

# Trends in Industrial Relations in the European Union

Dana Volosevici

Petroleum-Gas University of Ploiesti, Bd. Bucuresti 39, 100680, Ploiesti, Romania  
e-mail: dana.volosevici@vplaw.ro

## Abstract

*The paper aims to scrutinise the trends and challenges affecting the actors of industrial relations, the trade unions and the employers' association, in a Europe promoting smart, sustainable and inclusive growth and a specific social model. While social dialogue helps companies to cope with financial and economic shocks, the crisis that afflicted the European market impacted both employers and employees, generating mutations and re-arrangements in the industrial relations.*

**Keywords:** *trade union; collective bargaining; European social model; industrial relations*

**JEL Classification:** *J51; J 52*

## Introduction

The European Union is the architect of a specific social model which relies on six pillars: workers' rights and working conditions, social protection, the labour market, public services, social dialogue and social cohesion<sup>1</sup>. Policies in place at EU level, including Europe 2020<sup>2</sup> and the new system of economic governance have encouraged the social dialogue and the continuous participation of the employees into the company's activity.

The European action on enhancing the social dialogue is double-levelled: there is a social dialogue at European level, while an important European legislation enhances the social dialogue at national level. The procedures for European Social Dialogue were introduced by the Maastricht Treaty, as part of a larger package of actions intended to strengthen the social dimension of European integration. Through the Treaty provisions (Articles 154-155 TFEU), the European social partners received competence to become co-regulators of the European labour market. The European social partners have acquired the right to negotiate framework agreements and then jointly request the Commission to start the process to converting these agreements into EU Directives and, therefore, becoming formally incorporated into the European law. In parallel, the European social partners can conclude autonomous framework agreements. According to article 155 TFEU, implementation of these autonomous agreements should be in accordance with the procedures and practices specific to management and labour and the Member States.

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<sup>1</sup> Vaughan-Whitehead, D. (Eds.), *The European Social Model in Crisis: Is Europe losing its Soul?*, Edward Elgar, International Labour Office, 2015, p. 3-6.

<sup>2</sup> European Commission, *Communication from the Commission, Europe 2020 - A strategy for smart, sustainable and inclusive growth*, COM (2010) 2020 final.

It is to be pointed out that some of the European Commission' proposals to enhance the dialogue were not accepted by the social partners. The European framework for transnational collective bargaining proposed by the European Commission in the Social Agenda 2006-2010<sup>3</sup> provides a relevant example. The Commission considered that transnational collective bargaining at either enterprise level or sectorial level could support companies and sectors to handle challenges dealing with issues such as work organisation, employment, working conditions and training. Moreover, the instrument was intended to give the social partners a basis for increasing their capacity to act at transnational level<sup>4</sup>. The consultation process revealed the firm opposition of the European employers who argued that a collective agreement above national level would be contrary to established employer preferences favouring further decentralisation of collective bargaining.

Therefore, the main level of bargain is the national one, which is also a result of the European action to increase and consolidate the national social dialogue. Thus, matters as the framework for informing and consulting employees<sup>5</sup>, the procedure in case collective dismissal<sup>6</sup> or transfer of business<sup>7</sup>, the European Works Council<sup>8</sup> are regulated through directives. The diversity of collective labour law is reflected in the Community Charter of Fundamental Social Rights of Workers and the Charter of Fundamental Rights of the European Union<sup>9</sup>, which envisage a range of collective rights: rights of information, consultation and participation for workers, freedom of association for employers and workers, the right to negotiate and conclude collective agreements, the right to resort to collective action. However, it should be envisaged that with the exception of the right to join or not to join a trade union, reference is made to national law and practice to establish the substance and exercise of these rights. The reference to national law is necessary because of the absence of clear and undebatable European competence in the broad field of collective labour law<sup>10</sup>. In accordance with the Article 153.5 of the Treaty on the Functioning of the European Union, social policy competencies do „not apply to pay, the right of association, the right to strike or the right to impose lock-outs”. With a labour force which is constantly increasing, the European Union promote an industrial relation system based on social dialogue as the cornerstone of the competitive social market economy that inspires the European social model. Therefore, the industrial relations are under constant scrutiny of the European Commission, both as coordinator of national legislation but also as creator of European policy.

The paper examines the trends and challenges that affect the key actors of the industrial relations, the trade unions and the employers' associations as well as the main result of their co-operation, the collective bargaining agreements.

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<sup>3</sup> European Commission, *Communication from the Commission on the Social Agenda*, COM/2005/0033 final.

<sup>4</sup> *Idem*, p. 8.

<sup>5</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 *establishing a general framework for informing and consulting employees in the European Community* - Joint declaration of the European Parliament, the Council and the Commission on employee representation, OJ L 80, 23.3.2002, p. 29–34.

<sup>6</sup> Council Directive 98/59/EC of 20 July 1998 *on the approximation of the laws of the Member States relating to collective redundancies*, OJ L 225, 12.8.1998, p. 16–21.

<sup>7</sup> Council Directive 2001/23/EC of 12 March 2001 *on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*, OJ L 82, 22.3.2001, p. 16–20.

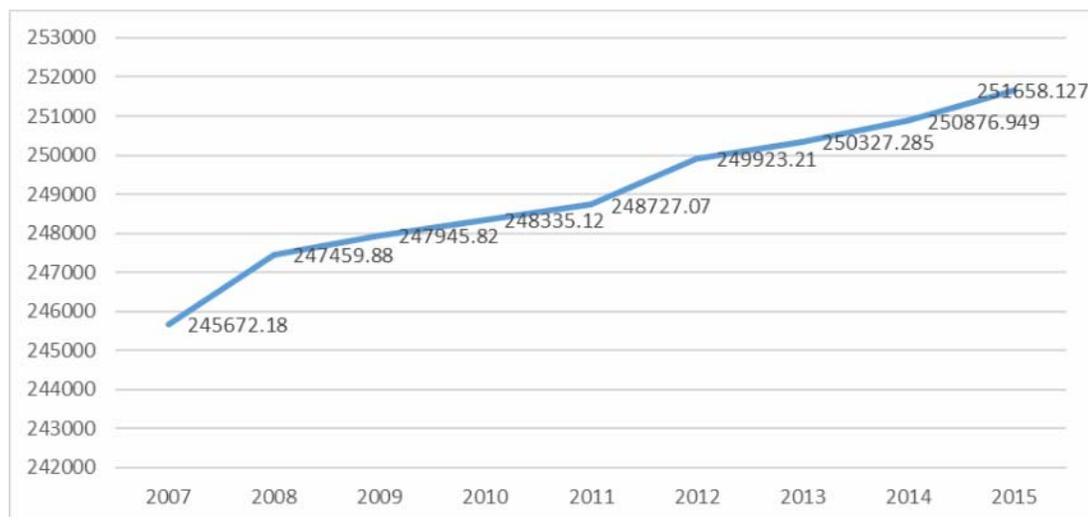
<sup>8</sup> Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 *on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees*, OJ L, 122, 16.05.2009, p. 28.

<sup>9</sup> *Charter of Fundamental Rights of the European Union* (2010/C 83/02), JO C 83, 30.03.2010, p. 389 – 403.

<sup>10</sup> Barnard, C., *EC Employment Law*, third edition, Oxford EC Law Library, 2006, p. 701.

## Key Actors in Industrial Relations

Despite de significant changes that have been seen in industrial relations over the past decade, there is a constant growth of the total labour force in the EU (Figure 1). It is therefore important to identify the existence of a common trend for the EU countries regarding the trade union and employers' organisations and the characteristics of such trend.



**Fig. 1.** Total labour force in the EU (unit 1000 persons)

Source: AMECO database 2015<sup>11</sup>

*Trade unions.* Levels of union density vary widely across the 28 EU states, from around 70% in Finland, Sweden and Denmark to 8% in France<sup>12</sup>. The average level of union membership across the whole of the European Union, weighted by the numbers employed in the different member states, is 23%. This level is a consequence of the relatively low levels of membership in some of the larger EU states, Germany with 18%, France with 8%, Spain with 19% and Poland with 12%.

The right of association is expressly provided by the Charter of Fundamental Rights of the European Union, in the article 12.1.: “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests”. Moreover, as abovementioned, the European Commission proposed transnational collective bargaining, which was intended to encourage the creation of transnational trade unions or even a European-wide trade union movement. However, the density, the organisational structure and the role played by the trade unions vary considerably between the Member States. While some trade unions concentrate on collective bargaining, some others are involved in public policy making, as part of the tripartite bodies and are consulted by administrative authorities on economic and social policy matters.

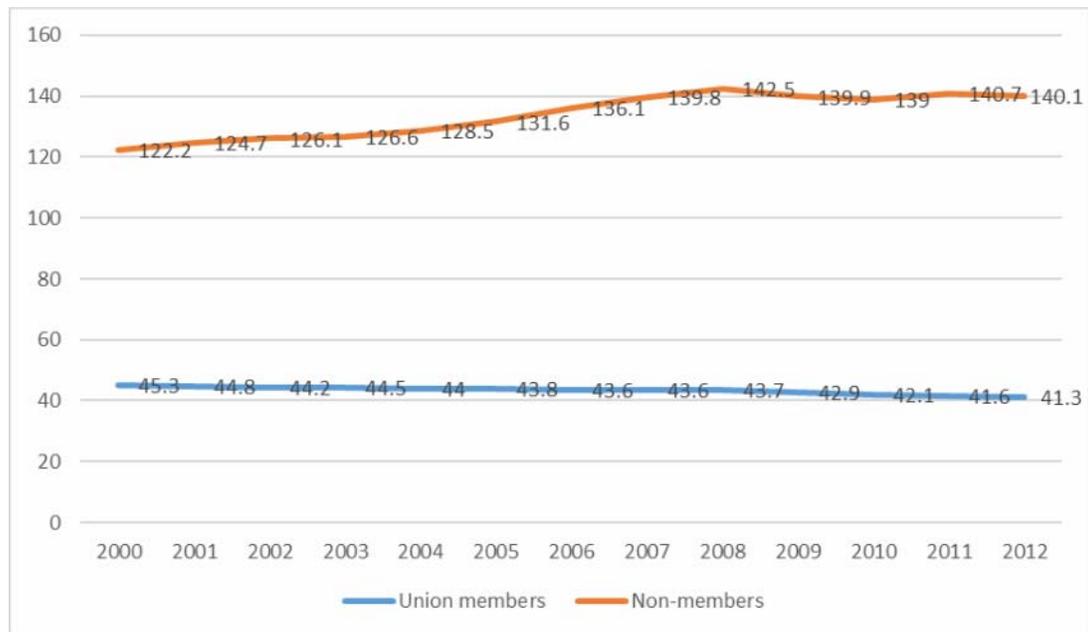
In some of the Member States, the trade unions are politically ideological and confessional. As an example, in the Netherlands, the largest trade union confederation is the FNV, which had

<sup>11</sup> European Commission, Annual Maco-Economic Database, [on-line], available on [http://ec.europa.eu/economy\\_finance/db\\_indicators/ameco/index\\_en.htm](http://ec.europa.eu/economy_finance/db_indicators/ameco/index_en.htm), [retrieved on June 5<sup>th</sup>, 2015].

<sup>12</sup> Fulton, L., *Worker representation in Europe*. Labour Research Department and ETUI. Produced with the assistance of the SEEurope Network, 2013, [on-line], available on <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2>, [retrieved on June 12, 2015].

1,367,800 members in December 2011 and the other main union confederation, the CNV, is considerably smaller with 338,000 members at the start of 2012. Both, the FNV and CNV trace their roots back to organisations with a clear religious or political orientation. The FNV emerged from the merger of the socialist and the catholic union federations; the CNV still describes itself as a Christian union and comes from a tradition of Protestant trade unionism.

The existence of such differences suggests that worker representation will continue to take place primarily within national context. But even at national level the trade unions need to address challenges related membership and legal criteria for being recognized as representative.



**Fig. 2.** Union membership and non-membership in EU Member States, 2000 -2012 (employees, in million)

Source: ICTWSS database<sup>13</sup>

As regards the union membership, the statistics reveal a continuous decrease of union members (Figure 2). The causes are multiple and complex. By way of comparison, it may be stated that the employees validated trade unions involved in the provision of unemployment benefits<sup>14</sup>. Belgium, Denmark, Sweden and Finland, who implemented the Ghent system, have high trade union density. We recall that the Ghent system refers to a system of voluntary unemployment insurance that is subsidized by public authorities and in which trade unions provide benefits to the unemployed<sup>15</sup>.

<sup>13</sup> Visser, J., *ICTWSS, Database on Institutional Characteristics of Trade Unions, Wage-settings, State Intervention and Social Pacts in 34 Countries between 1960 and 2012*, version 4, April 2013, Amsterdam Institute for Advanced Labour Studies (AIAS), University of Amsterdam, [on-line], available on <http://www.uva-aias.net/208>, [retrieved on June 12, 2015].

<sup>14</sup> Schnabel, C., Union membership and density: some (not so) stylised facts and challenges, *European Journal of Industrial Relations*, 19(3), p. 255-272.

<sup>15</sup> The Ghent system is named after the Belgian city where it was created at the end of the nineteenth century. The manual workers were organized in trade unions, some of which offered voluntary unemployment insurance to their members. Faced with increasing demand for benefits, the union asked the local authorities for financial aid. In 1900, the municipality granted this request, setting up a municipal fund to support union activities in the field of unemployment benefits. At the same time, the authorities confirmed the trade unions in their role as administrators of the unemployment insurance. The unemployed continued to apply for benefits through their trade union, which then provided both the

The legislative measures, especially those related to the criteria for the trade unions to be considered representative for the purpose of participating in the social dialogue, could have discouraged the employees to adhere to trade unions which seen their representativeness challenged. In 2008, France increased the minimum level of support for the trade union to 10% of the votes at company level and 8% of the votes at sector level. In 2011, Romania, the new law on social dialogue<sup>16</sup> imposed the following levels of support: 5% of the total number of employees of the national economy, at the national level, 7% of the total number of employees of the sector, at the sector level and 50% + 1 employees of the company, at the company level.

In parallel, the economic crisis generated a decrease of employment contracts concluded of indefinite duration, in favour of fixed-term contracts and part-time contracts employees, who are less likely to adhere to trade unions.

*Employers' associations.* Employers' associations are heterogenic as density, structure and role (Figure 3). If the trade unions are mainly created solely to manage industrial relations, the majority of employers' associations represent the interests of business both is their capacity of employer and as business actor.

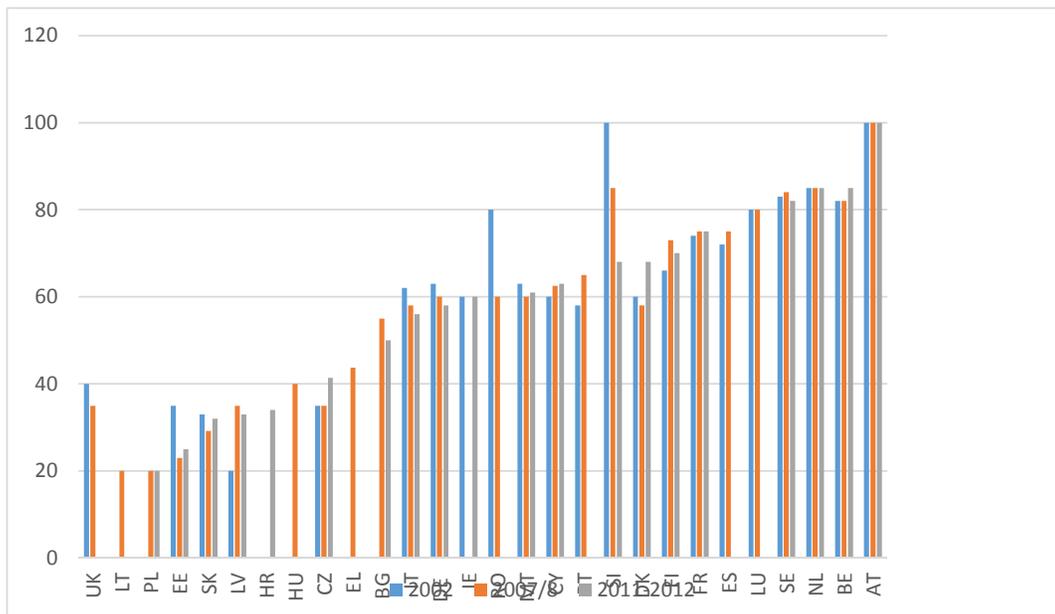


Fig. 3. Employers' organisation rate in EU Member States 2002-2012 (proportion of employees employed by companies that are members of employers' organisations)

Source: ICTWSS database<sup>17</sup>

Across the EU, the membership is voluntary, with the exception of Austria, with the membership of the general and sector sections of the Federal Economic Chamber being compulsory. Italy and Romania have the largest number of employers' organisations involved in cross-industry social dialogue, with fifteen respectively fourteen organisations. Some countries impose legal criteria to be met by the employers' organisation so that they become representative and therefore, part of the social dialogue. In Romania, the legal criteria refer to the number of employees, not to the number of employers, favouring the large employers. Thus, an employers' organisation is representative at national level if their members employ at least

union-financed and the city-funded benefits. Vanthemsche, G. *Unemployment insurance in Interwar Belgium*, *International Review of Social History* 35(3), 1990, pp. 349-376.

<sup>16</sup> Law no. 62/2011 on social dialogue, republished, Official Gazette no. 625 of 31 august 2012.

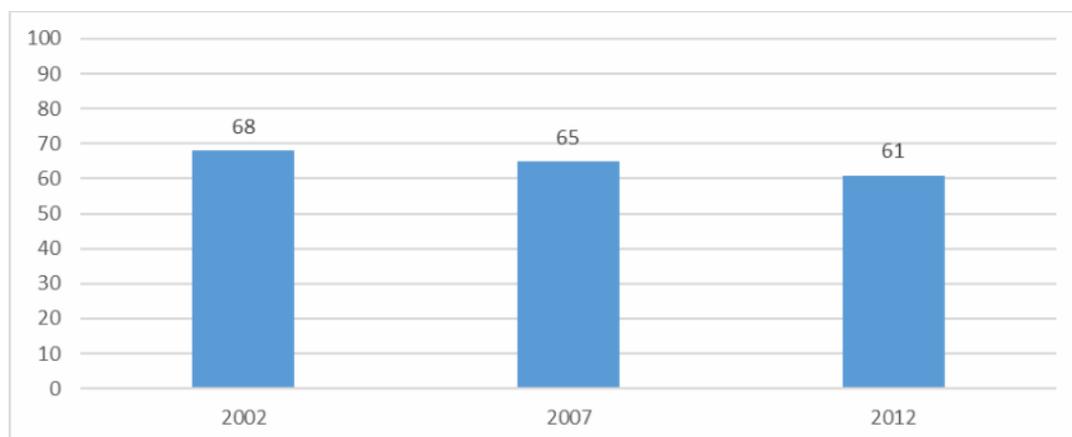
<sup>17</sup> Visser, J., *idem*.

7% of the total number of employees of the national economy minus the public sector employees. At sector level, the member shall employ at least 7% of the total number of the sector minus the public sector employees. Only the representative employers' organisations are allowed to participate at collective bargaining and, more generally, to the social dialogue.

## Collective Bargaining

In a broad sense, collective bargaining is a process of interest accommodation which includes all sorts of bipartite or tripartite discussions relating to labour problems directly or indirectly affecting a group of workers<sup>18</sup>. In a narrower sense, collective bargaining involves a process of negotiations between individual employers or representatives of employers' organisations and employees' representatives. Any agreement concluded is recognised as binding by the parties represented. As Advocate General Jacobs pointed out in Albany<sup>19</sup>, "it is widely accepted that collective agreement between management and labour prevent costly labour conflicts, reduce transaction costs through a collective and rule-based negotiation process and promote predictability and transparency. A measure of equilibrium between the bargaining power on both sides helps to ensure a balanced outcome for both sides and for society as a whole".

Despite of the benefits, collective bargaining coverage in the European Union remains under 70% and on a descendent trend (Figure 4).



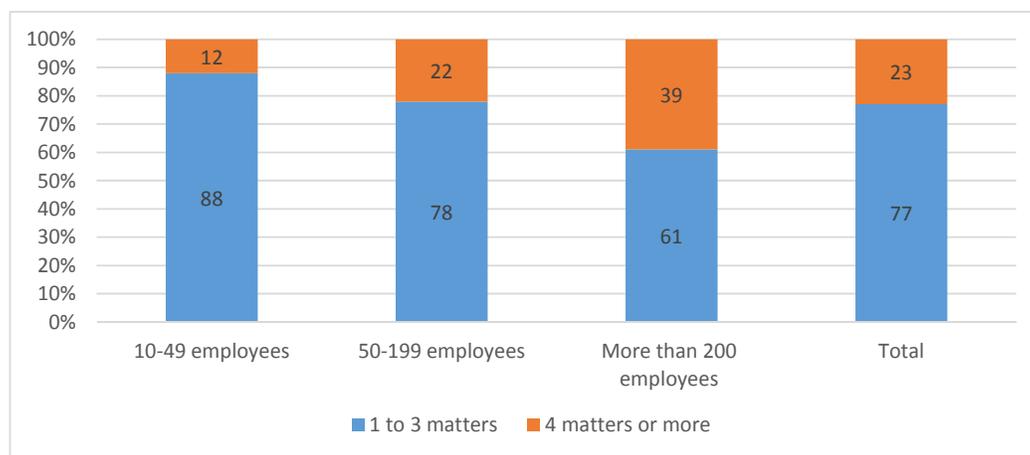
**Fig. 4.** Collective bargaining coverage in the European Union 2002-2012 (proportion of all employees covered by a collective agreement)

Source: Industrial Relations in Europe 2014, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2015

The content of collective agreements may also be a matter of analysis. While the specific content can be determined by the contracting parties, it comprises mainly normative clauses and contractual clauses. The normative part refers to the terms and conditions of work, such as working conditions, wages, fringe benefits, working hours, time off, job security, training, workers' participation. The contractual clauses establish the rights and duties of the parties, such as the peace obligation which imposes that for the duration of the agreement neither of the parties is permitted to initiate industrial action against the other party. In fact, the main matters of negotiations are limited to wages, financial participation, working hours, job security. In France, in the enterprises employing less than 50 employees, the periodical negotiation covers almost exclusively matters related to wages and financial participation (Figure 5).

<sup>18</sup> Cordova, E., *Collective Bargaining*, in Roger Blanpain (eds.), *Comparative Labour Law and Industrial Relations*, 1<sup>st</sup> ed., Kluwer, Deventer, 1982, p. 220.

<sup>19</sup> Case C-67/96, ECR I-5751, para. 181.



**Fig. 5.** Negotiation matters in French collective bargaining, in 2012

Source: DARES<sup>20</sup>

Another dominant trend is the decentralisation of the collective bargaining. With two exceptions, Belgium, as a result of the role played by the government in the wage negotiations in 2013 and Finland, following the return to cross-sector wage system in 2011 and 2013, it is to be pointed out a notable downward shift. The causes are multiple. Firstly, during the economic crisis the company level bargaining appeared to provide a prompter and more adapted response to the specific financial and organisational requirements, allowing the employer to readjust quickly to the market conditions. Secondly, legislative reforms generated a reposition of the collective bargaining. In Romania, the 2011 law on social dialogue abolished the cross-industry agreement (national collective agreement) and replaced the sector agreement with sector agreement. As a result, Romania joins the group of country where the company-level collective agreement is the main form of collective bargaining: Czech Republic, Hungary, Poland, Estonia, Latvia, Lithuania, Malta, Ireland and the United Kingdom.

One of the consequences of decentralisation regards the contents of the collective bargaining agreements. Thus, in general, national level negotiations for the whole economy cover a wide range of issues, including social security and industrial relations. Industry or sector level and company negotiations cover pay, pay structures, equality between men and women, financial participation, working time and a range of other working conditions. In the majority of the Member States, company level negotiations should also cover a wide range of topics, such as occupational equality between men and women, salary savings schemes, measures to aid disabled workers and equal pay.

Moreover, company level bargaining diminishes the risk of unfair competition acts. In *Albani*, the Court had to consider whether collective agreements on wages and conditions, concluded at sector level, could be shielded from European competition law. The Court has, essentially, ruled that agreements entered into within the framework of collective bargaining between employers and employees and intended to improve employment and working conditions are excluded from the scope of Article 101(1) TFEU. But once the level of bargaining is shifted to company level, it is difficult to sustain that the Article 101(1) TFEU could become applicable, due to the narrow applicability of the collective agreement.

<sup>20</sup> DARES, enquête Acemo «dialogue social en entreprise», in *Négociation collective et grèves en 2012. La négociation toujours soutenue par des incitations légales, légère diminution des grèves*, Dares Analyses, nov. 2014, no. 089, p. 3.

## Conclusion

The current industrial relation landscape in the EU reveals that the national level remains the main regulator of the social dialogue, despite of the efforts of the European Commission to enhance the role played by the industrial actors at European level. Both the trade unions and the employers' associations are heterogeneous as role, structure and density, and the consequence is that the collective bargaining agreements vary in terms of coverage and importance.

However, some trends may be considered relevant for the majority of the Member States: the decentralisation of collective bargaining, the decrease of collective bargaining coverage, the decline of trade union density and the relative stability of the employers' association. The years to come will answer at what extent the present trends have been brought about by the economic crisis or if they are a continuation of a long-term trends.

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