A Comparative Overview of Drivers and Outcomes of Labour Law and Industrial Relations Reforms in Selected Central and Eastern European Countries

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Introduction

The landscape of labour law and industrial relations has undergone significant reform in most of the Central and Eastern European (CEE) countries since the outset of the global financial and economic crisis. Following the development of new international visions on economic governance for economic recovery and growth, the vast majority of CEE countries have carried out or envisioned labour policy changes.

This report seeks to provide a comparative overview of the policy goals and rationale which led to the reform of labour law and industrial relations systems, and the outcomes of these changes in law and practice, in selected CEE countries. It also aims to outline trends and developments in labour law and industrial relations policy in the sub-region.

National independent consultants from twelve CEE countries – Albania, Bulgaria, Bosnia and Herezegovina (BiH), Hungary, the former Yugoslav Republic of Macedonia (FYR Macedonia), Montenegro, the Republic of Moldova, Poland, Romania, Serbia, Slovakia and Ukraine – collected the data analysed in this report, using two sets of questionnaires developed through a cooperative effort with the ILO Decent Work Team/Country Office (DWT/CO) Budapest and the INWORK and GOVERNANCE departments at ILO Geneva. This data is currently organized in a sub-regional legal database called CEELex.

CEELex aims to take stock of the national legal and institutional policies set out in the labour law systems in CEE countries. The provisions of the following ILO Conventions are used as benchmarks: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Termination of Employment Convention, 1982 (No. 158).

CEELex was developed to provide the world of work with a data platform to support informed policymaking in the realm of labour and industrial relations.

The database classification structure comprises binary (yes or no), textual, and numerical data, including summaries of quotes from specific paragraphs of laws and regulations. National researchers reviewed primary and secondary legislation, collective agreements at the national and sectorial levels, and available statistical and administrative data. There were considerable challenges in gathering the statistical information, ranging from a lack of data to the scarcity of reliable sources. The first validation of the collected data took place in a sub-regional tripartite workshop held in December 2015.

This report also draws on national discussions of a selected number of topics, and on the conclusions drawn during the 2017 meeting of the CEELex consultants. It is structured to capture the most debatable subjects that have arisen in national consultations and negotiations on labour law and industrial relations reforms in the sub-region in the last five years.

The first chapter discusses the policy goals and legal changes that have informed and triggered the wave of labour law reforms across the sub-region. Policymakers often cite objectives like creating new jobs through increased flexibility in the labour market, improving the business environment, and curbing informal employment. The external influences that shape these economic recovery policies are also examined here.

The second chapter looks at how countries determine the representativeness of the social partners for participation in tripartite social dialogue and collective bargaining. Representativeness criteria and certification have been longstanding subjects of heated national debate across the region. This chapter provides a comparative overview of the various statutory criteria laid down in domestic legislation, and discusses the range of regulatory solutions for establishing the representativeness status of participants in social dialogue and collective bargaining.

The third chapter analyses new approaches in the implementation of the ILO guiding principles of collective bargaining, including voluntarism and autonomy of the parties, favourability, and good faith. Insights into the national wage fixing mechanisms are also provided here.

Finally, a number of conclusions are drawn from the analysed data and policies.

The views expressed in this paper are the author’s alone and do not necessarily correspond to those of the ILO.

1. Policy goals and drivers of recent labour reforms

Between 2011 and 2016, major labour law reforms took place in Albania, Bosnia and Herzegovina (BiH), Hungary, Romania, and Serbia. Tripartite reflection on labour law reform is now underway in Poland, a draft Labour Code is currently under parliamentary debate in Ukraine, and tripartite negotiations on a new Labour Code have been finalized in Montenegro. Industrial relations systems are thus being reshaped across Central and Eastern Europe.

Generally, the policy objectives of the reforming governments have prioritized adjusting both the individual and collective labour relationships to the current economic situation, aiming to boost economic growth. Without exception, increasing the flexibility of labour regulations has been seen as the way to reach that goal. In most countries, labour law reforms have also aimed to curb widespread informal employment, including undeclared work. In the draft Labour Code of Ukraine, compliance with the European Social Charter (revised), the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO conventions and recommendations was also mentioned as a goal of the reform (Groisman et al, 2015). The stated objective of the 2012 Labour Code of Hungary is to significantly expand the autonomy of the parties in (individual) employment relationships and in collective bargaining, encouraging them to self-regulate and thus reducing the normative intervention of the state. According to the Hungarian Labour Code, atypical employment is "an essential means for job creation," and the new Labour Code shall "leave room for the parties to the employment relationship to shape it and only provide for the state to guarantee and protect the interests of the workers."

In the new labour laws, many existing regulations, especially in relation to hiring and firing and labour redundancies, were considered too rigid to promote the development of the national economy, especially in times of crisis or recovery. Centralized wage-fixing mechanisms set out in collective agreements were challenged, along with the representativeness of signatories of binding agreements concluded at the national and sectorial levels. In the view of some national legislators, labour law reform has been the stand-alone policy tool to fix dysfunctions in the labour market. In all of the countries analysed, this reform has been accompanied by the accelerated erosion of collective bargaining, whose traditional normative complementary role to lawmaking has been significantly diminished.

Across the sub-region, the uncoordinated decentralization of collective bargaining to the company level and a shift towards emphasizing enterprise performance, competitiveness, and productivity can be noted. In many cases, this has been at the expense of solidarity-oriented social policy goals such as equity, inclusiveness, and the protection of vulnerable workers. This national labour policy trend has been preceded by a series of developments in international economic governance since the global financial and economic crisis.

At the European Union (EU) level, the six-pack of initiatives and the Euro Plus Pact[1] came into force in 2011. To foster competitiveness, the Pact calls for Member States to "review the wage setting arrangements and, when necessary, the degree of centralization in the bargaining process, and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process."[2]

While acknowledging that wages are fixed through collective bargaining without government intervention in most States, the European Commission (EC) says that "reforms of labour markets should also contribute to making wage setting processes more efficient."[3] Decentralized collective bargaining has been described as "employment-friendly," and recommendations have been issued encouraging governments to "decrease the bargaining coverage (e.g., by revising the modalities and conditions for the extension of collective agreements to non-signatory parties) or to decentralize the bargaining system (e.g., by introducing/extending the possibility to derogate from higher level agreements or to negotiate firm-level agreements)." [4]

Although such regulations and recommendations are binding in Member States only, countries looking to join the EU have also paid close attention to the EC's new vision on labour market governance. In fact, negotiations on Economic Reform Programmes (ERPs) are a pre-condition for accession and for receiving financial support under the Pre-Accession Instrument (IPA) in the short run.

In the 2015-2018 Reform Agenda for Bosnia and Herzegovina, the country's labour laws were considered disconnected, contradictory and "insufficiently flexible" for the current economic realities in BiH, and the culture of collective bargaining and social dialogue was described as "underdeveloped and often burdened by unrealistic demands of the social partners." To address these shortcomings, the Reform Agenda provides that "labour market reforms will be enacted as agreed with the IMF and the World Bank and in consultation with the social partners. ... Entity governments will improve the drafts of new labour codes in consultations with the social partners, in order to increase flexibility in working conditions (including the facilitation of part-time employment) and allow differentiated wage setting based on skills, qualifications, level of experience, and performance."

The new Labour Code of the Federation of BiH was adopted at the end of 2015, and the new Labour Code of Republika Srpska in early 2016. In both cases, trade unions strongly opposed the bills. In the Federation of BiH they cited the lack of social dialogue in their opposition, and in

[1] The Euro Plus Pact was signed by the Eurozone Member States (including Slovakia and Slovenia), plus Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania. In the meantime, Latvia and Lithuania have become members of the Euro area.
[2] European Council, Presidency Conclusions, Brussels, 24-25 March 2011.
[3] European Commission, DG Employment and Financial Affairs, "Surveillance of Intra-Euro-Area Competitiveness and Imbalances," 2010.
[4] European Commission, Directorate General for Economic and Financial Affairs (DG ECFIN), Labour Market Developments in Europe, 2012.

Republika Srpska the trade unions refused to engage in negotiations over the adoption of the new labour law.

More recently, the EC has firmly recommended genuine consultations with the social partners during the drafting of National Reform Programmes and their early involvement in the design and implementation of relevant policies and reforms. The European Pillar for Social Rights is built on the key principle of **Social dialogue and involvement of workers.** This implies that the governments are obligated to consult the social partners on the design and implementation of economic, employment and social policies, and the promotion of collective bargaining.[5] However, in the EU candidate states, the social partners' involvement in broad economic and social reforms has not so far been fully institutionalized through effective social dialogue institutions.

Financial assistance memoranda, such as those signed by a number of EU Member States[6] with the "troika" (the EU, the ECB and the IMF) or the "Stand-by Arrangements" signed by Hungary and Lithuania with the IMF, have added another layer of stringent labour policy requirements. Austerity measure packages have been devised to reduce fiscal deficits by downsizing public expenditure, freezing or cutting public sector pay, and capping pensions and social benefits. The implementation of these measures has implied a drastic remodeling of wage-fixing mechanisms in general, and in the public sector in particular. When these mechanisms are laid down in collective agreements at the national or sectorial levels, it has sometimes led to dismantling existing collective bargaining infrastructures or unilaterally abolishing the collective agreements in force.

All Western Balkan countries have signed letters of intent, Memoranda of Economic and Financial Policies, and Technical Memoranda of Understanding with the IMF. In all cases, labour law reform is specified as a necessary policy measure to create environments more conducive to job creation.

The impact of these recent labour law reforms on national industrial relations systems has been dramatic in some cases. Across the sub-region, the industrial relations systems are statutory in nature, laid down in labour legislations enacted after the collapse of the communist regimes. By requiring higher representativeness thresholds for collective bargaining or abolishing bargaining at the national and sectorial levels, some labour law reforms have disempowered trade unions and employers' organizations in labour policymaking. Even where industrial relations frameworks have been less severely impacted, the effectiveness of tripartite social dialogue and the collective bargaining processes has decreased.

[5] European Commission, https://ec.europa.eu/commission/priorities/european-pillar-social-rights.

[6] Greece, Ireland, Latvia, Portugal, Spain, and Romania.

2. New rules of the game: representativeness of the social partners

The representativeness of the social partners for tripartite social dialogue and collective bargaining, and how to determine such representativeness, remains one of the long-standing debatable key issues for industrial relations in the sub-region.

For trade unions, the more traditional organizations that generally succeeded the trade unions of the former communist regimes have increasingly been challenged by newly-emerging trade unions. These new trade unions often refer to themselves as "free" or "independent," and claim representativeness status and the rights associated with it. Competition is particularly fierce in the public sector, with a much smaller trade union presence in the private sector. A tendency towards confrontation rather than cooperation on common negotiation platforms has deepened the fragmentation of the union movement at the national and sectorial levels in most of the CEE countries.

With a brief history dating back to the early 1990s, employers' organizations in the sub-region have remained stable in their mission, vision and programmes. They usually represent a mix of state managers, private employers and business associations, and act mainly as lobbyists to the government rather than trade unions' counterparts in social dialogue. Employers face significant organizational gaps, mainly at the sectorial level, and are increasingly confronted with strong competition from national or international chambers of commerce and foreign investor associations who claim their presence in the national policy dialogue.

Representativeness is critical for establishing the legitimacy of the social dialogue actors, and for ensuring their capability to commit to their constituencies and to further enforce these commitments. Since collective agreements have increasingly become an important source of legally enforceable rights, the people negotiating on behalf of a certain group of workers or employers need to be backed by their group and empowered by the law to conclude the collective agreements that bind their members. Moreover, representativeness is also important because of the series of privileges that accompany this status, such as the right to sign a collective agreement, the right to participate in tripartite or bipartite bodies, and the right to nominate delegates to the International Labour Conference and other international forums.

More often than not, however, the "top-to-bottom" structures of some of the social partner organizations continue to raise legitimacy questions. In addition, the coordination between national, sectorial, and enterprise representativeness remains unclear or blurred.

Generally, in order to be recognized as actors of social dialogue and partners in collective bargaining, workers and employers' organizations have to acquire legal personality through registration. However, registration alone does not automatically grant representativeness status. In fact, the multiplicity of competing actors and the lack of a voluntary mutual recognition by the

social partners have required governments to set out certain rules for determining representativeness status.

Statutory criteria for representativeness are common in the industrial relations mechanisms of the CEE countries. These criteria are always written into law, either in general law (labour codes) or in special laws on social dialogue and collective agreements.

International labour standards do not require the establishment of representativeness criteria, as both voluntary and statutory systems are acceptable in the view of the ILO's supervisory bodies. However, they require that certain legal and practical safeguards of independence and objectivity are observed for compulsory determination, such as the establishment of objective, pre-determined, and clear criteria that have been consulted by the concerned parties and certified by an independent body. The EU also sees the establishment of representativeness criteria as crucial to upholding the principles of democracy in national industrial relations systems.[7]

CEELex data

The CEElex data shows that national legislators have generally opted to establish the same representativeness criteria for participation in tripartite social dialogue and collective bargaining at the national and sectorial levels. However, different criteria are set for participation in collective bargaining at the company level.

The levels for which representativeness requirements are established by law vary among the CEE countries covered by CEElex. In most countries, criteria are established at the national, sectorial and company levels (e.g., in BiH, the FYR of Macedonia, Montenegro, Romania, and Serbia). In a few cases, criteria are set for one level only, either the national (in Bulgaria and Moldova) or the company level (in Poland and Slovakia). Finally, two countries have opted for requirements at the sectorial and company levels (Albania and Hungary).

All national requirements include a mix of quantitative and qualitative criteria, with some including a geographical representation component. Quantitative criteria mainly involve statutory thresholds, which increase from the upper to the lower levels of representation, while qualitative criteria include organizational independence, financial stability, experience, and infrastructure. In Albania and the FYR of Macedonia, participation in collective bargaining and experience concluding collective agreements are listed among the requirements for representativeness in order to get a seat on the national tripartite body. In the majority of countries, the representativeness criteria are not the same for trade unions as they are for employers' organizations.

Recently, specific industrial relations policy objectives have translated into various legislative amendments. For instance, by aiming to increase the inclusiveness of social dialogue, the legislators in BiH have lowered the representativeness thresholds for both workers' and

[7] European Court of Justice, 1996.

employers' organizations at the sectorial and entity levels. In order to reduce union fragmentation in Romania, the representativeness requirement for a trade union to engage in collective bargaining at the company level was increased from 30 per cent to 50 per cent plus one.

Representativeness criteria at the national and sectorial levels

a) Trade Unions

The prevalence of trade union membership within the total workforce employed at a certain level features prominently among the quantitative criteria for representativeness across the sub-region. At the national level, the percentage of the workforce required for representativeness ranges from 5 per cent in Romania to 20 per cent in the FYR of Macedonia. In Bulgaria and Poland, the required minimum membership is expressed as an absolute figure, namely 75,000 workers in Bulgaria and 300,000 workers in Poland. In one case (Albania), lawful registration is enough for a trade union to qualify as representative.[8]

At the sectorial level, the registration requirement varies between 7 per cent in Romania to 20 per cent of the workforce in the FYR of Macedonia whereas 10 per cent is required in Hungary, and Serbia. In Albania, there is not a specific criterion; the trade union with the largest membership would have representativeness status.

Minimum coverage for the number of sectors and territorial units or counties is generally required too (e.g., in Bulgaria and Romania).

b) Employers' organizations

Comparative data on the representativeness of employers' organizations also indicate that countries prefer cumulative criteria. These criteria include the organization's share of the total workforce employed by member organizations (included by all the reviewed countries), sectorial and territorial distribution (as in Romania and Bulgaria), participation in collective bargaining (as in the FYR of Macedonia and Albania), share of the total number of employers (as in Serbia), or contribution to the GDP (as in Montenegro). Qualitative criteria, such as independence or international affiliation (as in Albania), can also be included.

There are no membership requirements for employers' organizations at the national level in Poland and Bulgaria.

Notably, the minimum share of the total workforce required for a representative sectorial trade union in Serbia and Romania is lower than the minimum required for a representative employers' organization at the same level, but in the FYR of Macedonia it is the other way around.

[8] The 2015 Labour Code of Albania sets out a list of criteria, including engagement in collective bargaining and the number of concluded collective agreements, for participation of the social partners in regional tripartite social dialogue. However, it does not specify the representativeness criteria for social dialogue at the national level.

Representativeness of trade unions for collective bargaining at the company level

The membership criterion for representative trade unions at the company level is generally similar or more stringent than at the sectorial level. The required membership varies between 10 per cent (Hungary) to 20 per cent (Montenegro). Romania has set the highest threshold for a trade union to be recognized as the exclusive bargaining agent, requiring at least 50 per cent plus one of the workforce employed in the company to be members of the union.

Establishment of representativeness criteria

Generally, the procedures for certifying compliance with the statutory representativeness criteria are established in the labour legislation, either generally (as in the Labour Code in Bulgaria and the FYR of Macedonia), in special legislation (as in the Law on social dialogue in Romania), or through governmental decree (as in Albania). The competent authority to grant the status of representativeness is the Ministry of Labour or the Council of Ministers in all of the examined CEE countries except for Romania. In Romania, representativeness is granted and enforced by a judge. This decision is based on the recommendations of a tripartite commission or evidence certified by a notary.

In many cases, the practice of proving representativeness has been much more challenging than the regulations themselves might suggest. First, the required evidence of due-paying is difficult to check by both the administrative authority and the court. More often than not, there are no transparent or reliable sources of information regarding the number of members who pay membership dues, and there is not an accessible or systematic up-to-date data source for the total workforce employed in a given economic sector or branch. In some cases, the only evidence consists of a list of members presented by the authorized officials of the concerned organization to the notary or judge. Dues check-off systems are the most common across the sub-region, where employers agree to deduct all union dues and fees from the payroll and transfer the collected funds to the union regularly. In these cases, it is also the employer who certifies the union representativeness at the company level. At higher levels, the certification procedure is often based on membership card counting, which carries the risk of duplication or outdated information.

Some labour administrations (e.g., the Ministry of Labour of the FYR of Macedonia) have started developing databases for social partner membership, but it is a lengthy process and its success depends on the willingness and capacity of the concerned organizations to provide data.

The table below presents a summary of certification procedures in countries covered by the CEELex.

Establishment of representativeness of the social partners

	National	Sectorial	Company
Albania	By the Council of Ministers, based on notarized certificate every three years	By the Council of Ministers, based on notarized certificate every three years	Should the union representativeness be challenged, the notarized certificate serves as evidence
Bosnia and Herzegovina (Republika Srpska)	By the Ministry of Labour at the entity level	/	/
Bosnia and Herzegovina (Federation of BiH)	By the federal Ministry of Labour		
Bulgaria	By the Council of Ministers every 4 years		
FYR of Macedonia	By the Minister of Labour on the recommendation of a tripartite representativeness commission		
Montenegro	By the Ministry of Labour, at the proposal of the representativeness commission		
Poland		A multi-enterprise trade union may file a request to be recognized as representative with the Regional Court in Warsaw	
Romania	Civil court by judicial decision	Civil court by judicial decision	Civil court by judicial decision
Serbia	By the Minister of Labour upon recommendation of a tripartite representativeness board	By the Minister of Labour upon recommendation of a tripartite representativeness board	

Source: CEELex.

Other actors: participation of elected workers' representatives in collective bargaining

The right of elected workers' representatives to engage in collective bargaining at the company level has been provided by most national legislation in order to counterweigh the decline in unionization and the lack of trade unions, especially in SMEs in the private sector. Generally,

elected workers' representatives are entitled to participate in collective bargaining under two types of conditions:

a) in companies where there is no trade union or none of the existing trade unions meet the statutory representativeness thresholds (in Poland, Romania, Serbia, and Moldova); and
b) in companies employing less than 20 people (in Poland and Romania).

When a company's union is non-representative, some legislation nevertheless allows the concerned union to participate in negotiations along with elected workers' representatives (e.g., in Romania). In Serbia, a company-based work council empowered by no less than 50 per cent of the total number of employees may participate in collective bargaining in the absence of a trade union. In Hungary, the 2012 Labour Code permits work councils to conclude normatively binding agreements in cases where there is no collective agreement in force and no representative trade union in the company. Work councils can conclude "work agreements" with the employer to regulate the terms and conditions of employment, with the exception of wages and salaries. Such agreements shall terminate upon the collective agreement concluded by the employer entering into force, or upon the trade union notifying the employer of its entitlement to conclude a collective agreement.

In Poland, the employer and the elected employee representatives may conclude an atypical collective agreement when there is no trade union. Unlike a collective labour agreement within the meaning of the Labour Code, such an agreement is not registered and there are no special provisions required for its conclusion.

3. New trends in the regulation and practice of collective bargaining

Guiding principles

The fundamental principles of collective bargaining are laid down in the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), the Collective Bargaining Recommendation, 1981 (No. 163), the Collective Agreements Recommendation, 1951 (No. 91), and the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). The principles of voluntarism, autonomy of the parties, bargaining in good faith, and favorability – as enshrined in international labour standards – have been embedded in the legislation of most countries in the sub-region. However, in the last decade these principles have been challenged by a series of changes made to the legal frameworks regulating collective bargaining. Some of these changes are discussed below.

Voluntarism and autonomy of the parties in collective bargaining

The autonomy of the parties in collective bargaining is reflected in their freedom to choose the level of negotiation, the negotiation agenda, its conclusion, and the duration of the concluded collective agreement.

In all of the analysed countries, the place where collective bargaining can occur is determined by law. This choice reflects a certain policy approach towards more or less decentralization. In some EU Member States covered by the CEELex, decentralization of collective bargaining to the company level is a legislative policy goal and has been implemented through labour law reforms. To this end, the 2011 Law on Social Dialogue in Romania abolished the national collective agreement, and introduced more stringent requirements for representativeness of the signatories of collective agreements at the lower levels. Currently, a collective agreement can only be registered at the sectorial level if the signatory employers' organizations employ at least 50 per cent plus one of the total workforce in the concerned sector. In Hungary, the law regulates collective bargaining at the sectorial and company levels, but the practice of sectorial social dialogue remains weak. In Croatia, Poland and Slovakia, collective bargaining is legally permitted at all levels, but in practice has mainly taken place at the company level.

In the Western Balkans, the normative importance of collective bargaining at the national level is a common feature of the domestic legal systems. They often have general tripartite collective agreements where the government acts as the employer in the public sector. A general tripartite collective agreement defines the parameters of the more general provisions of the Labour Code and thus serves as an implementation tool of the latter. This is one of the reasons why national employers' organizations and trade unions have supported it during recent labour law reforms (e.g., in BiH and Montenegro). However, the general collective agreement suffers from a number of problems in practice, particularly relating to the actual representativeness of the signatories, in

particular the employers' organizations. As a consequence, the domestic judicial practice – which has, until now, confirmed its universally binding nature – is being challenged more and more by those who are not members of the signatory employers' organizations.

The principle of favourability

The principle of favourability states that in cases where several norms are applicable, the most favourable one shall prevail. Its application in labour law means that where there are several sources of law providing for different terms of employment and working conditions, the worker will be entitled to the most favourable ones. According to Recommendation No. 91, when provisions established by an employment contract and a collective agreement collide, the provisions most favourable for the concerned worker will apply. It also means that in situations where multiple collective agreements are applicable, the most favourable one will govern.

The principle of favourability is one of the guiding principles in the implementation of collective agreements according to the ILO's supervisory bodies,[9] and it has been upheld by most of the national labour legislation in the sub-region. While the "pyramid" of labour protection (labour law, collective agreements, and employment contracts, with the latter offering the most protection) has been generally maintained, it has become possible to deviate in practice through some labour law reform.

The majority of the CEE labour codes stipulate that the negotiated labour standards shall at least be at the level of the statutory standards (as in Albania, Bulgaria, and Serbia) or above them (as in the FYR of Macedonia, Moldova, Montenegro, Romania, and Slovakia). But in Poland, an employer may conclude an agreement at the company level that deviates from the provisions of the Labour Law or higher level collective agreement if it is justified by the company's financial situation. Furthermore, an employer that is not covered by a collective agreement and employs less than 20 people may modify individual employment contracts through an agreement with the elected workers' representatives that provides for less favourable working conditions than stipulated in the employment contracts, to the extent and for the period set out in the agreement.

The 2012 Labour Code of Hungary also allows, in the absence of an agreement to the contrary, deviations from statutory law though a collective agreement, with the exception of some provisions related to industrial relations, work councils, and trade unions' rights. Reportedly, the new Code extends the scope of collective bargaining with the aim to introduce a more flexible, autonomous system of employment regulation so as to strengthen the parties' contractual freedom and to reduce the regulatory role of the state.

[9] In its 2012 Observation on the application of the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) in Greece, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) stated that amendments introduced to the collective bargaining system in Greece that abrogated the principle of favourability that had previously applied were incompatible with Convention No. 98. The CEACR made specific reference to para. 3 (1) of ILO Recommendation No. 91.

The principle of favourability is generally upheld when it comes to individual employment contracts. Most legislation (e.g., in BiH – Republika Srpska, Montenegro, Poland, and the FYR of Macedonia) explicitly stipulates that an employment contract should raise the employee's protections or should not lower it as compared to the standards set forth in the labour law.

The new Hungarian Labour Code deviates from the mainstream by providing for the possibility for less favorable contractual derogations. Whereas the general rule – that employment contracts may only depart from the "rules relating to employment" in favour of the workers – is maintained, the Code provides for some exceptions where the parties can derogate (by way of individual agreement) to the detriment of the worker.

The application of the principle of favourability between employment contracts and collective agreements is generally presumed and not explicitly defined by law. There are two exceptions: the Romanian Labour Code states that an employment contract may not contain clauses that establish rights below those set out in collective agreements, and the Albanian Labour Code stipulates that any provision which is less favourable to the worker than the applicable collective agreement shall be null and void.

The principle of good faith

The principle of good faith relates to a number of key requirements that must be observed by the parties in a genuine collective bargaining process. Generally, engaging into collective bargaining with the aim to reach an agreement, readiness to meet and consider the other party's claims, avoidance of unjustified delays and unfair labour practices, and the timely provision of accurate economic and financial data concerning the bargaining unit are counted among critical conditions for the application of good faith.

In some legislation, the principle is spelled out by law (as in the FYR of Macedonia and Moldova) or is set out by the general collective agreement (as in BiH – Republika Srpska) without being defined. The Bulgarian Labour Code provides for the general duty for employers and workers to carry out their rights and duties in good faith, which is presumed until proven otherwise. To act in good faith, the employer shall provide timely and accurate information on their economic and financial situation that is relevant to the conclusion of the collective agreement, except where the disclosure could cause injury to the employer. In the Hungarian Labour Code, the definition of the principle of good faith in collective bargaining includes the parties' obligation to cooperate with one another and to abstain from any conduct that would breach the rights or legitimate interests of the other party. According to the Labour Code of Poland, the main elements of the principle of good faith consist of: (a) the obligation of the employer to make allowances for demands by a trade union if justified by the economic situation of the employer; (b) the obligation of the trade union to refrain from making demands that exceed the financial possibilities of the employer; and (c) the obligation to respect the interests of employees not covered by the agreement.

Validity of a collective agreement

The period of time when a collective agreement produces legal effects is generally specified in the collective agreement itself. Nevertheless, the majority of labour laws contain provisions regulating the duration of collective agreements, ranging from one year (as in Bulgaria and Romania) to an indefinite period (as in Albania, Poland, and Ukraine). Some legislation provides for both a minimum and maximum duration for collective agreements (as in Bulgaria and Romania). Moldovan Labour Law sets a minimum period only. In Slovakia, the Labour Law establishes that, unless otherwise specified, the agreement duration is one year.

A comparison of the reformed legislation with the previous legislation shows a clear trend towards legally defining the duration of a collective agreement.

Automatic continuation of a collective agreement after expiry

There is an ongoing debate among legislators and law practitioners as to whether collective agreements should continue to create rights and obligations after the agreed duration has expired, and for how long. The supporters of automatic continuation argue that a collective agreement should continue until a new one is concluded because it provides predictability and security by preserving negotiated pay rates and working conditions. From the trade union perspective, the continued application of an expired collective agreement is better than facing a "regulatory void," which could leave workers with individual negotiations or unilateral regulation by the employer only. Generally, this concern arises where the trade unions' bargaining power is low and the practice of collective bargaining is underdeveloped.

From the employer's perspective, the automatic continuation of a collective agreement may not allow for the adaptability needed to adjust to the national and international dynamics of competitiveness. This concern is common where the law does not provide for a definite duration of collective bargaining, and the validity of the collective agreement is not specified in law or in the agreement itself (as in Ukraine). In industrial relations systems where the parties are weak or reluctant to engage into collective bargaining, such situations might lead to endless negotiations and perpetual collective agreements.

Many national legislators are faced with a dilemma: while collective agreements without determined automatic continuations may respond better to changing economic situations,[10] they may also lead to increased uncertainity, social unrest and reduction in collective bargaining coverage. It appears that, in the majority of cases, legislators have chosen to limit the automatic continuation of collective agreements. The legally defined duration varies between three months (as in Croatia) and one year (as in Romania and Poland). In Romania, the agreement can be prolonged for another year through the agreement of the parties, whereas in Poland the agreement is automatically extended for one year if no new agreement has been signed in the meantime. The

[10] It has been argued that the general trend is moving towards shorter periodes of collective agreements due to the growing uncertainty of the social partners over economic prospects (European Commission, 2015).

General Collective Agreement of Montenegro provides for an "after-effect" period of four months, but also leaves open the possibility that the parties agree on a longer period. The FYR of Macedonia and Moldova provide for automatic continuation of collective agreements until new ones are concluded.

Extension of collective agreements

Extension is an effective policy tool that may be used to create a level-playing field in terms of wages and working conditions in a branch or sector of the economy. One of its main functions is to ensure that vulnerable workers in a given bargaining unit benefit from the same protections as the workers covered by the collective agreement to be extended. It has also been seen as an incentive for employers to join employers' organizations in order to influence the outcomes of collective bargaining.

Recommendation No. 91 sets out a number of conditions required for the extension of a collective agreement: (a) the collective agreement should already cover an amount of workers and employers which is regarded as sufficiently representative by the competent authority; (b) the request for extension should be made by one or more organizations of workers or employers who are parties to the agreement; and (c) the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their reservations.

Recent changes in extension regulation reflect a tendency to subject it to more stringent conditions and procedural requirements. For instance, besides the representativeness requirement, the 2011 Law on Social Dialogue in Romania introduced an additional condition for the extension of a collective agreement at the sectorial level: the members of signatory employers' organizations should also employ at least 50 per cent of the total workforce in the sector. Similarly, the 2015 Labour Code of Serbia provides for the requirement that 50 plus one of the total workforce is employed by the members of the signatory employers' organizations, a change that was enacted "for public interest" purposes. Hungarian law requires that for a collective agreement to be extended to the entire sector, the signatory employers' organizations must jointly employ the majority of the workforce in the sector. Following a different approach, Bulgarian law presumes that the level of coverage is sufficient for extension when the concerned collective agreement has been signed by all representative organizations of workers and employers in the given sector.

A public interest clause has been maintained in Croatia and Poland to allow for extensions. In Croatia, the Minister of Labour may extend a collective agreement if there is a public interest in the extension and if the collective agreement was concluded by trade unions with the highest number of members and by an employers' association with the highest number of workers at the level for which it is extended.

A "justified interest" clause is also provided by the 2015 Labour Code of Republika Srpska – BiH and the 2016 Labour Code of the Federation of BiH as a reason to extend by the Ministry of Labour. In Republika Srpska –BiH, the public policy objectives are to "implement economic and

social policies to provide equal working conditions," and to "mitigate differences in salaries in certain fields, areas or branches that significantly influence the social and economic position of employees resulting in disloyal competition." However, the "justified interest" clause will only apply when the signatory employers' organizations of the initial collective agreement employ at least 30 per cent of the workforce in the sector or branch.

Procedural requirements for extension are similar in all of the countries analysed. They include the joint request by the signatory parties (with the exception of Croatia and Slovakia, where the request may also be put forward by one of the parties only), and the consultation of the third party to be affected by extension or approval by a tripartite body.

In Ukraine, the institution of extension legally operates at all levels, whereas in the FYR of Macedonia it is not regulated.

The majority of the countries analysed do not have exception or exemption clauses. There are exceptions for the special financial and organizational circumstances of a company at the time (Serbia), if the employer employs less than 20 people, or if at least 10 per cent of the employees have disabilities or have filed bankruptcy (Slovakia).

Successive changes in the extension regulation in Slovakia over a short period of time illustrate how political ideology can influence the policy approach. In 2013, the Law on Collective Bargaining was amended to allow the Minister of Labour to extend a higher-level collective agreement in the public interest. In 2016, the constitutionality of that legal provision was challenged by a group of opposition MPs, who argued that it infringed upon the right to private property and the right to do business and did not guarantee that the balance between public and private interests would be preserved. The Constitutional Court agreed, ruling that the concerned provision was unconstitutional.

A new extension mechanism was approved in 2017 introducing a "representative higher-level collective agreement" that sets 30 per cent representativeness quota for the trade unions to be present at the employers that signed higher-level collective agreement (par. 7 CBA). The law also allows for the extension if both, employers and trade unions agree submit the proposal for the extension of the higher-level collective agreement signed among them. After fulfilling one of these criteria, automatic extension to the whole sector may be applied, upon the decision of the commission established by the Ministry of Labour based on par. 9 CBA.

Atypical collective agreements

While the pre-economic crisis erosion of collective bargaining has deepened and the decline in unionization has continued, the perception that trade unions have the exclusive prerogative of collective bargaining has also changed. The role of elected workers' representatives in collective bargaining has now also been recognized in most national labour legislation. In some cases, unique solutions have been devised to respond to new situations and challenges that arise.

The most illustrative case is Poland, where the legal system recognizes three different types of company-level collective agreements based on the status of the signatories, procedural requirements, and their legal effects. The first type is the classical collective labour agreement. It can only be concluded by the trade unions, and it determines the terms of employment and working conditions in the company. Because of its normative nature, its procedural requirements are specified by law. For extraordinary situations, where there is no time for extensive negotiations (such as when a company's ownership is being transferred or workers are collectively dismissed), the law provides for the possibility to conclude an atypical collective agreement (accord), which also produces normative effects but allows for flexibility and requires less stringent procedures. For instance, there is no obligation to register the agreement. The third type of atypical collective agreement is non-normative in nature and can be concluded between the employer and the workers' representatives, or elected workers when there is no trade union. However, these collective agreements are limited in scope, most often to overcome the economic or financial hardships of the company, and do not require specific procedures.

In Romania, the 2011 Law on Social Dialogue allows for a non-representative trade union (according to the statutory criteria) and an employer to mutually recognize one other as negotiation partners and to conclude a binding accord. However, the law does not specify what matters can be the subject of such negotiations, nor does it define the accord's relationship with an existing collective agreement (in the meaning of the law) in the company.

Filling the gap: unilateral work regulation by the employer

The labour legislation in all of the analysed countries permits the employer to unilaterally regulate certain work aspects in the company, under their general managerial prerogative. In all cases, the unilateral regulatory intervention of the employer is meant to take place in the absence of a valid collective agreement or to cover the period between the expiry of a collective agreement and the conclusion of a new one (if the collective agreement has a legally defined duration). The subjective scope of internal work regulations is generally confined to work organization, conduct and discipline policies in the company, grievance procedures, measures for occupational safety and health in the workplace, and work programmes. It usually does not include wage-fixing and working conditions traditionally determined through collective bargaining. The adoption and implementation of internal regulations is subject to prior consultation with trade unions or elected representatives if there is no trade union in the company.

However, in a number of recent labour law reforms, there has been a certain tendency to relax the conditions limiting the unilateral adoption of internal regulations, combined with an extension of the subjective scope of such regulations. For instance, the 2015 Labour Code of Serbia provides for consultations with concerned trade unions only to be carried out for seven days after the adoption of the internal regulation. If collective bargaining fails after 60 days of negotiations, the employer is entitled to determine wages and salaries through unilateral regulation until a new collective agreement is concluded. The law is silent on what options trade unions or elected

workers' representatives have if they disagree with the unilaterally fixed pay rates and other negotiable working conditions.

In the industrial relations systems where the practice of collective bargaining is weak, the period between two consecutive collective agreements can last for many years. This means that there is a high likelihood that unilateral internal regulations will replace collective agreements at the company level.

4. Outcomes of tripartite social dialogue and collective bargaining: minimum wage and wage setting

Setting the minimum wage and a wage scale in a country, region or sector implies considerable trade-offs between workers' and employers' interests, and requires reconciling different internal interests within each group. Employers, for example, may reject any constraints on their freedom to set what they consider to be a fair wage, but may also support a minimum wage securing fair competition. Trade unions may support a certain minimum wage that they perceive to be ensuring decent living standards for low wage workers and discouraging employers from informal activities, but may as well oppose it if it appears to undermine collective bargaining and open the door to precarious forms of employment (Grimshaw & Bosch, 2013).

After the statutory minimum wage, collective bargaining has been the most important mechanism in providing appropriate wage floors from the national to the company level (Delahaie, 2015). In many European countries, sectorial level wage bargaining has been the cornerstone of wage setting, providing fair competition and comparable wages within specific sectors (Visser, 2013). However, this approach was criticized during the economic crisis for providing too little flexibility for individual companies to adjust wages to local economic conditions.

The introductory chapter of this paper explains how new EU economic governance and other external factors have induced drastic changes in national and sectorial collective bargaining processes. This has resulted in significant alterations being made to the wage fixing mechanisms in the CEE countries analysed. The ways in which the minimum wage and wages are currently determined in the selected countries are presented from a comparative perspective below.

Minimum wage fixing at the national level

In the vast majority of CEE countries, the minimum wage is determined by the government in consultation with the representative organizations of employers or workers within national tripartite bodies or civic forums. In Hungary, the Government may fix two distinct wage floors at the national level: the mandatory minimum wage and the guaranteed minimum wage. The former applies to all workers, while the guaranteed minimum wage is set for professional (skilled) workers. The national Economic and Social Council, a civic forum with 43 members (eighteen representing the economy, six representing the national workforce, eleven representing civil society, and eight representing academia), has the right to propose the minimum wage levels to the Government. It has replaced the National Interest Reconciliation Council (OÉT), a tripartite body, which was formerly responsible for setting the minimum wage. In the FYR of Macedonia, the minimum wage is fixed yearly by the Ministry of Labour upon the recommendation of the national tripartite Economic and Social Council. The minimum wage is set by the Government, based on the proposal of the national tripartite Social Council every six months. In Romania, the National Tripartite Council, chaired by the Prime Minister and composed of the presidents of the

national organizations for employers and workers, has the legal mandate to set the national minimum wage.

In Poland, the roles of the Government and the national tripartite body are reversed. Every year the Council of Ministers must present a proposal on the minimum wage for the coming year to the National Tripartite Council, which may then agree on the proposal. If the tripartite body fails to do so, the Council of Ministers has the right to fix the new minimum wage. Serbia follows a similar model: the minimum wage is set through negotiations in the tripartite Social Economic Council, but the decision is handed over to the Government if the Social Economic Council fails to come to a decision.

In BiH – Republika Srpska, the minimum wage is fixed at the entity level through tripartite negotiations that take place in the General Tripartite Collective Agreement.

Criteria for minimum wage setting

The labour legislation in all of the CEE countries studied sets out various economic and social criteria for minimum wage setting. Economic criteria include economic indicators and wage developments, and the social criteria include minimum living standards and family needs, among others. The table below presents a comparative view of the economic and social factors reflected in some domestic legislation.

Criteria for minimum wage setting

	Economic factors					**Social factors**		
	GDP	Employment levels	Productivity	National pay rates	Consumer price index	Minimum living	Employees and family Needs	Living standards of different social groups
Albania	X	X	X				X	X
Republika Srpska (BiH)			X	X	X			
Bulgaria		X	X		X		X	X
FYR Macedonia				X				
Hungary	X	X						
Moldova	X		X	X	X	X		
Montenegro				X		X		
Poland					X			
Serbia	X	X	X	X	X	X	X	
Slovakia		X		X	X	X		

Source: CEELex.

Wage fixing at the national and sectorial level

In the CEE EU Member States, wage fixing has been fully decentralized at the company level, as explained above. In some Western Balkan countries, wages are negotiated through general tripartite collective agreements at the national level (as in Montenegro), the entity level (as in BiH), or at the sectorial level, mainly in the public sector. In the FYR of Macedonia, wages are determined through collective bargaining carried out separately for the public and the private sectors.

Wage fixing at the company level

In order to inform wage bargaining or individual negotiation, several labour laws provide for guidelines that may or must be used for wage setting at the company level.
In Albania, the labour law stipulates that the basic salary may be calculated based on time, job performance, and the profit realized by the company (profit sharing). Similarly, in Serbia, the time one spends carrying out the job tasks and their actual performance time on the job, as well as the company's overall business achievement, are considered in wage setting. Bulgarian Labour Law stipulates that remuneration shall be based on the worker's job evaluation by the employer. The evaluation analyses the complexity of the work, the level of responsibility implied, the intensity of the work, and the work environment. Moldovan Labour Law sets out broader economic criteria for wage fixing, including the supply and demand in the labour market, the quantity and complexity of the work, the worker's professional abilities, and their actual performance (and the results for the company).
Several labour laws provide for various statutory minimum rates for additional pay, although the actual extra pay rate is determined through negotiation. The following table provides a comparative snapshot of various legislative provisions on minimum pay rates.

Statutory minimum pay rates in addition to the basic salary

	Automatic increase		**Extra pay (% of the basic wage)**							**In kind**
	Education	Seniority	Night work	Overtime	Work on a public holidays or Sundays	On-call or shift work	Work in harsh conditions	Business trip reimbursements	Fees for hot meals	In-kind contribution (e.g., vouchers)
Albania	X		50%	35%	25%	20%				
Republika Srpska (BiH)		X	35%	30%	50%		X		X	
Bulgaria	X		as agreed	X		X				X

			by the parties							
FYR of Macedonia			35%	35%	50%	50 %				
Hungary			15%	50%	50%	30%				
Moldova	X		50%	50%		50%	X			
Montenegro		X	40%	40%	50%	X		X		
Poland			20%	100%	100%	X		X		
Romania			25%	75%	100%					X
Serbia		X	26%	26%	10%					
Slovakia			20%	25%	50%					

Source: CEELex.

Legal protection of wages

Several CEE countries provide for protection measures to secure fair and transparent wage setting and payment processes. These include obligating the employer to pay regularly, refunding workers in cases of unfair wage loss, and protecting workers' claims if the employer declares bankruptcy.

The Albanian Labour Code states that the worker's acceptance of a wage that is lower than what they should receive according to statutory law, collective agreement or employment contract is deemed to be null and void, and the difference must be reimbursed by the employer. The Labour Code of BiH – Republika Srpska stipulates that the employer may not withhold wages or salary compensation from the employee. Bulgarian law provides that no deductions may be made from an employee's wage or salary, except for advanced payments received, amounts overpaid as a result of technical error, and deductible taxes and social insurance contributions. In the FYR of Macedonia and in Hungary, the employer may only withhold parts of a wage as specifically stipulated by law. Moldovan Labour Code encourages employers to take active measures to protect employees against the risk of the non-payment of wages. The Labour Code of Poland stipulates that lawful deductions from an employee's salary may not exceed 50 percent of their remuneration. If employees experience an illegal or unfair wage loss or payment delay, the employer is obligated to compensate them by law (as in Moldova and Romania) or according to the general collective agreement (as in BiH – Republika Srpska). If the employer is insolvent, the Albanian Labour Code sets out an obligation for the employer to pay severance amounting to at least five times the minimum wage, which shall take precedent over any other payments due by the employer. In Romania, a Guarantee Fund was created to cover outstanding wages that a bankrupt employer may be unable to pay.

Conclusions

While perhaps it is too early to assess the extent to which the goals of these labour law reforms in the CEE have been achieved, the results indicate that the targets set in the respective policy agendas have not yet been met. The European Commission's overview and country assessment of the 2016 and 2017 Economic Reform Programmes in the Western Balkan countries show "limited implementation" of policy guidelines.

Why have the labour law reforms not boosted job creation as expected? One reason, among others, is the "piecemeal" reform approach, where changes have been made to the labour regulation through stand-alone policy measures. These were not coordinated with other policies to tackle related issues such as corruption, informality, law enforcement, taxation, business regulations, vocational training reforms, and administrative bureaucracy.

Although the myth of labour law being the "silver bullet" for dysfunctional labour markets has faded, labour law reform remains high on national and international policy agendas. These reforms appear to be paving the way for a paradigm shift from the continental European tradition of contract-based employment protection towards the civil law notion of contractual party equality.

The majority of reforms have weakened the normative function of collective bargaining through policies encouraging disorganized decentralization to the company level. One manifestation of this trend is the increasing role of the employer to unilaterally regulate the terms of employment, often replacing the collective agreement at the company level for a potentially indefinite period.
By removing or weakening these self-regulatory mechanisms, labour law reforms have created gaps in law and practice that are likely to put some fundamental labour rights at risk.

While multi-employer collective bargaining is still seen as the backbone of the industrial relations system in most EU Member States and at the level of the European social partners, some CEE EU Member States have adopted policies that both directly and indirectly dismantle national and sectorial collective bargaining. EU candidate states have so far opted to preserve their national tripartite or bipartite agreements, generally with the support of the social partners. These agreements have universal application, and thus serve an important normative role complementary to the law. However, their binding nature has often being challenged by non-members of the signatory employers' organizations.

The decentralization of collective bargaining has been accompanied by the legal recognition of elected workers' representatives in collective negotiations at the company level. Despite the growing attention they have recently received, the involvement of elected representatives in collective bargaining has proved to be sporadic and less effective than that of trade unions. In some

cases, complicated solutions for determining the bargaining powers of workers' representatives (as established by law) have created legal and practical uncertainties at the company level.

The legal limitations on the automatic continuation of collective agreements, combined with the extension of the employer's unilateral regulatory power on a wide range of topics, including those traditionally pertaining to collective bargaining (such as wages), pave the way to legal systems where the normative importance of the collective agreement diminishes significantly.

Unique agreements have emerged in the place of more traditional ones, often deviating from the principle of favourability through individual negotiations or through collective bargaining with ad hoc elected workers' representatives under more flexible conditions. Reportedly meant to expand the scope of collective bargaining, such solutions have not so far led to this result.

Whereas collective agreement extension operates as a matter of law at the company level in most of the CEE countries surveyed (in all of the Western Balkan countries, Croatia, Poland, Romania and Slovakia), extending collective agreements at the sectorial level appears to be impossible due to new stringent requirements for signatory employers' organizations.

In the selected CEE EU Member States, wage negotiations have shifted almost entirely to the company level, even when there is the possibility to negotiate at the upper levels. In the EU candidate countries, wages are set predominantly at the national level through general tripartite or bipartite collective agreements.

Scarcity of up-to-date administrative data, and the occasional absence of the legal obligation to register collective agreements, result in incomplete information on the number of collective agreements and the total coverage of collective bargaining, especially for the private sector and for SMEs.

More stringent legal requirements, including higher thresholds for representativeness and restrictive conditions for extension, have translated into lower collective bargaining coverage. This is even the case where the number of company collective agreements has increased. Generally, workers employed in companies with less than 20 employees remain outside the scope of collective bargaining.

It appears that these labour reforms have created various degrees of imbalance between the goal of enterprise competitiveness and the general public labor policy to secure inclusive access to decent work. To strike the correct balance, collective bargaining should be more thoroughly utilized in policy measures aiming to revitalize multi-employer bargaining and restore coordination at the company level. This approach would be particularly advantageous for economic sectors where SMEs are predominant.

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