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Editorial

Using the crisis to change the rules

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The last few years have seen union rights being reduced in many of the countries most affected by the economic crisis. National legislation in these countries has accelerated the trend to company level bargaining and the influence of collective bargaining has been reduced. At the same time changes in the rules have reduced the ability of unions to represent employees. Although there are some more positive signs, in many countries the position has worsened.

There are growing signs that Europe may be slowly starting to recover economically after the banking crisis of 2008-09 and the Euro crisis that followed it. Overall output was 0.4% up in the second quarter of 2013, after what the OECD described, with reference to the Euro area, as “a period of exceptional weakness”.

However, although there are signs that economically the worst may be over, the five years of crisis have left deep scars. Unemployment remains at a shockingly high level. There are 26.6 million people out of work in the EU, including almost a quarter (23.3% in August 2013) of those aged under 25. A recent report from the European Commission described how the economic crisis is “contributing to social polarisation”, with the poorest 25% of the population being more affected than society as a whole.

It is not just in social and economic areas that the crisis has had a profound impact. The crisis, or rather the response to it of governments and international institutions, has changed many of the rules governing the relations between employers and unions across Europe – to the disadvantage of those representing employees. And, as in the economic and social sphere, where the Commission report said “a new divide is emerging”, the changes are concentrated in relatively few countries – generally those which have been worst hit by the financial crisis.

This has become very clear in the process of updating the National Industrial Relations pages of the worker-participation website, a task that was completed earlier this year with the support of the SEEurope Network and is now available online in French and German, as well as English.

The shift in power is most marked in the area of collective bargaining, where a number of overlapping changes have made it more difficult in many countries for unions to maintain and advance living standards through collective agreements.

First, legislation has reinforced the trend towards more decentralised bargaining at company or workplace level, reducing the importance of agreements signed at national or industry level. In Spain, company agreements now automatically take preference over agreements signed at industry level, irrespective as to whether the industry-level agreement is still in force. In Romania, the national-level agreement, which set minimum terms and conditions for the whole private sector, has been abolished, and the new rules on representativeness have made it much more difficult for unions to find employers' organisations, with whom they can negotiate. In Greece, too, the influence of industry-level agreements has been hollowed out, as they can no longer set pay increases which go beyond those agreed nationally. At the same time the coverage of the national-level agreement itself is now limited to the members of the employers' associations that sign it, rather than the whole private sector.

Second, and closely linked to the first change, company agreements can now agree worse terms than those already set in industry-level agreements. This has always been possible in some countries subject to the agreement of the parties to the industry-level deal, but in Greece and Spain legislation has removed this requirement. In Greece this has been achieved through the introduction of so-called "special enterprise agreements", which do not need to keep to the industry minima. In Spain, employers are now able "for reasons of productivity and business competitiveness" to reduce agreed pay levels, taking their case to arbitration if they cannot reach agreement with local employee representatives. Similarly in France, new legislation allows companies in financial difficulties to reduce some pay rates, although not the very lowest, as well as making changes to working time. However, in contrast to Greece and Spain, this legislation was introduced with the backing of most although not all national unions, and the local deals have more safeguards built in. They need the support of unions representing a majority of employees and can last a maximum of two years.

A third key change reduces the significance of industry-level agreements by limiting the circumstances in which they can be extended to non-signatory employers. In Greece, these extensions have been ruled out until the end of the period of "economic adjustment", currently 2016. In Portugal, such extensions used to be almost automatic. Now, new legislation requires that at least one union and one employers' organisation must request an extension, and the signatory employers' organisations must employ more than half of all the employees in the industry concerned. In Romania, it is now more difficult for industry agreements, which in any case are difficult to reach (see above), to be extended. They can only be made binding on the whole industry if the employers' associations that sign them employ more than half the employees in the industry concerned and the extension has been requested by the signatories and approved by the national tripartite council.

The impact of collective agreements has also potentially been reduced by a cut in the length of time that their agreed terms continue to apply, after the date when the previous agreement expires. In Greece, this is now only three months. After that time, the employer can reduce terms and conditions to the basic legal minima. In Spain, the position is similar, although the period of ongoing validity for expired agreements is 12 months. In Portugal, it is 18 months, although there is then a 12-month transitional period when either side can ask an arbitrator to draw up a new agreement.

It is not just agreements that are under pressure. There are also changes in who can sign them, with unions losing out. In Greece, it is now possible for so-called “associations of persons” to sign company-level collective agreements, and although 60% of employees must belong to these associations before they can sign, they have none of the rights or protections that unions have. In Hungary, works councils, which cannot organise industrial action, can now negotiate with the employer, if there is no union at the workplace, although these negotiations still cannot cover pay. However, while works councils’ negotiating rights have been extended in Hungary, those of unions have been curtailed. A union can now only negotiate if it has at least 10% of the employees covered in membership. This threshold applies not just at the company, but also at the industry level.

Similarly in Romania, union negotiating rights depend on membership, although here the bar for company-level negotiations is set much higher. A Romanian union must have a majority of the company’s employees in membership before it can sign an agreement. Where this is not the case specially elected representatives have negotiating rights

Unions are also under more direct pressure through the loss of time off rights and protection against dismissal. In Romania, the previous right to five days a year to be spent on union activities has been removed; time off is now to be regulated through collective agreement. In Spain, the government has cancelled all agreements at national and local level that give union representatives more time off than the basic legal minimum, and in the UK the government has said that it wants to cut the time union representatives in central and local government have to undertake their duties.

In Hungary, time off is being cut by a quarter and, worse than that, now, only very limited numbers of union representatives are protected against dismissal or transfer. In the past all union officials had this protection. The maximum now is six where there are more than 4,000 employees. And in the overwhelming majority of workplaces — those with up to 500 employees — only two union representatives are protected in this way.

The consequences on the numbers willing to act as union representatives have been dramatic. In one company the number fell from 30 to three, in another from 110 to six.

The news is not entirely bleak. In France, there is a new right for employees to be represented on the boards of the largest companies, although there will be only one or two employee board members and the mechanism for choosing them, although not the choice itself, is in the hands of the company. In Slovakia, the government elected in 2012 reversed both cuts in unions' time off rights and a new higher threshold for union negotiating rights, which the previous government had imposed a year earlier.

These examples show a change in a positive direction is possible. By and large, however, the crisis has seen a worsening of union rights in many of the countries most affected by it.

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