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DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Austria

Much hated and yet renowned: The significance of obligatory membership in Austria's industrial relations

**Peer Review "Towards a more dynamic collective
bargaining"**

Portugal, 23-24 October 2017



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Table of Contents

1	Background to collective bargaining in Austria	1
2	Assessment of collective bargaining	2
3	Assessment of the success factors and transferability	4
4	Questions to the host country in the Peer Review	5
	Annex 1 Summary table	7

1 Background to collective bargaining in Austria

In Austria, at least 97-98% of the private-sector employees are covered through collective bargaining arrangements (the public sector is excluded from the right to bargain in Austria). The vast majority of collective agreements are concluded at sectoral/industry level. Single-employer agreements concluded by an individual employer are rare in Austria, since Austrian labour law¹ clearly privileges multi-employer settlements to company agreements; where the latter exist, they are clearly regulated by special legislation. The extremely high collective bargaining coverage rate arises from a number of industrial relations features in Austria, the most prominent one being the principle of mandatory membership of the principal employers' association in Austria, the *Wirtschaftskammer Österreich* (Austrian Chamber of the Economy) and its subunits. According to law², all businesses whose activities fall within the scope of the chamber's representational domain must be a member of it and its respective subunits (see chapter 2). Whilst on the employer side sectoral bargaining is in almost all industries conducted by the relevant sectoral chamber subunits, the only industrial relations agents involved in collective bargaining on the employees' side are the relevant trade unions affiliated to the *Österreichischer Gewerkschaftsbund* (Austrian Trade Union Federation).

International observers have frequently misclassified Austria as a case of centralised bargaining. However, bargaining takes place almost exclusively at sectoral level but is coordinated across the economy. This coordination mainly rests on the pattern-setting role of the metalworking industry, which takes the leading role in the overall annual bargaining process. The idea behind this concept of 'pattern bargaining' is that macroeconomic growth and inflation should be the main criteria for wage policy and that the sector of the Austrian economy exposed to international competition should be recognised as the pace-setter for the 'sheltered' sector. Whilst this coordination aligns bargaining with macroeconomic requirements, its rather decentralised structure ensures flexibility in several respects. For those employees who receive pay higher than collectively agreed standard rates of pay, the strongest unions have managed also to negotiate and include in their collective agreements 'actual pay' clauses. This means that in the best organised sectors (e.g. the metalworking industry or the banking sector) these clauses specify sectorally agreed percentage increases to be applied to the rates actually paid, which may vary from company to company. Since the mid-1980s, collective bargaining has undergone a phased process of organised decentralisation, in that sector level bargaining parties have deliberately devolved bargaining tasks to the enterprise level, but have maintained control over lower-level bargaining. With the inclusion of 'opening clauses' in the sectoral agreements since the mid-1980s, the regulation of explicitly defined issues (initially related to working time, since the 1990s also to pay) is delegated to the parties to the *Betriebsvereinbarung* (company agreement) at establishment level. This allows a more flexible and tailor-made regulation of terms and conditions of employment at enterprise level, albeit within the clear-cut framework laid down in the sectoral collective agreement.

Although several hundreds of sectoral and branch collective agreements are concluded each year, this process is nevertheless coordinated across the economy through a practice of 'pattern bargaining', whereby the metalworking industry sets the pace for the other industries within the annual bargaining round. Austria's system of pattern bargaining forms an integral part of macroeconomic concertation and delivers a special kind of incomes policy, with the aim of maintaining international competitiveness and high employment. Moreover, Austrian pay-setting has proved very flexible over time, in that it is highly sensitive to macroeconomic requirements, in particular, with regard to fluctuations in employment. Pay flexibility and sectoral pay differences are high in

¹ The core provisions of Austrian labour law are laid down in the *Arbeitsverfassungsgesetz* (Labour Constitution Act)

² *Wirtschaftskammergesetz* (Austrian Chamber of the Economy Act)

Austria, since the pay policy adopted by the parties to collective bargaining has always given precedence to maximum employment levels over other objectives, such as a more egalitarian pay distribution.

2 Assessment of collective bargaining

2.1 Evolution of collective bargaining

The system of collective bargaining in Austria has been very stable since the 1970s, when the Labour Constitution Act was passed. This is because both the industrial relations agents and the legal institutions are strong and have never been seriously questioned since. Nevertheless, since the mid-1990s collective bargaining in Austria has undergone some changes, in particular in terms of (wage) bargaining decentralisation and flexibilisation and – to a certain extent – in terms of the goals of the bargaining agents. However, overall, robustness and continuity characterise Austria's industrial relations system. Measures such as those introduced in Portugal during the adjustment programme under the provisions of the Memorandum of Understanding (MoU), including the freezing of minimum wages and restricting the extension of collective agreements (which represented a complete reversal of the evolution of collective bargaining in Portugal), have hitherto been inconceivable in Austria.

2.2 Main properties of Austria's collective bargaining system in relation to Portugal

Austrian labour law clearly privileges multi-employer bargaining in that it attributes the right to bargain to individual companies in only a few exceptional cases. Accordingly, almost all collective agreements are concluded at sectoral or industry level. In principle, collective bargaining in Austria is limited to the private sector, while the public sector is excluded from formal bargaining; nevertheless, negotiations between public sector trade unions and government representatives at all levels of government do take place, with parliament eventually determining the terms of employment. Within the private sector, the sectoral bargaining system is differentiated according to employee category (blue-collar and white-collar workers) and, in the area of the production of goods, according to production type (manufacturing industry and small-scale craft production). This differentiation reflects the internal organisational structure of the two principal 'peak organisations' of the two sides of industry: The Austrian Trade Union Federation with its separate unions for blue-collar workers and white-collar workers; and the Austrian Chamber of the Economy with its separate sectoral subunits for employers in manufacturing industry and in small-scale craft production. All sectoral trade unions involved in collective bargaining are affiliated to the Austrian Trade Union Federation, and almost all sectoral employer counterparts are under the umbrella of the Austrian Chamber of the Economy.

Most collective agreements cover the whole of national territory, while a minority is concluded at regional (*Land*) level. Company agreements in the strict sense of an agreement concluded by an individual employer are the exception in Austria, due to the legally established priority accorded to associations as parties to a collective agreement. Even though the peak employers' and employees' organisations possess the capacity to conclude collective agreements, national general collective agreements concluded at the central level are very rare and have never regulated pay for several decades. Nevertheless, the peak level social partner organisations do play an important role in macro-level concertation, through their active participation in innumerable tripartite advisory councils, committees and working parties.

When adjusting the collective bargaining coverage rate for those employees excluded from the right to conduct bargaining (i.e. the public-sector employees), Austria records a coverage rate of at least 97%. Several reasons for Austria's extraordinarily high collective bargaining coverage rate can be identified: First, with regard to employees,

Austrian labour law stipulates an automatic extension of collective agreements to cover non-unionised employees ('non-member effect'), provided that these workers are employed by a company which is a member of a signatory party on the employers' side to a collective agreement. Second, collective agreements remain, as a matter of principle, valid even after their expiration, as long as no new collective agreement (or individual contracts with the employees concerned) has (have) been concluded. Third, and most importantly, the principle of obligatory membership of the Austrian Chamber of the Economy and its subunits works as functional equivalent to mechanisms extending collective agreements to employers not affiliated to the signatory party. According to law, all businesses whose activities fall within the scope of the representational domain of the chamber (almost the entire private sector, with the notable exception of agriculture and some professions) are obliged to be a member of the chamber and its relevant subunits. Since the Austrian Chamber of the Economy, as the principal employer association in Austria, and its subunits conclude collective agreements on behalf of almost all employer groups under the chamber's umbrella, all employers belonging to the chamber subunit that concludes the relevant collective agreement are automatically covered. Fourth, Austrian labour law provides elaborate provisions for extending collective agreements to cover employers not affiliated to signatory bargaining parties. In such cases, labour law provides for a special official procedure called 'extension order' to be issued by the Bundeseinigungsamt (Federal Arbitration Board) affiliated to the ministry responsible for employment affairs, whereby a collective agreement (or part of it) can be extended to include employment relationships of essentially the same nature which are not covered by an agreement. However, in practice, extension provisions are by far less important than the system of obligatory membership of employer associations when it comes to making Austrian collective agreements generally binding.

At individual firm level, the parties to company agreements may regulate only those matters that have been delegated to the parties concerned (i.e. management and works council) by law or collective agreement. Pay-related issues, in principle, are excluded from the scope of the company agreement and fall within the scope of collective bargaining. Provisions of company agreements may not deviate from employment conditions laid down in the relevant collective agreement in a way unfavourable to employees unless the relevant collective agreement provides for so-called 'opening clauses' (see chapter 1).

In terms of minimum pay regulation, no minimum wage legislation exists in Austria that provides for a minimum wage for the entire economy. Rather, minimum rates of pay are laid down in sectoral and industry collective agreements, whereby the agreed wage rate for the least skilled group of workers determines the de facto minimum wage for the respective industry. Therefore, minimum wage levels vary widely according to the sectoral bargaining power of the trade unions involved.

Compared to the situation in Portugal, it should be noted that the weight of collective bargaining as the core element of the national industrial relations system is similar in both countries, as is the principal significance of the sector level (compared to the cross-industry and enterprise levels) in collective bargaining. Moreover, in both countries formal collective bargaining is restricted to the private sector of the economy. However, the coverage of collective bargaining arrangements has always been notably higher in Austria than in Portugal (even in its heyday of industrial relations), resulting from obligatory membership of the Austrian Chamber of the Economy for the vast majority of Austria's businesses (which is unique by international standards). Another legal difference between the two countries refers to the possibility, in principle (albeit only rarely used), of the two sides of the industry to conclude collective agreements at individual company level in Portugal, while the right to conclude wage agreements is conferred to the social partners only at multi-employer level in Austria.

With regard to the possibility of cancelling valid collective agreements, as introduced in the course of the revision of the Labour Code in the mid-2000s, it is not fully clear what

this actually means in the context of Portugal. In Austria, the parties to the existing (valid) collective agreement can unilaterally withdraw from the agreement, provided that they observe the period of cancellation as laid down in the agreement. However, the cancelled agreement remains valid for the existing (not the newly recruited) workforce as long as no new agreement (or individual contracts with the employees concerned) has (have) been concluded.

The practice of 'voluntary internal extension' of collective agreements by employers to non-unionised employees, as described for the situation in Portugal, is not applicable in the case of Austria. This is due to the above-mentioned 'non-member effect' applying to all employees working in companies which are members of the signatory employers' association. This mechanism is provided in Austria's Labour Constitution Act.

While in Portugal administrative extension of collective agreements has increased the overall collective bargaining coverage rate by approximately 10 percentage points during the recent years, the corresponding increase by extension order is much lower in Austria (only a few thousand employees are covered by extension order each year). This is due to the principle of obligatory membership of the Austrian Chamber of the Economy and its subunits for almost all businesses in Austria, which works as functional (and most effective) equivalent to extension procedures in Austria. Such a system of compulsory membership does not exist in Portugal.

In a way similarly to Portugal, collectively agreed wage agreements have been closely aligned with macroeconomic parameters, including the inflation rate and – at least to a certain degree – productivity growth, for many years also in Austria. Wage setting in both countries produces significant pay inequalities, since in both countries it appears that precedence is given to employment security over other objectives, such as a more egalitarian pay structure. Nevertheless, the issue of the so-called 'working poor' seems to be more pressing in Portugal than in Austria. For that reason, the statutory minimum wage has a major and even growing importance in Portugal in order to compensate for shortcomings of the collective bargaining system in terms of securing a decent income. In Austria, the legislator has refrained from introducing a statutory minimum wage thus far, relying on the social partners' proven capacity to negotiate wage accords largely safeguarding from in-work poverty.

3 Assessment of the success factors and transferability

The host country discussion paper on Portugal identifies two main criteria for measures aiming at a more dynamic collective bargaining to be fulfilled, in order to be successful: They must:

- Meet the perceived interest of the main actors (government and social partners); and
- Build on existing structures in the industrial relations system.

Irrespective of the different evolution and design of the two countries' respective industrial relations systems, these two success factors identified in the historical and structural context of Portugal's industrial relations system are likely also to apply to the situation in Austria.

Currently, fuelled by the electoral campaign for the general elections to parliament to be held in October 2017, in particular, two political parties are seeking to make use of the perceived bad reputation of traditional political institutions which are alleged to hamper overall business expansion in Austria. Both the populist Freiheitliche Partei Österreichs (Austria's Freedom Party) and the (neo)liberal NEOS have identified the system of compulsory membership of chambers as main administrative obstacles to Austria's businesses and want to abolish the principle of obligatory membership, while the position of the conservative Österreichische Volkspartei (Austrian People's Party),

which is the junior partner of the present coalition government led by the Sozialdemokratische Partei Österreichs (Social Democratic Party), on this issue is divided. The questioning of the principle of mandatory membership of chambers, which is a challenge, in particular, to the outstanding position in industrial relations of the Austrian Chamber of the Economy, has to be qualified as an attack on the entire system of social partnership and macro-level concertation of interests as such. The abolition of the principle of obligatory membership of chambers would imply that sectoral collective agreements cover only companies that are voluntary members of the Austrian Chamber of the Economy and its subunits, such that the whole system of encompassing bargaining coordination and its alignment with macroeconomic requirements is likely to collapse. Therefore, both the trade unions and the Austrian Chamber of the Economy representatives (who often maintain close links to the Austrian People's Party) strictly refuse any attempts to weaken their far-reaching regulatory power in all matters of economic and social policy in general and income policy in particular. It is important to note that – by international standards – the relative success of 'pattern bargaining' in terms of the stability of macroeconomic development as well as the ongoing but moderate diversification and decentralisation of the bargaining process is only conceivable against the background of the high degree of institutional and procedural stability of Austria's system of industrial relations. Any attempt to unilaterally remove one core element of Austria's integral system of collective bargaining has to be regarded as threat to the country's whole system of industrial relations, characterised by comprehensive collective bargaining, the reconciliation of differing interests and the constructiveness of political compromise based on relations of mutual trust.

With regard to the transferability of the system of statutory minimum pay regulation to Austria, reference should be made to a public debate on that issue as of the beginning of 2017. Since encompassing collective bargaining in Austria still does not prevent very low pay in some industries, such as services, retail, cleaning and some independent professions, Chancellor Christian Kern of the Social Democratic Party, in January 2017, announced his willingness to introduce a statutory minimum wage unless the social partners manage to establish a collectively agreed gross minimum wage of EUR 1 500 within the next one or two years. The peak social partner organisations, as a consequence, have then commissioned their sectoral subunits and trade unions to develop a roadmap for introducing a minimum pay of EUR 1 500 for all employee groups by the end of 2018, in order to avoid unilateral legislative initiative on that issue. The Austrian social partners consider statutory minimum pay as interference in their core business area, that is free collective bargaining, warning of making wages subject to political arbitrariness (under unfavourable political configurations) rather than macroeconomic considerations.

Other elements of Portugal's industrial relations system appear to be hardly transferable to Austria, due to the incomparability of the respective industrial relations systems of the two countries in many respects.

4 Questions to the host country in the Peer Review

- On p. 6 of the host country discussion paper the author outlines that the revision of the Labour Code in the 2000s introduced the possibility of unilateral cancellation of an existing collective agreement. Accordingly, prior to the amendment to the Labour Code an agreement could only be cancelled when it was substituted by a succession agreement. How does this comply with the principle of freedom of contract between private law natural or legal persons?
- Does the abolition of the principle of 'favor laboris' mean that the Labour Code provides for clauses defining circumstances under which legal standards can be undercut by collective agreements and/or works agreements and/or individual employment contracts?

- Could you please briefly explain what is meant by 'organised decentralisation' in the context of Portugal's industrial relations in general and in the context of the requirements as stipulated by the MoU in particular?
- On p. 8 and 9 the author indicates that neither the reduced period of validity of cancelled collective agreements nor the relaunch of tripartite concertation of wages nor the legislation facilitating bargaining decentralisation as introduced in the adjustment programme under the provisions of the MoU has resulted in major industrial relations changes. Nevertheless, the number of valid collective agreements fell from 296 in 2008 to 85 in 2012, while the collective bargaining coverage dropped to 8% in 2013 (Table 6 in Annex). Such decreases are unlikely to result from just one individual measure, namely the restriction of extension of collective agreements. Could you please elaborate a little bit on the reasons for these decreases in the number of collective agreements and in terms of collective bargaining coverage?
- With regard to the restrictions of collective agreements to be extended under the provisions of the MoU, could you please briefly address the criteria/thresholds in terms of the social partners' representativeness?

Annex 1 Summary table

Background to collective bargaining in the peer country

- Significantly higher collective bargaining coverage in Austria
- Prevalence of sector level bargaining in both countries
- Free collective bargaining in the private sector only in both countries
- Unique principle of obligatory membership of Economic Chamber as main reason for high collective bargaining coverage in Austria
- Stronger wage coordination in Austria through pattern-setting role of metalworking industry

Assessment of collective bargaining

- Unilateral withdrawal from existing collective agreement is possible in Austria, provided that period of cancellation is observed
- However, cancelled agreement remains valid until new agreement signed
- 'Non-member effect' in Austria supersedes practice of 'voluntary internal extension' of agreements to non-union members in Portugal
- Extension mechanisms targeting employers less significant in Austria than in Portugal
- Effective minimum wage bargaining in Austria makes statutory minimum pay (Portugal) redundant

Assessment of success factors and transferability

- Overall elements of Portugal's industrial relations system hardly transferable to Austria due to different traditions, practices and institutions
- Also in Austria measures to improve industrial relations have to meet the interests of the main agents on the two sides of industry...
- ... and have to build on existing structures rather than dismantling them

Questions to the host country in the Peer Review

- Does the provision according to which existing collective agreements can only be cancelled when they are replaced by a new one comply with civil law?
- Does the abolition of the principle of 'favor laboris' actually mean that minimum provisions of the labour law can be undercut?
- What is the notion and significance of 'organised decentralisation' in the context of Portugal's industrial relations and in the context of the MoU?
- What are the main reasons for the decrease of the number of collective agreements and in terms of collective bargaining coverage in the period 2012-13?
- Under the provisions of the MoU, what were the criteria to be met in terms of the social partners' representativeness as a precondition for collective agreements to be extended?

