Heribert Kohl

Freedom of Association, Employees' Rights and Social Dialogue in Central and Eastern Europe and the Western Balkans

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Results of a survey of 16 formerly socialist countries in Eastern Europe

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Note:

The complete as well as a short version oft this study of Heribert Kohl "Freedom of association, employees' rights and social dialogue in Central and Eastern Europe and the Western Balkans" are online available in several languages by Digitale Bibliothek of Friedrich-Ebert-Stiftung and additionally also in a print version.

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Publishers' foreword

The fact that this study has been jointly published by the Friedrich-Ebert-Stiftung, the European Trade Union Institute, the Otto Brenner Foundation and the Hans Böckler Foundation is in itself an expression of the solidarity that exists within the German, European and international labour movement. The study is the result of many years' close collaboration and cooperation in supporting trade union work – our central concern, as always, being to promote the interests of employees in Europe and throughout the world.

The author summarizes the main findings of surveys and country reports on the legal situation of trade unions and their members regarding implementation of labour rights and freedom of association, and analyses these on the basis of his extensive knowledge and experience of Eastern Europe. The comparative study covers 16 former socialist countries in Eastern Europe – the 10 new EU member states in Central Eastern Europe and the Eastern Balkans and also the candidates for the next accession round from the Western Balkans. Surrounded by the EU to the East and South, this region in the heart of the Balkans has relatively good prospects of developing practical social dialogue, despite the crises and tensions it has experienced over the last 15 years.

This comprehensive overview of the current situation regarding freedom of association and practical realisation of trade union rights in Eastern Europe would not have been possible without the detailed answers to our questions that were provided by trade union representatives, legal specialists and experts in labour relations in the 16 countries concerned. We would like to thank them for the opportunity they offered us to familiarize ourselves with the situation and learn about a number of hitherto unfamiliar problems at local level.

In particular we would like to express our thanks to the authors of the extensive country reports from the six countries of the Western Balkans – the successor states to the former Yugoslavia and Albania – who also acted as rapporteurs at the workshops organised with the participation of representatives of governments and social partners.

The full version of the research results is available in Polish, English and German, with a short version appearing not only in German and English but also in Polish, Czech, Hungarian, Bosnian-Croatian-Serbian, Romanian, Bulgarian and Albanian. By publishing the report we hope to contribute to the debate on the prospects for reform in Eastern, Central and South-Eastern Europe. We are delighted that you have shown an interest in this international exchange of experience within an enlarged Europe.

On behalf of the publishers

Constantin Grund
Friedrich-Ebert-Stiftung

Phillippe Pochet
ETUI Brussels

Wolf Jürgen Röder
Otto Brenner Foundation

Nikolaus Simon
Hans Böckler Foundation

Foreword by John Monks (ETUC)

Dear colleagues,

Eastern Europe has been particularly badly affected by the global financial and economic crisis. Twenty years after the fall of the Berlin Wall and the onset of political and economic transformation, it is becoming clear that restructuring of the Eastern European economies, with rapid privatisation and exposure to international competition, has not been accompanied by adequate guarantees for the social dimension. If the situation is to improve in this respect, what is needed is a well-functioning system of social dialogue based on unrestricted freedom of assembly in order to achieve bilateral regulation of labour relations.

Realisation of the European Social Model – an ongoing task for all European trade unions – calls for continued efforts to accompany economic growth with a balancing of social interests. Above all this involves adequate sharing of economic benefits and adherence to generally binding statutory labour standards. Day-to-day breaches of the standards laid down by basic ILO conventions, combined with recent judgements by the ECJ, have increased competition between locations, and this is having a detrimental impact on working people throughout Europe. The European Trade Union Confederation is therefore fighting to ensure that employee rights are given clear priority over Single Market freedoms by incorporating an additional social progress clause into the EU reform treaty.

Unless we can make tangible progress in achieving our vision of a social Europe, the citizens of the EU member countries will not accept further integration and future enlargement.

This issue is of particular importance for us, given that the member states of the European Union and the transformation states of Central Eastern Europe and the Western Balkans regard Brussels as the cradle of the European idea, with its associated concepts of transnational solidarity and the European Social Model. We must not jeopardize change processes and the hopes that are attached to these.

The European trade unions have an important contribution to make in this context, especially when it comes to representing the interests of employees who are particularly hard hit by redundancy and loss of status as a result of current developments or who suffer from social inequality. The unions also have to act as guarantors of social justice and the social market economy and support these when they come under threat during the current crisis. Well-functioning, independent trade unions capable of effectively representing their members' interests are crucial for the future development of society and the economy, as is extended dialogue between the social partners.

In practice – as is demonstrated by this study of the former socialist countries of Eastern Europe and the Western Balkans that are candidates for the next round of EU accession – the scope for trade unions to operate is only too often highly restricted. This report, based on information supplied by those affected, provides an impressive illustration of existing obstacles to member recruitment, practical freedom of association, social dialogue and implementation of employee rights in Central Eastern and South-Eastern Europe. Publication of this comparative study, which includes the Western Balkans as a European region, represents a new departure that deserves close consideration both within local organisations and also at European level.

Given the pace of structural change within companies and in particular the huge growth in small

and medium-sized enterprises in the region, it is essential that the legal and organisational obstacles identified in the study should be rapidly removed – a task for politicians and trade unions in the countries concerned and also at European level. The process of implementing the EU directive on information and consultation of employees needs to be energetically pursued by all concerned. And last but not least, monitoring of infringements of labour laws, such as is carried out with positive effects by labour courts in Western Europe, must become a priority issue in the new member states if there is to be any effective guarantee of freedom of association and stable labour relations.

The European Trade Union Confederation will continue to actively contribute towards dealing with all these issues.

Brussels, July 2009

John Monks
General Secretary of the
European Trade Union Confederation (ETUC)

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Introduction:
Survey of Central and Eastern Europe and the Western Balkans: background, goals and methodology

The immediate reason for embarking on this study was a realisation that the serious decline in trade union membership in Eastern Europe was not just the result of system change – in other words it was not just caused by the process of transformation – but that there were further factors involved that were to be found within the countries themselves. Clemens Rode, Head of Regional Trade Union Cooperation in the Warsaw office of the Friedrich Ebert Foundation, explains how these causes were identified:

"Our observation of the situation of trade unions in Central and Eastern Europe revealed that it is not just hostility on the part of managers and companies that explains the low levels of trade union membership – there are also other obstacles, including legal ones, which hinder people from joining trade unions. In Poland, for example, there has to be a minimum of ten employees in a particular company for it to be possible to register a trade union with the courts. The concept of joining via a sectoral trade union, as in Scandinavia, Germany or Austria, does not exist."

Our suspicion that it was not just in Poland that such obstacles were responsible for the drastic loss of membership but that similar problems also existed in other recent accession states, prompted us to carry out a wide-ranging survey of the current situation regarding freedom of association in all new EU member states. The survey was targeted both at trade unions and at legal experts in the eight former socialist countries of Central and Eastern Europe that acceded in 2004 and the two from the Eastern Balkans that joined the EU in 2007 – Romania und Bulgaria. The survey was designed to establish how people become members of trade unions in these countries: Was it, like in Poland, only possible via an existing trade union organisation in the company concerned? And what additional obstacles were there to realising one's right of association, for example in the form of discrimination of elected officials, bans on displays of solidarity and collective bargaining in the public sector, restrictions on the right to strike etc.? And what effective sanctions could be applied when the principle of freedom of association was infringed?

The answers to these questions (see Annex 1) came from various sources in all the countries concerned – almost 40 in total from trade unions' headquarters and labour law experts – and were in most cases gratifyingly detailed. Parallel to this, for, purposes of comparison, data was collected from a contrasting group of countries in Northern and Central Europe, in the form of reports from Sweden, Denmark, Austria and Germany.

The summary of the results of this analysis were presented by the author in May 2008 to an international audience in Kranjska Gora, Slovenia, during a joint meeting organised by the Otto Brenner, Friedrich Ebert and Hans Böckler foundations with many participants from Eastern and South-eastern Europe. As a result the study was further extended to include the countries of the Western Balkans, two of which – Croatia and Macedonia – are candidates for the next round of EU enlargement, which is expected to take place in the next decade.

Frank Hantke, Friedrich-Ebert-Stiftung Regional Coordinator in Belgrade for the project "Industrial relations and Social Dialogue in South-Eastern Europe", and the author of a "Handbook for Trade Unions in the Transformation Countries" (Hantke 2008), took up the idea of this project, but adopted a slightly different approach, initially using comprehensive reports from the six countries in the region – including Albania as well as the successor states to Yugoslavia – based on an extended range of questions (see Annex 1.2). The reliable and detailed data produced by this second survey were then used as a basis for in-depth discussion during special workshops in the countries concerned involving representatives of the trade unions, employers' associations and the government of each country.

Further information for the current comparative study was drawn from the results and experience gained during a number of projects in which the author himself was involved. These included country reports on capacity building by social partners in the new EU member states and candidate states produced by the Dublin-based European Foundation for the Improvement of Living and Working Conditions as well as national profiles of industrial relations in the EU as a whole (see Hülsmann/ Kohl 2006; European Foundation 2007; Van Gyes et al. 2007). And last but not least, the rather sobering annual reports produced by the International Trade Union Confederation (ITUC) on the infringement of trade union rights in individual countries (ITUC 2008 and 2009) as well as personal experience since the early 1990s in many different projects in Eastern Europe as part of the process of preparing for EU membership that included training sessions with trade unionists and social partners.

All these helped provide a clearer picture of the situation of employee organisations and freedom of association in the 16 countries concerned. This is a crucial issue for EU integration and the future of the European Union, for freedom of association and the legal and practical possibility of concluding collective agreements are an important prerequisite for properly-functioning industrial relations, regulated labour markets, social progress in individual countries and thus economic and social convergence within the EU. The relevant ILO Conventions (87, 98 and 135) are of crucial significance for social dialogue in this context. All the countries involved have ratified these and incorporated them into their national labour legislation.

The situation is, however, rather different when it comes to actual enforcement of these standards. Here the process is hindered both by legal restrictions imposed by the state and by an excess of statutory regulations. In a number of countries these represent an obstacle to joining trade unions and also to the formation of local trade union representation, especially when union statutes additionally underpin such obstacles. Major legal obstacles take the form of specific regulations on size when it comes to recognition of employee organisations' right to collective negotiation and their representativity. In addition, the negotiating rights of trade unions are restricted in the case of particular categories of employee – effectively excluding these groups from trade union membership and from being party to collectively negotiated agreements.

The result of the situation is not only a weakening of the negotiating position of employee organisations in Eastern Europe but also a deterioration in the quality of life of those affected, compared with the relatively more favourable position of employees and their trade unions in Western Europe. This inequality then results in social dumping and relocation of companies within Europe, which ultimately is to the disadvantage of everybody concerned.

It also goes against the predominant social model in Europe if the weak position of employee organisations and the corresponding refusal on the part of certain employer associations to negotiate mean that few if any sectoral collective agreements can be concluded or implemented outside the state sector. Company agreements that enable employees to enjoy an appropriate share of a company's economic performance appear in most cases only to be possible where there are strong trade unions capable of negotiating at local level. This means that wide gaps develop in terms of the incomes of employees even within a single sector. In certain countries in the region there are also statutory restrictions imposed on negotiations and independent agreements. Together with far-reaching restrictions on the right to strike in terms both of employee categories and practical implementation, this make it more difficult for those concerned to achieve acceptable negotiating results.

At the same time, EU directives forming part of Community social legislation, especially those on European Works Councils (1994) and on information and consultation of employees (2002), lay down certain minimum standards for employee participation in a bid to encourage social dialogue at local level and protect the interests of employees prior to and during the implementation of important economic decisions. This is important not least in view of the current global economic crisis, the consequences of which are as yet difficult to foresee.

In Eastern Europe, implementation of the standards of information, consultation and employee participation required under Community law fails largely because of a lack of employee representation in companies as a result not only of the relatively low trade union density in the country, but also of a complete lack or at least of the inadequacy of statutory regulations for setting up elected works councils in sufficient numbers.

This, again, has a negative impact on the scope to make use of the right to freedom of association: If employees' interests are not represented within the company, they have no basis for negotiating company-specific agreements. And this, again, is a reason for the lack of success in recruiting new members. For trade unions to be attractive and inspire loyalty amongst their members, they need not only to have a positive image based on achievement of certain successes for their members, but also direct face-to-face contact with shop stewards or works council members who stand up for the rights of individual employees. This was certainly the clear result of a member survey carried out within the IG Metall trade union in Germany on the issue of long-term trade union loyalty (Pyhel 2008).

To this extent an investigation of this background on the basis of the survey carried out in conjunction with the regional offices of the Friedrich-Ebert-Stiftung and the reports on the current situation of freedom of association and industrial relations in the Western Balkans makes an important contribution towards a realistic assessment of the situation and further discussion of the need to further develop social dialogue in the countries concerned.

The responses to the questionnaire, the various country reports and workshops involving the social partners, the government and, to some extent also the labour inspectorate and recognised experts in social dialogue, have made it possible to achieve a clearer picture of the situation and put together this initial international comparison. It should support attempts to further develop industrial relations and prepare the accession states in the Western Balkans for EU membership.

The study can also contribute to the necessary process of mutual familiarization between the trade unions in the region and in Europe as a whole. It is intended, despite the current crisis, to help rectify undesirable developments and to protect and further develop the emerging European Social Model on behalf of employees. Without this, it will neither be possible to effectively combat the strategies of international capital and the risks these bring for working people nor to move any closer to the goal of creating a "social Europe" that is so strongly desired by the vast majority of European citizens.

1. Current background: an acid test for industrial relations in a crisis-ridden Europe

The most far-reaching global economic crisis in human memory also poses a major challenge to the quality of industrial relations and the substance of the social welfare state in Europe.

The questions faced by citizens and employees in Europe are as follows:

- To what extent will it be possible, by dint of co-ordinated efforts of all those involved – companies, their workforces, the labour administration, politicians and, not least, the public at large as consumers and tax-payers (who will face greater demands in the future) – to preserve as many jobs as possible in this extremely critical phase of development?

- Is it, at the same time, possible to continue to pursue an active income distribution and social policy to halt a phenomenon that can be commonly observed throughout Europe: the increasing division of society into rich and poor and a lack of any real prospects for young people who are excluded from the world of work?

- Can the various instruments of social dialogue – in companies, in sectoral policy and in society as a whole – continue to uphold a functioning economic cycle based on strong levels of purchasing power – which require cooperative social partners and strong, well-positioned trade unions?

This is the cardinal point – not just in Eastern Europe but particularly in this part of our continent. For it is in the ten former socialist countries and the other accession candidates in the Balkans that the demands on trade unions are greatest in terms of their ability to change and their willingness to respond deliberately and actively to the new challenges posed by globalisation and the market economy. Faced with massive change, they have had to find a new role for themselves and learn to take a pro-active role in securing jobs during the process of privatisation, to fight to protect reasonable levels of pay and – not least – to participate in forming a new economic and social order including a suitable system of statutory labour rights.

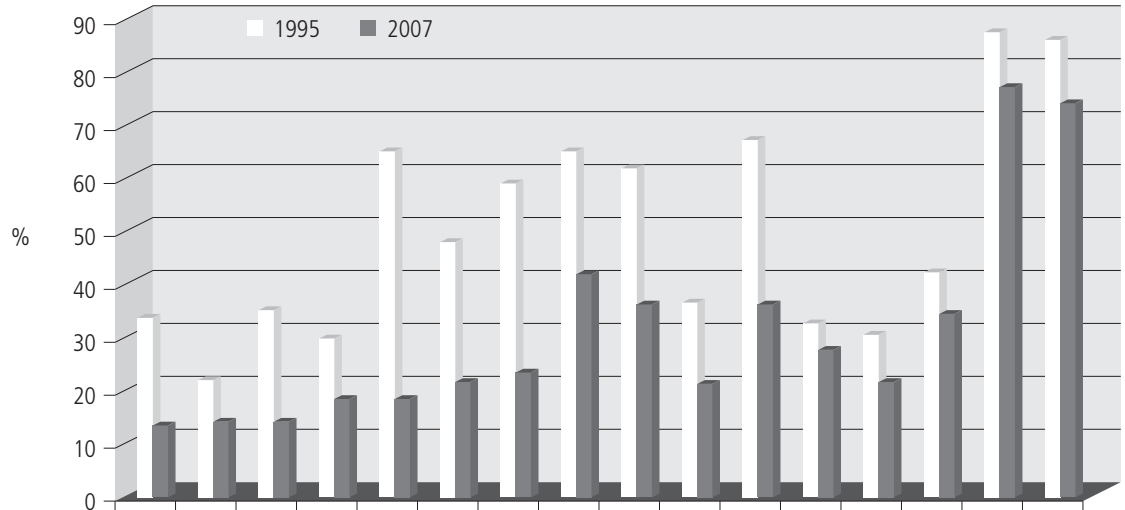
This is where the particular dilemma faced by the trade unions lies. They have failed to achieve an adequate number of these goals, given the entirely different tasks they faced in the past and the relatively short period of time available during the transformation phase in their countries, and as a result have found themselves suffering a devastating loss of members and personnel.

This question of the survival of the trade unions is a crucial challenge to social dialogue throughout Europe today. In Western Europe, following the golden age of the trade union movement, once described as the "apogée du syndicalisme" (Pigenet et al. 2005) there was, from the mid 1970s onwards, a steady decline in membership, even in the classical union strongholds of Scandinavia.

This decline was particularly dramatic in the aftermath of political transformation in Eastern Europe (see Figure 1). Of course these massive losses cannot be compared to the decline of traditional syndicalism in Western Europe, as they were caused by the transition from a system of virtually obligatory membership of a monopolistic employee representation organisation aligned with the interests of the state to a system of voluntary interest groups with completely new tasks in a market economy. But the impact has been the same – particularly as it is increasingly apparent across the entire spectrum of Eastern Europe.

With the introduction of the market economy, all Eastern European employee organisations underwent a change of role from being agencies for all-round social care to becoming the necessary guarantors of wages and employment – and the price they paid was a massive loss of members: By 1995, with the exception of Slovenia, levels of membership had more than halved.

Figure 1: **Loss of trade union membership in Europe: trade union densities in 1995 and 2007**



	EE	LT	PL	LV	HU	CZ	SK	SI	RO	BG	HR	EU 15	DE	AU	DK	SE
1995	32	20	33	28	63	46	57	63	60	35	65	31	29	41	85	84
2007	12	13	13	17	17	20	22	40	35	20	35	26	20	33	75	72

* Country abbreviations: BG= Bulgaria; CZ= Czech Republic, EE= Estonia; HR= Croatia (included in the comparison as a leading candidate for EU membership); HU= Hungary; LV= Latvia; LT= Lithuania; PL=Poland; RO= Romania; SI= Slovenia; SK= Slovakia; EU 15 = EU member states up to 2004; AU= Austria; DE= Germany; DK= Denmark; SE= Sweden

Source: EU, EU-Foundation, BwP 2009

It would seem obvious that one of the reasons for this was the collapse of socialism and the limited scope for action within a national welfare state in a capitalist environment. However, the attractiveness of an interest group is always a question of the degree to which it is perceived by its members as achieving measurable success on their behalf. It is this that creates the positive *image* of a trade union, in addition to its equally important tangible presence as an *interest group* at ground level. Certainly these two factors emerged as crucial in a 2005 survey carried out in Germany amongst a representative sample of members of IG Metall on the question of trade union loyalty and willingness to pay membership fees (see Pyhel 2008).

However this still does not satisfactorily answer the question of what motivates an individual – for example a young, well-qualified female at the start of her professional career – to join a trade union or not. The question of perceived efficiency in representing an individual's interests and the effectiveness and "powerfulness" of the trade union certainly plays a central role in this context. On the other hand, in the current global economic crisis the protective role of trade unions has once again come to the fore.

2. Freedom of association und social dialogue as pillars of the European social model – obstacles to their realisation in post-socialist countries

Another important aspect for member recruitment, in addition to the attractiveness of a trade union's "achievements" for the employees concerned, is the opportunities the organisation has to establish a visible presence on the ground and to act effectively to achieve its goals. This calls for adequate and appropriate legislation, social and political acceptance, certain rules for social dialogue and – not least – effective monitoring of the application of these rules and regulations.

2.1 Freedom of association – the basis for all trade union activities

Freedom of association in practice thus becomes a crucial issue for any comparative study. Positive freedom of association and the related basic rights (freedom of assembly, guaranteed participation rights for employees, bilateral collective bargaining autonomy, securing of an appropriate living), as enshrined in many international laws are an essential basis for any democratic state. In EU member states they are regularly detailed in the constitution of the country concerned and in the national labour code or individual laws. As a foundation for industrial relations they are all based on globally ratified ILO conventions aimed at enabling social dialogue at the relevant level: company, sector and society as a whole (see main excerpts in Annex 2).

In the EU 27, freedom of association and collective bargaining, as minimum standards within the social *acquis,* constitute the social dimension as an important goal of European integration and make up the basic structure of the **European social model**. However, this model, which is evolving over time as Europe grows together, is currently facing an acid test – on the one hand as a result of European enlargement and on the other hand as a result of a conflict of priorities between the principles of economic and market freedoms and basic social rights and standards. What is at stake here is nothing less than the question of whether an enlarged Europe can be created that is in the interests of all its citizens – thereby achieving general acceptance of the European project, which has been repeatedly put into question by negative national votes.

Implementation of the employee and trade union rights enshrined in law in all the new member states is an important touchstone for achieving this acceptance. The present survey of current practice regarding freedom of association, with its analysis of the situation and deficits in Eastern Europe and its comparison with selected countries from the old EU 15 – particularly Scandinavia and Southern European countries and those in continental Europe – is thus very revealing, as is demonstrated by the results presented here in conjunction with further sources that complete the overall picture.

Given the current challenges posed by globalisation and the threat it represents to achievements in the social sphere and social progress in general, the issues raised here are of more than mere marginal significance. After all, they are accompanied by a long-standing process of trade unions losing both their powers as employee representatives and their ability to retain the necessary social balance in a society exposed to the interaction of market forces. Thus there is more at stake than just maintenance of the status quo – this is all about the effective representation of the interests of working people.

2.2 Determining features of freedom of association and industrial relations in the EU 15

In order to be able to assess and evaluate the often divergent developments in Eastern and Western Europe, it is worth taking a comparative look at the traditional situation of freedom of association in selected countries of the EU 15 (see box).

The main features of freedom of association in Western Europe
(The example of Nordic and continental European countries)

(1) Experience of labour legislation, collective bargaining and trade union development dates back more than a century, with impressive levels of trade union density: in Scandinavia between 75% and 80%, in Austria 33%, but in Germany, since reunification, a decline to approx. 20%.

(2) Organisations have the right to establish their own statutes with a minimum of legal requirements – in some cases without any specific trade union legislation at all – right down to the practice of *closed shops,* with the concomitant problem of negative freedom of association.

(3) The majority of employees enjoy a trade union or institutionalised system of employee representation with legally guaranteed minimum standards of participation – and thanks to European Works Councils these are now also available within an international framework.

(4) Organisations have a legal right to conclude bilateral agreements whose form and content they can determine themselves. Their function in regulating the market even sector-wide is recognised. State intervention takes place only to ensure equality of treatment (e.g. through general extension of collective agreements).

(5) The right to strike as *ultima ratio* applies without any specific legal restrictions and is, at most, regulated through parity principles aimed at maintaining a balance between organisations (dispute parity). In some cases there is a longstanding tradition of trade union militancy.

(6) Employees are to a large degree covered by collective agreements. Statutory minimum wages have only become an issue in Austria and Germany since levels of collective agreement coverage have declined (as a result of migration from Eastern Europe and transformation in Eastern Germany).

(7) Labour courts involving representatives of the employee/employer organizations as lay judges, combined with a labour inspectorate, guarantee respect for freedom of association and adherence to existing legislation on individual and collective labour rights. New problems, however, are emerging as a result of external intervention (for example the most recent judgements of the European Court of Justice on collective bargaining and strike rights).

Traditionally the following levels are the main pillars of the European Social Model in the field of industrial relations:

- Company – with guaranteed rights of employee representation
- Sector – with collectively agreed minimum standards for wages and working conditions
- Country – with participation rights for fundamental decision-making processes (on labour law, labour market policy, minimum wages), e.g. in national economic and social councils
- EU – with opportunities to participate in the Brussels-based Economic and Social Committee, sectoral social dialogue, passing of EU directives etc.

All this seems to be undergoing a process of change as a result of the newly-formed constellations in an enlarged Europe, with a steady transfer of production sites towards the East (even beyond Eastern Europe) and national labour standards being challenged in a globalised economy. Mainstream neo-liberal thinking, which seems to have penetrated the Brussels administration and the decisions of the ECJ, tends to strengthen some aspects of this trend rather than correcting it.

The only corrective would seem to be the minimum standards of individual and collective labour rights applicable within the EU as enshrined in European law in the form of various directives. Particular innovative examples are the 1994 directive

on European Works Councils and the 2002 directive on information and consultation of employees, together with the practice of involving organisations representing the social partners in political decision-making processes and the scope offered to them within the context of European Social Dialogue.

The cornerstone remains national labour legislation passed within the framework of these directives and its implementation through social dialogue at all levels. Freedom of association is one important element in this, without which there is a lack of effective players capable of taking action.

This is an aspect that has often been overlooked by the EU in its pre-accession strategy for new member states, involving periodic screening and countless projects (for example under the PHARE programme). The latter have tended to focus more on formal transfer of the *acquis communautaire* than on its actual application or the practical conditions for this to take place.

The results of this survey of freedom of association and trade union rights in Eastern Europe, carried out jointly with the offices of the Friedrich-Ebert-Stiftung in Warsaw and Belgrade, has highlighted a number of questions and deficits for the first time. The central points are:

- What actual obstacles are there to trade union membership in the individual countries?

- What legal regulations and restrictions apply to anyone wishing to set up a trade union or achieve union representation?

- What legal and practical obstacles exist for the formation of trade union representation in a company and what are the restrictions on creating an interest group, especially in the many small enterprises?

- To what extent is there discrimination against trade unionists and elected representatives and open infringement of existing labour legislation – and what actual opportunities are there to control and reduce these?

This, in turn, generates a whole series of far-reaching questions that have implications also for collective bargaining policy, legislation on industrial disputes and the overall balance of income distribution. The central part of this study of the current status of social dialogue across Eastern Europe and the Western Balkans presents these findings and their implications.

3. Current status of social dialogue in Central Eastern and South-Eastern Europe

The following detailed analysis of the regions and countries concerned identifies two aspects in particular that would appear to constitute the main problems with regard to freedom of association in Eastern Europe:

- Firstly the existing **legal restrictions** on freedom of association found in legislation and trade union statutes in Eastern Europe – in particular with regard to the setting up of trade unions but frequently also with regard to restrictions on trade union membership. The result is that in individual cases important categories of employee are excluded from social dialogue and do not benefit from its results – which has far-reaching implications for their lives.

  In addition to this, there is very real pressure on the part of intolerant employers and a general lack of sympathy for such issues – largely as a reaction against the enforced collectivism of the past. This means that activities such as pay bargaining or even industrial disputes are viewed in a negative light from the very outset.

- These structural obstacles inevitably have a negative impact on the crucial process of **capacity building** of employees' organisations – and, indirectly also, employers' organisations – that is required, particularly during a period of system change in transformation countries. In some cases it is an uphill struggle to achieve a positive image for trade unions, given their past history of supporting the interests of the state. In some cases an unusually wide variety of different organisations are involved, which naturally causes considerable fragmentation of organisational, financial and human resources amongst trade unions. The crucial question is whether this plurality permits cooperation amongst employer and employee organisations in the interests of efficient social dialogue, or whether it acts as a hindrance.

Trade union density and the specific position of trade unions crucially determines how effective they can be in representing employees' interests in companies, in collective bargaining policy and in existing tripartite national economic and social councils.

3.1 The problems in the ten new EU member states in Eastern Europe

The following analysis looks initially at the legal and actual situation in the eight countries of Central and Eastern Europe (Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia, Hungary) which joined the EU in 2004, plus the countries of the Eastern Balkans – Bulgaria and Romania – which joined in 2007.

In all cases the legal basis for free trade unions is provided by ILO Conventions 87, 98 and 135 as described for Western Europe, covering

- the right to organise or join a trade union without hindrance (and the related opportunities to recruit members at the workplace)

- the necessary representation of interests and participation at local level – at least in conformity with the 2002 EU directive on information and consultation;

- the actual possibility to conclude collective agreements, if possible for all employees concerned; this includes scope for resorting to industrial action,

- and, last but not least, one aspect that is too often omitted in purely formal approaches: effective monitoring and sanctions in the case of abuse of the above-mentioned fundamental rights of employees and trade unions (for more on this see the text excerpts in Annex 2).

In the case of Eastern Europe it would be wrong to accuse the European Commission of poor monitoring and to assert that in its lengthy screening procedures it did not pay sufficient attention to whether international law on freedom of association had been taken over by the new EU member states. The legal preconditions for social dialogue do exist, in purely formal terms. There are enough legal texts and amendments – the problem lies in their implementation.

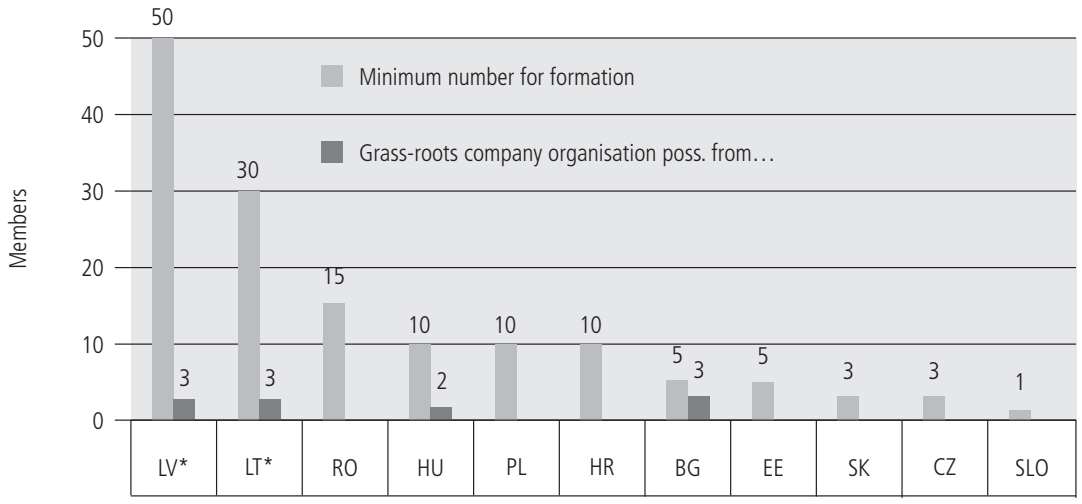
Indeed, a formal comparison of the legal situation even seems to indicate that in some important areas for the proper functioning of trade union representation there is more likely to be a degree of over-regulation that acts as a hindrance – for example special trade union legislation, representativity criteria, registration requirements, exclusion of certain categories of employee from membership, and regulations on conflict-resolution. Last but not least, there are also sometimes extremely restrictive laws on strikes that make industrial action virtually impossible.

3.1.1 Restrictive regulations on the formation of a trade union organisation

An over-zealous approach to regulation in some countries starts with statutory requirements for **minimum** numbers to be applied to any **grass-roots trade union** – both in terms of its foundation and the organisation of trade union representation (Figure 2). Added to this is the fact that trade union statutes frequently exclude the possibility of forming representative bodies, for example in the rapidly growing and now largely predominant SME sector, by laying down a minimum number of members for setting up a system of trade union representation in a company.

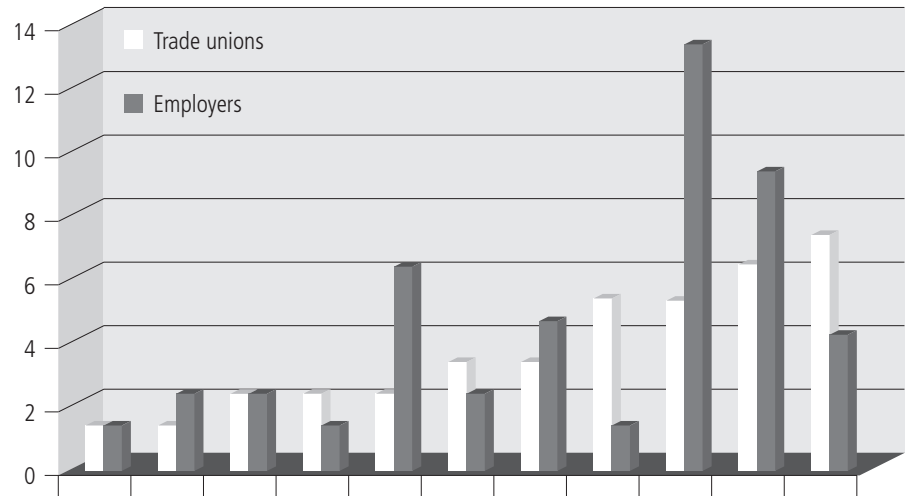
The significance of legal requirements or requirements in trade union statutes that exclude more or less extensive groups of employees becomes clear when one considers that collective bargaining frequently only takes place within individual sites – which always requires the existence of an appropriate organisation (this is the case, for example, in Poland, Hungary and the Baltic States – for more on this see below Section 3.1.6).

Figure 2: **Statutory requirements for formation of a trade union**



* or at least 1/4 workforce in LV and 1/5 in LT (minimum 3 employees)

Figure 3: **Number of "representative" social partner umbrella organisations**



	LV	SK	CZ	EE	BG	LT	PL	HR	RO*	HU	SI**
Trade unions	1	1	2	2	2	3	3	5	5	6	7
Employers	1	2	2	1	6	2	4	1	13	9	4

* 2008 merged into 2 umbrella organisations + UNPR

** for employers: incl. 2 industry chambers

Setting up a trade union can also be hindered by extensive requirements for **registration** with the state authorities, with this being refused or only permitted if certain requirements are met.

In addition there are problems resulting from – in some cases – the wide **variety of different organisations** on both sides (Figure 3). Whereas in Western Europe there is often one single trade union representing all employees and a corresponding single national employers' association, this is rare on both the employee and employer side in Eastern Europe.

Competition between organisations in such a pluralist structure can have a detrimental effect on representation of employees' interests – depending on whether attempts are made to cooperate despite such organisational variety (as, for example, in Hungary), or whether the relationship is characterised by conflict (as was the case for a long time in Poland). Necessary attempts at mergers tend to be the exception (as in Lithuania, Hungary and, currently, Romania). A further consequence is the multiplication of sectoral associations (see Figure in Annex 7.1).

Compulsory registration and criteria for representativity

Such a multiplicity of organisations necessarily results in intense competition in some cases but also brings a need for internal coordination – right down to the need to cooperate at company level in order, for example, to be able to conclude a collective agreement at all (see below Section 3.1.6).

Especially in countries with a multiplicity of organisations, the state can intervene by making registration compulsory and imposing numerical criteria for assessing so-called representativity, laying down **minimum proportions of members** in the sector, region or the entire country as a precondition for their being permitted to play a role in collective bargaining or to be represented in the tripartite national economic and social council. In addition to minimum percentages or absolute numbers, one criterion is sometimes also the result of the latest works council elections – as in Hungary, where a minimum of 10% of the ballot is required to qualify to participate in collective bargaining in a company.

Linked to such requirements there can also be regulations on freedom of association that can have a restrictive impact – inasmuch as certain groups of employees are also excluded from the possibility of membership (see below 3.1.2).

All in all there is a dense network of standards for **regulating the organisational landscape** both for employers and for trade unions, with often extremely detailed requirements compared with the usual practice in Western Europe (Figure 4).

Particularly in countries with a wide variety of organisations there is thus a combination of special trade union legislation and detailed regulations on representativity, with certain associated rights and obligations. Everywhere in Eastern Europe there is a standardised labour code, with the exception of Estonia, which only has a series of special labour laws (similar to the situation in Germany).

In contrast to this picture, Western Europe, apart from general guarantees of freedom of association and collective bargaining laid down in national constitutions, there is significantly less regulation, particularly in Scandinavia, Austria and Germany. In these countries there are neither statutory regulations on representativity nor any special legislation on trade unions – except, at most, for employee representation in companies or public administrations and legislation on collective agreements.

3.1.2 Obstacles to trade union membership

In Eastern Europe there are legal and practical obstacles to access to trade unions in the form of laws and trade union statutes on access routes and also certain categories of employee (Figure 5).

Figure 4: **Statutory regulation of freedom of association in Central Eastern Europe**

	Rights of trade unions und employers' associations codified in ...			**Legal representativity criteria**
	Constitution	Labour code	Law and trade unions/employer associations	
Estonia	X	–	X	no
Lativia	X	X	X	employers' associations und trade unions
Lithuania	X	X	X	no
Poland	X	X	X	no; only in the case of collective agreements with trade unions
Czech Republic	X	X	X	no
Slovakia	X	X	–	no
Hungary	X	X	–	at all levels: for trade unions and employers
Slovenia	X	X	X	at all levels: only for trade unions
Bulgaria	X	X	–	employers' associations and trade unions
Romania	X	X	X	employers' associations and trade unions
Croatia	X	X	X	only for trade unions

Figure 5: **Obstacles to trade union membership in Eastern Europe**

	Persons excluded from trade union membership	Obstacles to access
Lithuania	Only working people can become members, i.e. no unemployed, students, pensioners or self-employed	Access normally only via the grass-roots organisation, in exceptional cases via the sectoral organisation Possibility of "direct" membership currently under discussion
Latvia	Access only open to working people and trainees, not members of state security services (e.g. border police))	Access normally via the grass-roots organisation (high threshold for SMEs)
Poland	Excluded are: individuals not in regular employment, contract workers, students, quasi self-employed Civil servants are not permitted to take on any active trade union function	Depending on trade union statutes access normally only via the grass-roots organisation, with requirement for minimum of 10 trade union members. This obstacle excludes some 30% of employees, who work in SMEs with a workforce of less than 10
Slovakia	Legal obstacles only for members of the armed forces	Differentiation between ordinary (i.e. working) and extraordinary members (disabled, pensioners, maternity or parental leave, temporarily unable to work)
Estonia	No formal restrictions	Access normally via the grass-roots organisation
Slovenia	No formal restrictions	Direct (individual) membership possible, incl. for those not in employment
Hungary	No formal restrictions	2003 law on equality of treatment intended to reduce obstacles, but few legal sanctions. Membership also open to foreigners
Czech Republic	No formal restrictions	Membership also open to foreigners and migrant workers
Bulgaria	No formal restrictions	2004 Anti-discrimination law reduced obstacles
Romania	Excluded: top civil servants, members of the police, armed forces and telecommunications industry; but pensioners not excluded	Precondition for founding a trade union is an existing employment contract
Croatia	Only those in employment have legal right to union membership. In case of discrimination, burden of proof on employer	..at the same time, indirect obstacles through extremely high proportion of fixed-term contracts in case of new appointments (approx. 85%)

To summarise: the following *groups of persons excluded* from trade union membership as a result of legislation or trade union statutes can be found in many countries:

- Individuals not in employment or not in regular employment:
- Unemployed persons, students, pensioners
- Contract workers, quasi-self-employed, self-employed persons
- Employees in certain areas of the public sector: top civil servants, members of security-relevant services such as police, border police, telecommunications, armed forces
- Foreigners and migrant workers

An even more serious problem can be the "bottleneck" caused by statute requirements making access only possible via a grass-roots company organisation with a certain number of members – which calls for a certain size of workforce. Such requirements date from the early days of the transformation process when people still had in mind the predominant size of enterprise dating from the socialist era (so-called *Kombinate* and large-scale companies).

This means, however, that the majority of employees working for recently formed or spun-off **small or micro-companies** are not covered. It is not surprising, therefore, that internal discussions are

currently taking place on the issue of statutes and alternative possibilities such as "direct" membership or other methods of access to trade unions. The need for this is demonstrated by the "cumulative filters" described in the next section.

As can be seen above from Figure 5 on the other hand, half of the ten new EU member states do not have any formal obstacles to trade union membership and offer extended possibilities of access. However this does not necessarily mean that trade unionists are protected from discrimination and have any greater scope for representing employee interests at grass-roots level.

Result: cumulative filters hamper access

Taken together, all the obstacles to trade union membership and full realisation of freedom of association in Eastern Europe constitute a three-fold "filter" involving various grounds for excluding individuals from membership.

Filter 1: **Access usually only possible via in-company grass-roots organisation**

- Lithuania
- Latvia
- Poland

Filter 2: **Grass-roots company organisation requires minimum number of members**

- Poland: 10
- Croatia:: 10
- Lithuania: 3
- Latvia: 3
- Slovakia 3

Filter 3: **Access only to the employed**

- Lithuania: no unemployed, students, pensioners
- Latvia: Exclusion of members of state security services (but no restrictions for trainees)
- Poland: no fixed-term employees, contract workers, pensioners, students
- Slovakia: Those not in employment only have extraordinary member status
- Romania: Employment contract required, but pensioners also have access, though not police, members of armed forces, employees in telecommunications sector
- Croatia: under law, only employed persons, but in practice often ignored

Conclusion: **biggest obstacles through accumulation of filters**

	Filter 1: Grass-roots organisation	Filter 2 Minimum no.	Filter 3: Normal employment contract
Poland	X	X	X
Lithuania	X	X	X
Latvia	X	X	–
Slovakia	–	X	X
Romania	–	–	X
Croatia	–	–	X

A combination of all three types of obstacle results in a particularly high degree of exclusion of employees in SMEs – i.e. mainly in sectors with a prevalence of small companies (e.g. the many newly-created companies in the services and craft sectors).

This can add up to a considerable proportion of employees and potential members – estimated at up to 40% or more – being excluded. Added to this are further demotivating factors such as the exclusion of certain groups from having their working conditions regulated by collective agreement (for more, see Section 3.1.6), so that in an extreme case, if all these factors combine, only a minority of employees will have any actual interest in joining a trade union. This is all the more the case if unions have a negative public image and employers also discourage their employees from joining.

Nor is unrestricted **access to sites** granted to trade unions to advertise their services and recruit new members in every country. In Hungary, for example, this is only the case if a certain level of trade union membership in a company can be demonstrated. Monitoring adherence to legal regulations is thus also made more difficult (including monitoring of implementation of collective agreement provisions declared to be generally applicable).

3.1.3 Obstruction and discrimination of trade unionists and elected officials

There is – most visible in the form of the annual reports by the ITUC on infringement of trade union rights in the world (latest: ITUC 2009) – a wide range of ways and means used to harass active trade unionists and block grass-roots organisations from being formed and trade union recruitment campaigns from being carried out.

Figure 6: **Obstruction of freedom of association of trade unionists (categories)**

Individual trade union members	Elected trade union representatives
• Attempts at intimidation and bullying • Agreement to change fixed-term contract to permanent if individual leaves trade union • Special bonuses for non union members • Amendment of status from full employee to contract worker, thereby excluding trade union membership • Threats of redundancy and actual firings • Transfer to spun-off parts of site, combined with • re-founding and subsequent site closure • Interference in recruitment campaigns within companies • Continual renewal expected of confirmation of deduction of subscription from wage by employer • Ignoring of court decisions on re-instatement following unlawful dismissal • Trade union organisations obliged to provide regular information on the total number of members to the employer (e.g. in Poland on a quarterly basis)	• Threats and disciplinary action • Transfer to jobs with inappropriately high training requirements, followed by disciplinary action • Transfer to remote work locations • Wage reductions, refusal to pay bonuses and allowances due • Bribery attempts or high compensation payments for voluntary resignation • Termination of contract for disciplinary or other ostensible reasons • Reduction of existing rights to exemption from normal duties • Refusal of necessary information and consultation • Spin-off of part of company into units too small for legal right to found trade union or to be represented by one • Retention of membership subscriptions deducted by employer • Refusal of admittance to trade union representatives • Playing off works council and trade union against each other (especially where distribution of powers is unclear)

Particularly serious is the repeated claim that even blatant infringements of the law cannot be punished and court judgements, for example on reinstatement following unlawful dismissal, are not enforced. This is a weakness of labour legislation and the law on freedom of association caused by a one-sided approach by the judicial system and, in particular, a lack of specialised labour courts. Cases that come before the ordinary courts are usually excessively lengthy and therefore often achieve little in practical terms.

The question of the scope for legal monitoring is dealt with in detail in Section 3.1.9 below

3.1.4 Deduction of subscriptions and problems of distribution of resources within the trade union

Another way that employers can take discriminatory measures and infringe trade union rights is derived from a widespread practice inherited from the era of state socialism: deduction of membership subscriptions by the employer. This can result in close monitoring of employees and even intimidation, as well as a refusal, in individual cases, to pass on the sums concerned to the grass-roots organisation.

This issue, too, is a subject of internal discussion within the trade unions, with attempts being made to find acceptable alternatives in order to secure functional independence and financial stability for the trade unions. The level of subscriptions is, in any case, a constant source of concern, as the statutes lay down a percentage of an individual's wage as the basis for calculation, but in some cases only the minimum wage as officially reported by the employer serves as the benchmark. A crucial role in determining the ability of an organisation to operate effectively is also played by the internal regulations on where the subscription payments should go to and whether the method of distribution provides the offices of the branch or umbrella organisation with sufficient resources to function effectively. Generally-speaking it can be said that

- on average 60–80% – in extreme cases up to 90% – of subscription revenue remains with the grass-roots organisations in the companies and
- the sectoral organisations and main headquarters have to share what remains amongst themselves.

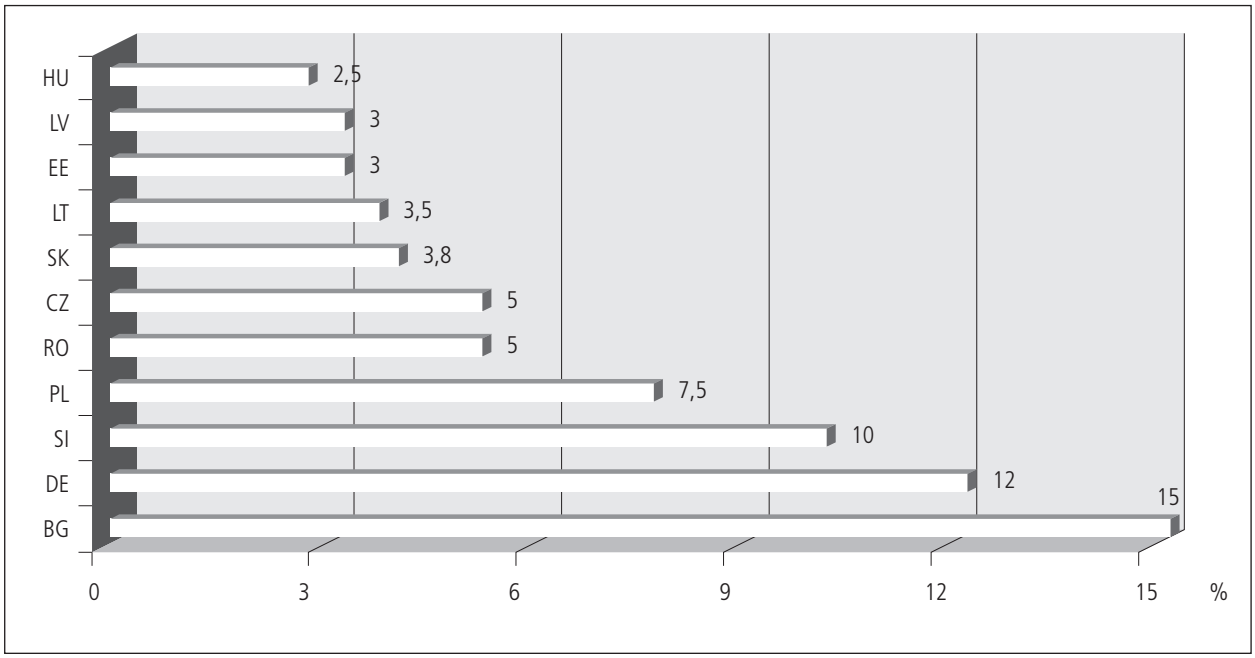
For the confederations and sectoral organisations the income available on this percentage basis to pay for specialist personnel, PR and advertising campaigns, training and collective bargaining support – not to mention maintenance of an international presence or even accumulation of a strike fund for all eventualities – is in many cases insufficient.

Figure 7 which follows is based mainly on interviews with national confederations and shows the percentage distribution of the budgets of the national trade unions (cf. European Foundation 2006/07). In cases where the subscription level is often based on the national minimum wage only (as in Hungary and Latvia, for example), it remains very low.

A common complaint is that the manner of distribution results in insufficient financial resources and therefore a lack of legal and economic specialists and experts in collective bargaining or employee representation (see Hülsmann/Kohl 2006). This applies both to the confederations and to their member organisations. The mainly decentralised use of resources thus also emerges as an unresolved problem of employee representation and freedom of association.

This weakness is exacerbated by the fact that – especially in those countries with a low minimum number of members required for founding a trade union – there is also a huge number of small-scale union organisations that are not affiliated to any umbrella organisation (an extreme example is Poland, with over 300 autonomous, i.e. unaffiliated, sectoral federations in addition to the approx. 23,000 company trade unions registered as legal entities).

Figure 7: **Proportion of subscriptions going to umbrella organisation (%)**



3.1.5 Differing regulations governing employee representation at company level

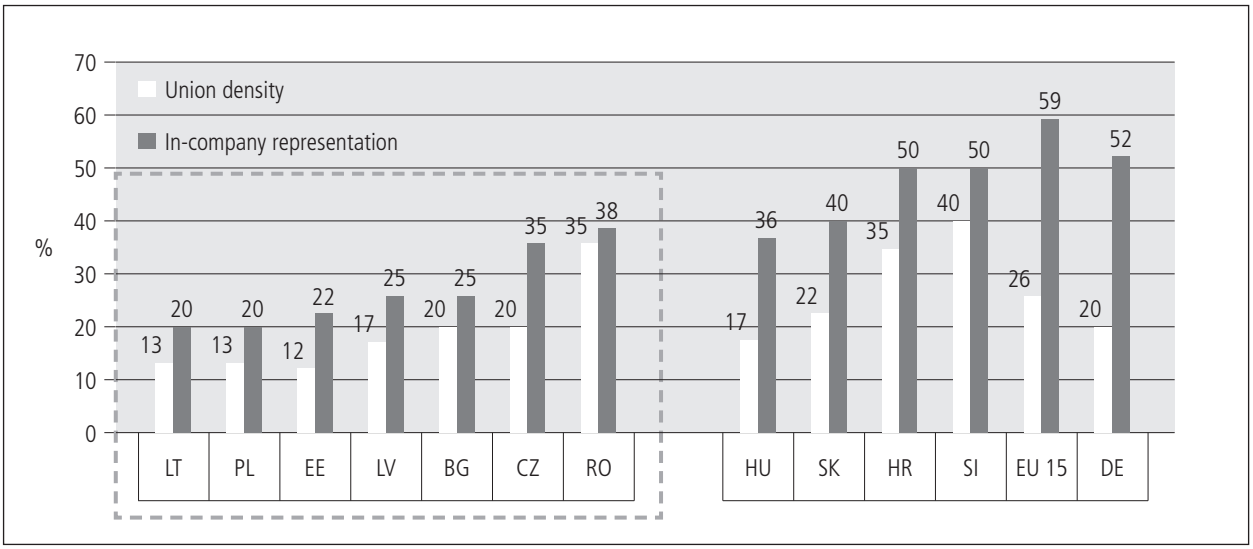
Workforce representation in Eastern Europe is traditionally the domain of local trade unions. However, these now only cover a minority of employees, especially in SMEs, which are largely "union-free". The percentage of employees with local representation increases sharply in those cases where an institutionalised system of representation in the form of a works council elected by the entire workforce can be set up (Figure 8). This has been the case in Hungary and Slovenia since the early 1990s (also since 1996 in Croatia and since 2003 in Slovakia) and also, in implementation of the 2002 EU directive (on employee information and consultation) to a lesser degree in Latvia and Estonia. The same applies, in more limited form, to most of the other Eastern European countries – although few such works councils have been set up to date there (on the special form taken by the "Czech Model" see below Fig. 9).

In Western Europe, with its longer tradition of institutionalised works councils, there is a denser network of legally established employee representation, and this can compensate for lower trade union density (e.g. Germany – for more on this issue in all the countries of the EU 15 see Figures 5.3 and 5.4 in the annex).

Despite a relatively low union density, a higher rate of representation, with a positive impact on trade union presence at grassroots level, can be found where *in addition* to trade union representation – and with union agreement – there is also a general employee representation elected by the entire workforce with legally guaranteed rights of participation (see right-hand half of Figure 8, starting with Hungary).

For such interaction to work and even result in mutual reinforcement, it is necessary to have a clearly defined **distribution of labour** between the trade union as the collective bargaining partner on the one hand, and, on the other, the statutory employee representation body with specific powers of implementation and monitoring of adherence to collective agreements, regulation of human resources and social issues on a day-to-day basis in the company and adherence to the principle of equality of treatment for those concerned. International experience indicates that this can positively boost member recruitment and retention, provided the trade unions make active use of the opportunity.

Figure 8: **Proportion of company employees represented by trade unions and works councils** (in relation to union density in a country)



A positive boost to the idea of a minimum framework for employee representation and participation was provided by the 2002 EU directive on information and consultation (for the essentials of this directive, see the excerpt from the main regulations in Annex 3). Timely and comprehensive information is crucial for any effective participation by trade unions and works councils. Before and after accession the governments of the new member states implemented this idea, with its parallels to the regulations on European Works Councils, to differing extents, as can be seen from Figure 9 (for the structures of employee representation and implementation of this directive in Western Europe, compare Figure 5.3 reproduced in the annex).

Figure 9: **Three forms of employee representation in Eastern Europe**

1. Only trade union representation	**2.** Alternative: trade union representation **or** works council	**3. Dual representation:** through works council **+** trade union
• Estonia (usual practice despite extended law 2006, see 3.) • Latvia (usual practice despite new law 2002, see 3.) • Lithuania (usual practice despite special law 2005, see 2.) • Poland (till 2006/08, with exception of state-run businesses)	• Czech Republic (from 2001) * • Lithuania (special law 2005)* • Poland (2006 law, for implementation by 2008: works council elections in companies with over 50 employees possible, inasmuch as no trade union representation exists) * • Romania (from 2003 or 2007: Works council possible, inasmuch as no trade union representation exists)**	• Hungary (from 1992) • Slovenia (from 1993) • Croatia (from 1996) • Latvia (2002 law, rarely enforced)** • Slovakia (from 2003, rare) • Estonia (from 2007, rare)** • Bulgaria (from mid 2006, still very rare)***

* In the Czech Republic, Lithuania and Poland works councils can, in principle, only operate for as long as there is not (yet) any trade union representation ("Czech model"). The electoral arrangements in Poland infringe "negative freedom of association" (ruling by constitutional court, 2008).

** In Latvia, Lithuania, Estonia and Romania works councils also have the right to conclude collective agreements, in the Baltic States they can even organise industrial action provided there is no local trade union representation in a company.

*** In order to make use of its right to information and consultation the workforce can elect a special representative body in companies with 50 or more employees, even parallel to existing trade union representation.

In cases where the trade unions have accepted and supported the introduction of works councils as a new element in employee representation – as in Slovenia and, after some initial scepticism, Hungary – they were able to largely fill these bodies with their own members and use the concomitant statutory rights of information and participation for themselves. (Where there is no works council in Hungary, Bulgaria and Croatia their participation rights are automatically transferred to a trade union representation, if it exists). Important areas for mutual cooperation between trade unions and works councils turn out to be the training and advising of works council members by the trade union organisation and, conversely, opportunities for recruitment of members (see the example of Slovenia).

Where the trade unions regard works councils as unwelcome competition – which in some cases is plausible, given their statutory rights and the preference of some employers for this type of body – the formation of works councils has remained marginal and, in practical terms, ineffectual.

This applies in particular to the Czech Republic, where the principle applies that a works council cannot be formed where there is already trade union representation and it has to immediately cease operations as soon as a union representation has been set up with at least three members and has concluded a collective agreement. This incompatibility – generally known as the "Czech model" – was subsequently taken over in modified form in Lithuania and Poland – with the addition of a provision for an existing trade union representation in Poland to be changed into a works council in order to access the statutory rights of information and participation. However on 1st July 2008 this arrangement was declared by the Constitutional Court to be incompatible with the principle of "negative freedom of association", particularly as an elected works council can, in law, only remain in office for a maximum of six further months when a trade union representation is created. In Lithuania, on the other hand, there is a statutory obligation to cooperate with a subsequently created trade union representation, failing which the workforce must charge one of the two bodies with representing its interests – in such cases at the most until the period of office of the works council has ended (for a further comparison of the legal rights of works councils in Eastern and South-Eastern Europe see the summary below in Section 4.2).

This form and practical implementation of representation does not, in effect, increase the proportion of employees with representation (see Figure 8), particularly as there is a quantitative hurdle blocking the way – like in the case of the founding of grass-roots representation in companies.

Again: Exclusion of many employees through requirements for a minimum number

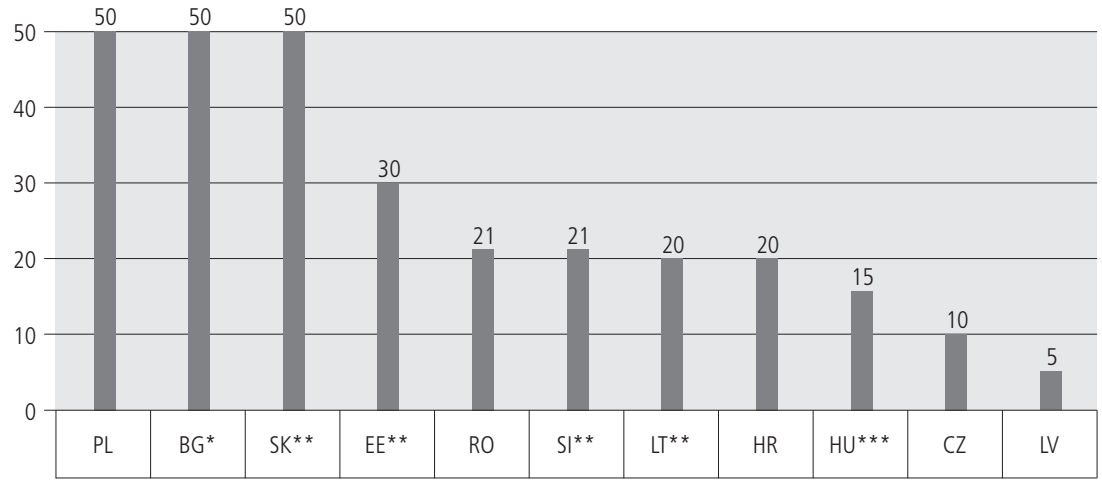
Another crucial problem for practical freedom of association in Eastern Europe is the legal requirement for a company to be of a certain size before a works council can be formed. This once again disadvantages the increasing number of employees in small and medium-sized enterprises (SMEs) over and above the framework set out by the EU.

In Poland, companies have to have 50, in Estonia 30, and in Romania, Bulgaria and Croatia 20 employees before a works council with the rights laid down in the 2002 EU directive can be formed (see Figure 10). A comparison with the similar minimum requirement for creation of trade union representation (see Figure 2 above) reveals that in Poland, Bulgaria, Romania and Croatia a much larger size of workforce is required before an institutionalised representation body can be elected under national law.

Apart from the special case of Poland, where a works council elected by the workforce can only be formed and continue to function provided there is no grass-roots trade union organisation (or one that has been transformed into a "works council"), the high threshold of at least 50 employees means that currently some 46 % – i.e. almost half of all Polish employees – are prevented by law from having their interests represented by a works council and are therefore unable to make use of their rights under the 2002 directive on information and consultation.

As the aforementioned legal regulations and statutes mean that over 80 % of SMEs in Poland are currently "union-free", such statutory restrictions

Figure 10: **Minimum no. of employees for formation of a works council**



* At individual company sites a representative body can be elected from 20 employees upwards.
** Below this number: 1 employee representative (in SK: minimum 5 employees; in CZ, however, if fewer than 10 employees, and in EE without full statutory rights of information and consultation).
*** 1 employee representative, upwards of 51 employees, a works council with several members

Source: BwP 2009

mean that the employees concerned enjoy virtually no improvement in their rights of free association as a result of recent legislation.

In Hungary there have to be at least 15 employees in a company for an institutionalised employee representation to be formed, but in the other countries even small companies with fewer than 10 employees can elect a workforce representative, though in some cases they have few participation rights.

In Western Europe, implementation of the 2002 EU directive was also by no means problem-free – both in terms of the threshold for setting up institutionalised employee representation in the form of a works council and also the introduction of a special *information and consultation forum* (in Ireland and the UK) (for more on this, see the figures on forms of implementation and legal obstacles to employee representation in Annexes 5.1 to 5.4). In several cases the Commission had to refer the matter to the ECJ in order for representation structures to be extended (EC 2008; EIRO 2008).

See Annex 3.2. for more detail on the overall legal **rights and powers of works councils** in the 10 new EU member states.

Participation of employee representatives in supervisory boards and European Works Councils

In the Baltic States there are no statutory provisions for participation of employees in the supervisory boards of larger corporate units; in Romania and Bulgaria a trade union representative can sit on the board (without voting rights) in certain cases; in Poland they can take between a third and two fifths of seats on the supervisory board (depending on the degree of state ownership still involved) and, if appropriate, send one employee representative to the management board.

In Croatia it is legally possible to have one workforce representative on the supervisory board of companies with more than 200 employees or those with at least 25% state ownership.

In the other states of Central Eastern Europe, the right to one third of seats exists in companies with 50 or more employees in the Czech Republic and Slovakia (in state-owned companies there is even parity representation); in Hungary this is possible from 200 employees upwards.

For companies with more than 500 employees in Slovenia, a third of seats on the supervisory board

go to employee representatives and – depending on the statutes – there can even be parity representation in larger companies. In companies with more than 1,000 employees, the works council has the right to nominate a personnel manager as a member of the management board. These types of participation enable a timely flow of information to take place and open up scope for influencing corporate and human resources planning.

The **European Works Councils** (EWCs) created by the 1994 EU directive provide an extra boost to the process of Europeanization of industrial relations. EWCs have to be set up if the parent company of a conglomerate with over 1,000 employees has 150 or more employees in a foreign subsidiary. The main rights of the EWC consist of the right to be provided in advance with information about the economic and financial situation of the group and its business planning (similarly to the provisions of the 2002 EU directive) and to discuss it. This makes it possible to develop a joint employee strategy and, if appropriate, draw up alternatives to the company's plans.

In Eastern Europe the necessary statutory regulations for setting up EWCs exist, but the problem that remains – as in Western Europe – is one of implementation (on the spread of EWCs see the EWC database drawn up by ETUI). Currently, approximately 30 % of the 820 EWCs in Europe include representatives from the new EU accession states and candidate states, but these only represent about half of all the company entities situated there.

3.1.6 Collective agreements – statutory provisions, practice, and coverage of employees

In Eastern Europe the vast majority of collective agreements (with the exception of Slovenia and, to some extent also Slovakia, Romania and Bulgaria) are concluded at company level (see Figure 11). The situation of the trade unions at this level is therefore once again a crucial criterion for realisation of freedom of association – with significant implications for the material consequences of income distribution policy.

When it comes to the ability of trade unions to operate as collective bargaining partners, the main factors involved are state regulations laying down certain representativity requirements in terms of minimum levels of membership in the workforce or – as in the case of Hungary – an indirect mandate for the negotiating party based on the results of the most recent works council elections (i.e. over 50 %, in the case of there being several trade unions, at least 65 % of votes cast). In the public sector, membership of at least 25 % of the workforce is even required as a precondition for trade unions to commence the bargaining process in a company.

Actual wage-setting takes place mainly at company level throughout the whole of Eastern Europe: even where sectoral arrangements predominate or are widespread – as in Slovenia, Slovakia, Romania and Bulgaria – supplementary negotiations usually take place in sites and companies. This is one of the main structural differences compared with Western Europe, where sectoral agreements (with very few exceptions such as the UK) establish binding wage definitions and pay scales.

In addition, in Romania and Slovenia, tripartite coordination of certain factors defining or supplementing basic wages also takes place in national economic and social councils (see below Tab. 1).

Collective bargaining policy benefits employees most in cases where – as in Slovenia and, to some extent, also Slovakia – blanket **sectoral collective agreements** are concluded, thereby securing minimum standards of working conditions for the majority of workers in the sector concerned (see Table 1).

Their impact is strengthened if these agreements achieve **general extension**, making them applicable to non-members of the employer's or trade union organisation as a result of a decree by the responsible labour ministry. In Western Europe this is common practice. In Central Eastern Europe, on the other hand, this has hitherto been the exception. In Romania the law decrees that every sectoral collective agreement applies to all employers in the sector concerned, and similarly company

Figure 11: **Levels of wage-setting in Eastern Europe: company or sector?**

	National level*	Sector	Company
Estonia	□	□	▲
Latvia	□	□	▲
Lithuania		□	▲
Poland	□	□	▲
Czech Republic		□	▲
Hungary	□	○	▲
Croatia	□	○	▲
Slovakia		▲	○
Slovenia	○	▲	○
Bulgaria	○	▲	○
Romania**	▲	○	○

□ Existing level of collective bargaining
○ Important, but not predominant level
▲ Predominant level of collective bargaining

* Cross-sectoral agreements
** Bargaining obligatory in companies with over 21 employees

agreements apply to all employees, irrespective of whether or not they are trade union members. In Slovenia there are sectoral collective agreements in all branches of industry. This happens because the Slovenian chamber of commerce has hitherto operated as the main collective bargaining partner of the trade unions. Since the law was amended in 2006, however, the chamber has no longer required obligatory membership by all employers but now operates on a voluntary basis, which means that the unusually high proportion of companies bound by collective agreements is likely to decline somewhat in the future. On the other hand, the existing instrument of general extension of sectoral agreements could help avoid such a negative impact.

In some cases sectoral agreements in the Czech Republic, Slovakia, Hungary and Bulgaria also achieve general extension, as also happens in very rare cases in Estonia and Lithuania – but not hitherto in the private sector in Poland and Latvia (see Tab. 2).

In addition, another useful tool for regulating working conditions can be cross-sectoral national agreements in the form of **social pacts** and bilateral or tripartite agreements (e.g. for the private or public sector) that lay down corridors for subsequent sectoral or company-level wage negotiations or further framework regulations, for example on working time, vacations or vacation payments. These create scope for negotiations at the lower level in sectors and individual companies (for more on this see Tab. 1).

Countries where wage-setting occurs mainly at company level (in Figure 12, those outlined on the left) have a lower level of **collective agreement coverage** than countries in which it is (mainly) sectoral agreements that are concluded.

Depending on national legal practice, coverage by collective agreements can be significantly extended by labour ministries declaring them to be **generally applicable** for all employers in that sector, as is usual in the case of sectoral agreements in Romania, as well as in the Czech Republic and Croatia and sometimes also in Hungary (on this see the comparative Figure for the EU 27 in Annex 5.6).

Tab. 1: **Levels of collective bargaining and their significance in Central Eastern Europe**

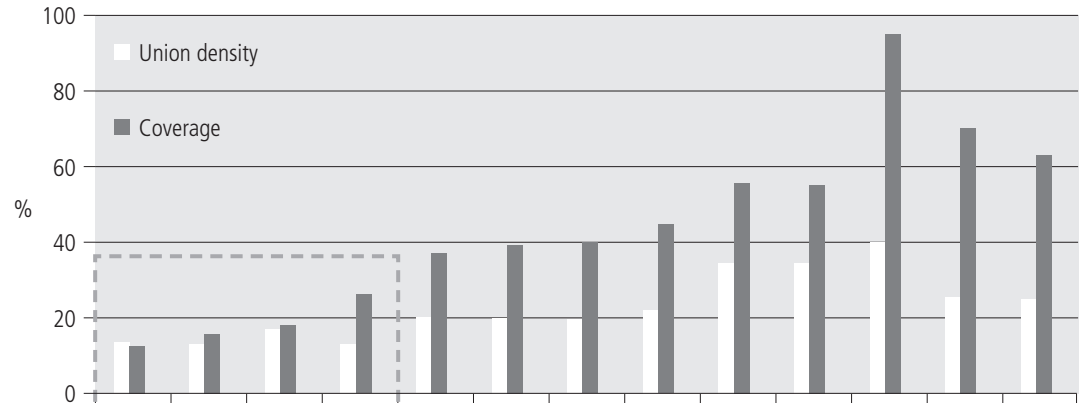
	National	Sectoral	Company
CZ	No social pact or bilateral negotiations	Industry-wide agreement (for about ¼ of employees)*	Greater importance of company agreements (for approx 30% of employees)
EE	No bilateral negotiations or social pact	Public sector and health (= generally binding)	Company agreements predominate
HU	Tripartite recommendations for negotiations at the lower level	Bilateral sectoral committees in 36 industries; several agreements	Company agreements for approximately a third of employees
LV	Tripartite concertation, no negotiations	Only in public sector	Company agreements predominate**
LT	No social pact, no bilateral negotiations	In public sector, first agreement in private sector 2005***	Company agreements predominate
PL	Tripartite concertation with recommendations for collective bargaining	12 tripartite sectoral committees to prepare sectoral agreements	Usually company agreements in as much as trade union representation exists
SI	Social pact and bilateral framework regulations	Sectoral agreements in all 34 industries	Many company agreement
SK	No social pact	Agreements in most sectors	Many company agreement
BG	Bilateral agreements, social pact (2007)	Agreements in approx. 10 sectors	Many company agreement
RO****	Agreements, amongst other things on minimum wage	Many sectoral agreements	Company agreements important

* some with general extension for all companies in a sector according to law of 2005
** lack of collective agreements in particular in private services sector
*** in agricultural sector, with general extension
**** collective agreements at all levels are legally binding on all employers/employees concerned.

Tab. 2: **General extension of sectoral agreements**

	Coverage by collective agreements (%)	General extension for all employers in a sector
Slovenia	95	hitherto not necessary, but possible
Romania	55	all collective agreements concluded
Slovakia	45	possible
Hungary	40	possible (still rare)
Bulgaria	38	possible
Czech Republic	36	increasingly since 2000/2005
Poland	25	possible since 2000 (rare)
Latvia	18	possible since 2002 (very rare)
Estonia	16	possible since 2000 (very rare)
Lithuania	12	possible since 2003 (hitherto 1 sector)

Figure 12: **Proportion of employees covered by collective agreements**



	LT	EE	LV	PL	CZ	BG	HU	SK	HR	RO	SI	EU 15	EU 27
Union density	13	12	17	13	20	20	19	22	35	35	40	26	25
Coverage	12	16	18	25	36	38	40	45	55	55	95	70	63

Source: BwP 2009

Collective bargaining: Who – with whom – without whom – and what about?

Going beyond mere formal provisions, the question arises as to how and in what circumstances collective agreements in Eastern Europe are concluded and, if they are not, what areas freedom of association covers. The following aspects therefore need to be looked at more closely:

a) Legal requirements for the commencement of collective bargaining and exclusion of certain groups of employees from collective agreements

b) Collective bargaining autonomy: in what areas can negotiations take place without preconditions laid down by the government?

c) When can pressure be exerted and what restrictions are there on the right to take industrial action?

d) What happens when there is no collective agreement – what implications does this have for the pay and working conditions of those affected?

The **trade unions** in some cases require legal legitimation to be able to initiate negotiations. To be recognised as negotiating partners they must, amongst other things, fulfil certain representativity criteria (at sectoral as well as company level) or, if they are company trade unions, represent a certain percentage of the workforce.

This is the case in Hungary, for example, where the right to negotiate is based on the results of the most recent works council elections. In Romania, membership of a third of the workforce is required for the annual collective bargaining round, which is otherwise obligatory for companies with more than 21 employees (the mandate can also be delegated to a superordinate, representative trade union). In Poland, until 2006, an employer was only obliged to enter into negotiations if there was a joint list of demands submitted by several trade unions or the grassroots organisation initiating the negotiations represented more than 50 % of the workforce. The law now lays down that the employer must always enter into negotiations with the trade union that has the strongest representation in a company. However in the Czech Republic the constitutional court blocked precisely this procedure in 2008 and decreed that in the case of several trade unions, joint negotiation was re-

quired for the conclusion of collective agreements – in the case of infringement, the employer can make his own, one-sided decisions on wages and working conditions (ITUC 2009).

In Lithuania and Latvia, every agreement concluded additionally requires the approval of a majority of the workforce.

Trade unions frequently complain that **employers** refuse to enter into negotiations; this is the case in Slovakia, for example, where there is no obligation to do so or a sectoral employers' organisation does not have a negotiating mandate for a sectoral agreement or this is explicitly forbidden in its statutes. In Eastern Europe there is in any case often a tendency to conclude only company level agreements instead of sectoral ones, as the latter tend to restrict companies' room to manoeuvre.

In addition, the option of declaring a **general extension** of existing sectoral agreements, which is permitted by law in all parts of Central Eastern Europe is virtually never used in Poland and the Baltic States, whereas elsewhere, for example in Romania, it is commonly applied (giving collective agreements a higher degree of coverage); in the Czech Republic, Slovakia, Bulgaria, Hungary and Croatia it is rarer, but nevertheless has a definite positive impact on employees.

Apart from the problem of exclusion of many employees in SMEs whose size means that there is no trade union organisation to conclude agreements, many **public sector** employees in Eastern European countries are disadvantaged by restrictive regulations. It is not only civil servants (as in Bulgaria and Estonia) who are excluded from collective negotiations but also some government white-collar workers (in Lithuania). In Croatia, agreements can only be signed covering the basic salary – not other elements, which can account for up to 30 % and more of total remuneration. In Hungary, collective agreements are only permitted in public institutions and companies if more than 25% of the employees concerned are also trade union members. In the Czech Republic, up till 2007, even wages were completely excluded from collective bargaining in the public sector, but since then the scope for negotiation of collective agreements has been widened. In Romania this is still the case, despite a call from the ILO Committee on Freedom of Association for the regulations to be changed.

On the other hand, in those countries where there is a predominance of company collective agreements, sectoral regulation of working conditions and wages has hitherto only been possible in the public sector – for local authority employees, in the education and health systems or in other public services – but not in predominantly private sectors.

Problems of collective bargaining autonomy

When it comes to the content of collective agreements between the social partners, the process of transformation in Eastern Europe has brought a clear trend towards greater bargaining autonomy. Whereas in the past the state laid down clear requirements according to the principle that "anything that the law does not explicitly permit cannot be covered by bilateral agreements", this has

Employee groups not covered by collective bargaining
Employees without any right to a collective agreement (examples from Eastern Europe):
• Employees in small companies that do not have a negotiating body because of their size (statutory exclusion);
• Employees in the public sector (civil servants and some government white-collar workers, for example in EE and BG); in Romania, wage issues are completely excluded;
• Negotiations only possible on basic salary for public employees, not on other remuneration elements (HR);
• Public sector completely excluded from collective negotiations (until 2007 the case in CZ, now liberalised)
• Collective agreements in public sector only possible if at least a quarter of workforce are members of the trade union conducting the negotiations (HU).

now given way to a greater degree of freedom on the part of the social partners. The principle applies here that provisions otherwise regulated by law can only be improved by collective agreements and not worsened.

On the other hand there are wage guidelines or framework regulations laid down on a tripartite or bilateral basis at national level that aim to compensate for deficits in the negotiating process as well as limit measures that might have a negative impact on prices and affect international competitiveness. Examples of these are as follows:

- According to a tripartite recommendation by the economic and social council in Bulgaria, collective agreements should offer compensation for anticipated inflation and productivity growth, i.e. for the period 2007–2009 they should operate in a bandwidth of between 7.5% and 10%. For the public sector the indices for income distribution policy are based on guideline figures of 100% inflation protection and 75% of GDP growth.

- In Lithuania a lack of sectoral and often also company agreements resulted in the signing of a bilateral national agreement in 2005 that recommended a "method for evaluating occupations and positions" in order to classify different wage groups.

- Slovenia has a three-stage collective agreement system: In order to meet the Maastricht criteria prior to introduction of the euro in 2007, the national social pact and framework agreements for private industry and the public sector laid down that sectoral agreements had to allow for 80% of the inflation rate and an element of productivity growth minus one percentage point. These margins can, however, be varied in company agreements according to the particular company's performance.

- Poland has had a regulation on hardship cases since 2002 allowing companies in economic difficulties to suspend collectively agreed regulations for up to three years. This has been increasingly used in recent years, though it requires the formal agreement of the trade union and a local tripartite committee. Whether there is effective monitoring by the trade unions in every case is doubtful, given that the labour inspectorate at the same time reported in 2005 that 56% of companies inspected were not meeting their statutory obligations in terms of wage payments.

3.1.7 Statutory restrictions on the right to strike, and current practice in the field

If agreement is to be reached, it is essential for trade unions to be able to threaten or take industrial action as a weapon of last resort. However, if we look at the situation in Eastern Europe at least in the private sector, we see that while this method of exerting pressure was relatively widely used at the start of the transformation process in Europe, it has now clearly lost its effectiveness.

One main reason for this, in addition to a drop in union density and concomitant loss of strength by the trade unions, is the fact that there are – in some cases extensive – restrictions on the right to strike which the relevant bodies of the ILO (for example the Committee of Freedom of Association) and the Council of Europe have criticised as an infringement of the European Social Charter.

Individual countries have a broad range of administrative obstacles and explicit bans aimed at controlling what they fear could be excessive use of industrial action. The main examples are listed in Figure 13.

The right to take industrial action is enshrined in law in all countries – including the right to lockouts (in five countries, though this has hitherto not played any direct role in practice – see Figure 14).

When it comes to the detail, however, there are considerable (and in some cases serious) constraints on the practical feasibility of organising a strike as a necessary means of exerting pressure in an industrial dispute. The main constraints are:

- Exclusion of certain groups of persons and sectors from industrial action,

- Exclusion of certain strike goals, such as trying to prevent infringements of existing collective agreements

Figure 13: **Restrictive regulations on strike rights in Eastern Europe**

	Exclusion of certain employee categories	Statutory regulations
Estonia	Public service (state/local authorities), armed forces	Seven days' notice required Works council has right to call strike
Lithuania	Electricity sector, members of the armed forces Heat and gas supply (till 2005) Comprehensive strike in an entire sector practically impossible in legal terms	2/3 (since 2008: 50 %) workforce vote Seven days' notice required; in many "essential" supply and service industries, 14 days (plus guaranteed emergency cover)
Latvia	Police officers and members of the security forces, border police and armed forces "essential" services and utilities (requirement for guaranteed emergency cover)	3/4 workforce vote 10 days notice required Strike allowed in the case of infringement of an agreement State can ban a strike Works Council has right to call strike
Poland	Public service (state/local authorities), only protests or demonstrations possible; so-called "essential" services, members of the armed forces, police	Demonstrations require 30 days notice and safety measures taking into account road traffic regulations Strict sanctions for illegal strikes
Czech Republic	Supply industries (oil and gas pipelines etc), security services, members of the armed forces Essential health services and telecommunications	Ballot of >50% of employees in company or sector (from 2007: at least 50% of those with voting rights) and positive vote of 2/3 of those involved List of names of those wishing to strike to be submitted to employer (up to 2006), now only the numbers involved Strike on account of infringement of agreement not permitted
Slovakia	Supply industries (distribution of oil, gas, etc.)	Industrial action in response to infringement of provisions of collective agreement permitted
Hungary	Restrictions for large areas of public service (acc. to 1994 agreement with trade unions)*	Industrial action for continued application of a collective agreement and also particular forms of strike not permitted; sanctions possible
Slovenia	No formal restrictions, only guarantee of vital services	Only procedures on account of abuse of principle of negative freedom of association
Romania	Restriction for employees in health, education and communications sectors (radio and TV), in transport sector, gas and electricity supply (emergency cover of at least 1/3 of workforce required)	Notice 48 hours before start of industrial action, vote by 50% of members or 1/4 of workforce sufficient; strikes often declared illegal and suspended by courts for formal reasons Compulsory state arbitration possible
Bulgaria	Public service (only protest permitted); post, railways (see right) Energy supply, communications and health (up to 2006)*	For rail companies a minimum service of 50% must be maintained; this requirement is the subject of criticism by ILO on grounds that it is excessive
Croatia	Restrictions in public sector, for police, railways, post, telecommunications, health	Strike only possible if a collective agreement has lapsed.

* criticised by Council of Europe as infringement of European Social Charter

- Restriction of strikes to individual companies, banning of strike action in an entire sector,
- Statutory requirements for an extremely high vote in a strike ballot
- Unusually long periods of advance notice to the employer required prior to the start of a strike (similar provisions exist in the Nordic countries), combined with administrative hurdles designed to prevent the possibility of industrial action
- Statutory requirement to take part in voluntary or compulsory arbitration prior to the strike (for more on this, see Figure 14).

In the Baltic states of Latvia and Estonia, in cases where no union representation exists, a right to strike similar to that of a trade union was recently granted either to a representative body elected by the workforce or to a works council (if it exists, but so far this has little practical significance in such cases). This (in EU terms) unique arrangement, which tries to make a virtue out of the lack of trade union grassroots organisations, represents a provocation for the trade unions in the countries concerned, as it allocates to the works council a similar role to that of a union but without the necessary income from membership subscriptions – which is likely merely to encourage the sort of free-riding attitude that already exists.

Consequences for industrial action in practice

The conclusion one can reach from this overview of the right to strike in the countries concerned is that restrictive statutory regulations consist above all of:

- long periods of notice required prior to industrial action
- high percentage of votes required in workforce or membership ballot
- exclusion of certain goals and categories of employee

The effects of these restrictions and obstacles are measurable – both in terms of frequency of strikes and the type of strikes in a particular country in recent years and also in terms of the outcome of

Figure 14: **Strike rights regulated by national legislation**

	Strike rights*		**Lock-out**	**Compulsory mediation/ arbitration prior to start**
	Trade union	Elected employee representatives	Employers	
Estonia	X	X	X	only mediation
Latvia	X	X	X	only mediation
Lithuania	X	X	–	only mediation
Poland	X	–	–	only mediation
Czech Republic	X	–	X	X
Slovakia	X	–	X	only mediation
Hungary	X	–	–	X
Slovenia	X	–	–	–
Romania	X	–	–	X**
Bulgaria	X	–	–	X
Croatia	X	–	X	only mediation

* Right to strike in the state sector not always granted or only in restricted form (see Figure 13)

** Compulsory arbitration also possible

industrial action and its impact on income distribution policy in relation to economic growth and productivity.

Since the mid 1990s, industrial action, which had increased in frequency at the start of the transformation process in Eastern Europe, has virtually ground to a halt, with the exception of certain public service sectors like education and health or railways, in which sectoral collective agreements exist and protest campaigns are regularly organised. In Lithuania, for example, there were no all-out or token strikes at all between 2001 and 2005. A recently planned across-the board strike by nurses was found to be effectively impossible for legal reasons as it would have required a majority vote in favour of strike action by employees in *all* health institutions throughout the country.

The reasons for this lack of industrial action, in addition to the existing legal restrictions, lie in above-average unemployment rates and a widespread requirement for mediation and arbitration prior to any planned strike (see Figure 14).

More recently, though, a number of countries have experienced isolated but increasing numbers of cases of successful strike action in large private companies with strong trade union organisations. This fits with the trend in Eastern Europe for trade unions to concentrate on company agreements in areas where they are particularly well organised.

One exception to this picture is Slovenia, where there is apparently a widespread willingness to take industrial action and to press for resolution of non company-specific issues – even to take measures that come close to a general strike. In 2004, for example, this enabled employees to achieve effective sectoral collective agreements instead of the national framework agreements that had predominated hitherto.

3.1.8 Minimum wage as an alternative to collective agreements – impact on social structures and employment policy

Where collective agreements do not exist, or a general extension decreed by the labour ministry has not made sectoral agreements applicable to all employers in an industry, employees can only fall back on individual employment contracts and, in most cases, the **statutory minimum wage**.

On average in the EU the minimum wage amounts to a maximum of 50% of the average wage in a country, but in Eastern Europe it is usually well below this (see Figure 15; for the absolute level of minimum wages in 2008 see the comparative Figure in Annex 4.3; on the minimum wage structures in Western and Eastern Europe see Schulten et al 2006).

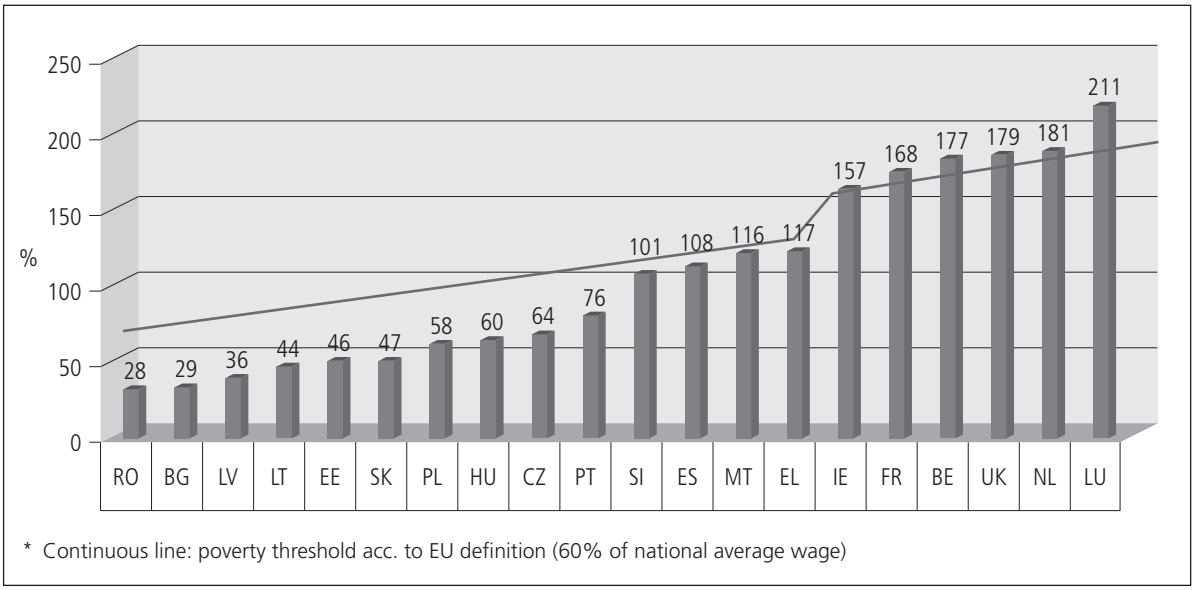
The relative levels of the minimum wage of in the 20 EU countries with a statutory minimum system is illustrated by another figure which – to facilitate comparisons – is based on the purchasing power standards (PPS i.e. calculated independently of the relative prices and exchange rates) in each country. The columns in Figure 16 show the relationship of the national minimum wage to the calculated EU average of all minimum wages (=100).

The continuous line shows the **poverty threshold** for each country (i.e. less than 60 % of the average income of employees) according to the EU definition. The data is based on the purchasing power parities for minimum wages calculated annually by Eurostat (see: Eurostat, Statistics in focus 105/2008). This method eliminates currency and price fluctuations from the calculation and makes it possible to compare the actual purchasing power of the incomes concerned.

Figure 15: **Minimum wage as a proportion of national average wage (2008)**

30 – 35%	35 – 40%	41 – 46%
Romania Latvia Lithuania	Poland Hungary Czech Republic Croatia	Bulgaria Estonia Slovakia Slovenia

Figure 16: **Relationship of minimum wage levels to EU median (= 100, in PPS)***



* Continuous line: poverty threshold acc. to EU definition (60% of national average wage)

According to the EU's 4th Cohesion Report published in 2008, 20 % of the population in Poland and Romania are directly affected by poverty – considerably more than the European average. Moreover it will take 15 years before these countries reach 75% of the per capita income of the EU 27. When predictions of future developments are made, however, it should be noted that in 2008 there were above-average increases in the levels of minimum wages specifically in those countries at the lower end of the scale: compared with the previous year's figures these were

Latvia	+ 32.8%	(2009: –12.5%)
Romania	+ 28.2%	(2009: +20.0%)
Bulgaria	+ 22.2%	(2009: +9.7%)
Estonia	+ 20.8%	(2009: 0.0%)
Poland	+ 20.2%	(2009: +13.0%)
Lithuania	+ 16.7%	(2009: +4.5%)

These very high increases in the countries on the periphery of Northern and South Eastern Europe, with their low wages prior to the 2008 crisis, are not the result of state philanthropy but rather – setting aside the need to catch up with the rest of the EU – caused also by the increasingly noticeable impact of a **lack of skilled workers** in these countries. However this trend stopped abruptly in 2009 as a result of the massive impact of the global economic crisis on these countries. With continued high levels of inflation in the Baltic countries there is now even a very real threat of a significant drop in real wages (see below).

Prior to this, Bulgaria and Romania had seen a good fifth of their potential working population emigrate and take up jobs abroad. In the Baltic States the emigration of many nurses and doctors left such huge gaps in the health sector that this negative trend could only be combated by an increase in the minimum wages in the Estonian health service by 25 % in 2007 and a further 20 % in 2008. In Poland, too, bottlenecks in certain areas of the labour market were partly responsible for the government deciding to increase public sector wages by some 10 % in 2008.

Further consequences of minimum wages

In this context, two not unimportant aspects should be mentioned:

- Firstly, the practice of paying a proportion of wages – in some cases several times the official minimum wage – as **"cash in hand"**, so as to minimise tax and social security payments. This has a negative impact on the later level of pension payable. In some cases this practice affects up to a third of employees in the private sector and has even spread to the public sector as well (see e.g. Antila et al 2003).

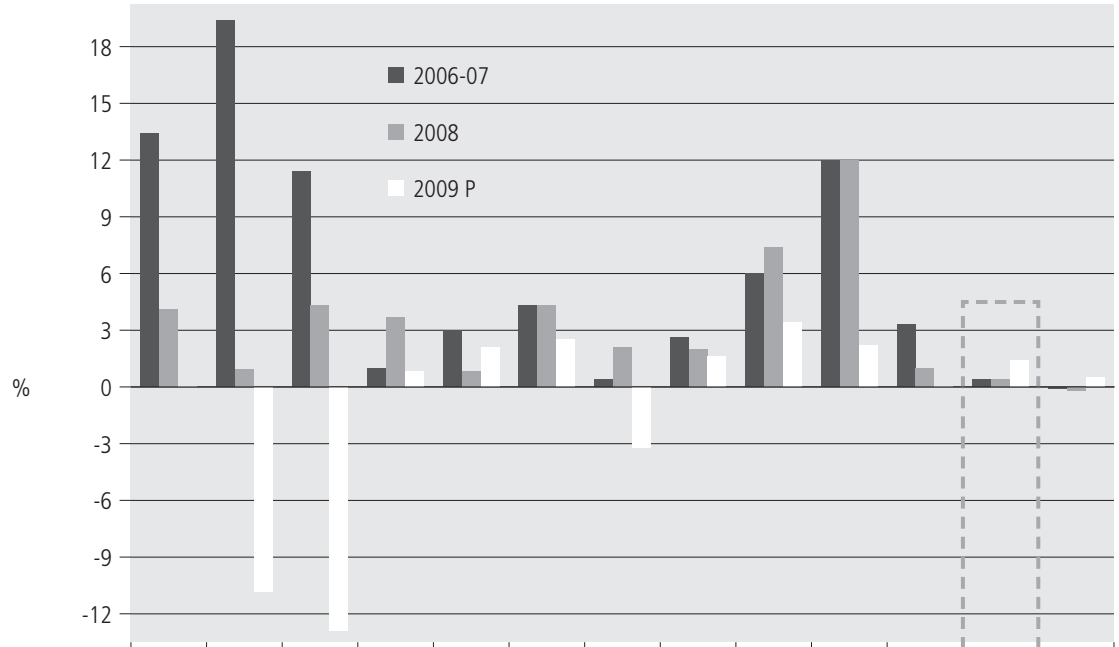
- As a result of this, in some countries (for example Hungary and Latvia) the trade unions complain that, despite the provisions in their statutes, their **membership subscriptions** are only based on the minimum wage, thereby reducing what is already a sparse income.

3.1.9 Material impact of negotiation and wage-setting systems on income distribution policy and wage disparities

The material impact of the various different forms of collective negotiation in Eastern Europe is obvious. There may be a sharp increase in real wages, but so far these have always been triggered by even higher growth rates and productivity increases in the individual countries (see Figure 17 and the relevant indicators in Annexes 4.1 and 4.2). Moreover, as already mentioned, high levels of migration have had a positive impact in terms of pay increases. Now, however, this trend has stopped as a result of the economic crisis and during 2009 has even been drastically reversed in some countries of Eastern Europe.

Looking back, one can discern a clear pattern over recent years of general **wage restraint** resulting from a failure to use the scope for cost-neutral redistribution. With the exception of the Baltic States, widespread wage restraint in collective agreements – visible in terms of the gap between the increase in productivity and the rise of real wages – is, on average, much more marked than in Western Europe. One of the main reasons for this is undoubtedly the structure of the collective agreement system. But the negative redistribution trend is often also the result of a lack of practice in negotiation and an inadequate ability to put forward economic arguments in collective bargaining and to explore the scope for compromise. This has been demonstrated in many bargaining training

Figure 17: **Real wages in Eastern and Western Europe 2006 to 2009 (EU forecast)**



	EE	LV	LT	PL	CZ	SK	HU	SI	BG	RO	HR	Euro-Zone	DE
2006-07	13,4	19,4	11,4	1,0	3,0	4,3	0,4	2,6	6,0	12,0	3,3	0,4	-0,1
2008	4,1	0,9	4,3	3,7	0,8	4,3	2,1	2,0	7,4	12,0	1,0	0,4	-0,2
2009 P	0,0	-10,8	-12,9	0,8	2,1	2,5	-3,2	1,6	3,4	2,2	0,0	1,4	0,5

Source: EC, Forecast of European Economy, Spring 2009

sessions (planning games involving both sides) with Eastern European trade unions within the framework of international projects such as the PHARE programme.

The sheer extent of wage restraint displayed in certain countries in Eastern Europe can be seen from a comparative figure based on data from the EU Commission's autumn 2008 economic forecast for the European economy (see Figure 18).

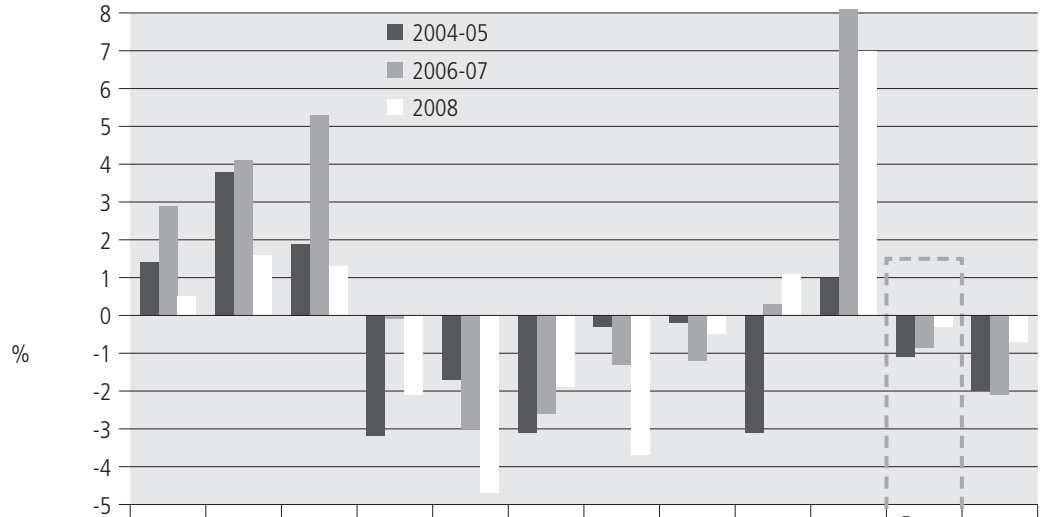
With only a few exceptions, collective bargaining policy has failed to achieve any compensation in wage agreements for sometimes extremely high inflation rates and rapidly growing productivity. In recent years, Estonia, Latvia and Romania have made particularly strong advances in productivity as a result of a modern and flexible approach to work organisation (EIRO 2009). Unfortunately the current collapse in economic and productivity growth has undermined the positive opportunity this offered for countries like the Baltic States but also Bulgaria and Romania to redistribute incomes and catch up with the rest of the EU (cf. Figures A 4.1 and 4.2 in the Annex).

At the same time as this process, **wage drift** – i.e. the difference between the collectively agreed wage increases and the actual increase paid – has been all the higher, the greater the wage restraint shown by the trade unions. The amount that the trade union negotiating committees fail to realise as potential wage rises is often paid out voluntarily by employers over and above the agreed wage, depending on the position of the labour market. This approach can be seen if one compares the growth rates of effective earnings in each case (Figure 19).

This result, which is rather different from normal practice in Western Europe (see the figures for the EU 15 in Figure 19) is unlikely to persuade people of the advantages of trade union membership. In the case of groups of employees that hitherto have not been members of trade unions, such as younger white-collar workers, it might indeed encourage the belief that their own performance counts for much more in terms of improving their pay than a collective approach based on solidarity.

In addition to this, in certain countries of Eastern Europe, there are also particularly high **wage dif-**

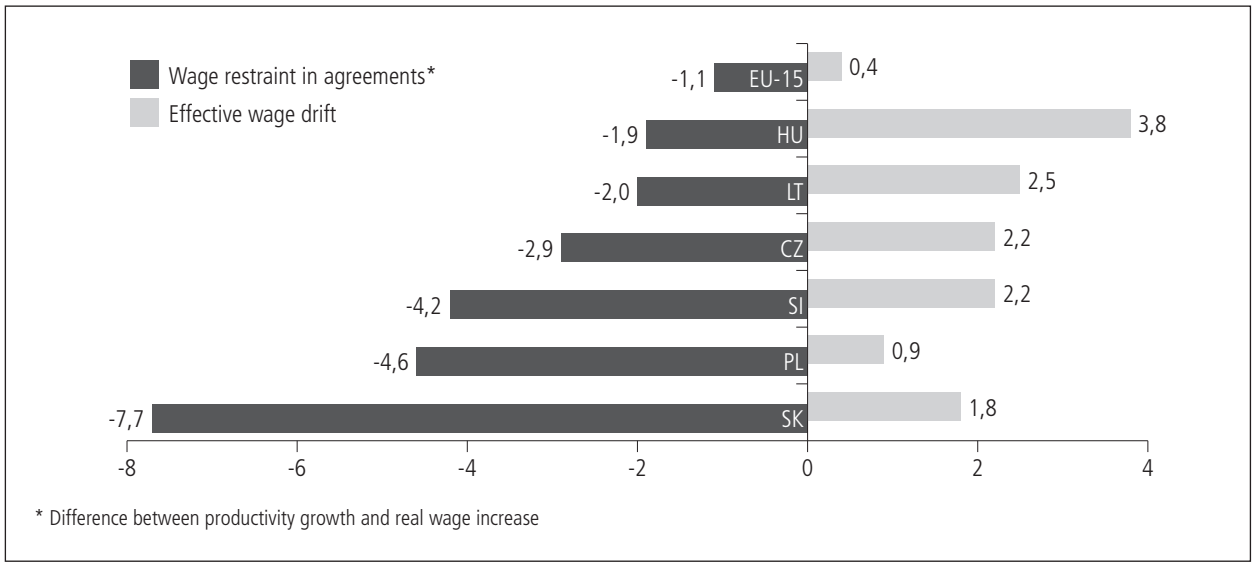
Figure 18: **Underused scope for cost-neutral income redistribution**
Negative result of difference between productivity increase and rise in real wages (in %)



	EE	LV	LT	PL	CZ	SK	HU	SI	BG	RO	Euro-Zone	DE
2004-05	1,4	3,8	1,9	-3,2	-1,7	-3,1	-0,3	-0,2	-3,1	1,0	-1,1	-2,0
2006-07	2,9	4,1	5,3	-0,1	-3,0	-2,6	-1,3	-1,2	0,3	8,1	-0,85	-2,1
2008	0,5	1,6	1,3	-2,1	-4,7	-1,9	-3,7	-0,5	1,1	7,0	-0,3	-0,7

Data source: EC, Economic Forecast European Economy, Autumn 2008 – own calculations (BwP)

Figure 19: **Wage restraint and wage increases above collectively agreed rates in Central Eastern Europe**
(Average 2000-2004, in %)



* Difference between productivity growth and real wage increase

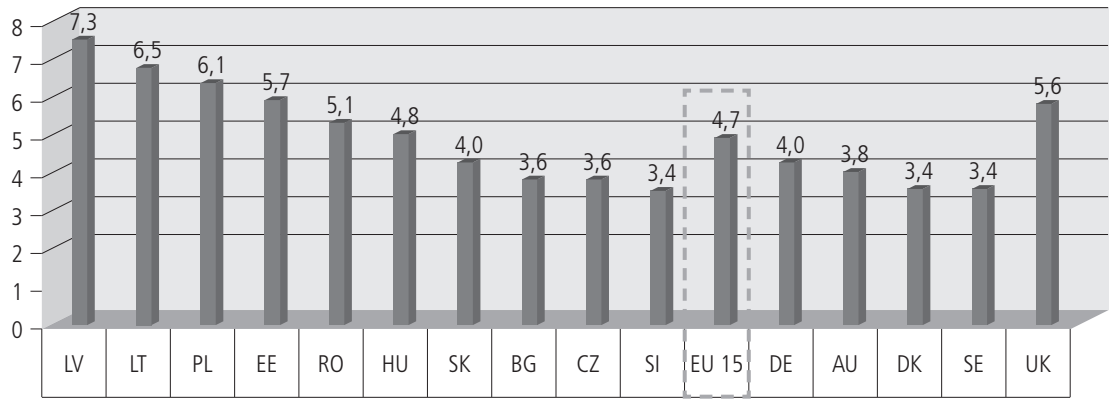
ferentials and wage inequality as a direct result of a lack of collective agreements. Increasing numbers of individuals have been able to establish impressively high incomes for themselves in contrast to the broad majority of low paid employees.

The gap between the incomes of the top 20 % of earners in Eastern Europe and the 20 % lowest earners is considerably higher than in Western Europe (in particular Scandinavia, Austria and Germany). However, here too, there are considerable variations between countries, depending on the quality of social dialogue and the predominant form of collective agreement (see Figure 20).

Income disparities can be found above all in countries with a low level of collective agreement coverage as a result of a low trade union density and a predominance of company-level agreements combined with a lack of sectoral agreements (as in the Baltic States, Poland and, in Western Europe, the UK).

The latest European Commission report on industrial relations in Europe (2008) comes to the same conclusion in relation to the **gender pay gap**, which throughout Europe tends to be lower the greater the proportion of employees covered by collective agreements in the country (EC 2009, 88 ff.).

Figure 20: **Wage disparities as a result of a lack of collective agreements (2005/2006)**
Relationship between incomes of 20% top earners and 20% lowest earners



Data source: Eurostat

However, this sobering fact should not necessarily result in a pessimistic assessment of the future scope for convergence in Europe, inasmuch as the current trend of high real wage increases, especially in the case of the countries with the need to catch up within the EU, can continue despite the tendency for it to be weakened by the global economic crisis (on the situation so far, see Annex 4.2). In a number of the new member states this trend has been strengthened by an increasingly noticeable labour shortfall caused by massive levels of migration to western and southern Europe, combined with simultaneous strong economic and productivity growth amounting to more than twice the EU average.

Inasmuch as they can actually make use of the scope for redistribution, the trade unions should also be able to open up new opportunities for recruitment of new members that enable them to pursue their collective activities more successfully in the future.

3.1.10 Monitoring and implementation of employee and trade union rights by the players and institutions of social dialogue

Europe-wide convergence of wages and working conditions as an important way of combating ongoing social dumping in the old EU member states is a process that is likely to take several decades. The speed of the process depends primarily on the economic situation of each particular country. In recent years economic growth and productivity increases in Eastern Europe, particularly on its geographical margins, have been above average (for more on this see the figures on economic growth and productivity in Eastern Europe in Annex 4).

The question of the extent to which this scope can be utilised always depends, however, on the particular position and capacity of the social partners in the country concerned. This again leads us to focus on the crucial issue of the application of freedom of association and the actual implementability of trade union rights.

For the basic rights of employees and trade unions as laid down in international standards to be implemented and maintained, they not only have to be enshrined in law – the following important players and institutions also have to operate efficiently:

- Effective grassroots **employee representation** with guaranteed powers,
- Intermediary institutions for **handling individual and collective disputes** (parity-based arbitration bodies with neutral chairpersons, mediation procedures),
- A **labour inspectorate** with sufficient personnel, rights of monitoring and powers to impose sanctions
- Last, but not least, a **specialised system of labour courts** with the ability to reach rapid decisions where existing statutory standards have been infringed. As far as possible these should include representatives of both sides of industry, for example through the use of lay judges or panels. And, equally importantly, there must be rigorous enforcement of court decisions. Reports frequently come from Eastern Europe about inadequate enforcement of judgements made by the civil courts.

Measured against these preconditions for full realization of employee and trade union rights, the main deficits, in addition to

- practical obstacles and restrictions on freedom of association (trade union membership and activity, use of right to strike and other necessary means of exerting pressure to prevent infringements of existing collectively agreed standards) and
- huge gaps in employee representation in companies and the related lack of collective agreements,

can be found above all in

- insufficient monitoring by the labour inspectorate caused by a "lack of commitment" and a lack of specialised personnel as well as inadequate and ineffectual scope for control (CZ) and imposition of sanctions – despite the large number of recorded infringements of existing statutory regulations (on the other hand, there have lately been improvements in monitoring in HU).

One crucial element in implementing existing rights and pursuing infringements of the law is the organisation of the legal system in terms of:

- The existence of labour courts or special chambers for dealing with disputes across several levels, combined with a system of arbitration for achieving out-of-court settlements. The lack of labour courts (except in Slovenia and Hungary) is a regular complaint, particularly as the ordinary courts are often overloaded and lack the necessary expertise.

- The fact that cases brought before the civil courts take, on average, up to three years or more to reach completion cannot have a deterrent effect and cannot provide a solution in the case of suspended labour procedures; there is often, to use the words of the ECJ, an "excessive backlog".

- Legal judgements, once passed, are not respected by the defendants and not properly enforced – especially in the case of wrongful dismissal appeals by trade union members or elected officials; court orders to reappoint individuals are ignored or, at best, dealt with by offering compensation payments. Specially created chambers for labour cases may display greater expertise, but they are hardly in a position to do anything about the procedural deficits described.

- Ordinary courts are often regarded as biased towards the interests of the employer ("commercial arguments and interests have priority"); or they decide that appeals from employees have "insufficient social relevance", and impose inadequate punishments and ineffectual sanctions in the case of infringements.

- Trade unions in some cases have no rights to resort to the courts or to represent individuals in court cases related to infringements of statutory labour regulations.

Figure 21 that follows demonstrates the existing gaps in monitoring implementation of labour legislation in each of the countries. It underlines above all the need for **labour courts** to be introduced – a

Figure 21: **Monitoring and control of labour legislation by public bodies and courts**

	Conflict regulation* by		Labour inspectorate – deficits:		Judicial monitoring by	
	Publ. institution	Social partners	Use	Sanctions	Civil court	Labour court
EE	✓		efficient	no criticism	few complaints	non-existent
LV		✓	lack of personnel	low efficiency	few complaints	non-existent
LT		✓	improved	partly effective	too lengthy	non-existent
PL		✓	to some extent too little interest	too little impact	specialised chambers for labour issues (enforcement?)**	
CZ	✓	✓	lack of personnel	too few	few cases	non-existent***
SK	✓	✓	lack of personnel (25%)	improved	too little trust	non-existent
HU	✓		lack of personnel	too few		✓
SI		✓	lack of personnel	improved		✓
BG	✓		new: legislation 2009	so far, little impact	too lengthy procedures	since 2004 "tested"
RO	✓		too few controls	too little impact	specialised bodies ****	since 2004 "approved"
HR	✓		lack of personnel (50%)	little deterrent effect	often no enforcement	no, formerly existed

* Mediation, conciliation, arbitration (on the role in collective bargaining conflicts see above Figure 14)

** Lengthy procedures, no effective enforcement (50% of work inspectorate's decisions not in force)

*** Setting up labour courts would require amendment to constitution

**** Chambers for labour issues involving representatives of social partners, but with no voting rights

consistent demand on the part of the trade unions. But despite the obvious need for such courts given so many reported infringements, the idea is resisted by state administrations on grounds of cost – and in the case of the Czech Republic, also on the grounds that such a step would require an amendment to the constitution, which provides for a uniform court system.

This information can be used to draw up a comparative index for evaluating the actual implementation and monitoring of current collective and individual labour standards *(Labour Rights Standards Index* – for more on this, see pan-European comparison in Section 5.1).

This evaluation underlines the fact that the structural weaknesses in freedom of association and social dialogue are not due to a lack of legal standards but rather to their inadequate enforceability in the case of disputes – and this has the effect of fatally undermining the willingness of those involved to show any resistance.

3.2 Situation in the current and future EU candidate countries of the Western Balkans

This study covers six of the seven countries of the Western Balkans that in principle have the prospect of joining the EU, i.e. with the exception of Kosovo. A year after Kosovo became a sovereign state the institutional and legal framework in the country is not yet sufficiently developed to allow any meaningful comparison with others in the region.

Croatia and Macedonia (as referred to hereafter, rather than the official EU compromise term Former Yugoslav Republic of Macedonia or FYROM) have been candidates for EU enlargement for some time. As such they are subject to regular EU screening procedures and integrated into the Eurostat reporting system, so there is more data available for these countries than for the other four states covered by this study, i.e. Bosnia-Herzegovina (BiH), Montenegro, Serbia and Albania.

Croatia, however, is a country which, in contrast to Macedonia, is likely to accede in the shorter term (a decision on accession is due at the end of 2009, with 2010 or 2011 hitherto envisaged as the possible accession date). It has also already adapted its fundamental structures more completely to the European social model, as again highlighted in the latest EU Progress Report on the region dated November 2008. As a result, Croatia is already broadly included, where possible, in the figures comparing the new Eastern European member states in section 3.1 above.

This situation is likely to make the following comparison between the six countries of the Western Balkans even more interesting. The problems raised in response to our questions about freedom of association and social dialogue structures differ somewhat from those of Central Eastern Europe because of the historical differences. At the same time, however, these countries naturally also encounter similar issues to those in the whole of Eastern Europe.

At this stage, one significant difference should be pointed out. Five of the countries covered here are states that constituted the former Yugoslavia. In terms of industrial relations, the Yugoslav state was largely characterised by c**ompany self-management** by the entire workforce and a different understanding of so-called social ownership. Under the socialist market economy, each company was in theory responsible for deciding how much of the profits were invested or paid out to the workforce. As a result there had always been a certain openness to business and corporate policy issues and a tradition of social dialogue, at least at microeconomic company level (cf. more in Kohl, 1972).

The question that particularly interests us here is which, if any, aspects of this tradition managed to survive the systemic change that has now taken place and which, if any, were lost in the turmoil surrounding the attaining of sovereignty by the seven independent states – including Slovenia and Kosovo, the latter having become a sovereign state in 2008. It can already be assumed that here, too, developments across the different countries make up an extremely varied picture, despite many decades of shared history – not to mention Albania with its espousal over many years of a type of socialism originating outside Europe. In this country, the process of transformation required a particularly clean break with tradition.

3.2.1 Moderate pluralism – characteristic of both social partners

The **trade unions** in South-Eastern Europe, unlike those in Central Eastern Europe, did not play any decisive role in the restructuring of society during the period of transformation after 1990. This was largely due to the fact that in this region, the implosion of socialism brought the 'national question' to the fore, rather than, as elsewhere, the decisive 'social question'. Moreover, the achievement of state sovereignty was accompanied in Croatia and Bosnia by many years of bloody conflict during the civil wars of the early 1990s.

As a consequence, there was a long delay in the necessary process of adapting and reshaping industrial relations and labour law. At the same time, the change of system and collapse of the federal Yugoslavia triggered a process of uncontrolled privatisation with a host of adverse consequences for the workforce. As elsewhere in the transition states, there were initially no employers' associations, which meant that the relevant national tripartite bodies – in the form of Economic and Social Councils with the participation of the social partners – were only established after some delay and to this day have not managed to acquire much political influence.

Conversely, however, this also meant that the notion of pluralism for both sides of industry had noticeably less impact than in North-Eastern Europe. Only Croatia saw the establishment of a multitude of new and competing employee confederations at national level, while elsewhere, with the exception of Albania, one new alternative organisation at most emerged alongside the traditional trade union federations.

For the **employers**, in contrast, the picture is one of complete unity within a single umbrella organisation in each country (Figure 22). Nevertheless, the existence of such unified organisations by no means indicates that employers are automatically more committed to membership of an association. Their associations tend to represent small and medium-sized enterprises, while the trade unions retain a strong presence in the large former state enterprises.

In order to explain this figure and the description below, it should be pointed out that the state structure of Bosnia and Herzegovina was defined in the Dayton Agreement of 1995 as a condominium of two independent administrative units ('entities'), i.e. the Bosniak-Croat Federation and the Republic of Serbia (Republika Srpska with capital Banja Luka). There is a formal head of state (alter-

Figure 22: **Representative trade union and employers' umbrella organisations***

	HR	MK	MNE	SRB	BiH**	AL
Trade unions	5	2	2	2	2	3
Employers	1	1	1	1	2	1

* Abbreviations for countries of the Western Balkans used hereafter: AL = Albania; BiH = Bosnia-Herzegovina; HR = Croatia; MK = Macedonia (Former Yugoslav Republic of Macedonia – FYROM); MNE = Montenegro; SRB = Serbia; RS = *Republika Srpska* (Republic of Serbia, a discrete 'entity' within Bosnia-Herzegovina, largely with its own legislation and administration).

** incl. Republika Srpska

nating Presidium) and the international High Representative in Sarajevo, but each entity has its own legislation – including labour law – and administrative structure. Consequently, each half of the state has an autonomous association of employees and of employers. Substantial differences in the legal environment and social context thus continue to exist between the two different parts of the state.

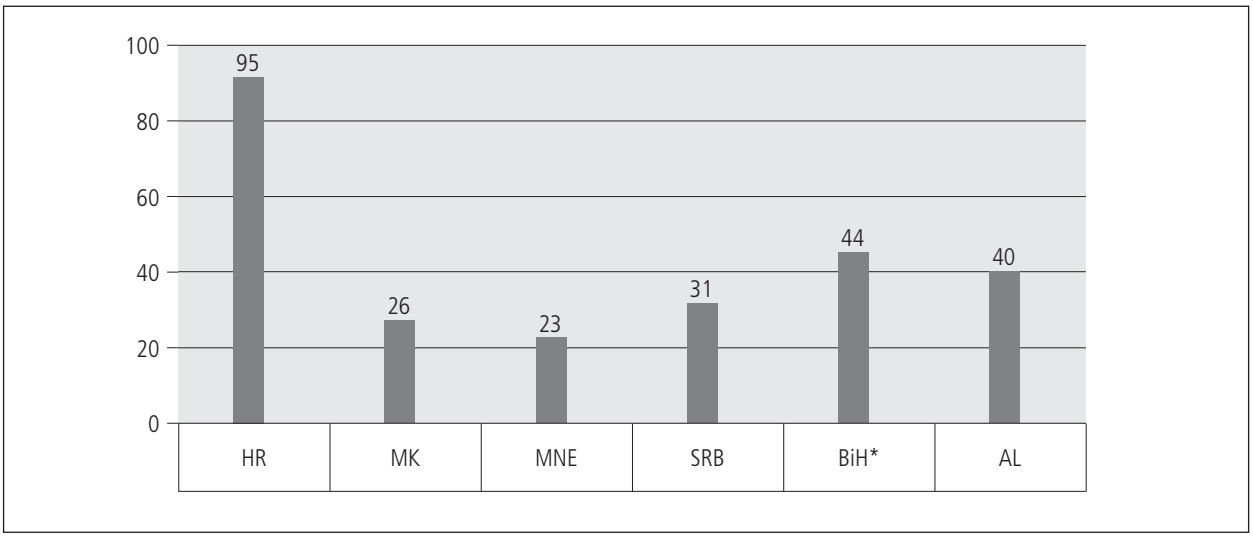
All six countries are relatively small states, ranging from a population of 630,000 (in Montenegro) to 4.4 million (in Croatia) and some 7 million in Serbia. Relative to their size, individual countries often appear to have an excessively large number of sectoral trade unions as member associations of national confederations, particularly in Croatia (see Figure 23). This invariably raises the question of the power of the sectoral associations and how much real influence they have.

At the same time, the union density in all of the countries has fallen considerably – by over half compared with 1990 – albeit not as drastically as in many other post-socialist countries of Eastern Europe (Tab. 3).

When considering this data it should be borne in mind that to a large extent these are figures or estimates from the relevant organisations themselves. Furthermore, BiH, Macedonia and Albania have unemployment rates of over 30 % and at the same time a high proportion of informal employment. Of the total number of people in employment outside the agricultural sector, which remains substantial), the comparable union density in these countries is therefore more likely to be between 20 % and 25 %.

This creates particular difficulties in terms of the **financial and human resources** of an organisation. Apart from the number of members, the main problem is how funding is obtained and spent. On the one hand, there is the usual requirement under union statutes to pay membership subscriptions amounting to 1% of individual gross income. However, honesty would be especially called for where membership subscriptions are set according to the minimum wage alone. Current practice only serves to exacerbate this situation, since an employer will deduct union membership subscriptions directly from pay, but this pay may officially consist of only the minimum wage and may be supplemented by an undeclared amount of cash in hand. A further difficulty is the fact that not all members, by a long way, can afford to pay membership subscriptions. For Albania, for in-

Figure 23: **Number of sectoral trade unions in South-Eastern Europe**



Tab. 3: **Union density in trade union confederations in South-Eastern Europe** (% of all employees)

	HR	MK	MNE	SRB	BiH	AL
Union density (%)	35	30	35	33	30	23

stance, it is reported that only 25–30 % of members pay any subscription at all or the subscription laid down in the statutes.

Membership subscriptions are collected by the employer – who can thus exercise complete control over union members in the company. The subscriptions are then passed on directly to company trade union representatives, who, under union statutes, can use between 60 % and in extreme circumstances up to 90 % of the funds for their own purposes. The remaining income from membership subscriptions must be shared between the sectoral association and umbrella organisation (in Serbia the latter receives around 5%). This means that a sectoral organisation has on average a mere 10-15% of membership income at its disposal – too little for financing the running costs of the organisation along with campaigns, activities or the necessary expert personnel, not to mention amassing a strike fund for use in the event of a serious industrial dispute. As a consequence, umbrella organisations continue to have limited scope, and a decentralised structure based primarily at company or site level continues to predominate.

Even where the method of distributing membership income is more favourable for umbrella organisations – as in Montenegro and Macedonia with shares of between 20 % and 30 % – this does not necessarily mean that these high-level organisations are better funded, given the relatively small populations and low employment rates in these countries.

While it is true that, as a rule, the countries of the Western Balkans have no specific legislation governing the organisation of trade unions or employer associations – a further contrast to Eastern Europe – the thresholds for recognition as a **representative** organisation are nonetheless set high. This is necessary to legitimise both collective bargaining and participation in tripartite national Economic and Social Councils. For employers' associations, this threshold ranges between at least 10 % and 25 % of all relevant employees in their member companies, on the basis of which they are considered representative and thus entitled to participate in tripartite bodies.

The threshold for trade union recognition for collective bargaining is in some cases considerably higher: in Serbia the requirement is a minimum membership of 15 %, in Bosnia 20 %, in Macedonia up to 33 % and in Albania 50 %. In Croatia, however, the threshold is relatively low and only required for participation in tripartite councils. This explains the large number of five 'representative' trade unions in the country, a state of affairs that meets with strong criticism from the leading confederation SSSH, which would like to see the much stricter criteria applying to employers also applied to the Croatian trade union confederations.

In the Western Balkans the situation between the social partners is somewhat distorted by the fact that trade unions are very poorly represented in SMEs, and at the same time these are the companies from which the employers' associations recruit the majority of their members.

3.2.2 Statutory regulation of the establishment of trade unions and obstacles to union membership

In all countries of the region, the establishment of a grass-roots trade union organisation at both local and supra-company level is relatively straightforward from a legal point of view. The minimum number of members required for the establishment of a union in a company ranges from 3 to 10 employees, depending on the relevant labour legislation and the statutes of the organisation. The minimum requirement for establishing a trade union at supra-company level is only slightly higher (see Tab. 4 below):

The registration procedure that is required once a trade union federation or national confederation has been established can prove to be more problematic in certain cases, since state approval is always necessary. Thus the umbrella organisation SSSBiH in the Bosniak-Croat Federation is still not legally recognised – a situation stemming from the complex constitutional circumstances in the country.

Individual **trade union membership**, as an essential component of freedom of association, is subject to similar conditions as in Central Eastern Europe. These are applied cumulatively and have an adverse impact in particular on employees in the many small enterprises.

- The principal 'filter' in this respect is once again the ubiquitous rule that employees may only join a union via the **company trade union**

Tab. 4: **Minimum number of employees required to establish a trade union in South-Eastern Europe**

	HR	MK	MNE	SRB	BiH	AL
Company trade union representation	10	5 (10)**	5	3	3	*
Minimum number required to establish a trade union	*	*	5	3	3	20

* as per trade union statutes
** increase planned by government (ITUC 2009)

representation. In principle this is the case in Montenegro, Serbia, Bosnia and Albania.

- Conversely, however, it is also usual to join via a sectoral trade union in Macedonia, or at all levels of an organisation in line with union statutes in Croatia.

The following groups are legally excluded from membership:

- Croatia and Serbia have a provision that stipulates an **existing employment relationship** as a condition of joining a union. In practice there are numerous 'exceptions' in Croatia where this regulation is ignored. Of much more serious import, however, is the fact that almost 90% of new recruitment is for a fixed term, which prevents many people who are newly entering employment or changing jobs from joining a trade union.

- In Macedonia, **pensioners** are banned from membership, as are certain members of the **public service** and the **police**.

- In Montenegro, membership of those in senior management within state **cultural and educational institutions** is undesired and therefore unusual.

- Apart from the police, **army employees and their relatives** were banned from membership in Serbia until 2008. Today the latter is still true of Bosnia.

In summary, therefore, the legal grounds for exclusion from membership in South-Eastern Europe are on the whole less pronounced than as described above for North-Eastern Europe. However, in South-Eastern Europe there is a proliferation of additional obstacles to the genuine exercise of the right to freedom of association.

3.2.3 Obstruction and discrimination of members and officials

It is generally true for this region, too, that it can be extremely difficult to prove actual discrimination by an employer against trade union members or their elected representatives. Disciplinary action entailing compulsory transfer or dismissal is frequently justified on the grounds of professional misconduct or similar. In its annual publications on infringements of trade union rights, the ITUC reports on serious cases of harassment and repression of employees who exercise their legal rights to representation and freedom of association in all these countries (see the latest ITUC 2009).

Challenging such violations proves difficult where, as in Serbia, labour law **does not provide for sanctions** for discrimination against trade unions, which would make effective prosecution easier. In BiH, too, there are **no sanctions** for such violations. At most, trade union officials and the few works councils in the country benefit from specific legal protection.

Nonetheless, in instances of indirect discrimination in Croatia, the burden of proof falls on the employer, who has to prove that measures taken against active trade unionists are justified on grounds related purely to their work.

A particularly serious violation of the right to freedom of association by the state authorities is reported from Albania. In 2007, the two national confederations KSSH and BSPSH (see Appendix 7.1) were expelled from their offices with brute force by the police on the grounds of unresolved property issues linked to their status as successor organisations to the former state-run trade union. Property and documents etc. were partially destroyed in the raid. To date, neither confederation has been rehabilitated (ITUC 2008). Similarly, it is

not always possible to bring effective prosecutions in Albania for illegal pressure on company union representatives or the illegal dismissal of trade unionists. The same goes for the establishment of 'yellow' trade unions.

In all these countries, foreign investors play a somewhat disreputable role, believing as they do that they can largely disregard the law of the land.

3.2.4 Regulations on company level employee representation – works councils still largely insignificant

Despite the long tradition of workers' councils under the socialist system of self-management in Yugoslavia, today elected employee councils no longer play any significant role in the countries of the Western Balkans with the exception of Croatia. In practice, employee representation has an overwhelmingly uniform structure, generally consisting of company trade union representatives. This, however, is again dependent on the level of union density in a company.

Given the structure of the company agreements that also prevail here (see more information in the next section), this creates difficulties for the majority of "union-free" companies, particularly the many newly-founded small and medium-sized enterprises (SMEs).

In Croatia, however, a large number of works councils were already introduced from 1996 onwards with the implementation of the new 1995 Labour Code (Zakon o radu) and are now widespread, primarily in large and medium-sized companies. The structure of these works councils is similar to those in continental Europe, albeit with fewer participation rights (see a comparison between German and Croatian practice in Kohl 1998, in Croatian).

Nonetheless, in Bosnia and Serbia too, legislation since the new millennium has made it legally possible to establish works councils within a dual system consisting of employee representatives elected by the entire workforce alongside existing local union representatives. This legislation, however, expressly requires both representative bodies to co-operate with each other and also clearly specifies the distinct competences of each (see Tab. 5).

In companies without a works council in Croatia and Bosnia, the trade union representation can itself exercise the rights to information and consultation that a works council would have, as well as its other statutory participation rights. This means, however, that there is no particular incentive for a trade union to establish a works council in order to obtain more representation in the interests of the workforce. Even so, under the 1999 Labour Law in the Bosniak-Croat Federation, a works council is required to give an opinion on all cases of dismissal in that company, and in the event of e.g. a disabled employee being dismissed, it is even asked for formal consent. Works councils in Croatia also have certain rights that go beyond the usual rights of local trade union representatives (see a comparison between Germany and Croatia in Kohl 1998).

In practice, works councils currently play a fairly important role in Croatia, in Bosnia a less substantial one – with to date around 300 works councils – and in Serbia so far a fairly marginal role. Here, too, more detailed provisions on the functioning of works councils are due to be set out in a special law that has not yet come into existence. After its

Tab. 5: **Relationship between works councils and company trade union representation**

	Works council	**Trade union representation (TU rep.)**
Croatia (Law of 1995)	Can be established on basis of 21 employees; law stipulates co-operation with TU rep.	If no WC, TU rep. has WC rights
Bosnia (1999/2006) Dual employee representation (rare)	Can be established on basis of 15 employees; obligation to co-operate with TU rep. (in BiH approx. 300 WCs)	TU rep. entitled to participate in WC meetings; if no WC, TU rep. has WC rights
Serbia (2002) Dual employee representation (no implementing law to date)	Can be established on basis of 51 employees; can where necessary conclude company agreement, if desired by over 50% of the workforce	Prerequisite for this kind of agreement: company has no existing TU rep. (negligible in practice)

separation from Serbia in 2006, Montenegro in any case abandoned the possibility of establishing works councils that previously existed under the 2003 Labour Law. This possibility is no longer included in the new Labour Law of autumn 2008.

In Macedonia, by contrast, where there is currently one single kind of representation, i.e. local trade union representatives, the possibility of introducing works councils is under discussion and is supported by some unions. In Albania the legislative created, in 2008, the possibility of forming an employee representation body with a range of different rights of information in companies with 20 or more employees (ITUC 2009).

Furthermore, the trade unions in this region – with the exception of Croatia – tend on the whole to take a sceptical view of the institution of works councils. They fear that they would be unwelcome competition or even undermine their own existence, although experience invariably shows that if works councils were to be used effectively, unions would on the contrary be likely to benefit from more extensive employee participation rights, closer co-operation and, above all, redoubled recruitment opportunities. In addition it can be assumed that the workers' councils of the former Yugoslavia operated rather differently: during the transformation period public opinion as a result often wrongly held the past self-management system partly responsible for the failure of Titoist socialism.

From a legal point of view, while the countries with provision for works councils have complied with the minimum conditions for applying the 2002 EU directive on information and consultation, the content of the legislation in question differs from one country to another. The detail of this can be seen in the summary below (Figure 24). It also includes *Republika Srpska* (RS) as a part of Bosnia and Herzegovina, with its own legislation from 2001 onwards.

Figure 24: **Works council facilities and competences under legislation or collective agreements (CA) in South-Eastern Europe**

	HR	SRB	BiH	RS
Provision of offices etc. at employer's expense	✓	if CA exists	as per CA	as per CA
Regular release from work of works council members	6 hrs per week, also full release where necessary	if regulated in CA	6 hrs per week	2 to 4 hrs per month
Release from work for training	✓	–	–	–
Coverage of cost of experts	✓	–	–	–
Right to information from employer	not commercial data	✓ (as per CA)	✓	✓
Right to consultation by employer	✓	✓ (as per CA)	✓	✓
Participation /co-determination under works agreement	✓ (partly)	✓ (as per CA)	✓ (as per CA)	no provision
Right to convene employee meeting	2x per year	–	2x per year	possible
Duty of WC to inform the workforce	regularly required	no provision	no provision	where necessary in conjunction with employer
TU rep. assumes WC rights, if no WC exists	✓	–	✓	–

Croatia is the only country with adequate legislation on the provision of premises and equipment and the covering of the costs of personnel and experts if necessary; elsewhere these are at best obtained by specific agreement with the individual employer. The picture is the same with regard to the partial or full release from work of elected employee representatives, as well as the training they need to fulfil their mandate. The statutory minimum scarcely allows representatives in medium-sized – let alone large – enterprises to do the work required of them.

To summarise the institutional context, the following picture emerges of the intensity and quality of employee representation in the region, based on the estimates and findings of observers (cf. Figure 25):

- If we take the total proportion of employees in a country who are represented by a company trade union and by a works council as well, in Macedonia, Albania and Serbia this figure is little higher than the percentage of employees organised in a trade union. (The lower figure for Serbia is the result of less adequate representation in the private sector).

- On the other hand, the proportion of employees represented in Croatia and Bosnia is higher, due to more widespread works councils and a strong union presence in medium-sized and large enterprises.

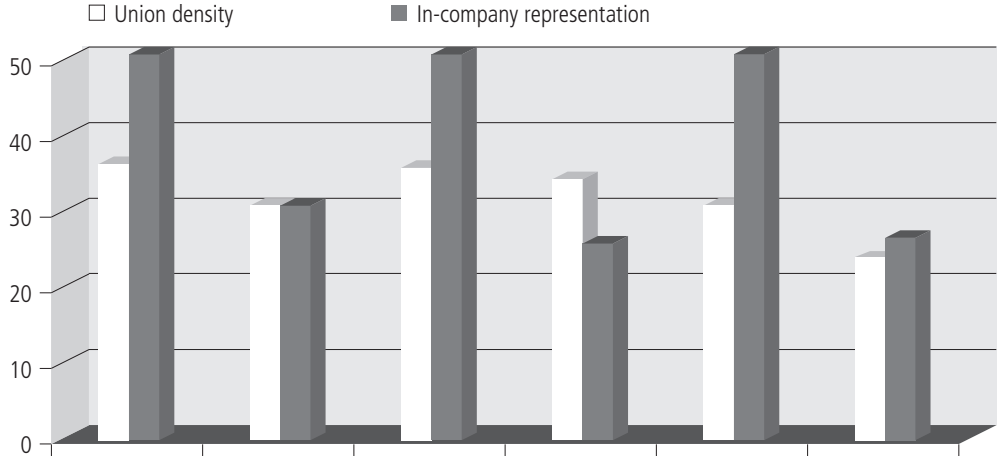
- A similarly high percentage to Bosnia and Croatia is reported for Montenegro – which suggests that company union representation is relatively more widespread. It is doubtful whether this is true of the many small and micro-enterprises newly established in the wave of privatisation in a country where 74% of companies are in the service sector: this subject merits further study.

Moreover, the primary focus of company trade unions is invariably the conclusion of collective agreements. Such outcomes therefore also provide reliable information on the number of employees in that country who fall within the scope of the unions.

3.2.5 Collective bargaining legislation and practice, the scope of sectoral agreements and workforce coverage

As already described for Central Eastern Europe, the collective bargaining landscape in the Western Balkans is also largely dominated by company agreements. In addition, sectoral agreements are found to varying degrees in certain countries in

Figure 25: **Proportion of company employees represented by a trade union or works council** (as a percentage of union membership in a country)



	HR	MK	MNE	SRB	BiH	AL
Union density	35	30	35	33	30	23
In-company representation	50	30	50	25	50	25

both public and private sectors, resulting in correspondingly higher rates of coverage. This is particularly the case where these agreements can be made generally binding on all employers in a sector, and this will be considered in detail below.

Generally speaking there are also tripartite framework regulations agreed between the competent ministries and the social partners that then serve as **collective framework agreements for all employees** in the public or private sector. However, as a rule they contain little more in terms of substance than the statutory minimum standards that apply anyway, plus a number of other elements relating to bonuses, meal allowances, redundancy pay and provisions on working time and annual leave. They do not contain specific pay scales, but at best include provisions on a minimum wage that may be generally applicable or further specified by the sector. In this context, the government is in any case frequently less interested in genuine social dialogue than in achieving its political objectives and what is more, is subject to conditions set out by international financial institutions (see FES Information from South-Eastern Europe 3/09).

Such **tripartite framework agreements** involving the government are found in both entities of BiH, in Macedonia and in Montenegro and generally apply to all relevant employees in the public and private sectors. It would be mistaken, however, to view this as tantamount to complete coverage of all employees, since for example in Macedonia and Montenegro, a statutory minimum wage has yet to be introduced.

At **sectoral level**, there have recently been an increasing number of agreements in certain countries. They cover

- primarily the **public sector** in Serbia and both parts of BiH, and broad sections of the public service, public utilities and service sectors in Macedonia and Albania.

- However, in the **private sector** there are now also more sectoral agreements (though with distinct gaps in coverage) in Croatia (17), Montenegro (17) and Macedonia (16 – of which several are recent). To date there have been fewer in Bosnia and Herzegovina.

On the other hand, collective agreements at **company level** continue to predominate

- in the Serbian private sector (provided the company trade union represents at least 15% of the workforce)

- widely in Croatia, but frequently in the form of agreements that supplement sectoral agreements

- and also in Albania.

In addition, there is a possibility of achieving broader coverage where the competent ministry declares a collective agreement to be **generally applicable**. In Croatia this is currently true of six sectoral agreements (in tourism, hotel and catering, commerce, construction, the timber industry, and SMEs in the craft sector). This means that all employers in these sectors are bound by the provisions of existing agreements – irrespective of their membership of an employers' association. Similarly, collective agreements covering six public sector industries in Serbia have been declared generally binding and thus apply nationwide.

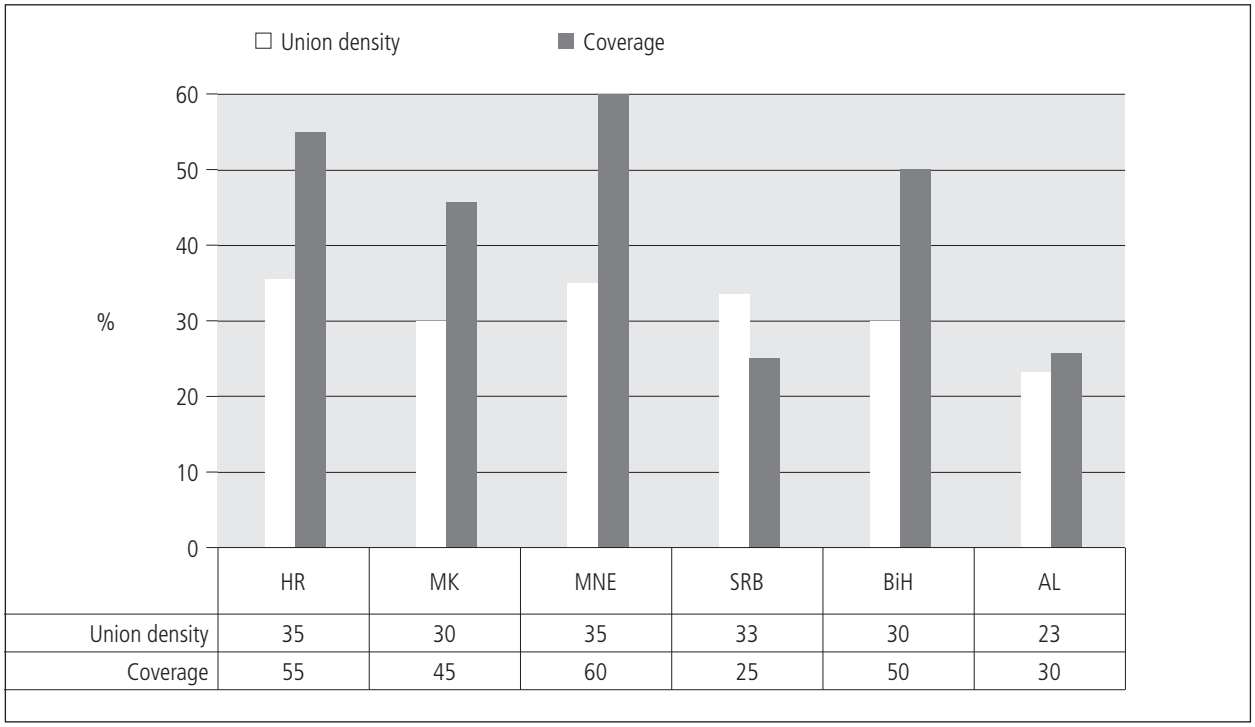
In theory, this instrument could also be introduced in Albania where a sectoral agreement covers more than 50% of the workforce in question. In Macedonia, however, this is so far not a legal possibility

In the region as a whole, binding agreements have so far had a relatively minor impact in practice, despite the wider coverage of some national framework agreements, as is commonplace in Montenegro and Bosnia, even those do not set wage levels. Such coverage tends to be more significant in Croatia, with its numerous company and sectoral agreements. In this country, too, a statutory minimum wage was first introduced in 2008 to replace the existing minimum wage established by national collective agreement.

3.2.6 The right to strike: theory and practice

The right to strike, like freedom of association, is guaranteed in principle in all countries of the region by the constitution and/or specific legislation. In practice, however, it is also restricted by a range of administrative provisions. Certain groups of employees are totally prohibited from taking strike action.

Figure 26: **Overall proportion of employees covered by collective agreements**



	HR	MK	MNE	SRB	BiH	AL
Union density	35	30	35	33	30	23
Coverage	55	45	60	25	50	30

This situation stems from the fears – largely apparent at the beginning of the transformation period – that public order might be jeopardised by uncontrollable waves of strike action, that supplies might no longer be guaranteed and that all this might deter foreign investors. In fact, none of this occurred: indeed, with a few exceptions, the desire for industrial action has now subsided almost completely. What is more, employers in three of the six countries now have the right to undertake **lock-outs**.

The following **groups** are restricted from taking part in industrial action:

- **Members of public services** may only take limited strike action: not at all in Albania, and in Croatia only subject to certain restrictions.
- Employees in so-called 'essential services' (utilities, public security etc.) are also prohibited from strike action in Serbia and Albania.
- In *Republika Srpska (BiH),* public sector production must not be interrupted.
- On the other hand, Macedonia has no fundamental restrictions in this respect – even members of the army may take strike action once a year.

Administrative requirements mainly consist of the duty to provide specific notice of strike action. They stipulate for

- Serbia: notice to be given to the employer at least 15 days before the start of strike action;
- Montenegro: usually a notice period of 5 days, in "essential" services 10 days;
- BiH, the Bosniak-Croat part: generally 10 days; in RS: 8 days before the start of strike action.

In virtually all cases, a strike is only legally permissible as a last resort in a pay or other industrial dispute after **compulsory conciliation or arbitration** or prior voluntary mediation, again with specific and sometimes extended cooling-off periods. These rules are designed to help the parties arrive at a compromise as well as offering necessary opportunities for calming down during a heated dispute. Failing this, a work stoppage can be declared illegal by the courts, which can result in serious demands for compensation or other disciplinary measures affecting the workforce and in particular the strike organisers.

In BiH, an employer is legally permitted to **lock out** up to half of any striking workers, and the same

goes for Croatia. In Macedonia, however, this much more limited, at up to 2% of strikers. To date, this legal possibility has not been used in practice: it arose largely from the principle of formal parity.

All of this – along with the general economic and labour market situation and widespread migration – means that today there are virtually no widespread strikes in South-Eastern Europe, with a few exceptions involving certain public sector professions. At the very most, strikes occur in individual companies and are triggered by breaches of collective agreements or unjustified wage arrears. Strikes therefore tend to be viewed as a means of resistance rather than an active tool in the struggle for fair income distribution.

3.2.7 A minimum wage instead of collective agreements – the impact of the bargaining system on income distribution policy

The tangible impact of social dialogue and of the specific approach to bargaining in the Western Balkans can be evaluated using a range of significant indicators and parameters. Most telling of these are the minimum and average wages in a country seen against the relevant macroeconomic data. Compared with the new Eastern European member states, however, there is less data available for the Western Balkans, since Eurostat does not yet carry out continuous or systematic monitoring of these countries, with the exception of candidate states Croatia and Macedonia. Moreover, certain macroeconomic parameters, such as productivity, cannot always be measured and reported on a comparable basis. To take this example, those involved in the bargaining process are themselves frequently not as well-informed as they should be about such data, as is evident from simulated planning exercises carried out at local level. In addition, a focus on the situation in individual companies and company agreements in any case creates a different approach, geared primarily to microeconomic data.

A comparison of key macroeconomic parameters across the countries of the region may serve as an initial indication of the outcomes of income distribution policy (Figure 26a).

What is initially striking here is the fact that two of the six countries do not have a statutory minimum wage. In **Macedonia** the minimum figure is based merely on the lowest wage bracket where specified in a sectoral agreement. The range here is from the lowest wage, equivalent to 68 – 75 euros in the textile and leather industry, to current monthly earnings (2008/2009) of around 218 euros in the health professions. The threshold for the payment of social security contributions and the like is 166 euros, or 65% of the average wage in the country. In reality the lowest income is likely to be significantly lower than this threshold.

Montenegro similarly has no statutory minimum wage. The figure of 55 euros in brackets merely

Figure 26a: **Minimum wages in € and as a proportion of the average wage in South-Eastern Europe (%) 2008**

	HR	MK	MNE	SRB	BiH	AL
Minimum wage	381	(75–218)[1]	(55)	159	159/142*	138
Average wage	1.000	250	630	400	514/452*	350
Minimum wage as a proportion (%)	38	(30)	?	39	31	41
Growth in GDP (%)	2,4	5,0	8,1	5,4	5,5	7,2
Unemployment (%)	13,4	33,8	10,8	18,8	40,6	ca. 33[2]

* Figures for RS

1 Lowest wage bracket as per collective agreement in the textile industry and health sector in 2008.

2 With the official rate at 13%, actual unemployment is estimated to be 30–35%; however, due to the high proportion of informal employment this real figure is not registered (as in BiH and MK).

represents the minimum amount on the basis of which an employer is required to pay social security contributions at the nationally applicable rate (where necessary also for part-time workers). Compared to an average income in the country of 600 euros, this is a very low figure. It is no surprise, therefore, that trade unions and others have long been calling for a minimum wage in Montenegro. An initial step in this respect, involving the national tripartite **Social Council** established in mid-2008, took the form of an amendment to the Montenegrin Labour Law in September 2008, setting out in detail the economic parameters that agreements must take into account.

Nonetheless, it was not until July 2008 that **Croatia** first enshrined a national minimum wage in law, following years of internal debate. This was after it became evident that the existing minimum wage – previously fixed by national bilateral agreement between the social partners – could no longer be adjusted and was far from sufficient to guarantee a decent livelihood for full-time employees.

Similarly to the situation in Central Eastern Europe, **the minimum wage as a proportion of the average wage** in the countries of the Western Balkans ranges between only 30% and 40%. Since decisions in this respect are generally taken by the government in consultation or agreement with the particular national Economic and Social Council, such figures tell us a lot about the overall quality of tripartite social dialogue in a given country.

The most recent progress report by the EU Commission of November 2008 provided a critical assessment of the state of social dialogue at this level in the individual countries of the Western Balkans as in Tab. 6 below:

On the other hand, over the past few years the countries of the Western Balkans have experienced extremely dynamic annual **economic growth** of between 6% and 10%, which has now fallen considerably due to the global crisis but in individual countries is likely to remain in positive figures (see Annex 4.4). However, it is apparently only Croatia and Montenegro – thanks above all to their tourist boom – that have succeeded in passing on a sufficient proportion of their productivity increases to the employees. What is significant here is the type of agreement that predominates and the proportion of those covered by such an agreement (see Figure 26 above).

Invariably in this context, the **level of employment** and the actual **unemployment rate** in a country are also of decisive importance for income distribution policy. Macedonia, BiH and Albania each have an actual level of unemployment of

Tab. 6: **Effectiveness of national Economic and Social Councils and of social dialogue in South-Eastern Europe** (from an EU perspective)

Croatia	Economic and Social Council (re-established 1999)	"Tripartite social dialogue is already well established... …has resulted in the Act on minimum wage" (2008)
Macedonia	Economic and Social Committee (established 1995)	"Economic and Social Committee does not fulfil its role... Until the labour law is amended accordingly, it is not possible to ensure a functional social dialogue."
Montenegro	National Social Council (since mid-2008)	"Some progress has been made in social dialogue… A Social Council was established in June 2008"
Serbia	Socio-Economic Council (established 2005)	"Social Dialogue is still weak. The role and capacity of the Socio-Economic Council still need to be fully developed."
Bosnia and Herzegovina	No country-wide Economic and Social Council, only exists at 'entity' level	"No development in establishing the trade union confederation (KSBH)… No country-wide Economic and Social Council has been established."
Albania	National Labour Council (established 1996)	"The absence of a revised labour law is hampering the transformation of the National Labour Council into a National Social and Economic Council."

Quotations from: EU Progress Reports of November 2008

well over 30%, while for the remaining countries it is between 15% and 20%. To some extent this hampers the ability of the trade unions to assert their demands and thus limits the success of income distribution policy (see Figure A 4.5 in the Appendix). Furthermore, all three countries mentioned above have a large proportion of people working in the **informal sector**.

What is more, in the light of this situation, there are large contingents of the working population that work abroad. It is true that such **migration** reduces unemployment and strengthens the national economy, with the regular transfer back home of large sums earned abroad. Moreover, where migration has already caused a lack of skilled labour and hence bottlenecks in certain sectors of the labour market, it can also lead to a more active income distribution policy, as is apparent from comparable developments regarding the minimum wage in Romania and the Baltic States over the last few years, for instance. However, in the current world economic crisis, the impact of this trend diminishes the more migrant workers lose their jobs and are the first to be sent home when jobs are cut.

A further consequence of the bargaining approach taken is the extent of the **pay gap** between employees in a given country. As reiterated in the latest EU Commission report on industrial relations in Europe 2008 (EC 2009), there is a clear connection between a country's union density and collective bargaining/agreement structures on the one hand and on the other, the measurable **pay inequalities** between the highest and lowest earners and between men and women. The wage differentials in the former socialist countries of Eastern Europe are generally much more pronounced in absolute terms than in Western Europe, though this is less true of countries with widespread sectoral agreements and larger trade union membership in both East and West (see Figure 20 above for details).

Consequently, the countries of the Western Balkans – with the exception of Croatia – also show greater inequalities in income distribution. This is evident from the mere arithmetical fact that where the minimum wage of a country represents a low percentage of average income, there must be a correspondingly large proportion of people with incomes that are several times higher and therefore inflate the average wage – quite apart from the practice of cash-in-hand payments (i.e. undeclared pay) that is also widespread in this region. Where pay policy is only regulated by agreement to a limited degree or hardly at all, skilled employees invariably earn disproportionately more than those in less skilled and more common jobs than when the reverse is true (cf. EC 2009, part 3).

3.2.8 Monitoring of the implementation of employee and trade union rights

The quality of labour rights and standards depends on the one hand on the codified legal provisions, and on how social dialogue works in practice. Another crucial factor, however, is the question of how agreements made within social dialogue or under existing legislation are implemented on the ground. Monitoring of this requires the relevant players and authorities to be robust and equipped with sufficient powers of enforcement.

Once again, there are clear differences in this respect within the Western Balkans. Where it has been possible to achieve a high density of agreements and a high degree of regulation, the relevant standards are higher than in areas where this is not the case. Shortcomings are particularly apparent where statutory monitoring and control cannot impose corrective sanctions or act as a deterrent. As above in other sections of this study, clear differences are apparent in the labour standards implemented in EU accession candidate Croatia and its neighbours in the Western Balkans.

Apart from the question of their legal basis in specific laws and regulations, the standards compared here – freedom of association and social dialogue – primarily stipulate the following five areas:

- As far as possible, the existence of **employee representation** with guaranteed powers in all sizes of company
- Comparable working conditions and remuneration for comparable work guaranteed by effective **collective agreements**
- Intervention by **dispute settlement** bodies on issues pertaining to collective labour rights (particularly bargaining policy and the exercise of the right to strike)

- A **labour inspectorate** that works effectively

- **Judicial monitoring** and protection of individual and collective labour rights in the event of obvious infringements.

Another significant aspect of this comparison is the safeguarding of a decent livelihood by means of a guaranteed minimum wage together with additional state transfer payments.

As far as the areas listed above are concerned, the second half of this central section of the study (3.2) has already detailed the strengths and weaknesses and specific shortcomings of company employee representation and bargaining policy, including a guaranteed minimum wage. Given the legal gaps apparent here and the current limits on freedom of association, further targeted initiatives will be needed in the individual countries in the run-up to membership of and integration into the EU.

Quite apart from the gaps in legislation and implementing regulations, at this juncture the focus is particularly on the implementation, **promotion and monitoring of existing legislation**.

In the countries studied, some **dispute settlement** bodies have recently been extended to include, alongside arbitration, voluntary mediation (advice) and conciliation services (mediation and help in reaching a compromise solution) before a dispute escalates into possible industrial or legal action. However, this kind of conflict resolution is still in its infancy, as such services are as yet seldom used.

In general terms, the role of these new bodies is to carry out compulsory arbitration during pay disputes. For instance, in Serbia in 2005 a public "Agency for the Settlement of Industrial Disputes" was set up specifically for this purpose. In Montenegro there is similarly provision in law for compulsory mediation and arbitration in disputes in sectors "of public interest", but not for the private sector. In Albania, too, there are state mediation and dispute-settlement agencies that must be called in prior to possible industrial action. The situation is similar in Macedonia and Croatia.

It is an open question, however, as to what extent such bodies can be – or actually are – called upon to help interpret disputed aspects of collective agreements and can operate effectively in such cases.

In this region, arbitration is a function traditionally performed by the **labour inspectorate**, provided it has the requisite monitoring and decision-making powers. This is the case in Serbia, where this body is reported to have comprehensive rights, including the power to remedy rights violations (including illegal dismissal). In such cases, however, the effectiveness of any possible sanctions is always questionable. The labour inspectorate in Montenegro possesses similar broad powers to monitor labour law and health and safety in the workplace. It is moreover equipped with sufficient staff resources to enable it to carry out regular monitoring of individual companies at relatively short intervals.

The issue of staff resources is problematic for Croatia, since according to trade union confederation SSSH, 50% of posts in the labour inspectorate are currently vacant. In Macedonia, according to the latest EU Progress Report, personnel has been increased by 30% (from 96 to 129 posts); however, the trade unions consider that it has relatively little power to impose penalties.

In Bosnia-Herzegovina the labour inspectorate also has wide-ranging powers to monitor the implementation of legislation and collective agreements. A new draft law even provides for the possibility of halting production in the event of serious breaches of health and safety regulations. The inspectorate also has powers to monitor the implementation of dismissal protection regulations: for such activities the inspectorate provides intensive training for its own personnel as well as a number of employee representatives.

The issue of court action for violation of labour rights, whether individual or collective, is a particularly thorny one.

The **labour courts** that existed in the former Yugoslavia are not found in any of the successor states or in Albania, even though they are clearly needed, given that court cases take far too long and the civil courts lack competence to deal with labour disputes. This is why the trade unions have also

incessantly demanded them. In Albania the introduction of labour courts was provided for some time ago in the 2003 Labour Code, but has still not yet been implemented in practice.

Nevertheless, this region still has specific departments or **labour law chambers** as for example established within the system of ordinary courts in Macedonia and Serbia. However, this has not brought about any noticeable reduction in the duration of court proceedings, which usually take as long as 2 or 3 years.

Finally, the enforcement of court judgements constitutes a particular problem. The individual country reports contain repeated complaints about dismissals, e.g. of trade union activists that have been declared illegal but are subsequently not rescinded by the company responsible, with no reinstatement of the employees in question. Reports from Croatia state that around one third of judgements are not enforced, since the companies accused either no longer legally exist or prefer to pay the corresponding fine as an alternative. This again raises the crucial issue of an effective system of penalties for breaches of the law that could act as a deterrent.

3.2.9 Interim conclusions on the role of social dialogue

Following this description of the salient features of industrial relations in the Western Balkans, an initial appraisal leads us to the following conclusions:

- In terms of indicators, the situation in Croatia is more similar to the situation in the more developed new EU member states and already largely meets the industrial relations standards usual in the EU. This means that alongside Slovenia it is the only former Yugoslav country in the region in which the previous tradition of worker self-management has remained alive. This is evident from the decision to introduce works councils (as early as 1995) and from the presence of employee representatives on supervisory boards of companies with 200 employees and over.
- Nonetheless, in terms of their structures, the remaining countries of South-Eastern Europe are not lagging behind the new EU member states to any considerable extent – indeed, with regard to essential indicators such as collective agreement coverage and union density, the opposite is generally the case. Their overall economic performance and income levels are in the same range as those of the two member states of the Eastern Balkans, Bulgaria and Romania. Because of their initial delay in embarking on the transformation process, they need time for the further development of social dialogue, a fact that is apparent, for instance, from the lack of social concertation in their national tripartite Economic and Social Councils (cf. EU Progress Reports 2008).
- Finally, it should be borne in mind that four of the six countries of the Western Balkans, as successor states to the former Yugoslavia, only became independent during the transformation process after 1991. Indeed, the same is also true of half (five out of ten) of the new EU member states in Eastern Europe.

A certain light can also be shed on the reality of **bipartite and tripartite social dialogue** not least by considering how the social partners and governments participated in the – officially – tripartite workshops run by the Friedrich-Ebert-Stiftung in December 2008 and February 2009 in the capitals of the six countries. The aim was to present and discuss the outcomes of the respective country reports on freedom of association and social dialogue, as well as to draw a comparison between these findings and the situation in the new EU member states and the EU 15. In each country, experts from associations of both sides of industry and government representatives (Ministry of Labour and labour inspectorate) were invited.

Only in Montenegro and Albania did representatives of all three parties attend the workshops. In Serbia and Croatia both social partners were present, but no representative of the Ministry of Labour or the labour inspectorate. In Macedonia the employers' representatives were absent, and in Bosnia the numerous union activists attending did not mix at all with the other parties. It is true that, as a consequence of the Dayton Agreement and

ensuing decentralisation into cantons and ethnic entities, the situation in this country is scarcely comparable with the others, but it demonstrates, however, how necessary it is to overcome a situation marked by deep divisions and a lack of dialogue. The quality of social dialogue in the entire region, particularly at the highest level, thus still needs to be further improved.

The final sections extend this study and its conclusions with a broader comparison, not only between the regions under investigation here – North-Eastern and South-Eastern Europe, the new and future EU member states – but also between Western and Eastern Europe as a whole. This broader approach inevitably raises the question of the extent to which the present European social model in the EU 15 may be transformed as a result of enlargement to include the current ten and in future a possible six more former socialist countries. At the same time, the question is whether it can nevertheless retain its essential character and continue to develop in a number of important areas.

This issue will crucially depend on the true potential for legal and practical convergence and thus on the prospects for the different regions to grow closer together within a larger Europe.

4. Comparison of the two country groups: Central Eastern and South-Eastern Europe

The main focus of the comparison carried out by this study is the ability of the two regions under investigation to adapt to the main features of the European social model, first and foremost its structures for social dialogue based on freedom of association, and the use made of them by the trade unions.

With respect to **freedom of association**, a direct comparison between the Western Balkan countries and those of Central Eastern Europe reveals that:

- the legal obstacles posed by prescribed minimum numbers for the establishment of a grassroots union organisation, both within and outside a company, are less high than in some of the new EU member states;

- the statutory or regulatory "filters" that prevent or restrict an individual from joining a trade union are therefore far less widespread in the Western Balkans;

- the amount of discrimination to which trade union members or elected officials are subjected is no greater. Legal protection exists everywhere, although implementing it in conflict situations can be difficult;

- the rights and opportunities to participate in collective bargaining or to take industrial action are no less extensive in South-Eastern Europe: indeed, there are considerably fewer restrictions on certain groups of employees;

- tripartite social concertation at national level, on the other hand, is generally still in its early stages, and this affects the overall climate of social dialogue in the country.

The following four aspects will be examined below in order to obtain a more precise picture of the situation:

(1) The trade unions' organisational composition and internal potential

(2) Their presence and operations on the ground through the representation of employees' interests at company level

(3) Their effectiveness as negotiating partners required for concluding collective agreements

(4) Their ability to monitor and further develop formal industrial relations.

4.1 Capacity building: organisational composition of trade unions and the social partners

All of those concerned have had to, and still have to, confront the twofold challenge posed by systemic change: transformation into a market economy and adaptation to internationally applicable standards (ILO and EU). The trade unions have been expected to modify their structures and adopt new strategies as quickly as possible, while in some cases the employers, for their part, have had to set up completely new organisations in response to the new situation and the resulting need for action.

The results can be summarised as follows in comparative terms:

- In the Western Balkans – with the exception of Croatia – there is, on the whole, much less organisational diversity than in the new EU member states. This applies to both employees' and employers' associations. The way in which the assets of the former trade unions were divided up led to less pluralism in these countries than in countries such as Hungary, where company unions registered as independent organisations in order to be entitled to a share of union assets.

- Trade union density in the Western Balkans, at levels of between 25% and 35%, is, on the whole better, and comparable with the average for Central Eastern Europe (i.e. CZ, SK, RO and SI);

thus it lies well above the group of countries in the latter region suffering significant membership losses.

- The unions in both regions are faced with similar issues regarding the availability of financial and human resources. Union subscriptions are (still) deducted from wages at source by employers everywhere – which can in practice deter potential recruits from joining up where an anti-union climate prevails in the company – and are chiefly utilised locally. This strengthens the local players, where they exist, but weakens the central organisation. Proposals that the funds be redistributed, such as the one put forward by sectoral organisations in Lithuania wanting to claim back 50% of total subscriptions for themselves, have not yet been successful in either region. Consequently, central organisations everywhere complain of a shortage of experts.

- The employers, for their part, face similar problems, although they are less dependent on labour-intensive resources in the shape of full-time experts. Since the main activity of the employers' associations is lobbying governments, they are in any event less involved in collective bargaining; indeed, in some cases they have no such mandate from their members. In the Western Balkans they tend to draw most of their clientele from the wide array of small and medium-sized enterprises, and fewer from large companies and international joint ventures than is the case in the new EU member states.

The extent to which the additional challenges posed by the current financial crisis have stepped up the need for organised trade union action in South-Eastern Europe is as yet an unanswered question.

4.2 Uneven representation of employees' interests in companies

Because of the shift in company structures towards smaller corporate entities, and the general drop in membership levels, the proportion of "union-free" companies in Eastern Europe – i.e. ones with no employee representatives – has increased to such an extent that while trade union representation exists in a majority of large companies nowadays as a rule it no longer exists in most medium-sized enterprises and definitely not in the increasing number of small firms. Employees in approximately 80 % or more of all companies are therefore left without the requisite legal protection in the event of a dispute.

Works council members or individual employee representatives (shop stewards), elected by the workforce as a whole, can play an important role in such situations, especially where they have guaranteed minimum rights to ensure that the employees' voice is heard, for example on issues such as working time arrangements or personnel matters such as socially acceptable staff cuts. This always presupposes timely information and participation facilitated by the employer, as is laid down by the 2002 directive for companies with at least 50 employees or establishments employing at least 20 employees.

To date, the pressure exerted by this directive has brought about a rather different state of affairs in the new Eastern European EU member states than is currently apparent in South-Eastern Europe. Here, works councils were in most cases set up prior to accession to represent employees' interests, or else were created at the latest when the directive came into force. The incentive for governments to introduce works councils in the wake of accession was that trade union representation in the workplace was often only patchy.

Many unions tended to perceive this procedure as an attack on their existing rights and as unwelcome competition. They protested with all their might against the introduction of such an unknown institution, above all in the Czech Republic, Poland, Slovakia and the three Baltic States, as explained in Section 3.1.

In Slovenia and Croatia, on the other hand, as well as in Hungary, with their different tradition of workers' councils, the employee organisations caught up in the changes of the early 1990s had fewer reservations. They immediately grasped the function of works councils as a "gateway" for their activities, acting in tandem with the trade unions, especially wherever the unions were less strong or no longer represented. By providing advice and training for elected employee representatives, the trade unions managed to create closer bonds be-

tween the works councils and themselves. This stronger presence on the ground simultaneously guarantees the necessary direct contact with the workforce, which can in turn help win new members. All of this presupposes, though, that the role of works councils as a second channel of employee representation is accompanied by a clear separation of powers – and is welcomed and deliberately used as such – as is the case for example in Slovenia, to some extent continuing the previously success of self-administration in companies.

Over and above this general issue of acceptance, there are a number of tangible differences even within the two Eastern European regions concerning the establishment and effectiveness of the works council as an institution. These relate to the provision, equipping and staffing of offices for works councillors, the employers' obligation to bear the cost of hiring the necessary experts and, not least, the arrangements for granting elected officials time-off to perform their duties or for any training they may require.

Of the three South-Eastern European countries where training for works councillors is permitted by law (Croatia, Bosnia and Serbia), sufficient training is provided only in the country where these employee representatives are most widespread: Croatia. Elsewhere it is dependent on an agreement with the employer (see Figure 24 above). Compared with this, the situation in the ten new EU member states concerning statutory guarantees for the activities of elected works councillors is more favourable on the whole, apart from a few exceptions (for more detail on this see the summary for Central Eastern Europe on "Facilities and statutory powers of Works Councils in Central Eastern Europe" in Annex 3.2).

Differences in the statutory provisions for holding company assemblies and providing information to the workforce are less pronounced. However, under the 2002 EU directive, which is already in force in Central Eastern Europe, works councils here already possess considerably more legal rights to information and consultation. Works councils in these countries also have much greater supervisory powers to monitor compliance with labour legislation, sometimes combined with the right to take employers to court if they act improperly or breach the regulations.

Unusual provisions going beyond the usual powers have recently been introduced in the Baltic States, whereby in the absence of any trade union representation in a company, a works council may conclude a company agreement and even, where appropriate, ensure its application by means of industrial action (see Figure in Annex 3.2).

This unique legal state of affairs, which does not exist anywhere else in Europe, constitutes an attempt to make a virtue out of a country's lack of trade union representation and collective agreements, but has in actual fact merely served to strengthen trade union resistance towards the works council as an institution. Conversely, nor has the spread of works councils been furthered in practice by the rule in three Central Eastern European countries (Bulgaria, Poland and Hungary), as well as Croatia and Bosnia, that where there is no works council the local trade union representatives assume its rights. On the other hand, the fact that a works council cannot be elected or operate, or must stop operating once trade union representatives have a presence in a company, was declared by a ruling of the Polish constitutional court in July 2008 to be in breach of the principle of "negative freedom of association", and the Polish Sejm was ordered to amend the 2006 law.

Generally speaking, the role and powers of local trade union representatives are in any case broader than those of works councillors, although the legal framework for works councillors in Central Eastern Europe is often defined in a more detailed and more comprehensive fashion (see EC 2008b). The legal situation in the Western Balkans is likely to be adjusted along similar lines as part of the EU pre-accession strategy.

4.3 The extent, substance and effects of collective bargaining practice

The nature and extent of coverage of employees by collective agreements is determined both by the structure of bargaining levels and, in particular, by trade union density. Since membership in South-Eastern Europe is not lower on average, but generally higher, than in Eastern Europe as a whole, collective agreement coverage tends to be greater in countries where sectoral collective agreements pre-

dominate, such as Croatia and increasingly also Macedonia (see Figure 26 above), and where it is possible at the same time for existing sectoral agreements to be declared generally applicable to all employees (e.g. Romania and Slovenia).

In addition to identifying similarities, any comparison of wage-setting in Central Eastern and South-Eastern Europe also points up a number of significant differences between the two regions (see Tab. 7). Generally speaking it is company level that emerges as the main arena for wage bargaining: most clearly in the northern group of new EU member states (Baltic States, Poland and also Hungary and – to a lesser extent because of a recent increase in collective agreements being declared generally binding – also the Czech Republic). The same goes for the Southern Balkans (Macedonia, Montenegro, Serbia and Albania). Within the group of Central Eastern European and Northern Balkan countries (Slovakia, Slovenia, Romania, Bulgaria) and also in a number of sectors in Croatia (less in the industrial than in the services sector) strong sectoral agreements predominate. Bosnia-Herzegovina has a special status, with tripartite framework agreements being concluded at the level of each separate entity; otherwise bipartite agreements regulate details of remuneration and other working conditions at cantonal level and in companies.

Inasmuch as company-level agreements predominate, similar problems and bargaining results (see below) can be identified in the Western Balkans as in all other formerly socialist states (on collective agreement structures in Western Europe see Annex 5.5).

The right to industrial action is less well regulated formally and less restricted in the Western Balkans. Nonetheless, strike action is not any more frequent here than elsewhere in Eastern Europe.

Tab. 7: **Comparison of levels for wage-setting in Central Eastern and South Eastern Europe**

	National level*	Sector	Company
Estonia	□	□	▲
Latvia	□	□	▲
Lithuania		□	▲
Poland	□	□	▲
Czech Republic		□	▲
Hungary	□	○	▲
Slowakia		▲	○
Slovenia	○	▲	○
Bulgaria	○	▲	○
Romania**	□	▲	▲
Croatia		▲	▲
Macedonia	… □	○	▲
Montenegro	… ○	○	▲
Serbien		○	▲
Serbia	▲***	□***	○
Albania		○	▲

□ Existing level for collective bargaining ○ Important, but not predominant level ▲ Predominant level for collective bargaining

* Cross-sectoral agreements
** Bargaining obligatory in companies with over 21 employees
*** Separated at entity level (Bosnian-Croatian Federation or Republika Srpska)

Slovenia is an exception in this respect, however, with its manifest readiness to take action and its effective militancy on crucial issues, including ones of a more general social nature (e.g. the successful rejection of the flat tax rate – see Hantke 2008). There is generally no such capacity in other countries to exert pressure in the public arena in such cases, or even in pay disputes, often because of a lack of experience in preparing for and carrying out successful sectoral negotiations.

If one compares the outcomes of different forms of collective wage agreement in Eastern Europe, the most significant factor of all is the "minimum wage" indicator. Crucial in determining its level are the players who set it and the extent to which the trade unions and employers play a role rather than just the government (for more detail on this see Schulten et al. 2006).

In some parts of South-Eastern Europe the level of the minimum – or lowest – wage is sub-marginal and barely covers subsistence requirements. Elsewhere, however, it is set at a level considerably higher than that of minimum earnings in many of the new EU member states. Croatia already belongs to the upper median EU group in this respect, coming just behind Slovenia and Portugal (see comparative Figure on minimum wage levels in Europe in Annex 4.3; on the trend in real wages see Figure 17 and Annex 4.5).

The gap between high and low earnings is substantial in both regions – greater on average than in Western Europe (see Figure 20 above). In the Western Balkans the minimum wage as a proportion of a country's average earnings also lies well below the poverty threshold defined by the EU (= at least 50% of national average earnings), and the same applies to the majority of the new EU member states. The size of the gender pay gap likewise differs from one part of the region to another, depending on the degree to which pay is regulated by collective agreements. At first sight, the pay gap in the Western Balkans – with the exception of Albania – would appear, as a legacy of the former Yugoslavia, to be rather narrower than in Central Eastern Europe where the front-runners for Europe as a whole are to be found.

4.4 Monitoring of standards on freedom of association and employee rights

The weaknesses in the monitoring of implementation of existing rights for trade unions and employees in the Western Balkans are scarcely any different structurally from the shortcomings noted in Central Eastern Europe (see Section 3.1):

- On the whole, employee representation in the Western Balkans is less rather than more patchy than in the rest of Eastern Europe, but again it is particularly poor in the majority of small firms.
- Labour inspectorates have recently been successful with special efforts to improve the nature and intensity of their monitoring activity.
- Ineffective monitoring by the courts is primarily responsible for the much-lamented lack of legal protection. Unlike countries such as Slovenia and Hungary, there are no labour courts in this region, although two countries do have special chambers to rule on labour disputes.
- Given that tripartism, with involvement of the social partners, is generally less widespread and well-established, it is much less easy to influence the political decisions reached by parliaments than in many comparable Central Eastern European countries.

4.5 Potential and shortcomings in the two groups of countries

In conclusion, an assessment of the **strengths and weaknesses** of industrial relations and social dialogue reveals the following salient points on both sides:

The **plus points** are:

- An even higher trade union density (especially still in South-Eastern Europe, less so in Central Eastern Europe)
- Functional collective bargaining structures at each individual level

- Works councils already established in a few Eastern European countries

- Tripartism in operation (above all in Central Eastern Europe, less so in the Western Balkans).

The main **weak points** to be noted, on the other hand, are:

- A widespread lack of any trade union presence in companies, but no works councils established either

- Little ability on the part of union members to mobilise around public campaigns (with very few exceptions anywhere in Eastern Europe)

- Little trade union activity targeted at, or appealing to young people (Hantke 2008)

- No strong central union organisations, since financial resources are deployed on a highly decentralised basis; this has serious consequences in smaller countries

- Too little effective monitoring – and hence strengthening – of formally established labour rights owing to inadequate legal protection; this results from insufficient trade union potential as well as a lack of specialist labour courts involving representatives of the social partners.

Impending EU accession and the momentum that this will generate are most likely to enable the weaknesses noticeable particularly in the Western Balkans to be overcome, and the scope for development to be utilised. What is needed before this happens is closer cross-border cooperation, targeted training programmes and cross-border exchanges of relevant experience within the regions and the EU as a whole.

5. An East-West comparison: the likelihood of convergence in an enlarged Europe

By conducting a comparative analysis of the practice and impact of freedom of association in Eastern Europe, and comparing that analysis with the trends prevailing in Western Europe, it is not difficult to detect significant structural and practical differences between industrial relations in the new member states/candidate countries and the former heartlands of the old EU. These differences derive for the most part from the different starting points and developments in the two regions but are certainly not an inevitable result of them – as demonstrated by the results of an innovative policy drawing on existing potential, in the case of Slovenia.

If we take the Nordic countries of Scandinavia or exponents of the continental European model of industrial relations (e.g. Austria or Germany) as a comparison group, it becomes clear from the legal state of affairs alone that a hands-off approach to state regulation can help an autonomous social dialogue to develop freely. By contrast though, industrial relations in the formerly socialist transformation countries are controlled much more by the state and its regulatory mechanisms, as is evident from the emphasis placed on tripartite national economic and social councils. This initially resulted in a comparatively dense set of rules and regulations, which have only very recently been eased in the course of EU integration by adapting to the mainstream European social model and its principles favouring autonomous management by organised interest groups.

One particular obstacle to adaptation in Eastern Europe is the fact that – despite government incentives and encouragement from international associations – a sectoral collective bargaining policy encompassing as many groups of employees as possible has so far rarely been given a chance. This works to the detriment of employees, who then have to make do with the generally very meagre minimum wage.

It appears equally difficult to establish a broad concept of participation in companies and public institutions in a way that complements traditional forms of trade union employee representation and also encompasses the numerous unorganised company units. This illustrates the fragmentary manner in which the 2002 EU directive guaranteeing specific minimum standards for information and consultation has been implemented in practice in Eastern Europe (see EC 2008; EIRO 2008).

Of course, these forms of participation had long been an accepted tradition in Western Europe especially in the countries mentioned above as examples: Generally speaking, new laws were not even needed in order to comply with the EU regulations. In these countries, compliance with existing labour law provisions is ensured by an independent judicial system, usually in the form of specialist labour courts in which the social partners are involved institutionally (e.g. as lay judges with a right of co-decision). Such monitoring bodies working to uphold freedom of association are unfortunately still a rare exception in Eastern Europe.

In Germany, for example, well over half a million cases per year are brought before the three-tier labour courts (federal, Land and district). More than half of these disputes under individual and collective labour law – the overwhelming majority concern dismissal, pay grading and remuneration problems, as well as employee participation and representation issues – are settled out of court, i.e. through a (pre-trial) compromise between the parties rather than a formal legal judgement.

Alongside professional labour judges, honorary lay judges are involved in these labour courts as representatives of the employers and trade unions (the structure is similar to that of the *prud'hommes* in France). These two groups have full voting rights, so it is possible for them to overrule the neutral professional judge if need be. As well as the individuals concerned, the trade union responsible also has a right to bring proceedings before a labour court in Germany, and union members receive legal protection free of charge. (In 2007 the independent legal protection body DGB Rechtsschutz GmbH acted in over 140,000 cases pertaining to labour and industrial rights, with a "success value" of around € 355 million.)

This system ensures very effectively that where breaches occur they can be subjected to legal scrutiny as rapidly as possible – as is likewise the case in many other Western European countries. In Germany, proceedings before the court of first instance last seven months on average; where an ap-

Tab. 8: **Industrial relations in Eastern Europe and key elements of the EU social model**

Eastern Europe	Western Europe
• Industrial relations are state-dominated: tripartism plays a major role, especially since the minimum wage acts as a replacement for collective agreements. • TCollective agreements are concluded primarily at company level, since employers refuse other options and unions cannot exert enough pressure through strike action. • The trade union presence in companies is very patchy. • There is a plethora of rules and regulations, sometimes hampering rather than assisting trade unions, especially as monitoring by the courts is extremely limited.	• The state tends largely to steer clear of intervening in social dialogue, tending instead to rectify any existing imbalances through regulation. • Collective agreements are concluded autonomously, primarily at sectoral level. Strike action is used where necessary as a weapon of last resort to reach a settlement. • The trade union presence in companies is complemented by works councils. • The legal framework allows the social dialogue players the necessary room for manoeuvre; in cases of dispute, the rules are enforced by judicial control of labour courts.

peal is heard at a higher level (Land or federal) it may take another 12 to 18 months.

The composition of Eastern and Western European industrial relations systems, which still vary considerably, can be summarised schematically as follows (see Tab. 8):

5.1 A broad range of achievements in respect of labour standards: the LRS Index on actual implementation of labour rights

Reference has repeatedly been made in this study to the problem of how to properly monitor existing labour rights standards and prevent infringements. In order to facilitate a comparison of the labour rights standards governing the current state of affairs in different countries, a previous comparative project at EU level devised a procedure for looking at all the relevant factors in order to obtain as objective picture as possible of the standards achieved in one country compared with others.

Taking together all the empirically calculable indicators in the field of industrial relations, it is possible to produce an evaluation scale reflecting the current state of play – i.e. the implementation and monitoring of existing collective and individual labour rights standards – in the form of a comparative summary index (the Labour Rights Standards Index – LRS).

Any such Europe-wide comparative appraisal of the 27 EU member states must necessarily cover the following three levels (with a total of 15 subindicators to compile the resulting generic index):

(1) Individual labour rights, relating in detail to the situation concerning trade union membership, dismissal protection, health and safety at work, monitoring of working time, gender equality, and a statutory minimum wage;

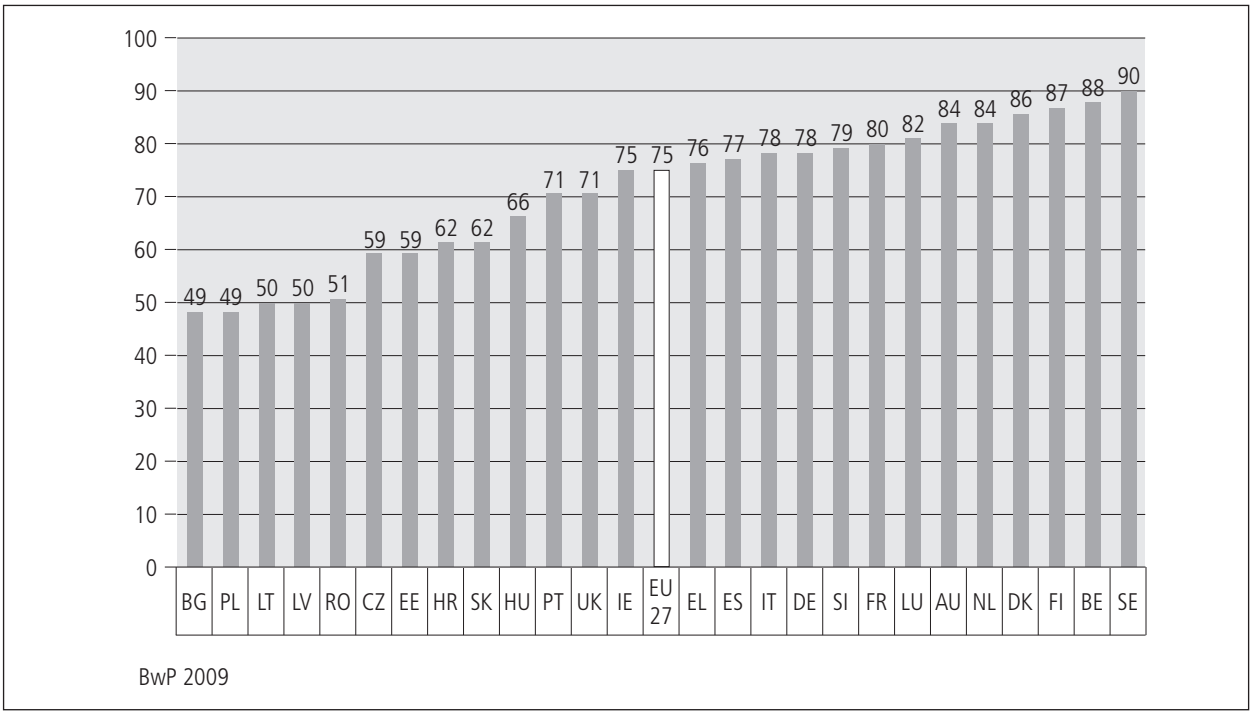
(2) Collective labour rights, relating to employee representation, information and consultation, collective bargaining and collective agreements, the scope for sectoral agreements being declared generally applicable, and the right to strike;

(3) The effectiveness of monitoring authorities, through employee representation and a trade union presence, dispute resolution bodies, labour inspectorates, the system of labour courts (where they exist) or the role of civil courts in labour disputes.

The **Labour Rights Standards** Index (LRS), devised as part of a project run by the EU's Dublin-based Foundation for the Improvement of Living and Working Conditions, provides a picture of a broad spectrum of rights in the EU member states (for more on the methodology, see (in German) Kohl/Lehndorff/Schief 2006 or (in English) Kohl/Platzer 2007). As can be seen from Figure 27, this broad spectrum is not distributed along clearly defined geographical lines. The Eastern European countries do, however, congregate chiefly to the left of the EU mid-way point (along with Portugal and the UK).

The orders of magnitude depicted in this graph can be regarded as an indicator of the practical implementation and potential monitoring of essential trade union rights and freedoms, while at the same time illustrating the need for action to

Figure 27: **Labour Rights Standards Index in Europe: results of implementation and control**



consolidate these rights and eliminate the deficiencies hindering further development of the social dimension in a workers' Europe.

One of the candidate countries, Croatia, already features on this scale. An initial appraisal based on the country reports and workshops reveals that the other Western Balkan countries are to be found towards the lower end, oscillating around an index value of -/+ 50: thus their level matches that of some North-Eastern European countries and the new Eastern Balkan member states that acceded to the EU in 2007.

Given the process of creating not just a frontier-free internal market but also social integration in an enlarged Europe, one question that must be asked in conjunction with this comparative assessment is: what signs are there of mutual rapprochement and innovative adjustments, and how can they be better targeted?

5.2 The potential for development of trade unions in Eastern and South-Eastern Europe

Adjustment is most visible – and more can be expected – where cross-border cooperation and dialogue are already a reality, as is the case in the numerous **European Works Council** bodies in which thousands of East Europeans now participate as elected delegates. Other examples include the **sectoral coordination of collective bargaining**, such as that which has been taking place for years in the metalworking sector in Central and South-Eastern Europe (the "Vienna Memorandum"), or the many exchanges arranged by the **Interregional Trade Union Councils** (IRTUCs) and organised encounters of young people; not to mention the cooperation already underway in various European-level bodies (in the sectoral social dialogue, in the Brussels Economic and Social Committee, within the ETUC and its affiliates, and in the 12 European Industry Federations that have replaced the International Trade Secretariats). All these bodies have only a limited impact on the public at large, of course, for instance through reports in the national media.

The trend towards standardisation, stemming from the minimum provisions set out in the **EU directives** and in Community law, implies that – as happened in the past – the new member states, and also the candidate countries, will make further progress in the medium to long-term future.

What still remains crucial is to strengthen the hand of the **players** operating on the ground. Nothing is more necessary to this end than employee representation that is demonstrably successful, particularly

in respect of a policy on collective bargaining and distribution, and the consequent strengthening of trade union organisation at all levels.

This process has hitherto been bolstered by a number of objective factors, inasmuch as the unions have managed to turn them to good effect. The main factors here are:

- The hitherto above-average economic and productivity growth in Eastern Europe (see the current trends and forecasts in Annexes 4.1 and 4.2);
- The recent steady fall in unemployment in the very countries previously worst affected, not least owing to the outflow of workers through emigration over the past few years (see the current state of affairs in Figure 30);
- And last but not least, the drive to adapt pay and other working conditions to the higher standards prevailing in the rest of Europe, partly as a result of added opportunities for participation and cooperation.

All of this has helped to considerably improve the trade unions' scope for action, their rate of success in raising real wages (see on this point the current status and EU forecasts in Figure 17 above) and hence their attractiveness. It has already proved possible to halt and reverse the trend towards declining membership in certain Eastern European countries and turn it round. This is already noticeable in Slovakia, Slovenia and to a lesser extent Lithuania, as well as very recently even Eastern Germany. It is equally true for South-Eastern Europe that demonstrable achievements, above all advantageous pay deals, can make trade union organisations look much more attractive.

In these times of global economic crisis, however, the boost given to trade unions by the above-mentioned favourable economic circumstances has disappeared. Even greater efforts are therefore required to limit the dangers lying in store for employees, who must themselves show resilience if they are to ride out the crisis. On the other hand, many employees are again recognising the need for collective solidarity precisely in times of crisis.

Targeted **recruitment and image-promotion campaigns**, of which there are a number of positive examples – even from the new member states – can play a key role in sustaining the positive trend in membership recruitment that has been noticeable until now (see for example Kuhlbrodt 2009). The trade unions' position is simultaneously bolstered by a continuing shortage of skilled workers and by the employment opportunities created by business relocations – the flipside of production transfers from west to east.

5.3 Innovative new departures for social dialogue – positive examples from individual countries

The situation is not entirely negative. A number of positive innovations have already occurred in the new EU member states that can serve as encouraging examples for their immediate neighbours in the region, as well as for other candidate countries. The impact of these innovations in improving social dialogue and making it more efficient is manifest. In particular, seven different pointers for positive future developments and further convergence towards the European social model might be highlighted:

(1) National labour legislation has for the most part been substantially amended in the wake of EU integration, not merely in the sense of introducing greater flexibility along neoliberal lines but also in that trade union organisations have been freed from overly restrictive legal regulations and the state has granted the social partners more independent powers.

(2) This is especially true with regard to the removal of restrictions on the right to collective bargaining and the right to strike, in some instances following intervention by the ILO and the Council of Europe. This has led to an appreciable strengthening of freedom of association in individual cases. One positive example in this context is the statutory obligation of Romanian employers with more than 21 employees to engage in collective bargaining – provided there is no regional sectoral agreement in place.

(3) The introduction of institutional employee representation (i.e. elected by the entire workforce) in companies, in the form of works councils, has been advantageous in several countries, both in terms of enhancing opportunities

for employee participation and also increased scope for recruiting new trade union members. The EU directive on information and consultation can be expected to have similar effects in the Western Balkans too.

(4) Regional sectoral collective agreements in parts of the public sector, as well as in the private sector, have proved capable of imposing the hoped-for market discipline in respect of pay policy and also labour market policy, especially where collective agreements have been declared generally applicable.

(5) Tripartite social dialogue is increasingly being practised not just nationally but also at regional level.

(6) The steady decline in membership since the fall of Communism has been effectively halted in certain countries and the downward trend reversed, particularly thanks to more broad-based employee representation in the workplace including in small and medium-sized firms, increased collective bargaining activity and, last but not least, successful publicity drives with targeted image-promotion campaigns.

(7) The introduction – albeit so far only in a few countries – of labour courts or special chambers for labour-related cases within the general judicial system has visibly improved the implementation and enforcement of existing labour rights standards, and has helped to introduce more efficient sanctions for infringements – especially where the labour inspectorate is endowed with adequate powers. In addition, mediation and arbitration bodies can usefully facilitate dispute resolution before cases come to court, above all when the social partners are actively involved in reaching the verdict.

For these reasons the European social model, whose key elements are based more on Western Europe, from where it originated, is less likely to be jeopardised in the long term than is implied by the prophets of doom, who have for years been predicting its imminent demise as a result of the "Trojan horses" at work in Eastern Europe.

A precondition, however, is greater networking and strengthening of the European trade union movement and a lasting agreement on its common goals, with – as ever – joint practical action being the most promising approach. This comparative country-by-country analysis has drawn attention to enough areas where solidarity-based action is virtually a matter of life or death.

5.4 The economic crisis lessens the prospect of EU convergence

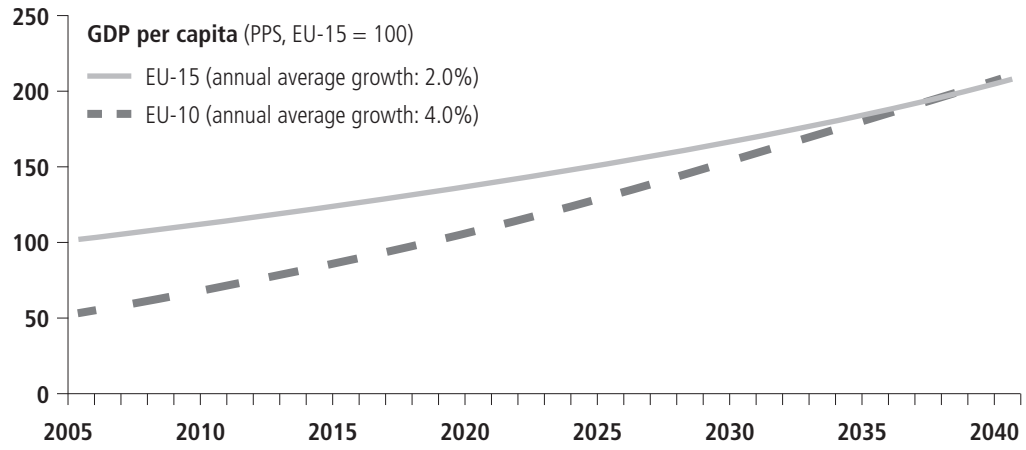
In addition to the completion of a free internal market with all its basic freedoms, another overriding goal of EU integration is a "social Europe". Without this prospect, the necessary acceptance from Europe's citizens would be lacking and the European project would be fatally undermined.

The social fault-lines now increasingly running through the entire European Union as a consequence of the economic crisis currently pose a threat to the future of the EU integration project. Just as serious as the global recession itself is the resulting rise in unemployment, poverty and inequality within societies as well as between countries, which is jeopardising the goal of greater social cohesion and reducing people's feeling of belonging to Europe and their commitment to cross-border cooperation. Added to that, several countries are currently experiencing not just stagnation of real wages but a huge drop that is set to continue in the medium term (see Figure 17 above) – not least as the result of drastic public sector pay reductions in Eastern Europe in 2009. According to the EU's 2009 spring forecast, this trend will continue beyond 2010 in the euro zone as well as in Eastern Europe (see EC 2009a, p. 134, Statistical Annex; on more recent developments in the Western Balkans, see Figure A 4.5 in Annex).

Another threatened consequence of the crisis is that the much-needed advancement of social dialogue throughout the EU will grind to a halt; yet the quality and efficiency of that dialogue is crucial, above all for overcoming predictable social discontent. When people in some parts of Eastern Europe see themselves as victims of the crisis and feel particularly threatened and gloomy about the future, their reaction is to engage in some cases in violent protest (see the events in Lithuania and Latvia at the beginning of 2009).

Recent developments mean that the prospect of convergence as hitherto envisaged by the EU's economic forecasters – see Figure 28 – has been

Figure 28: **EU long-term forecast: convergence only possible with continued high growth and an active collective bargaining and distribution policy***



* EU 10 = 2004 accession countries. The curves show GDP per capita at purchasing power parities.

Source: EC, Enlargement, two years after, 2006

totally undermined and needs to be rethought, given that some of the new EU member states (referred to in this graph as the EU-10) are now expected to lag behind.

The starting point for this long-term forecast was the expectation that economic growth in the new member states, at 4%, would continue to be twice as high as the average of 2% for the old EU (the EU-15). Although the EU-10 group does include countries such as Slovenia, which is thought likely to match the average EU level as early as the start of the 2020s, the assumptions behind this projection, dating from 2006, anticipate that the "foot-draggers" in this process will not catch up until well into the 2040s.

As with all the forecasts made to date, this prospect is now being put on hold in view of the deteriorating economic conditions. Indeed, if the economically stronger Western European countries continue to press ahead with their traditionally more efficient wage and distribution policies based on more efficient bargaining structures than in Eastern Europe, the hoped-for increase in convergence may not materialise at all in the foreseeable future.

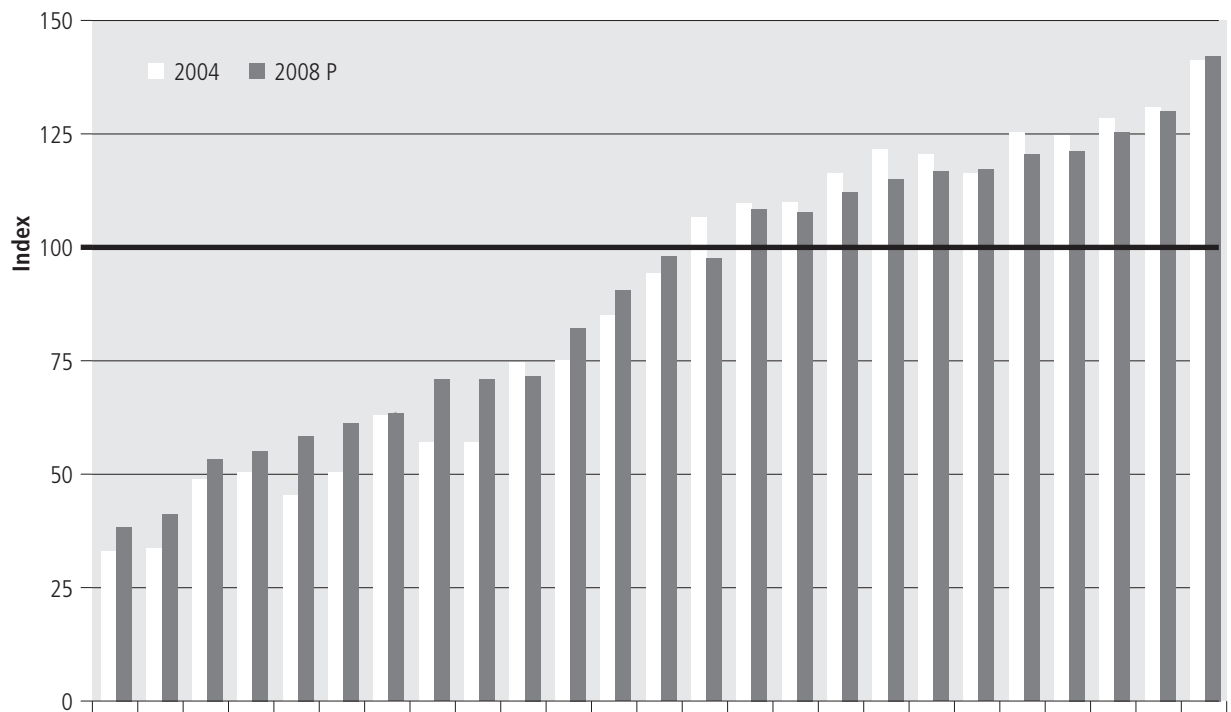
On the other hand, GDP per capita in the new member states, measured in purchasing power standards (PPS), has risen significantly since 2004, while all the Western countries apart from Finland and Ireland – as shown in Figure 29 – stagnated or declined during the period from 2004 to 2008 in relation to the EU average. In Eastern Europe this was only the case for Hungary.

Thus if this trend were to resume, together with an unchanged or even improved intensity of distribution in some countries of Eastern Europe, absolute pessimism about achieving greater convergence within the EU-27 in future would be misplaced, regardless of the economic crisis.

5.5 Employment situation and pressure of migration – with escalating youth unemployment

Another open-ended question is how the Eastern European labour market will develop in the future, given that high migration rates above all in Poland, Romania and Bulgaria, as well as in the Baltic States, have in the past served as an outlet for high levels of unemployment. Many workers were lured by the prospect of better earnings in Northern, Western and Southern European countries (Scandinavia, the UK and Ireland, as well as Italy and Spain). On the whole, this had a positive

Figure 29: **Comparison of GDP per capita in the EU-27 (2004 and 2008)**
– measured in comparable purchasing power standards (EU average =100) –



	BG	RO	HR	PL	LV	LT	HU	SK	EE	PT	CZ	SI	EL	IT	ES	FR	DE	UK	BE	FI	DK	SE	AU	NL	IE
2004	33,8	34,1	48,9	50,7	45,8	50,5	63,3	57,2	56,9	74,7	75,3	85,3	93,9	106,9	110,0	110,3	116,6	122,0	121,0	116,5	125,9	125,0	128,8	131,0	141,8
2008 P	39,0	41,5	53,6	55,4	58,5	61,7	63,5	70,7	71,0	72,2	81,9	90,5	98,0	98,4	108,1	108,1	112,4	115,5	116,7	117,3	120,9	121,7	125,9	130,1	142,4

NB: values for Luxembourg 253.2 (2004) and 277.4 (2008) omitted for graphical reasons
2008 P = EC forecast
Source: Eurostat

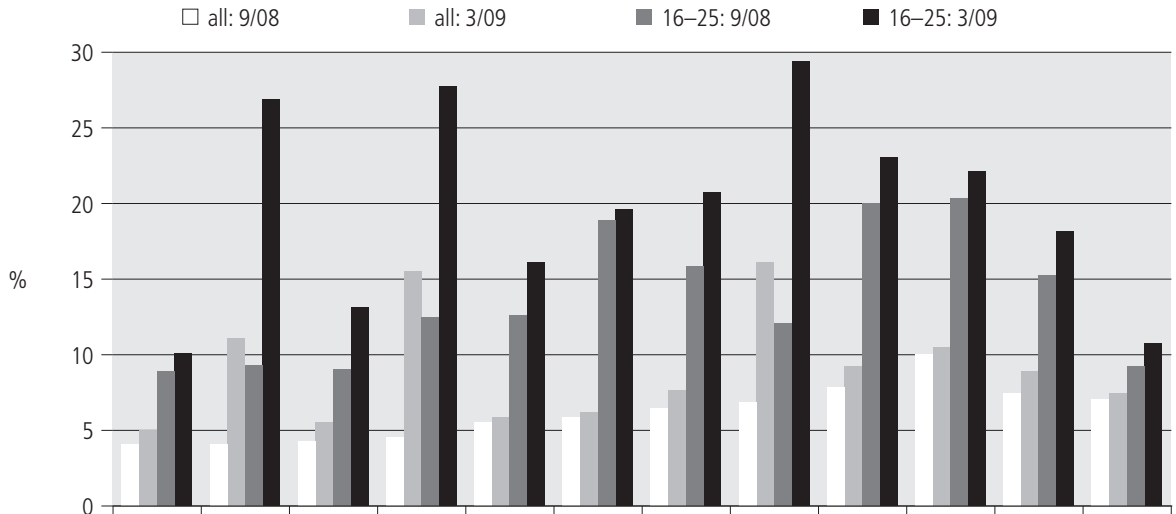
impact on wage growth in their respective countries of origin – both on account of an increasingly obvious shortage of skilled workers in certain sectors (construction trade, health service, etc.) and also owing to the pull of higher rates of pay in Western Europe. Registered unemployment in many Eastern European countries has consequently fallen well below the margin in the euro zone (EZ-16), with the only exceptions prior to the onset of the global economic crisis being Slovakia and Hungary.

This trend has now been thwarted by the effects of the economic crisis. Many migrants have been forced to return home by the huge reduction in job opportunities, a phenomenon that has been reflected in the spiralling unemployment figures of recent weeks and months, particularly in Latvia, Lithuania and Estonia (see Figure 30).

What is especially serious about this process is the fact that the proportion of young people out of work, already excessively high in the past, is now in some cases running completely out of control among 15 to 25 year-olds in all of the EU member states. The crisis has pushed youth unemployment rates up to 20% or even 30% in the Baltic States as well as in Hungary, Slovakia and Poland.

The repercussions of this gloomy outlook on the future social climate and on the social situation in Europe as a whole cannot be predicted as yet. The Lisbon Strategy goal of raising the employment rate will no doubt remain on the back burner for a long time to come as a consequence of this trend, which can only be described as scandalous, even though the current state of affairs could be somewhat eased by the unlimited freedom of movement likely to be granted to all workers in the EU from 2011 onwards.

Figure 30: **Migration has so far lowered unemployment in Eastern Europe**
– except among young workers (seasonally adjusted half-yearly data 2008/2009)



	SI	EE	CZ	LT	BG	RO	PL	LV	HU	SK	EZ 15	DE
all: 9/08	4,1	4,2	4,3	4,6	5,6	5,9	6,5	6,8	7,9	10,0	7,5	7,1
all: 3/09	5,0	11,1	5,5	15,5	5,9	6,2	7,7	16,1	9,2	10,5	8,9	7,6
16–25: 9/08	9,0	9,3	9,0	12,5	12,5	18,9	15,9	12,1	20,0	20,4	15,3	9,3
16–25: 3/09	10,1	26,8	13,0	27,7	16,1	19,6	20,7	29,3	23,0	22,1	18,1	10,7

Source: Eurostat, Euro-Indicators 152/08 and 61/2009

Turning to **South-Eastern Europe**, the official data for young people without jobs here are far more alarming still (see Figure 8):

- The proportion of young job-seekers in the 15 to 24 age group in Macedonia is just under 58%;
- Estimates of the true state of affairs in Bosnia-Herzegovina put the figure considerably higher, at approx. 75%;
- In Serbia too, almost every second youngster had no prospect of finding a job in 2008.
- Work opportunities – if any – for this group of people usually arise only in the informal sector, and sometimes only abroad, in Western European countries.

The trade unions will not be meeting their obligations in future unless they tackle the problems of this age group head-on, and do so successfully (for a positive example in this region, see Hantke 2008).

Tab. 9: **Unemployment rate (%) for all workers in the country and for those aged under 25 in the Western Balkans (2008)**

	HR	MK	MNE	SRB	BiH*	AL*
all workers	13,4	33,8	10,8	18,8	40,6	13,0
15-24 years	27,0	57,7	26,2	43,7	58,5	26,0

* Contrary to the official unemployment records, it is estimated by trade unions and discerning labour market researchers that the real youth unemployment rate in BiH lies even higher, at 70%–75%. The real overall rate for Albania is estimated at 30%–35%, with that for younger workers around 40%. (Source: Eurostat; Country Reports for S-Europe)

6. Conclusion – in times of crisis

The individual phases of this study of the two regions of Eastern Europe identified a number of significant differences with regard to legal structures and the practice of industrial relations between the countries concerned and also between Western and Eastern Europe. The need for reforms and structural change has also become obvious, and it is important – in (and despite) this time of crisis – that these should be clearly identified and, where possible, the necessary action specified.

6.1 Main results of the comparative study in Eastern Europe

The results of the comparative study of the 16 former socialist countries in Eastern Europe can be summarised as follows:

- There are many cases of laws and statutes not only excluding certain groups of employees from joining trade unions but also creating obstacles to the setting up of unions, recruitment of members and realization of the right to freedom of association. The general trend towards small-scale companies is partly the reason for the lower trade union density in these countries.

- Freedom of association is significantly restricted by the existence of minimum requirements in terms of workforce size for setting up grassroots trade union organisations or works councils. This means that a growing number of people employed in small and medium-sized enterprises are prevented from enjoying their participation rights and regulating their working conditions through collective agreements.

- Larger groups of employees are sometimes even denied access to collective bargaining and collective agreements, above all in the public sector and the utilities. Freedom of association at sectoral level is also made more difficult by the existence of strict requirements for recognising organisations as sufficiently representative and regulations that are designed primarily for company-level agreements.

- The right to strike is severely restricted in some cases. International bodies such as the ILO and the Council of Europe have frequently criticised a number of aspects of this question: the large number of people who are excluded from the right to strike, excessively high quorums for membership ballots and bureaucratic hurdles that favour the employers and act as a deterrent. The result is that substantial industrial action in both the private and public sectors quickly reaches the bounds of legality and therefore has become increasingly rare in recent years. Under these circumstances, collective bargaining degenerates into little more than "collective begging" (to use the words of the German Federal Labour Court in a domestic judgment on the right to strike).

Infringements of freedom of association often go unpunished in the new member states, as administrative or judicial monitoring and rectification is rarely feasible or successful. Non-adherence to collective agreements and the lack of effective protection of trade union members in turn has a sustained detrimental impact on interest in trade union membership.

6.2 Conclusions for trade union policy: the need for structural change and improved minimum standards

A number of consequences should be listed here both for the trade unions themselves and also for those politicians responsible for introducing any changes to the overall framework for trade union activities. If freedom of association is to be unrestricted and easier to apply, there is an urgent need for change in the following areas:

(1) Improved opportunities to join trade unions!

First of all this requires the **trade unions** to change all those provisions in their statutes that restrict the route to trade union membership to existing grassroots organisations within a company. This is especially the case where legislation or union statutes lay down high minimum numerical requirements for setting up such an organisation – thereby ruling out many SMEs.

The second important aspect is the practice of **employers deducting subscriptions from individuals' wages**. This acts as a deterrent in all cases where there is an anti-union climate in a company and the attitude of the owners is also unfavourable. The scope that this creates for intimidation and negative monitoring outweighs any advantages in terms of ease and simplicity of trade union funding. A necessary consequence of this would be a change to more modern, electronic methods of subscription payment (through standing orders or traditional collection at work), combined with a change in existing statutory regulations. Independently of this the trade unions are free to regulate this practice differently if they so wish (see e.g. Hantke 2008).

This would entail the **government** and the relevant ministries amending labour legislation: the minimum threshold for a grassroots trade union organisation in a company would need to be reduced to a level that makes employee representation possible in small enterprises. Furthermore, the legal exclusion of certain larger groups of persons from trade union membership, which this study has identified as a considerable problem, is no longer compatible with the principle of freedom of association.

Similarly, existing legal restrictions on collective bargaining for all employees and the use of industrial action according to international standards urgently require revision.

(2) New methods of member recruitment should be tried out!

In order to recruit members more efficiently, new ways of reaching out to certain target groups outside the usual areas need to be explored – above all employees in small companies, white-collar workers, young people and women (on new methods for campaigning, see Mernyi 2005). There follow two practical examples of new forms of trade union campaigning that demonstrate how the current low levels of membership can be overcome and individuals motivated to join up:

- The first example concerns the experience of the Lithuanian trade union confederation LPSK, which a few years ago launched a country-wide public relations campaign in the form of public appearances in large cities together with mayors and company representatives. By publicising their objectives and successes, they not only succeeded in changing the largely negative image of their organisation since the Soviet era, but also managed to motivate people to become actively involved. Since then, levels of union membership have risen significantly.

- The second example concerns an innovative attempt by the Irish Congress of Trade Unions (ICTU) together with five of its sectoral associations to use a "union outreach service" to back up traditional recruitment methods by running special campaigns in companies that formerly had no trade unions and by providing support for their employees. The campaign was targeted at selected groups including immigrants and made use of the full range of communication options (TV, radio, press, Internet and email). ICTU sees this investment (partly financed from the existing strike fund) as a way of reversing negative membership trends.

6.3 Consistent implementation of employee and trade union rights through the introduction of labour courts

Given everything that has been said about the limited scope for legal monitoring and the woefully inadequate protection of existing rights in most of the countries covered by this study, the lack of special labour courts in 14 out of the 16 Eastern European states is clearly a deficit that calls for urgent action, as it significantly hampers freedom of association and social dialogue as well as individual rights.

Even before any special labour courts are set up, one possible step towards strengthening existing individual and collective legal rights, would be to create special **chambers for labour-related legal issues** within the existing civil court system. There would, however, have to be enough of these and they would have to be staffed with sufficient specialised personnel to shorten the currently lengthy duration of court proceedings.

Labour courts such as were introduced more than 10 years ago in Slovenia and Hungary have demonstrated their ability to considerably reduce the **length of court proceedings**. And provided there is an equal number of competent **representatives of the social partners** sitting with the professional judges, there is in any case considerable scope for achieving out-of-court settlements prior to the start of any proceedings. This improves general legal certainty and makes it more likely that decisions will be enforced in disputes.

The trade unions should therefore campaign with renewed vigour for the rapid introduction of such a system – especially where governments have already agreed to the principle, as in Romania and Bulgaria, or where the current Labour Code already provides for it (Albania). Objections on financial grounds are not convincing in the long run, given that labour courts already existed in the former Yugoslavia and the judges subsequently had to find new occupations, for example as specialist lawyers, following the onset of political change.

One thing that would undoubtedly help in this context would be if the EU created framework legislation and undertook to set up such courts with effective rights to impose sanctions in all member states. This has already been mooted by the spokesperson of the employee side in the European Economic and Social Committee, Alexander Graf von Schwerin, (international conference of the Otto Brenner Foundation in Kranjska Gora, Slovenia, 2008). Such a helpful step would also need to be more widely discussed in the ETUC. It is hard to understand why it is only in Western Europe that legal monitoring appears to be customary and feasible.

6.4 Amendment of the 2002 EU directive on information and consultation

The analysis undertaken in this study, together with the EU's 2008 review of implementation of the directive on information and consultation of employees (for more on this see Annex 3.1) clearly demonstrate that the desired goal of greater scope for consultation and participation often only applies to a minority of employees. One of the obstacles is the minimum size of 50 or more employees laid down in the directive. Given the trend towards small and medium-sized enterprises employing between 10 and 50 people that developed during the economic transformation of these countries, this means that approximately half of all working people in a country can be excluded from the legal right to consultation on changes in corporate structure, personnel cuts and the introduction of new working arrangements – with all the concomitant disadvantages that this implies.

The second, equally important way that the goals of the directive are circumvented takes the form of restrictive national regulations on the election of a works council to represent the workforce and on the provision of material resources and personnel, including any required training and release from working duties (see overview in Annex 3.2). It is a fact that the generally extremely low level of union membership means that in a number of new member states there is no negotiating partner for the employers – either in the form of a works council or trade union representatives.

In order to rectify this situation the following measures are urgently required

- The EU directive should be adapted to the situation by reducing the minimum workforce size above which information and consultation of employees has to be guaranteed. This would ensure that, at most, only employees in very small companies (less than 5–10 employees) would be excluded;

- The national legislature should be required to consistently implement the directive and amend any regulations that clash with it, if necessary with the assistance of the ECJ; this should also be subject to regular monitoring.

- Finally, the trade unions should, in their own interests, be aware of the possibilities offered by works councils as additional vehicles for carrying out their tasks and intensifying social dialogue. This would require them change their currently negative attitude, which is largely based on experience from a previous historical situation rather than on any actual knowledge of what goes on, for example, in European Works Councils.

6.5 Promotion of further EU convergence and pre-accession support

EU integration would be unthinkable without active efforts to achieve economic and social convergence. The main question nowadays is how this can continue in the currently negative climate caused by the global economic crisis. In this context there are a number of potential areas which, if tackled with the necessary energy, could promise further progress in this direction.

One of these involves establishing adequate minimum wages that enable individuals to meet their basic needs. What is needed is a European minimum wage policy based on a country's economic performance and calculated as a proportion of the national average wage that is above the poverty line, i.e. at least 50%.

To do this, and to achieve better results with collective bargaining policy, there is a need for more training for those involved to provide them with a basic knowledge of micro- and macroeconomics and the necessary negotiating skills – for example using the tried and tested method of planning games. There is a need for a more efficient transfer of knowledge about the structures and functioning of sectoral agreements and the ability to argue the case for these.

Finally – particularly in times of crisis – the effectiveness of working time reductions in avoiding redundancies and helping reduce personnel costs without job losses has gained new relevance. This is an approach that is being successfully used in Sweden in the current crisis, but in Eastern Europe there has so far been little discussion about **working time policy** as a method of safeguarding employment, even in trade union circles.

An **example** from Germany can illustrate the potential of such an approach: Although the total volume of work, despite German reunification, has only marginally increased over the last 40 years – by 2.7% – the increase in the size of the labour force by some 18 million (from 26.3 to 44.4 million) means that about 69% more people are now competing for the same volume of work. Up till the mid 1970s, any growth in the labour force was more or less offset by a reduction of the working week from 44 to 40 hours. But thereafter, despite introduction of the 35-hour week, working time reductions were effectively halted by the expansion of overtime working. The result was that the long-term decline in the volume of work pushed up the unemployment figures (see 2009 memorandum from the Working Group on Alternative Economic Policy in Germany).

In Eastern Europe, particularly in the current and potential accession states in the Western Balkans, it is possible to use projects financed by the European Social Fund (ESF) to promote social dialogue. These call for concrete initiatives in collaboration with the national social partners and governments concerned. The same applies to pre-accession projects financed under the European Union IPA programmes (*Instruments of Preaccession Activities;*

cf. also the project recommendations for Serbia in Annex 6 at the end of this study). The employers, too, should display a willingness to support sectoral regulation of working conditions, as it is in their own interests that fairness should prevail in the market.

Cross-border activities within the framework of so-called Euregios are already stimulating mutual cooperation. They are also the focus of the Interregional Trade Union Councils formed within the framework of regional networks between old and new member states (see for example cooperation in the border region between Saxony, Poland and the Czech Republic).

These are areas for trade union activity that provide a basis for upholding international solidarity and maintaining and developing the European social model.

In order to combat the current rush to reduce labour standards in Europe and the effect this has of undermining international solidarity, it is crucial that trade union confederations at European level should display coordinated resistance to any infringements of freedom of association. This includes joining forces to combat interference by the ECJ in national legislation on labour rights to the detriment of working people (e.g. the Laval, Viking, Rüffert and Luxemburg cases) by achieving legal clarification of the fact that Community law gives priority to basic social rights over free movement of goods and services.

By supporting national confederations in their struggle to protect crucial employee rights, all those concerned will be protecting current levels of social standards and social justice – thus ensuring their survival as organisations. Greater solidarity and collaboration are in the interests of anyone concerned to maintain labour standards in the face of the threat posed by the current crisis.

Already struggling to defend themselves, stem the loss of members and cope with growing competition amongst their ranks, the trade union organizations of Eastern Europe are in no position to achieve this on their own. The standards already achieved in EU community law will only have a chance of survival if everyone in an enlarged Europe with an interest in developing the social dimension of the EU is prepared to pull together.

Conclusion: **Urgent need for action by all players in the field of labour policy**

National trade unions	National government

• amend statutes: create access at all organisational levels; no longer organise subscription payment only via employer
• activities: greater focus on social dialogue and collective agreements at all levels – not only on remuneration but also on working time reductions as an alternative to growing unemployment
• targeted programmes aimed in particular at young people and other groups
• willingness to consider "duplicate" representation of interests in companies – taking into account experience with works councils and EWCs
• fight restrictions on the right to conclude collective agreements and take industrial action
• demand the setting up of special labour courts, and offer to become actively involved in their activities
• become involved at European level on securing the "social dimension" by further developing directives on freedom of assembly and greater representation in companies
• call for greater economic policy coordination in the EU ("European economic governance")
• debate more European policy issues and cross-border cooperation
	• amend restrictive regulations on
	  • minimum numbers for setting up trade union representation in companies
	  • exclusion of certain groups from trade union membership
	  • subscription deduction by employers
	• amend legislation on works councils: lower thresholds for their formation; make representation through one elected individual possible even in small enterprises; increase competences at EU level; clearly separate competences vis a vis trade union representation
	• liberalise law on collective agreements, especially for public sector employees
	• bring the right to strike into line with international and EU standards
	• introduce labour courts that incorporate the social partners – if necessary starting with selected pilot projects
	• strengthen tripartite collaboration at national and regional level, involve the social partners in important decisions (on labour law, minimum wage etc.)
	• strengthen the involvement in EU in order to increase possibility of convergence and integration
	• promote cross-border cooperation in existing or new Euregios
	• become involved and take the initiative on the introduction of ESF and IPA projects

European Trade Union Confederation (ETUC)	EU Commission and European Economic and Social Committee (EESC)
• propagate and support initiation of ESF and IPA programmes • extend membership to trade unions in the Western Balkans (observer status for all national confederations) • promote mutual exchanges, contacts and special sponsorship schemes between West and East	• need to consider amending EU directives with SMEs in mind (e.g. 2002 directive on information for employees) • discuss obligation to set up labour courts and, if appropriate, incorporate this into Community law • continue pre-accession programmes and promote their use

ANNEX

Data, texts, corporate figures, players

A 1.1:

Questionnaire from the Friedrich Ebert Foundation Warsaw, Regional Coordination for Labour Relations and Social Dialogue in Central and Eastern Europe

FRIEDRICH EBERT STIFTUNG
PRZEDSTAWICIELSTWO W POLSCE

Survey: Freedom of Association and Trade Union Membership in Central And Eastern Europe

The Friedrich-Ebert-Stiftung's Regional Project for Labour Relations and Social Dialogue in Central and Eastern Europe supports the work of trade unions and other employees' interest groups by enhancing the efficiency of their work and assisting Global or Regional Union Networks and European Works Councils. The overall aims of this engagement are to deepen the European Union and to lend a greater degree of solidarity to the face of globalization. The staff of the regional project office therefore organizes workshops, trainings, conferences and expert task forces or deals with the generation of essential background knowledge by conducting surveys and writing reports.

By analysing the situation of trade unions in Central Eastern Europe we assume, that the main obstacles to trade union membership are more likely to be routed in current laws, than in managers' and enterprises' adverseness to trade unions. In Poland, a legally approved trade union can only be established in production places with more than 10 employees. A basic trade union membership in sector- or branch-based trade unions like in Germany, Austria or Scandinavia does not exist in Poland.

In Polish companies for instance and in other countries too, trade union membership has to be reported individually to the employer and can have severe consequences like mobbing or dismissal for the employee.

As a result, the spectrum of Polish trade unions is unbelievable atomized with an overall low degree of organization. In enterprises approved to establish European Works Councils, it is in many cases not possible to find delegates for all mandates or the workforces` deputies are appointed by the management.

By such legal provisions and internal practises, the majority of people in working age may be excluded from trade union membership and association.

For documenting this situation and developing alternative ways to generate new membership, we plan to survey the Freedom of Association and trade union membership in the new EU member states in Central and Eastern Europe as well as in some Western countries (Sweden, Denmark, Germany, Austria). We ask you to support us by filling in this questionnaire as well as sending us copies of relevant laws and legal paragraphs concerning Freedom of Association in our country.

Questionnaire for the Survey "Freedom of Association and Trade Union Membership"

1. What legal provisions concerning trade union membership are you aware of in your country? Please count laws and norms from your national legal provisions!

2. Have you ever heard of court proceedings that have taken place because of infringements of freedom of association? If yes, which cases can you recount? What kind of cases are reported, and which court proceedings are usual (ordinary tribunals or special labour courts)?

3. If there have been any such court proceedings, at what administrative levels have they taken place? (including European Level)?

4. How many people are required for the foundation of a trade union in your country?

   a) for trade unions in representative trade union confederations?

   b) for unaffiliated, new trade unions?

5. What is the statutory basis for membership of a trade union in your country?

6. Which forms of trade union membership are possible according to the statutes of your trade union? At which level can employees pay their membership fees?

   – at production site level

   – at company level

   – at the level of industrial sectors

   – at regional level

   – at national level (national trade union associations).

   – at other levels (which ones?)

7. Do trade unions at inter-company level exist in your country, e.g. in big corporations?

8. What obstacles to trade union membership are you aware of?
   Are certain groups of employees excluded from membership by law or according to trade union statutes (such as the unemployed, students, apprentices, persons with fixed-term or casual jobs, state functionaries or others)?

9. Do you know of any cases of negative consequences of trade union membership? Can you give us some examples? What are the usual or possible reactions of the trade unions?

A 1.2

Questionnaire for the six country reports on freedom of association and trade union rights in the Western Balkans

I. Freedom of association and its practical implementation

1. What is the statutory basis for trade union membership and freedom of association in your country? Is there special trade union and employer legislation?

2. By what route do individuals normally join a trade union (according to legislation and union statutes):
   - Primarily via the company trade union organisation (and, if so, how many employees are required by legislation or union statutes as a minimum for a trade union to be formed)?
   - Via the relevant sectoral trade union?
   - Does the possibility of direct membership of the confederation exist?

3. Requirements for the founding of a trade union: How many members are required
   - to set up a local trade union?
   - to set up a trade union at sectoral or country level?

4. What groups of persons are excluded from trade union membership?
   - Individuals without a permanent employment contract?
   - Government employees, members of public services and utilities, police, armed forces etc.?
   - Who is excluded from taking on a function within a trade union?

5. Infringement of the rights of trade union members and elected representatives:
   - What practical obstacles and constraints are there for trade union membership?
   - What infringements of the law by employers take place?
   - Is access to companies for trade union representatives guaranteed, and is it possible to carry out recruitment campaigns without hindrance?

6. Court proceedings to prevent infringements of the law and their consequences:
   - Where have court proceedings occurred to prevent such infringements and what results did they achieve?
   - What was the impact in the media and in expert circles?

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II. Collective labour legislation

- Collective agreement legislation: Are any persons or sectors legally excluded from collective bargaining and collective agreements?
- Structure of collective agreements (company/sector): What is the predominant level for wage negotiations?
- Collective bargaining autonomy vs. issues not subject to negotiation: Is there any legislation that has priority on issues like wages, working time and other employment conditions?
- Binding nature of collective agreements: what proportion of employees is covered by collective agreements?
- Right to strike: What statutory restrictions exist in the form of exclusion of particular persons, administrative obstacles, commitment to prior mediation or arbitration, negative court judgements?

III. Capacity building: position of trade union confederations and their member organisations

- Current trade union density and developments since 1995?
- Trade union pluralism: number of representative umbrella organisations? Financial and staff resources: forms of subscription payment, distribution of subscription income?
- Employer's associations: mandate for collective agreements, primarily an industry lobby or an employers' organisation prepared to engage in social dialogue?

IV. Structure of actual social dialogue:

- Company: Predominant form of representation of interests? To what extent is implementation of the 2002 EU directive on employee information and consultation possible in practice?
- How large is the proportion of employees covered by company representation in the country as a whole?
- Sector: Collective agreements in what sectors? Is it legally possible for existing agreements to be declared generally binding and is this done?
- Country: Do inter-sectoral agreements (e.g. in the private or public sector) exist or are there tripartite social pacts? Who is represented on the national economic and social committee? Is the national minimum wage laid down by this committee and, if so, how?

➜

➜

VI. Monitoring implementation of employee rights and statutory minimum standards

- What players can carry out effective monitoring?:
- The company employee representation (trade union/works council)?
- Existing institutions for conflict-solving (mediation, arbitration and conciliation procedures, arbitrage)?
- The labour inspectorate: what breaches does this mainly identify and what sanctions can it apply?
- Special labour courts or just ordinary civil courts? How long do proceedings usually last and what chances of success does a plaintiff have?

VI. Summary:

Analysis of shortcomings, political demands and implications for trade union policy

- What demands do the trade unions make in order to defend themselves against the shortcomings in freedom of coalition?
- How would you describe developments in the field of social dialogue and employee rights in your country hitherto?
- What amendments to labour legislation are being planned by government/the employers?

What are the expectations regarding improvements to social dialogue and social progress in your country in the context of EU accession?

Annex 2:
ILO conventions on freedom of association

2.1 Convention (No. 87) on Freedom of Association and Protection of the Right to Organise, 1948 (excerpts)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations….

2.2 Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (excerpts)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to--
   (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
   (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations….

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

2.3 Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971 (excerpts)

Article 1

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

Article 2

1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.
2. In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.
3. The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

Article 3

For the purpose of this Convention the term workers' representatives means persons who are recognised as such under national law or practice, whether they are

(a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

(b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

Article 4

National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

Article 5

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

Annex 3.1:

What does EU Directive 2002/14/EC on information and consultation say?

In **undertakings** with more than 50 and **establishments** with more than 20 employees:

Employer obliged to offer information and consultation – as with the EWR directive – on:

- the **economic situation** and probable development
- the **employment situation** and probable development (= personnel planning)
- substantial **changes in work organisation**
  (= establishment changes with possible effects on contractual relations)
- The objective, after provision of timely information, is to discuss the consequences and "anticipatory measures" and
- if possible reach **agreement on future action and regulation**.

In the case of infringement, **adequate sanctions** are to be provided by the member states.

In **2007** the EU Commission checked implementation of the directive. 5 countries, all from the EU 15, were taken before ECJ by the Commission for failure to implement the directive!

(see EC 2008)

Excerpts from the EU Directive establishing a general framework for informing and consulting employees in the European Community

Article 3: Scope

1. This Directive shall apply, according to the choice made by Member States, to:

   (a) undertakings employing at least 50 employees in any one Member State, or

   (b) establishments employing at least 20 employees in any one Member State.

Member States shall determine the method for calculating the thresholds of employees employed….

Article 4: Practical arrangements for information and consultation

1. In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article.
2. Information and consultation shall cover:
   (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
   (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
   (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).
3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.
4. Consultation shall take place:
   (a) while ensuring that the timing, method and content thereof are appropriate;
   (b) at the relevant level of management and representation, depending on the subject under discussion;
   (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;
   (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
   (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c).

A 3.2
Facilities and legal competences of Works Councils in Central Eastern Europe

(see next page)

A 3.2 **Facilities and competences of Works Councils based on legislation or collective agreements (CA) in Central Eastern Europe**

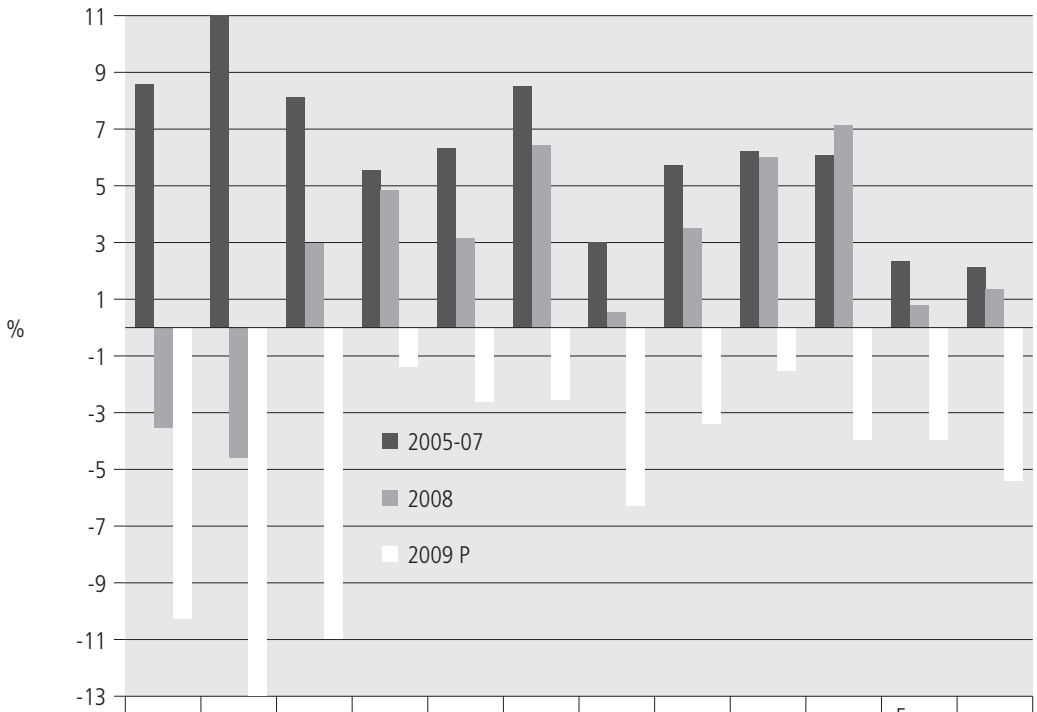
	EE	LV	LT	PL	CZ	SK	HU	SI	RO	BG
1. Availability of offices etc. at cost of employer (EM)	✓ (CA)	–	✓	if BR elected*	✓	✓	✓	✓	✓	if CA
2. Regulations on work release for works council members	only for meetings	by Agreement	60 h per year	if EM agrees	✓	4 h per month	10% of working time	5 h/month or CA	20 h per month	no provisions
3. Release for training purposes	if CA with EM	–	3 days per year	–	–	–	if CA	5 days per year	–	if CA
4. Costs for experts covered	if CA with EM	–	–	if BR elected*	no provisions	–	if CA with EM	✓	–	–
5. Right to information from EM	✓	✓	✓ (partly)	✓	✓ (partly)**	✓	✓	✓	✓	✓
6. Right to consultation with EM …	✓		✓ (partly)	✓	✓	✓	✓	✓	✓	✓
7. …and possibility of concluding works (council) agreement	✓	(see 11.)	✓ (partly.)	–	partly restricted	✓	if CA with EM	✓	✓	✓
8. Holding of employees' assembly	✓	✓	✓	–	–	–	✓	✓	✓	✓
9. WC obligation to inform workforce and …	✓	✓	✓	no provisions	no provisions	no provisions	✓	no provisions	–	no provisions
10 ….mandate through workforce	✓	✓	✓	–	–	–	indirect	–	–	–
11. Conclusion of company collective agreement[1]	✓	✓	✓	–	–	–	–	–	✓	–
12. Industrial action[1]	✓	✓	✓	–	–	–	–	–	–	–
13. Right of BR to monitor and go to court	with Emplooyee concerned	–	✓	not codified	–	✓ (partly)	✓	✓	✓ (partly)	✓ (partly)
14. TU rep. takes over rights of WC if not elected	–	–	–	✓	–	–	✓	–	–	✓

1 if no TU representation (TU rep.) in establishment *if TU rep. exists, this nominates WC **not: personnel planning

Source: EC 2008b; research BwP

Annex 4
Key economic indicators for Eastern and South-Eastern Europe

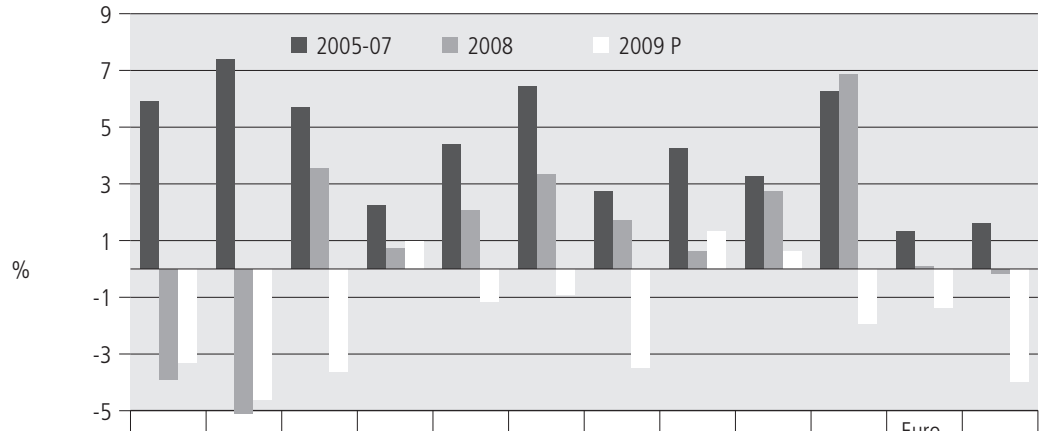
4.1 2009: Reversal of greater economic dynamism in Eastern Europe as a result of the crisis
– Real GDP growth in % (2009: EU Commission) –



	EE	LV	LT	PL	CZ	SK	HU	SI	BG	RO	Euro-Zone	DE
2005-07	8,6	11,0	8,1	5,5	6,3	8,5	3,1	5,7	6,2	6,1	2,4	2,1
2008	-3,6	-4,6	3,0	4,8	3,2	6,4	0,5	3,5	6,0	7,1	0,8	1,3
2009 P	-10,3	-13,1	-11,0	-1,4	-2,7	-2,6	-6,3	-3,4	-1,6	-4,0	-4,0	-5,4

Data source: EC, Economic Forecast of European Economy – Spring 2009

4.2 **Crisis causes decline in high productivity growth rates**
– per employee (2009: EU forecast) –



	EE	LV	LT	PL	CZ	SK	HU	SI	BG	RO	Euro-Zone	DE
2005-07	5,9	7,4	5,7	2,2	4,4	6,4	2,7	4,2	3,2	6,2	1,3	1,6
2008	-3,8	-5,3	3,5	0,7	2,0	3,3	1,7	0,6	2,7	6,8	0,1	-0,1
2009 P	-3,2	-4,6	-3,6	1,0	-1,1	-0,9	-3,5	1,3	0,6	-1,9	-1,4	-3,9

Data source: EC, Economic Forecast of European Economy – Spring 2009

4.3 Level of statutory minimum wage in Eastern and Western Europe 2008

– in euros and comparable purchasing price standards (PPS) –

	Euro	PPS
Romania	141,1	232
Bulgaria	112,5	245
Latvia	229,4	351
Slovakia	267,0	381
Lithuania	231,7	388
Estonia	278,0	390
Hungary*	285,0	418
Czech Republic	329,0	460
Poland	334,0	469
Croatia	380,9	537
Portugal	497,0	588
Slovenia	566,5	736
Spain	700,0	753
Greece	680,6	768
Malta	612,3	837
Ireland	1462,0	1160
UK	1148,0	1183
France	1321,0	1239
Belgium	1336,0	1268
Netherlands	1356,6	1316
Luxembourg	1609,5	1532

* gross = net, as minimum wage is tax-free

Source: Eurostat

Minimum wages in the Western Balkans (euros)*

Albania	138
Bosnia-Herzegovina	159
Republika Srpska (BiH)	142
Croatia	381
Serbia	159

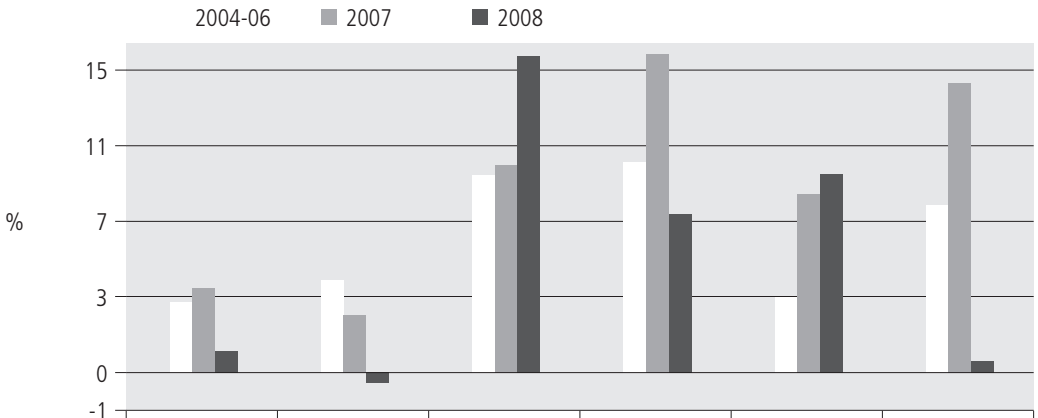
* no statutory minimum wage in Macedonia and Montenegro
(Sums in PPS not yet calculated by Eurostat

A 4.4 **GDP growth in Western Balkans (local prices)**

	HR	MK	MNE	SRB	BiH	AL
2004-2005	4,2	4,0	4,3	7,0	5,1	5,7
2006-2007	5,1	4,9	9,7	6,1	6,8	5,8
2008	2,4	5,0	8,1	5,4	5,5	7,2

Source: Eurostat/ECFIN Unit D-1 (4/2009)

A 4.5 **Rise in real wages in the Western Balkans between 2004 and 2008**
– in % compared with previous year –



	HR	MK	MNE	SRB	BiH	AL*
2004-06	2,8	3,8	9,2	10,2	3,0	7,8
2007	3,3	2,5	9,9	15,5	8,3	14,2
2008	1,0	-0,3	15,4	7,2	9,2	0,5

*only state sector – not private sector – Source: ECFIN Unit D-1 (4/2009)

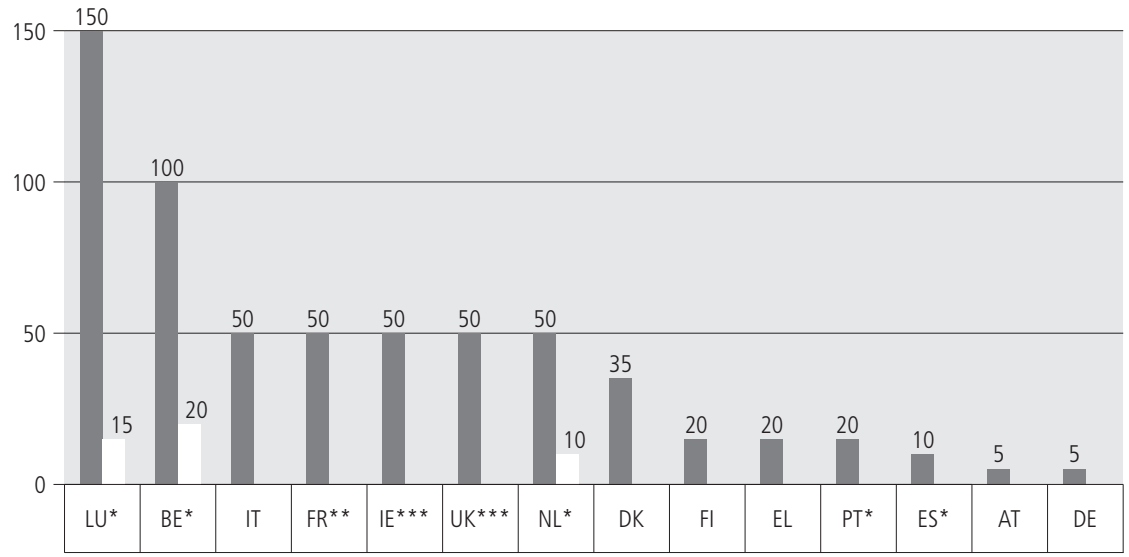
A 4.6 **Average monthly earnings and statutory minimum wage in euros (2008)**

	HR	MK	MNE	SRB	BiH	AL
Average wage	1000	250	630	400	483*	350
Minimum wage	381	–	–	159	159*	138

* Average of Federation and RS – Source: Country reports SOE of FES

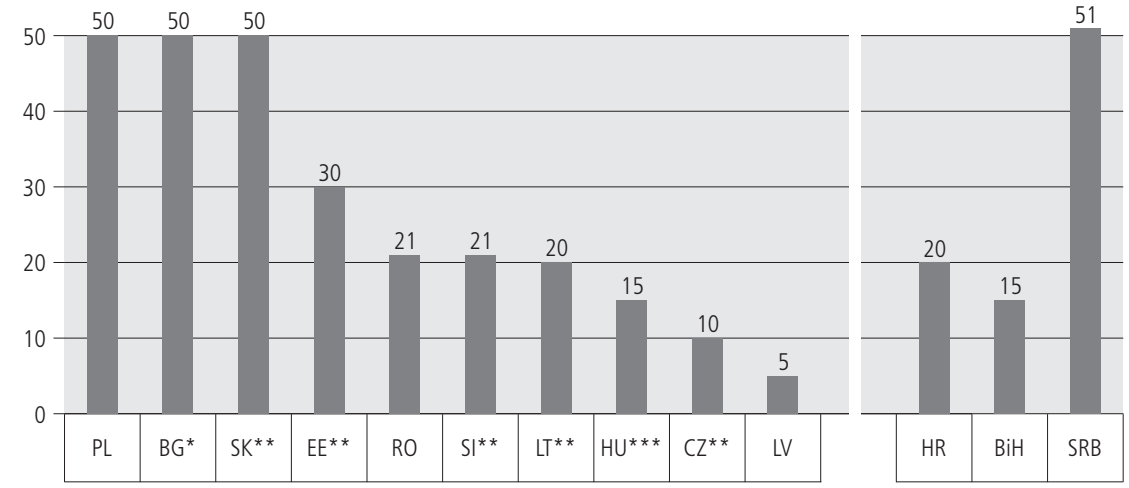
Annex 5
Comparative data on Western Europe

5.1 **Legal barriers to setting up a works council in Western Europe:**
Minimum number of employees for the creation of a works council/workforce representation



* As a result of the 2002 directive there is now an employee representation in LU from 15 employees upwards, in BE from 20, in NL from 10, in ES from 6 and in PT from 1, though partly with fewer rights than a WC.
** In France a lower minimum number can be laid down in a collective agreement.
*** In establishments without trade union representation since 2008 the formation of a *"consultation forum"* is possible.

5.2 **Legal barriers to setting up a works council in Eastern Europe**
Minimum number of employees for election of a works council



* At individual company sites a representative body can be elected from 20 employees upwards.
** Below this number: 1 employee representative (in SK: minimum 5 employees; in CZ, however, if fewer than 10 employees, and in EE without full statutory rights of information and consultation).
*** 1 employee representative, upwards of 51 employees, a works council with several members

5.3 Forms of implementation of the 2002 EU directive on information and consultation of employees in Western Europe

1. Only trade union presentation	2. Joint representation by trade union + works council	3. Dual representation: works council*** and trade union
• Sweden • UK (supplemented 2004)* • Ireland (supplemented 2006)* • Malta (supplemented 2006)* • Cyprus	• Denmark: Cooperation council 50% elected by employees and 50% nominated by trade union • Finland: shop stewards elected by all employees – they represent non-members • Italy: RSU**, 2/3 elected by employees, 1/3 nominated by trade unions	• Belgium • Germany • France • Greece • Luxembourg • Netherlands • Austria • Portugal • Spain

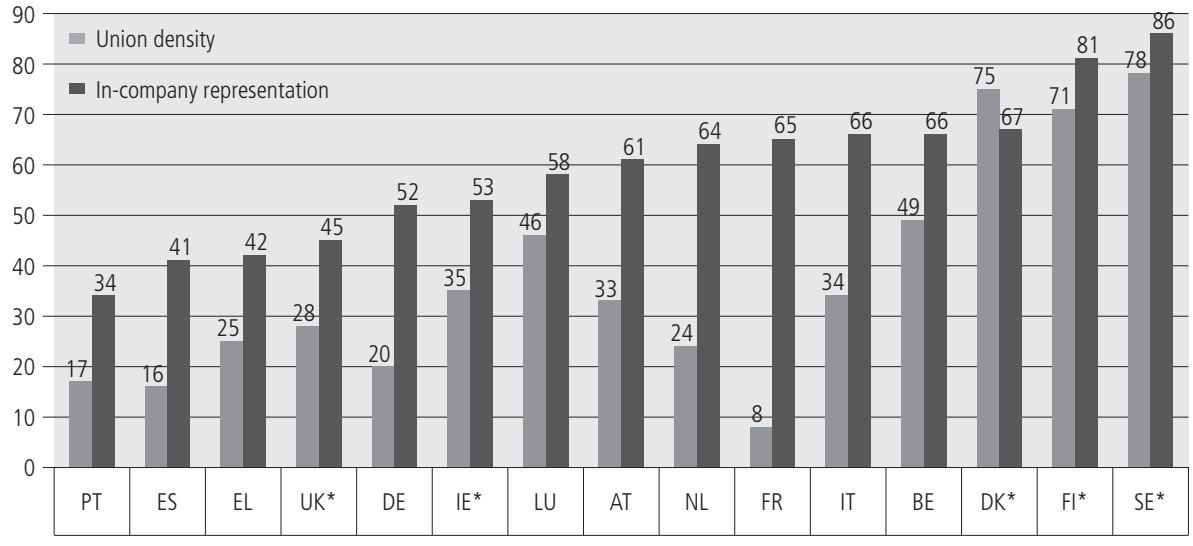
* Representative body elected by all employees to safeguard rights of information and consultation possible if no trade union representation exists in the establishment.

** Rappresentanza Sindicale Unitaria: joint representation organ (with collective bargaining powers)

*** For the formation of a works council there are certain requirements in terms of the size of the establishment – a minimum of between 5 and 150 employees in the individual countries (see separate Figure above in Annex 5.1). Following appeals by the Commission to the ECJ they were amended in, amongst others, Belgium and Luxembourg.

5.4 Employee representation in Western Europe compared with union density

– Proportion of employees represented by trade union plus works council (% of workforce on average) –



* Countries without legally defined works councils

Source: BwP 2008

5.5 **Conclusion of collective agreements: Main levels for wage-setting in Western Europe**

	Intersektoral*	Sector	Company
FI	▲	○	□
IE	▲	□	□
AT		▲	□
BE	○	▲	□
DK	□	▲	○
EL	○	▲	□
DE		▲	○
IT	□	▲	○
NL	□	▲	□
PT	□	▲	○
ES		▲	○
SE		▲	□
FR		○	○
LU		○	○
CY		○	▲
MT		□	▲
UK		□	▲

□ existing level of collective bargaining

○ important, but not predominant level of collective bargaining

▲ predominant level of bargaining

* Tripartite and bilateral agreements

Source: Van Gyes et al. 2007

5.6 **Higher rate of coverage thanks to sectoral agreements declared generally binding**

	Rate of coverage (%)	Sectoral agreements declared generally binding
Austria	98	usual practice
Belgium	96	usual practice
Slovenia	95	possible but hitherto not necessary*
France	90	usual practice
Portugal	90	usual practice
Sweden	90	partly, informally
Netherlands	89	häufig
Finland	82	usual practice
Spain	82	frequent
Greece	80	usual practice
Denmark	80	common practice informally
Italy	75	common practice informally
Cyprus	70	no regulations
Germany	64	now rare
Luxembourg	60	not used
Romania	55	usual practice
Ireland	55	occasional
Malta	50	no regulations
Czech Republic	40	more frequent since 2000
Hungary	40	hitherto rare
Slovakia	35	possible
UK	34	no
Bulgaria	30	possible but not used
Poland	30	possible but not used
Estonia	22	since 2000 possible
Latvia	20	since 2002 possible
Lithuania	15	since 2003 possible

* Reduction of general coverage in all sectors possible in future due to lifting, in 2006, of statutory obligation on employers to be members of the Chamber of Industry and Commerce as the dominant collective bargaining party vis a vis the trade unions in Slovenia since the start of transformation.

Annex 6

Relations between the EU and Serbia: the role of civil society

Opinion of the European Economic and Social Committee

(2008/C 224/29) of 29 May 2008 – excerpts –

The EU goals in the Western Balkans and Serbia

The Stabilisation and Association Process (SAP) was created in order to assist the countries of the region on their way to the EU. ..As of May 2008, five out of six Western Balkan countries had signed an SAA.

The Western Balkans is among the top regional priorities of the EU's foreign policy. The main goal of the EU in the Western Balkans is to increase regional stability and prosperity. The preparation of the Western Balkan countries for EU membership

can be mentioned as an equally important goal. To achieve the latter, the EU is using specific instruments of pre-accession assistance.

Social dialogue

Though an effective social dialogue is one of the preconditions for successful economic transformation, the role of the social partners in Serbian society remains relatively weak. After the Labour Law came into force in 2005, the General Collective Agreement ceased to apply. The same is true for all special collective agreements concluded before 2001. Another change connected with the new legal regulation is that the Government

does not participate in the conclusion of the new General Collective Agreement anymore, but continues to play an active role in the conclusion of several sectoral and special collective agreements.

The Social and Economic Council of the Republic of Serbia, established in 2005 by the Law on the Social and Economic Council, provides an institutional basis for tripartite negotiations. However, the Council is facing several problems that have had a negative impact on its activities. Firstly, the scarcity of financial resources should be mentioned. .. Another problem is the irregular attendance of the representatives of the social partners

at the Council's meetings. As a result, some draft laws are passed in parliament without being discussed on the Council's floor.

The current situation and role of the trade unions

The trade unions are more heterogeneous. Overall, there exist about 20 000 trade unions in Serbia at all levels, from company to national level. Most of them belong to the two main national confederations… Another related problem is the lack of cooperation among trade unions. Though the role of trade unions is considered to be relatively weak in Serbia, their active participation in collective negotiations in the public sector and public enterprises shows that their role in strengthening the social dialogue is not to be underestimated.

The Serbian employers' organisations

The Union of Employers of Serbia (UPS) is the main national organisation of employers. Unlike the trade unions, UPS has enjoyed good cooperation with the Ministry of Labour and Social Policy. It participates regularly in the activities of the Social and Economic Council of the Republic of Serbia.

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Conclusions and recommendations

- To support projects aiming at transferring know-how and experience from the EU Member States to Serbia. The contribution of the 'new' Member States from Central and Eastern Europe might be of real added value. The importance of 'twinning projects' should be given greater recognition and support by the EU institutions.
- To support the maintenance of a regular tripartite social dialogue and ensure the proper functioning of the Serbian Economic and Social Council (SESC) according to the law.
- To distinguish between NGOs and social partners in terms of the creation and adoption of support strategies.
- To support programmes focused on the capacity-building of social partners in order to strengthen their capability to an effective social dialogue.
- To participate actively in the new People to People Dialogue Programme managed by the EC's Directorate-General for Enlargement: the EESC could prepare and organise study visits within the EU (especially in Brussels) for representatives of Serbian civil society organisations.

(from: Official Journal of the European Union C224/130 ff. of 30. 8. 2008)

Annex 7.1

National trade union confederations in Central and South East Europe

(with year of funding – N = newly founded, former state organisations)

A. New EU member states:

Bulgaria

CITUP: Confederation of Independent Trade Unions in Bulgaria (N 1990)
Podkrepa: Confederation of Labour "Podkrepa" (1989)
Promiana: Union of United Trade Unions "Promiana" (1998)

Estonia

EAKL: Confederation of Estonian Trade Unions (N 1990)
TALO: Employees Unions' Confederation (1992)

Latvia

LBAS: Free Trade Union Confederation of Latvia (N 1990)

Lithuania

LPSK: Lithuanian Trade Unions Confederation (N 1990, Fusion 1992 with LPSS)
Solidarumas: Lithuanian Trade Union "Solidarumas" (1989)
LDF: Lithuanian Labour Federation (1991)

Poland

OPZZ: All Poland Alliance of Trade Unions (1984)
Solidarity: Trade Union Confederation NSZZ Solidarność (1980, banned 1981-1989))
FZZ: Trade Unions Forum (2002)

Slovakia

KOZ SR: Confederation of Trade Unions of the Slovak Republic (N 1990)

Slovenia

ZSSS: Association of Free Trade Unions of Slovenia (N 1990)
KSJS: Confederation of Public Sector Trade Unions (2006)
PERGAM: Confederation of Trade Unions of Slovenia Pergam (1991)
K'90: Confederation of Trade Unions '90 of Slovenia (1991)
KNSS: Confederation of New Trade Unions of Slovenia (1991)
Alternativa: Alternative (1999)
Solidarnost: Solidarity (2001)

Romania

BNS: National Trade Union Block (1991, Fusion with "Fratia" and Meridian to the Allianz ACSR planned since 2006)
Cartel Alfa: National Confederation Cartel Alfa (1990)
CNSLR Fratia: National Confederation of Free Trade Unions "Fratia" (1993)
Meridian: National Trade Union Confederation Meridian (1994)
CSDR: Confederation of Democratic Trade Unions in Romania (1994)
Sed Lex: Confederacy of Civil Servants Trade Unions "Sed Lex" (2005)

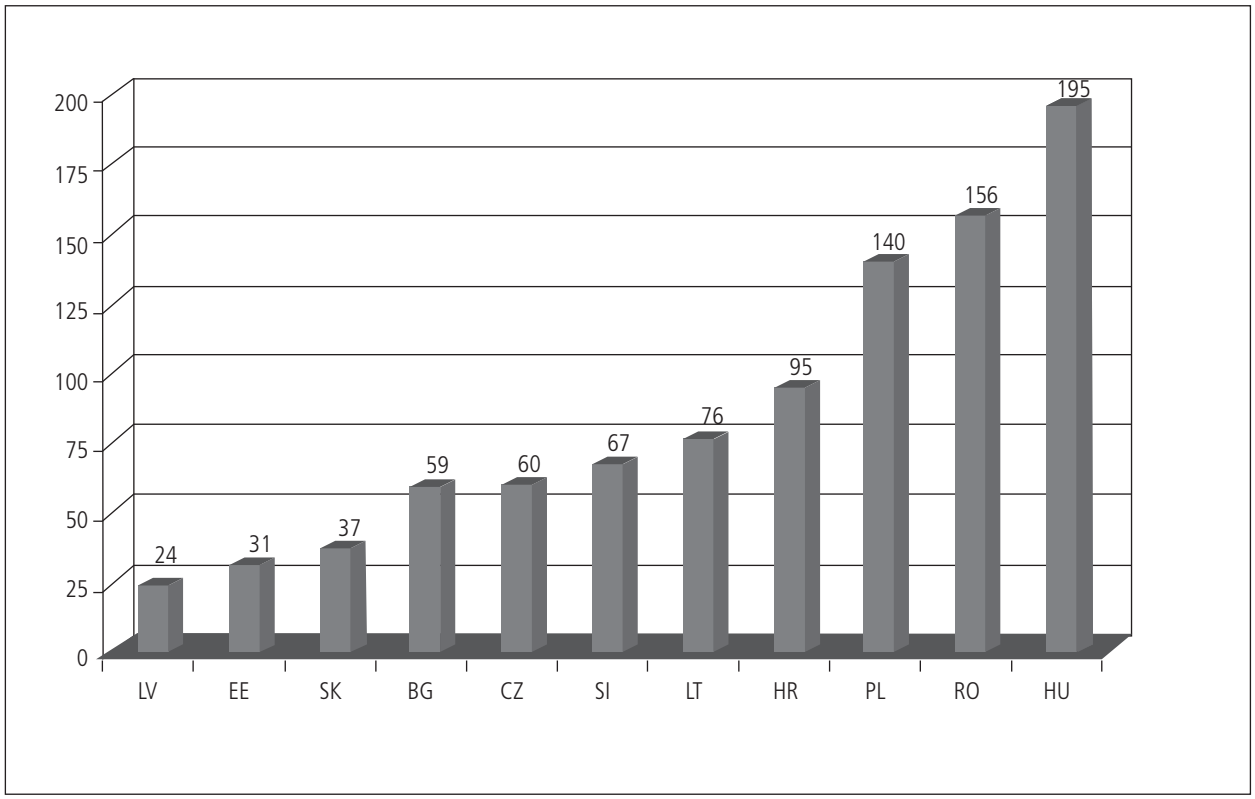
Czech Republic

ČMKOS: Czech-Moravian Confederation of Trade Unions (N1990 – acknowledged as representative confederation)
ASO: Association of Autonomous Trade Unions (1995 – representative confederation)
KUK: Confederation of Art and Culture (1990)
OS CMS: Trade Union Association of Bohemia, Moravia and Silesia (1991)
KOK: Christian Trade Union Coalition(1990)

Hungary

MSZOSZ: National Confederation of Hungarian Trade Unions ((N 1990)
SZEF: Trade Union Cooperation Forum (1990)
LIGA: Democratic League of Independent Trade Unions (1988)
ASZSZ: National Federation of Autonomous Trade Unions (1990)
ESZT: Confederation of Trade Unions of Professionals (1989)
MOSZ: National Federation of Workers' Councils (1988)

Figure: **Total of all national sectoral trade unions in the new EU member states**



B. Countries in the Western Balkans:

Albania

KSSH: Confederation of Trade Unions of Albania (N 1991)
BSPSH: Union of Trade Unions of Albanian Workers (1991)
FSTBFH: Federation of Trade Unions of Albania (1997)

BiH

CTUBiH: Confederation of Trade Unions of Bosnia and Herzegovina (2004)
SSSBiH*: Confederation of Independent Trade Unions of Bosnia and Herzegovina (1905)
SSRS*: Confederation of Trade Unions of the Republika Srpska (1992)

*limited to each "entity" (Bosnian-Croatian Federation or RS)

Croatia

SSSH: Union of Autonomous Trade Unions of Croatia (N 1990)
Matica: Association of Croatian Public Sector Unions (1993) – merged in 2008 with Uni-Cro to Association of Croatian Unions
NHS: Independent Trade Unions of Croatia (1999)
HUS: Croatian Association of Trade Unions (1990)
URSH: Workers Trade Union Association of Croatia (1994)

Macedonia

SSM: Federation of Trade Unions of Macedonia (N 1989)
KSS: Federation of Free Trade Unions of Macedonia (2005)

Montenegro

SSCG: Confederation of Trade Unions of Montenegro (N 1991)

Serbia

SSSS: Independent Confederation of Trade Unions of Serbia (1903)
UGS Nezavisnost: "Independence" Trade Union Confederation (1991)

A 7.2:
Membership of Eastern European trade union confederations in ETUC

	Members	Non-members
CZ	ČMKOS	ASO, KUK, KOK, OS CMS
EE	EAKL, TALO	
HR	SSSH	NHS, HUS, URSH, Matica
HU	ASZSZ, ÉSZT, LIGA, MOSZ, MSZOSZ, SZEF	
LT	LPSK, Solidarumas, LDF	
LV	LBAS	
PL	Solidarność, OPZZ	FZZ Forum
SLO	ZSSS	Pergam, K'90, KNSS, Alternativa, Solidarity
SK	KOZ SR	
BG	CITUB, Podkrepa	Promiana
RO	BNS, Cartel Alfa, CSDR, CNSLR Fratia	Meridian, Sed Lex

Trade union confederations in the Western Balkans with observer status:

BiH	Confederation of Trade Unions of Bosnia and Herzegovina (CTUBiH)
MK	SSM Federation of Trade Unions of Macedonia
SRB	NEZAVISNOST – "Independence" Trade Union Confederation

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(1) Figures:

Central Eastern Europe

South-Eastern Europe (SEE) – Western Balkans

East-West comparison

Figures in Annex

(2) Tables

International country abbreviations

AL	Albania
AU	Austria
BE	Belgium
BiH	Bosnia-Herzegovina
BG	Bulgaria
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MK	Macedonia (FYROM)
MNE	Montenegro
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
RS (BiH)	Republika Srpska (Bosnia)
SE	Sweden
SI	Slovenia
SK	Slovakia
SRB	Serbia
UK	United Kingdom
EU 15	the 15 EU member states up till 2004
EZ	Euro zone (now EZ-16)

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