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ANNEX II

TIME FOR

ACTION!

**HOW POLICY CAN STRENGTHEN (MULTI-EMPLOYER)
COLLECTIVE BARGAINING IN EUROPE**

Stan De Spiegelare

The main text of this report is based on country contributions from experts from twenty countries in Europe. This annex gives provides the full country contributions. Please note that these contributions are not language-checked.

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SWEDEN

ANDERS KJELLBERG

The policy initiatives are presented into 13 partly overlapping groups:

(1) Increase the negotiation strength of individuals and unions.

- *Fight unemployment.* Decreased unemployment would make the individual worker less dependent upon the employer and by that also less exposed to unfair working conditions and precarity. When unemployment is high, the workers may hesitate to support union actions to force the company to sign a collective agreement, particularly if they also in other respects are in a vulnerable position. Conversely, it is easier for unions to persuade or force companies to sign collective agreements when unemployment is low.
- For the same reason it is important to *reduce the number of unsecure jobs*, particularly such as employment per hour and day labourers, and facilitate the creation of permanent jobs. With an economic policy and a labour market policy that reduce unemployment, the frequency of fix-termed jobs in general tend to decline as it will be more difficult for companies to recruit workers by offering this type of jobs.
- Change the *legislation on employment protection*, particularly with respect to the most insecure jobs. The recent revision of the Law on Employment Protection (Las) weakened Swedish employment protection in many respects. This was a union concession in exchange for radically increased prospects to transition education in the new 2022 basic agreement.
- Improve *education and training* possibilities. From a union perspective the most important part of the 2022 basic agreement is the new transition study support (*omställningsstudiestöd*) to strengthen the position of the individual worker on the labour market, increase the prospects for changing occupation and decrease the risk of unemployment. As the transition study support mainly is financed by the state, the new basic agreement is part of a larger tripartite deal. It is urgent that the Swedish state honours this deal by providing the Board of Student Finance with sufficient economic resources to handle the large number of applications for study support.
- Facilitate for bogus *self-employed (falska egenföretagare)* to become regular employees by revised legislation and a new EU-directive. Many posted workers in construction are not formally employed. The growing 'grey area' of bogus self-employed workers dependent upon a single employer is closely related to 'the frequent use of long subcontracting chains in which self-employed migrant workers are often to be found at the end-point of these supply chains' (Thörnquist 2015: 419). Bogus self-employment is

frequent also among platform workers and in road haulage companies with foreign drivers. In 2009 the centre-right government changed the F-tax rules so it became possible for self-employed to have just one contractor.³³ Another group of workers not covered by collective agreements is self-employed persons who pay A-tax and are linked to a self-employment company which bill the contractor for which the self-employed is obliged to pay a fee. - Encourage a high density of unions and employers' associations "to promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level" (Article 4:1a in the Directive on adequate minimum wages in the European Union), for example by introducing tax reduction for union membership contributions.

(2) Change the legislation to *reduce the vulnerability of labour migrants and asylum seekers.*

- Revise the law to make the labour migrant less dependent upon the employer.³⁴
- Introduce significantly improved information to the labour migrants about their rights.
- Abolish the possibility to change track from asylum seeker to labour migrant.³⁵

(3) Fight working life criminality.

- The economists Petter Hällberg and Christian Kjellström at the National Mediation Office have shown that collective agreements have a strong normative influence on wages for the 500,000 or so employees without such agreements: "In practice, the minimum wages settled in collective agreements seem to affect wage levels for all employees, even where employers lack collective agreements" (Hällberg & Kjellström 2020).

33 The Swedish Tax Agency: "As a rule, entrepreneurs who run business as sole traders are approved for F-tax. An approval for F-tax is based on the fact that the sole trader himself or herself is responsible for paying taxes and social contributions on compensation for any work carried out." <https://skatteverket.se/servicelankar/otherlanguages/inenglishengelska/businessesandemployers/startingandrunningaswedishbusiness/registeringabusiness/approvalforftax.4.676f4884175c97df4192308.html>

34 The introduction of employer-driven labour immigration from third countries in December 2008 resulted in large inflows of migrants in low-skilled occupations in labour surplus sectors. The Migration Agency is not allowed to reject work permit applications only because there is no collective agreement in place. Approval for the permit requires only that the offered wage is not lower than the minimum level stipulated in the agreement, and that the employer provides the employee with sickness, injury, life, and occupational pension insurances. During the first two years of a work permit, the labour migrant is bound to a specific employer and occupation. If the migrant loses the job, expulsion from Sweden will follow unless a new job in the same occupation is found within a few months and a new work permit is granted. After four years, the labour migrant normally receives a permanent residence permit. In the meantime, the migrant may be prepared to accept worse working conditions than promised in the work offer, which until June 2022 was not legally binding (Frödin & Kjellberg 2018). The risk of being exploited could be expected to be greatest in companies without collective agreements. In such situations, unions have virtually no ability to control working conditions. The Migration Agency do some financial controls of the employer before conceding or prolonging work permits but never visits workplaces to investigate the real working and employment conditions. By its very construction, the legislation puts unskilled labour migrants in surplus occupations into a vulnerable position. Therefore, the absence of a collective agreement could be expected to make this category of workers more exposed to abuse than other foreign-born workers. Consequently, there is an urgent need of revised legislation.

35 The vulnerability of labour migrants is reinforced when combined with a high demand for work permits from former asylum seekers, as these persons might be prepared to accept bad working conditions to get a chance to remain in or return to Sweden. Individuals whose asylum applications have been rejected can change tracks and become labour migrants and thus remain in the country. Sweden is one of the few countries where asylum seekers have the right to work pending the asylum decision. A possible legislative measure is to stop changing track from asylum seekers to labour migrant.

- As there in some industries are relatively many companies bound by collective agreements that not fully, or at all, comply with them, a contradictory picture emerges with on one hand companies without collective agreements that follow them, and on the hand companies with collective agreements not complying with them. One should then observe that a collective agreement contains much more than the wage, for example occupational pensions and other insurances).
- According to the Law on Co-determination (MBL) trade unions only have the right to represent their own members. Among the LO unions it, however, exists collectively agreed negotiation arrangements that go further than MBL and give the unions negotiation rights if they suspect that the collective agreement is not applied on non-members (SOU 2005:89, p. 166). Furthermore, the legislation on posted workers today provides the unions access to employment contracts, wage specifications, time reports and certificates of payouts (Sjödén & Wadensjö 2020: 79).
- Above all in construction and particularly among posted workers collective agreements are far from always followed in practice. It is of course easiest for trade unions to monitor the compliance with collective agreements where there exists a union workplace organization or at least union members. Due to limited economic and human resources this is more problematic in industries with a low union density such as the hotel and restaurant sector. A low rate of unionization usually correlates with many small workplaces without union representation, high labour turnover and a high share of fixed-term jobs. In order to fight working life criminality and increase the coverage of collective agreements the following measures are proposed (a list of 69 such measures are presented in Kjellberg 2023g):
- *Intensify cooperation between state agencies to fight working-life criminality.* A change in privacy legislation is required to facilitate exchange of information between public authorities. Seven regional centres to fight working life criminality are planned, of which three have opened.
- *Increase resources to the cooperating state agencies:* Swedish Work Environment Authority (increased number of labour inspectors), Public Employment Service, Social Insurance Agency, Tax Agency, Migration Agency, Gender Equality Agency, Police (not the least the traffic police), Economic Crime Authority and Prosecution Authority.
- *Adjust the legislation to the gig economy.* At present it is not adjusted to the gig economy and the platform companies' frequent use of bogus self-employed and workers in the most insecure employment forms. The law on public procurement is far from optimal to keep away the irresponsible companies. The regulations of subsidised jobs need to be amended to prevent payments to rogue companies.³⁶ The F-tax system should be reformed to solve the problem of bogus self-employed. The Regulatory framework for labour migration is insufficient to prevent the migrants from ending up in a vulnerable position with a risk of exploitation.³⁷

(4) Stop privatisations and transfer tax-financed services like elderly care, home care, personals assistants and schools to the public sector.

The radical and fast privatisation of schools and care in Sweden has created a large tax-financed part of the private service sector. Union density and the coverage of collective agreements is also lower in the private schools and care companies than in the public sector where the collective agreement coverage is 100 per cent.

36 *Nationell strategi mot arbetslivskriminalitet* (Regeringskansliet 2022), pp. 15, 19-20.

37 Fastighetsfolket 2023-01-30.

(5) Fewer *public* procurements and revised EU directive on procurements, making it possible to demand collective agreements among contractors.

According to the law on *public procurement* (LOU) it is, as a rule, mandatory for contracting authorities to demand that wage, holidays and working hours (but not insurances) are the same as in the collective agreement if there is a risk of unfair working conditions when the contract is to be performed. They have, however, no right to demand the company to sign a collective agreement, but only require the minimum levels stipulated in the collective agreement if the procurement exceeds a certain threshold value. This is possible also for procurements below this level. The risk for unfair working conditions and unfair competition is relatively large in the construction and cleaning industries. It is particularly high in occupations with low training and qualification requirements and where there is often a foreign labour force, where collective agreements have a low coverage rate and where there are long subcontracting chains. Anyhow, the companies offering the lowest price very often win the contracts also in industries with high risk of unfair working conditions and unfair competition. The Maintenance Workers' Union argues that the LOU law will not be effective until the EU directive on public procurement is revised.³⁸ The need of procurements would of course diminish if public authorities would perform the services themselves (cf. point 4 above)

(6) Expand the area of *semi-dispositive* legislation, making it possible to find more flexible and advantageous solutions by collective agreements.

- In case of redundancies the *Law on Employment Protection (Las)* allows the local parties (employers and workplace unions) to negotiate a *redundancy* list deviating from the law.

- Another example is the introduction of short-term work during the pandemic year 2020.³⁹

- *The Working Hours Act* is a third example illustrating the advantages of the Swedish model of collective agreements. It allows the labour market parties to find solutions deviating from the law.

(7) Introduce establishment jobs (collective agreements obligatory).

Public agencies are involved in three types of jobs where collective agreements not are obligatory, but the terms of employment more or less should be in accordance with such agreements: (1) jobs aimed at third country labour migrants applying for work permits issued by the Migration Agency (*Migrationsverket*), (2) 'new start jobs' for recently arrived migrants or long-term unemployed conceded by the Public Employment Service (*Arbetsförmedlingen*), and (3) public procurements in industries where there exists a risk of unfair working conditions have to follow legislation (LOU) under supervision of the National Agency for Public Procurement (*Upphandlingsmyndigheten*).

38 Europaportalen 14 September 2022: Debatt: Låt kollektivavtal bli möjlighet vid offentlig upphandling i EU (europaportalen.se)

39 In the beginning, the state financed three fourth of the labour costs (from 1 January 2021 one third) for employees with reduced working hours but keeping 90 per cent of the wage. The unions and employers' associations very soon concluded collective agreements on short-term work covering most of the labour market. At the end of 2020 the state had conceded short-term support for almost 590,000 employees, but the use of the support declined rapidly when the general economic conditions improved in the autumn 2020. To get short-time support a company must have a contract with the employees about short-time work, which states how much the working hours and the wage are reduced. As this is much easier if there is a collective agreement more companies than usual joined employers' associations during the pandemic. In companies without collective agreements, it was required that at least 70 per cent of the employees accepted the proposal on short-term work. Furthermore, the reduction of working hours and wage had to be the same for all with short-term work. By concluding local collective agreements about short-term work, the scheme could be used with greater flexibility and better adjustment to the industry and to local circumstances than in companies without collective agreements which must adhere to the letter of the law. With a collective agreement, for example the degree of short-term work may vary between different groups of employees.

In contrast, collective agreements will be obligatory in a new form of state-subsidized jobs, *establishment jobs* (*etableringsjobb*), which like the new start jobs are aimed at recently arrived migrants or long-term unemployed.⁴⁰

After getting a green light from the EU Commission in May 2022, the final agreement on establishment jobs was signed by LO, Unionen and SN in December the same year and is in force since 1 January 2023. The agreement includes a board aimed at preventing the establishment jobs from being used solely to bring down wage costs without offering learning. The parties shall jointly prevent abuse of this new form of subsidised employment. Furthermore, it is required that the union first gives the go-ahead for establishment jobs at workplaces where they are introduced. For the unions, it is also important that the participants will be trained on working hours and that the wage and state compensation (paid directly to the worker) together provide a contractual minimum wage.

The introduction of establishment jobs could be expected to reduce the widespread abuse of subsidized employment in the form of unfair working conditions and unfair competition, at least if the other types of subsidized jobs become less frequent. This would be conducive for increased coverage of collective agreements in for example the cleaning and restaurant industries, particularly as no establishment jobs without collective agreements will be allowed.

(8) Intensify information about the Swedish model of collective agreements.

By schools (in history and social studies) for young people, by the National Mediation Office, the Public Employment Service and the Migration Agency for newly arrived immigrants and others. In addition, measures to facilitate the access of trade union representatives to workplaces to reach out to and inform the workers may be required to increase the coverage of collective agreements (cf. SOU 2023:36, p. 61). Cf article 4:1 on promotion of collective bargaining on wage-setting and point 24 in the Preamble to the Minimum Wage Directive, according to which “measures promoting collective bargaining on wage-setting (...) might include, among others, measures easing the access of trade union representatives to workers.”

(9) Increase the financial support to education and training of trade union and safety representatives.

The government subsidies to working environment education and other union education have since long successively been cut (Kjellberg 2021: 44-45). To monitor the compliance with collective agreements the presence of well-educated union workplace representatives is decisive.

(10) Give union regional safety representatives access to workplaces with collective agreements but without union members.

Few workers posted to Sweden are union members. Several hundred foreign construction companies employing posted workers have collective agreements, but no union members or union representatives. Consequently, it is hard for the Building Workers' Union to check whether the agreements are being applied. According to law, the regional safety representatives appointed by the unions have no access to workplaces without union members, even if there is a collective agreement. There is plenty of evidence suggesting a

40 That collective agreements are required is not surprising given that this kind of jobs has its origin in a 2017 agreement between LO, the white-collar union Unionen (Sweden's largest union, affiliated to the white-collar confederation TCO) and SN (the Confederation of Swedish Enterprise). After deliberations with the government, a joint statement of intent about the introduction of establishment jobs was signed in March 2018. Due to the 2019 January Agreement between the social democratic-led government and two neoliberal parties it was decided that also companies without collective agreements should be included. After one of the neoliberal parties resigned from the January Agreement it ceased and establishment jobs will again include only companies with collective agreements.

high prevalence of poor working conditions at many sites with posted workers. After issuing a strike notice in 2020 the Building Workers' Union managed to obtain access right. The Confederation of Swedish Enterprise (*Svenskt Näringsliv*, SN), however, would like to abolish regional safety representatives and replace them with local non-union safety representatives, assisted by officials from the Swedish Work Environment Authority (*Arbetsmiljöverket*). Obviously, the employers wish to exclude regional union safety representatives, who, with some authority, can demand improvements in the working environment in companies without local union safety representatives. Non-union safety representatives at such workplaces would hardly be able to represent the workers effectively in relation to the employer, particularly because workers are often afraid of being dismissed if they contact a union. This is a problem for Swedish unions trying to organize posted workers in construction. If the workers don't even dare to contact union representatives, they will hardly contact safety representatives that are not independent of the company.

(11) Introduce a mechanism that extend collective agreements to whole industries (not recommended).⁴¹

Introducing such an extension mechanism would mean a departure from the Swedish labour market model, which is dominated by self-regulation on the part of the labour market parties themselves. It would probably also have a negative effect on the willingness to join unions as the terms of employment would be in accordance with the collective agreement, at least on paper. If so, the result would be fewer union workplace organizations, reduced bargaining strength and increasing difficulties monitoring compliance with collective agreements, not to speak with respect to all the workplaces that now would be covered by agreements.

(12) Appoint a new public inquiry on the compliance with collective agreements similar to the one presented in 2005 (SOU 2005:89), *Bevakning av kollektivavtals efterlevnad*.

At that time, the scope of posted workers and the problems with unfair competition and working life criminality were much smaller than today.

(13) Assess the impact of new reforms with respect to the coverage and compliance of collective agreements.

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41 In Norway extension of collective agreements is used since 2004 in sectors where foreign workers are subject to less favourable wage and working conditions than are usual in manufacturing industry (Kjellberg & Nergaard 2022). Usually only minimum wage rates and some other provisions are generalized, meaning that the negative effect on union density is expected to be relatively small.

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TIME FOR

ACTION!

**HOW POLICY CAN STRENGTHEN (MULTI-EMPLOYER)
COLLECTIVE BARGAINING IN EUROPE**

Stan De Spiegelaere

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UNI Europa – The European Services Workers Union

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EXECUTIVE SUMMARY

The European minimum wage directive offers the European trade union movement a historic opportunity to rebuild its power by strengthening collective bargaining. All European countries will now be obliged to protect and promote collective bargaining and, where collective bargaining coverage is below 80%, EU Member States will be obliged to draw up and implement national action plans to increase coverage.

Based on reports from 20 national experts, the aim of this report is to support trade unions in Europe in their efforts to make the most of these National Action Plans by providing a detailed overview of a range of ideas on how to boost collective bargaining coverage. This report does not claim to be exhaustive or definitive, nor does it reflect the position of UNI Europa, the experts or UNI Europa affiliates. It is simply a list of ideas that might (or might not) be desirable or effective in different industrial relations contexts.

The ideas are structured around 5 main areas of intervention:

First, a lot of ideas refer to the need to **strengthen trade union bargaining capacity**. This could be done by removing existing barriers to union organisation and protecting

workers from anti-union practices. Next, union membership could be encouraged by limiting the cost of joining a union through tax exemptions or refunds, introducing Ghent-like structures, giving unions access to workers and facilities as well as resources for union representation, or providing direct capacity-building support to (sectoral) unions. Other proposals include the introduction of union-only benefits, the introduction of solidarity fees or even systems of mandatory union membership, and the general need to re-regulate the labour market to avoid precarious work.

The second section focuses on **employers**, emphasising the importance of willing and able employers for effective collective bargaining and the role of public policy in this regard. Enabling policies address the frequent lack of a mandate for employers' organisations to conduct bargaining and the challenge of fragmented bargaining in multi-employer systems due to sectoral definitions. Other, more enabling policies make some enterprise benefits (e.g. tax credits, training, access to subsidised employment) conditional on collective bargaining. More coercive policy proposals include compulsory membership of employers' organisations with bargaining mandates.

Thirdly, public policy has an important role to play in promoting **effective collective bargaining processes**. Such policies can focus on ensuring the availability of accurate and complete data, proposing information requirements for employers, and emphasising good-faith bargaining rules, with recommendations for the development of charters outlining fair bargaining practices. Strike legislation is identified as critical to successful bargaining, with calls for the reform of strike regulations. Incentive-based policies include the design of bargaining infrastructure, financial support for bargaining and support for mediation. Again, policy can make some benefits conditional on collective agreements, along with political pressure to encourage sectoral bargaining. More coercive measures include compulsory bargaining systems, compulsory mediation, arbitration and the setting of sectoral standards through government regulation in the event of bargaining failure. These policies are aimed at facilitating, incentivising and, where necessary, enforcing the collective bargaining process to ensure fair and successful outcomes.

Fourth, collective bargaining can be promoted by ensuring that **collective agreements are effective regulatory instruments**. To this end, public policy can use several strategies to enhance their importance. For example, policies could clarify the legal status and requirements for sectoral agreements, ensure a principle of favourability and establish a clear hierarchy of norms. Extension policies are identified as a very strong driver for increasing the coverage of collective agreements. Suggestions include limiting administrative and political discretion, making extensions automatic and considering qualitative criteria. Other measures include restricting the use of opt-out clauses, creating voluntary charters in regions without clear legislation on multi-employer agreements, and using public procurement to incentivise sectoral

bargaining. More binding measures include making agreements more enforceable through specialised labour courts, improving overall enforcement and using social inspection services to monitor compliance.

In the last part, the focus shifts to the importance of **culture**, as the cultural acceptance of (multi-employer) collective bargaining plays a crucial role in its prevalence. Policy-makers can influence this cultural perspective through various means, such as establishing monitoring mechanisms to track the extent and content of collective bargaining, ensuring bipartite or tripartite structures for monitoring bodies, and ensuring funding for research on social dialogue and collective bargaining. Education also contributes to shaping cultural attitudes, where social dialogue can be made more accessible through the public education system and business management courses. Public campaigns on the benefits of collective bargaining, involving non-traditional actors such as NGOs, journalists and activists, can also promote a positive culture around good working conditions and collective bargaining rights.

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