

International Comparative Trends in Collective Bargaining

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Collective bargaining is a key means for improving wages and conditions of work and for regulating employment relations. Integration into global markets has intensified competition. In response, enterprises sought to be more flexible by introducing new forms of work organization and changing their employment practices. These changes present important challenges for collective bargaining. Collective bargaining practices and structures needed to adapt to remain responsive. This paper examines some broad trends and issues in specific regions.

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Collective Representation, Coverage & Scope

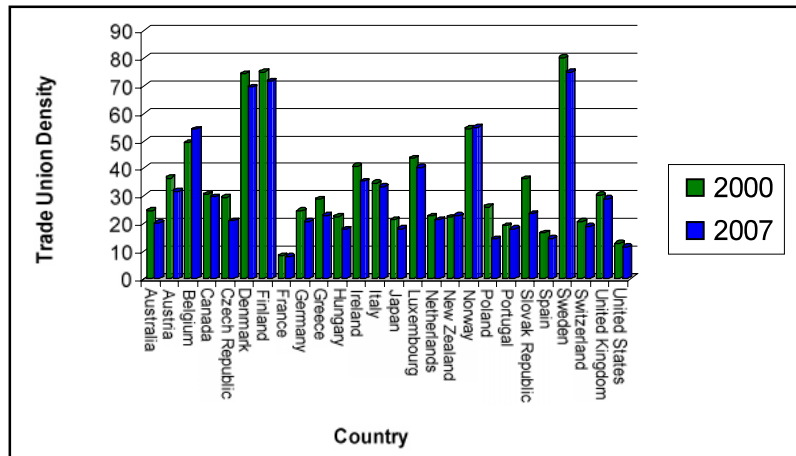
As Figure 1 shows, trade union membership has declined in many countries. There are a number of reasons for this. First, structural changes in labour markets, involving a decline in the share of manufacturing in total employment and increase in the share of services, eroded the traditional membership base of trade unions. In some regions, the dramatic decline in public sector employment as a result of structural adjustment and privatization had a detrimental effect on union membership. Second, legal reforms introduced in some countries prohibited compulsory unionisation (“closed shops”) and encouraged individual contracts. Third, the increase in international competition as a result of globalization undermined the bargaining power of trade unions and strengthened the hand of management. Finally, the growth of non-standard forms of employment, for example part-time or fixed-term contracts put a brake on union

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recruitment of these workers or at least made it more difficult.¹

Despite a general decline in collective representation, the number of workers covered by collective agreements remained relatively stable in some countries but fell in others, particularly in countries which de-regulated labour markets and removed support for collective bargaining (Fig. 2). The data also shows a significant difference in the role that collective bargaining plays in regulating terms and conditions of work in high income and

Figure 1: Trade Union Density for OECD Countries



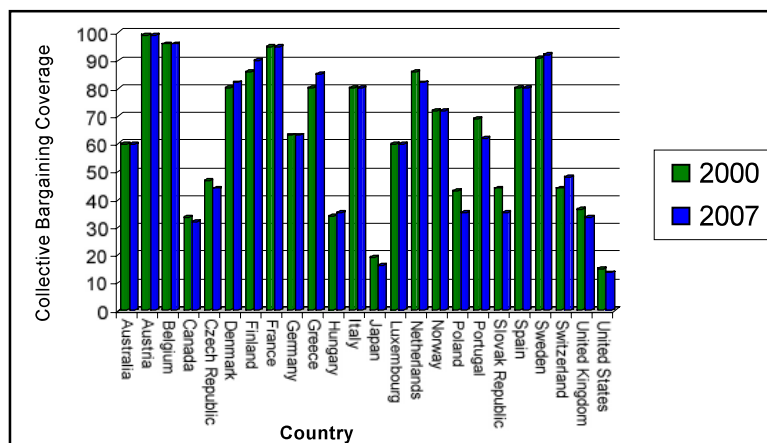
Note: Iceland, Korea, Mexico and Turkey excluded due to unavailable data

developing countries. In high income countries, the proportion of workers covered by collective agreements is either equal to or higher than trade union density. In developing countries, industrial relations institutions are weak and the proportion of work-

ers engaged in and covered by the terms of collective agreements remains very low, particularly when those in informal employment are included (Hayter 2010).

The scope of collective bargaining expanded in many countries. Collective

Figure 2: Collective Bargaining Coverage



Note: Iceland, Ireland, Korea, Mexico, New Zealand and Turkey excluded due to unavailable data

¹ For analysis see for example, Visser (2006)

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agreements now include a wide range of issues such as training, demographic change and parental rights. This broad-

ening of the collective bargaining agenda, which often includes many of the issues outlined in Box 1, enables the social partners to negotiate agreements that seek to address the needs of enterprises for increased flexibility in order to remain competitive, as well as those of workers for employment security, better working conditions and fair treatment.

Box 1

Flexible work practices:

- Wage flexibility (e.g. variable pay systems, pay incentives linked to productivity)
- Working time (e.g. annualized working hours limiting or abolishing overtime, flexi-time, working-time account)
- Work organization, quality control and standards
- Job evaluation systems/categories

Employment security:

- Continuity of service
- Regularizing employment
- Restructuring (e.g. skills upgrading, voluntary retirement, severance pay)
- Pensions

Employability:

- Vocational training
- Leave and financing

Gender and equal treatment:

- HIV/AIDS and disability
- Parental leave and family responsibilities
- Sexual harassment
- Wage improvements or wage parity for atypical workers
- Gender and racial equality

Occupational safety and health

Developments in Different Regions

Turning to trends in different parts of the world, there continues to be great diversity in how collective bargaining is organized in different countries. This section highlights some key developments in specific regions.

Africa

There are significant developments in the legal and institutional frameworks for collective bargaining in many countries in

the African region. Some countries strengthened organizational rights (for example, allowing trade union pluralism in Tanzania, Ethiopia, Mauritania and Nigeria), while others introduced and/or elaborated on the rules and procedures governing collective bargaining processes (for example, Kenya and Namibia introduced a right to information). A number of countries created new industrial relations institutions to encourage collective bargaining and its smooth functioning such as dispute resolution agencies. A notable development was the establishment of tri

Table 1: Collective Bargaining in Africa

Legislative framework	Bargaining structure	Issues and challenges
Strengthening organizational rights (e.g. organizational rights in public sector; trade union pluralism)	Mixed: enterprise and sectoral level bargaining	Underdeveloped institutions Informal economy
Introducing or elaborating bargaining rules and procedures	Sectoral bargaining councils in South Africa	Fragmentation of trade unions Poor labour relations in public sector
Creation of institutions of tripartite social dialogue and/or dispute resolution.	Tripartite structures key in Niger, Togo, DRC and Senegal	Unstable political structures and weak states.

partite institutions of social dialogue in some countries, such as the Comité National du Dialogue Social (National Social Dialogue Committee) in Senegal.

Despite these developments in the legislative and institutional framework, collective bargaining remains underdeveloped in many countries in Africa². Formal wage employment accounts for a relatively small percentage of employment in most countries and the majority of workers work in the informal economy or in unpaid work in the rural sector. Many countries experienced a sharp decline in formal sector employment and trade union membership as a result of structural adjustment programmes. In addition, trade unions tend to be fragmented and relatively weak.

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2. For overview of diverse trends in labour relations, see Wood & Brewster (2007).

Collective bargaining structures across the region are diverse with bargaining taking place at different levels (i.e., enterprise, sectoral/industry or central/national levels), or at multiple levels at the same time. For example, in Nigeria, employers' associations and one or more trade unions negotiate industry-wide agreements which may then be improved upon or supplemented by issues negotiated at the enterprise-level (Fajana 2010). In Ghana, the National Tripartite Commission establishes minimum conditions which serve as a reference point for bargaining at the enterprise level (Gockel 2009).

In South Africa, where formal wage employment is significant, sectoral bargaining, through either Bargaining Councils or non-statutory fora, plays an important role in regulating terms and conditions. Collective bargaining agreements are estimated to cover around one-third of all workers in wage and salaried employment. Bargaining Council agreements can be extended to non-parties (enterprises that are not members of the employers' association) within the par

ticular scope of the Council. The Bargaining Councils often provide procedures by which enterprises can apply for exemptions from the agreements, based on criteria such as the size of the business or undue financial hardship (Budlender 2009).

Labour disputes have increased in a number of countries, particularly in the public sector where the practice of collective bargaining is not as advanced as in the private sector (for example, in South Africa and Nigeria). Despite the creation of many new institutions for dispute resolution, their effective funding remains a key challenge. In some countries, the unstable political climate does not present a promising outlook for the use of collective bargaining as a means to facilitate the development of sound and productive labour relations and improve working conditions, as can be seen in countries such as Zimbabwe.

The Americas & the Caribbean

There have also been a number of legal and institutional developments in the Americas and the Caribbean. After a period of relative hiatus in respect of legal and institutional reforms, there are attempts to strengthen union recognition and bargaining rights in the United States. In Canada, a recent Supreme Court ruling strengthened collective bargaining rights. A number of countries in the Caribbean reformed or enacted new procedures promoting collective bargaining and introduced a duty to bargain in good faith (for example, Jamaica,

Bermuda, and Grenada). Some countries have strengthened organizational rights (for example, Brazil).³

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Others reformed or enacted new procedures promoting collective bargaining (for example, Uruguay and Argentina).⁴ One issue remains, promotion of collective bargaining with alternative forms of workers' organizations.⁵

In North America, collective bargaining is mostly decentralized to the enterprise-level, and at least in Canada and the United States, privately organized. In the latter, judicial decisions regarding the use of permanent replacement workers during a strike and subsequent employer strategies to individualize employment relations had a dramatic impact on trade union density and collec

3. Consolidação das Leis do Trabalho Ley 11.468 de 2008.

4. Uruguay adopted 16 July 2009, Collective Bargaining in Labour Relations in the Public Sector, Num. 18.508 (Negociación Colectiva En El Marco de las Relaciones Laborales en el Sector Público). Argentina adopted a Law on Stable Employment (Nueva Ley De Empleo Estable, No. 25.250 de 2000 (amended by Ley No. 25.877 de 2004).

5. The ILO Committee on Freedom of Association considers that direct negotiations between an enterprise and its staff which take no account of existing representative organizations may run counter to international standards (see ILO 2006).

Table 2: Collective bargaining in the Americas

Legislative framework	Bargaining structure	Issues and challenges
Strengthen collective bargaining institutions and extend rights (Argentina, Uruguay, Brazil)	Mostly enterprise level	Extension of rights
Supreme Court decision 2007 protects CB (Canada)	Reinvigoration of sectoral wage councils in Uruguay	Flexible employment practices Other workers' organizations (Solidarista)
Proposal to strengthen recognition and collective bargaining (United States)	Sectoral and enterprise level (coordinated by industry level trade union) in Argentina	Small size of establishments and ongoing fragmentation Increased use of safety clauses and opt-out clauses.

tive bargaining coverage.⁶ The significance collective bargaining plays in regulating terms and conditions of work has been more stable in Canada, where collective bargaining agreements are estimated to cover 31.5 per cent of wage and salaried workers (Hayter 2010).

Collective bargaining remains underdeveloped in much of South America and there is a general emphasis on enterprise-level bargaining, particularly in Central America and the Andean region. With the exception of Uruguay and Argentina, the proportion of workers covered by collective agreements is low, ranging between 4.1 per cent of wage and salaried workers in El Salvador and 16.2 per cent in Costa Rica (Hayter 2010). Collective bargaining coverage has fallen, particularly in sectors that have been privatized and/or where restructuring and the reorganization of production resulted in the outsourcing of

particular services. The large informal economy and the predominance of small enterprises are often seen as obstacles to collective bargaining, particularly as in this region the threshold for forming a trade union is anywhere from 20 to 40 workers.⁷

In Brazil, collective bargaining occurs largely at the municipal/territorial level. Collective conventions at the municipal/territorial level generally set minimum standards that may then be improved on by negotiations between an enterprise and the municipal union. There have been interesting developments in Brazil's banking sector, where both the employers' organizations and unions formed national industry-wide associations to coordinate their bargaining strategies in the public and private sectors (Cardoso & Gindin 2009). Collective bargaining was reinvigorated in Uruguay, with the reinstatement of sectoral

6. Trade union density declined from 20.1 per cent in 1983 to 12.1 per cent in 2007. There was a slight increase to 12.4 per cent in 2008 (United States Bureau of Labour Statistics).

7. In Colombia, 25 workers are needed to form a union at the enterprise level, 30 in Ecuador and Honduras, 35 in El Salvador and 40 in Panama (Vega 2005: 224).

Wage Councils and the creation of new Councils for rural workers and domestic workers in 2005. The sectoral agreements reached by Wage Councils do allow some flexibility through the inclusion of “safety clauses” which shorten the duration of the contract in case of economic difficulty, with the original agreement remaining in effect until another agreement is concluded (Mazzuchi 2009). In Argentina, collective bargaining has been reinvigorated through the strengthening of industry/sectoral level bargaining. In general, industry/sectoral agreements set minimum standards. Enterprise-level agreements may be negotiated to improve upon, but not derogate from, these standards (Cardoso & Gindin 2009).

Asia & the Pacific

In the Asia and Pacific region, institutional frameworks for labour relations are at very different stages of development. At one end of the spectrum are countries in which labour relations are relatively well developed, such as Australia, New Zealand, Japan and Singapore. At the other, countries such as Cambodia, China, Mongolia, Nepal and Viet Nam that are establishing new labour relations frameworks. Legal reforms in the region reflect these priorities. The strengthening of organizational rights and the enactment of procedures for recognition are a key focus in countries that recently underwent a transition to democracy, such as Indonesia.⁸ Legal

reforms of a more procedural nature have been introduced in Malaysia and Singapore, where the state plays a key role in shaping the bargaining structure/practices. After significant deregulation of rules and procedures for collective labour relations in Australia and New Zealand, recent reforms have reaffirmed support for collective bargaining, and in respect of the latter country, expanded the system of collective bargaining in the public sector.

Enterprise-level bargaining remains the predominant practice in most countries in the region. Exceptions include sectoral agreements in the plantations sector in Sri Lanka, and the cotton and textiles and plantations sectors in India (Amerasinghe 2009). Labour market reform under way in Nepal also aims to strengthen collective bargaining at the sectoral level. Faced with the proliferation of non-regular forms of employment, some trade unions in Korea initiated a nationwide campaign to reorganize previously enterprise-based trade unions into industry-based organizations. While collective bargaining still takes place predominantly at the enterprise-level in Korea, there has been some shift to sectoral bargaining in the banking, health and metal sectors (Yoon 2009).

Significant changes in collective bargaining practices are taking place in China, particularly since the early 2000s. According to official statistics, 149 million workers were covered by collective agreements in 2008. The government and social partners have used tripartite

8. Act concerning Trade Union/Labor Union No. 21 of 2001 and Manpower Act No. 13 of 2003.

mechanisms to promote the expansion of collective bargaining coverage. While questions remain about the quality of these collective agreements and the collective bargaining process, there is some indication that there has been a steady improvement in their quality. There has also been a gradual spread of regional/sectoral bargaining. This development is considered important in helping overcome the widespread problem of unions' dependence on individual employers at the enterprise level. In some localities this led to the negotiation of minimum wages for workers in small- and medium-sized enterprises that are higher than the mandatory local minimum wages (Lee 2009).

Although most collective bargaining takes place at the enterprise-level, different mechanisms function to coordinate wage settlements across the economy. For example, in Singapore, the tripartite National Wage Council (NWC) plays a key role in issuing national guidelines that are taken up in subsequent enterprise-level negotiations. In Sri Lanka, employers' organizations coordinate collective bargaining, and no collective agreements are reached outside of the Employers' Federation of Ceylon. In Japan, the Shunto (spring wage offensive) has traditionally played an important role in this regard. The Shunto is the mechanism by which sectoral unions lead wage negotiations in a coordinated manner. However, it has weakened in recent years due to worsening economic conditions which have constrained the ability of unions to achieve annual pay scale increases. With the weakening of its traditional role, new

roles are being explored for the Shunto and the mechanism is undergoing a period of revitalization. At the national level, the Japanese Trade Union Confederation (JTUC-RENGO) has been utilising Shunto as a means to reduce wage disparity between those who work in large firms and those who work in SMEs, and between regular and non-regular workers.⁹

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One of the most salient constraints on collective bargaining in this region is the weak capacity of the social partners. A multiplicity of trade unions has been one of the elements hampering collective bargaining practices in Cambodia, Indonesia, Pakistan and the Philippines. Furthermore, employers' organizations have only recently emerged in transition economies, such as Cambodia, China, Mongolia and Viet Nam (Yoon 2009).

Labour relations are highly adversarial in many countries in the region. Collective disputes have been rising in the public sector in Sri Lanka. Labour relations are also highly adversarial in Nepal where institutions for dispute resolution are underdeveloped. China and Viet Nam have also seen a dramatic rise in disputes due to ten

9. Information provided by Japanese Institute for Labour Policy and Training.

sions arising from new market-based employment relations with which labour laws and underdeveloped industrial relations institutions are struggling to cope (Lee 2009).

Table 3: Collective bargaining in Asia

Legislative framework	Bargaining structure	Issues and challenges
Strengthen organizational rights (Indonesia, Korea public sector)	Mostly enterprise level Weakening of Shunto in Japan	Extension of rights (public sector, EPZs and migrant workers)
Establish new institutional framework for IR (China, Vietnam, Nepal, Indonesia, Cambodia, Mongolia)	Some sectoral bargaining emerging in Cambodia (garment), Korea (metal, banking, hospital), Sri Lanka (plantations) and India (cotton & textiles and plantations)	Informal economy Flexible employment practices
Reassert role of CB (New Zealand and Australia)		Rise in labour disputes (Nepal, Vietnam, China)

Europe & Central Asia

As in other regions, there are significant differences between countries in Europe. In respect of developments in collective bargaining frameworks and institutions, three broad groups can be distinguished. The first group includes countries in the enlarged European Union (EU), where integration and European Union directives shape legal and institutional developments. The second group includes Moldova and countries in the Western Balkans.¹⁰ The third group is made up of the Commonwealth of Independent States (CIS).¹¹

In respect of the first group of countries, some in the EU 15,¹² with relatively well developed industrial relations institutions introduced procedural amendments to facilitate the adaptation of collective bargaining structures, permitting greater articulation of issues at different levels. For example, France introduced changes to regulations governing representativity and introduced other reforms that give broader scope to enterprise-level negotiations.¹³ The situation is somewhat different in the new EU Member States. Many countries adopted new labour codes extending the scope of collective bargaining and setting out proce

10. Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Montenegro and Serbia.

11. Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

12. EU15 refers to the 'old' EU Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

13. Law on Lifelong Vocational Training and Social Dialogue No. 4 of 2004, and Law on Renewing Social Democracy and Working Time of 2008.

dures for collective bargaining. For example, the Czech Republic enacted procedures for extending collective bargaining agreements.¹⁴ Bulgaria introduced legal reforms regulating thresholds for recognition and the conduct of collective bargaining at different levels.¹⁵

Collective bargaining coverage tends to be high, sometimes higher than trade union density

In respect of practice, most of the EU15 and some of the new Member States have strong multi-employer bargaining structures which extend collective agreements to non-parties. Collective bargaining coverage tends to be high, sometimes higher than trade union density (e.g. France). Collective bargaining takes place at the sectoral level in many of these countries.¹⁶ However, inter-sectoral agreements may be reached on particular issues, for example, on occupational accidents and illness in France (EIRO 2008). In other countries, collective bargaining takes place at a centralized or inter-sectoral level, although subsequent bargaining at either the sectoral or enterprise level may play a role in implementing or expanding on national inter-sectoral accords.¹⁷ There

are also a group of countries where most collective bargaining takes place at the enterprise level.¹⁸

Some decentralization is evident in this group of countries. In Finland, after a long period of central income policy agreements, collective bargaining shifted to the sectoral level in 2007 (EIRO 2008). In Denmark, a new sectoral framework agreement paved the way for the development of an enterprise-level bargaining structure in the insurance sector (EIRO 2009). There are also opposing developments; for example, fragmented bargaining practices in Spain led to the centralization of collective bargaining.

What is clear is that in response to growing pressure for enterprise flexibility, higher-level agreements, whether at the intersectoral or sectoral level, have widened the scope for collective bargaining at the enterprise level. This permits issues agreed at higher levels to be further articulated at lower levels. In Germany, for example, the November 2008 collective agreement in the metalworking industry set out a general wage increase, but included a clause allowing the implementation of the increase to be negotiated at the enterprise level. Enterprise-level negotiations also play a key role in determining the details of flexible working time arrangements.

14. Collective Bargaining Amendment Act No. 255 of 2005.

15. Labour Code Amendment Act No. 25 of 2001 (amended by Act No. 40 of 2007).

16. Austria, Bulgaria, Denmark, Finland, Germany, Italy, Netherlands, Norway, Portugal, Slovakia, Sweden.

17. Belgium, Ireland, Greece and Spain (framework), Romania.

18. Cyprus, Estonia, Latvia, Lithuania, Luxembourg, Malta, Poland and the United Kingdom. There are a few sectoral agreements, for instance in education and the performing arts in Estonia and in metalworks in Cyprus.

It is important to point out that collective bargaining coverage has remained relatively stable despite these changes in collective bargaining arrangements, which suggests that they are adapting rather than weakening. The relationship between different levels is being regulated in diverse ways. Some countries allow lower-level agreements to derogate from standards set by higher-level agreements, in particular circumstances and according to an agreed procedure (e.g. France). In other countries, a favourability principle applies, meaning that lower-level agreements may improve upon but not derogate from labour standards in higher agreements (e.g. Slovenia).

With the enlargement of the European Union, the transnational dimension of collective bargaining is becoming more important. There are two important developments in this regard. The first is the increased cross-border comparison of labour costs, flexibility and performance by multinational enterprises (MNEs) and the exchange of information and coordination of bargaining agendas by trade unions. The second concerns transnational negotiations between European industry federations, sometimes initiated by European Works Councils (EWCs), and a multinational enterprise which result in European Framework Agreements (EFAs). These agreements do not address wages and working time but rather address topics such as corporate social responsibility; the elaboration of key principles underpinning company employment policies; business restructuring; and particular

aspects of company policy such as health and safety (EIRO 2008 & EU 2008).

In respect of the second group of countries, including Moldova and countries in the Western Balkans, significant efforts were made to establish the legal and institutional foundations for social dialogue, including procedures governing collective bargaining and dispute resolution. In Moldova, Serbia, and the FYR of Macedonia and Montenegro, the main focus of recent reforms has been the regulation of national tripartite bodies for social dialogue (e.g. representativity for participation). As a result, a number of economic and social councils and similar institutions have been established. Collective bargaining in these countries takes place at different levels (national inter-sectoral, sectoral/branch level and enterprise), although weak and fragmented social partners have limited the development of collective bargaining. In addition, the priority given to the establishment of tripartite institutions of social dialogue as part of the preparatory work for accession to the European Union has captured the bulk of the resources and attention of the social partners.

In the third group of countries (CIS), many also adopted labour codes over the last decade that included procedures for collective bargaining and dispute settlement. However, the weak capacity of the social partners limits the development of collective bargaining in practice. Collective bargaining takes place mostly within larger (formerly state-owned) enterprises.

Table 4: Collective bargaining in Europe and Central Asia

Legislative framework	Bargaining structure	Issues and challenges
Establishing legal frameworks (CEE)	Adaptation of inter-sectoral and sectoral bargaining to allow articulation of issues and more enterprise level bargaining (EU15)	Vertical coordination between levels EU15
Amendments to procedures to allow more enterprise level bargaining (France)	Enterprise level (UK and CEE) Focus on tripartite structures, limited CB (SEE)	EU enlargement and cross-border coordination of collective bargaining
Regulating derogations: allowing derogations from min. (Finland); not allowing derogations from min. (Slovenia)		Derogations and open clauses Flexible employment practices Capacity of social partners in SEE

Conclusion

A comparative analysis of trends in different parts of the world reveals that there continue to be diverging tendencies. First, collective bargaining coverage has dramatically declined in some countries (e.g. United Kingdom) in part as a result of a rollback in public support for collective employment relations and the growing individualization of employment relations. By contrast, coverage remained relatively stable in many countries (e.g. those in the EU15) and even expanded in a few (e.g. Uruguay and Argentina). Second, while there is an increase in collective bargaining activity at the enterprise level in many countries, there has also been a shift to industry-level bargaining in some.

Collective bargaining practices and structures can be responsive and adapt to changing circumstances. One example of this is the introduction of clauses that allow some flexibility in collective agreements either in respect of different sizes of enterprises or par-

ticular economic circumstances. In some countries, inter-sectoral and sectoral bargaining structures have also adapted to competitive pressures by allowing greater articulation of issues at the enterprise level. Another example of the responsive nature of collective bargaining is the adaption of collective bargaining practices in some countries (e.g. Japan and Korea) to the rise in temporary, fixed-term and other types of flexible employment, also protecting and improving the working conditions of these workers.

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