

RESEARCH

REPORTS

RECOMMENDATIONS

JENS ARNHOLTZ

A NORDIC PERSPECTIVE ON THE EUROPEANISATION OF INDUSTRIAL RELATIONS

AN EXPERT RESPONSE TO CEE TRADE UNION STRATEGIES

**INSTITUTE OF
PUBLIC AFFAIRS**

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Social Policy Programme

This report is one of a series of Western expert commentaries on research findings about the visions of the Europeanisation of industrial relations which trade unions from Central and Eastern Europe have, particularly in regard to building common EU-level standards. The research was carried out in Bulgaria, Lithuania, Poland, Romania, Slovakia and Slovenia, as part of the project titled ARTUS CEE ‘Articulation of the Trade Unions’ Strategies on upward convergence of social standards in the enlarged European Union – voices of CEE countries’ (VS/2019/0070), which was led by the Institute of Public Affairs (Warsaw). The other partners were the Central European Labour Studies Institute (Bratislava), the Centre for Economic Development (Sofia), the Lithuanian Social Research Centre (Vilnius), the Institute of Public Policy (Bucharest), and the Faculty of Social Sciences at the University of Ljubljana.

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Introduction

In some respects, Denmark has a very liberal labour market. There is no statutory minimum wage or extension of collective agreements to secure a wage floor for all workers. Furthermore, there is next to no employment protection legislation, which makes hiring and firing workers easy for employers, and results in rather high job turnover every year. However, at the same time, Denmark is a country with high wage levels and low income inequality. According to Eurostat, Denmark has the highest labour cost level in the EU (Eurostat, 2019), while it has the lowest Gini coefficient in the EU, according to the OECD (2017). There are many factors influencing this outcome, but there are three that seem particularly worth highlighting. First, there is a universalistic welfare system, financed by progressive taxation. This combination of a progressive tax and relatively high social benefits plays a key role in redistribution and creates a security net for vulnerable workers. The second factor is an active labour market and educational policy aimed at re-commodifying workers via continuous re-skilling. This includes everything from a dual vocational training system, which secures an easy transition into the labour market as well as skill transferability, re-skilling systems for the unemployed, and a system of further education for the employed to ensure continuous skill development. The third factor consists of the collective bargaining system and the corporatist decision-making structures surrounding the labour market. While there is only minor statutory regulation of the labour market, wages and working conditions are regulated through collective bargaining. Collective agreement negotiations take place at the sectorial level, but with close coordination between sectors to avoid dualisation (Andersen et al., 2014). High trade union density (62%) and high employers' collective agreement coverage (around 82%) underpin the collective bargaining system. While employers and workers have divergent interests, the system is based on mutual respect and the recognition that joint, pragmatic regulation of employment relations is preferable to conflict. At the same time, it is acknowledged that the system requires a balancing act, which can easily be disrupted.

One thing that has been causing such disruptions during recent decades is the process of European integration. While there has always been strong EU-scepticism in Denmark, with very close popular votes in relation to treaty changes, the policy-making establishment has always been EU-positive and recognises the vast benefits Denmark derives from being part of the internal market. However, even this policy establishment has become more EU-sceptical during the last decade or so. From taking a 'best in class' approach to both implementation of

EU legislation and legislative initiatives aimed at improving social standards, there is now a greater awareness that this may undermine the Danish system in significant ways. In the light of the upcoming Brexit, the Danish government is preparing to step out of the UK's EU-sceptical shadow and become more outspoken about concerns regarding subsidiarity. This is especially true for labour market issues where government, trade unions and employers' associations often stand united in their defence of the 'Danish model' of labour market governance. From the perspective of Danish trade unions, the Danish system supports their strength while delivering employment and good working conditions to their members. In many instances, they therefore aim to preserve the system rather than support the creation of a somewhat weaker European social policy system. There have been some debates about the viability of the Danish system in a globalised world, but they are not widespread, and the approach of Danish policy-makers is generally one of incremental adjustments rather than major reforms. A case in point is a recent debate about social dumping in road transport. The Prime Minister at the time, Lars Løkke Rasmussen, suggested that there might be a need for the introduction of a statutory minimum wage to address the problem. However, the actual initiative taken was a much more specific reform, requiring road transport employers to pay their employees at the wage level of the most representative collective agreement. This illustrates a general willingness of both employers and trade unions to preserve the system, while finding pragmatic solutions to specific problems. At the same time, this pragmatic approach sometimes stands in the way of addressing the consequences of (and the need for) long-term system changes, made necessary by the gradual decline in trade union density, for instance, or the hollowing out of unemployment benefits, increases in income inequality, and growth in the number of precarious workers.

Changes in Danish industrial relations following the 2004/2007 enlargement

Labour migration and posted work have been major issues in the Danish public debate and in industrial relations since the EU enlargement of 2004, while there has been little debate about cross-border relocation of production. For that reason, the term 'social dumping' is used almost exclusively to talk about issues related to labour migration and posted work.

Public debate on social dumping has led the authorities to introduce a whole range of new measures, aimed at tackling fraudulent behaviour by employers

using migrant labour, and posting companies in particular. There have been several increases in funding and changes to the competence of the labour inspectorate, which enforces statutory regulations on health and safety. A program of coordinated enforcement efforts by labour inspectors, tax authorities, and police has augmented this. Furthermore, the authorities have introduced a register for foreign service-providing companies (named RUT) to give both labour inspectors and trade unions knowledge about which companies operate in the country, where they operate, and how many workers they bring in. At the municipal level, there has been a substantial increase in the use of social and labour clauses in public procurement tenders. Such labour clauses will typically require contractors to provide their workers with labour standards that are on par with those prescribed by the relevant collective agreements.

Yet for all these new initiatives, there has been continuous acknowledgement of the limits of governmental action. Trade unions, employers' associations, and successive governments have generally agreed that the regulation of wages and working conditions is the domain of the social partners. Thus, trade unions and employers have fiercely opposed suggestions to introduce statutory minimum wages or legal extensions of collective agreements. These, they agree, would undermine the Danish collective bargaining system. Instead, labour migration and posted work have been the subject of collective bargaining – particularly in the construction sector, but also in others, such as road transport. On the one hand, the social partners have agreed on new clauses, granting trade unions new tools for enforcing collective agreements: building on this, trade unions have used massive resources to improve the enforcement of collective agreements with regard to foreign workers. On the other hand, the issue has become highly contentious between trade unions and employers' associations, with the latter refusing several trade unions' demands for further improvements. Trade unions have put forward requests for a significant rise in the minimum wage, the introduction of chain liability, and clauses requiring that subcontractors are covered by collective agreements. Employers have declined all of these demands (Arnholtz and Andersen, 2018). Especially noteworthy is the demand for an increase in the minimum wage in construction. Very few Danish construction workers are paid the minimum wage, because their wages are raised by local wage bargaining. For foreign workers, however, the minimum wage is the norm. Thus, there is a substantial gap in wages between Danish and foreign workers, and to decrease this gap, Danish workers have offered to forgo their own annual wage increases in order to have the minimum wage (and the wages of foreign workers) raised substantially.

As for the unilateral action of trade unions, they have invested substantial funds in improving the enforcement of collective agreements for foreign workers and for organising them. Over the years, there has been a shift from an approach mainly focused on signing and enforcing collective agreements to a tactic where more emphasis is placed on organising foreign colleagues. This is not uncontroversial, however, as Danish trade union members are paying for the extraordinary measures taken to organise foreign workers, who often leave after a short while. Many Danish workers feel exposed to unfair competition from foreign workers, and trade unions struggle to find a balance between taking a welcoming approach to new colleagues, and at the same time, making efforts to secure the jobs and working conditions of their paying, Danish members.

Amidst these many dilemmas and heated debates, it has not helped that EU institutions (like the Court of Justice of the European Union and the European Commission) have challenged the Danish institutions, thus restricting decision-makers' room for manoeuvre with regard to finding pragmatic solutions to the problems at hand. The most obvious example is the *Laval* ruling, which had the potential to disrupt the balance in the system by undermining local wage negotiations. While Danish decision-makers did find a solution that proved less disruptive than initially feared, the ruling nonetheless shifted the balance of power in favour of employers (Seikel, 2015). Another case in point is the ongoing dialogue between the Danish government and the European Commission about the RUT-register, which the Danish side considers vital to the enforcement of labour regulations, but which the EU Commission criticises for restricting the free movement of services. Yet another example is the Ruffert ruling – and more generally, the Commission's restrictive approach to using labour clauses in public procurement tenders (Ahlberg and Bruun, 2012). These examples are merely those related to the issues surrounding posted workers, but there are also rulings on other issues that have challenged the Danish system¹. All in all, it is fair to say that the combination of on-the-ground pressure on working conditions, produced by the inflow of foreign workers, and the top-down pressure on Danish institutions from the EU, have done nothing to improve the popularity of the European Union or the internal market among Danish workers. As one politician remarked at a public hearing on the challenges related to posted work and labour migration, 'If we had a referendum on EU membership today, a huge majority would vote "leave"':

1 We can mention the Anjos case, in which the Danish supreme court, after several preliminary references, felt compelled to overrule the ECJ to preserve the principle of legal certainty.

Relations between trade unions in Denmark and unions from the CEE

Nordic trade unions have tried to establish cooperation with trade unions in CEE countries, on several occasions (Furåker and Larsson, 2020). Some of these attempts have been more successful than others, though they have generally been marked by a certain inequality between the partners.

For instance, there is cooperation between Danish and German trade unions which implies that Danish trade union members working in Germany can gain support from German trade unions without being a member of that trade union, and visa-versa (Andersen, 2006). However, this sort of agreement depends on a somewhat balanced flow of workers between the two countries. The same arrangement does not make a lot of sense in relations between, for instance, a Danish trade union and a Polish one; very few Danish workers work in Poland, while many Polish workers work in Denmark. Thus a similar arrangement would imply that Danish trade union members should pay to have the Danish trade union serve a lot of non-paying Polish workers. With the strong local democracy in a Danish trade union, the members will often oppose such an arrangement. Instead, Danish trade unions make an effort to enforce collective agreements on behalf of Polish workers, while aiming to organise those workers as their own members at the same time (Eldring et al., 2012; Arnholtz and Refslund, 2019). There have been attempts at establishing formal cooperation between trade unions in the construction sector, but the inequalities between the parties make it difficult.

Regardless of the issues just mentioned, there are corporations. For instance, a Danish and Dutch transport trade union have had corporations with Romanian and Bulgarian transport trade unions since 2013, organising transport workers from the latter two countries. After joint discussion and fieldwork, it was concluded that organising transport workers is best done in the home country, and the Danish trade union has therefore provided financial support and expertise, particularly for their Romanian counterparts, in an effort to promote the establishment of self-sustained organising efforts. These efforts are in the interest of the Danish trade unions, as they want workers on Danish roads to be organised, irrespective of nationality. However, there is also a genuine element of solidarity in helping Romanian trade unions establish themselves via organising. According to Danish trade unionists, the process has been characterised by mutual respect and dialogue, rather than the 'system export' approach that was common in the years prior to EU accession.

Another example is the effort by The Central Organisation of Industrial Employees in Denmark to help their Lithuanian counterparts through the *Baltic Organising Alliance*. From an initial ‘system export’ approach, where Baltic trade unionists were schooled about the wonders of Nordic collective bargaining, the focus is now on establishing a membership base for Baltic trade unions through organising. This focus on organising and establishing a membership base reflects a general sentiment among Nordic trade unions, who have the strength to raise their own labour standards. They typically view it as a long-term goal that other national trade unions should mobilise and organise themselves into similar situations. Recognising that this is challenging for the CEE counterparts, the Danish unions thus provide financial support, expertise, and personnel to help their counterparts build this base. As for the motives behind this help, Danish manufacturing jobs are being relocated to CEE countries, but this is viewed as an accepted fact rather than a contested issue by the Danish unions. Furthermore, the jobs that are relocated mainly go to Central European countries and not the Baltic States. In that sense, there is little self-interest in the support by the Danish unions for their Lithuanian colleagues. As a representative from the union argues, this is simply a matter of ‘solidarity’ and helping those in a weaker position.

Danish trade unions’ perspective on EU social policy and their CEE colleagues

It is important to note that Danish trade unions are generally positive towards European integration. Furthermore, they are very active at the European level, and in that sense generally support the ETUC, the various EU-level sectorial trade unions, and European social dialogue. However, the assessment of the benefits and challenges coming from the EU differs markedly from those of the CEE trade unions, due to the significant differences in the quality of their national industrial relations.

Whereas the comparative ARTUS report highlights how accession to the EU has helped trade unions in the CEE countries, via funding and rights obtained through the *acquis communautaire*, EU membership is viewed in the Nordic countries as providing economic opportunities and jobs, and also as containing the risk of challenging trade union rights. Where CEE trade unions regard EU membership as an opportunity to strengthen themselves via a transfer of elements of the European Social Model to the CEE countries, this is not the case for trade unions in many North-western member states, and

the Nordic countries in particular. In the view of the latter group, the so-called European Social Model is a pale shadow of the social models that they have at the domestic levels. The European social dialogue is seen as quite ineffective in producing real results, compared to national collective bargaining, and many of the adopted directives of social issues are merely the lowest common denominators, which add little to improving workers' rights in the Nordic countries. Even when they do, they tend to challenge the basic features of the Nordic models. Therefore, Nordic trade unions are sceptical of the basic premise that transferring the European Social Model to the national level would be an improvement. Instead, they often regard the initiatives taken under the umbrella of the European Social Model as interfering with (and even threatening) their national models, and their position within them. They recognise that this standpoint can be problematic for the internal coherence of the European trade union, but they are not willing to gamble with their own model, on the off-chance that the EU initiative might help trade unions in other countries (Furåker and Larsson, 2020). As a Danish trade union representative responded when asked if Nordic trade unions were lacking in solidarity, 'That depends on how you define solidarity. Is it solidarity to undermine your own position for something that might help someone else?'

EU minimum wage

The above position is reflected in the Danish trade unions' approach to a European minimum wage. A statutory minimum wage would undermine the legitimacy of Danish trade unions' collective actions. There have already been a couple of conflicts on the Danish labour markets, where public opinion turned against collective actions taken to impose a collective agreement on specific companies. Some politicians have even argued that this should be disallowed, although these conflicts are a basic premise for the Danish model. If a company can claim to already be paying the statutory minimum wage, it could become even harder for trade unions to legitimise their collective action and thus the foundation for their power would erode. Furthermore, a statutory minimum wage would disincentivise trade union membership and shift worker's loyalty from trade unions toward the state. This would erode trade union strength even further. Additionally, having a statutory minimum wage opens the door for the politicisation of wage-setting in two ways. First, politicians may try to influence the wage setting to cater to certain groups of voters, which would undermine the stability provided by a system where the social partners have to reach agreements, continuously. Second, politicians

may regulate the resources spent on enforcing the statutory minimum wage, thereby making it more or less effective, depending on political orientation. By contrast, trade unions are currently the ones deciding how resources will be spent on enforcement.

From this perspective, a statutory minimum wage entails many disadvantages for trade unions and only really makes sense if national trade unions are already too weak to impose and enforce collective agreements – which is not the case in Denmark. Danish trade unionists acknowledge that a statutory minimum wage may be beneficial for workers in some countries, but they reject common EU legislation because they fear that it will undermine their own model. Furthermore, promises made by the EU Commission to have exemptions for the Nordic countries ring hollow to Nordic trade unionists. They remember well the promises the EU Commission made about Sweden being able to retain its labour market model, and how those promises were completely ignored by the European Court of Justice in the *Laval* case. While this case has been the most prominent of its kind, Danish trade unionists point to a whole range of ECJ cases that have ignored exemptions or overruled national sovereignty. A case in point is the Danish holiday scheme, which had to be revised after several ECJ rulings. Allowing the EU to regulate wage setting will open the door even further to ECJ interference in national wage setting systems. Nordic trade unions perceive the proposal for an EU minimum wage as a frontal attack on their models and their power base, and the issue is driving a wedge between them and their EU level organisations (both the ETUC and the sectorial organisations) because the latter are supporting the EU minimum wage and have failed to produce a text that will ensure the exemption of the Nordic countries.

In relation to all of these concerns, the Danish trade unionists interviewed report that they have not yet heard convincing arguments about how an EU minimum wage will actually help. Some proponents seem to hope that an EU minimum wage will bring wage convergence across Europe, but scrutinising the numbers shows that the highest wage increases will occur in Western European countries. It will presumably increase wage differences across the EU, rather than diminish them. Other proponents suggest that an EU measure will help eliminate low wage groups. However, Nordic trade unionists argue that the Nordic countries are among those with the fewest low-wage workers, and they have managed that without a statutory minimum wage. Summarising the problem, one Danish trade unionist argues: ‘They hope it will help, but I still haven’t seen any evidence or argument supporting that hope’.

Transnational Collective Agreements and European Works Councils

The issue of convergence is also at stake regarding TCAs. From the perspective of Danish trade unions, the CEE trade unions hope that TCAs will create convergence, but they have delivered no convincing arguments for why that would happen. Furthermore, Nordic trade unions have long taken the stance that if companies cannot pay the collectively agreed wages, it is acceptable for those jobs to be priced out of the Danish market and relocated somewhere else. Until recently, the CEE trade unions had been more ambivalent about this, which implies that TCAs could easily become a tool for levelling down Nordic workers, rather than levelling up CEE workers. Now that CEE trade unions have more consistently rejected the position of being low-wage production centres, the TCAs might make more sense. However, Nordic trade unions view these company-level agreements as a potential tool for circumventing their national, sectorial collective agreements, especially since wage differences are still substantial. Once again, Danish trade unions fear that accepting TCAs will mean undermining their own sectorial collective bargaining system, without any real benefit.

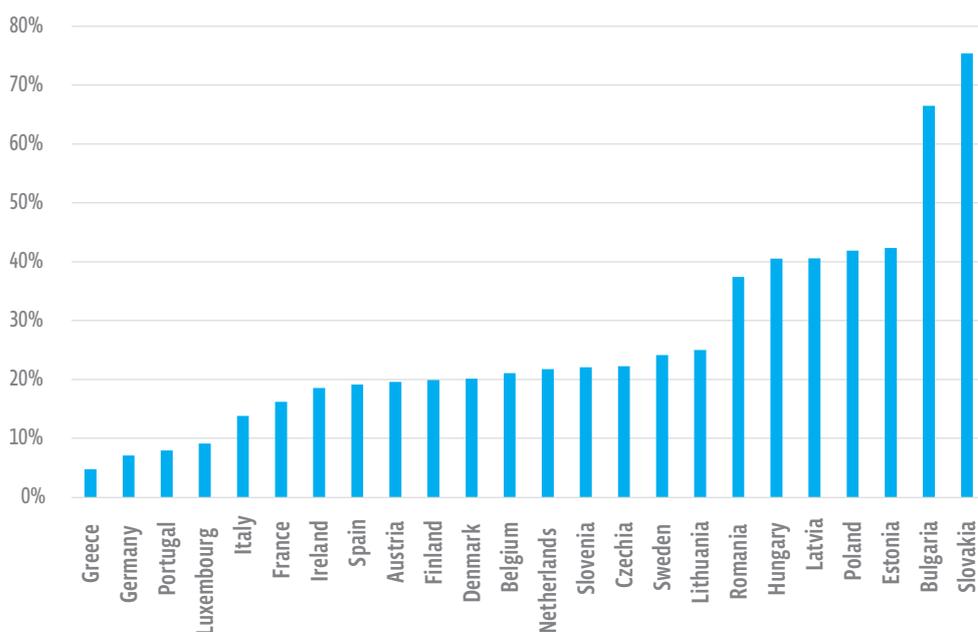
The same thing can generally be said for their approach to EWC. While Danish trade unions do participate in these, EWCs are seen as a weaker version of local company representation. Trade unions typically regard their representation in local bargaining and boards in the Danish affiliate as the main vehicle for influencing working conditions. However, there is little research on how Danish trade unions actually participate in the EWC.

Discussion of the ARTUS project findings from a Nordic perspective

In the light of the above, what factors could help promote more cross-border cooperation, and perhaps even solidarity between national trade unions, and what might hamper it? Paradoxically, one of the key drivers of cross-border trade union cooperation is the erosion of working standards potentially caused by the integration of markets. As employers seek to utilise national differences to their advantage, workers may increasingly recognise that they have a common interest in cooperating across borders. At the same time, however, this process may undermine the establishment of solidarity, as workers in different countries

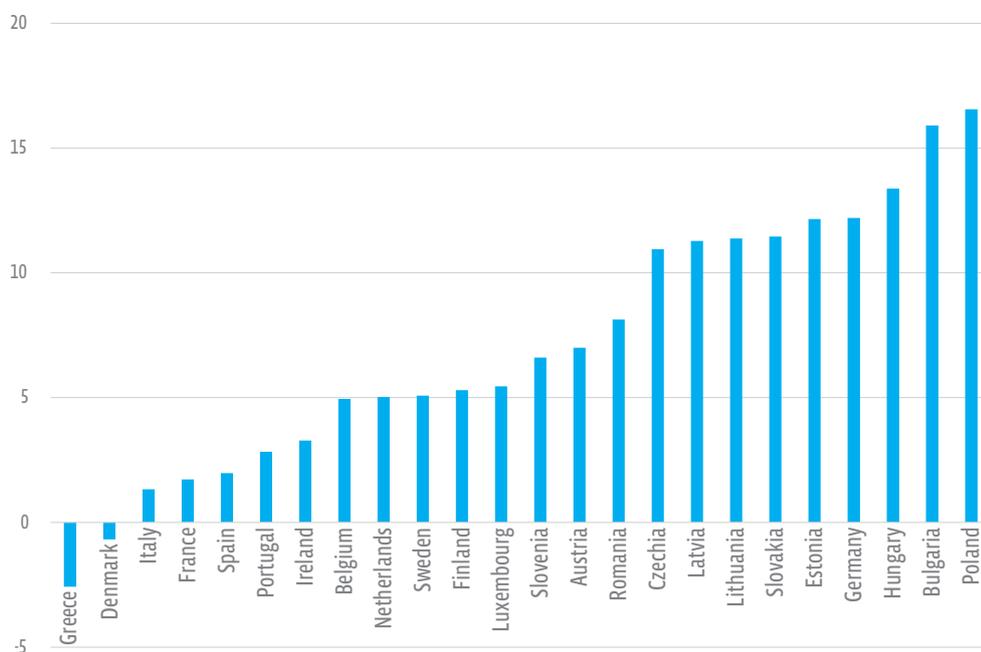
recognise that their immediate welfare may come at the expense of the welfare of workers in other countries. Building solidarity among workers has always been difficult, since workers are not just colleagues, but also competitors for jobs and earnings. This holds true at the local, national, and international levels. It may, therefore, be hard to encourage genuine, long-term solidarity between workers from different countries, especially in situations where workers are in direct competition for jobs and/or wage shares. Some workers may simply benefit more, at least in the short term, from letting market mechanisms play out.

The starting point of the ARTUS project seems to be an assumption that CEE trade unions have been treated as less important than their colleagues, but also that they are owed a special solidarity by their Western European colleagues due to poorer socio-economic conditions. Unfortunately, there are still substantial differences in wages and working conditions between East and West, and it could therefore be argued that Southern, Western and Nordic trade unions should extend a helping hand to their CEE colleagues. Interviews with Danish trade unionists suggest that they do so, in fact, though to varying degrees. At the same time, what is missing from this discussion is that the CEE member states seem to benefit more from the functioning of the internal market than the old member states. The graphs below illustrate how workers in CEE countries have benefitted from joining the EU. In the first, data from the labour cost survey shows how the purchasing power of the median worker in CEE countries has increased much more (at least in relative terms) than that of their Western European counterparts.



Source: Eurostat (earn_ses_pub2s)

In a similar manner, if we look at employment rate developments, we see that the internal market has served the CEE countries well over the last 15 years (graph below). Apart from Germany, the EU countries with the best development in their employment rates have all been CEE countries. The picture is similar regarding developments in unemployment rates, where CEE countries have also experienced the greatest decline during that period. By contrast, most of the old member states have experienced quite moderate development, in both employment rates and median purchasing power. This is not surprising, as the latter started from a very different level. Yet it shows that the median CEE worker has indeed benefitted a lot from letting the mechanisms of the internal market run their course. Jobs have been relocated from West to East, while workers have moved from East to West to get jobs and increased wages.



Source: Eurostat (LFS)

While these movements have given CEE workers well-deserved opportunities, they have introduced challenges for some Western European workers. When Western trade unions are now focusing on how the 4th Industrial Revolution can help the transition more fully into post-Fordist economies, it is in part due to the fact that EU enlargements have sped up the process of relocating late-Fordist jobs to other countries (including CEE member states). Western trade unions have generally supported EU-enlargement and thus accept the increasing competition it has entailed (not just in manufacturing, but also service sector jobs). Yet their potential members are starting to show dissent, both by leaving trade unions and increasingly voting for EU-sceptical parties.

In this context, serious discussions on how to build worker solidarity across borders cannot start from the one-sided premise that trade unions in the older member states owe CEE trade unions a special debt, or should forego their self-interest to help workers in the newer member states. Rather, it must be concerned with finding a balance between strengthening CEE trade unions and workers (via institutional reforms and the functioning of markets) and allowing Western trade unions to defend their position and that of their members. This is not easy; as pointed out by Bernaciak (2015), what looks like social dumping for some workers looks like opportunity for others.

Perhaps one solution is to aim for building solidarity against employers, rather than aiming to build solidarity with each other (Gumbrell-McCormick and Hyman, 2014). One of the strengths of the Nordic models has been trade unions' insistence on pricing out companies that are too unproductive to supply high-paying jobs. While this has implied job relocation abroad, it has prevented labour costs from becoming a competitive factor in the Nordic economies. Rather than focusing on obtaining full equality of working conditions, cross-border trade union collaboration could be based on the principle that employers should not be allowed to use transnational differences in wages and working conditions to cut labour costs. A case in point is the lengthy debate about 'no-factory production', in the lead-up to the 2020 Danish private sector collective bargaining round. Manufacturing trade unions had observed a growing gap between productivity development and wage development, with wages lagging behind. They had criticised companies for maintaining the crisis mood that marked local wage negotiations after the financial crisis. They threatened that if wage development does not follow productivity development in local bargaining, they will be forced to make higher demands at the centralised bargaining level, thereby reducing the flexibility of the system. For their part, Danish employers have responded by introducing the concept of 'no-factory production', to argue that the excess productivity gains are in fact derived from investment abroad, and that Danish workers should, therefore, not benefit from them. This has caused sharp reactions from the otherwise pragmatic Metal Workers' Union, arguing that it had little relevance where productivity gains had come from. The basic premise of the response is that if companies derive excess profits from investments abroad (for instance by paying their workers abroad less than their productivity allows), then Danish trade unions will insist on picking up those productivity gains.

From a 'solidarity with' perspective, this might seem an unfair demand, in which Danish workers benefit from the low wages of their colleagues abroad. From a 'solidarity against' perspective, the aim is to disallow companies increasing their profits by under-paying workers in other countries. The long-term effect will potentially be to incentivise companies to pay their workers abroad what productivity actually allows, rather than just letting Danish workers benefit from those productivity gains. In that sense, there is a recognition that Danish workers might be benefitting from the low wages of their colleagues abroad, but that the only way effectively to secure these foreign colleagues a better wage is to make sure that under-payment does not increase the company's profits. Clearly, this approach does run the risk of creating a worker-employer alliance, which creates a division between workers. Finding the right balance between these two approaches to solidarity is not easy.

Another lesson that can potentially be learned from Nordic trade unions is to focus on capacity building, rather than workers' rights. While the ETUC has been criticised as lacking mobilising power and being part of the EU system ethos (Martin and Ross, 2001; Seeliger and Wagner, 2018), there is a further element that needs to be stressed. As emphasised by a respondent in the Slovakian report, 'the more [trade unions] focus on legislation, the weaker collective bargaining is.' Continuing this idea, the more trade unions seek help from the EU to secure workers' rights, the more workers' loyalty will shift towards the EU, rather than towards trade unions. The more successful the ETUC is at lobbying for EU-level legislation to protect workers, the more it will risk undermining efforts of capacity building at the national level. The ETUC has an important role to play: 1) pushing back against EU legislation that will undermine workers' rights or trade union capacity, 2) coordinating trade union transnational strategies, and 3) engaging in a serious dialogue about how macroeconomic policies at the EU level (including industrial policies aimed at ensuring that European companies can survive international competition while delivering good jobs to all workers). However, if national trade unions want to be a thing of the future, they must recognise that they can only win workers' loyalty by organising, mobilising and winning struggles for workers' rights at the national level.

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