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EUROPEANIZATION OF SOCIAL DIALOGUE IN CENTRAL AND EASTERN EUROPE: FROM ACCESSION TO CRISIS RECOVERY

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1. INTRODUCTION

This paper critically looks at the role of the EU in promoting social dialogue in Central and Eastern Europe (CEE) since the accession period. Around two decades ago, the CEE countries started building their legal and institutional framework for collective bargaining, while at the same time transposing *acquis communitaire* into their legal systems. During the accession period, the matters of social dialogue formed a part of the social *acquis* which the candidate countries were supposed to transpose and implement. At the same time, the EU has been offering support to social partners in CEE by the virtue of various forms of pre-accession assistance. However, with the recent EU developments, particularly European economic governance measures, which put an emphasis to decentralization of industrial relations in Member States, the EU's approach towards social dialogue in CEE requires further re-assessment. The industrial relations in most of the CEE countries are already decentralized, with collective bargaining predominantly taking place at company or enterprise level. Further decentralization may therefore additionally weaken already weak collective bargaining position of trade unions in these countries. On the country examples of Slovenia, Slovakia and Poland, this paper aims at re-assessing the role of the EU in building legal and institutional framework of rules for collective bargaining in CEE, by investigating the role which the EU had in institutionalizing social dialogue in the accession period and comparing it with the implications created by the recent EU policy measures.

The country selection in this paper has been made in order to reflect the different industrial relations regimes in CEE. The absence of sectoral collective bargaining and low coverage of collective agreements represent general features of CEE industrial relations, which make this group of country unique and incomparable to the other European countries.[1] Nevertheless, the industrial relations of the CEE countries are greatly diversified. Slovenia has the most centralized system of collective bargaining and the most developed cross-sectoral and sectoral collective bargaining from the entire CEE group. Slovakia has also fairly developed sectoral level of collective bargaining, compared to the other CEE countries. In Poland, collective bargaining takes place almost solely at company or enterprise level while sectoral or "multi-establishment" collective bargaining plays rather marginal role. Thus, in the context of this paper, Poland represents the most decentralized country example. The data in this paper derives from the interviews which were conducted in the three countries in 2012, for the purpose of conducting a broader study on the development of legal and institutional framework for collective bargaining in CEE in the last two decades.[2]

The paper is structured in the following manner. Firstly (section 2), the paper explains the problematic aspects of building legal and institutional framework of rules for collective bargaining in CEE on the example of the three respective countries. Secondly (section 3), the paper assesses the role of the EU in building social

[1] European Commission (2008:50).

[2] The officials and legal experts of the trade unions and employer's organisations have been interviewed in these countries, as well as legal experts in the Ministries for labour and social affairs. In total, 20 interviews have been conducted in these three countries.

dialogue infrastructure during the accession period. Thirdly (section 4), the paper turns to the recent developments taking place at the level of the EU and critically assesses their meaning for social dialogue in CEE. The remaining section is devoted to reaching the conclusions on the topic of this paper.

2. BULDING INDUSTRIAL RELATIONS IN SLOVAKIA, SLOVENIA AND POLAND

With the demise of communism in early 1990s, the CEE countries started opening their economies and introducing free market. The introduction of the free market rationale involved not only economic reforms, but also substantial change of the legal mindset, including the reforms of labour markets and labour laws. The social partners, which played only marginal role in the previous communist regime, had to undertake new prerogatives, which involved collective bargaining - in most of the CEE countries; the practice of concluding collective agreements was not exercised or was rather limited before 1990s. The process of building legal and institutional framework for collective bargaining started in the early 1990s. In the first place, the reforms involved introducing freedom of association and free organization of social partners in accordance with the relevant ILO conventions. On a general level, it can be concluded that the process of building legal and institutional framework of rules for social dialogue in CEE was shaped by the two distinct agendas throughout 1990s:

(a) *The agenda of building the industrial relations institutions* – The general principles of labour laws were majorly re-constructed in early 1990s, as the legal rules supporting centrally-planned economies were not adequately meeting the needs of the free market economies. Likewise, legal provisions defining the role and activities of social partners had to be promulgated. The free organization of the social partners had to be made possible and collective bargaining had to be regulated as voluntary. The new legal rules had to ensure that social partners may mutually set the labour conditions which were previously regulated by statutory law. As the result, the new institutions were introduced in collective labour laws, such as freedom of association, social dialogue, trade union representativeness, as well as different forms of employee representation.

(b) The agenda of introducing the "free market rationale" in labour laws – The post-1990s labour law had to be built in the way to support free market and economic reforms. This objective involved allowing more flexible forms of labour market regulation and abolishing the vast employee protection codified in the communist labour provisions, otherwise considered to be too rigid for changed economic circumstances. It is essential to understand this agenda as a two-fold process. In the first place, as antipode to the communist centrally-planned ideology, the free market ideas enjoyed wide societal support in CEE in 1990s. The language of affording same or similar level of labour standard protection as the one from the communist period was not nurtured, especially since the policy makers expected that labour standards would be eventually rendered by fast economic growth and rapid economic reforms. In the second place, once the CEE countries opened their markets, their economies became exposed to the ongoing trend of globalisation - which had already affected other European countries since 1980s – and which gave impulse towards creation of the rules which are not rigid and do not hamper the international competition.

As the result of the two agendas which coloured the process of legal and institutional building of industrial relations, the notion of decentralised collective bargaining found a fertile ground in CEE (with the notable exception of Slovenia). The process of decentralisation was, moreover, nurtured by the fact that the institutionalisation of social dialogue has been rather slow, because of the lack of social dialogue tradition and weak role of trade unions, inherited from the previous communist regime. Today, the CEE trade unions' capacities at the sectoral level are weak, while the organisations of employers are reluctant to engage in social dialogue. Also, the trade union power has been shrinking throughout 1990s, as the density rates were declining.[3] The collective bargaining coverage rates vary from one country to another and are only exceptionally high in Slovenia (over 90%), while in Slovakia and Poland they amount to around 40%.[4] Despite the fact that all legal systems allow for the possibility of the extensions, the sectoral agreements rarely become generally applicable for the entire sector. The existing CEE studies moreover point out that in the countries where sectoral collective

[3] Visser (2011).
[4] Ibid.

agreements exist, their regulatory role is challenged by the fact that they tend to replicate the provisions already set out in the labour codes, rarely adding new provisions. [5]

The insertion of the free market rationale into the legal mindset created specific legal solutions, and in some cases even obstacles for further expansion of the trade union role. Likewise, in Poland, where decentralisation of industrial relations has been comparatively more prominent than in Slovakia and Slovenia, specific legal developments which were undertaken since 1990s, when a systematic labour law reform started, underpinned the prominence of collective bargaining at company level. Poland has never recodified its Labour Code, which dates from 1974, although its structure has been almost completely changed with a number of amendments.[6] Moreover, in 1991 – thus at the earliest period of the economic reforms, Poland adopted the Trade Union Act, which introduced freedom of association in the legal system, as understood by the ILO treaty architecture. With the Trade Union Act, the workers were granted rights to belong to a trade union, trade unions were entitled to be independent from the state and social partners were granted rights to collective bargaining. Essentially, the most prominent amendment to the Labour Code regarding collective labour agreements took place in 1994, which introduced the division between the "single-establishment" and "multi-establishment" collective agreements. Such division between the two major types of collective agreements, unique compared to the other countries in this study, has not been changed ever since 1991. In essence, as the provisions on the two types of collective agreements did not provide clear recourse to sectoral collective agreements, they underpinned the rationale of collective bargaining decentralisation. Furthermore, Polish Labour Code is underpinning decentralisation by stipulating the possibility of delivering internal regulations at the company level, provided unilaterally by an employer in the companies with more than 20 employees, when no collective agreement is applicable.

Similarly, in Slovakia, the legal provisions which were created in 1991 did not provide for a clear definition of sectoral collective agreements, but instead stipulated a generic notion of "higher-level agreements" (which should be interpreted as including all agreements concluded at levels higher than company). Similarly to Poland, the labour law reform was taking place over the course of many legal amendments, including the recent crisis period; but in practice, sectoral collective bargaining established a firm foothold in industrial relations. While the initial legal division between the two types of collective agreements ("enterprise-level agreements" and "higher-level agreements") has never been subjected to legal modifications, the legal amendments were substantially devoted to changing the legal rules on collective agreements extension and amending its conditions many times.

In Slovenia, a thorough legal reform has been undertaken as late as in 2006. The 2006 Collective Agreements Act introduced voluntary system of collective bargaining, based on autonomous employer and trade union organisations with voluntary membership (while abolishing the mandatory membership of the employers with the Chamber of Commerce). The 2006 Act defined the parties to collective agreements as well as the content and procedures for their conclusion. Nevertheless, the number of concluded collective agreements was higher than in Poland and Slovakia even before the 2006 legal reform. Already in early 1990s, the centralised collective bargaining system started appearing in Slovenia, based on the two cross-sectoral ("general") agreements applicable to the entire public and private sectors, next to the umbrella of sectoral level collective agreements existing in almost all the sectors. Unlike in Poland and Slovakia, the 2006 Act did not stipulate the levels at which collective bargaining may take place, thus leaving the social partners to conduct negotiations at the levels they see fit. The 2006 Act is furthermore specific for allowing the insertion of opening or derogation clauses in the sectoral collective agreements, allowing derogations below its standards at the company level – which is a legal solution not in existence in Slovakia and Poland. However, there is no official data about the frequency of use of such clauses, although the interviewees from trade unions claim that their use has been rather limited and usually subjected to the condition of employers' financial difficulties.

As the three country examples demonstrate, the extent of decentralisation of collective bargaining is in many instances underpinned by the specific legal architecture. Nevertheless, it should be underlined that the legal

[5] Ghellab and Vaughan-Whitehead (2003:8).

[6] Despite the amendments, some provisions from the Labour Code have still remained valid in their integral version since 1974. Otherwise, the period from 1990 to 2002 brought around 20 amendments to the Labour Code, according to Gardawski (2003).

regulation did not solely attribute to the shape of industrial relations, since other factors also played a role, including historical legacies (as an example, Slovenian centralized style of collective bargaining can be linked to the Yugoslav legacy of trade unions' self-management). Still, with a sufficient degree of generalization, it can be noted that several common traits of CEE collective labour laws greatly support the predominance of collective bargaining taking place at local levels. The examples of such common features include the lack of specific definition of sectoral collective agreement – as Polish and Slovak example demonstrate; the lack of legal possibilities to conclude different forms of derogatory clauses and generally vast statutory labour regulation (in Poland particularly), which deprives social partners from incentives to enter into collective bargaining. The collective labour law which developed in CEE is featured by the strong hierarchical structure between the statutory law and collective labour agreements, where the rule set out at the higher level cannot be derogated at lower levels.

The major reason lying behind the CEE "prolific and cumbersome"[7] legal regulation is the overwhelming role of the state in industrial relations, inherited from the communist era, followed by the weak role of social partners. In practice, collective labour agreements are struggling to become accepted as a source of law, because of the weak collective bargaining tradition. While the CEE countries have strived to build flexible labour regulations that would reflect free market rationale ever since the early 1990s, the weak use of collective labour agreements challenge the notion of flexibility of their labour laws. In the rest of this paper, the process of legal and institutional building of industrial relations in the three countries of CEE will be observed through the lenses of the EU, by assessing the ways in which the EU contributed towards the ideas of legal and institutional building and greater use of collective labour agreements as a source of flexible regulation.

3. THE ROLE OF SOCIAL *ACQUIS*

At the beginning of the accession process, the EU recognised that the CEE economic models, types of welfare and industrial relations differ from the other European countries. It has been acknowledged that the CEE countries would be entering the EU with lower wages, lower labour protection and weaker role of trade unions compared to the other European countries. In order to bridge the "social" gap with the other Member States, the goal of "making success in the social field" was set out by the Nice European Council already in 2000.[8] However, if the EU was to transfer any social norms and values to the candidate countries, the valid question was what would be content of such norms and what kind of techniques would be used for their transferral.

Since the 2004 and 2007 Eastern European enlargements, social dialogue forms a part of the *acquis communitaire* which the candidate countries are supposed to transpose and implement in their legal systems. However, the criteria for social dialogue developments in the candidate countries are not set out in the clearest terms. Social dialogue is understood as a part of so-called "Copenhagen criteria",[9] which in a broad manner require from the candidate countries to achieve the level of institutional stability which is essential for democratic life and functioning market economy. Correspondingly, social dialogue is understood to belong not only to legal, but also institutional *acquis*, because its improvement involves not only the transposition of the legally binding secondary law, but also the efforts towards building autonomous social dialogue infrastructure. The institutional aspects of social dialogue *acquis* play particularly prominent role in helping national social partners to participate in the implementation of the secondary EU law into the national law, as well as helping them to participate in the EU-related mechanisms such as European social dialogue or European employment strategy. For some scholars, like Borragan and Smismans, the fact that the EU required bottom-up, institutional building efforts from the CEE social partners made the interpretation of the

[7] Pollert (2000:199).
[8] European Council, Presidency Conclusions, Nice, 7-9 December 2000.
[9] European Council, Presidency Conclusions, Copenhagen, 21-22 June 1993.

social *acquis* "maximalistic", [10] since these conditions were otherwise not required from any other Member State.

However, since no official EU document beyond the Copenhagen criteria further specified what kind of social dialogue reforms are expected in the candidate countries, the Commission has been given the entrepreneurship role in directing the negotiating process on social dialogue with the candidate countries. The Commission's opinions over the social dialogue developments in the candidate countries were regularly expressed in their annual reports. However, the Commission has not typically described the details of the social dialogue situation in the country, nor it has been giving clear-cut and specific recommendations for improvements. Typically, the Commission used similar expressions like the following:

> "The autonomous social dialogue and social partners' structures at sectoral level need to be further strengthened, also in the regions. The Council of Economic and Social Partnership has to be strengthened. Collective bargaining, particularly at sectoral and regional level, needs to be reinforced. Forms of dialogue and workers' participation should also be promoted at enterprise level. The social partners have to be, in general, more widely involved in the social and employment policy, in order to play a role in the adoption and implementation of the acquis"[11]

Moreover, the Commission could not use any sanctioning mechanism to encourage any social dialogue development. Instead, in order to induce bottom-up developments, the Commission developed a "capacity-building" approach aiming at bottom-up improvement of organisational, financial and personnel capacities of the trade unions and associations of employers. Capacity-building has been executed via different types of programmes, like PHARE or Twinning,[12] which aimed at improving know-how via strengthening the transfer of knowledge and linkages with the social partners from the other Member States. Next to PHARE and Twinning, similar projects were as well initiated under the heading of European Social Fund and by European social partners, also with the aim of improving the capacity of CEE social partners.

Overall, as the interviews with the social partners in the three countries reveal, the EU influences towards social dialogue developments during the accession stage have been limited in the sense of inducing specific legal changes. In principle, at the beginning of the transition period, the ratification and transposition of ILO Conventions[13] was more influential, because this helped inserting the principle of freedom of association into the legal systems. Only in very limited cases, as Slovakian example demonstrates, the reforms were undertaken by consulting the EU and ILO experts. [14] However, social partners, particularly trade unions in the three countries, give positive evaluation of the capacity-building initiatives, which allowed them to learn more about collective bargaining techniques and to establish links with social partners from other European countries. As such, the EU's role for building social dialogue capacities in CEE can be marked as supportive. Also, it also needs to be taken into account that the process of building legal and institutional framework of rules is a complex and time-consuming process which may not be solely subjected to the EU rules of conditionality, but requires a concerted action on the side of all involved national actors – the state and social partners. Also, it is relevant to note that the institutionalisation of social dialogue has been expected to take

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[10] Borragan and Smismans (2012).

[11] European Commission, Regular Report on Slovakia's Progress towards Accession (Brussels, 2000), available for download at:
http://ec.europa.eu/enlargement/archives/enlargement_process/past_enlargements/eu10/slovakia_en.htm

[12] *PHARE* (Poland and Hungary: Action for the Restructuring of the Economy) was originally devised in 1989 to assist Poland and Hungary, but since 1994 it has been extended and adapted to the other applicant countries. It became the major financial instrument in the pre-accession process. Its main activities are concerned with the preparations of the administrations and institutions of the candidate countries to transpose and implement the *acquis communitaire*. *Twinning* projects also date back from 1989 and involve the cooperation projects between the experts from the existing Member States and institutions in the candidate countries, aimed at sharing experiences and know-how in dealing with EU law and policy.

[13] Particularly, the following ILO Conventions: Freedom of Association and Protection of the Right to Organise Convention No. 87, 1948 and Right to Organise and Collective Bargaining Convention, No. 98, 1949.

[14] Munková and Czíria (2002).

place in much shorter time-span in CEE than it took place in other Member States of the EU, where social dialogue traditions have been developing over the course of several decades.

Furthermore, it needs to be underlined that the limited influence which the EU exerted on the legal and institutional building for social dialogue in CEE can be partially contributed to the weak message which was directed to the candidate countries. As explained already, the accession criteria did not contain specific conditions for collective bargaining or definition of collective labour agreement. The European Commission was, as a rule of thumb, repeating the importance of building social dialogue infrastructure in its regular reports, particularly at sectoral and cross-sectoral levels, but the national policy makers or social partners were not provided with further explanations or clear criteria over the importance of centralised forms of collective bargaining. The weak message which was coming from the EU on the matters of social dialogue has been a part of the weak influence which the EU could have afforded with respect to social aspects of the enlargement process. The latter has been explained in the literature from different perspectives. For some CEE scholars like Lendvai, the EU has been translating its own tensions between economic and social policies to the candidate countries.[15] Keune argues that the absence of a comprehensive European social model has restricted the weight afforded to the social issues in the accession process, and that economic *acquis* created additional pressures for wages and working conditions via economic requests for competition and deregulation. [16] For Borragan and Smismans,[17] the EU contains inherent limits in requiring social dialogue reforms in the candidate countries, for the reasons that it does not have a single industrial relations model and a coherent normative theory regarding social dialogue which could be as such transferred to the candidate countries. Another opinion has been expressed by Lafoucriere and Green,[18] who claim that a model of industrial relations, which they chose to call "concerted regulation model", represents an intrinsic element of the European social model. Such model is consisted of the common features of industrial relations in Europe, i.e. the active participation of social partners in the labour market and these features have been nurtured as a more flexible alternative to the legislative standard-setting in the majority of Member States. In that respect, the authors continue, concerted regulation model finds no similar counterpart in the other parts of the world. The reference to these common features should be more emphasised in the accession process.

This section demonstrated that the EU has had rather limited impact in legal and institutional building of framework for collective bargaining rules in CEE during the accession period. However, despite the absence of clear criteria for conditionality regarding social dialogue and the absence of well-defined EU industrial relations model that can be promoted and transferred to the candidate countries, it is in the context of this paper important to underline that the EU has been principally supportive of collective bargaining developments at all possible levels in the candidate countries (national/cross-sectoral, sectoral, company or enterprise). As the following section demonstrates, the recent crisis period brought more nuanced approach of the EU to collective bargaining in the Member States, which sheds a new light on the issues of CEE industrial relations.

4. THE RECENT EU ECONOMIC GOVERNANCE AND CEE INDUSTRIAL RELATIONS

The economic crisis created an incentive for the EU seeking to improve its governance structure to address social impacts of the economic crisis, particularly the unemployment, poverty and social exclusion. Europe 2020 Strategy was designed with the objective of addressing the negative effects of the crisis with renewed goals, tools and policies. The major goal of making the EU economy „smart, sustainable and inclusive" requires active participation of the EU and national actors, including policy makers and social

[15] Lendvai (2007:32-33).
[16] Keune (2008:7).
[17] Borragan and Smismans (2012).
[18] Lafoucriere and Green (2006:235).

partners. Also, many goals set out in the Europe 2020 Strategy can be successfully achieved by the means of collective bargaining and social dialogue. Essentially, Europe 2020 is about the EU communicating policy guidelines to its Member States on a regular basis, whilst it is expected from the countries to draw their national reform programmes as well as stability and convergence programmes, in which they would represents their policy programmes aimed at reaching the set of the EU objectives. However, as the following lines briefly explain, what the renewed EU goals and tools impose on the Member States is the creeping pressure for collective bargaining decentralisation.

Pursuant to Europe 2020, individual measures of economic governance were adopted, addressing macroeconomic coordination, fiscal coordination and structural reforms in the EU. The new method of coordination of economic policies introduced alongside Europe 2020 was Euro Plus Pact, created in 2011, which calls for greater collective bargaining decentralisation. [19] More precisely, in fostering competitiveness, the Pact sets out that the Member States should:

> "review the wage setting arrangements, and, where necessary, the degree of centralisation in the bargaining process, and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process".

However, not only Euro Plus Pact explicitly calls for changes in the national industrial relations regimes. In particular, *"six-pack regulations",* [20] devoted to surveillance of macroeconomic and fiscal policies in Member States, can be interpreted as potentially affecting national systems of industrial relations. Particularly, "*six-pack regulations*" prescribe that in the cases of macroeconomic imbalances, the EU can rely on the set of preventive and corrective measures in the individual countries. This may include the Council undertaking an in-depth country review, drafting the national corrective plan and issuing a list of national recommendations to be undertaken by the national governments. The Council can monitor the progress of implementation of the recommendations, and if necessary it can issue a decision by which it would declare non-compliance. Strict fines, up to 0,1% of national GDP, can be imposed to the countries not complying with the recommended corrective actions ("excessive balance procedure").[21] As the Council may issue recommendations which can relate to wage-setting arrangements, these instruments of macro-economic policy coordination may challenge collective bargaining systems, especially when taking into account the legally binding nature of the *six-pack* legislation and the existence of fines.

Other policy instruments under the new EU governance architecture also provide references to wage bargaining. For instance, 2011 Annual Growth Survey [22] prescribes that the countries which have large account deficits should present corrective measures in order to overcome macroeconomic imbalances, which can also include changes related to wage setting mechanisms.

The presented policy instruments suggest that under the new economic governance measures, adopted pursuant to Europe 2020 Strategy, matters of social policy and in particular collective bargaining and wage setting mechanisms of Member States increasingly become affected by the EU. Likewise, in the Report on Competitiveness, issued by the Directorate on Economic and Financial Affairs, [23] the Commission explains how wage bargaining becomes a crucial instrument for economic growth in the EU:

> "Possible losses in growth potential are generally projected to be stronger in Member States with large competitiveness problems. In these countries, wage bargaining systems face the double challenge of

[19] European Council, Presidency Conclusions, Brussels, 24-25 March 2011. Euro Plus Pact comprises of the Eurozone countries, as well as Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania.
[20] http://ec.europa.eu/economy_finance/articles/governance/2012-03-14_six_pack_en.htm.
[21] Regulation (EU) No. 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area (OJ [2011] L306 8).
[22] European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Annual Growth Survey: advancing the EU's comprehensive response to the crisis, COM(2011)11, Brussels, 12.1.2010.
[23] European Commission, DG Employment and Financial Affairs 'Surveillance of Intra-Euro-Area Competitiveness and Imbalances' (2010) 1 *European Economy* 2.

having to adjust to past losses in competitiveness as well as to reduced productivity growth and deteriorated labour markets."

In the same Report, the Commission acknowledges that wage bargaining is traditionally performed by the social partners without interference of the governments. However, the Report continues, it is necessary to seek the ways by which policy-makers can influence wage settings:

"In most Member States, wages are formed in a collective bargaining process without formal involvement of governments. Nevertheless, policy-makers can affect wage setting processes via a number of ways, including the provision of information or wage rules, changes to wage-indexation rules and the signalling role played by public sector wages. In addition, reforms of labour markets should also contribute to make wage setting processes more efficient."[24]

While it is obvious that the matters of collective bargaining, wage-bargaining in particular, have recently become increasingly affected by the EU laws and policies, the question is how these developments affect the CEE industrial relations, which are already sufficiently decentralised. In order to answer this question, the following lines contain a brief overview of the recent social dialogue developments in the three CEE countries:

a) In Slovakia, as recent surveys from Slovak experts demonstrated, [25] the crisis did not produce significant changes in industrial relations, although the relationship between social partners worsened, particularly with respect to wage-setting. With respect to sectoral collective bargaining, the crisis did not initiate substantial changes.[26] Temporarily, the crisis initiated increased tripartite activities within the newly established tripartite Economic Crisis Council, which nevertheless ceased to exist within few months. Moreover, the economic crisis sparked debates on labour law changes. In 2011 National Reform Programme, the government undertook obligation to amend labour laws with a view of making them more flexible.[27] Specifically, the intention of the Slovak policy makers has been to provide more room for negotiated outcomes at the company level.[28] Accordingly, in 2011, legal amendments were promulgated, which created certain repercussions with respect to collective bargaining (at least for a limited period of time). Namely, in 2011, the legal amendments introduced representativeness criteria at the enterprise level as high as 30% of employees working in a company. [29] The imposition of such restrictive criterion has not been warmly accepted by the trade unions, who feared that their collective bargaining position would be additionally challenged, as trade union organisation at this level is already limited. However, the 30% legal rule has never been imposed in practice, as it was supposed to become effective as of 2013, and was deleted by that time because the newly elected government amended the law. The legal amendments introduced with the new government in 2012, which afforded political support to trade unions, were however criticised by the European Commission[30] as potentially challenging the labour market flexibility, although the Commission acknowledged the lack empirical evidence at the moment.

b) In Poland, despite the fact that the economic indicators suggested well economic performance, the crisis induced certain developments at the level of tripartite social dialogue. For some experts, the tripartite events led to an „oblivion"[31] of tripartite social dialogue, because the attempts to conclude social pact on anti-crisis measures have fallen down. For other experts, the crisis nevertheless induced positive bilateral social dialogue developments, because of the remarkable cooperation achieved between the main social partners,

[24] Ibid., 3.
[25] Kahancova (2013: 177).
[26] Ibid., 173.
[27] The Council of the European Union, Recommendation on the National Reform Programme 2011 of Slovakia and delivering a Council opinion on the updated Stability Programme of Slovakia, 2011-2014, 11393/11, Brussels, 20 June 2011.
[28] National Reform Programme of the Slovak Republic for 2011-2014, April 2011, p.25.
[29] http://www.eurofound.europa.eu/eiro/2011/09/articles/sk1109019i.htm
[30] European Commission, Commission Staff Working Document, Assessment of the 2013 National Reform Programme and Stability Programme for Slovakia, SWD(2013)375, Brussels, 29.5.2013.
[31] Bernaciak (2013:243).

although no social pact was signed.[32] Namely, in late 2008, social partners started their discussions on mitigating the effects of the crisis. As the result of their negotiations, a list of thirteen issues has been presented to the government in early 2009. The legislative package which was subsequently, in 2009, promulgated by the government changed the original social partners' proposal on the thirteen points, but nevertheless it was based on it.

Apart from the tripartite level developments, collective bargaining at other levels was not significantly changed because of the crisis.[33] The Polish industrial relations, featured by disorganized decentralisation, did not experience shift to sectoral or cross-sectoral collective bargaining but remained within the ambit of company level collective agreements in the crisis period. Nevertheless, as explained by Meardi and Trappmann, the otherwise already weak multi-employer collective bargaining has become even weaker.[34] Moreover, the employers relied more often on the possibility stipulated in the Labour Code, which allowed them to suspend the application of the collective labour agreements when surrendered with financial difficulties, but only temporarily (up to three years). However, such suspension could not amount to deterioration of the standards set out in the Labour Code, as such possibility was not legally allowed.

The state of industrial relations decentralisation seem to have been somewhat endorsed by the European Commission: in its 2013 assessment of the National Reform Programme and Convergence Programme for Poland, the Commission acknowledges that Polish labour laws provide for a „substantial degree of flexibility" and that „the wage bargaining system is highly decentralised (conducted mostly at the company level)", which was generally intonated in a way to represent a positive development.[35]

c) In Slovenia, before mid- 2000s, centralized collective bargaining system has been the main feature of industrial relations. Since Slovenia entered the EU, the collective bargaining focus has shifted from national (cross-sectoral) to sectoral level. [36] Also, the influence of trade unions has been steadily declining over the course of transition. Slovenia was hardly hit with the financial crisis, with the first anti-crisis responses being created already in 2008. However, the crisis did not significantly affect the state of sectoral social dialogue – 45 collective agreements are registered at this level, covering almost the entire economy, amounting to around 96% of the coverage rate.[37] No official data can be presented with respect to the possible changes of company collective bargaining during the crisis, as company collective agreements are not officially registered with the government. However, the crisis induced certain social dialogue developments at the national level, with negotiations between social partners entering a stalemate in 2009 and resuming only in 2012. Also, a renewed Minimum Wage Act was passed in 2010, which introduced significant increase to the minimum wage and its regular indexation in accordance with the price increase.

In its assessment of the National Reform and Stability Programme of Slovenia for 2013,[38] the Commission marked labour market as insufficiently flexible, especially because of the high level of minimum wage and the fact that it is being automatically increased by inflation rate each year; thus, hampering the competitiveness of the labour market.

The three country examples show that the EU has been clearly supportive of collective bargaining decentralisation in the recent period of the crisis in its Member States, as evidenced by the recommendations issued to the governments in Slovakia, Slovenia and Poland. Nevertheless, such support did not amount to clear-cut obligations for the governments to introduce certain set of changes with respect to industrial relations. While it is true that the recent renewed coordination methods of the EU economic and social policies result in more obligations for the Member States, the national policy makers have still certain degree of freedom in choosing the ways how to respond to the EU demands. [39]

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[32] I. Guardiancich and M. Pliszkiewicz, 'The case of Poland' in Guardiachich (2013: 82).
[33] Meardi and Trappmann (2013:196).
[34] Ibid., 203.
[35] European Commission, Commission Staff Working Document, Assessment of the 2013 National Reform Programme and Convergence Programme for Poland, SWD(2013) 371, Brussels, 29.5.2013, p.15.
[36] Stanojevič and Klarič (2013:223).
[37] I. Guardianchich, ' The case of Slovenia' in Guardianchich (2012:105).
[38] Commission Staff Working Document, Assessment of the 2013 National Reform Programme and Stability Programme for Slovenia, Brussels, 29.5.2013, SWD(2013) 374 final, p.4.
[39] Bekker (2013:16).

On the other hand, it should be underlined that the newly established EU governance architecture does not meet the needs of the CEE social partners for at least two reasons. Firstly, as the three country examples demonstrate, the CEE countries have entered the crisis period with unfinished process of institutionalisation of social dialogue. Thus, further calls for decentralisation may not help building legal and institutional framework for collective bargaining but rather substantially weaken the position of trade unions and deteriorate the state of working conditions. Secondly, the CEE social partners have not yet developed adequate capacities to be able to effectively participate in broad set of goals, which were ambitiously designed under the umbrella of Europe 2020.

5. CONCLUSION

This paper explored the role of the EU in influencing the process of development of legal and institutional framework of rules for collective bargaining in CEE. The paper explained that the EU had supportive, but rather limited influence on the legal and institutional building regarding social dialogue during the accession process. Although the EU was not sufficiently precise about the substance of the reforms which were supposed to be undertaken in the candidate countries, essentially the support was directed towards establishing the collective bargaining infrastructure at all possible levels. With the recent crisis period, the EU has nevertheless demonstrated a change in its approach towards industrial relations in CEE, by supporting the processes of decentralisation, under the demands for flexibility and economic competitiveness. As demonstrated on the example of the three countries, the CEE countries entered the crisis with incomplete process of institutionalisation of social dialogue and weak trade unions. While these countries entered the transition process in the early 1990s with the ideas of building flexible labour laws, the collective labour agreements are still underused source of law and further legal re-definition of the relationship between the statutory law and collective agreements would be needed in the future. Furthermore, the economic crisis additionally challenged industrial relations in CEE, highlighting their deficiencies and urging the needs for supporting further institutionalisation of social dialogue, particularly at centralised levels. From that point of view, further pressures for decentralisation, as those coming from the recent EU policy measures, cannot be regarded as welcome in CEE, as they hamper trade union position and underpin the existing weak legal and institutional framework for social dialogue.

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