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Under pressure: The impact of EU policy on the social partners in central and eastern Europe

Abstract

Collective bargaining systems in Europe are under pressure from EU policy in the form of recent case law from the European Court of Justice and from measures of economic governance. From a predominantly legal point of view, the paper identifies and explains the types of impulses and possible adjustments that these pressures have inspired with regard to the position of the social partners in central and eastern Europe, considering the weak role of the social partners and the underdeveloped social dialogue structures in that part of the European Union. The author highlights that the more resolute implications for central and eastern Europe are likely to come from EU- and liberal-inspired changes in economic governance. Nevertheless, the author believes that the present legal systems of most countries in the region do not offer enough support and capacity for bargaining at sectoral level, or additional forms of flexibility at company level, and that an over-reliance on government is likely to be a source of severe difficulty in the face of the Europeanisation project.

Keywords: *EU law, collective bargaining, social partners, industrial relations, central and eastern Europe, EU economic governance, co-ordination, European Court of Justice, decentralisation, liberalisation, flexibility, institution building*

Introduction

Europeanisation, which may be broadly defined as:

> *A process by which domestic policy areas become increasingly subject to European policy-making,*[1]

has recently become a relevant influential factor on national social partners in the European Union, whose collective bargaining autonomy had been traditionally protected within national boundaries. This article deals with recent developments in the juridical and economic sphere of the EU and the way that these challenge the social partners in the countries of central and eastern Europe.

The legal and economic developments which will be described in this article create pressures for collective bargaining in all member states of the EU, but we focus here on the countries of central and eastern Europe for specific reasons. Namely, the position of the social partners in the region has already been under challenge for quite some

1 Börzel, T (1999) 'Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain' *Journal of Common Market Studies* 39(4): 574.

time. Two decades ago, the transition to market economies challenged central and eastern Europe with the heavy task of building entirely new systems of industrial relations, coping with European integration and the transposition of the social *acquis communautaire*. It will be demonstrated in this article that, with the EU's recent legal and economic developments, social partners in central and eastern Europe are now confronted with new challenges.

The article starts with an explanation of the adaptational pressures originating in the EU and continues with an overview of the anticipated domestic responses in central and east European countries. Next, the article analyses the industrial relations and legal systems in central and eastern Europe in order to explain the obstacles to meeting the EU requirements. In its conclusion, the article aims to comment on the probability of changes in collective bargaining trends triggered by EU pressures.

The pressures: what's it all about?

Two sets of adaptational pressures are challenging collective bargaining systems in Europe. The first includes several recent judgments of the European Court of Justice (ECJ). Until recently, the autonomy of the social partners had not been disputed before the ECJ, while the former Article 137 of the 1992 Treaty Establishing the European Community (now contained in Article 153 of 2008's Treaty on the Functioning of the European Union) seemed to offer limited basis for EU intervention in this respect.[2] However, the situation changed drastically after the judgments in *Laval*, *Viking* and *Rüffert*[3] which endangered the regulatory autonomy of the social partners by giving them an external source of pressure, originating in EU law.

The facts and detailed analysis of these three cases will not be presented here.[4] However, the most frequently scrutinised element of the judgments in the literature

2 By excluding jurisdiction in matters related to pay, strikes and lock-outs as well as freedom of association.

3 Laval C-341/05; Viking C-438/05; Rüffert C-346-06.

4 In short, *Laval* involved a Latvian company 'Laval' which planned to undertake business in a Swedish city, Vaxholm, but did not conform to the provisions of the Swedish collective agreement for the building sector. Laval argued that Sweden had no statutory minimum wages which the Latvian company would have to apply. A similar legal problem occurred in *Viking*: a Finnish firm, operating a route between Finland and Estonia, decided to reflag its ship to the Estonian flag in order to benefit from lower Estonian wages and thereby circumvent the rules established by a Finnish collective agreement. *Rüffert* dealt with public procurement. The ECJ scrutinised the legal rules of the German federal unit of Lower Saxony, which stipulated that local wages (established by local collective agreement) need to be respected when performing tasks arising out of public procurement contracts in Lower Saxony because such local wages were not universally applicable in the sector.

concerns how the Court in Luxembourg sees the intersection of social and economic spheres in the EU.[5]

Closer analysis of the parts of the judgments which are relevant in the context of this article reveals the Court's views on trade union rights and collective bargaining. The Court held trade union rights not to be absolute but subject to balancing against the economic requirements of the internal market. This has spurred a great deal of criticism in the academic literature.[6] Moreover, the Court provided certain preferences as regards how collective bargaining should be carried out in member states.[7]

The judicial reasoning seemed to be built on arguments arising out of the transparency of legal rules, so that foreign service providers could benefit better from the 1996 Posted Workers Directive. Countries having statutory minimum wages are, accordingly, more likely to fit the requirements of the judgments than those countries with negotiated minimum wages in collective agreements, or countries without minimum wages. Moreover, systems which legally recognise the possibility of collective agreements being extended to an entire industry sector, so that a minimum wage laid down in a collective agreement becomes mandatory for that sector, fulfil the transparency criteria.

The second set of pressures on collective bargaining systems arise out of EU economic governance. Namely, the EU has recently created a list of measures intended to tackle the issues created by the financial crisis and some of them have certain implications for industrial relations systems.

The variety of economic and social measures located under the umbrella of the *Europe 2020 Strategy*[8] was approved by the European Council in June 2010.[9] In order for member states to reach its ambitious targets, the Strategy anticipates the active participation of the social partners in association with a strengthening of the capacity for social dialogue at various levels of collective bargaining. Additionally, with the so-called European Semester,[10] the EU will monitor the progress of economic reforms in member states, on the basis of national reports (the Stability and Convergence Pro-

5 Some comments and overviews may be found in the following papers: Davies, A. C. L (2008) 'One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ' *Industrial Law Journal* 37(2): 126-148; Barnard, C (2008) 'Social Dumping or Dumping Socialism' *Cambridge Law Journal* 67(2): 262-264; Kilpatrick, C (2009) 'Laval's Regulatory Conundrum: Collective Standard-Setting and the Court's New Approach to Posted Workers' *European Law Journal* 34(6): 844-865; Malmberg, J and T. Sigeman (2008) 'Industrial Actions and EU Economic Freedoms: the Autonomous Collective Bargaining Model Curtailed by the European Court of Justice' *Common Market Law Review* 45(4): 1115-1146.

6 The ETUC, for instance, characterised the judgments as intending to create a hierarchy between legal rules in the EU, in which market freedoms deserved a higher place than the right to collective bargaining. ETUC (2008) *Workers' Rights and Economic Freedoms* available at: http://www.etuc.org/a/5418.

7 In particular, *Laval* paras. 63-72, *Rüffert* paras. 23-31.

8 European Commission Communication *EUROPE 2020, A Strategy for Smart, Sustainable and Inclusive Growth* COM(2010)2020 final, Brussels, 3 March 2010.

9 European Council Conclusions, EUCO 13/10, Brussels, 17 June 2010.

10 European Council Conclusions, EUCO 10/11, Brussels, 24-25 March 2011.

grammes and the National Reform Programmes) on which the Commission regularly issues country-specific recommendations.

On 20 June 2011, the Commission issued its first recommendations. Some recommendations put direct pressure on collective bargaining systems, for instance by asking governments to 'unwield' the entire collective bargaining system (Spain);[11] to ensure that wage rates reflect productivity (Bulgaria, Belgium);[12] to reform wage indexation systems (Belgium); or to allow for the stipulation of opening clauses which would ensure more effective company bargaining (Italy).[13]

Another project of economic governance creating pressures for collective bargaining is the Euro-Plus Pact. The Pact envisages the advanced co-ordination of member states' economic policies.[14] Some of the tasks laid down for member states include setting wage levels in accordance with rates of productivity, reconsidering wage indexation and achieving a greater decentralisation of collective bargaining. The Pact calls explicitly for respecting:

> *National traditions of social dialogue and industrial relations,*[15]

but, for many member states, these goals cannot be achieved without changes to collective bargaining practices.

This overview of the two respective sets of pressures implies that the impulses which the social partners are receiving from the EU are multi-faceted and, at first sight, contradictory. The pressures created by ECJ case law seem to be pushing towards the centralisation of collective bargaining. The judicial rationale for this may be explained by the interests of free competition and the needs of foreign service providers under the Posted Workers Directive, who are able to benefit from centralised standard-setting systems emphasising cross-sectoral or sectoral collective bargaining. At the same time, rules of economic governance are being defined which are creating pressures in the direction of decentralisation and the linking of wage levels to productivity. These measures are inclined towards fragmented standard-setting mechanisms with a particular emphasis on company-level bargaining.

11 Council of the European Union (2011) *Council Recommendation on the National Reform Programme 2011 of Spain and delivering a Council Opinion on the Updated Stability Programme of Spain, 2011-2014* 11386/3/11, Brussels, 1 July.

12 Council of the European Union (2011) *Council Recommendation on the National Reform Programme 2011 of Belgium and delivering a Council Opinion on the Updated Stability Programme of Belgium, 2011-2014*, 11316/3/11 REV 3, Brussels, 22 June. Council of the European Union (2011) *Council Recommendation on the National Reform Programme 2011 of Bulgaria and delivering a Council Opinion on the Updated Convergence Programme of Bulgaria, 2011-2014*, 11317/2/11 REV 2, Brussels, 1 July.

13 Council of the European Union (2011) *Council Recommendation on the National Reform Programme 2011 of Italy and delivering a Council Opinion on the Updated Stability Programme of Italy, 2011-2014*, 11408/11, Brussels, 20 June.

14 European Council Conclusions, EUCO 10/11, Brussels, 24-25 March 2011. The European-Plus Pact was concluded between eurozone member states and Bulgaria, Denmark, Poland, Latvia, Romania and Lithuania.

15 *ibid*. at Annex I, p. 16.

Adaptational responses

The ways in which pressures are perceived and accepted by social partners and governments differ in all European countries. Focusing on central and eastern Europe, the social partners will, most likely, be indirectly affected by Europeanisation pressures through the modified setting of legal rules that would allow increased scope for decentralised standard-setting. Another mechanism by which collective bargaining could be affected by EU policies is more direct, as the social partners could decide to change their collective bargaining practices within an existing, unmodified legal framework.

To a certain extent, theories dealing with the classification of socio-economic regimes in Europe can help us understand why certain types of response are likely to occur in some countries, as studies on Europeanisation have revealed that adaptational change on the part of interest groups will, firstly, be conditioned by the features of the domestic environment.[16]

Socio-economic classifications categorise central and east European countries as a distinct, although diversified, group, non-comparable to other European regimes because of the shared basic features of a weak social partner structure and inefficient collective bargaining inherited from the communist period. Likewise, the literature on varieties of capitalism,[17] which traditionally differentiates between liberal and co-ordinated market economies, suggests, in its modern version,[18] that central and east European countries form a distinct, third group. Furthermore, industrial relations in central and eastern Europe do not resemble any existing model in the old member states. Some consider that only Slovenia resembles the German model.[19] Owing to the weak regulatory position of the social partners, it is even tempting to compare central and eastern Europe with the Anglo-Saxon model,[20] although the UK and Ireland contain more comprehensive regulation of collective bargaining. Central and east European legal systems, based on the Roman-Germanic tradition,[21] underpin the state in their industrial relations systems. Statutory legal regulation is usually very comprehensive, illustrating the strong role which the state has in industrial relations. Broad statutory regulation compensates, to a certain extent, for the lack of collective bargaining structures, but it also arguably deprives social partners' incentives to bargain.

16 Beyers, J and B. Kerremans (2007) 'Critical Resource Dependencies and the Europeanization of Domestic Interest Groups' *Journal of European Public Policy* 14(3): 460.

17 Hall, P. A and P. Soskice (2001) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* Oxford: Oxford University Press.

18 Nölke, A and A. Vliegenthart (2009) 'Enlarging the Varieties of Capitalism: The Emergence of Dependent Market Economies in East Central Europe' *World Politics* 61(4): 670-702.

19 Kohl, H and H. W. Platzer (2007) 'The Role of the State in Central and Eastern European Industrial Relations: the Case of Minimum Wages' *Industrial Relations Journal* 38(6): 617.

20 Kohl, H and H. W. Platzer (2003) 'Labour Relations in Central and Eastern Europe and the European Social Model' *Transfer: European Review of Labour and Research* 9(1): 24.

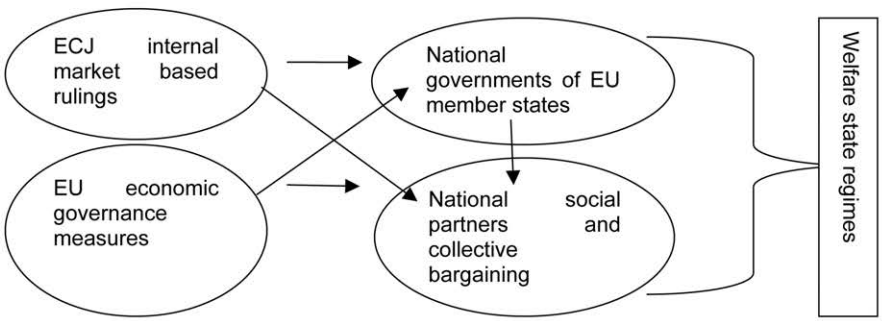
21 Bronstein, A (2006) 'Trends and Challenges of Labour Law in Central Europe' in J. Craig (Ed.) *Globalization and the Future of Labour Law* Cambridge: Cambridge University Press, p. 201.

Within the existing classifications, some studies have developed a sub-division between a 'two speed'[22] central and eastern Europe, organised between two poles, the first being Poland and the Baltics and the second Slovenia and Hungary. The latter group is said to resemble more closely the industrial relations in continental Europe, while the former is still lagging in the transition. The Czech Republic and Slovakia are said to lie between the two types, while Romania and Bulgaria are closer to the Baltics. It is reasonable to assume that this sub-division will map out the pace of the adjustments to the EU pressures described in this article, although the evidence for this will become obvious only in the future.

With these preliminary explanations of collective bargaining in central and east Europe, combined with the 'goodness of fit' or 'misfit' argument from the literature on Europeanisation, according to which the pressure will be stronger if the degree of the 'misfit' between national and European policies is greater,[23] it is possible to elaborate further on the effects and outcomes of the two sets of pressures.

Our scheme of analysis can be visualised as follows (see Figure 1), indicating the direct and indirect ways in which the different kind of pressures might be exerted. The impact arising out of the Court's case law is limited because it only underpins the current state of legal solutions, but the impact of EU economic governance is more obvious.

Figure 1 – Direct and indirect sources of pressure



In addition to the degree of 'misfit', which is high in the case of economic governance measures and the particularities of industrial relations, adaptational responses are also shaped by the legal nature of these EU measures because of the current absence of a European Commission, or ECJ, mechanism for sanctions. Furthermore, in assessing the effects of the Europeanisation of collective bargaining, it is important to keep in mind that other international organisations, such as the International Monetary Fund

22 See Kohl and Platzer (2007) *op. cit*. p. 619. Authors base the distinction between the two groups on the level of development of works councils, sectoral social dialogue and wage-setting policies.

23 Cowles, M. G and T. Risse-Kappen (2001) *Transforming Europe, Europeanization and Domestic Change* New York: Cornell University, p. 6.

and the OECD, which play a distinct role in the economies of central and eastern Europe, can also be influential in shaping collective bargaining.

The degree of 'misfit' is low regarding the three ECJ judgments *vis-à-vis* the legal systems of central and east European countries whereas, in the case of the EU economic measures, it is high. The ECJ judgments create greater challenges for countries with the highest autonomy for the social partners, i.e. the Nordic group.[24] The legal systems and industrial relations of central and east European countries, with statutory minimum wages and elaborated statutory regulation of labour law, could be interpreted as having been built in the way rather preferred by the ECJ in its three judgments. Therefore, the social partners in central and east Europe have received neither challenge nor impetus from the ECJ but, in fact, have gained an underpinning for their currently weak state of industrial relations.

Contrary to the impulses arising from the three judgments, more resolute implications stem from EU economic governance. It was indicated earlier that EU economic measures require both greater decentralisation of collective bargaining and the linking of wages to productivity. These elements create substantial challenges for central and east European countries since, in order to meet these requirements, strong and autonomous social partners and bargaining systems need to be in place.

Leaving aside the issue of the institutional capacity of the social partners in central and eastern Europe, an issue which is broadly examined in the literature, this article proceeds to assess the extent to which the legal systems of this group of countries allow for decentralised collective bargaining. Such systems have to be flexible enough to allow for variations between the different levels and to warrant efficient responses at company level. In such systems, company-level bargaining is integrated into a wider set of rules, framed by sectoral, or cross-sectoral (inter-professional) bargaining and underpinned by adequate statutory rules.

It will be demonstrated in the following section that the present legal systems of most central and east European countries do not offer enough support and capacity for bargaining at sector level, or additional forms of flexibility at company level.

Challenges for CEE collective bargaining at sector and company level

Legislative reform is one of the anticipated domestic responses to the pressures of EU economic governance visualised in Figure 1. The literature on central and eastern Europe often solely ascribes low collective bargaining outcomes to the institutional and organisational incapacity of the social partners, but a closer look at the legal systems of such countries can reveal rule frameworks for collective bargaining which are unsupportive. It is not within the competence of the legal system to designate the level(s) at which collective bargaining should take place, but an adequate legal framework is

24 The Danish and Swedish responses to the ECJ judgments involved a modification to the legal provisions of the Danish and Swedish laws on collective bargaining. More on this topic can be found in N. Bruun and C. M. Jonsson (2010) 'Consequences and Policy Perspectives in the Nordic Countries as a Result of Certain Important Decisions of the European Court of Justice' in A. Bucker and W. Warneck (Eds.) *Viking – Laval – Rüffert: Consequences and Policy Perspectives* Brussels: European Trade Union Institute, pp. 15-28.

essential to safeguard the autonomy of the social partners. A proper legislative environment for collective bargaining has been advocated by a few studies as contributing to better collective bargaining outcomes.[25]

The first question is whether and, if so, to what extent the current legal systems in central and east Europe are supportive of the decentralisation of collective bargaining. Linked to this is the question of the extent to which a legal system is designed to allow wages to reflect the rate of productivity. The trend towards 'organised decentralisation',[26] or 'centrally co-ordinated decentralisation',[27] dominant in many countries in western Europe, involves, in essence, negotiations between the social partners taking place at lower levels, but within a framework of integrated rules for collective bargaining at all levels in existence. Accordingly, decentralisation also includes a regulation of the hierarchy between collective agreements at various levels and providing the possibility for lower-level agreements to deviate from the provisions of higher-level rules in order to resolve substantive matters at the most appropriate level. One example is the principle of the semi-mandatory, or even less ('one-fifth'), legal regulation of collective bargaining, as applied in the Netherlands, in which the social partners can deviate from legal requirements if they manage to generate sufficient consensus on and support for these deviations in collective labour agreements, e.g. in the realm of working time.

In determining the level of presence of organised decentralisation in central and east Europe, two preliminary remarks need to be made. Firstly, the two elements – the institutional and the organisational weaknesses of the social partners and the overarching role of the state – are vital to explaining the range of common patterns in industrial relations in central and eastern Europe and to arguing why industrial relations do not follow the multi-level picture of 'organised decentralisation'. National tripartite organisations, usually in the form of an economic and social council, have a great say in industrial relations, particularly in the formation of minimum wages.[28] Moreover, statutory minimum wages exist across the entire group of countries, acting as a safeguard against poverty. Considering the weak collective bargaining role of trade unions – which would not be able to secure minimum living standards on their own – statutory minimum wages are an essential element of collective bargaining systems.

25 Ghellab, Y and D. Vaughan-Whitehead (2003) *Sectoral Social Dialogue in Future EU Member States: The Weakest Link* Budapest: International Labour Organization, pp. 1-29; Parissaki, M and S. Vega Vega (2008) *Capacity Building for Social Dialogue at Sectoral and Company Level in the New Member States, Croatia and Turkey* Dublin: European Foundation for the Improvement of Living and Working Conditions, pp. 32-34 and 69-70.

26 Traxler, F (1995) 'Farewell to the Labour Market Organizations. Organized Versus Disorganized Decentralization as a Map for Industrial Relations' in C. Crouch and F. Traxler (Eds.) *Organized Industrial Relations. What Future?* Avebury: Aldershot.

27 Ferner, A and R. Hyman (1998) 'Introduction: Towards European Industrial Relations?' in A. Ferner and R. Hyman (Eds.) *Changing Industrial Relations in Europe* Oxford: Blackwell Publishing, pp. xvi-xvii.

28 Parissaki and Vega Vega (2008) *op. cit*. p. 7.

Secondly, the structure of many private sector markets in central and east Europe underpins weak collective bargaining practices.[29] The overall high percentage of workers in small enterprises in many countries in the region contributes to the low coverage of collective labour agreements. Specifically, and particularly within private sector markets which predominantly consist of SMEs, collective bargaining has a weak impact since the trade union presence is less pronounced in small enterprises.[30] Furthermore, at the heart of industrial relations lies company-level bargaining, with few exceptions (Slovakia and Slovenia),[31] which – as demonstrated in the previous sentence – is not perfectly functional.

Another common feature of central and east European countries is that the incapacity of the social partners is the factor which has the most obvious impact on the sectoral bargaining outcomes. Thus, sectoral bargaining is often labelled as 'the weakest link'[32] between decisions reached in tripartite organisations and company-level bargaining. Not only is the number of sectoral agreements low but, content-wise, they often merely reproduce the provisions of labour codes. Low sectoral activity is underpinned by central and east European countries rarely using the legal possibilities to extend the application of collective agreements to an entire sector,[33] which is second to the low rate of union membership as a reason contributing to the poor coverage of collective agreements.

Labour laws in central and east European countries show a variety of legal solutions to collective bargaining, which range from almost no regulation (Hungary, Estonia and the Czech Republic) to more elaborated solutions (Slovenia).[34] An adequate legal framework does not guarantee efficient collective bargaining due to the weaknesses of the social partners, but more favourable legal provisions on sectoral and company-level collective bargaining could benefit all countries in the region. The labour laws of some countries are too rigid to allow functional collective bargaining, such as in Latvia, Lithuania and the Czech Republic.[35]

Generally, however, a supportive basic legal framework for collective bargaining, with well-defined basic rights, procedures and parties to collective bargaining, is absent in central and eastern Europe. For instance, the inability to establish trade unions because of significant legal restrictions is a common problem, especially at the company level in sectors which predominantly consist of small enterprises. Moreover, an in-

29 Lado, M and D. Vaughan-Whitehead (2003) 'Social Dialogue in Candidate Countries: What for?' *Transfer: European Review of Labour and Research* 9(1): 69.

30 According to some data, the dominance of small enterprises leads to one-half of the active workforce remaining outside the scope of collective bargaining in this way. See *ibid*. p. 69.

31 Kohl, H (2009) *Freedom of Association, Employees' Rights and Social Dialogue in Central and Eastern Europe and the Western Balkans* Berlin: Friedrich-Ebert-Stiftung, p. 62.

32 Ghellab and Vaughan-Whitehead (2003); Marginson, P (2006) *Between Europeanization and Regime Competition: Labour Market Regulation Following EU Enlargement* Warwick Papers in Industrial Relations No. 79, p. 17.

33 Except for Slovenia and, to a certain extent, Czech Republic, Latvia, Lithuania and Poland. See Parissaki and Vega Vega (2008) *op. cit*. p. 7.

34 *ibid*. pp. 32-34.

35 *ibid*. p. 74.

creased scope for voluntary negotiations could benefit collective bargaining, especially at sectoral level where the lack of a bargaining culture is most evident. Additionally, the conditions for using the extension of collective agreements to cover an entire sector could be redefined. This would increase the coverage of sectoral agreements, which is a legal possibility rarely used in countries in the region.

Apart from modifications to the general framework of the rules for collective bargaining, some specific legal changes could facilitate the better decentralisation of collective bargaining. A study on sectoral collective bargaining in central and eastern Europe has emphasised that one of the most important issues is that in no country is sectoral bargaining explicitly defined and promoted by legislators, being not even regulated under a distinct heading in labour codes.[36] One of the ways in which the authors see a solution to this problem is to make collective bargaining legally binding at sectoral level.[37] This is intended to facilitate the conclusion of a greater number of collective agreements, judging by the experience of the French law. Specifically, the French law introduced mandatory sectoral and company bargaining for specific matters in 1982, after which the number of concluded collective labour agreements increased. In central and eastern Europe, no law explicitly makes sectoral bargaining mandatory.

Moreover, legal rules on company bargaining should be changed to allow greater decentralisation. Unlike the case with sectoral bargaining, most countries in central and eastern Europe have provisions for company bargaining. Employers are the most inclined to seek to avoid bargaining at this level, so we find this trend valuable. However, the modification of some legal provisions could allow additional flexibility in industrial relations and facilitate more functional company bargaining. Firstly, in countries in the region it is a general rule that collective agreements cannot run contrary to statutory provisions, unless stated otherwise in the statutes themselves or unless they provide more favourable conditions for employees. Linked to this is a rule that collective agreements cannot usually stipulate less favourable conditions than agreements contracted at higher levels.[38] For instance, explicit statutory provisions to allow derogations and deviations from higher to lower level agreements could be a way to facilitate flexible industrial relations. Such an explicit statutory provision also exists in some European countries (including France, where it was introduced only in 2004 with the so-called Fillon Law).[39]

One positive example of recently modified legislation, which has facilitated better collective bargaining outcomes, is the Slovenian 2006 Act. The Act was adopted with the aim of boosting autonomous collective bargaining and voluntary relationships bet-

36 See Ghellab and Vaughan-Whitehead (2003) *op. cit.* p. 20.

37 *ibid.* p. 26.

38 Casale, G (2002) *Collective Bargaining and the Law in Central and Eastern Europe: Recent Trends and Issues* VII European Regional Congress of the International Society for Labour Law and Social Security, Stockholm, 4-6 September, p. 75 and p. 84, available online at: http://www.juridicum.su.se/stockholmcongress 2002/casale_english.pdf.

39 Keune, M (2010) Derogation Clauses on Wages in Sectoral Collective Agreements in Seven European Countries Dublin: European Foundation for the Improvement of Living and Working Conditions, pp. 3-5.

ween the social partners. A number of innovations have been introduced,[40] such as the possibility of including so-called opening clauses by which collective agreements concluded at lower levels may now not only enhance but also deteriorate workers' rights laid down in higher-level agreements.

Better legal formulation of sectoral and company level bargaining would also facilitate the resolution of outstanding issues in wage flexibility and in the linking of wage levels to productivity.[41] The general problem about wage bargaining is that the company-level predominates as the main determinant for wage bargaining. Nevertheless, only the national tripartite level figures in the general framework of the rules for wage-setting at company level because sectoral wage bargaining is too weak. Partly, this is because central and east European countries have low collective bargaining coverage, which means that a large portion of employees who are not covered by any collective agreement determine their wages on the basis of individual employment relationships. In some extreme cases, as in Estonia and Lithuania, individual wage bargaining is predominant[42] because the coverage of collective agreements is too low and a high percentage of the workforce remains outside wage bargaining structures.

Conclusion

Domestic adjustments to the pressures of Europeanisation will become evident only in the future, but this article aims to map out the obstacles to meeting the EU requirements with a specific emphasis on the role of the legal responses in central and east European countries. Despite the variations in industrial relations and legal systems, common challenges are posed for governments and social partners in the region, and some similar type of response may be expected from this group of countries.

Of the many possible responses, a changing of the legislative frameworks is the expected adaptational strategy on the part of governments. This is likely to result in new, supportive contexts for social partners and collective bargaining at the discrete levels. For instance, the state could stimulate collective bargaining practice by encouraging the use of extension mechanisms, or by including statutory regulation for the possibility of using deviation/derogation clauses. An example of a recently-changed legal environment is the new Romanian Law for Social Dialogue which was adopted in 2011 with the aim of boosting collective bargaining. Introduced with high ambitions, the Law has, however, been strongly contested for its establishment of restrictive conditions under which collective agreements can be negotiated at the company level and for its lack of scope for national collective bargaining.[43]

40 Koncar, P (2008) 'EU v. National Industrial Relations: The Slovenian Perspective' in M. Ronnmar *EU Industrial Relations v. National Industrial Relations. Comparative and Interdisciplinary Perspectives* Alphen aan den Rijn: Kluwer Law International, pp. 41-53.

41 Kohl (2009) *op. cit.* p. 38.

42 Eurofound (2009) *Wage Formation in the EU* Dublin: European Foundation for the Improvement of Living and Working Conditions, p. 3.

43 Kyloh, R (2011) 'Labour Reforms in Romania' in *The Global Crisis: Causes, Responses and Challenges* Geneva: ILO, pp. 93-105.

It is more difficult to envisage how the social partners will adjust to adaptational pressures, bearing in mind the general weaknesses of the system of industrial relations. The current EU pressures, requiring liberalisation and deregulation, place the social partners in central and eastern Europe in what Kohl and Platzer described as a 'liberalisation dilemma',[44] because the social partners are required, in the absence of their own capacities, to change their practice of a reliance on state regulation. The social partners have, in the past two decades, largely relied upon government strategies when confronted with external pressures. For example, the social partners in each central and east European country took little or no share in the transposition of the social *acquis*, and the respective governments guided the entire accession process.

Therefore, Europeanisation, in the context of the pressures analysed in this article, could, in a certain way, represent a process of institution-building rather than institutional change for the social partners, as well as a source of power and not only a source of pressure.[45] In addition, the creation of a more flexible collective bargaining environment in central and eastern Europe will involve not only strengthening the autonomous capacity of the social partners but also building a supportive state strategy via the creation of an appropriate legal context for voluntary collective bargaining.

44 Kohl and Platzer (2007) *op. cit.* p. 614.

45 Börzel, T (2005) 'Europeanization: How the European Union Interacts with its Member States' in S. Bulmer and C. Lequesne (Eds.) *The Member States of the European Union* Oxford: Oxford University Press, p. 51.