judicial bodies, the onslaught on fundamental trade union and workers' rights entailed by various aspects of austerity measures (for more details see ETUI and ETUC 2014: 65-67; ETUI and ETUC 2015: 53-55). An overview of some of the most significant cases is provided below. We begin with cases brought before the Court of Justice of the European Union (CJEU), continue with cases of alleged violation of the Council of Europe's European Convention of Human Rights and European Social Charter, and finally present a selection of cases brought before high-level national courts. The key issues at stake have been protection of workers on atypical contract, cuts in various kinds of social benefit, and government intervention in wage-setting.

At the European level, in the EU context, the CJEU had to rule on a case in which an employee contested whether an 'open-ended employment contract to support entrepreneurs', subject to a one-year probationary period during which the employee may be summarily dismissed, is compatible with Article 30 of the EU Charter of Fundamental Rights ('protection in the event of unjustified dismissal') and Directive 1999/70 of 28 June 1999 concerning the framework agreement on fixed-term work concluded by the ETUC, UNICE and CEEP. This new form of contract was introduced by Spanish Law 3/2012 of 6 July 2012 on urgent measures for labour market reform in order, in the wake of the economic crisis, to foster open-ended employment and

promote job creation. The law in question was influenced by various EU employment policy decisions and recommendations. Unlike the referring court that considered this new form of contract to be contrary to the goals of the Directive, the CJEU did not regard it as a fixed-term contract; as such it fell under the scope of neither the Directive nor EU law in general (C-117/14 G.J. Nisttahuz Poclava v. J.M. Ariza Toledano, judgement of 5 February 2015). Secondly, reference can be made to a request for a preliminary ruling by the German Federal Labour Court on the impact of Greek austerity measures on the labour contracts of a Greek teacher working in a Greek school in Germany. In this case the CJEU has not yet issued a ruling and, although the questions raised do not relate directly to the conformity of Greek austerity measures with EU law but rather to the impact of labour contracts outside Greece, it will be of interest to see the CJEU views on the question (C-135/15 Hellenic Republic v Grigorios Nikiforidis, lodged at the CJEU on 20 March 2015).

Still in the European context, but at the level of the Council of Europe, the following new developments are worth highlighting. First of all, the judgment of the European Court of Human Rights (ECtHR) in a case against Hungary in which a Hungarian national considered that a new law on disability allowances violated her right 'to protection of property' under Article 1 of Protocol n° 1 to the European Convention of Human Rights (ECHR) (Act n° CXCI of 2011, entered into force on 1 January 2012). The new law was manifestly introduced by the Hungarian government to cope with budgetary deficits in times of austerity but, simultaneously, so as to ensure – as requested by the European institutions under the European semester – better labour market integration of vulnerable groups (Government of Hungary 2012 and 2013). However, because of the introduction of additional applicability criteria which the Hungarian national was unable to meet, she lost the disability allowance which represented her main form of income. The ECtHR agreed that this drastic change in the conditions for entitlement to disability benefits led to a violation of her right to property. It is to

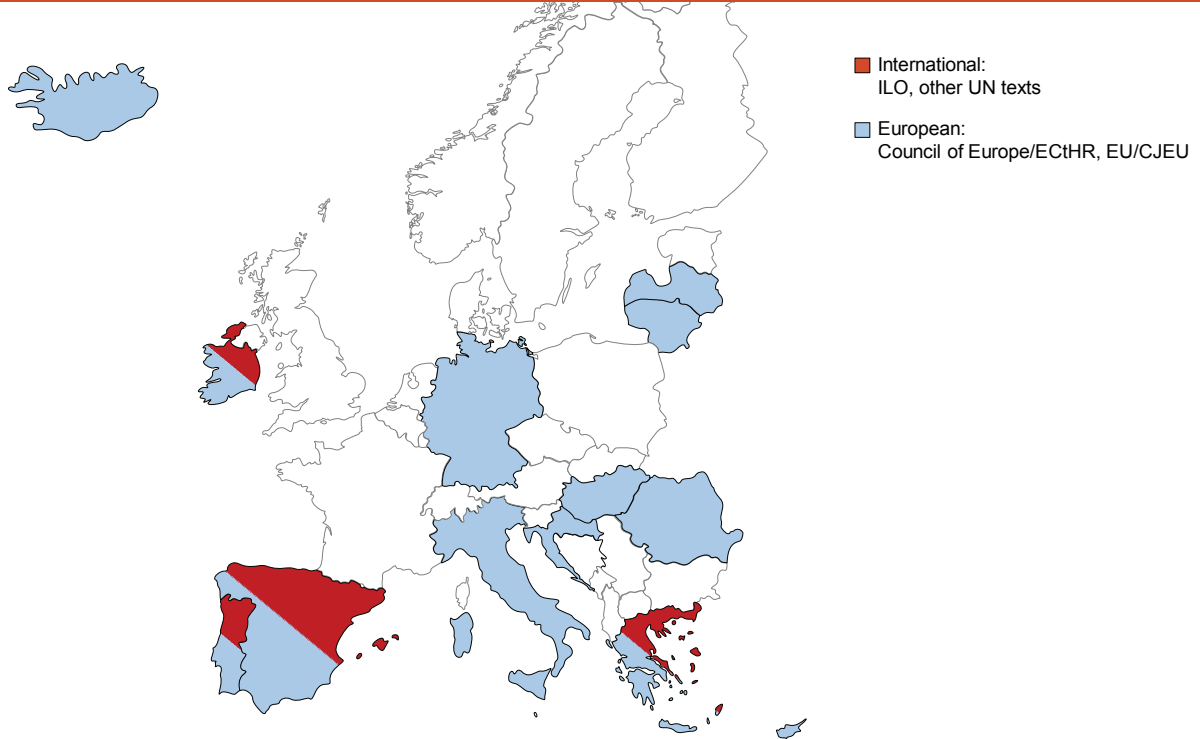
be noted that in this case the ETUC made a so-called third party intervention, and its arguments were quoted at length during the hearing (Application n°53080/13 Béláné Nagy v. Hungary, judgement of 10 February 2015).

In relation to the same Article 1 of Protocol n°1, the ECtHR heard a complaint concerning the reduction of retirement pensions following austerity measures (Application n° 13341/14 da Silva Carvalho Rico v Portugal). The complaint was declared inadmissible by the Court. Ms. da Silva Carvalho Rico, belonging to a public-sector pension scheme, saw her pension reduced because of a so-called 'extraordinary solidarity contribution' ('CES') introduced by the Portuguese government in the framework of the 2011 Memorandum of Understanding with the Troika. The ECtHR considered that in the overall public interest of Portugal in times of financial crisis the CES was a proportionate restriction, considering also the limited and temporary nature of the measure.

In the context of the European Social Charter of the Council of Europe, and in the specific framework of the collective complaints procedure, the collective complaint 111/14 to which we referred last year (ETUI and ETUC 2015: 53) was found admissible. This complaint, lodged by the Greek trade union GSEE, alleged that provisions of the new legislation enacted as part of the austerity measures adopted in Greece affected different workers' rights (e.g. the right to work, the right to fair conditions of work, and the right to fair remuneration). Since last year's edition of this *Benchmarking working Europe* report, three more complaints relating to 'crisis/austerity measures' have been lodged, all of them by trade union(s) sections. In particular, a complaint against Italy alleges a violation of the right to social security and workers' right to protection of their claims in the event of insolvency of their employer (Complaint 113/2014 Unione Italiana del Lavoro U.I.L. Scuola – Sicilia v. Italy). Secondly, a complaint against Croatia alleging that Act No. 143/2012 on Withdrawal of Certain Material Rights of the Employed in Public Services violates the right to organise and the right to bargain collectively (Complaint 116/2015 Matica

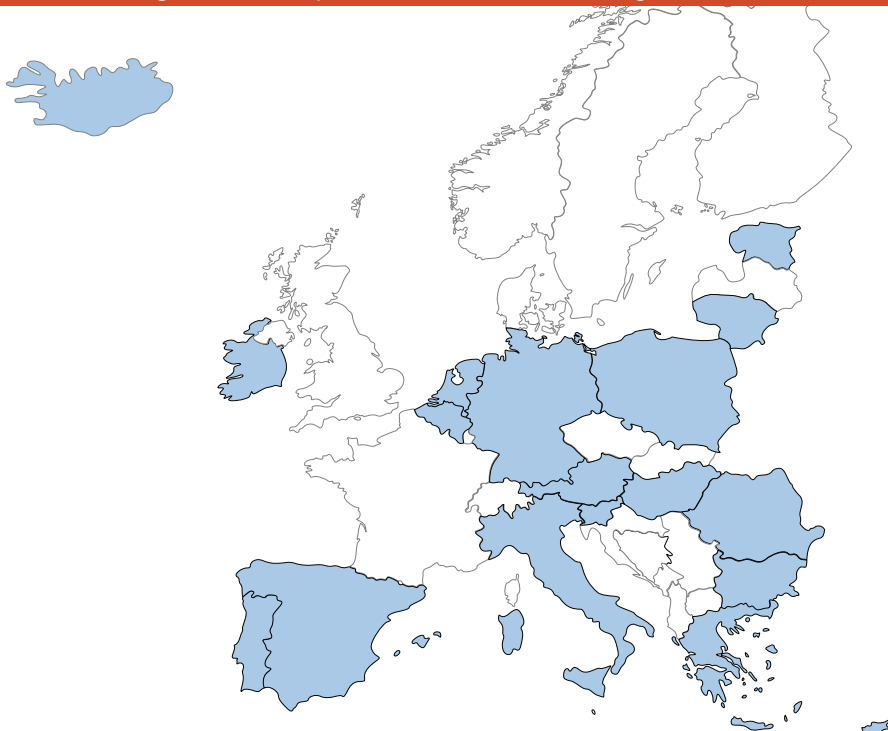
## Collective organisation and action of workers

Figure 3.12 Litigation actions at international/European level



Source: ETUI own research; the countries coloured concern cases brought against austerity measures not necessarily limited to cases related to changes to IR/CB and wage-setting systems.

Figure 3.13 National litigation actions (constitutional court, human rights commissions, ombudsmen, referenda, etc.)



Source: ETUI own research; the countries coloured concern cases brought against austerity measures not necessarily limited to cases related to changes to IR/CB and wage-setting systems.

## Collective organisation and action of workers

hrvatskih sindikata v. Croatia). Finally, a complaint against France alleges that conditions imposed by the French legislation on supplementary social protection of employees violate the right to bargain collectively (Complaint 118/2015 Confédération Générale du Travail Force Ouvrière (CGT-FO) v. France). In the meantime, all three complaints have been declared admissible by the ECSR (all documents relating to these complaints can be found at the Council of Europe European Social Charter website).

The ECSR also published in January 2016 its '2015 Conclusions' based on national reports pertaining to the reference period 2010-2013. The conclusions in question relate to vulnerable groups like children/young persons (articles 7 and 17), families (articles 8, 16 and 27) and migrant(s) workers (article 19). With the economic crisis still very present during the reference period, the ECSR found no less than 277 violations of the Charter provisions in 31 states. The conclusions are particularly interesting in relation to posted workers (and their rights to equal treatment in relation to remuneration, other employment and working conditions, trade union membership and enjoyment of the benefits of collective bargaining). With reference to article 19§4a and b), the ECSR found that practices in Cyprus, Slovenia and Sweden, among others, ran counter to the provisions of the Charter (Council of Europe 2016a, b).

At the national level, finally, the following cases are worthy of mention. In Belgium, the *Conseil d'Etat* rejected a claim by the Flemish and Walloon metalworkers' trade unions to annul a Royal Decree by which the government imposed a complete freeze wage for the period 2013-2014 (Conseil d'Etat, judgement n° 230.207 of 13 February 2015). According to the *Conseil d'Etat*, this wage freeze did not represent an infringement of the right/freedom of collective bargaining. Also in Belgium, the national trade union confederations CSC, FGTB and CGSLB launched a case in relation to recently adopted laws providing for wage moderation measures that temporarily prohibited wage increases by linking them to consumer price indexation. In Italy, the Constitutional Court ruled as unconstitutional legislation limiting the

annual revaluation increase for old-age pensions for larger pensions, allowing the full increase only to pensions up to three times the minimum INPS pension as unconstitutional. The Court's ruling was based principally on the argument that, whilst the right to an adequate pension was not absolute, any sacrifice in the name of budgetary requirements must be justified in detail (Italian Constitutional Court, judgement 70/2015).

The various examples mentioned above show that, while the fight against austerity via litigation remains a painstaking exercise, it is one in which successes can and are being gained. Furthermore, it would appear, by and large, that is still principally the CJEU that continues to find novel arguments for not condemning austerity measures ordered by the EU institutions (and implemented by the member states) as violations of fundamental social rights even where such rights are enshrined in the EU Charter of Fundamental Rights. Yet this stance should not discourage trade unions across Europe from continuing and even enhancing their litigation strategies, employing, to this end, all possible international and European forms of recourse to justice in the effort to protect fundamental trade union and workers' rights (see different contributions in Bruun *et al.* 2014).

## Conclusions

### Few grounds for optimism

The foregoing analysis has shown that, after years of real wages lagging behind productivity growth, in 2015 real wages in the majority of EU countries grew at a slightly stronger rate than productivity. What we saw also was that real *minimum* wages increased in the majority of countries – at a rate that often even exceeded the general growth in wages. What is more, it is possible to observe a growing awareness among trade unions and their members of the need for a fundamental change of approach in relation to wages, collective bargaining and workers' rights. The clearest signs of this growing awareness – or at least of discontent with the current policy of internal devaluation and structural reforms – are: (1) diversification of workers' repertoire of actions in the light of continuing attempts to limit the right to strike; (2) a rise in economically motivated protest in CEE countries against government-led austerity policies and (3) continuation of legal action against austerity measures and attacks on trade unions' and workers' rights.

Is there then some light at the end of the tunnel? Are these the first signs of a re-orientation of the Commission's policy stance, signifying an end to the previous form of crisis management driven, in the field of wages and collective bargaining, principally by considerations of improving cost competitiveness through internal devaluation? Unfortunately, there are limited grounds for optimism. First of all, the real wage increases observed were greatly facilitated by the deflationary environment in the EU with zero inflation or even negative inflation rates in some countries. Since in most cases the development of real wages exceeded productivity growth by only a small margin, we are still a long way from the pursuit of a more expansive wage policy that would not only follow the combined growth of inflation and productivity but would also include a redistributive component so as to increase the wage share and, in doing

so, boost aggregate demand (Bispinck *et al.* 2008).

Another reason for a less than optimistic answer to the questions just asked is that the political environment at both European and national level is hardly conducive to a policy change more generally or, more specifically, to a demand-oriented change of wage policies. At the European institutional level, the analysis has shown that, despite the lip-service paid in its studies to the need to embrace a more demand-side-oriented view of wages, when it comes to concrete policy suggestions such as the Country-Specific Recommendations, the Commission continues to pursue its strategy of promoting internal devaluation and neoliberal structural reforms. An equally discouraging initiative is the so-called 'Five presidents' report' with its proposal to establish a euro-area system of national competitiveness authorities with the explicit goal of assessing whether wages are evolving in line with productivity and of issuing opinions to be used by national collective bargaining actors as guidelines during wage negotiations (Juncker *et al.* 2015: 8). Even though this proposal was to some extent watered down in a later Commission recommendation (European Commission 2015b), the intention clearly is to continue the policy model of European wage policy interventionism (Schulten and Müller 2015) by further increasing the scope of European policymakers to intervene in national collective bargaining and industrial relations systems in order to push through the policy of internal devaluation (Janssen 2015).

Additional alarming signs in terms of attacks on collective bargaining and trade union rights come even from countries which are not directly subject to European intervention. Examples here are (1) Finland, where in autumn 2015 the new centre-right government threatened to bring in legislation introducing far-reaching cuts in social benefits and wages with the ultimate goal of increasing the country's cost competitiveness by reducing unit labour costs by at least 5% – unless the two sides of industry reach an agreement to the same effect; (2) the United Kingdom where the Conservative government aims to introduce

the so-called 'Trade Union Bill' with far-reaching implications for the right to strike and trade union activities in the public sector; and (3) Belgium, where in April 2015 the liberal-conservative government introduced the so-called 'wage index jump' which essentially suspended the wage indexation mechanism previously in force.

All these examples from the European and national levels indicate that the political framework conditions are, at the present time, not in the least conducive to a change of approach to wages, collective bargaining and trade union rights. Yet such a change is not only an *economic* necessity given that domestic demand is the key driver of economic performance within the EU (Müller *et al.* 2015); in the light of the growing disaffection of European citizens from the 'political' Europe represented by its institutions and their policies, it is becoming ever more apparent that the financial and economic crisis is turning increasingly into a *political* crisis. The clearest indication of this disaffection can be seen in the southern European 'crisis countries' that were hardest hit by the internal devaluation approach imposed by the Troika. According to Eurobarometer surveys, the level of trust in the EU in Greece, Spain and Portugal has plummeted since the beginning of the crisis (Müller 2015). While caution is naturally required in claiming a direct causal relationship between EU crisis management and the crisis in political confidence, this is nonetheless a strong pointer towards a growing disaffection with the 'political' Europe. It is also clear that, in the longer term, such increasing disaffection will ultimately jeopardise the European integration project as a whole – because as Fischer-Lescano has pointed out: 'without social stability, there can be no economic and financial stability in the European Union' (2014: 5). An essential building block in overcoming the political crisis of confidence in Europe is a change of approach towards European crisis management more generally and towards wages, collective bargaining and trade union rights more specifically.