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Reinforcing social dialogue as an instrument for stability and decreasing social and economic inequalities

Report¹

Committee on Social Affairs, Health and Sustainable Development

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Summary

The social dialogue, involving trade unions, employers' associations and public authorities, has been negatively affected by a number of (more or less) recent trends, such as globalisation, new forms of employment, pressure on employment conditions and a changed functioning of labour market institutions. In some countries, restrictions on industrial action and collective bargaining coverage have been put in place with the purpose of achieving more economic stability.

However, evidence gathered by the OECD and others has shown that countries with a strong social dialogue are characterised by better economic performance and a more equal distribution of income. All social partners should therefore have an interest in such a social dialogue, based on a healthy balance of power, an open and trustful dialogue and full respect for international standards, with a view to contributing to better economic conditions and preventing excessive industrial action.

The Parliamentary Assembly should call on member States to reinforce the social dialogue through labour legislation and policies, to re-establish collective rights where they have been weakened and to apply legal restrictions to such rights only in strict conformity with European and international standards. Member States should also promote a comparative assessment of compliance through the ILO monitoring system.

1. Reference to committee: Bureau decision, Reference 4211 of 20 June 2016.



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A. Draft resolution²

1. In the globalised economy at the beginning of the 21st century, social partners – trade unions, employers' federations and public authorities – are acting on a complex playing field. Trade unions in particular are expected to represent the interests of workers in the face of various, often contradictory trends which have significantly changed their role in the social dialogue, both at national and European levels, and in society in general.
2. Like other labour market institutions, trade unions need to adapt to the fast-evolving world of work, which requires ever new capacities from workers at all levels. They also need to react to declining membership levels in their organisations, and to an increasing use of information technologies and social media as vectors of communication, including in labour relations. In a number of countries, the scope of action and influence of trade unions, and collective bargaining coverage, has diminished over the past years due to legal restrictions applied to collective labour rights under austerity programmes, as already pointed out by the Parliamentary Assembly in [Resolution 2033 \(2015\)](#) on protecting the right to bargain collectively, including the right to strike.
3. The Assembly is concerned about some of these trends negatively affecting trade unions and the social dialogue. It fears that the lower significance and changing role of trade unions could further increase currently widening social and economic inequalities. Trade unions themselves should be prudent and take utmost care to always act in a democratic manner and avoid contradictory decisions, for example when acting as economic stakeholders and investors themselves.
4. While the collective rights they defend, including the right to strike, should be protected as essential elements of the European Social Model, trade unions should act in a responsible and accountable manner at all times. While any legal restrictions to trade union action, including the right to collective bargaining and the right to strike, should only be applied in full respect of international standards as laid down by the International Labour Organization (ILO), trade unions should always use their fullest discretion and bear in mind their social responsibilities by keeping strike action as targeted as possible. A precondition for a fruitful social dialogue is internal consent and mutual trust between the social partners that their respective interests be understood and respected.
5. Convinced that the need for a strong social dialogue, based on a healthy balance of power, an open and trustful dialogue and full respect for international standards, should be recognised and its implementation supported by all social partners, the Assembly calls on member States to:
 - 5.1. ratify and fully implement the European Social Charter (revised) (ETS No. 163) and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158), if this has not yet been done, and develop or revise national labour legislation accordingly to bring it into conformity with these standards;
 - 5.2. promote and support industrial relations and collective bargaining coverage, through appropriate legal frameworks and constructive political action, as a means of securing the stability of economic processes and of decreasing social and economic inequality;
 - 5.3. reverse, wherever necessary, the measures which weaken social dialogue, including by reinstating social dialogue institutions where they have been abolished, with a view to bringing the national social dialogue and other collective rights back into conformity with the International Covenant on Social and Economic Rights, the ILO conventions, the case law of the European Court of Human Rights and the European Social Charter;
 - 5.4. keep to the strict minimum legal limitations on the right to collective bargaining and the right to strike, as provided for by well-established ILO and European standards;
 - 5.5. raise the awareness of all social partners of their specific roles, of the need for responsibility and accountability in the social dialogue and industrial action, as well as of the need to respect individual and collective social rights and democratic processes when it comes to collective action;
 - 5.6. co-operate closely in designing modern labour market policies and institutions capable of continuously adapting to socio-economic changes, and ensure that social partners jointly address major challenges including economic stability and growth, social and technological trends, a more equal income distribution and social cohesion in Council of Europe member States.

2. Draft resolution adopted unanimously by the committee on 30 November 2016.

6. Furthermore, the Assembly calls on the ILO to conduct a comparative assessment of the implementation of its substantive provisions of labour legislation on the right to strike, including the conditions for the exercise of the right to strike, essential and minimum services to be upheld and the individual right to work, in the light of its latest provisions on labour legislation and policies. At the same time, the Assembly calls on State Parties to relevant ILO conventions and members of ILO monitoring bodies to support such an undertaking.

B. Explanatory memorandum by Mr Ögmundur Jónasson, rapporteur

1. Introduction: origin, aims and scope of the report

1. In the past decades, trade unions in Europe have played an important role in the negotiations between employers, employees and the State, thus leading to widely accepted collective agreements for specific economic sectors. This “social dialogue” has been widely considered as a main component of the European Social Model and an asset to European market economies.

2. Whilst the role and influence of trade unions have traditionally varied across Europe, we could recently observe general trends which find similar expressions in different countries: an overall decline in trade union membership; a decentralisation of collective agreements at company level; an increasing share of workers in precarious employment not covered by collective agreements; as well as developments concerning the internal functioning of trade unions. These developments tend to weaken the position of trade unions in collective bargaining processes and diminish their role amongst social partners. Trade union influence in pension funds is important but it brings to light the social responsibilities expected to be shouldered by them when acting as economic players. If they are not seen to do so, it has been argued that this may weaken them in the eyes of their membership. They may for example be seen to be in a contradictory position when defending the infrastructure but at the same time looking for investment opportunities there. On the other hand, it has been argued, prudent and socially responsible investment could be acceptable.

3. The first aim of this report – based on a motion for a resolution I had tabled myself before being appointed rapporteur – will therefore be to explore whether there is a direct correlation between developments concerning the functioning and role of trade unions on the one hand and rising inequalities as observed in many European countries on the other. This approach to the issue can partly be seen in continuity with Parliamentary Assembly [Resolution 2033 \(2015\)](#) on the protection of the right to bargain collectively, including the right to strike. In addition to following up on this earlier text calling for the protection of social dialogue, it shall be explored how social partners in member States need to adapt to new realities and how a balanced social dialogue involving strong partners on all sides can be maintained.

4. However, next to my own initiative, the European Conservatives group recently on two occasions expressed concern to the Assembly’s Bureau about continuous and widespread strikes and manifestations of a more political nature which might affect the right to work by preventing people from reaching their work places, by disrupting the functioning of public services, or by some participants in strikes and protests resorting to violence and causing material damage.

5. Subsequently, the Bureau decided to seize the Committee on Social Affairs, Health and Sustainable Development for report on “An urgent call for increased solidarity: the right to work, the right to strike” (for preparation of a report in time for a debate during the January 2017 part-session). Through this mandate, the committee has been asked to examine which measures could protect the right to work in the face of widespread strike and protest movements. At its meeting on 23 June 2016, the committee decided to merge this second reference with the first report, for which I had already been appointed rapporteur, and asked me to include these questions into a report to be prepared for January 2017. This mandate was confirmed at the subsequent meeting on 21 September 2016 in Paris where the majority of the committee once again expressed the conviction that no separate report was needed.

6. In order to take into consideration the intentions and interrogations behind both references described above and to take a balanced approach, I shall look into the newest developments in trade unionism, measures to be taken to maintain a strong and balanced social dialogue (in continuity with previous Assembly resolutions), the way in which strike and protest movements may challenge our economies and the possible scope of measures to be applied to guarantee the right to work in a fully democratic manner in conformity with European and international standards.

2. Trends and challenges concerning trade unions

7. Social dialogue represents an important pillar of the European Social Model according to the understanding promoted by the International Labour Organization (ILO) and fully shared by the Parliamentary Assembly. The ILO generally defines collective bargaining as “a key means through which employers and their organizations and trade unions can establish fair wages and working conditions. It also provides the basis for sound labour relations”.³ Based on this understanding and functioning, trade unions have always been important stakeholders in socio-economic European developments in past decades. Any evolutions regarding their role and functioning are therefore related to other trends, including general economic trends

(globalisation, delocalisation of production, development of the “platform” or “gig” economy, flexible production etc.), the nature of social dialogue generally, the tools used in labour conflicts, but also the outcome of socio-economic negotiation processes which may have an impact on income distribution and levels of inequality.

8. I recall that some of the trends concerning trade unions and social dialogue have already been highlighted by the Parliamentary Assembly in recent years: [Resolution 2033 \(2015\)](#) on the protection of the right to bargain collectively, including the right to strike emphasised how, during the economic crisis, collective bargaining agreements had been undermined and the right to strike had been limited, and pointed to the need to protect the rights to bargain collectively and to strike, to ensure that workers and their organisations can effectively take part in the socio-economic process to promote their interests when it comes to wages, working conditions and social rights. In [Resolution 2068 \(2015\)](#) “Towards a new European Social Model”, the Assembly considered that high standards should be maintained regarding employment and working conditions, social protection systems and labour markets, but also with a view to a well-functioning social dialogue at various levels and quality public services.

2.1. Recent trends concerning the role and functioning of trade unions and their effects

2.1.1. Lower trade union density and collective bargaining coverage

9. Trade unions have been losing membership, bargaining power and political influence across Europe over the past years, not least due to the economic crisis and austerity programmes having further added to these unfavourable conditions.⁴ All countries of the Organisation for Economic Co-operation and Development (OECD) taken together have on average seen trade union density decline from 21% in 1999 to 16.7% in 2014.⁵ In the European Union (28 European Union countries plus Norway and Iceland), levels of union density vary greatly, from around 85% in Iceland, 70% in Finland, Sweden and Denmark (where social benefits are paid out through unions), to 8% in France. However, France is an example of the fact that “density” is not the only indicator for the strength of a union; in some countries with low union density, trade unions still manage to mobilise great numbers of workers for works council elections (Spain) or mass strikes and demonstrations (France).⁶

10. The decline in union density in most countries is linked to structural changes: manufacturing industries have decreased; production processes have been digitalised; economic structures marked by both fragmentation (through outsourcing) and multinational enterprises have made it harder for unions to regulate work.⁷ In Europe, next to structural changes, legislative action including minimum wages not based on collective agreements and extension mechanisms as we have in my country, Iceland, and measures against workplace discrimination have reduced the perceived need to join a union. Unions, failing to respond to some of the topical challenges, do not seem to appeal anymore in particular to younger workers, the self-employed or those in part-time, precarious employment. Some unions are facing free-rider problems, since collective agreements often cover all workers, irrespective of union membership (in some countries, such as France, this is even required by law⁸); this may positively affect coverage rates and protect workers but may also have negative effects for union membership and influence.⁹

11. Although many trade unions are actively promoting positive services to their members, we are witnessing a continuous retraction in membership across Europe.¹⁰ Consequently, a rising number of workers are no longer covered by social dialogue and inequalities are further increasing.¹¹ In particular in central and eastern European countries (CEE), unions have weak positions¹² due to the role they played in previous

3. ILO Topics, Collective bargaining and labour relations: <http://ilo.org/global/topics/collective-bargaining-labour-relations/lang--en/index.htm>.

4. Friedrich Ebert Stiftung (FES) – Bernaciak, Gumbrell-McCormick, Hyman, Trade Unions in Europe, Innovative Responses to Hard Times, Berlin, April 2014.

5. Trade union density, OECD.Stat, data extracted on 25 July 16: https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.

6. Worker-participation.eu – a service by ETUI, “Trade Unions” (data gathered in 2013); www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2.

7. Guardiancich, Recovering from the crisis through social dialogue in the new EU member States, ILO, 2012.

8. Gautié, France’s social model: Between resilience and erosion, in: Vaughan-Whitehead (ed.): *The European Social Model in Crisis*, ILO, Geneva, 2015.

9. Visser/Hayter/Gammarano, Trends in collective bargaining coverage: stability, erosion or decline?, ILO issue brief 1/2015.

10. “Why trade unions are declining”, *The Economist*, 28 September 2016.

11. Vaughan-Whitehead, *The European Social Model in Crisis*, ILO, Geneva, 2015.

12. Commission of the European Communities, *Industrial Relations in Europe 2008*, Brussels, 2009.

systems: “younger workers in the CEE consider the labour movement as a relic of the communist era”¹³ despite their positive role in European Union accession, which is expressed through union density being the lowest in the Baltic States.¹⁴

12. Overall, the growth of non-standard forms of employment has brought lower coverage of collective bargaining and social dialogue, as temporary workers, agency workers and the self-employed are usually not covered by collective bargaining. The ILO also found that further factors come into play in different countries: whilst in Spain, trust in trade unions seems to be higher among the middle class than among unskilled workers, weakly embedded institutions for collective bargaining seem to have played a role in the decline in real wages, with the share of employees covered by collective bargaining agreements falling from 23% to 17% between 1995 and 2013. On the other hand, data from Belgium has shown that consultation mechanisms had contributed to maintaining wage levels and working conditions and represented a major factor behind middle class stability there.¹⁵

13. One of the main determinants for the stability of collective bargaining coverage seems to be the willingness of employers’ organisations and trade unions to negotiate and act as social partners in the regulation of labour markets.¹⁶ A good example of stable social dialogue generating positive effects seems to be the one in the Netherlands, characterised by: 1) a coverage rate of 80% of collective agreements through extension mechanisms; 2) 80% of Dutch households belonging to the middle class; 3) sectoral bargaining and the extension of collective agreements in the industrial sector, including an expansion into new business sectors (for example cleaning and safety services).

14. In contrast, the sharpest decline in bargaining coverage occurred in countries that had to seek assistance from international financial organisations. Through the study of various national situations (for example Greece, Hungary, Ireland and Portugal), the ILO has shown how the decreasing coverage by collective bargaining agreements and a weakening of tripartite consultations were related to the evolution of wages of low-income and middle-income groups.¹⁷

2.1.2. Globalisation and the development of the “platform economy” as new challenges for trade unions

15. Looking at the issue of globalisation, it seems that trade unions have found it difficult to follow international developments, such as the increasing importance of multinational enterprises and the delocalisation of industry and services to emerging economies. A glance at recent specialised literature even suggests that globalisation has not been sufficiently addressed as a specific challenge by trade unions and related institutions.¹⁸ Some global trade unions, such as Public Services International (PSI), have, however, been very active in the debate on international treaties, such as the Trade in Services Agreement (TiSA), the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic Trade Agreement (CETA), calling for access to these negotiations. Nevertheless, the massive trend of merging smaller trade unions into larger organisations is certainly a reaction to the economy going global.¹⁹

16. In parallel, the increasing use of the internet by firms in various business sectors (for example *Uber* in taxi services or *Airbnb* in accommodation services), using online platforms for innovation and transaction of services, and using workers whose status remains largely unregulated, creates new challenges for the social dialogue. Issues involved include fair competition with established firms, contractual situations of workers, consumer protection, the impact on urban public transport and urban development. Given the novelty and complexity of this development, I suggest that the committee could consider some of these new trends in a specific report on the impact of the “platform economy”. The international trade agreements just mentioned are already being looked at in a separate report currently being prepared by our committee, also with a view to a debate at the January 2017 part-session. As important as these trends may be, they should, however, not be overestimated since the relationship between the employers and the employed still exists, as recently recognised in the United Kingdom in the case of a complaint by the trade union GBM against the Uber taxi company.²⁰

13. Guardiancich, op. cit.

14. Vaughan-Whitehead, op. cit.

15. ILO/European Commission (Vaughan-Whitehead, Daniel (ed.)), Long-term effects in the world of work: What effects on inequalities and middle-income groups?, Geneva, 2015.

16. Visser/Hayter/Gammarano, op. cit.

17. ILO/European Commission, op. cit.

18. Even the most recent ILO publication in this area dates back to 2007.

19. Friedrich Ebert Stiftung, op. cit.

17. These contextual elements of trade union development, globalisation, “platform economy” and international trade agreements will therefore deserve further attention in the future and on a larger scale. The issue is highly complex as it is very much linked to global commercial relations and industrial delocalisation: especially governments in emerging economies sometimes seem to perceive “decent work” as defended by trade unions as a Eurocentric concept to protect jobs in the North and see international labour standards as a way of removing the only comparative advantage the poor have – their cheap labour.²¹

2.1.3. Democratic deficits

18. Against this background, we cannot deny that collective labour rights have been threatened over the past decade, thus leading to democratic deficits in adopting social policy reforms. Structural reforms of national industrial relation systems have mostly focused on:

- decentralising collective bargaining (shifting from national/sectoral/branch level to company level);
- introducing or extending possibilities for lower-level bargaining outcomes;
- compelling notably European Union member States, in the framework of relevant memoranda of understanding, to reach specific outcomes in collective negotiations, in particular on wage determination.²²

19. This is also confirmed by ILO observations that countries most severely affected by the crisis experienced a weakening of the role of tripartism, an alteration of collective bargaining institutions and rights and a weakening of social dialogue in the public sector. Social partners were involved in first phase of stimulus packages after the crisis, but in the second wave of reforms “trade unions were generally excluded from the decisions to reduce public expenditure and to cut jobs and wages in the public sector”.²³ The social impact and democratic deficit of early austerity programmes in the past economic crisis had already been underlined by the Assembly itself in [Resolution 1884 \(2012\)](#) “Austerity measures – a danger for democracy and social rights”.

2.1.4. Increasing inequalities and their link to developments in trade unions

20. Common to all these developments is the fact that even though changes in labour laws, social security systems and public employment were praised as remedies to the crisis, they have instead led to an explosion of inequalities in and outside the workplace, in some cases irrespective of fundamental social rights. Such trends not only contrast with the duty and commitment of European institutions (including the European Union and the Council of Europe) to promote social dialogue as a component of democratic governance structures, but affect a number of social rights as covered by the European Social Charter (ETS Nos. 35 and 163) and income distribution in the long term.²⁴

21. An International Monetary Fund (IMF) analysis of advanced economies since the 1980s has shown that lower unionisation or minimum wages not only affect low- and middle-income workers, but can also be associated with an increase in top incomes. According to the IMF study, the main channels through which labour market institutions affect income inequality are: 1) the equalisation of wage distribution; and 2) redistribution. Positive effects through the latter could be achieved by strong unions inducing policy makers to engage in relevant policies or by leading all parties to do so. The weakening of unions also reduced the bargaining power of workers relative to capital owners and their influence on corporate decisions that benefited top earners, such as the size and structure of top executive compensation.²⁵

20. See recent press reports, for example: www.independent.co.uk/news/business/news/uber-verdict-loses-drivers-workers-rights-minimum-wage-a7384921.html, and the verdict itself on the website of the Icelandic Confederation of Labour (ASI): www.asi.is/media/312955/aslam-og-farrar-gegn-uber-28102016.pdf.

21. ILO, Trade Unions and the Global Crisis – Labour’s Visions, Strategies and Responses, Geneva, 2011, www.bollettinoadapt.it/old/files/document/14526ILO_tradeunions_.pdf.

22. Schömann, Isabelle, Collective labour law under attack: how anti-crisis measures dismantle workers’ collective rights, ETUI Policy Brief, European Economic, Employment and Social Policy, No. 2/2014, Brussels.

23. Vaughan-Whitehead, op. cit.

24. Schömann, Isabelle, op. cit.

25. Jaumotte, Florence and Osorio Buitron, Carolina (IMF), Power from the People, Finance & Development, Vol. 52, No. 1, March 2015; www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm.

22. The impact of evolutions in social dialogue and collective bargaining has also been analysed by the ILO in recent years; currently, it is working on a project concerning evolutions in trade unions and social dialogue, the final report of which should be published before the end of 2016. However, already in 2015, the group of European researchers collaborating with the ILO, basing itself on previous OECD data, found that “declining union coverage has had a disequalising effect on the wage distribution”.²⁶

23. Indeed, in its latest report on inequality trends, the OECD illustrated how the income gap between the poorest and the richest had been widening over the past decades, and elaborated on the determinants of this trend. According to OECD estimates, the real household incomes of top earners had increased by more than 50% from 1985 until 2010, whilst middle earners saw an increase of about 30%, the bulk of low earners an increase of slightly more than 20% and the bottom 10% of households an increase of just over 10%. Amongst the factors determining this increase in inequality, the OECD sees a rising share of non-standard employment, persistent inequalities between women and men, and an unequal distribution of wealth.

24. For the OECD, pathways out of the current situation would notably include measures aimed at promoting quality employment, for example active labour market policies, in general and targeting gender equality and young people, and the reform of labour market institutions such as trade unions. The OECD thus confirms that improving social dialogue and industrial relations is an important element of a more equitable and inclusive growth based on evidence that high union density and bargaining coverage, but also the central co-ordination of wage-bargaining, go hand-in-hand with lower wage inequality.²⁷ However, I will end with these few indications given that our committee is currently mandated to prepare a separate report entitled “Increased income inequalities are a threat to social cohesion” in which we shall explore in more detail how increasing income inequalities affect economic growth and social cohesion.

2.1.5. Other roles of trade unions

25. Next to the wage-setting powers of trade unions, the means at their disposal are crucial. One of the essential questions here is whether a strike or collective action against economic austerity measures (or new labour laws as seen recently in France) is meant or perceived as a political strike (therefore going against many member States’ legislation) or as a collective or individual right and tool to defend labour rights. Especially with regard to labour movements turning into more general protest movements, some are calling for more restrictive legislative action. Another area where the function of trade unions is not entirely transparent for all today is their role as economic stakeholders and investors.

2.2. Trends in trade unionism as observed by social partners

26. In order to gather information in the most targeted and balanced manner possible, the Committee on Social Affairs organised a specific expert hearing at which both the positions of trade unions and employers as main partners in the social dialogue were represented. The experts heard on this occasion were Dr Aristeia Koukiadaki, Senior lecturer in employment law at the University of Manchester (United Kingdom) and also member of the Network of Transnational Trade Union Rights Experts of the European Trade Union Institute (ETUI), and Ms Renate Hornung-Draus, Managing Director and Director for European and International Affairs of the Confederation of German Employers (BDA), Germany’s largest employers federation. The aim of this hearing was to explore the impact of relevant trends and developments concerning trade unions, both on levels of inequalities and the economy overall.²⁸

27. Both experts present at the hearing underlined the importance of tripartite social dialogue for all stakeholders involved (workers, employers and the State) and confirmed some of the trends observed by myself previously. Especially the most recent economic crisis had led to policies meant to be “employment-friendly” in certain countries (e.g. Greece, Romania and Spain), limiting collective bargaining, overruling collective agreements already concluded and, consequently, reducing the wage-setting powers of trade unions and their representative functions. In some cases, radical policy changes led to a lack of social and democratic legitimacy and generated mass mobilisation and protests. Limitations on the right to strike were observed in a number of countries recently (for example Romania and the United Kingdom). Other countries saw the abolition of extension mechanisms (NB: extension of collective agreements to a whole branch, for example in Greece, Ireland, Portugal, Romania and Spain) and extended possibilities for company-level derogations (for example France, Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain).

26. ILO/European Commission, op. cit.

27. OECD, *In it together: Why less inequality benefits all*, Paris 2015.

28. The rapporteur would like to thank both experts for their availability and the open and constructive dialogue held at and around the Paris meeting on 21 September 2016.

28. As a result of these trends, the following effects can be observed on trade unions, social dialogue and the labour market more generally²⁹:

- current collective bargaining and industrial relations systems are more fragmented, unco-ordinated and disorganised, which not only leads to a lower influence of trade unions on adequate pay and working conditions, but also reduces their regulatory influence on the economy (for example in the area of unemployment insurance) and excludes them from policy-making processes, further marginalising them in the social dialogue. Where the social dialogue is still functioning, one can observe more insistence on cost competitiveness and unit labour costs and subsequently minimalist bargaining agendas;
- the outcome for the workers is a rise in precarious work, labour market segmentation and informality, which will have an effect on labour market performance (and thus represent a backlash for the overall economy). Increased inequalities in terms of pay dispersion are expected to inhibit inclusive growth and recovery from the crisis;
- for employers, a certain loss in associative capacities (due to the closure of companies during the crisis), the growth in informal labour, wage dumping and unfair competition represent particular challenges, whilst the State sees itself confronted with increased externalities (including more labour and political conflicts, increased costs, etc.) and could find itself in non-conformity with the European Social Charter wherever collective bargaining coverage is going under critical thresholds;
- industrial relations overall were characterised by an erosion of trust, a rise in adversarialism (instead of dialogue) and a lack of social and democratic legitimacy which further impacted on economic and production systems and reallocated risks between employers, employees and the State in a non-constructive manner for the economy.

29. According to the academic expert, the way forward should include a reorientation of policy objectives considering collective agreements as public goods with inclusive regulatory coverage and trade unions as having a “beneficial constraint” effect on the organisation of labour markets, thus not only as part of the problem but as a key solution to economic recovery. Policy responses should comprise a reaffirmation of the central role of collective bargaining and industrial action in the European Social Model, a broad nexus between the right to collective bargaining and the right to take industrial action and lawful collective action against governmental intervention restricting collective bargaining. Trade unions acting politically at higher levels have taken pressure off individual companies, so even a “politicised” social dialogue could not only be considered as affecting the economy negatively.

30. The need for strong social partners on both sides was confirmed by the employers’ representative at the expert hearing, who insisted on the importance of the European Social Model and social dialogue as assets for European economies. The traditions of industrial relations have always been diverse across Europe: Whilst the Nordic systems have binding collective agreements (including peace obligations) where employers participating in the social dialogue feel protected, industrial action in the Mediterranean system is more or less perceived as an individual right. Whatever the national context, however, punctual State interventions into such systems should not occur too often because existing balances could be disturbed.

31. Most economies across Europe have suffered from the crisis in one way or the other, but reactions to it have been very different: Whilst in Germany, both employers and employees have been ready to make concessions, other countries have not come to consensual solutions and the State has felt obliged to intervene (for example in Spain). Austerity measures have been imposed in particular in countries where social dialogue has not functioned well. The decrease of trade union density (due to the crisis, to changing economic structures and a greater individualisation of society), is much to the regret of today’s employers who wish to meet strong partners in the social dialogue and have an interest in organisational levels being upheld on all sides. From the point of view of employers, another effect of globalisation is that trade unions increasingly followed international models of communication led via social media. Even European systems, which had previously strived towards consensus, are now being pushed into more adversarial situations and conflicts.

32. Finally, also from the employers’ point of view, trade unions need to be fully accountable for any action taken, not least to ensure the right to work for all. To illustrate this, the employers’ representative referred to a collective complaint treated by the European Committee of Social Rights (ECSR) a few years ago.³⁰ In this

29. See the written contribution presented by Dr Aristeia Koukiadaki for the committee meeting held on 21 September 2016 in Paris (full presentation available upon request from the committee Secretariat).

30. For full information on the complaint against Belgium (Complaint No. 59/2009), please consult the Council of Europe database: <http://hudoc.esc.coe.int/eng?i=cc-59-2009-dmerits-en>.

case, the ECSR had condemned a State intervention concerning the activities of strike pickets as an unlawful restriction and incompatible with Article 6.4 of the revised European Social Charter. However, in its decision, the ECSR did not take into account the fact that the Belgian trade unions involved did not have a legal personality (but were organised as loose associations) and could therefore not be held fully accountable.

33. After having received input from academia and heard a representative of an employers' federation, and to complete the picture, I personally requested feedback from the European trade unions. The European Trade Union Confederation (ETUC) provided me with its evaluation of the subject matter in a written reply received on 15 November 2016. In their comments, ETUC confirmed the trade unions' view that trade union rights, structures and functioning had been under constant attack in particular through the implementation of austerity measures in almost all EU countries, often under pressure from informal institutions like the "Troika" (composed of non-elected officials of the International Monetary Fund, the European Commission and the European Central Bank). Beyond the crisis, measures undermining collective bargaining systems across Europe were then extended to economic governance systems, in particular via the European Semester of the European Union and the so-called country-specific recommendations. Reforms imposed led, *inter alia*, to: abolishing national, bipartite or tripartite social dialogue and its bodies, the decentralisation of collective bargaining from national/sectoral to almost exclusively company level, the restriction of representativity criteria, thus limiting the possibility for extension of collective agreements and facilitated application of derogations at company level. The final consequences from ETUC's point of view were weaker trade unions, weaker collective bargaining powers and diminished coverage of collective agreements.³¹

3. Legal and political frameworks determining trade union activities

34. Limitations on the rights of collective bargaining and the right to strike and the definition of stricter legal frameworks for trade unions have been observed all across Europe over the past years. The economic crisis has been one of the reasons given for such measures. Some examples for national legislative action limiting collective action were gathered by my colleague, Mr Andrej Hunko, in his report³² leading up to [Resolution 2033 \(2015\)](#) on the protection of the right to bargain collectively, including the right to strike.

35. In the explanatory memorandum to this text, the Assembly pointed to the essential legal references covering collective social rights and thus also building the foundations for a strong and balanced social dialogue, which I would like to briefly enumerate here:

- Article 11 of the European Convention on Human Rights (ETS No. 5) protects the right to freedom of assembly and association with others, including the right to form and to join trade unions for the protection of one's interests;
- the European Court of Human Rights, in its case law, unanimously decided that Article 11 encompasses a right to collective bargaining and a right to strike for unions;
- in its Articles 5 and 6, the European Social Charter (revised) guarantees the right to organise and to bargain collectively in a labour context and the right to strike;
- at European Union level, the Charter of Fundamental Rights of the European Union provides, in its Article 28, for the right to collective bargaining and action;
- relevant ILO instruments in this area are Conventions Nos. 98, 151 and 154, which have been reaffirmed in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

36. Under the pressure of crisis response and austerity, undue interferences with collective bargaining systems have notably been observed by the rapporteur in Greece, Portugal, Spain, and Romania, whilst other countries, such as Germany or Turkey, had been found to apply measures which undermined the social dialogue for other reasons. Other experts confirmed that legislation affecting trade unions and social dialogue had been passed in the context of the crisis in Estonia, Greece, Hungary, Italy, Portugal, Romania, Spain and even before the crisis in Germany and the United Kingdom.³³

31. According to the written contribution kindly provided to me personally in my capacity as rapporteur by Ms Veronica Nilsson, Confederal Secretary of ETUC, who was unfortunately not in a position to participate in our committee meetings held on 21 September and 13 October 2016.

32. [Doc. 13663](#).

33. Visser/Hayter/Gammarano, Trends in collective bargaining coverage: stability, erosion or decline? ILO issue brief No. 1, 2015.

37. Further debates about the limitation on the right to strike have been triggered since the beginning of 2016 in the face of widespread strikes and protest movements against a new labour law in France, which paralysed parts of the country's economy for certain periods of time. In this context, some stakeholders called for more restrictive legal frameworks regarding collective action and strikes, putting forward the argument that the movements did not take place in the exercise of labour rights, but were protest movements of a more political nature. Indeed, the new French labour law was feared by many to undermine national labour protection standards in favour of business interests, which led to a month-long industrial action causing severe air and rail disruption, fuel shortages and uncollected rubbish on the streets of the capital.³⁴

38. Explicitly referring to the motion "An urgent call for increased solidarity: the right to work, the right to strike" which our committee decided to include in the present reporting activity, I would at this stage like to draw attention to the right to work as covered by European legal standards. The main important provisions are probably Article 1 of the European Social Charter (revised) on the right to work³⁵ and Article 6 of the International Covenant on Economic, Social and Cultural Rights.³⁶ However, I would like to point out that these rights are not absolute and stand-alone rights, but need to be seen in relation with other articles of the same texts.

39. More precisely: Whilst the International Covenant requests that "States Parties to the present Covenant [to] recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right", it also provides under Article 8 for the right to strike in conformity with the laws of a particular country, adding that in particular State Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize ("ILO Convention No. 87" hereafter) are not authorised "to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention". My interpretation and joint reading of these articles would be that none of the two categories of rights stands above the other, and that unlawful restrictions on the right to strike are not authorised, whatever the impact of strikes on other rights covered by the Covenant.

40. As rapporteur on this highly complex and controversial matter, I understand the arguments of those who wish to respond to excessive protest movements affecting the economy overall and the right to work for individual workers. However, I would like to underline the need to fully respect international labour standards in any attempt to tighten legal frameworks for trade union activities.³⁷ And then again, we also should have full understanding that the protest seen as political by some analysts, in the eyes of others is a justifiable response to restrictive and unjust political measures taken by governments. This is also the stand taken by the ILO Freedom of Association Committee as well as the ILO guidance on political strikes: Indeed the Committee recognises that trade unions should be able to have recourse to protest strikes against government economic and social policies; hence protest strikes against such policies should not be considered political strikes. This is certainly even more so the case in a national context where continuous dialogue between social partners seems to be disrupted and the level of mutual trust significantly declined, as observed in France earlier this year.³⁸

41. The ILO endeavours to take a balanced stand on the right to strike, which may be helpful as a reference for member States in any reform process. The ILO defines strike action as one of the fundamental means available to workers and their organisations to promote their economic and social interests, but at the same time underlines that strikes should not be seen in isolation from industrial relations as a whole as they are expensive and disruptive for workers, employers and society alike. Consequently, they are seen as a failure in the process of fixing working conditions through collective bargaining, in other words: as non-successful social dialogue.

42. Amongst international labour standards, the right to strike is recognised by the ILO's supervisory bodies as an intrinsic corollary of the right to organise protected by ILO Convention No. 87, deriving from the right of workers' organisations to formulate their programmes of activities to further and defend the economic and social interests of their members. In Europe, the right to strike is also recognised in international and regional instruments, including the International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

34. French labour law protests again descend into violence, *The Guardian/AFP*, 14 June 2016, <https://www.theguardian.com/world/2016/jun/14/french-labour-law-protests-violence-police-paris-strikes-transport-euro-2016>.

35. See full text via: www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93.

36. See full text via: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

37. Papadakis/Ghellab (eds.), *The governance of policy reforms in southern Europe and Ireland*, ILO, 2014.

38. According to the analysis presented by Dr Aristeia Koukiadaki on 21 September 2016 (full presentation available upon request from the committee Secretariat).

43. However, as the ILO points out, the right to strike is not absolute. It may be subject to certain legal conditions or restrictions at the national level, and may even be prohibited in exceptional circumstances. In this respect, the ILO notes the following conditions and principles amongst others³⁹:

- *Essential services*: It is admissible to limit or prohibit the right to strike in essential services, generally defined as “those the interruption of which would endanger the life, personal safety or health of the whole or part of the population”;⁴⁰ a definition that may be further specified by specific legislation, public authorities, courts or participative procedures involving employers or workers. Evaluations of what is essential and what is not may also vary according to a given national and geographical context and the length of strikes. Wherever the right to strike is subject to restrictions or a prohibition, the workers concerned should be afforded compensatory guarantees, such as conciliation and mediation procedures.
- *Minimum service*: To ensure that the basic needs of the population are met during a strike in a public utility, and if a total ban is not justified, maintenance of a minimum service may be required on two conditions: 1) the service required must genuinely be a minimum service, namely limited to the operations that are strictly necessary to meet the basic needs of the population; and 2) workers organisations concerned should be able to participate in defining such a service in the framework of tripartite negotiations.
- *Conditions for the exercise of the right to strike*: Conditions regularly found in national legislation include: 1) the prior exhaustion of easily accessible conciliation and mediation procedures; 2) the holding of pre-strike ballots in which a majority of workers votes in favour of a strike; and 3) prior notification periods before calling a strike (up to 20 days for services of public interest and 40 days for essential services).
- *Pre-strike ballots*: Legislative requirements for pre-strike ballots may be intended to ensure that industrial action is carried out in an orderly manner, to prevent “wildcat strikes” and to ensure democratic control over an important decision for the workers concerned. Provisions of this type are in accordance with the principles of freedom of association where they do not make the exercise of a right to strike very difficult or even impossible and ensure that both the quorum and majority required are reasonable and that account is only taken of the votes actually cast in determining a majority.

44. These guidelines (dating from 2001) continue to be promoted by the ILO. However, compliance therewith is not specifically assessed, but rather integrated into monitoring of national practice within the ILO treaty system. The latest document specifying the scope and restrictions of strike action at the national level is “The Standards Initiative” prepared for the 323rd session of the Governing Body of the International Labour Conference in March 2015.⁴¹ This document specifies, for example, that in practice certain categories of workers may be excluded from the right to strike (for example workers in the public sector or in essential services), and describes the procedures according to which essential services may be determined at the national level (for example through legislation or social dialogue). The document also explains how strikes may be restricted during the term of validity of collective agreements, declared unlawful or postponed due to certain national circumstances. Furthermore, it specifies possible national preconditions for calling strikes (e.g. advance notice), and deals with the question of pre-strike ballots and minimum services.

45. However, the relevant document seems to mostly focus on how member States may and do regulate strike action, but does not provide analytical replies with regard to whether national practice is in conformity with ILO standards. A specific and comparative assessment of the conformity of selected national practices with international standards would certainly be of interest.

39. ILO, Labour Legislation Guidelines, Chapter V: Substantive provisions of labour legislation – the right to strike, last updated in 2001; www.ilo.org/legacy/english/dialogue/ifpdial/lg/noframes/ch5.htm.

40. General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), Report III (Part 1B), International Labour Conference (ILC), 101st Session, 2012: www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf.

41. The Standards Initiative – Appendix III: Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised), Document for the 323rd session of the Governing Body of the ILC, Geneva, 23-25 February 2015, www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_351512.pdf.

46. To monitor compliance with its standards, the ILO has at its disposal a complex monitoring system involving, amongst others, the Committee of Experts on the Application of Conventions and Recommendations and the Standing Conference Committee (of the International Labour Conference) on the Application of Standards, as well as the closely related Committee for Freedom of Association. Whilst the first is in charge of technically examining governmental reports, the second provides a forum for a broader exchange on compliance with international labour standards. However, according to researchers observing ILO activities, an ongoing internal conflict over the mandate of certain ILO monitoring bodies has led to a situation where notably the Committee of Experts cannot fully live up to its mandate of monitoring States Parties' compliance with ILO standards. More concretely, at the 2012 International Labour Conference, the employers in particular blocked the adoption and discussion of a list of 25 countries accused of the most serious violations of international labour and social standards in the annual report by the Committee of Experts, and rejected the idea of a general "right to strike" according to ILO standards. Before initiating an assessment of national situations through the ILO mechanism, this internal conflict may have to be overcome.⁴²

47. Notwithstanding persistent difficulties, I would just like to point to a topical national example in which ILO standards have been relevant: Only this year, legal experts criticised the new Trade Union Act passed in 2016 in the United Kingdom for breaching international labour standards by imposing excessive restrictions on the right to strike. Motivated by the government's claimed concern for more fairness and democracy, the new provisions require that at least 50% of union members entitled to vote now have to take part in a ballot to make it valid. For "important public services", a notion that is somewhat different from the ILO definition of essential services – thus perceived as unclear by legal experts – at least 40% of those entitled to vote must vote yes.

48. Experts from the United Kingdom call the new thresholds unreasonable, considering that they represent substantial limitations and that they could "effectively end the right to strike in the public sector", and that alternative measures such as minimum service requirements or compensatory guarantees would have been preferable. Generally, legal experts consider the use of thresholds in pre-strike ballots as controversial because they are based on the assumption that abstainers are against industrial action, which is not always the case.⁴³

49. Whilst decreasing trade union density and influence as described above (2.1) are expected to impact on income inequalities, I strongly believe that far-reaching limitations on trade union action, as observed in the United Kingdom, may further increase such trends and, in the long run, be economically counterproductive. Measures applied to limit the rights to collective bargaining and to strike should therefore be applied in the most prudent manner and always in conformity with the international labour standards mentioned above, which have been a long-standing consensus and framework for collective action in Europe.

4. Future challenges in terms of a strong social dialogue as an asset of economic stability

50. Against this sensitive and controversial background, trade unions, employers' associations and public authorities are facing a complex playing field. They need to respond to varying trends such as declining density of trade unions, new forms of work, new expectations by younger generations, decentralisation of collective bargaining and a diminishing influence on collective bargaining outcomes and social and economic policies overall. To effectively respond to these, trade unions need to be proactive and innovative towards their members, in order to renew their influence and not be pressed into concession bargaining.⁴⁴ At the same time, trade unions are also expected to be responsible economic players.

51. As rapporteur, and, in this case, also as a former Icelandic Minister and public trade union representative, I am convinced that a strong social dialogue is an asset for our economies. Recent attempts to weaken trade unions and reduce the rights to collective bargaining and to strike have often had a negative impact on European economies and socio-economic systems. The idea that collective and individual labour rights need to be protected as a European *acquis* should once again be promoted by the Parliamentary Assembly through the present report and the resolution to be hopefully adopted by the Assembly in January 2017.

42. Hoffmann, Claudia, (The Right to) Strike and the International Labour Organization. Is the System for Monitoring Labour and Social Standards in Trouble?, paper published by the Friedrich Ebert Stiftung (FES), Berlin, May 2014.

43. See, for example, O'Donnell, Ruth, Pre-Strike Ballots and the Trade Union Act 2016: Denying Workers the Right to Strike? School of Law Blog, University of Glasgow, 14 June 2016, <http://schooloflaw.academicblogs.co.uk/2016/06/14/pre-strike-ballots-and-the-trade-union-act-2016-denying-workers-the-right-to-strike/>.

44. Visser, Wage bargaining institutions – from crisis to crisis, *Economic Papers* 488, 2013.

52. Strict austerity measures and legislation adopted in the context of the past crisis have weakened the role of social partners and social dialogue as such in some countries. Such short-term measures should not influence the permanent conditions and institutional set-up under which a solid and healthy social dialogue, as a basic element of democratic governance, takes place. Social dialogue and strong trade unions are needed in order to ensure sustainable growth and ensure that levels of wages may once again increase once the crisis and its consequences have been weathered.⁴⁵ The need for strong trade unions as partners in a balanced social dialogue and the need to maintain a “dialogue culture” instead of further nourishing the “conflict culture” is regularly underlined by the employers’ side, such as at the committee hearing involving the BDA, Germany’s largest employers’ federation, on 21 September 2016 (see above).

53. Trade unions should be responsible, coherent and accountable in their industrial and political action. The example referring to the 2012 decision by the European Committee of Social Rights concerning Belgium has shown that both employers and the State have a strong interest in trade unions acting at “eye level”. Structural adaptations leading to a more balanced social dialogue should therefore be promoted in certain countries. It is also imperative that trade union access and involvement be considered positively in a globalising world, and that the voice of trade unions be heard in negotiations of international treaties such as the General Agreement on Trade in Services (GATS), TISA, TTIP, CETA and other agreements affecting labour rights and the social dimension of our economies.

54. However, any legal or policy measures taken to restrict the rights to collective bargaining and the right to strike should respect in particular the United Nations International Covenant on Economic, Social and Cultural Rights, ILO standards, in particular the ILO Freedom of Association and Protection of the Right to Organise Convention of 1948 (No. 87) and relevant guidelines, and the European Social Charter (revised). Having been involved in legislative and policy decisions relating to trade unions and collective rights in my own country and in my various capacities as parliamentarian and minister, I invite all stakeholders involved in relevant legislative changes to thoroughly consult specialised agencies and experts in legislative processes to ensure that they comply with international and European standards.

55. On the other hand, trade unions themselves should respect the common understanding of social dialogue and possible industrial action aimed at specific targets relating to employment or working conditions or wage levels and increases. Although trade unions act as political stakeholders, in many contexts they should take care to differentiate work-related strikes from larger political protest movements, because this could undermine their credibility in the social dialogue towards different social partners, both towards the State and their own members.

56. In this context, I reiterate that it would be useful if ILO could conduct a comparative assessment of the implementation of its substantive provisions of labour legislation on the right to strike, dealing with the conditions for the exercise of the right to strike, essential and minimum services to be upheld and the individual right to work, in the light of its latest provisions on labour legislation and policies, for example through its Committee of Experts on the Application of Conventions and Recommendations and once the political issues related to the mandate of this Committee have been resolved. State Parties to relevant ILO conventions, thus stakeholders in this process, certainly have the power to contribute to resolving ongoing internal conflicts within the ILO monitoring system.

5. Conclusions and recommendations

57. All social partners involved in the bipartite or tripartite social dialogue, trade unions, employers’ federations and State authorities should fully respect social dialogue as an indispensable part of the European Social Model. Jointly and individually, they should also not forget about rebuilding the trust of workers at all levels in their respective institutions and mutual recognition and trust between them. To function properly, such a dialogue must be based on a respect for the agreed rules and regulations by all stakeholders and must not involve force or coercion but respect for a dynamic dialogue. Likewise, rules and regulations in industrial relations should not be forced upon the partners involved but evolve from an agreement if possible, and be allowed to change on democratic grounds, wherever appropriate. In this context, trade unions must also have open access to international trade negotiations to make their voices heard and be able to exert influence on the protection of and progress in matters of labour rights and welfare in society.

45. Papadakis and Ghellab (eds.), *The governance of policy reforms in southern Europe and Ireland*, ILO, 2014.

58. At the same time, trade unions must be aware and critical of their own role, which may sometimes be contradictory. Trade unions are expected to be the guardians of a non-profit welfare system based on 20th century traditions and social *acquis*. If they are not consistent and convincing in their traditional role as defenders of social welfare systems they will eventually undermine and lose grassroots support and thus put their position in society at risk.

59. Based on strong labour market institutions, mutual recognition and trust, all partners of the social dialogue should contribute to modern labour market policies in a constructive manner, considering their joint interest in maintaining and building performing and inclusive economic systems. Wherever appropriate, and both at the European and the national level, they should join forces to address the challenges of modern economies and societies, including economic stability and growth, structural changes relevant for the economy, such as technological and demographic changes, patterns of wealth and income distribution and social cohesion.

60. State authorities are not only stakeholders in a tripartite social dialogue; they also set the legal framework and initiate relevant political action for labour market institutions and policies. In times of economic hardship and notably the most recent economic crisis, their power to legislate in this area has sometimes been applied in an excessive manner, unduly limiting the rights to bargain collectively and to strike, which has certainly had negative effects on social dialogue overall in many countries.

61. Through upcoming legislative and political action, and as specified in a more detailed and structured manner in the draft resolution above, member States should, through both governmental and parliamentary action:

- send out positive signals underlining the importance of social dialogue;
- uphold or strengthen conformity with European and international standards;
- support the development of modern labour market institutions and policies;
- refrain from unwarranted restrictions of fundamental collective rights in this field, including the right to strike.

Furthermore, they should promote the exchange of good practice and contribute to improving levels of trust between social partners.