

## COLLECTIVE NEGOTIATIONS IN THE EUROPEAN UNION

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by Jadranka DENKOVA; Suzana DZAMTOSKA - ZDRAVKOVSKA; Andon MAJHOSEV

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**Andon MAJHOSEV**  
**Suzana DZAMTOSKA - ZDRAVKOVSKA**  
**Jadranka DENKOVA**

## **COLLECTIVE NEGOTIATIONS IN THE EUROPEAN UNION**

### **1. Introduction**

The collective negotiations at the EU level appeared in the mid 90s of the last (XX) century. The establishment of the European Collective Agreements was preceded with adoption of multiple rules included in the founding treaties (primary sources), for example, Article 8 and Article 117 under the *Treaty establishing the European Community* (Treaty of Rome) from 1957. The Single European Act, from 1986, for the first time in article 118B explicitly provides the European Social Dialogue to be performed in a form of *collective negotiations* which lead to conclusion of *European collective work agreements*. The previously adopted agreement between the Employers' Associations of the EU (UNICE and CEEP) and the Trade Unions at European level (ETUC), according to which the Social Dialogue at European level aims at functioning of the collective negotiations and conclusion of sector based and inter-sector col-

The authors are PhDs and associate professors at the Faculty of Law, University "Goce Delchev", Shtip.

lective agreements. The next step in the development of the European collective negotiations is the *Social Policy Agreement* from 1992, i.e. Maastricht Treaty, which finally provides for conclusion of European collective work agreement.<sup>1</sup> Such favorable conditions created a legal opportunity for conclusion of European company, sector based, inter-sector and inter-regional collective work agreements between European social partners<sup>2</sup> (Employers' Organizations at European level - UNICE, CEEP, UEAPME and Trade Unions at European level - ETUC and CESI and their sector unions – the European Federation of Agricultural Workers - EFA and the European Confederation of Executives and Managerial Staff - CEC<sup>3</sup>). Three European collective work agreements were concluded by 2000: European Framework collective agreement on parental leave in 1995 (implemented by Directive 96/34), European Framework collective agreement on part-time work in 1996 (implemented by Directive 97/81) and Framework collective agreement on fixed-term work in 1997 (implemented by Directive 1999/70),<sup>4</sup> etc. The number of concluded Framework collective agreements increased from 3 to 11 by 2006, with an increasing tendency.<sup>5</sup>

In order to begin the process of collective negotiations at the EU level, the social partners (ETUC, BUSINESSSEUROPA, UAEPME, CEEP) are obliged to inform the European Commission about their intention to begin the collective negotiations process, and within nine months period (which can be extended) of negotiations to reach a framework agreement, whose implementation can be provided in two possible manners: by concluding collective agreements within each state, and by decision of the Council of Ministers. Thus, UNICE, CEEP and ETUC at the end of 1995 concluded a Framework agreement on parental leave, submitted to the European Commission, which proposed the Council of Ministers to adopt appropriate binding instrument (Directive). Moreover, the European Commission, on the basis of Article 3 and Article 4 under the *Social Policy Agreement* has the right and obligation to promote social dialogue between the social

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1 B. Lubarda, European employment law [*Европско радно право*], ЦИД, Подгорица, 2004, p. 325.

2 Dragan M. Mitovich, Autonomous law [*Аутономно право*], Правен факултет, Београд, 2009, p. 133.

3 Ibid. B. Lubarda, p.305-333

4 B. Lubarda, Collective agreements on employment [*Колективни уговори о раду*], p. 129.

5 Европски социјални модел – Социјални дијалог (Internet: [www.fpn.co.me/files/1270118999.pdf](http://www.fpn.co.me/files/1270118999.pdf)/ accessed on 19.07.2010).

partners at European level, and to consult them on every social policy activity. In order successfully to implement collective negotiations, the Commission may undertake independent actions before expiration of the nine months period, for example, additional consultation of the Commission, assessment of the social partners' representativeness and others. A very important feature of European collective agreements is that they provide social peace and consensus between labor and capital, as well as harmonization of the concept of unity and the concept of preserving diversity in the common social policy area.

## 2. Collective Negotiations Bodies in the EU

**A. European Commission:** the European Commission is collegial executive body of the EU and has the characteristics of parliamentary and responsible government<sup>6</sup>. The duration of the mandate is identical with the mandate of the European Parliament Members and lasts 5 years. The Commission is composed of one member from each Member State, including its President and Foreign Affairs Minister. The summit in Brussels in June 2007 decided that the Commission is to be composed of 17 members, and after 2014, the number of Commission members shall be equal to two-thirds of the Member States number, according to strictly defined order of rotation.<sup>7</sup> The Commission has a president and a vice president. It has broad authority and powers: it has authority to propose concrete measures, the adoption of which is within competence of the European Parliament and the EU Council. It provides for agreement and provision implementation (monitors agreements) adopted by the EU bodies, manages the EU funds and budget, provides recommendations and opinions in the area of economic and monetary policy, prepares and executes decisions,<sup>8</sup> etc. Hence, we conclude that the European Commission is collective executive body with the role of European government.

What is the Commission's role in collective negotiations? It is a driving force of the social dialogue and collective negotiations in the EU. With the introduction of Article 118B in the Single European Act, the Commission was competent to provide for the development of the social dialogue

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6 S. Shkarich, Constitutional Law [Уставно право], Култура, 2008, Скопје, p. 572.

7 Ibid. p. 572-573

8 W. Weidenfeld and W. Wessels, *Europe from A to Z*, Konrad Adenauer Foundation, Sector for European Integration, Скопје [Европа од А-Ш Фондација Конрад Аденауер, Сектор за европска интеграција, Скопје], 2003, p.121-126.

among the social partners at European level, which can lead to conclusion of European collective agreements<sup>9</sup>. Apart from the classical method of creating the communitarian social law with Directives, it opens possibility of creating an autonomous communitarian social law, which requires fulfillment of certain assumptions. If the social partners want to conclude European collective agreement, they are obliged to inform the Commission and within nine months period to conclude a framework agreement (contract) the application of which can be in two manners: first, by concluding collective agreement within each state, and second, by the Council of Ministers decision, when the matter of regulation is within competence of the communitarian authorities. The European Commission in 1998 issued a statement: "Acceptance and development of social dialogue at communitarian level" (COM (98) 322 20/5/98), stating the most important actions for the development of collective negotiations at communitarian level.<sup>10</sup> Within the European Commission 36 sectoral Social Dialogues Commissions at EU level were formed by 2008.<sup>11</sup>

**B. European Economic and Social Committee:** the EESC was formed in 1958 with task to articulate common interests of the economy and the social civil society.<sup>12</sup> This body has a supranational character and is comprised of three different interest groups from various EU Member States from: employers' associations, trade unions and other interest associations such as consumers, trade chambers, farmers' associations and others. It can be noticed from the structure that the governments of the EU Member States are not represented in this tripartite body. It does not participate directly in collective negotiations in the EU, but as an advisory-consultative body aims to advise EU bodies on issues of economic and social nature. In addition, the Committee has jurisdiction, in one part mandatory, in another part optional right to provide the Parliament with an opinion on certain

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9 В. Lubarda, "Радноправни положај у праву Европске уније", Право Европске уније - Физичка и правна лица у ЕУ, редактор, Д. Митровић, Удружење за право ЕУ и Центар за међународне студија, Београд, 1998, р. 111-112.

10 More in European Trade Union Information Bulletin, Issue 2/98, р. 8.

11 Industrial Relations in Europe 2008, European Commission, Brussels, 2008, р. 120, Тибор Сарваш, Грански социјални дијалог у ЕУ и у Маџарској, Министарство иностраних послова Републике Маџарске и Унапређење комуналних услуга Србије-УКУС, Пројекат, "Развој међународне сарадње" р. 10.

12 Ingo Linsenmann Europe from A to Z, Guidebook for European Integration, Konrad Adenauer Foundation and Sector for European Integration, Скопје [Европа од А-Ш, Прирачник за европска интеграција, Фондација Конрад Аденауер и Сектор за европска интеграција, Скопје], 2003, стр. 189.

Directives, Recommendations, EU policies, especially on the labor movement, industrial, technological and employment policy, as well as on the social dialogue, where the collective negotiations have a very important role in the working conditions regulation.

**C. Trade Unions:** As a single entity on the side of employees is the European Trade Union Confederation (ETUC). This union represents more than 90% of all organized employees in the EU. ETUC today has over 62 million members organized in 82 national federations from 36 European countries. In this union, apart from, national trade union federations from 27 countries - EU members, there are members of national trade union federations from other countries, which are not EU members, such as Andorra, Croatia, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and Turkey.<sup>13</sup> The national trade union federations of Bosnia and Herzegovina, Macedonia and Serbia have status of associate members. The European Trade Union Confederation (ETUC) participates in the EU tripartite consultative bodies and is a signatory to several European industrial and sectoral collective agreements.

**D. Employers' Organizations:** In the EU, the main Employers' Organization is BUSINESSEUROPE (previously UNICE - *Union of Business and Employers Confederations of Europe*), which represents the interests of employers in the private sector. The membership includes 36 Employers' Organizations from 31 countries, representing approximately 20 million companies in Europe, including countries, which are not EU members: Croatia, Montenegro, Iceland, Norway and San Marino (but there are no members from Slovenia and Slovakia which are EU members). BUSINESSEUROPE does not have sectoral Employers' Organizations.

Two other smaller European Confederations represent the small and medium-sized enterprises (UEAPME) and public and general interest enterprises (CEEP). All of them are included in the tripartite EU consultative bodies and have signed European cross-industrial agreements.

### 3. Legal Framework of Collective Negotiations in the EU

The most important international-legal instrument related to the collective negotiations and the social dialogue in the European Union is the European Social Charter.

**The European Social Charter** of the Council of Europe was signed in Torino on June 18, 1961 and entered into force on February 26, 1965. The

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13 Industrial Relations in Europe, European Commission, Brussels, 2008, p. 35.

Charter addresses the bipartite consultations and the social dialogue where the signatories of the same oblige:

1. To promote joint consultations between employees and employers;<sup>14</sup>
2. To promote, upon request and necessity, the mechanism of free negotiations between employers, on the one side, and the employees' organizations, on the other side, in order to establish the working conditions via *collective agreements*.<sup>15</sup>

**The Treaty on European Union**<sup>16</sup> in Chapter XI, entitled "*Social policy, education, vocational training and youth*" in separate Title I contains provisions on social issues that include the social dialogue, i.e. the collective negotiations. Under the Treaty, EU Member States should create legal and material conditions for development and promotion of social dialogue in the actual state via developing democratic mechanisms and instruments of internal communication of the social dialogue subjects.

In order to exercise the social rights, envisaged in the *European Social Charter* and the *Community Charter of the Fundamental Social Rights of Workers*, from 1989, the Member States Community aims to "encourage employment, improve living and working conditions, provide proper social protection, provide dialogue between social partners - employers and employees, develop human resources in order to achieve high and stable employment rate and fight against social marginalization".<sup>17</sup> In this context, "the EU Commission shall promote consultations of the social partners at Community level and shall undertake all measures to facilitate such dialogue via balanced support of the partners".<sup>18</sup> Thus "the social partners' dialogue at Community level may lead ... to establishment of contractual relations, including agreements"(Article 139, paragraph 1). Agreements concluded at Community level may be applied in a manner or procedure specific for social partners and for Member States (Article 139, paragraph 2 of the EU Treaty).

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14 See Article 6, paragraph 1, point 1 from the European Social Charter

15 Ibid. Article 6, paragraph 1, point 2

16 The solemn signing of the Treaty on EU was in the Netherlands city of Maastricht on 7.02.1992. According to the article "R" from the Treaty on EU, upon Member States ratification, in accordance with their constitutional procedure ... it shall come into force on January 1st, 1993. Due to the ratification problems, the Treaty on EU entered into force ten months later after the term set in article "R", i.e. on 1.11.1993.

17 See more in Article 136, paragraph 1 from the Treaty on EU

18 Ibid. Article 138, paragraph

In order to achieve the objectives of the Community and the Member States under Article 136, the EU Commission encourages cooperation between the Member States and facilitates the coordination of their activities in all areas of social policy, particularly in relation to: employment, employment law and labor conditions, vocational training; social insurance; preventing accidents at work and occupational diseases; professional protection at work; *the right to association and collective negotiations between employer and employees*<sup>19</sup>.

Prior to giving opinions provided in this Article, the Commission shall consult the Economic and Social Committee. In the context of wider legal framework of collective negotiations, and also in the context also of the social dialogue, the **Directive 2002/14/EC** of the European Parliament and the Council of the European Union from 11.03.2002 cannot be avoided, which actually establishes a general framework for basic procedures for exercising the right of workers and their legitimate representatives of *consulting and informing in the enterprises* on issues of economic, financial, organizational nature in the enterprise. The main aim of this Directive is to promote the *social dialogue* between the management and the trade union (social partners) and to promote mutual trust in the enterprises in order better to predict risk, to organize work in a more flexible manner and to facilitate access to training for employees in the enterprise, paying close attention to work safety, the need to inform employees about the necessity of adapting, improvement of opportunities for taking measures for greater competitiveness, to promote the involvement of employees in the work process and future of the enterprise and increase competitiveness. This Directive is addressed to organizations and enterprises that employ at least 50, i.e. 20 employees.

The **Community Charter of the Fundamental Social Rights of Workers**<sup>20</sup> from 1989 dedicated an entire chapter entitled “*Freedom of association and collective negotiations*”, which covers the right of employers and employees in the European Community to associate in order to create-form professional organizations and trade unions upon their choice to defend their economic and social interests.<sup>21</sup>

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19 See Article 140 under the Treaty on EU

20 The European Union Charter was adopted in 1989 by the European Council in Strasbourg. Its adoption is an expression of the understanding that the social dimension of the European Community has equal significance as well as the economic dimension in the EU building, and also that the social consensus is an important factor for the development of the Union.

21 Article 11 under the Community Charter of the Fundamental Social Rights of Workers



Employers' organizations, on the one hand, and employees' organizations on the other hand, *have the right to negotiation and conclusion of Collective Agreements under conditions determined by the national law and practice*. In case of a dispute between the parties, the Charter provides for opportunity to organize collective action, including the right to strike in accordance with the national laws and collective agreements.<sup>22</sup> In order to facilitate resolution of disputes (conflicts) in the production, the adoption of appropriate procedures for negotiation, mediation and arbitration in accordance with national practice should be promoted.<sup>23</sup>

**The Charter of Fundamental Rights of the EU** was adopted at the meeting of the Council of Europe on 13<sup>th</sup> and 14<sup>th</sup> October 2000 in Biarritz, and was proclaimed in Nice in 2000. The text of the Charter begins with the preamble, while the articles are divided into 7 chapters whose titles correspond to the fundamental values of the EU, which are: dignity, freedoms, equality, solidarity, citizenship, justice, and ends with a technical section containing the general clauses. The articles are short in order to facilitate easier perception for the citizens. In Chapter IV of the Charter entitled "Solidarity", in particular Article 28 regulates that "*Employees and employers, or their respective organizations, in accordance with the Community law (EU) and the national laws and practices, have the right to negotiate and conclude collective agreements at appropriate levels and in cases of conflict of interest, to undertake collective action to defend their interests, including strikes*".<sup>24</sup>

**What can we conclude?** The most relevant international organizations and institutions in the world (UN, ILO, and EU) dedicate respectable attention to the right of collective negotiations that can be noticed from the adoption of several Conventions, Charters, Declarations, Recommendations, and Directives, discussed earlier in the text. The above mentioned international-legal instruments represent a broader legal framework and oblige the Member States to implement them in the national legislations as a basis for functioning of various forms of social dialogue, consultations, where the collective negotiations have an important role. The constant upgrading of the legal instruments and mechanisms, as well as monitoring their implementation further emphasizes their importance.

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22 Ibid. Article 13, paragraph 1

23 Ibid. Article 13, paragraph 2

24 Article 28 under the Charter of Fundamental Rights of the EU

#### 4. Employee Coverage with Collective Agreements in the EU

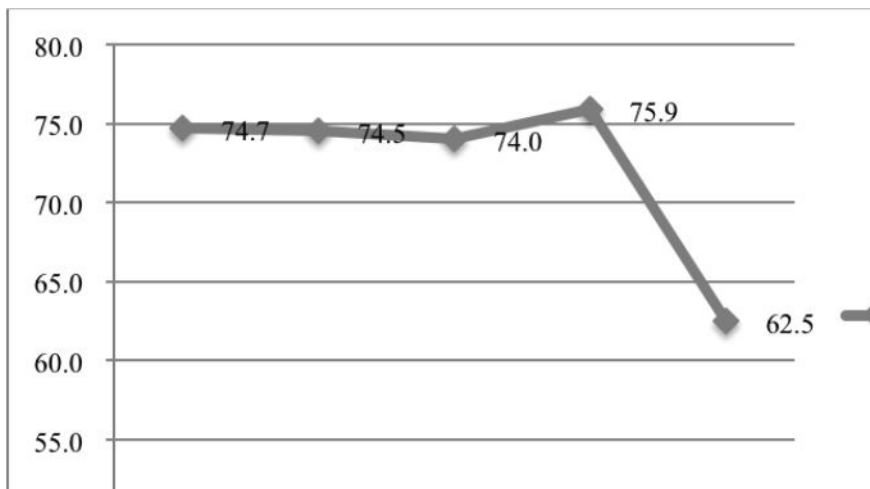
If we make a comparative analysis of the employee coverage with collective agreements rate in the EU with the enlargement process we shall undoubtedly notice obvious difference. The course of the average employee coverage with collective agreements rate with the enlargement of the EU is presented in the following table:

**Table 1. Level of employee coverage with collective agreements in the EU**

	EU-6 (1960-71)	EU-9 (1972-84)	EU-12 (1985-94)	EU-15 (1995-03)	EU-27 (2004-06)
% of coverage	74,7%	74,5%	74,0%	75,9%	62,5%

*Source: ICTWSS database.<sup>25</sup>*

**Figure 1. Trend of average employee coverage with collective agreements with the enlargement of the EU with new Member States**



The average employee coverage with collective agreements in EU-6 was about 75%, in EU-12 it was 74.5%, in EU-15 it was 75.9%. With the enlargement process of the EU with 10 new Member States, which mostly came from the post communist countries, where the average employee

<sup>25</sup> Taken from Industrial Relations in Europe 2008, EC, Brussels, p. 22

coverage with collective agreements rate is under 50%, the average employee coverage with collective agreements rate in the EU-27 is 62.5 %<sup>26</sup>. The decline in the coverage with collective agreements rate is a result of the EU enlargement with new Member States where the employee coverage with collective agreements rate is significantly lower (<50%).

According to the survey results of the *Labor Market Working Group of European Commission*, the countries with medium level of collective negotiations are characterized by higher employee coverage with collective agreements rate (European Commission, 2007a). In the countries with a coverage rate of negotiations above 70%, the sectoral collective negotiations are dominant, while in the countries prevailing with collective negotiations on employer (enterprise) level the employee coverage with collective agreements rate is 40% or lower.<sup>27</sup>

### Conclusion

The European Union for a relatively short period built a solid legal and institutional framework for functioning and development of collective negotiations, compatible with the ILO and the UN acts.

The average employee coverage with collective agreements in the European Union (EU-6, EU-9, EU-12, and EU-15) was around 75%, while upon the admission of 10 new Member States the average decrease to 62.5%.

The European Union is dominated by the sectoral model of collective negotiations.

Republic of Macedonia, at present, successfully implements and harmonizes the labor legislation referring to collective negotiations and bipartite social dialogue with minor difficulties.

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26 Industrial Relations in Europe 2008, European Commission, Brussels, 2008, p. 78.

27 Ibid. p.78

**Abstract**

This paper explores the issue of collective negotiations in the European Union. It covers the issues of collective negotiations, the most important legal instruments for collective negotiations, and the extent of employee coverage with collective agreements in the European Union according to the number of Member States.

**Резиме**

Трудот ја обработува проблематиката на колективното преговарање во Европската Унија. Во него се обработени субјектите на колективното преговарање, најважните правни инструменти кои се важни за колективното преговарање, како и степенот на покриеноста на вработените со колективни договори во Европската Унија зависно од бројот на државите-членки.

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