The Sources of Labour Law

Studies in Employment and Social Policy

VOLUME 54

Editors

Professor Alan Neal (founding editor of the *International Journal of Labour Law and Industrial Relations*, and Convenor of the European Association of Labour Law Judges); Professor Manfred Weiss (past president of the International Industrial Relations Association); and Professor Birgitta Nyström (professor of private law at the Law Faculty, University of Lund, Sweden, and member of the European Committee of Social Rights).

Objective

Studies in Employment and Social Policy series seeks to provide a forum for highlighting international and comparative research on contemporary areas of significance for evaluation and regulation of the world of work.

Introduction

Launched in 1997, the Studies in Employment and Social Policy Series now boasts over fifty titles, addressing key policy and development issues in the fields of industrial relations, labour law, social security, and international labour regulation.

Content

With contributions from leading figures in the field, the series brings together key policymakers, academics, and regulators, providing a unique context in which to analyse and evaluate the rapid and dramatic work and social policy developments taking place around the globe.

The titles published in this series are listed at the end of this volume.

The Sources of Labour Law

Edited by

Tamás Gyulavári
Emanuele Menegatti

Wolters Kluwer

Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
E-mail: international-sales@wolterskluwer.com
Website: lrus.wolterskluwer.com

Sold and distributed in North, Central and South America by:
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Sold and distributed in all other countries by:
Air Business Subscriptions
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterskluwer.com

Printed on acid-free paper.

ISBN 978-94-035-0284-7

e-Book: ISBN 978-94-035-0204-5
web-PDF: ISBN 978-94-035-0235-9

Printed in the United Kingdom.

Editors

Tamás Gyulavári is a professor of Labour Law and Chair of the Labour Law Department at Pázmány Péter Catholic University in Budapest, Hungary. He studied and did research at the Universities of Budapest, Warwick, Groningen and Aix-Marseilles and was also a visiting fellow at the European University Institute in Florence in 2013. He has been a regular lecturer at the Academy of European Law in Trier, and lectured at several universities, including Porto, Bologna, Vienna, Quito, Jakarta and Chicago. He is the founding editor of the *Hungarian Labour Law E-Journal*. He has been engaged in a dozen of European projects with several international organisations and institutions, including the ILO and ETUI. He is the member of the European Labour Law Network and the Academic Network of Experts on Disability.

Emanuele Menegatti is Professor of Labour Law and Dean of the School of Economics and Management at the University of Bologna. He has been a visiting professor at many Universities, including the University of Illinois, Monash University (Melbourne), Curtin University (Perth), Pázmány Péter Catholic University (Budapest, Hungary). He is the editor-in-chief of the *Italian Labour Law E-Journal*. His main fields of specialisation are Comparative and EU Labour Law. His main current research interests include the balance between social rights and economic freedoms in European Union law, minimum wage regulation, new forms of work in the gig-economy. He is the author of two books and a broad number of scientific publications on high-ranking Italian and international journals.

Contributors

Edoardo Ales is Full Professor of Labour and Social Security Law at the Department of Law of the University of Naples 'Parthenope' (Italy). He also teaches European Labour Law at the LUISS – G. Carli in Rome (Italy) and the Vienna University of Economics and Business (Austria). He is an invited professor of International and European Labour Law at the Pontifical Lateran University (Vatican State). He is Member of the Board of Directors of the *Giornale del Diritto del Lavoro e delle Relazioni Industriali*, of *Rivista del Diritto della Sicurezza Sociale*, of the *Italian Labour Law E-Journal*. He is Member of the Scientific Committee of the Marco Biagi Foundation of the University of Modena and Reggio Emilia (Italy). He is the National Expert for Italy in the ICF-ECE and MoveS Network supporting the EU Commission in the field of Labour Law and Free Movement of Workers.

Mark Bray holds the Foundation Chair in Employment Studies at the University of Newcastle, Australia. He is a lead author (with Peter Waring, Rachel Cooper and Johanna Macneil) on the widely adopted university textbook, *Employment Relations: Theory and Practice* (4th Edition, 2018, McGraw-Hill, Sydney) and has recently authored (with Johanna Macneil and Andrew Stewart) the research monograph *Cooperation at Work: How Tribunals Can Help Transform Workplaces* (Federation Press, Sydney, 2017). His current research projects include studies of cooperation in the workplace and the roles of different regulatory instruments, like awards and collective agreements.

Alan C. Neal is Professor of Law in the University of Warwick, United Kingdom, and an employment judge in the Central London Employment Tribunals. He is the Convenor of the European Association of Labour Court Judges. He is a lifetime professor in the Zhejiang University (PRC) and Visiting Professor in the Beijing Jiao Tong University (PRC), as well as in the University of Paris II (Pantheon) and USEK (Beirut). He was the founding editor and is now Scientific

Director of the *International Journal of Comparative Labour Law and Industrial Relations*. He is the General Editor of the monograph series 'Studies in Employment and Social Policy' (published by Kluwer Law International).

Isabelle Daugareilh is a CNRS research director in the Center for Comparative Labour and Social Security Law, at Bordeaux University. She is a specialist in international and comparative labour law and has been teaching in several master's programmes at Bordeaux University and Bordeaux Institute for Political Studies. She is an associate researcher at Interuniversity Research Centre on Globalization and Work (CRIMT) in Canada.

Michael Doherty is Professor of Law, and Head of the Department of Law, at Maynooth University (Ireland), with particular expertise in the areas of Irish and EU employment and labour law, industrial relations and social dialogue. He has published widely in national and international outlets on these topics and presented his work at numerous domestic and international conferences. He is a frequent media contributor on labour relations issues and a member of a number of pan-European research networks.

Jedidiah Kroncke is an Associate Professor of Law at the University of Hong Kong. His work centres on the relationship of law to economic and political development, with a focus on alternative forms of labour and property institutions. As a comparative and historical scholar, his writing has focused on the political economy of the American, Chinese and Brazilian legal systems as well as the general development of comparative law as a global discipline.

Rochelle Le Roux is Professor in the Faculty of Law at the University of Cape Town. She currently serves as a non-executive director of the South African Reserve Bank. Some of her publications include *Harassment in the Workplace: Law, Policies and Processes*, *Reinventing Labour Law*, both with Alan Rycroft; *Laws Against Strikes* with the late Prof Sir Bob Hepple and Prof Silvana Sciarra; and *Retrenchment Law in South Africa*.

David Mangan is Assistant Professor at the Department of Law, Maynooth University. His research in labour, common law obligations and information technology has been published internationally. Prior to moving to Ireland, David completed his doctorate and subsequently held academic positions in the United Kingdom.

José María Miranda Boto is Lecturer in Labour Law at the University of Santiago de Compostela in Spain. He is the author of over 100 papers on Spanish and European Labour Law. He is the member of several funded research projects on Spanish and European Labour Law for the European Commission, the Spanish Government, regional authorities and trade unions. He is also the member of the

Experts' Group designated by the Ministry of Employment of Spain to study the consequences of *the De Diego Porras* ECJ's ruling; Spanish expert for the Conseil d'orientation pour l'emploi of the French Government; Secretary-General of the Spanish Association of Labour and Social Security Law.

Łukasz Pisarczyk is Professor at the University of Warsaw, Department of Labour Law and Social Policy; Visiting Professor at the University of Silesia in Katowice; from 2016 to 2018, Member of the Codification Committee of Labour Law; Head of Postgraduate Studies (Labour Law) at the Faculty of Law, Warsaw University; General Secretary of the Polish Section of the International Society for Labour and Social Security Law; Member of Editorial Board of the journal *Monitor Prawa Pracy* (Monitor Labour Law); Associate Editor of the journal *Studia Iuridica*; and Author of numerous scholar publications.

Joellen Riley Munton is a professor of Law at the University of Technology Sydney. She has been teaching and researching in the field of labour law since 1998. Her academic career includes time on the law faculties of the University of New South Wales and the University of Sydney (where she served as Dean and Professor of Labour Law from 2013 till 2018). She is also admitted as a legal practitioner in New South Wales.

Martin Risak is Associate Professor in the Department of Labour Law and Law of Social Security at the University of Vienna (Austria) and the chairperson of Senate II of the Austrian Equal Treatment Commission. He was an associate with the international law firm CMS Reich-Rohrwig Hainz, Professor of Labour Law and Civil Law at the University of Passau (Germany) and a Marie Curie-Fellow at the University of Otago (New Zealand). He is the national expert for Austria of the European Centre of Expertise ('ECE') in the field of labour law, employment and labour market policies that advises the European Commission.

Olga Rymkevich is a senior researcher in labour law and industrial relations at the Marco Biagi Foundation, University of Modena and Reggio Emilia, Modena (Italy). She graduated in St. Petersburg State University, Russia, in foreign languages and international relations and in Economics in the University of Modena, Italy, and Reggio Emilia and has a degree of PhD in Labour Law (University of St. Petersburg, Russia). Her research interests include international and comparative labour law. She also serves as a managing editor of *The International Journal of Comparative Labour Law and Industrial Relations* (Kluwer Law International).

Christian Højer Schjøler is Associate Professor in the Department of Law at the University of Southern Denmark and specialises in labour law and employment law and European Labour Law. He publishes internationally as well as in

Danish. He wrote a comprehensive doctoral thesis on the topic of age discrimination and publishes independently as well as a co-author. Prior to his career in Academia, he worked as a solicitor in an employer organisation and in law firms representing both employers and employees.

Paul Secunda is a professor of Law at Marquette University Law School in Milwaukee, Wisconsin. In his eighteenth year of teaching, he focuses on workplace, benefits and education law, often taking an international and comparative law focus. He is a senior Fulbright Scholar, member of the American Law Institute, and his research concerns the labour, civil and retirement rights of employees and students. He has written dozens of articles, books and chapters on these topics.

Iacopo Senatori is Researcher of Labour Law at the Marco Biagi Foundation, University of Modena and Reggio Emilia. He received a PhD in Labour Law and Industrial Relations at the University of Bologna. He is Coordinator of the Labour Law Area in the PhD Programme of Labour, Development and Innovation at the University of Modena and Reggio Emilia; Managing Editor of the *Italian Labour Law E-Journal*. His research interests include EU Labour Law, freedom of association and collective bargaining, workers' well-being and the regulation of new forms of work. He is the author of a book and several articles and essays written in Italian and English, published on high-ranking national and international journals. He has coordinated several international research projects co-funded by the European Commission.

Andrew Stewart is the John Bray Professor of Law at the University of Adelaide, a Legal Consultant to the law firm Piper Alderman and an editor of the *Australian Journal of Labour Law*. His books include *Stewart's Guide to Employment Law*, *Creighton & Stewart's Labour Law*, *Cooperation at Work: How Tribunals Can Help Transform Workplaces* (with Mark Bray and Johanna Macneil) and *The Wages Crisis in Australia* (co-edited with Jim Stanford and Tess Hardy). His current research projects include studies of the prevalence and regulation of internships, and of work organised through digital platforms.

Jenny Julén Votinius, Professor in private law at the Faculty of Law, Lund University, has wide experience of labour law research in comparative and international settings. She has been a visiting researcher at the University of California in Berkeley. Her works regularly appear in high-impact journals and international publications. Her research is characterised by an interdisciplinary approach, integrating perspectives from social science and political philosophy in the legal analysis. Julén Votinius serves in the European Commission Expert Legal Network in Gender Equality, and she has repeatedly served as an expert to

the ILO, *inter alia*, within a project on the prevention and resolution of individual labour disputes.

Manfred Weiss has been a full professor for labour law and civil law (first at the University of Hamburg and since 1977 at the Goethe University in Frankfurt); Professor emeritus since 2008; 2000–2003 President of ILERA; 1998–2002 Deputy President of German Lawyers' Association (DJT); for many years, Consultant to the International Labour Organisation since 1980 and to the Commission of the EU. He received Honorary Doctorates in Budapest (2005), Lima (2006), Bordeaux (2011), Northwest University (NWU) / South Africa (2015); Award of the Labour Law Research Network (LLRN) for outstanding contribution to Labour Law (2015).

Dong Yan received his doctoral degree from the University of Warwick and currently acts as the associate professor in the Law School of Beijing Foreign Study University. He is a standing member of China Social Law Society and has chaired a number of labour law research projects since 2011. He has been a member of the Chinese Bar Association since 2016 and part-time labour arbitrator in Beijing since 2018.

Summary of Contents

Table of Contents

CHAPTER 6

The Impact of the European Union Economic Governance on the Hierarchy of National Labour Law Sources

Emanuele Menegatti

6.1 INTRODUCTION

In coordinating national economic policies within the framework of the European Economic Governance (EEG), the Institutions of the European Union (EU) have interfered with the hierarchy of labour law sources of some Member States. In this respect, the EU has challenged the traditional European model of employment regulation, built on a rigid floor of mandatory statutory protections and a centralised system of collective bargaining, endorsing a completely different and more flexible one, that is to say, a model based on decentralised collective bargaining and on a loose application of one of the founding principles of labour law, the so-called favour (or favourability) principle.

The results are tangible. According to a recent report,[1] twelve countries have presented decentralisation tendencies since 2008, from the cross-sector towards the sector or company levels, and/or from the sector towards the company level, most of them under the influence of the EU institutions.

In investigating the impact of the EU economic governance on the hierarchy of national labour law sources, this chapter will provide a preliminary brief description of the functioning of the EEG (section 6.2), followed by a consideration of the economic arguments underpinning the revision of the hierarchy of

1. Paul Marginson & Christian Welz, *Changes to Wage-Setting Mechanisms in the Context of the Crisis and the EU's New Economic Governance Regime*, 24 (Eurofound 2014).

labour law sources promoted by the EU institutions (section 6.3). It will then consider the recommendations addressed to a selection of countries within the framework of the EEG (section 6.4), analysing the results generated by them (section 6.5). Finally, it will focus on a possible and desirable change of course compared to the trend promoted by the EEG so far (section 6.6).

6.2 THE 'ORDINARY' AND 'EXTRAORDINARY' CHANNELS OF THE EU ECONOMIC GOVERNANCE

In the broad context of EU economic coordination, we have witnessed two main channels of the Union intervention which have affected in general work regulations and their sources.

The first, and more dramatic, concerned those countries that received financial assistance under the so-called bailout plans. The assistance came alternatively from the so-called Troika (the European Commission acting in liaison with the European Central Bank and the International Monetary Fund (IMF)), bilateral loans, but mostly from the European Financial Stabilization Mechanism and its successor, the European Stability Mechanism.[2] These programmes concerned both Eurozone countries (Ireland, Portugal, Greece and Cyprus) and non-Eurozone countries (Hungary, Latvia and Romania) and even though the money came from various sources, they all shared a same relevant characteristic: the financial assistance was conditioned by satisfactory implementation of reforms formally agreed to by Member States under (binding) memoranda of understanding (MoUs). These reforms, we will see (section 6.4.3), have sometimes involved the set-up of labour law sources.

Semi-bailout received by Spain and Italy in 2011 and 2012 can be included in this first channel of intervention. For both countries, the European Central Bank purchase of government bonds was conditional on policy reforms.

The second and 'ordinary' channel of intervention is that referring to the new version of the EEG, widely reformed in response to the financial and economic crisis of 2008. The present system is a stronger revamped version of the weak and ineffective 'multilateral surveillance', set up under Article 121 TFEU and implemented in the late 1990s through the original Stability and Growth Pact (SGP).[3] The most significant amendments to the original system came from the so-called Six-Pack (five regulations and one directive), providing: (i) stricter oversight over annual stability and convergence programmes; (ii)

2. The European Stability Mechanism was designed to become the main and stable way for managing Eurozone Member States financial crisis. Unlike its predecessor, it works outside the EU institutional context, bases on an Intergovernmental Organisation created by the Eurozone countries, similarly to the IMF.
3. Under the former (pre-2008) SGP, Member States could not be compelled to implement responsible fiscal policies, so much so that departures from such policies were never subject to penalty.

semi-automatic sanctions for Eurozone countries in excessive deficit position, not following the direction provided by the Council;[4] (iii) a brand-new procedure aimed at correcting and preventing excessive macroeconomic imbalances;[5] and (iv) a single process, the so-called European Semester, merging together the surveillance over budgetary positions, coordination of economic policies, prevention of excessive macroeconomic imbalances and integrated guidelines for growth and employment coming from the Europe 2020 strategy in just one process.[6]

Despite its name, the European Semester basically consists in a yearly cycle where each Member State receives Country-Specific Recommendations (CSRs) drawn up by the Commission on the basis of a detailed analysis of national budgetary and structural policies and macroeconomic imbalances. Once endorsed by the heads of state and governments within the European Council and formally adopted by the Council of the EU, these recommendations are to be transformed into national 'reform programmes' whose effectiveness will again be assessed by the Commission.

Quite often, the recommendations addressing the sources of work regulation, in particular wage-setting mechanisms, have been generated by the procedure for macroeconomic surveillance. This starts with the alert mechanism report, through which the Commission analyses the economic situation of every country using a scoreboard with ten indicators covering the major sources of macroeconomic imbalance. The current scoreboard includes the unemployment rate and the variation of the unit labour cost (ULC).

The ULC has played a central role in the topic we are dealing with. As the European Commission has repeatedly stressed, the increase in nominal ULC corresponds to a rise in labour costs exceeding the increase in labour productivity, which might erode competitiveness.[7] This has become a problem of major concern after the creation of the monetary union. The increasing differences in competitiveness between EU countries (between so-called surplus and deficit countries) are mainly owed to the divergent trends in wages and ULCs. Many

4. According to Article 6 of Regulation (EU) No. 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, a fine amounting to 0.2% of the Member State's Gross Domestic Product (GDP) in the preceding year can be imposed by the Council on the basis of a Commission recommendation, unless a qualified majority of Member States should vote against such a fine (under the so-called reverse qualified majority voting procedure).
5. Regulation (EU) No. 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, and Regulation (EU) No. 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area.
6. Regulation (EU) No. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies.
7. *See* European Commission, '*Scoreboard for the Surveillance on Macroeconomic Imbalances*,' European Economy Occasional Papers 92, 14 (2012).

countries in the past have been able to circumvent this problem by devaluating their national currencies, but this is obviously no longer possible under the single currency. Nowadays, according to the EU institutions, the same result can be achieved by policies of 'internal devaluation', meaning a reduction of labour costs able to increase the competitiveness of deficit countries.[8]

An economic reading of the scoreboard indicators does not lead to any automatic conclusions.[9] They are just symptoms of probable macroeconomic imbalances subject to a further in-depth Commission review. If on the basis of the in-depth review the situation cannot be considered dramatic, it will be dealt with under the preventive arm of the procedure, leading to recommendations requiring countries to take actions to correct the identified imbalances, which become part of the CSRs. Otherwise, when macroeconomic imbalances are deemed excessive and in need of corrective actions, the Commission may ask the Council to place the country in question under the corrective arm (the excessive imbalance procedure). Here the Council issues a set of policy recommendations to be followed within a deadline. Non-compliant Eurozone Member States will face financial sanctions designed with a high level of automatism.

Sanctions against Eurozone Member States are provided not only for macroeconomic imbalances but also for failure to meet the deficit target set in the SGP under the excessive deficit procedure (EDP) set forth in Article 126 TFEU.[10]

6.3 THE ECONOMIC PARADIGM UNDERPINNING THE EEG INTERVENTION ON LABOUR LAW SOURCES

The economic argument promoting a reduction of labour costs and an increase in employment flexibility has played a pivotal role in the framework of the EEG.[11] With regard to the sources of employment regulation, it provided the basis for all the recommendations promoting flexible working conditions,

8. K. Armingeon & L. Baccaro, *Political Economy of the Sovereign Debt Crisis: The Limits of Internal Devaluation*, 41 *Industrial Law Journal*, 254-256 (2012).
9. As literally expressed in Article 3(2) of Regulation No. 1176/2011: The Commission's 'conclusions shall not be drawn from a mechanical reading of the scoreboard indicators'.
10. The EDP has been revised by Regulation No. 1175/2011 and Council Regulation (EU) No. 1177/2011 of 8 November 2011 amending Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure; it was subsequently reinforced by the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the so-called Fiscal Compact), providing the golden rule on balanced budgets; and most recently it was amended by the so-called Two-Pack (Regulation Nos 472 2013 and 473 2013).
11. T. Schulten & T. Müller, *A new European interventionism? The impact of the new European economic governance on wages and collective bargaining* (David Natali & Bart Vanhercke, eds), *Social developments in the European Union*, 186 (ETUI 2012).

adaptable to firms' contingent or permanent needs and to the specific characteristics of individual employment relations, such as to enable differentiation across sectors, firms and workers.

In the light of this argument, not surprisingly, a radical change of the relations between the various layers of labour law regulation has been promoted for those European countries experiencing excessive deficits and/or macroeconomic imbalances (i.e., France, Belgium, Italy, Spain and Portugal) and presenting the following common pattern: traditionally quite strict employment protection, largely predominant multi-employer collective bargaining, and, on the top of that, the (explicit or implicit) recognition of the principle of favour. This principle, as is well known, covers the relationship between statutory law, collective bargaining and individual contracting and, less often, the relationship between the different levels of collective bargaining. It stipulates that derogation to the mandatory rules provided by higher-ranking sources is possible only improving them, precisely, in employees' favour.

That model of labour law sources hierarchy has been considered by the EU institutions outmoded with regard to the current economic paradigm.[12] Multi-employer collective bargaining and, in particular, industry-level agreements have traditionally served the purpose of taking wages and employment conditions out of competition. Uniformity of working conditions within the different sectors has limited competitive pricing among entrepreneurs and competition among workers in the labour market. Moreover, the combination with the favour principle has traditionally supported the traditional functions of labour law as a floor of mandatory protections aimed at compensating the asymmetry of bargaining power between the parties of the employment contract, so preventing any derogation to the detriment of working conditions at the firm level, both by individual negotiations and by collective agreements.[13]

Multi-employer bargaining, combined with statutory mandatory protection, provided therefore a common floor of protection and a levelled playfield, based on stable and predictable labour cost, for competition between companies (and workers) within the domestic market. However, when the playfield has started becoming bigger, crossing national borders, 'stability' (and rigidity) of employment conditions, granted by the traditional set-up of labour law sources, turned out to be rather undesirable for companies having to compete on the global market.

12. *See* the analysis of Isabelle Schömann, *Collective Labour Law under Attack: How Anti-crisis Measures Dismantle Workers' Collective Rights*, 2 *ETUI Policy Brief* (2014), https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Collective-labour-law-under-attack-how-anti-crisis-measures-dismantle-workers-collective-rights (accessed 23 April 2019).
13. M. Pallini, *Italian Industrial Relations: Toward a Strongly Decentralized Collective Bargaining*, 38 *Comparative Labor Law & Policy Journal*, 1, 2 (2016).

In the context of global competition, especially for export-driven companies, wages and other employment conditions could no longer be excluded from competition; on the contrary, they have become key components of competitive strategies.[14] Moreover, the volatility of globalised markets does not affect to the same extent companies belonging to the same sector; therefore, some of them might need to go beyond the uniformity of industry-level agreements and statutory protections. Last but not least, financialisation of the economy has led to short-term strategies, which hardly fit in with changes negotiated only when an expiring contract is to be replaced, every three or four years or so.[15]

The 'stability' provided by industry-level bargaining combined with strong statutory protections and the favour principle has, in the opinion of many, become at odds with flexible and 'dynamic' working conditions requested by the new economic setting. This apparent mismatch has put pressure on models based on centralised collective bargaining. Where social partners have not been able to quickly react, in particular by promoting a process of 'organised' decentralisation of working conditions, the system of industrial relations got into a crisis.[16] The outcome varied across countries, leading to: collective bargaining coverage and trade union density decline; proliferation of collective agreements signed by scarcely representative trade unions promoting a race to the bottom of wage and working conditions; the switch to single-employer bargaining by some big companies.

Very often, the absence of any reaction from social partners has been compensated by the interventionism of national legislators. The autonomy of collective bargaining has been frequently invaded by statutory 'opt-out' clauses, allowing derogation to the sectoral standards by company-level agreements and even individual negotiations or unliteral regulations.[17] An increasing number of employers decided to move towards single-employer agreements and to get completely rid of employment protection by subcontracting and more in general by replacing employment contracts with civil law and commercial law contracts.

Some economists have welcomed these changes to the traditional model of employment regulation, which has been accused of charging unionised companies with high transaction costs. In their view, the constraints normally posed to managerial discretion by multi-employer agreements represent a sort of union tax on company earnings, leading to slow response to economic shocks and then

14. *See* J. Visser, *Wage Bargaining Institutions-From Crisis to Crisis*, 488 *European Economy-Economic Papers* (2013), https://ec.europa.eu/economy_finance/publications/economic_paper/2013/pdf/ecp488_en.pdf(accessed 22 October 2019).
15. T. Darcillon, *How Does Finance Affect Labor Market Institutions? An Empirical Analysis in 16 OECD Countries*, 13 *Socio-Economic Review*, 477 (2015).
16. P. Marginson, *Coordinated Bargaining in Europe: From Incremental Corrosion to Frontal Assault?*, 21 *European Journal of Industrial Relations*, 97, 99 (2015).
17. *See* the analysis of Maarten Keune, *Wage Flexibilisation and the Minimum Wage*, in *Industrial Relations in Europe*, 127 (Publications Office of the European Union 2010).

poor performance[18]; something difficult to accept in the current competitive and dynamic economic environments.

Similar arguments have been shared also by the EU institutions, clearly supporting, in the framework of the EEG, the trend promoted by market mechanisms.[19] In this respect, we are going to see into detail how the European Semester has, in a selection of countries (France, Italy and Portugal), implicitly and sometimes rather explicitly, forced national legislators towards the promotion of decentralised collective bargaining – especially 'uncoordinated' decentralisation – and towards the overcoming of the principle of favour.[20]

6.4 ECONOMIC GOVERNANCE VERSUS NATIONAL SYSTEM OF EMPLOYMENT REGULATION

6.4.1 The Case of France

The French case is a very good example of the effective vertical relationship between the EU and Member States created by the reinforced EEG. France was under EDP since the launch of the European Semester until 2018, systematically failing to meet the SGP requirements. In the same period, it presented macroeconomic imbalances, which became excessive from 2015 to 2107. The country has therefore been constantly under the Commission specific monitoring, just one step away from the corrective arms of the EEG.

As far as labour regulation is concerned, the issue of main concern for the union has constantly been the exaggerated level and pace of the minimum wage, not in line with productivity gains, and the excessive labour market rigidity. It is exactly on this latter point that the European Commission has challenged the French hierarchy of labour law sources and in particular that 'internal' to collective bargaining.

France belongs to the group of the above-mentioned countries, where: the relationship between statutory law – namely the *Code du Travail* (Labour Code)

18. B.T. Hirsch, *Sluggish Institutions in a Dynamic World: Can Unions and Industrial Competition Coexist?*, 22 *Journal of Economic Perspectives*, 153, 154 (2008); 'In dynamic economic settings, the high transaction costs of union governance result in sluggish response to shocks, placing union companies at a competitive disadvantage.'
19. L. Bordogna & R. Pedersini, *What Kind of Europeanization? How EMU Is Changing National Industrial Relations in Europe*, 146 *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 184-187 (2015).
20. J. Cruces, I.A. Francisco Trillo & S. Leonardi, *Impact of the euro crisis on wages and collective bargaining in southern Europe – A comparison of Italy, Portugal and Spain* (Guy Van Gyes & Thorsten Schulten, eds), *Wage bargaining under the new European economic governance*, 93, 100 (ETUI 2015); F. Bergamante & M. Marocco, *New European Economic Governance and Decentralisation of the Collective Bargaining Structure in Italy: Did It Work Out?*, 4 (2018), https://ssrn.com/abstract = 3228590 (accessed 23 April 2019).

– collective agreements, individual contracting, as well as the collective bargaining 'internal' hierarchy used to be based on the application of the favour principle; sectoral agreements represented the core level of employment regulation and they can be provided of universal application throughout the whole sector by the Ministry of Labour.

Things started changing from Auroux reform of 1982. From this point on, the relevance and spread of company-level collective bargaining have been increasing, currently covering more than half of the workforce.[21] This growth has been achieved mainly thanks to the obligation to negotiate at the company level certain items: initially just referred to wages, working time and work organisation, then extended during the 2000s to many other subjects such as gender equality, employees' participation in company profits and employment of senior workers.

The process of overcoming the traditional relations between the various layers of regulation was then accelerated in 2004 by the loi Fillon. It introduced consistent room for company collective bargaining to derogate to working conditions established at the sectoral level, with the only exception of some protected areas (i.e., minimum wage and classification). However, it was not a disruptive change in the hierarchy of sources yet. Social partners had the power to 'lock up' conditions provided at the sectoral level, so preventing company derogations or cancelling it *ex post*, as they often did.[22] In any case, the 1982 and 2004 reforms paved the way to further and more radical changes.

Since the inception of the EEG, the EU institutions immediately noticed that the level of decentralisation of employment regulation achieved by France was not enough. Starting from 2015, the Commission has insisted that more flexibility for the employers to depart from industry-level agreement should have been granted.[23] To this end, the favourability principle should have been repealed for topics such as minimum wages, job classifications, supplementary social protection and multi-company and cross-sector vocational training funds[24]; furthermore, a priority should have been given to company-level agreements in establishing the rules governing working time, wages, working conditions and

21. On the development of decentralised bargaining in France *see* U. Rehfeldt & C. Vincent, *The decentralisation of collective bargaining in France: an escalating process* (Salvo Leonardi & Roberto Pedersini, eds), *Multi-employer bargaining under pressure – Decentralisation trends in five European countries*, 151 (ETUI 2018).
22. Rehfeldt & Vincent (n. 21) 155. Jean-Marie Pernot, *France and the European Agenda: an Ambiguous Impact on Industrial Relations*, in *The New EU Economic Governance and Its Impact on the National Collective Bargaining Systems: Final Report* 100 (2014), https://www.fondazionedivittorio.it/sites/default/files/content-attachment/GOCOBA_Final%20report.pdf (accessed 23 April 2019).
23. European Commission, *Country Report France 2015. Including an In-Depth Review on the prevention and correction of macroeconomic imbalances* 16, https://ec.europa.eu/info/sites/info/files/file_import/cr2015_france_en_0.pdf (accessed 23 April 2019).
24. *Ibid*.

employment.[25] The Commission's view was completely endorsed by the Council of the EU in the 2015 CSRs: 'recent reforms have created only limited scope for employers to depart from branch-level agreements through company-level agreements', therefore, recommending accordingly to 'facilitate take-up of derogations at company and branch level from general legal provisions'.[26] The same recommendation was then repeated in 2016.[27]

The reaction of France to the stimulus coming from the EU has been quite fast, prompted by the so-called Combrexelle Report of 2015.[28] It proposed to prioritise the regulative role of collective bargaining, over that of the Labour Code, and in particular to give to company-specific collective agreements a larger role, according to a desirable 'proximity regulation'. The subsequent El Khomri reform of 2016 drove forward the project of reversing the hierarchy of sources.[29] In this respect, it has created a new shared competence between statutory law and collective agreements in specific areas, such as working time, overtime pay, paid holidays and weekly rest. Without prejudice of the fundamental principles of labour law provided by peremptory statutory norms, related to constitutional principles, sectoral or company agreements can freely regulate the working conditions in the mentioned areas. Company agreements have a priority over sectoral regulation, apart from matters not open to derogation established by the latter. Statutory protections beyond and above the 'minimum legal framework' apply only in the absence of collective agreements.

One year later, the process of reform made another significant step forward. The so-called Enabling Act, adopted by the French Parliament on 2 August 2017, allowed the Government to pass the legislation by decrees (so-called ordonnances), giving birth to the so-called Macron reform of the Labour Code.

The Macron reform was aimed, among other things, at enlarging the field of collective bargaining and reinforcing sectoral agreements. To this purpose, it has reserved to industry-level collective bargaining thirteen topics, including jobs classification and appropriate minimum wages, probation period, some

25. European Commission, *Country Report France 2016. Including an In-Depth Review on the prevention and correction of macroeconomic imbalances* 58, https://ec.europa.eu/info/sites/info/files/cr_france_2016_en.pdf (accessed 23 April 2019).
26. Council Recommendation on the 2015 National Reform Programme of France and delivering a Council opinion on the 2015 Stability Programme of France (2015/C 272/14), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015H0818%2815%29 (accessed 23 April 2019).
27. Council Recommendation on the 2016 National Reform Programme of France and delivering a Council opinion on the 2016 Stability Programme of France (2016/C 299/27), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2016.299.01.0114.01.ENG&toc=OJ%3AC%3A2016%3A299%3ATOC (accessed 23 April 2019).
28. Jean-Denise Combrexelle, *La négociation collective le travail et l'emploi* (2015), https://www.ladocumentationfrancaise.fr/rapports-publics/154000638/index.shtml (accessed 23 April 2019).
29. Rehfeldt & Vincent (n. 21) 161.

aspects concerning working time and restrictions to temporary employment. Company agreements are not allowed to regulate this reserved area unless they provide 'at least equivalent guarantees'.

At a closer scrutiny, according to some commentators, the reinforcement of sectoral agreements turns out to be only at the expense of statutory law, which can now be changed *in peius* for employees by collective agreements.[30] In a matter of fact, the Macron reform has taken the priority given until then to company agreements to the next level. In this connection, the sectoral 'lock-up' – unlimited under the 2004 law – has been reduced to only four specific areas (i.e., disabled workers). Company agreements, for their part, have acquired a competence on everything that does not fall into the sectoral agreements and legislative ones. This has created a considerable room for negotiating at the company level worse working conditions concerning, for example, remuneration, without prejudice to the minimum wage.[31]

The outcome has been a significant and unprecedented primacy of company agreements, the parallel decline of the regulatory capacity of sectoral agreements, and the restriction of the favourability principle, even with regard to the relationship between statutory law and collective bargaining.

Obviously, less favourable employment conditions should be collectively negotiated and accepted by bargaining actors representing employees. However, this has been facilitated by the Macron reform itself in workplaces where trade unions are not present. Thus, in small companies employing less than twenty employees, the employer can propose a draft agreement made by himself, which should be approved by 2/3 of the staff. In non-unionised bigger companies, elected representatives or employees delegated by trade unions can be the signatory parties of the agreement. By these rules, the French Government clearly wanted to give access to company-level collective bargaining to all employers as a means to achieve more flexibility (that is to say, weaker employment conditions, including lower wages).

As anticipated, all the considered changes in the hierarchy of labour law sources have been recommended in the framework of the EEG. It is therefore not surprising that these actions have been finally well received by the European Commission, which in the 2018 Country Report highlighted that 'recent reforms are expected to improve the functioning of the labour market over time' and contributing to 'the competitiveness of the French economy'.[32]

30. Rehfeldt & Vincent (n. 21) 163.
31. *Ibid*.
32. European Commission, *Country Report France 2018. Including an In-Depth Review on the prevention and correction of macroeconomic imbalances* 11, https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-france-en.pdf (accessed 23 April 2019).

6.4.2 The Case of Italy

Similar targets – in particular, decentralisation of collective bargaining – but in a rather different context of industrial relations have been pursued by the EU with regard to Italy. Differently from France and from other Mediterranean countries, Italian industrial relations, with the exception of the Fascist period, have always been scarcely institutionalised, mostly based on voluntarism. A statutory regulation of collective bargaining process, structure and efficacy is completely missing. Nonetheless, despite the absence of a mechanism for the extension of collective agreements to non-members, coverage of industry-level collective bargaining has constantly been quite high – around 80% according to Organisation for Economic Co-operation and Development (OECD) data[33] – mainly because labour courts and some legislative prescriptions have managed to force employers towards the application of sectoral agreements.[34]

As for the hierarchy between the different levels of collective bargaining, the current framework has been moving from that established by a 1993 tripartite economy-wide collective agreement.[35] This was based on a two-tier bargaining structure providing a strict subordination of company and territorial-level agreements (second level) to sectoral agreements (first level). Second-level agreements were not only prevented from *in peius* modifications, but also from any regulation of employment other than those expressly allowed by industry-level. According to the ne bis in idem principle, the former cannot deal with topics already regulated by the latter. As a matter of fact, company collective bargaining was almost exclusively entrusted of setting additional wages related to productivity gains. This framework has remained pretty untouched for nearly two decades, even if it turned out to be sometimes unstable: being not supported by statute, it could only rely on voluntary compliance of bargaining players at the firm and territorial level.[36]

The change of economic paradigm and eventually the 'Great Recession' jeopardised the functioning of the 1993 framework. In particular, the employers' side challenged the centrality of industry-level collective bargaining, deemed to be inappropriate. Export-driven companies advocated more room for adapting the rules negotiated at the industry level to their specific needs. That was, in particular, the case of FIAT-FCA, one of the most important and iconic Italian company. FIAT-FCA set up in 2010 its own single-employer collective agreement

33. OECD, Collective Bargaining Coverage, https://stats.oecd.org/Index.aspx?DataSetCode=CBC (accessed 19 April 2019).
34. *See* Gaetano Zilio Grandi, *Collective barganiing* (Franco Carinci, Emanuele Menegatti, eds), *Labour law and industrial relations in Italy*, Chapter XV (Wolters Kluwer 2015); Pallini (n. 13) 16-17.
35. Zilio Grandi (n. 34) 309-310.
36. G.A. Recchia, *The Future of Collective Bargaining in Italy Between Legislative Reforms and Social Partners' Responses*, 23 *Transfer: European Review of Labour and Research*, 457, 458 (2017).

with a view to achieve more flexibility with regard to working time and shift work than that allowed by the sectoral metal workers agreement.

The pressure towards decentralisation managed to be successful for the first time in 2009, when a new tripartite agreement, not signed by the largest Italian trade union, opened up a breach in the centralisation of the system of collective bargaining. Industry-level remained the central level of negotiation, but, differently from the 1993 rules, company-level agreements were allowed to derogate *in peius* to sectoral agreements, only under sectoral agreements permission (opening clauses). A subsequent economy-wide agreement, signed in June 2011 by all the major trade unions, went further, increasing the room for derogation in favour of company-level agreements, which can now worsen the working conditions provided by sectoral agreements even in the absence of opening clauses, if justified by a situation of crisis or in order to improve companies economic performances.[37]

When the EU institutions decided in 2011 to step in and influence the way Italy was addressing the crisis, they found therefore a fertile sole, already prepared by internal players. The first intervention was that of the European Central Bank, which told in a 'secret' letter sent to the Italian Government on 5 August 2011 that, among other things, the system of industrial relations had to be reformed, in order to 'allow enterprise-level agreements to cut wages and working conditions to the specific needs of companies and make these agreements more relevant than other negotiating levels'.[38]

The purchase of hundred millions of Italian Government bond was at stake. Therefore, not surprisingly, the Government reacted very quickly, approving in August 2011 a law decree entitled 'support for proximity collective bargaining'. By this act, company or territorial-level agreements can derogate not only from industry-level agreements but also from statutory law, outside of any principle of favour, on most of the employment matters. The deviation should respect the constraints deriving from constitutional provisions, international conventions and EU law. It shall also be justified on the ground of company objective needs, such as managing crisis, increasing employment or productivity and new investments. Differently from the just considered economy-wide agreement of a couple of months before (June 2011), here company agreements are totally disconnected from any delegation and control of industry-level agreement and statutes. A form of 'disorganised decentralisation' has made its appearance in Italy for the first time in recent decades.[39]

37. *See* the detailed reconstruction by Pallini (n. 13) 3-5.
38. Recchia (n. 36) 459.
39. S. Leonardi, M. Concetta Ambra & A. Ciarini, *Italian collective bargaining at a turning point* (Salvo Leonardi & Roberto Pedersini, eds), *Multi-employer bargaining under pressure – Decentralisation trends in five European countries*, 185, 193 (ETUI 2018).

The European Semester moved in this same direction since its inception. In 2012 the Council addressed to Italy the recommendation, similarly repeated also in 2013, of reinforcing 'the new wage setting framework [that provided by mentioned economy wide agreement of 2011] in order to contribute to the alignment of wage growth and productivity at sector and company level'.[40] This implicitly included the request for further decentralisation of collective bargaining, as it turned out in the subsequent 2013 country report: 'The dominant level of collective bargaining in Italy remains the national level … This hampers a better alignment of wages to firms or local economic and competitiveness conditions.'[41]

The 2014 Commission Country Report on Italy complained about the fact that company-level agreements still covered a minority of workers and firms.[42] The 2015 Council CSRs required explicitly to Italy to 'promote, in consultation with the social partners and in accordance with national practices, an effective framework for second-level contractual bargaining'.[43] Again the 2016[44] and 2017[45] CSRs reported the insufficient use of second-level bargaining which, in the opinion of the Council, made it difficult to develop innovative solutions at firm level that could improve productivity and foster the response of wages to labour market conditions.

A response from the Italian Government came in the framework of a major reform of Italian labour law, the so-called Jobs Act. Legislative decree No. 81 of 2015 specified that anytime statutory law delegates the regulation of employment relations to collective bargaining, and the reference shall be intended to any level of it (industry, local, company level). Even if this rule does not directly deal with the relationship between different levels of collective agreements and to its contents, it contributes to an alteration of it, conferring company-level

40. Council Recommendation on the National Reform Programme 2013 of Italy and delivering a Council opinion on the Stability Programme of Italy 2012-2017 (2013/C 217/11), https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:217:0042:0046:EN:PDF(accessed 22 October 2019).
41. European Commission, *Assessment of the 2013 national reform programme and stability programme for ITALY* 10, https://ec.europa.eu/info/sites/info/files/file_import/swd2013_italy_en_0.pdf (accessed 23 April 2019).
42. European Commission, *Assessment of the 2014 national reform programme and stability programme for ITALY* 20, https://ec.europa.eu/info/sites/info/files/file_import/swd2014_italy_en_0.pdf (accessed 23 April 2019).
43. Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Italy and delivering a Council opinion on the 2015 Stability Programme of Italy, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015H0818%2817%29 (accessed 23 April 2019).
44. Council Recommendation of 12 July 2016 on the 2016 National Reform Programme of Italy and delivering a Council opinion on the 2016 Stability Programme of Italy, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2016.299.01.0001.01.ENG&toc=OJ%3AC%3A2016%3A299%3ATOC (accessed 23 April 2019).
45. Council Recommendation on the 2017 National Reform Programme of Italy and delivering a Council opinion on the 2017 Stability Programme of Italy (2017/C 261/11), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A32017H0809%2811%29 (accessed 23 April 2019).

agreements the same regulative power which used to be of industry-level agreements, outside of any principle of favour. Thus, it is a significant step towards equalisation of the different levels.[46]

Social partners, for their part, have confirmed the importance of second-level bargaining in 2018, by a new economy-wide framework agreement.

At the end of the day, the internal pressure coupled with the external coming from the EU has been able to achieve a certain degree of decentralisation, along two parallel tracks: one drafted by the legislator, heading towards uncoordinated decentralisation; the other governed by collective autonomy, where industry-level collective bargaining still keeps the control over territorial and company-level agreements.

6.4.3 The Case of Portugal

Portugal used to have a centralised system of collective bargaining, mostly at the industry-level. Differently from France and Italy or even from the Spanish neighbours, company-level agreements have historically been very rare in Portugal since very rare have always been the workers' representatives presence at workplace level. Not surprisingly, given the peculiarity of the Portuguese productive fabric, which presents an overwhelming prevalence of very small companies. In this context, mechanisms to articulate collective bargaining have remained very weak, since they never received particular attention by the social partners and the legislator.[47] Nevertheless, coverage of collective bargaining used to be quite high. It was the result of two main factors: the legal extensions of the scope of industry-level agreements, which was almost automatically granted by the Ministry of Labour; and the 'after-effect' rules, allowing expired collective agreements to remain valid until renegotiated.[48]

The Portuguese collective bargaining system has been criticised because it did not grant the necessary flexibility to companies. Moreover, the after-effect rule attracted a great deal of disapproval. It was accused of being a major factor of rigidity, because it took away from trade unions the pressure normally caused by expiring collective agreements, making them less prone to make concession to employers.[49]

46. M. Magnani, *The Role of Collective Bargaining in Italian Labour Law*, 7 *Labour Studies*, 13 (2018); Recchia (n. 36) 466.
47. *See* L. Fulton, *Worker Representation in Europe* (2015), http://www.worker-participation.eu/National-Industrial-Relations (accessed 23 April 2019).
48. M. do Rosário Palma Ramalho, *Portuguese Labour Law and Industrial Relations During the Crisis*, ILO Working Paper 54 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_232798.pdf (accessed 24 April 2019).
49. I. Távora & P. González Tabora, *Labour Market Regulation and Collective Bargaining in Portugal During the Crisis: Continuity and Change*, 22 *European Journal of Industrial Relations*, 251, 256 (2016).

Things started changing when an important process of reform was undertaken during the first decade of the 2000s. The 2003 revision of the Labour Code eliminated the favour principle related to the relations between statutory law and collective agreements, then partially reinstated by a subsequent 2009 revision of the Labour Code for some 'core' areas like non-discrimination, wage, working time limitations, protection of worker's 'personality'. The same 2009 Labour Code revision set an eighteen months ceiling to the after-effect rule, provided that any of the bargaining parties have requested the expiration of the agreement.

Following the bailout, Portugal entered the Economic Adjustment Programme, which covered the period 2011-2014. The MoU of 17 May 2011 proposed the usual target of promoting 'coordinated decentralised bargaining'. This led to a couple of changes by the 2012 revision of the Labour Code: reduction of the threshold required for non-union workers' representatives to conclude collective agreements – from company employing at least 500 employees to 150 – and the introduction of the possibility for sectoral agreements to provide opening clauses admitting the derogation by company agreements on some topics.

These were just marginal adjustments.[50] The real target of the MoU was instead the mechanism for the extension of collective agreements. The definition of 'clear criteria to be followed for the extension of collective agreements', taking into close consideration not only 'the representativeness of the negotiating organisations' but also 'the implications of the extension for the competitive position of non-affiliated firms' deemed necessary by the Troika.[51]

As a result, the extension of collective agreements was first suspended in 2011 and 2012, waiting for the definition of the new criteria, then approved by the Government in October 2012. According to these, only collective agreements signed by an association representing 50% or more of the employees in the respective sector could be extended. The outcome was a sharp restriction of the extension mechanism and, of course, a huge reduction of extended agreements.[52] However, because of the protests of social partners, the rule has been relaxed in 2014, admitting as an alternative to it, the possibility of extension if at least 30% of the members of the signatory employers' association were small

50. Since the overwhelming majority of Portuguese corporations is very small, the reduction of the threshold from 500 to 150 had a very limited impact. As for the opening clauses, they were already enabled by former legislation. *See* Cruces, Álvarez, Trillo & Leonardi (n. 20) 108-109.
51. Memorandum of Understanding on specific economic policy conditionality, Portugal, 17 May 2011, 23-24, § 4.7.
52. According to the data provided by União Geral de Trabalhadores (UGT), Relatório Anual da Negociação Coletiva – 2014, https://www.ugt.pt/NC_relatorioanual2014.pdf (accessed 24 April 2019) the number of extended agreements collapsed from 296 in 2008 to 85 in 2012, slowly recovering to 94 in 2013.

and medium enterprises. Which is a very likely condition, given that 99.9% of Portuguese companies belong to this category.[53]

Still, the 2012 reform of the Labour Code led to the erosion of the application of the favourability principle, covering the relations between statutory law and collective and individual contracting, for the purpose of reducing labour costs. Some examples are the statutory reduction of overtime payments and abolition of paid compensatory time off, with the neutralisation of better regimes provided by collective agreements. Overtime payment higher than that provided by collective agreements was suspended and clauses on compensatory time off declared null and void. Provisions have then be declared unconstitutional.[54] Another significant example is the 'time bank' scheme, allowing some work after normal working time not to be considered as overtime, and then paid the regular hourly wage. This working scheme, which worsens statutory conditions, used to be permitted only if regulated by collective agreements. After the 2012 reform, it can be adopted by individual negotiation, which will therefore prevail over statutory regulation.

Once the bailout programme was concluded in 2014, Portugal entered the ordinary cycle of economic governance. The European Commission noted immediately the significant decline of collective bargaining under the bailout programme.[55] The number of sectoral agreements reached the lowest point ever in 2012,[56] as well as that of firm-level agreements, but in a measure proportionally less adverse.[57] Measures to 'foster collective bargaining' were then considered necessary.[58] This had nothing to do with the traditional 'equity' and 'stability' provided by sectoral agreements. On the contrary, the target the Commission had in mind was that of inducing 'greater dynamism and make wages more flexible' passing through the promotion of 'a more effective decentralisation of wage bargaining'.[59] Here it comes again, the switch from the old economic model based on patient capital and the new one based on shareholder value and short-term profits (*see supra* section 6.3).

53. Távora & González Tabora (n. 49) 256.
54. Decision of the Portuguese Constitutional Court No. 602 of 2013, https://dre.pt/pesquisa/-/search/502979/details/maximized (accessed 24 April 2019).
55. European Commission, *Assessment of the 2014 national reform programme and stability programme for PORTUGAL* 18, https://ec.europa.eu/info/sites/info/files/file_import/swd2014_portugal_en_0.pdf (accessed 23 April 2019).
56. *See* above (n. 52).
57. Above (n. 52). *See also* Maria da Paz Campos Lima, *EUROFOUND in Portugal: Decline in Collective Bargaining Reaches Critical Point* (2014), https://www.eurofound.europa.eu/publications/article/2014/portugal-decline-in-collective-bargaining-reaches-critical-point (accessed 24 April 2019).
58. European Commission (n. 55).
59. *Ibid*.

Still in the 2014 Country Report, the Commission went on to propose 'the introduction of a mutually agreed temporary opt-out from the collective agreement, when a firm is facing economic difficulties'.[60] This policy was considered so important that it was included in the CSRs for 2014, connected to a specific deadline: 'By September 2014, present proposals on mutually agreed firm-level temporary suspension of collective agreements and on a revision of the survival of collective agreements.'[61] One year later, in the 2015 CSRs, the Council decided to put forward the 'classic theme' of wage bargaining decentralisation, for the usual purpose of promoting 'the alignment of wages and productivity … taking into account differences in skills and local labour market conditions as well as divergences in economic performance across regions, sectors and companies'.[62]

Portugal has been extremely reactive to all the above-mentioned recommendations. The 2014 Act (No. 55/2014) has made it possible to suspend collective agreements when companies are in crisis. The request for a 'greater dynamism' has been addressed by reducing the after-effect period from eighteen to twelve months and the validity of successive renewal clauses from five to three years.

As for the results of the reform process undertaken, when collective bargaining recovered from the decline recorded during the adjustment programme, it presented nearly half of the number of sectoral agreements in force in 2008, and almost the same small number level of firm-level agreements (not exceeding a hundred).[63] At the end of the day, the degree of decentralisation of collective bargaining, achieved by the extraordinary measures put in place under the bailout programme and then the ordinary cycle of EEG, has not been as pronounced as the growth of individual arrangements of working conditions.[64] In practice, rather than just simply prompting a decentralisation of collective bargaining – probably an unrealistic target considered the limited capacity of Portuguese firms to engage in collective bargaining[65] – the unstated objective, or

60. *Ibid.*, 28.
61. Council Recommendation on the National Reform Programme 2014 of Portugal and delivering a Council opinion on the Stability Programme of Portugal, 2014 (2014/C 247/20), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0423 (accessed 22 October 2019).
62. Council Recommendation on the 2015 National Reform Programme of Portugal and delivering a Council opinion on the 2015 Stability Programme of Portugal (2015/C 272/25), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015H0818%2826%29 (accessed 24 April 2019).
63. Compare data included in UGT, Relatório Anual da Negociação Coletiva – 2014 above (n. 52) and UGT, Relatório Anual da Negociação Coletiva – 2018, https://www.crlaborais.pt/documents/10182/13326/CRL+-+Relatório+Anual+NC+-+2017+++%28versão+atualizada+em+08.08.2018%29/2f65f793-0178-4a7a-8bed-2a01d01e0b85 (accessed 24 April 2019). In 2008, 173 industry-level and 95 company-level collective agreements were concluded, whereas in 2018 only 98 industry-level and 96 at the firm-level agreements.
64. Távora & González Tabora (n. 49) 262.
65. Fernando Rocha & Alan Stoleroff, *The Challenges of the Crisis and the External Intervention in Portugal*, in *The New EU Economic Governance and Its Impact on the National Collective*

maybe just unintentional, of the State intervention under the auspices of the EEG has been that of jeopardising collective autonomy and its regulatory capacity in favour of managerial unilateralism.[66]

6.5 THE ACHIEVEMENTS OF THE EEG

6.5.1 The Legal Changes under the 'Implicit' Conditionality

The description of the reforms undertaken by France, Italy and Portugal in response to the recommendations coming from the EU has shown a high commitment of national governments and legislations to the EEG. Under the EU guidance, national legislations have intervened to steer collective bargaining and more in general the hierarchy of sources towards a more desirable, in the opinion of the EU, configuration. This has given rise to 'uncoordinated' priority to the company-level agreement, out of any principle of favour, for the purpose of providing companies with the ability to deviate from general standard of employment protection provided by higher-level agreements and even by the statutes.[67] The switch to a new institutional set-up of the sources of employment regulation took place even where the system of industrial relations was historically based on strong voluntarism, like in Italy.

The system of 'ordinary' economic governance has therefore proven to be very effective. Its reinforcement undertaken with the so-called 2011 Six-Pack has worked, thanks, probably, to the spectre of sanctions for the case Member States under the 'corrective arms' persistently departed from the course indicated by the EU institutions.

A mechanism, therefore, based on 'implicit' conditionality.[68] Whereas 'explicit' conditionality is related to the case of bailout countries, for which expected behaviours and related sanctions for non-compliance were expressly formalised in the MoUs, 'implicit' conditionality is otherwise based on the understanding that in case of non-compliance with certain expected behaviours there may be consequences. The precondition is an underlying asymmetry of power, created by the mentioned threat of sanctions or by the promise of financial support, in order to avoid the strict 'explicit' conditionality which the

Bargaining Systems: *Final Report* 158 (2014), https://www.fondazionedivittorio.it/sites/default/files/content-attachment/GOCOBA_Final%20report.pdf (accessed 24 April 2019).

66. Cruces, Álvarez, Trillo & Leonardi (n. 20) 107-108.

67. R. Perdersini, *Conclusions and outlook. More challenges and some opportunities for industrial relations in the European Union* (Salvo Leonardi, Roberto Pedersini, eds), *Multi-employer bargaining under pressure – Decentralisation trends in five European countries* 291 (ETUI 2018).

68. S. Sacchi, *Conditionality by Other Means: EU Involvement in Italy's Structural Reforms in the Sovereign Debt Crisis*, 13 *Comparative European Politics*, 77 (2015).

IMF (or Troika) assistance would require.[69] This has made the EEG a sort of 'hybrid' legal system, 'a step away from … a purely soft law mechanism'.[70]

6.5.2 The Changes in Actual Practice: The Resistance of Social Partners

While is true that the economic governance has permitted to the EU institutions to achieve the desired change of national institutional frameworks, nonetheless it has not always been able to achieve the desired results in practice, because of the resistance of national social partners. In the wake of the mentioned shifting economic paradigms (above section 6.3), social partners, to a different extent in the different countries, have tried to govern the stream of change. In doing so, they sometimes opposed their solutions to that put forward by the legislation under the control of the EEG.

That was the case of the recent legislative reforms in France, aimed at stimulating company-level derogation to standards established by sectoral agreements, negotiable even without the involvement of trade unions. They have not produced the expected results. Trade unions kept being involved in negotiations at the firm level, and the worsening of employment standards provided by industry-level agreements, including a reduction of labour costs, has not normally taken place.[71] So far, the actors of collective bargaining, including employers, have decided not to take advantage of the tools made available by the new legislative framework, probably because they do not really need them.[72]

This is clearly confirmed by data collected by the French Ministry of Labour.[73] The large majority of company agreements are still signed by union delegates or employees mandated by trade unions. As for the number of company agreements, after the significant increase between the 1980s and the 2010s, boosted by the Auroux Law of 1982, imposing for the first time mandatory company negotiation in unionised companies, and by the Aubry laws of 1998 and 2000, allowing company bargaining on working time reductions, the

69. *Ibid.*, 83. *See also* A. Steinbach, *EU Economic Governance after the Crisis: Revisiting the Accountability Shift in EU Economic Governance*, A Gwilym Gibbon Centre for Public Policy Working Paper (2018), https://www.nuffield.ox.ac.uk/media/2664/2018-07-eu-economic-governance-after-the-crisis.pdf (accessed 24 April 2019).
70. P. Pecinovsky, *EU Economic Governance and the Right to Collective Bargaining. Part 1. Standard and Extreme Governance and the Indicators and Limits of the Right to Collective Bargaining*, 9 *European Labour Law Journal*, 274, 388 (2018). On the de fact binding nature of CSRs *see also* E. Menegatti, *Challenging the EU Downward Pressure on National Wage Policy*, 33 *International Journal of Comparative Labour Law and Industrial Relations*, 195, 210-213 (2017).
71. Rehfeldt & Vincent (n. 21) 182-184.
72. That is the assumption of Jean-Marie Pernot (n. 22) 101.
73. *See* the report produced by the Ministère du Travail – Direction de l'animation de la recherche, des études et des statistiques, *Bilans de la négociation collective par la Commission nationale de la négociation collective* (2018), https://travail-emploi.gouv.fr/IMG/pdf/bnc_2018-hd-web.pdf (accessed 24 April 2019).

number of collective agreements signed from 2012 to 2017 is similar to that of 2000.

National legislation has opened up to 'uncoordinated' decentralisation also in Italy, fostering 'proximity' collective bargaining as an open alternative to statutory and industry-level regulation outside of any delegation and favour principle. However, the (most representative) social partners have managed to resist the pressure coming from the EEG, still keeping a certain degree of coordination over company-level bargaining.[74] To this end, they expressly and quite successfully committed all their structures, at any level, not to take advantage of the potentially disruptive 'proximity' agreements.[75] The industry-level agreements signed after 2011 respected this instruction when they regulated the opening clauses, maintaining a coordination over decentralised collective bargaining.[76]

The action of the social partners, embracing their own decentralisation process parallel to that of the legislator, has therefore helped to reduce the impact of the mentioned and unprecedented legislative intrusions in industrial relations. Since the model of coordinated collective bargaining provided by social partners has been able to grant to companies a fair degree of flexibility, company-level collective agreements have rarely resorted to the harsh flexibility admitted by legislations.

However, the main current problem regarding the layers of employment regulations in Italy does not concern the process of decentralisation of collective bargaining. If we look at the figures provided by a recent survey,[77] the coverage of the second-level agreement has actually decreased from around 34% in 2005 to 27% in 2015, whereas the coverage of industry-level agreements is around 93%, higher than that usually estimated by OECD.[78] Behind this apparently reassuring figures is hidden the most striking problem for the Italian framework of employment regulation sources: the increasing number of industry-level collective agreements signed by scarcely representative organisations (so-called pirate agreements), aiming at making available to companies wages lower and employment conditions weaker than those provided by 'mainstream' collective

74. Leonardi, Ambra & Ciarini (n. 39) 200-201.
75. This clause has been included in an amendment to the Economy-Wide agreement of June 2011. Apparently they have been of their words, since il ricorso alle deroghe ex Article 8 risulterebbe finora molto contenuto (Cisl 2013; Toma- setti 2015; Banca d'Italia 2013.
76. Leonardi, Ambra & Ciarini (n. 39) 197. However, Massimo Pallini, cit., 4 has a totally different opinion, believing that despite the efforts, the 'chaos reigns'.
77. *See* INAPP (National Institute for Public Policy Analysis) – RIL (Longitudinal Detection on Labour and Enterprises) survey, https://inapp.org/it/dati/ril (accessed 24 April 2019), analysed by Bergamante, Marocco (n. 20).
78. OECD, *Collective Bargaining in OECD and accession countries*, http://www.oecd.org/employment/collective-bargaining.htm (accessed 24 April 2019).

agreements.[79] A very effective instrument for achieving cost competitiveness, even more disruptive for the industrial relations system than uncoordinated company-level collective bargaining.

Even in Portugal, despite the legislative reforms undertaken under the extraordinary adjustment programme and the ordinary cycle of economic governance, company-level agreements have not much increased their presence. They were really rare before the crisis and they are still very rare in 2018.[80] In a productive fabric where very small companies are hugely overrepresented, the activation of firm-level bargaining is just unrealistic. But even the number of sectoral collective agreements signed in 2018, after reaching their historic lows in 2003, has been only around one-third of that it used to be before the crisis. As for their coverage, estimates are rather conflicting.[81] Anyway, it looks like the drop in the number of sectoral collective agreements has not affected by the same proportion the share of workers covered. That probably because those workers not covered by new agreements are still covered by existing agreements, relying on the mentioned after-effect rule. Even if after the 2009 reform the expiration of agreements is an option that one of the parties of collective agreements may trigger, this has not happened very frequently because also employers are normally reluctant to let agreements expire.[82]

As anticipated, rather than promoting any sort of decentralisation of collective bargaining, the real effect of the changes in Portugal has been that of weakening collective bargaining at any level. This probably might depend on the already highlighted lack of a clear articulation between the different levels of collective bargaining and, more in general, on the characteristic of the Portuguese industrial relations system too reliant on institutional protections. Differently from France and Italy, social partners have not been able to control the centrifugal pressures, gradually moving the main source of employment regulation, from centralised collective bargaining and statutory law to individual contracting and managerial unilateralism.

79. Magnani (n. 46) 13, quotes the CNEL (National Council for Economics and Labour) census, which reports that in September 2017 there were 868 national level collective agreements, whereas in 2013 there were 561 and 396 in 2008. Not surprisingly, the increasing number of 'pirate' agreements goes hand in hand with the that of companies withdrawing from employers' associations, as confirmed by the survey quote above in n. 77. This has been made possible by the continued absence in Italy of a mechanism for the selection of bargaining players, notwithstanding the effort recently made by the most representative social partners.
80. *See* n. 63.
81. According to UGT, Relatório Anual da Negociação Coletiva – 2018, cit. above nt. 65, the number of workers covered by valid agreements had a slight decline during the crisis: from 83.5% to around 80%. OECD, Collective Bargaining in OECD and accession countries, http://www.oecd.org/employment/collective-bargaining.htm, embraces a more pessimist view, reporting that coverage dropped from 86% in 2008 until reaching 72% in 2015.
82. Távora & González Tabora (n. 49) 258.

6.6 CONCLUSIONS

Changing economic models have put the traditional hierarchy of labour law sources under stress. This is particularly true for those countries where employment regulation used to rely on strong centralised collective bargaining and the favour principle providing little room for derogation at the company level and even less for individual contracting and managerial unilateral decision.

Against this background, in some countries social partners have completely or partially lost the control of the undergoing transformation. National governments, supported (or forced) by the EEG, big companies and even 'non-mainstream' trade unions have successfully achieved disorganised decentralisation and invidualisation of employment regulation.

This is clearly placing in jeopardy the purpose of labour law and even its very existence. The increasing room for derogation to protections afforded by statutes and multi-employer collective bargaining might lead to the end of labour law itself, replaced with a general freedom of contract regime. We are not there yet, and probably not even close. National systems of industrial relations have demonstrated to be rather resistant to the external pressure, especially in France and Italy. By and large, the traditional set-up of the hierarchy of labour law sources has not been disrupted hitherto. In particular, industry-level collective bargaining seems still barycentric and many companies, especially small, seem willing to rely on the 'stability' which sectoral agreements are able to provide.

However, if we look at the overall trend, we can appreciate that the medium long-term trajectory is a neo-liberal convergence between the different systems. Industrial relations are reducing 'the constraints – in the form of labor law or collective regulation – acting on employers … increas[ing] their ability to manage the workplace and their relationship with their employees as they please'.[83] This trend of 'marketisation' is inevitably leading to negative externalities: i.e., market forces are very keen on getting rid of Employment Protection Legislation and public pension schemes, not considering that these create workers anxiety about the future and people failing to acquire pensions, eventually leading to reduced consumptions and a lot of old people in extreme poverty situation.[84]

Collective bargaining has the capacity to mitigate these negative externalities by establishing arrangements which are able to provide substantive and procedural certainty for both workers and employers, and in particular greater

83. L. Baccaro, C. Howell, *A Common Neoliberal Trajectory: The Transformation of Industrial Relations in Advanced Capitalism*, 39 *Politics & Society* 521, 549 (2011) who gave particular emphasis to the decentralisation of collective bargaining, concluding that the resilience of national institutions to common challenges and trend is just surface.
84. C. Crouch, *Introduction: Labour Markets and Social Policy after the Crisis*, 20 *Transfer: European Review of Labour and Research*, 7, 9 (2014).

security for workers.[85] However, in order to ensure the sound functioning of collective bargaining, and more in general the maintenance of the traditional hierarchy of labour law sources based on the principle of favour, the social partners should be capable of a quick response to shifting economic paradigms, by governing the change, rather than opposing a counterproductive defence.

The best way of doing so is probably that of pursuing the trend, opened in the 1990s by the collective autonomy in many countries, towards 'organised' decentralisation.[86] According to empirical analysis, where the relationship between the different levels is coordinated by well-defined articulation mechanism, the labour market is more efficient[87] and the outcomes of collective bargaining are also consistent with the EU target of cost competitiveness.[88] This might require the intervention of the legislature, especially where systems based on strong voluntarism are no longer able to work properly, as in the case of Italy, in order to support the social partners' choices. Or where, again in the case of Italy, but also Portugal, mechanisms for stimulating second-level collective bargaining (at the territorial or firm-level) under trade unions' control are required in order to avoid managerial unilateralism.

BIBLIOGRAPHY

K. Armingeon &, L. Baccaro, *Political Economy of the Sovereign Debt Crisis: The Limits of Internal Devaluation*, 41 *Industrial Law Journal*, 254-256 (2012).

L. Baccaro &, C. Howell, *A Common Neoliberal Trajectory: The Transformation of Industrial Relations in Advanced Capitalism*, 39 *Politics & Society*, 521, 549 (2011).

F. Bergamante &, M. Marocco, *New European Economic Governance and Decentralisation of the Collective Bargaining Structure in Italy: Did It Work Out?*, 4 (2018), https://ssrn.com/abstract = 3228590 (accessed 23 April 2019).

85. P. Marginson, M. Keune & D. Bohle, *Negotiating the Effects of Uncertainty? The Governance Capacity of Collective Bargaining under Pressure*, 20 *Transfer: European Review of Labour and Research*, 37, 39 (2014).
86. G.P. Cella, *Quale futuro per la contrattazione collettiva?*, 150 *Giornale di diritto del lavoro e di relazioni industriali,* 217, 226-229 (2016). For a recognition of the models of industrial relations based either on organised decentralisation or unorganised: *See* the analysis of F. Traxler, *Two logics of collective action in industrial relations* (Colin Crouch, Franz Traxler, eds), *Organized industrial relations in Europe: What future?* (Avebur 1995).
87. This is the conclusion of the OECD, *Employment Outlook 2018*, OECD Publishing, Paris, 73-122, showing that the employment rate is higher in system where collective bargaining is coordinated than in system entirely based on firm-level bargaining, or even centralised collective bargaining but weekly coordinated. Same conclusions are reached with specific regard to the weaker segments of the labour market: youth, women and low-skilled unemployment rates are much lower in coordinated bargaining systems.
88. These are the findings of the research conducted by F. Traxler & B. Brandl, *Collective Bargaining, Inter-Sectoral Heterogeneity and Competitiveness: A Cross-National Comparison of Macroeconomic Performance*, 50 *British Journal of Industrial Relations*, 73-98 (2012).

L. Bordogna &, R. Pedersini, *What Kind of Europeanization? How EMU Is Changing National Industrial Relations in Europe*, 146 *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 184-187 (2015).

G.P. Cella, *Quale futuro per la contrattazione collettiva?*, 150 *Giornale di diritto del lavoro e di relazioni industriali*, 217, 226-229 (2016).

C. Crouch, *Introduction: Labour Markets and Social Policy after the Ccrisis*, 20 *Transfer: European Review of Labour and Research*, 7, 9 (2014).

J. Cruces, I. A., Francisco Trillo &, S. Leonardi, *Impact of the euro crisis on wages and collective bargaining in southern Europe: A comparison of Italy, Portugal and Spain* (Guy Van Gyes & Thorsten Schulten, eds), *Wage bargaining under the new European economic governance*, 93, 100 (ETUI 2015).

Maria da Paz Campos Lima, *EUROFOUND in Portugal: Decline in Collective Bargaining Reaches Critical Point* (2014), https://www.eurofound.europa.eu/publications/article/2014/portugal-decline-in-collective-bargaining-reaches-critical-point (accessed 24 April 2019).

T. Darcillon, *How Does Finance Affect Labor Market Institutions? An Empirical Analysis in 16 OECD Countries*, 13 *Socio-Economic Review*, 477 (2015).

M. do Rosário Palma Ramalho, *Portuguese Labour Law and Industrial Relations During the Crisis*, ILO Working Paper 54 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_232798.pdf (accessed 24 April 2019).

European Commission, '*Scoreboard for the Surveillance on Macroeconomic Imbalances*,' European Economy Occasional Papers 92, 14 (2012).

B.T. Hirsch, *Sluggish Institutions in a Dynamic World: Can Unions and Industrial Competition Coexist?*, 22 *Journal of Economic Perspectives,* 153, 154 (2008).

Maarten Keune, *Wage Flexibilisation and the Minimum Wage*, in *Industrial Relations in Europe*, 127 (Publications Office of the European Union 2010).

Salvo Leonardi, Maria Concetta Ambra &, Andrea Ciarini, *Italian Collective Bargaining at a Turning Point* (Salvo Leonardi & Roberto Pedersini, eds), *Multi-Employer Bargaining under Pressure: Decentralisation Trends in Five European Countries*, 185, 193 (ETUI 2018).

M. Magnani, *The Role of Collective Bargaining in Italian Labour Law*, 7 *Labour Studies*, 13 (2018).

Paul Marginson &, Christian Welz, *Changes to Wage-Setting Mechanisms in the Context of the Crisis and the EU's New Economic Governance Regime*, 24 (Eurofound 2014).

P. Marginson, *Coordinated Bargaining in Europe: From Incremental Corrosion to Frontal Assault?*, 21 *European Journal of Industrial Relations* 97, 99 (2015).

P. Marginson, M. Keune &, D. Bohle, *Negotiating the Effects of Uncertainty? The Governance Capacity of Collective Bargaining under Pressure*, 20 *Transfer: European Review of Labour and Research*, 37, 39 (2014).

M. Pallini, *Italian Industrial Relations: Toward a Strongly Decentralized Collective Bargaining*, 38 *Comparative Labor Law & Policy Journal*, 1, 2 (2016).

P. Pecinovsky, *EU Economic Governance and the Right to Collective Bargaining: Part 1. Standard and Extreme Governance and the Indicators and Limits of the Right to Collective Bargaining*, 9 *European Labour Law Journal*, 274, 388 (2018).

Roberto Perdersini, *Conclusions and Outlook. More Challenges and Some Opportunities for Industrial Relations in the European Union* (Salvo Leonardi & Roberto Pedersini, eds), *Multi-Employer Bargaining under Pressure: Decentralisation Trends in Five European Countries*, 291 (ETUI 2018).

Jean-Marie Pernot, *France and the European Agenda: An Ambiguous Impact on Industrial Relations*, in *The New EU Economic Governance and Its Impact on the National Collective Bargaining Systems: Final Report* 100 (2014), https://www.fondazionedivittorio.it/sites/default/files/content-attachment/GOCOBA_Final%20report.pdf (accessed 23 April 2019).

G.A. Recchia, *The Future of Collective Bargaining in Italy Between Legislative Reforms and Social Partners' Responses*, 23 *Transfer: European Review of Labour and Research*, 457, 458 (2017).

Udo Rehfeldt &, Catherine Vincent, *The Decentralisation of Collective Bargaining in France: An Escalating Process* (Salvo Leonardi & Roberto Pedersini, eds), *Multi-Employer Bargaining under Pressure: Decentralisation Trends in Five European Countries*, 151 (ETUI 2018).

Fernando Rocha &, Alan Stoleroff, *The Challenges of the Crisis and the External Intervention in Portugal*, in *The New EU Economic Governance and Its Impact on the National Collective Bargaining Systems: Final Report* 158 (2014), https://www.fondazionedivittorio.it/sites/default/files/content-attachment/GOCOBA_Final%20report.pdf (accessed 24 April 2019).

S. Sacchi, *Conditionality by Other Means: EU Involvement in Italy's Structural Reforms in the Sovereign Debt Crisis*, 13 *Comparative European Politics*, 77 (2015).

Isabelle Schömann, *Collective Labour Law under Attack: How Anti-crisis Measures Dismantle Workers' Collective Rights*, 2 ETUI Policy Brief (2014), https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Collective-labour-law-under-attack-how-anti-crisis-measures-dismantle-workers-collective-rights (accessed 23 April 2019).

T. Schulten &, T. Müller, *A New European Interventionism? The Impact of the New European Economic Governance on Wages and Collective Bargaining*

(David Natali & Bart Vanhercke, eds), *Social developments in the European Union*, 186 (ETUI 2012).

A. Steinbach, *EU Economic Governance after the Crisis: Rrevisiting the Accountability Shift in EU Economic Governance*, A Gwilym Gibbon Centre for Public Policy Working Paper (2018), https://www.nuffield.ox.ac.uk/media/2664/2018-07-eu-economic-governance-after-the-crisis.pdf (accessed 24 April 2019).

I. Távora &, P. González Tabora, *Labour Market Regulation and Collective Bargaining in Portugal During the Crisis: Continuity and Cchange*, 22 *European Journal of Industrial Relations*, 251, 256 (2016).

F. Traxler &, B. Brandl, *Collective Bargaining, Inter-Sectoral Heterogeneity and Competitiveness: A Cross-National Comparison of Macroeconomic Performance*, 50 *British Journal of Industrial Relations*, 73-98 (2012).

Franz Traxler, *Two Logics of Collective Action in Industrial Relations* (Colin Crouch & Franz Traxler, eds), *Organized Industrial Relations in Europe: What Future?* (Avebur 1995).

J. Visser, *Wage Bargaining Institutions-From Crisis to Crisis*, 488 *European Economy-Economic Papers* (2013), https://ec.europa.eu/economy_finance/publications/economic_paper/2013/pdf/ecp488_en.pdf (accessed 23 April 2019).

Gaetano Zilio Grandi, *Collective Bargaining* (Franco Carinci & Emanuele Menegatti, eds), *Labour Law and Industrial Relations in Italy*, Chapter. XV (Wolters Kluwer 2015).