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ABSTRACT

The Economic Impact of East-West Migration on the European Union European Union and Labor's Legal Resources in Central and East European Countries

This article investigates the influence of the European Union (EU) on legal resources available to labour to tackle labour market challenges in central and east European countries after their accession to the EU in 2004 and 2007. Its conclusion is that the EU's impact has been complex and contradictory, with differences between countries and time periods. It has to varying degrees encouraged social partnership and supported a model of employment relations giving high levels of legal and collective protection to employees. Since 2008, the EU has advocated reductions in protection for employees on standard contracts and a very substantial reduction in collective bargaining coverage in one case, only partially balanced by advocacy for improving the lot of those on less secure employment relationships. The EU agenda has in practice been largely irrelevant to the widespread informalization and casualization of employment relations in the region.

Keywords: labour market, labour code, trade unions, collective bargaining, central and eastern Europe

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European Union and labour's legal resources in Central and East European Countries

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This paper investigates the influence of the European Union (EU) on labour resources to tackle labour market challenges in Central and East European Countries (CEECs) after their accession to the EU in 2004 and 2007. Its conclusion is that the EU's impact has been complex and contradictory, with differences between countries and time periods. It has to varying degrees encouraged social partnership and supported a model of employment relations giving high levels of legal and collective protection to employees. However, it has also advocated reductions in protection for employees on standard contracts and even supported a very substantial reduction in collective bargaining coverage in one case. This has been only partially balanced by advocacy for improving the lot of those on less secure employment relationships. This paper follows these developments, starting with the transformation of the model of employment relations inherited from state socialism.[1]

Following the effects of the EU on labour's legal resources in CEECs requires a complex analytical framework. The effectiveness of the EU agenda needs to be set against the changes taking place in employment relations and labour markets within countries. There was no simple process of transfer of a 'European' framework onto new member states at the time of their accession. There were significant EU influences, but they varied in form, direction and impact between different periods. They were never the dominant determinant of development but rather influences that affected processes of transformation driven essentially by forces within those societies. The framework for understanding EU impact therefore sets it within the context of a process of historical development, showing differences between periods. It takes account of labour's organisational strength and of labour's ability both to influence law-making and to make use of laws that exist. This changed over time and varied between countries. The framework also takes account of changes in labour markets which both conditioned the collective strength of labour and set the problems that laws could be expected to address. This paper aims to bring these

[1] The paper draws on secondary resources covering employment relations in individual countries, analysis of comparative statistics, and documents produced by the European Commission, national labour inspectorates, and the International Labour Organization. These documents provided evidence on the developments in employment law and in the labour markets and also on the advice and other forms of involvement of the EU in CEECs. The analytical strategy was to follow developments in employment relations and labour law in individual countries while looking for any evidence on the impact by the EU institutions in the processes.

themes together in an overall assessment of the place of EU accession in the strengthening, or weakening, of labour's legal resources.

EMPLOYMENT RELATIONS IN TRANSITION

All state socialist countries operated very similar employment-relations systems in which trade unions played no significant role in the collective representation of employees. However, laws gave protection against excessive work and arbitrary dismissal and unions were expected to represent employees with individual grievances in such cases.

Labour codes were radically reformed after 1989, but with significant continuing protection for employees (Myant, 2014). The new legal frameworks emerged with trade union input and following advice from international agencies, especially the ILO and the EU. Rigid rules were replaced by systems of protection through legal minimum standards – minimum wages and holiday entitlements, maximum working hours and permissible overtime – and protection in cases of individual and collective dismissal (for comparisons between countries, see the contributions in Blanpain and Nagy, 1996; ILO, 2009). Unions, to varying degrees, kept considerable formal powers, including for example rights to information and some control over the regulation of health and safety and overtime work. Formal legal protections for employees were accompanied by legal frameworks for union recognition and collective bargaining.

After these early reforms there was no Eastern European employment law model distinct from that of Western Europe. There was variety across both parts of the continent, but Eastern Europe appeared more uniform and closer to a 'European' model, with significant employee protection as favoured by trade unions across Europe, rather than a free-market neo-liberal model.

However, Eastern Europe did differ from western Europe in the extent and speed of decline in trade union influence, albeit with some country differences as referred to below. Union density in all countries fell from levels of up to 90% of employees to reported figures of under 20% in all countries apart from Croatia, Romania and Slovenia (see Table 1). Collective bargaining coverage also fell, generally to figures below the western European average, again with Romania and Slovenia standing up better than others (see Table 2). Trade unions retained some strength in state-owned enterprises, some branches of multinational companies and public services, but suffered a dual process of 'erosion and marginalization' in privatized enterprises (Gardawski et al., 1999: 248)—meaning disappearance of organizations and reduced influence for those

that survived—and practically no presence at all in much of the new private sectors.

TABLES 1 & 2 ABOUT HERE

The causes of this sharp decline are debated elsewhere (e.g. Myant, 2014; Crowley, 2004). Differences between countries, following from historical causes and the natures of transition that are also beyond the scope of this article, reflected the political strength of trade unions, both in the initial period when the first legal changes were made and in subsequent years (for comparisons see the contributions in Crowley and Ost, 2001; Phelan, 2007). They were strongest in Slovenia and Romania where they could pose a considerable threat to governments that tried to by-pass consultation. Bargaining at sectoral and national levels was firmly established from the early 1990s and the law made collective agreements an effective requirement for all larger employers. Unions were less powerful in central Europe: they were seen by new elites as a potential threat in the early period when new legal frameworks were negotiated, but they posed little threat in later years. National bargaining never took root and bargaining in workplaces took place with very little open conflict and a very low strike level. Unions were weakest in the Baltic Republics where they never posed a serious political threat and had the least strength in workplaces.

There were changes in employment laws through the 1990s in a number of countries, but the broad framework set immediately after 1989 broadly remained in place. This apparent mismatch between weak or weakening trade unions and a legal framework favourable to labour served to make employment relations heavily dependent on the use of legal provisions. These have been described as ‘statist’ systems, with a larger role for politics and law than in western Europe (Kohl and Platzer, 2007). Lacking workplace collective strength, unions protected the lowest pay levels through minimum wages. As shown in Table 3, all EU member CEECs had statutory minimum wages, albeit with levels relative to average earnings that in all but a very few cases were below the average for the 20 EU member states with minimum wages.

TABLE 3 ABOUT HERE

Similarly, protection for employees in individual workplace issues depended on quoting laws and using courts, with claims of significant success (e.g. Myant, 2010: 20–21). This form of support was clearly valued and cited in major surveys in the Czech Republic and Poland as a principal reason for joining unions, coming comfortably above general support for collective representation of employees (Pollert, 1999: 228, 2001: 29; Gardawski et al., 1999: 132–4). Thus a central role for unions was to ensure that laws were applied in practice

and that was frequently not the case, both where they were present and, to an even greater extent, in the increasingly important share of the economies where they lacked any presence. Declining union coverage coincided with a trend away from regular, standard employment contracts to greater use of less secure and often illegal forms of employment relationship. That in turn coincided with EU accession, the implications of which are discussed in the following section.

EU ACCESSION AND EMPLOYMENT LAW

The most important European Union (EU) influence on employment relations in east-central Europe before accession negotiations was indirect, by setting a broad example of 'European' practice for countries to follow as they emerged from state socialism (cf. Myant and Drahokoupil, 2011). This changed only slightly during the accession negotiations. The firmest requirements were for the economic acquis, meaning the body of law relating to economic organisation and policy. Pressure on economic-policy issues thus endorsed a neo-liberal agenda, including privatization, a reduction of state involvement in the economy, and further liberalization.

Social and employment issues were less prominent, although the CEECs had to implement a number of 'social directives' covering working conditions, including working time, information and consultation with employees, equal treatment in employment of men and women and the integration of persons excluded from the labour market (see Falkner et al., 2005). Implementation was often slow and rather patchy (Falkner and Treib, 2008). Despite some suggestions that provisions could be used to undermine existing trade union positions (Meardi, 2012), evidence rather points to no consistent pattern in the impact of the transposition of social directives as either undermining or improving social standards in CEECs (e.g. Keune, 2009).

Overall, the EU's message was partly contradictory, pointing towards a role for social policy and state intervention, but also pressing policies that tended to limit that role. Some of the key principles of the so-called European social model were inscribed in the soft social acquis of non-binding provisions, including the principles of social dialogue and multi-employer bargaining. The European Employment Strategy, including the principles of activation and employability, was promoted through the open method of coordination in which the candidate countries were obliged to participate from 1999, but this did not involve binding commitments, and it is difficult to find strong evidence of an impact on the national level (see Barcevičius et al., 2014).

The hard acquis included implementation of the Directive on Information and Consultation (2002/14/EC) which led to the introduction of works councils in the six CEECs which did not have them already. This made very little practical difference and did not challenge the trade-union based industrial relations systems that had already developed. Transnational worker participation provisions included, most notably, the European Works Councils (EWCs). Despite a degree of trade union scepticism, there are cases of EWC involvement that is seen as valuable among the unions and employee representatives (cf. Drahokoupil et al., 2015).[2]

EU thinking on employment policy underwent two significant changes in the years after CEECs negotiated accession. The first was a focus on the notion of 'flexicurity'. As originally developed, the idea was to make it easier to dismiss unneeded employees while also ensuring significant benefit levels and strong support for training and finding new employment (e.g. Wilthagen, 1998; see Viebrock and Clasen, 2009). This was reflected in EU thinking that set out a case for reducing dualism in labour markets (EC, 2007). The argument was for preventing over-protection of a secure labour force while also ensuring adequate protection for a growing body on non-standard, notably part-time or fixed-term, contracts. Although little empirical evidence was cited to support the argument, it was claimed possible that this might both increase job turnover and help reduce unemployment. Thus the flexicurity agenda justified greater security for some and less security for others and that was expressed in specific recommendations that are referred to below.

In the period after the crisis of 2008, however, this agenda embodied a clearer trend towards liberalisation of employment law which reinforced pressures in that direction from political forces supporting a purely business-oriented agenda in a number of CEECs. The justification from the EU side moved beyond concern with flexicurity to a belief that international competitiveness and employment levels were threatened by apparently high wage levels and employment security. The EU became more forceful in its recommendations and a new model of economic governance, the so-called European Semester, was introduced in 2011. In this context, the European Council, based on proposals drawn up by the European Commission, adopts so-called country-specific recommendations (CSRs) that covered also employment and social policies.

[2] According to ETUI EWCs database, there were in 2014 about 350 active EWCs, out of the total of 1060, with employee representatives from CEECs (which amounted to about 770 seats for CEECs representatives). However, only five MNCs headquartered in CEECs established an EWC.

Intervention in the wage setting mechanisms was high on the agenda, particularly in 2011 (Clauwaert, 2013, 2014). More specifically, recommendations criticized wage indexation to inflation, applying to both minimum wage regulations and collective agreements, and centralized collective bargaining which were seen as hindrances to the perceived need to reduce wage levels. The CSRs were not legally binding, but the EU could exert very 'hard' pressure through loan conditionality imposed on countries that had to rely on financial assistance. Memoranda of understanding including specific policy commitments were concluded with Hungary (November 2008), Latvia (December 2008), and Romania (from May 2009). Employment and labour issues were not prominent in these memoranda, but the EU gave implicit backing to reforms that substantially reduced the scope of collective bargaining in Romania, as discussed below. The background to such changes was, as indicated, an assumption that low employment levels were linked with over-rigid, inflexible and excessively regulated labour markets. The next section provides evidence on how far the trend was, and had been, in the opposite direction, towards high levels of casualization and informality in employment relations.

CASUALIZATION AND THE INCREASING IRRELEVANCE OF LABOUR LAW

Table 4 and Table 5 indicate the growth in non-standard employment contracts as recorded by Eurostat. The two categories cannot be considered distinct as a significant proportion of part-time employees work on fixed-term contracts. This is indicated by Eurofound (2012) data for 2010 in which, at the top end, 70% in the Netherlands on fixed-term contracts were working under 35 hours per week. The lowest figures were for Poland, at 9%, and Bulgaria at 8%. These data suggest that the most dramatic change took place in Poland with an enormous expansion of temporary work. The impression for other countries is of relatively high proportions on standard, indefinite contracts when set against the EU average.

TABLES 4 & 5 ABOUT HERE

Thus Eastern Europe as a whole could appear to have been slow to innovate away from standard forms of employment contract. However, where relaxation of laws made it possible, or where laws were relatively easy to circumvent, forms of non-standard employment could develop very rapidly. These statistics therefore need not accurately reflect the extent of the growth of a casualised or 'secondary' labour force. This took different forms between countries, depending on the laws that applied.

This trend towards casualization of employment relations cannot be quantified precisely because many of the key practices were illegal and therefore not recorded. It is also complicated by the fact that legal forms justified by demands for flexibility were also used more generally as a means by employers to give greater power over employees, to reduce costs of tax and insurance contributions and to avoid obligations laid down in employment law over hours and holidays.

The best information on illegal employment practices comes from reports of Labour Inspectorates. Their evidence cannot be considered representative as much of their work involves following up complaints they receive or investigating where they expect to find abuse. However, their evidence puts into context the statistical data.

The first point to emerge is that abuse of employment law is very widespread. In Czechia in 2013 one or other legal breach was found in most workplaces subjected to inspection. In aggregate, 20,377 firms were controlled revealing 10,696 illegal employment practices. In Slovakia, 23,838 firms were inspected in 2013 revealing 10,366 breaches of employment laws (SUIP, 2014: 53; NIP, 2014: 4 & 7). Simple and widespread abuses included the absence of written contracts and with that no clearly defined working times or working hours. This is contrary to the law for most employees, but difficult to enforce without collective representation and/or strong labour inspectorates where employees' market power is weak. Evidence from Poland in 2013 showed 14% of employers that were investigated failing to pay wages and 18% failing to provide written employment contracts, implying that they could avoid all obligations of employers including payment of social security and pension contributions. Fully 41% had not recorded working hours, meaning that they could avoid rules on maxima (PIP, 2014). The implication is that even basic elements of legal protection for employees need not be applied in practice, although, to repeat, it remains impossible to give any definite quantitative indication of how widespread that abuse might be.

Reports from the labour inspectorate also help to shed light on the remarkable increase after 2000 in the numbers in Poland on temporary contracts shown in Table 4, equivalent to over 20% of the employed labour force. Part of this reflected use in Poland of very long fixed-term contracts, sometimes even up to 20 years, as employers sought to avoid obligations associated with permanent contract. However, a large part was probably from arrangements not covered by employment law, but rather by the use of commercial contracts. This kind of relationship clearly can have a place as a flexible relationship allowing for specific small tasks outside a normal work contract, but that could explain only a very small part of the growth in this kind of employment relationship in Poland.

The main reason for their growth was the advantages they offered employers, avoiding costs of tax, insurance and pension contributions and giving employers the maximum freedom to set and vary working hours and other conditions. They were contrary to Polish law in cases when the relationship was effectively that defined in the labour code as employment, meaning a defined time and place for work and a defined authority structure.

In 2013 the inspectorate found this practice applying to 43% of those working in 1,238 workplaces investigated to check on respect for the law defining employment (PIP, 2014: 54), no doubt both reflecting quite widespread use and a selection bias towards sectors in which the practice was most prevalent. Labour market conditions meant that people would 'agree to any kind of employment conditions that were necessary for obtaining or maintaining work' and courts were strongly biased in favour of accepting civil contracts (PIP, 2014: 56 & 57). Protection for these employees would appear to depend not on measures to limit the use of formally agreed fixed-term contracts, as pressed for all member states from the EU, but on enforcing the legal definition of an employee and on imposing the same financial obligations on employers as for regular employees.

A slightly different practice developed in Czechia, starting in the early 1990s, in which employers entered into commercial contracts with self-employed individuals to undertake regular work. Czech law has defined employment, as in Poland, in terms of regularity of tasks and hours and subordination to someone who sets those tasks. Use of a commercial contract in such cases is illegal. There have been periodic changes to that law which have altered the scope for using sub-contracting as an alternative to employment and estimates of the extent of the practice have ranged between 2 and 4% of the workforce. Further changes to the law in 2012 brought investigation of the practice within the remit of the labour inspectorate, but subsequent official reports did not demonstrate positive action. The practice continued to be advantageous to employers in reducing costs and avoiding many obligations of an employer, although they were obliged to respect anti-discrimination and health and safety rules.

Agency work is another form of employment that varied greatly in extent between countries – estimates suggest about 2% of the total labour force across the EU - bringing benefits to employers, even where flexibility was of little importance, because labour costs were frequently lower than for regular employees. An EU directive of November 2008, to be applied in all countries from December 2011, laid down that the basic employment and working conditions for agency workers were to be the same as for regular employees. However, even when adopted as a national law, this proved possible to

circumvent (cf. Myant, 2013: 193). Agency workers, often temporary immigrants from another country, were in a very weak bargaining position and the nature of the employment contract is inherently difficult to regulate as it includes a commercial contract between two companies that has not been open to view to labour inspectorates. Using agency workers as a form of cheap and docile labour therefore continued to be attractive to many employers.

The efforts from EU level to hold in check the casualization of labour markets were amply counterbalanced in some countries by changes in domestic employment rules. An extreme form of casual work was allowed in Hungary from 2010. For this there was no need for a written contract and pay could be below the minimum wage level. Employers were expected to report such employment and to fulfil some financial obligations, while avoiding most commitments associated with regular employment. The number of such contracts rapidly rose to 630,000 in 2013, against a total employed labour force of just under 4 million. In Slovakia, contract agreements were allowed formally as an addition to regular work contracts. This could provide a useful form of flexibility for small parcels of extra work. It could also allow the abuses familiar from other forms of casual work. A restriction in 2013 meant that employers were required to pay social insurance contributions and the number of these contracts fell from possibly as many as 700,000 to the still substantial level of 416,046 in a total employed labour force of 2.3 million.

LABOUR MARKET REGULATIONS

The story of casualisation and a weakening bargaining position for much of the labour force appears to be a lesser concern at EU level than a perceived high level of protection for permanent employees. This corresponds, albeit only to a limited extent, to the OECD's well-publicised Employment Protection Index. This uses a weighted combination of 25 indicators to provide a comparative overview of legal provisions in current OECD member countries focusing on procedures and costs to employers of individual and collective dismissals, the length of trial periods for regular contracts and protection against continual renewal of temporary contracts and against imposition of particularly unfavourable conditions for agency workers.

This index has clear limitations. It depends on a choice of indicators and their weightings. Protection against dismissal in practice depends on whether rules are enforced and also on whether they may not be enhanced by employees' collective representation. Indeed, there is little relationship between Eurostat's labour turnover figures and employment protection. The OECD index should therefore be treated with some scepticism and considered alongside other

measures. Trade union membership and collective bargaining coverage are likely to be important for ensuring that laws are respected or for providing protection beyond the legal minimum. As indicated in Table 1 and 2, the trend has been for both of these to decline.

Protection is also likely to be strongly influenced by labour market conditions and by access to benefits for the unemployed. Thus, for example, Poland suffered from significant unemployment over many years and unemployment benefits were paid for only six months at a flat rate equivalent in 2011 to 22% of the average wage. Only 16.4% of the registered unemployed in 2011 were entitled to any benefit. For the Czech Republic a slightly more generous figure of 32% of the registered unemployment were receiving unemployment benefit in 2010 (Beblavy et al., 2011: 21 & 33). Under such circumstances the incentive can be very strong to accept any employment conditions on offer, irrespective of the formal legal position.

TABLE 6 ABOUT HERE

Nevertheless, as countries with strong dependence on legal protections, it is not surprising that a number of CEECs appeared to provide comparatively high levels of protection, although this was not true of all. Table 6 shows Czechia, Poland and Slovenia all above the OECD average for protection against individual and collective dismissals. Hungary, Estonia and Slovakia were below the average. These differences primarily reflected decisions made in the early 1990s. Changes were gradually made after that, in almost all cases reducing protection for employees on rgular contracts and most substantially in those countries where it was already lowest. Thus this was not a process of moving towards existing western European levels of protection but rather one of reducing the lowest to still lower levels. There were reductions in Czechia in 2006 and 2012, in Poland in 2003, in Slovakia in 2003, 2004 and 2011, albeit with a small partial reversal of preceding changes in 2013. Similarly Hungary, among the more liberal from 1990, became an extremely liberal case in 2012.

These reductions in protection cannot be directly linked to EU pressure, even though they corresponded to the underlying advice found in the CSRs to reform labour law along the flexicurity principles. CSRs identified a need for more flexibility in Lithuania and Croatia, both countries with relatively high levels of formal protection as shown in Table 6. A recommendation to review labour legislation appeared in all CSRs issued to Lithuania in 2011-2014. More specifically, they called for removal of ‘unnecessary restrictions’ on flexible contract arrangements, introduction of flexible work time, alleviation of the administrative burden on employers, and flexibilization of dismissal provisions. CSRs for 2014 for Croatia called for a reform of conditions for dismissals.

TABLE 7 ABOUT HERE

Improved protection for fixed-term contracts, shown in Table 7, followed EU recommendations following directives 1999/70/EC on fixed-term work and 2008/104/EC on temporary agency work. They both set limits on where such contracts could be used and on the number of times they can be renewed. The movement towards lower index scores in Table 7, in a number of countries, including the two comparators Germany and Sweden, reflected relaxation of controls, effectively allowing fixed-term contracts in more cases.

The trend in CEECs has been towards some strengthening of formal protection for fixed-term contracts. They have followed the EU directive obliging member states to introduce limits on the reasons for the renewal of fixed-term contracts, on the maximum total duration of successive fixed-term employment contracts, and on the permitted number of renewals. Protection for agency work centres on the principle of non-discrimination, regarding the essential conditions of work and of employment, including the access to collective rights. The tendency for a strengthening of protections in CEECs, started with Poland in 2004 and included Czechia in 2005 and 2009, Estonia in 2011, Slovakia in 2008 and 2010, but saw a unique reversal in Slovenia in 2013. As indicated above, these changes alone do little to improve protection for these groups of employees

The general issue of informalization of employment relations does not figure in CSRs. Only the 2009 memorandum of understanding with Romania obliged the country to 'tackle undeclared work' through increasing the intensity of controls and applying sufficient dissuasive fines (p. 6).[3] In practice, and in line with several other CEECs, Romania moved in 2011 to allow highly casualised forms of employment as day labourers. Thus the problem of illegal economic activity seemed to have been addressed by making the same practices legal.

Labour market duality was identified as a general issue in Slovenia, Poland, and Czechia. In Poland, CSRs in 2012-2014 recommended tackling segmentation by limiting use of civil contracts and extending the probationary period for permanent contracts. The first of these had been given concrete form in long-standing demands from Polish trade unions for subjecting such commercial contracts to the same financial obligations as formal employment contracts: the government in 2014, despite opposition from employers' organisations, proposed to impose a requirement for limited social insurance and pension deductions. In Czechia, 2013 CSRs called for reducing the discrepancy between employment and self-employment. Again, the gap in financial obligations was a

[3] http://ec.europa.eu/economy_finance/publications/publication15409_en.pdf

major factor making the use of commercial contracts with formally self-employed individuals attractive. However, equalising financial obligations always met strong opposition from the right of the political spectrum and from the small business lobby. Clearly, some of the important issues were noticed in EU recommendations, but change depended entirely on political conditions in member states. Any efforts from EU level to hold in check the dualization of labour markets could thus be more than counterbalanced by changes in domestic employment rules. EU advice, recommendations or legal measures were making no significant impact on the general trend towards casualization of large parts of the labour force across Eastern Europe.

INDUSTRIAL RELATIONS AND WAGE SETTING

While giving some recognition to the need to improve protection for part of the labour force, recommendations related to collective bargaining and wage setting tended to reduce protection for all groups of employees. As indicated in Table 2, collective bargaining coverage remained high in Slovenia and Croatia. In Czechia, Slovakia, Hungary and Poland , it remained at about or over 30%. Substantial declines in Bulgaria and Romania followed legislative changes.

In Romania in 2011 the government effectively dismantled national and industry-level collective bargaining institutions that had provided the basis for the previously high level of bargaining coverage (see overview in Chivu et al., 2013). New legislation abolished national collective agreements that had been a reference point for bargaining at lower levels. It also limited the validity of sectoral agreements only to companies that were members of employer organizations signing the agreements. In the public sector wages and pecuniary entitlements were excluded from the scope of collective bargaining. The reforms also introduced representativeness requirements that made it difficult, if not impossible, for unions to function in most companies. The result was the fall in bargaining coverage from 70% in 2008, the second highest in Eastern Europe, to 20% in 2013, a comparatively low figure (see Table 2). In effect, a comprehensive sectoral-level bargaining system was replaced by a weak system of company-level bargaining (compare ICTWSS database, data code: Level). An ILO mission in June 2011 found the reforms to be breach of its Right to Organise and Collective Bargaining Convention (1949/98, ratified by Romania in 1958).[4]

[4] ILO Observation (CEACR) - adopted 2011, published 101st ILC session (2012) Right to Organise and Collective Bargaining Convention, 1949 (No. 98), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698945.

The weakness of collective resources, reflected in either the gradual decline in visible union influence in most CEECs or in the abrupt falls in Romania and Bulgaria, made the minimum wage a particularly important wage-setting institution. However, wage-setting mechanisms, including both minimum wage and collective bargaining, were seen as a problem by the European Commission after 2010 predominantly where the wage levels were deemed too high relative to productivity and where adjustment through wages was seen as a means of increasing employment and improving competitiveness. Such were the assessments for Romania, Bulgaria, Slovenia, and Croatia. Lithuania was the only country where CSRs (2014) judged positively an increase in the minimum wage as a means to address the working-age poverty. Otherwise, recommendations were for wage restraint, albeit worded carefully, for example for Slovenia in every CSR from 2011 to 2014 as ensuring that 'wage growth, including minimum wage adaptation, supports competitiveness and job creation'.[5]

The memorandum of understanding between the EU and Romania signed in June 2011 noted the reforms 'streamlining wage setting institutions' (p. 4) which included commitments to seeking, with relevant stakeholders, 'to rationalize bargaining in the private sector' (p. 4).[6] This evidently referred to the requirement for more than 50% union membership in a workplace before a collective agreement could be valid, thereby eliminating collective bargaining from most of the economy.

A subsequent Romanian government, with support from all trade union confederations and employer associations, proposed to reverse the previous reforms in 2012. The European Commission and IMF indicated their displeasure with these proposals. Their comments pointed to a preference for the minimum of revision as they 'strongly urge[d] the authorities to limit any amendments to Law [on labour relations] to revisions necessary to bring the law into compliance with core ILO conventions'. However, they still included recommendations that were identified by ILO as in violation of the convention, notably the provision that national collective agreements to 'do not contain elements related to wages', limits on the protection of trade union representatives against discrimination in companies, and maintaining provisions

[5] The 2014 CSRs for Slovenia also criticised the Slovenian minimum wage setting system for linking the minimum-wage to inflation. The 2014 CSRs for Croatia included a recommendation to review the wage setting system to align wages with productivity and observed that 'no changes envisioned in wage-setting institutions despite high wages and low employment'. In Bulgaria, the 2013 increase in the minimum wage was suspected to have negative impact on employment and the minimum wage level was recommended to be monitored and adjusted. The 2014 CSRs for Bulgaria and Romania criticised their minimum-wage setting systems that involved also a social-partner consultation for the lack of 'clear guidelines for transparent minimum wage setting'.

[6] http://ec.europa.eu/economy_finance/eu_borrower/mou/20110629-mou-romania_en.pdf

‘intended to avoid the proliferation of strikes’. The Romanian government eventually decided not to pursue the amendments it had been proposing.

CONCLUSION

The EU influence on employment relations in CEECs has been complex and varied. It was undoubtedly a help in the years from 1990 in establishing and cementing what was interpreted as a ‘European’ model with strong employee representation and legal protection for employees, following the example of a number of western European countries. That persisted as one form of influence. However, EU advice had shifted by the time of these countries’ accession towards an emphasis on flexicurity and reducing labour-market dualism which, in practice, meant increasing formal protections for non-standard employees while reducing protection for those on standard contracts. This, then, was not support for a clearly neo-liberal agenda, but elements of such an agenda could find encouragement in EU policy statements.

In the years after 2008 the EU changed both in its thinking and in its means for influencing individual countries’ policies. The change in thinking followed from a belief that problems with competitiveness and employment levels were linked to high wages and high employee protection. The change in means included recommendations to all member states’ governments and the powerful tool of conditionality applied to those in financial peril. Together these shifted the EU input towards vigorous support for elements of a neo-liberal agenda alongside some continuing recommendations for protecting the most vulnerable. The promotion of social dialogue inscribed in the Treaties amounted to little more than the consistent requirement to adjust wages or reform wage-setting institution ‘in consultation with the social partners’. In reality, however, these reforms tended to undermine collective bargaining mechanisms.

These shifts in thinking came as the contexts in individual countries were also shifting. Labour’s political resources were weakened over the years by declining membership. Unions appeared as less of a threat than in the early 1990s in all countries while the neo-liberal voice was much stronger with the growth in domestic business communities and with effective support from the EU after 2008. At the same time, the shifting economic context, with greater casualization of employment, pointed to a greater need for effective employee representation.

The European Commission did make some recommendations that could have improved the position of the casualised labour forces, but they were of marginal significance while measures proposed to reduce protection for regular

employees encouraged the general trends towards casualization and supported the trend towards reduced trade union strength. Thus, the EU has lost its initial position of supporting a ‘European’ model of employment relations to become irrelevant, if not complicit, in its replacement by a neo-liberal model.

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TABLES

Table 1 Union density rate, %

	2000	2004	2008	2011
Bulgaria	27.7	28.1*	20.1	
Croatia	40.0*		34.0	
Czechia	27.2	21.0	17.4	
Estonia	14.9	11.9*	7.1	8.1*
Hungary	21.7	16.9	16.8	
Latvia		20.0	14.8	
Lithuania	17.3**	14.1*	8.5	10.0*
Poland	20.5	18.8	15.6	14.1
Romania		38.3*	32.8	
Slovakia	32.3	23.6	17.2	16.7
Slovenia	41.6	43.7*	26.6	24.4

* previous year, ** following year
Source: ICTWSS database 4.0 (data code: UD), Bagić (2010) for Croatia

Table 2 Collective bargaining coverage, %

	2000	2004	2008	2011
Bulgaria		40.0*	30	18
Croatia			61	
Czechia	41	36	38	41
Estonia	29**	28	25*	
Hungary	47*	44*	36	
Latvia			25	20
Lithuania		12.5*	15	12
Poland	42**	38**	33	29*
Romania			70	20
Slovakia	51	40	40	35
Slovenia	100	100	92	

* previous year, ** following year
Employees covered by collective (wage) bargaining agreements as a proportion of all wage and salary earners in employment with the right to bargaining, expressed as percentage, adjusted for the possibility that some sectors or occupations are excluded from the right to bargain (removing such groups)

Source: ICTWSS database 4.0 (data code: AdjCov), Bagić (2010) for Croatia

Table 3 Statutory minimum wages as a percentage of average monthly earnings

GEO/TIME	2008	2012	2013

Bulgaria	40.6	37.8	38.2
Czechia	35.2	31.6	31.7
Estonia	34.8	33.0	:
Croatia	37.6	37.0	37.5
Latvia	37.4	43.4	42.0
Lithuania	40.2	42.0	48.3
Hungary	38.8	42.5	43.3
Poland	35.7	40.3	44.8
Romania	31.3	34.1	:
Slovenia	43.4	52.2	53.2
Slovakia	33.6	35.6	36.0
Average, 20 EU members	40.4	41.3	42.4

Source; Eurostat (data code: earn_mw_avgr2)

Note ; the EU average covers only those countries with a statutory minimum wage.

Table 4 Percentage of employees with temporary contracts

	2000	2008	2013
European Union (27 countries)	12.3	14.2	13.8
Bulgaria	:	5.0	5.7
Czechia	8.1	8.0	9.6
Estonia	3.0	2.4	3.5
Croatia	:	12.1	14.5
Latvia	6.7	3.4	4.4
Lithuania	4.4	2.4	2.7
Hungary	7.1	7.9	10.8
Poland	5.8	27.0	26.9
Romania	2.8	1.3	1.5
Slovenia	13.7	17.4	16.5
Slovakia	4.8	4.7	7.0

Source; Eurostat (data code: tps00073)

Table 5 Percentage of employees with part-time contracts

	2000	2008	2013
European Union (27 countries)	16.2	18.2	20.4

Bulgaria	:	2.3	2.7
Czechia	5.3	4.9	6.6
Estonia	8.3	7.2	10.2
Croatia	:	8.8	6.5
Latvia	11.3	6.6	8.1
Lithuania	10.2	6.8	9.0
Hungary	3.5	4.6	6.7
Poland	10.5	8.5	7.8
Romania	16.5	9.9	9.9
Slovenia	6.5	9.0	10.1
Slovakia	2.1	2.7	4.8

Source; Eurostat (data code: tps00159)

Table 6 OECD indicators of strictness of employment protection – individual and collective dismissals (regular contracts), 1990 to 2013

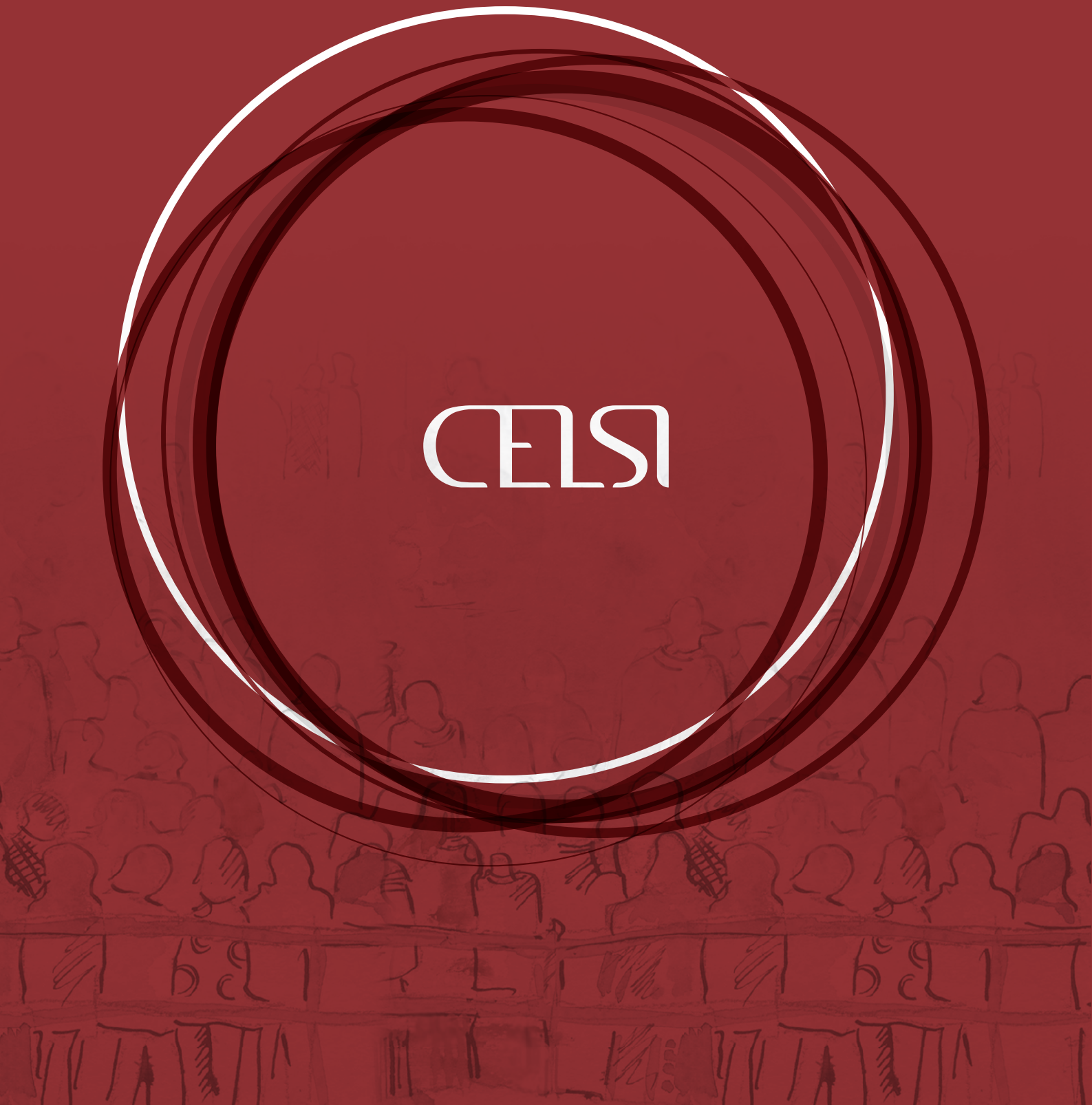
	1990	2000	2008	2013
Czechia	3.31 (1993)	3.31	3.05	2.92
Croatia		2.7 (2003)	2.59	
Estonia			2.74	1.81
Hungary	2.00	2.00	2.00	1.59
Lithuania		3.6 (2003)		
Poland	2.23	2.23	2.23	2.23
Slovakia	2.47 (1993)	2.47	2.22	1.84
Slovenia			2.65	2.60
Germany	2.58	2.68	2.87	2.87
Sweden	2.80	2.61	2.61	2.61

Source; OECD.Stat Extracts (data code: EPL_CD), http://stats.oecd.org/Index.aspx?DataSetCode=EPL_CD
WB staff calculations for Croatia in 2008 (WB, 2011: 17)

Table 7 OECD indicators of strictness of employment protection (temporary contracts), 1990 to 2013

	1990	2000	2008	2013
Czechia	0.50(1993)	0.50	1.13	1.44
Croatia		2.8 (2003)	2.63	
Estonia			1.88	3.00
Hungary	0.63	0.63	1.13	1.25
Lithuania		0.8 (2003)		
Poland	0.75	0.75	1.75	1.75
Slovakia	1.38 (1993)	1.38	1.63	1.75
Slovenia			1.81	1.81
Germany	3.25	2.00	1.00	1.13

Source; OECD, http://stats.oecd.org/Index.aspx?DataSetCode=EPL_CD
WB staff calculations for Croatia in 2008 (WB, 2011: 17)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