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Samuel Dahan

(RE-)DESIGNING INSTITUTIONS FOR EMU WAGE POLICY COORDINATION

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(RE-)DESIGNING INSTITUTIONS FOR EMU WAGE POLICY COORDINATION

SAMUEL DAHAN

Abstract

This article uses the concept of 'institutional learning' to make a legal case for a stronger wage policy at the EMU level. This article takes the view that an inherent asymmetry in the EMU, namely the presence of a unified monetary policy without a commensurate coordination of wage-setting mechanisms, contributed to the development of the crisis. The latent consequences of this flaw—diverging (wage) growth and cost competitiveness—were brought into full view when the global financial crisis struck.

A unique wage-coordination process has already become institutionalised at the EU level through the European Semester: wage and spending cuts supplant the role of currency depreciation as a means of addressing external economic shocks and competitiveness gaps.

We argue that the new wage coordination process constitutes a step in the right direction insofar as the EU has learned from its past mistake, namely creating a currency union without any transnational wage determination mechanism. However, this paper makes a legal and institutional case for a more reflexive and solidaristic approach to wage coordination. In order to do so, we take the economic view that stronger EU labour coordination is not likely to diminish competitiveness. While market wisdom would seem to support the view that decentralized collective bargaining systems performs better, evidence suggests that solidaristic wage-setting offers a critical means of channelling economic policy into a model less narrowly focused on labour cost.

Beyond the economic debate, there is a legal case to be made in favour of stronger wage bargaining that can reconcile the markets with labour law in the EMU. It is the role of lawyers to investigate possible legal avenues towards achieving a more appropriate solution that is compatible with the Treaty of Lisbon as well as with the

goal of competitiveness. Our project does not advocate for Treaty changes; instead we use the concept of 'institutional layering/learning' to reinforce already-existing reflexive approaches such as the Macroeconomic Dialogue (MED) in order to create a multi-level wage determination strategy that mediates a genuine facilitation process between the Commission, the European Central Bank and the unions.

I - Introduction

This paper claims that the EU needs to engage in a genuine learning exercise, both fixing the problem and, more importantly, challenging the flawed EMU paradigm under which the euro crisis developed in the first place. Based on earlier work,[1] this article takes the view that the institutional failure was the embedding of a unified monetary policy without a commensurate coordination of economic and social policy, especially wage policy.[2] More specifically, there was a lack of real convergence between the core and the periphery, leading to diverging growth paths. This bifurcation was exacerbated by the 'one-size-fits-all' ECB interest-rate policy; distorted fiscal policy; and the lack of a common approach to wage determination.[3]

Accordingly, the euro crisis should be viewed as an opportunity to address the EMU's flaws and more particularly to re-evaluate macroeconomic policies (notably wage policies). However, the new economic governance architecture communicated mixed signals. On the one hand, it represents a promising institutional shift towards more wage coordination; on the other hand, it signals the 'marginalization of social policy at EU level and an increase in the use of ... monetary policy' as an excuse to institutionalise internal devaluation.[4] Social policy is meant to become a flexible instrument so that wage supplant the role of currency devaluation as a means of addressing external economic shocks and competitiveness gaps.[5]

Drawing on human-developmental theories, this paper puts forward legal arguments that attempts to reconcile labour law and competitiveness. We advocate a wage driven approach as an alternative to the asymmetric-wage EMU system that set the stage for the crisis. We argue that a wage-led approach is already significantly supported by current European law, and that neither substantive nor procedural treaty

[1] For a detailed explanation of the causes of the EMU crisis and the role of wage policy see. S Dahan, "Path-Dependent Deadlock: The Institutional Causes of the Euro Crisis" (2016) 49:1 Cornell Int Law J.
[2] S Deakin, *Social Policy, Wage Determination and EMU: Towards an Egalitarian Solution to the Crisis* (European Trade Union Institute, 2013).
[3] S Deakin, F Wilkinson & C Didry, "Marchés du Travail, Crise Financière et Réforme: Projet d'Agenda pour une Politique du Travail" (2012) 182:4 Homme Société 25.
[4] S Deakin & R Rogowski, "11. Reflexive labour law, capabilities and the future of social Europe" (2012) Transform Eur Employ Policy Labour Mark Transit Promot Capab 229.
[5] S Dahan, "The Legal Framework for New Economic Governance and Its Implications for Wage Policy" (2014) 16 Camb Yearb Eur Leg Stud.

changes are necessary. Even though the Treaty does not offer any legal competence to legislate on wages at the Union level, the EU legal framework is sufficiently flexible to support a human-developmental approach to wage coordination.

We argue that a genuine learning process does not have to take the form of hard law change, that is Treaty revision. Instead, we propose a reflexive solution, one that could draw the appropriate lessons from the crisis, namely by addressing the EMU's asymmetric design while retaining the positive lessons of labour reflexive tools such as the Open Method of Coordination (OMC).[6]

It is, for instance, legally feasible to implement a reflexive rebalancing approach through the reinforcement of the Macroeconomic Dialogue (MED). We envision a process that creates a genuine link between monetary policy, fiscal policy as well as wage policy, similar to the one that existed between before the introduction of the euro.

The flexibility shown in the recent case law of the CJEU (notably *Pringle and Gauweiler)* seems to support this proposition. The clear distinction drawn by the Court between monetary and economic policy as well as the enlarged ECB mandate offers a constitutional opportunity to engage in a process of institutional layering that would revive the EMU social dimension. Even though institutional evolution is path-dependent, we do not rule out the (re)emergence of a human-developmental approach in the near future, provided that the Union finds sufficient political support to implement more ambitious reforms.

This analysis draws upon institutional learning theories[7] to understand the EMU crisis and whether it has created a window of opportunity to build wage coordination institutions. More particularly, considering the limitations of the EU legal framework in the field of wage policy, it is relevant to use *reflexive learning*[8] to investigate how the MED could become a more effective instrument for coordinating wage policy.

The paper is organised as follows: We briefly review the problem of wage setting divergence and how the EMU crisis has created a learning opportunity for wage

[6] M P Hamel & B Vanhercke, "The Open Method of Coordination and Domestic Social Policy Making in Belgium and France" in M Heidenreich & J Zeitlin, eds, *Chang Eur Employ Welf Regimes Influ Open Method Coord Natl Reforms* (Routledge, 2009) 134.
[7] F Gilardi & C Radaelli, "Governance and Learning" in D Levi-Faur, ed, *Oxf Handb Gov* (Oxford, New York: Oxford University Press, 2012) 155; W W Powell & P J DiMaggio, *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991).
[8] Deakin & Rogowski, *supra* note 4.

coordination (**II**). We then make both a human-developmental and a legal argument in favour of solidaristic and reflexive wage coordination institutions as a solution to the EMU crisis (**III**). Finally, the last section investigates the imperfect initiative of the MED and whether *reflexive* learning approaches can help to propose a more constructive MED (**VI**).

II – Lack of Wage Coordination: A Catalyst for the EMU Crisis

The EMU project has been built as a multi-layered process combining both social and economic aspects, although the social dimension is said to have played a secondary role.[9] In particular, the EMU is characterised by a unique asymmetry: the embedding of a unified monetary policy with a fiscal policy distorted through an excessive emphasis on price stability, but without sufficient coordination of economic and social policy. While a debate on the causes of the EMU crisis is beyond the scope of this paper, it is worth noting that this unique macroeconomic model is said to have contributed to the development of wage divergence and macroeconomic imbalances.

First, according to the consensus in the Maastricht Treaty, the primary objective of an independent ECB is to maintain price stability (Article 119(2) TFEU). No mention is made of any other objectives of macroeconomic management such as high employment levels or financial stability. As a result, the ECB was constrained to set a "one-size-fits-all" rate that reflected average conditions in the Eurozone but not specific national economies. As a result, considering the interdependency between monetary policy and wage growth, it is argued that the ECB uniform interest rate encouraged diverging growth paths and differential (wage) inflation. The real interest rate – the nominal interest rate set by the ECB, minus country-specific inflation rates – became lower in countries with high inflation, and higher in countries with low inflation.

[9] We discuss the causes of the EMU crisis elsewhere in more detail. S. Dahan, *supra* note 1. The new Social Chapter of the EC Treaty, as amended by the Treaties of Amsterdam and Nice (Art 136 EC, now Art 151 TFEU), incorporates the Agreement on Social Policy. The new Social Chapter of the EC Treaty, as amended by the Treaties of Amsterdam and Nice (Arts 136 ff EC, now Arts 151 ff TFEU), incorporates the Agreement on Social Policy; P Pochet and B Vanhercke, Social Challenges of Economic and Monetary Union (Berlin, Peter Lang, 1998) 68.

This pro-cyclical monetarist system had the following consequences. For countries of the core with below-average inflation, mainly Germany, the ECB real rates was too high and depressed further growth and wage levels (Figure 1). As for the southern European countries, above-average inflation rates, the nominal interest rate policy was too accommodating and the real interest rate became extremely low, even dropping into negative territory. This fed finance-led economic and wage growth (Figures 2 and 3).[10] Against this background the core and the periphery (further) developed two opposing growth models. The countries of the periphery, thanks to low real interest rates, have become highly dependent on an expansion of private credit and on increasing asset prices in the market for commercial and residential investment. The core economies (particularly Germany) have relied on export-led growth and wage restraint. As a result, this asymmetric system has encouraged the development of a competitiveness gap between these two models (Figure 4).

As a result, the core countries have exported to the periphery while the south has relied mainly on finance-led growth. As a result, current account deficits, and specifically the balance of trade, widened in the periphery as domestic production systems could not match the boom in domestic demand, whereas the core economies generated a growing account surplus (trade surplus) thanks to their export-led strategies.[11] This example of macroeconomic imbalance can be explained as follows: export-led strategies leading to current account surpluses in the core economies had to be matched by current account deficits in finance-led countries (Figure 5).

Beside monetary policy, another problem that went unnoticed is the role of wage bargaining in the development of current account imbalances. While asymmetric growth was mainly the result of a too-accommodating monetary policy and an excessive reliance on capital inflows in the periphery, weakness in wage-setting bargaining has exacerbated the problem.

[10] *Ibid*, s II, B, 1.
[11] The current account position is composed of the trade position and the net income flows, and the latter interest payment on borrowing. The largest component of the current account calculation is generally the balance of trade.

On the one hand, high finance-led growth in the periphery fuelled (wage) inflation, thanks to both the ECB interest rate and the ineffectiveness of domestic wage-setting (Table 1 and Figure 6). Wages grew faster than productivity and national wage-setting arrangements had little leverage to mitigate the inflationary pressures coming from the ECB.[12] On the other hand, the unnecessarily restrictive monetary policy imposed on low-inflation economies was accompanied by strong wage-moderation mechanisms, thereby worsening the deflationary pressures on these economies (Table 3 and Figure 6).[13] This pro-cyclical dynamic eventually catapulted the competitiveness of Germany and the periphery onto diverging paths.[14]

It is worth noting that before the introduction of the euro, the political economy of the prospective eurozone candidates was a robust wage-restraint system closely pegged to the German model. The aggregate nominal wage cycles of most candidates were closely calibrated to German wages through the interaction of wage-setters and central banks. National central banks usually responded to (wage and price) inflation by threatening to raise interest rates. When the euro was introduced, Maastricht only transferred monetary policy to the ECB without a parallel centralization of wage-setting. As a result, this new legal design gave rise to a procyclical macroeconomic management model, with ripple effects on wage growth.

In addition, the EMU offered little legal means at the EU level to mitigate this effect. Firstly, these perverse effects could not be offset via the nominal exchange rate. Secondly, fiscal policy – an analysis of which is beyond the scope of this paper – also exacerbated the procyclical dynamic produced by the ECB by rewarding countries that had a surplus and punishing countries that had a deficit. Thirdly, EU level reflexive instruments such as the Open Method of Coordination or the MED failed to develop an anti-inflationary wage coordination mechanism at the EU level.

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[12] Deakin *supra* note 151; B. Hancké, Worlds Apart? Labour Unions, Wages and Monetary Integration in Continental Europe, Institute for Advanced Studies, IHS Political Science Series No 128 (Feb. 2012).
[13] Fritz W Scharpf, *Monetary union, fiscal crisis and the preemption of democracy* (MPIfG discussion paper, 2011); B Hancké, *Unions, Central Banks, and EMU: Labour Market Institutions and Monetary Integration in Europe* (OUP Oxford, 2013).
[14] S. Dahan, *supra* note 1, s II, B, 3.

In light of these macroeconomic developments the Commission has come to interpret the current crisis as being two-fold: both a debt crisis and a competitiveness crisis. In particular,[15] the Union claimed that intra-EMU current account imbalances are the result of diverging competitiveness, that is to say, uneven development of Unit Labour Cost (ULC).[16] This has produced a vicious circle: government expenditures rise because they import too much, while productivity and export growth weaken. Outside a single currency framework, Member States would have addressed that issue through currency devaluation. Low competitiveness countries would have undergone a real depreciation and deflated their general price levels in relative terms to regain competitiveness.[17] However, the legal framework of the EMU leaves little flexibility for Member States, insofar as competitiveness must be restored though 'internal devaluation', the 'functional substitute to currency devaluation'.

In spite of the limitations of the EMU legal framework – especially the fact the EU has not legal competences in the field of wage policy – the EU, through the framework of the European Semester, had to develop an innovative procedure for wage coordination, one that could partially overcome the structural flaws of Maastricht.[18] This new model aimed stabilisation of the single currency requires the introduction of stricter national economic and social policy coordination.[19] This new model comprises several elements including the Fiscal Compact, the so-called Six-Pack,[20] the Euro Plus Pact (EPP)[21] and the European Semester, among others. The first two—the Fiscal Compact and the Six-Pack—aim to promote a pan-European fiscal and wage policy

[15] S. Dahan, *supra* note 5.
[16] See Regulation (EU) No 1176/2011 ([2011] OJ L306/25). Lack of fiscal discipline has also been an important component of the debate on the causes of the crisis but this chapter only focuses on the competitiveness debate.
[17] S. Dahan, *supra* note 5.
[18] See *Ibid*; T Schulten & T Müller, "A New European Interventionism? The Impact of the New European Economic Governance on Wages and Collective Bargaining" in D Natali & B Vanhercke, eds, *Soc Dev Eur Union 2012* (ETUI and OSE, 2013).
[19] Deakin & Rogowski, *supra* note 4.
[20] These are Regulation (EU) No 1173/2011 of 16 November 2011 ([2011] OJ L306/1); Regulation (EU) No 1174/2011 of 16 November 2011 ([2011] OJ L306/8); Regulation (EU) No 1175/2011 of 16 November 2011 amending Council Regulation (EC) No 1466/97 ([2011] OJ L306/12); Regulation (EU) No 1176/2011 of 16 November 2011 ([2011] OJ L306/25); Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on ([2011] OJ L306/33); and Council Directive 2011/85/EU ([2011] OJ L306/41).
[21] See Conclusions of the Heads of State or Government of the Euro Area, 'A Pact for the Euro. Stronger Economic Policy Coordination for Competitiveness and Convergence', 11 March 2011.

process by strengthening the Stability and Growth Pact (SGP) enforcement mechanisms and establishing a new 'Macroeconomic Imbalance Procedure' (MIP). The third element, the EPP, addresses areas that fall strictly within national competence with respect to law-making powers but that may be the subject of mutual benchmarking and learning processes. Finally, at the core of the new model is the European Semester, through which the Commission, the Council and the European Council set priorities. This six-month process brings together the new arrangements for economic governance: the SGP, the MIP, the EPP, the Fiscal Compact and the Europe 2020 Strategy.[22]

III – Learning the Right Lessons from the EMU Crisis: Human-Developmental Approach to Wage Determination

While the new economic governance illustrates a step in the right direction[23], we argue below that the EU has to learn the right lessons from the EMU crisis to challenge the current internal devaluation approach. It has to build a response that addresses the EMU's primary flaw, namely the embedding of a unified monetary policy without a commensurate coordination of wage policy (**A**).[24] One solution would be to engage in a more solidaristic wage process adjusted in line with monetary and fiscal policy. We draw on human-developmental theories to explore the question of why Europe needs stronger cross-policy coordination in support of a "wage-rebalancing" approach as an alternative to internal devaluation **(B)**.[25]

A – Misunderstanding the EMU Crisis: Failure of Internal Devaluation

As pointed out above, the EU has attempted to address EMU imbalances by cutting nominal wages and more generally by deregulating labour law. Recent developments

[22] For a full analysis of the Economic Governance legal Framework see S. Dahan, *supra* note 5; Niklas Bruun, Klaus Lörcher & Isabelle Schömann, *The Economic and Financial Crisis and Collective Labour Law in Europe* (Bloomsbury Publishing, 2014).
[23] S. Dahan, *supra* note 5.
[24] Recent evidence suggests that the European Semester is not only encouraging internal devaluation. In fact it has also encouraged wage re-evaluation in Germany (see Country Specific Recommendations 2014, 2015).
[25] For further details on the dichotomy between wage-led and profit-led regimes, see A. Bhaduri and S. Marglin, 'Unemployment and the Real Wage: The Economic Basis for Contesting Political Ideologies' (1990) 14 Cambridge Journal of Economics 375–93.

show that this approach has only led to a short-term productivity boost; in the medium run, growth has not come back and the Eurozone is deflating.[26] Indeed, the decline in real wages has had a strong negative effect on the development of domestic demand and has thus contributed to the persistence of economic stagnation. Moreover, since many European countries have followed the same strategy of wage restraint in an already-stagnating economy, this has further contributed to a decline in price developments, that is, EU-wide deflation.

There are a few problems with this solution. First, the mainstream view is that weak economies are still in crisis because wages are too high. This understanding of the crisis constitutes a missed opportunity insofar as it only scratches the surface of the problem. It does not address the root cause of the crisis, namely the absence of cross-policy coordination.. As described above (II), uncoordinated wage policy exacerbated the pro-cyclical dynamic of EU fiscal and monetary policy and thus exacerbated the development of macroeconomic imbalances. In particular, two different models emerged in the EMU. One is an export-led growth model (followed by the core economies) based on wage restraint and trade surpluses. The other is a debt-led model of growth (followed by the periphery) relying on domestic demand and private debt.

However, in spite of these flaws, the crisis response seems to focus on wage-restraint in the core economies as if it were the right approach to encourage recovery. In that respect, the crisis has not really challenged the EMU's flaws. While it has put an end to finance-led growth, export-led models have become the great winners in the crisis, although this success has relied on wage moderation strategies and capital outflows to finance-led countries. As a result, wage moderation is now advanced as a cure to finance-led growth, even though it is only a consequence of EMU flaws and not a long-term solution.

The result is that it creates an incentive for most States to pursue a beggar-thy-neighbour wage policy in order to address the problem of competitiveness divergence.

[26] F. Huizinga, 'Wage Moderation and Labour Productivity' (2004) 263 Contributions to Economic Analysis 141, 9; A. Kleinknecht, 'Notes and Communications, Causes of the Dutch Job Miracle: There is No Free Lunch! A Reply to Fase and Tieman' (2003) 151 De Economist 329–333; C. W. M. Naastepad and A. Kleinknecht, 'The Dutch Productivity Slowdown: the Culprit at Last?' (2004) 15 Structural Change and Economic Dynamics 137–163.

The problem with this approach is that neomercantilist strategies cannot be pursued by all members of a single-currency union at the same time. Only half of them can be successful, and if a neomercantilist model were to be implemented at the EU level it would have damaging implications for EU labour standards.

Finally, wage restraint is also problematic because there seem to be a strong correlation between unit labour cost and export performance as if competitiveness were entirely defined through cost. However, we know that competiveness is also about a wide range of non-price factors, such as innovation, quality, originality, brand image and sectoral specialisation.

B – Theoretical Grounds for Solidaristic Coordination of Wage (and Monetary Policy)

For lawyers and economists, the role of wage coordination, as well as the broader issue of labour law and economic growth, are hotly debated topics. In recent decades, the neoliberal consensus has dominated most policy circles and claimed that labour rules do more harm than good.[27] As the World Bank argued: "laws created to protect workers often hurt them". The core assumption here is that there is a fundamental trade-off between equality and efficiency. However, this so-called neoclassical approach seems to lose momentum in the context of growing inequalities and falling wages in most developed economies, notably in the EMU.

Against this background, we believe that alternate avenues such as a human-developmental approach would serve as critical means of channelling economic policy in favour of a set of developmental objectives that go beyond a narrow focus on competitiveness.[28] In line with the work of the Cambridge school on labour law and inclusive development, we argue that labour law, and specifically wage bargaining institutions, should be regarded as developmental institutions capable of enhancing

[27] Simon Deakin, *Labour Law and Inclusive Development*, Working Paper 458 (Centre for Business Research, University of Cambridge, 2014).
[28] S. Deakin, 'The Lisbon Treaty, the Viking and Laval Judgments and the Financial Crisis' in N. Bruun and others (eds), *The Lisbon Treaty and Social Europe* (Hart 2012).

equality and efficiency.[29] While this approach does not maintain that protective labour laws are always efficient, it claims that there is no inherent trade-off between equality and growth. We therefore believe that recent law and economics literature can help to build a strong case in favour of a stronger wage coordination system at the EU level, one that can address the issue of imbalances but also of equality.

On the specific issue of wage coordination, the literature is divided between two schools of thoughts, the neoclassical and the Keynesian. For neoclassical economists, the precondition to maintaining successful economic policy is to maintain clear divisions of responsibilities, according to which the Central Bank should only be responsible for price stability. In that sense, neoclassical economics does not leave room for coordination of wage and monetary policy in spite of the interdependency described above.[30] As for the Keynesian view, coordination of wage policy and monetary policy is a crucial component of a single-currency system. As a consequence, nominal wage adjustments or structural labour reforms only have an impact on prices, and can affect employment and real wages if pegged to a symmetrical monetary policy.[31]

In spite of this divergence, a consensus has emerged supporting the creation of a vertical coordination mechanism in the form of a productivity-oriented wage policy, the so-called Golden Wage Rule. According to the Golden Rule, if the ECB inflation target is 2% over the medium term, nominal wages must not increase by more than 2% above the rate of productivity growth. The assumption behind a productivity-inflation oriented model is that nominal claims to higher wages do not exceed the available real social product, and that real wage costs remain the same. However, it is worth noting that designing a wage and productivity formula is problematic in a non-homogenous area such as the Eurozone.[32]

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[29] Simon Deakin, *supra* note 27.
[30] L Calmfors, "Macroeconomic policy, wage setting, and employment - what difference does the EMU make?" (1998) 14:3 Oxf Rev Econ Policy 125; Armin Steinbach, *Economic Policy Coordination in the Euro Area* (Routledge, 2014) at 133.
[31] Achim Truger & Eckhard Hein, *Macroeconomic co-ordination as an economic policy concept: opportunities and obstacles in the EMU*, WSI Discussion Paper 125 (Hans-Böckler-Stiftung, Wirtschafts- und Sozialwissenschaftliches Institut (WSI), 2004).
[32] For a more detail analysis see, Armin Steinbach, *supra* note 30 at 138.

As discussed above, the Golden Wage Rule was not respected insofar as wages grew above productivity in the periphery and below productivity in the core. The ECB rate exerted procyclical effects by encouraging further inflation (including wage inflation) in the periphery and deflation in the core. One of the problems with the current EMU model is that the ECB does not take into account the individual impact of real interest rates and fiscal policy at the domestic level. The ECB set its uniform interest rate with only average inflation in mind and therefore cannot use monetary policy at the domestic level to mitigate inflationary pressures, unlike national central banks before the euro. Accordingly, it can be argued that these trends could be offset by an EMU-level wage policy adapted to domestic inflation conditions. In other words, the ECB, along with the Commission and the unions, has to coordinate wages with local conditions in mind in order to compensate for the negative effects of the ECB uniform rate.

Against this background, we argue that cross-policy coordination (wage and monetary policies) deserves more attention. While the details of the Golden Wage Rule should be left to economists, we believe it is relevant to briefly explore some of the promising solutions and institutional developments compatible with a solidaristic wage system.

For instance, Chagny and Husson[33] have developed an 'optimum wage regime' that avoids increasing wage differences between the various sectors, and raises wages at the lower end of the scale. We believe this model is relevant to our study because it has acknowledged and attempted to address the EMU's flaws. Furthermore, recent studies confirm that an optimal regime of this kind – namely, more expansionary wages– may have positive effects on growth and investment.

The main argument for an optimal wage system is twofold: First, an optimum wage regime should allow for a redistribution of higher productivity gains from the most efficient sectors with the less productive sectors, in order to achieve a more balanced redistribution. Secondly, an optimum wage regime should be consistent with an upward

[33] Guy Van Gyes & Thorsten Schulten, *Wage bargaining under the new European Economic Governance: Alternative strategies for inclusive growth* (ETUI, 2015), ch 9.

convergence of real wages across the EMU, that is real wages should grow faster in countries starting from a lower initial level of productivity.[34]

Finally, it is important to note that such an expansionary and solidaristic wage regime cannot be developed in a vacuum. It requires institutions that are capable of supporting such an alternative strategy.[35] At the moment the institutional landscape does not allow for cross-national wage policy coordination, mainly because wage setting mechanisms have become decentralised across Europe.[36] Uncoordinated wage setting is problematic because it cannot play its role as economic stabilizers and thus encourages pro-cyclical economic development. Although in times of economic downturn it may encourage greater downwards wage flexibility, in periods of economic growth, it encourages faster wage growth. In sum, more decentralized wage-setting systems can generate much higher wages dispersion, which was one of the root causes of the EMU crisis. As a result, there is a strong case to be made in favour of stronger and more centralized wage institutions in order to prevent downward and upward development. This one of the key elements of Keynesian economics and has recently been confirmed by the Commission[37] and the Eurofound[38] in their latest report.

While collective bargaining approaches across Europe are diverse[39] – with coverage ranging from 100% to only 10% – there is a consensus that collective bargaining requires a comprehensive system of more centralised multi-employer bargaining.[40] Instead of deregulation of labour and wage-setting systems, the new economic governance should allow supportive regulation by the states, such as collective agreement extensions, or should launch a campaign to increase wage bargaining coverage.

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[34] *Ibid* at 306–307.
[35] Janine Berg, *Labour Markets, Institutions and Inequality* (Edward Elgar, 2015), ch 4.
[36] European Commission, DG Employment, *Industrial Relations in Europe 2014* (Brussels: European Commission, 2015).
[37] *Ibid*, ch 2 and 3.
[38] Speckesser Stefan, Nafilyan, Vahé & Ledermaier Stefanie, *Pay in Europe in different wage-bargaining regimes* (Eurofound, 2015).
[39] European Commission, DG Employment, *supra* note 36.
[40] Guy Van Gyes & Thorsten Schulten, *supra* note 33, ch 8.

Finally, industrial relations research, as well as more mainstream economic research, conducted by international organisations such as the International Monetary Fund have argued that a more equal and balanced growth model requires stronger unions.[41] While European unions must take responsibility for strengthening their negotiation capabilities and their organisational power at the cross-border level, it is also the responsibility of other institutions such as the ECB and the Commission to play a greater role in this endeavour. This leads us to our next section, which explores whether such institutional developments are possible from a legal perspective, and whether we can build a strong legal and institutional case in favour of a more solidaristic and balanced wage system.

IV – Legal and Institutional Preconditions for a Solidaristic Wage Solution

This section explores the legal and institutional debate surrounding the issue of EMU wage policy as a response to the crisis. We investigate how the economic debate described above can be translated into legal and institutional terms. In particular, we attempt to identify the type of Union necessary to achieve a more solidaristic and balanced wage system. While a treaty change towards a fully-fledged Union would be a necessary solution over the long term, we claim that a wage solution would not require treaty changes in the current context. A treaty revision would only face insurmountable hurdles; however, the current EU legal framework – the Treaty, but also the new economic governance – does offer sufficient support for a solidaristic wage solution**.** Firstly, we argue that the human developmental approach finds strong substantive support in the Union's legal framework **(A)**. Secondly, we investigate procedural instruments at the disposal of the Union that could help to design a solidaristic solution to the crisis **(B)**.

A – A Substantive Legal Argument in Favour of Solidaristic Wage-setting

Despite the dominance of economic rights in the legal construction of the integration project, the Union can be described neither as a purely neoliberal project nor

[41] Florence Jaumotte & Carolina Osorio Buitron, *Power from People* (IMF Finance & Development, 2015).

as an ordoliberal project. It is a multi-layered project with a strong social dimension which has remained side-lined and subject to significant pressures, but which could come the fore at any time given sufficient political will. Deakin notes that there is no single predominant conception of the state-market relationship in EU law. Instead, several different versions of this idea are present in the corpus of law that includes the Treaties, secondary legislation, case law and so on.[42] The Union has shifted from an 'ordoliberal' paradigm in the 1950s to a neoliberal one in the 1990s, which is further reinforced by the economic governance legal framework.[43]

However, while these reforms have undoubtedly subordinated labour law systems to a deregulatory process of internal devaluation, the labour-law pillar of the integration project is more relevant than ever. Indeed, the Union's legal framework includes a strong human-developmental component that is perfectly compatible with a solidaristic wage policy. Article 3 TEU, for instance, is not confined to the establishment of the 'internal market.' The Union shall also achieve 'a highly competitive social market economy aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.'[44] Deakin and Barnard note that economic freedoms are no longer placed in a dominant position among social rights.[45] The internal market is no longer interpreted as a goal in itself. It is seen as means of achieving the values enshrined in Article 2 TEU, namely 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights.'

Against this legal background, social policy and labour law could play a more ambitious role than merely mitigating the worst effects of the crisis. There is a strong legal reason to reconsider the economic governance framework, as it does not support social progress and balanced growth. Article 3 TEU clearly implies that the Union should take active steps to promote social goals such as '[combating] social exclusion and discrimination' and the '[promotion] of social justice and protection, equality

[42] S. Deakin and R. Rogowski, 'Reflexive Labour Law, Capabilities, and the Future of Social Europe' in R. Rogowski and others (eds), *Transforming European Employment Policy: Labour Market Transitions and the Promotion of Capability* (Edward Elgar Publishing 2011).
[43] Rogowski, Salais, and Whiteside, Transforming European Employment Policy.
[44] Article 3 TEU.
[45] S. Deakin, 'Regulatory Competition after Laval' (2007) 10 Cambridge Yearbook of European Legal Studies 581–609.

between women and men, solidarity between generations and protection of the rights of the child.' However, these human-developmental provisions are unlikely to play a significant role in the short term. As noted, the social dimensions of the EMU and Lisbon have proven too weak to mitigate the undermining of labour law in the periphery.

One could, however, argue that social rights in the Charter and in the Treaty could still, in the longer term, play a significant role in the operation of the economic governance process. While there is no relationship of parity,[46] the Charter makes it more difficult to argue that economic freedoms prevail over social rights.[47] Therefore, the human-developmental interpretation of EU law may offer sufficient legal support to counterbalance the internal devaluation dynamic underlying the crisis response.

B – Procedural Basis for an EMU-level Wage Determination Process

While the developmental approach offers some substantive support for a solidaristic wage policy, the Lisbon Treaty does not seem to grant any procedural powers at the EU level to achieve such a solution. We believe, however, that the Union's legal framework already offers some procedural means to develop an optimal wage regime, thereby reversing the downward path adopted by the new economic governance.

First, Articles 121 and 136 TFEU state that the Council may examine the consistency of national economic development with the BEPG. More precisely, Guideline 4 of the BEPG calls for wage developments that 'contribute to macroeconomic stability and growth.' At the same time, Member States are required to 'encourage the right framework conditions for wage-bargaining systems, while fully respecting the role of the social partners, with a view to promoting nominal wage and labour cost developments consistent with price stability and the trend in productivity over the medium term, taking into account differences across skills and local labour market conditions'. While these provisions do not advocate a solidaristic approach on wage policy, neither do they

[46] C-515/08 Criminal proceedings against Vítor Manuel dos Santos Palhota and Others. Reference for a preliminary ruling [2010] ECR I-09133.
[47] S. Deakin, 'The Lisbon Treaty, the Viking and Laval Judgments and the Financial Crisis' in N. Bruun and others (eds), *The Lisbon Treaty and Social Europe* (Hart 2012) 41.

offer any legal support in favour of a downward wage-setting model such as that introduced by the new economic governance.

Secondly, Article 152 TFEU suggests that the European social dialogue be extended beyond the strict framework of social harmonisation defined by Article 153 TFEU. For Schmitt, European social partners should be involved in all normative decision-making processes, hard or soft.[48] It may also be argued on the basis of Article 9 TFEU that the Union should take into account requirements linked to the promotion of high employment levels; guaranteed social protections; the fight against social exclusion; and high-quality education, training and health care. Accordingly, it is clear that any action initiated by the Commission must be preceded by a social impact assessment. In particular, European social partners should be fully involved in the main stages of the EU Semester and in EU Council decisions approving financial aid.[49]

Finally, the Treaty has offered several reflexive methods aimed at coordinating employment policy at the EU level. The most significant layer of innovation since the Maastricht Treaty was the European Employment Strategy, which was the first supranational method of coordination.[50]

The principle of coordination was further institutionalized during the Lisbon summit, which was held on March 23-24, 2000. The central objective of the Lisbon Strategy was to achieve full employment through a section titled 'Modernising the European Social Model.' This was to be achieved through the so-called Open Method of Coordination.

The method was described as a 'means of spreading best practice and achieving greater convergence towards the main EU goals through common targets and

[48] M. Schmitt, 'Evaluation of European Union Responses to the Crisis having Regard to Primary Legislation' (ETUI May 2013), Paper prepared for ETUI seminar on 'The Impact of the Economic Crisis on Collective Labour Law in Europe'.

[49] With regard to the decision of the ESM, there seems to be no requirement to involve the social partners since the mechanism does not come under EU law. However, the ESMT (Article 13) suggests that MOUs concluded by the ESM should be consistent with EU law.

[50] According to Article 145 TFEU (ex 125 EC):
"Member States and the Union shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labor markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union."

Guidelines for Member States, sometimes backed up by national action plans.'[51] It relies on regular monitoring of progress to meet those targets, allowing Member States to compare their efforts and learn from the experience of others.[52]

Terms such as *soft law*, *self-regulation*, and *negotiated governance* have been widely used to characterize the OMC and the *modes of governance* that resulted from Lisbon.[53] In procedural terms, the Lisbon Strategy consisted of new forms of multi-level governance through the exchange of information among policy-makers, learning from others' practices and intentions, national ownership, and finally the exertion of peer pressure to galvanize governments into taking appropriate policy action.

More recently, the Lisbon strategy has given way to its successor, the Europe 2020 Strategy, which draws its inspiration in terms of both content and process from the Lisbon Strategy. The Europe 2020 Strategy intends to create jobs and promote growth through economic and social reforms. Under the three headings of *smart*, *sustainable* and *inclusive growth*, it covers policy actions at both national and EU levels and is aimed at enhancing the welfare of European citizens.[1] In particular, one can argue that a more solidaristic wage growth model finds support in the *inclusive growth* heading; and, at least on paper, this became the official guiding principle of the Europe 2020 Strategy.[54]

One of the most striking developments in the field of wage policy is the **European Semester,** notably its Macroeconomic Imbalance Procedure (MIP). The MIP is aimed at detecting macroeconomic imbalances via a 'scoreboard' of economic indicators, including wage cost. It has been argued that the MIP characterizes a new form of hybrid interventionism on wage policy.[55] One the one hand, the MIP is still entrenched in a reflexive approach via monitoring, negotiation and substantive guidelines; on the other

[51] Communication from the Commission – European governance - A white paper, Jul. 25 2001. COM(2001) 428 final.
[52] *Id*.
[53] G Falkner, *Complying with Europe: EU Harmonisation and Soft Law in the Member States* (Cambridge University Press, 2005).
[54] Commission, *EUROPE 2020 Integrated Guidelines for the Economic and Employment Policies of the Member States* (European Commission, 2012).
[55] S. Dahan, *supra* note 5; Schulten & Müller, *supra* note 18.

hand, it also allows the Commission to exert strong pressure on wage policy through hard economic sanctions.

Finally, there is another instrument that also bears a strong reflexive component due to its negotiated dynamic, namely the Macroeconomic Dialogue (MED) which was introduced by the Cologne European Council in June 1999. This instrument was designed as a facilitation process aimed at improving interactions among those responsible for wage development, fiscal and monetary policy. While it has not yet achieved its potential, the MED may illustrate the kind of instruments required at the EMU level to coordinate monetary and wage policy and thus to address imbalances.

V – The Institutional Framework for Solidaristic Wage Coordination: Reforming the Macroeconomic Dialogue

In light of the institutional context, we advocate a reflexive solution based on already-existing institutions to design a successful trialogue between the unions, the ECB and the Commission. Drawing from both policy learning theories, we argue that the EU should engage in a process of institutional layering to reform the Macroeconomic Dialogue. Accordingly, we will investigate why the MED has never produced any significant results (**A**). Furthermore, we will draw upon the positive experience of other reflexive/legal institutions such as the OMC and the MIP to propose a revision of the MED (**B**). Finally, we will discuss whether the proposal raises new legal issues vis-à-vis the Treaty (**C**).

A – MED – A Failed Experience

A Macroeconomic Dialogue was introduced by the Cologne Council in 1999 as a means to improve macroeconomic coordination. The main objective of the MED was to improve cooperation between the main actors responsible for monetary, fiscal and wage policy – actors which include the Commission, the EC, employers and trade unions. In line with the Treaty and the BEPG, the idea was to promote stability-oriented wage policy, to provide monetary conditions conducive to stronger growth, and to stimulate employment without prejudice to price stability. Specially, it has formulated the Golden

Wage Rule, according to which if the ECB inflation target is 2% over the medium term, nominal wages must not increase by more than 2% plus rate productivity growth. However, the MED has not produced significant results, nor has it prevented the development of imbalances in spite of the Golden Rule.

The MED is peculiar institution, one which does not match many of the Member States' monetary systems prior to the creation of the EMU. In particular, the Bundesbank system never had an institution responsible for the coordination of monetary and wages policies. In this respect, this institution provided an innovative opportunity for most trade unions to influence wage policy at the EMU level. At the same time, the MED is also an attempt to include the ECBs in a process of 'ex-ante coordination', and by the same token mitigate the consequences of the EMU's flaws. In 1999, the ECB Annual Report claimed that in light of the increasing economic integration of the EMU, there was a strong case to be made in favour of closer coordination of economic policies. Coordination was supposed to 'reduce negative spill overs, create peer pressure, facilitate the exchange of best practices and thereby generate positive welfare effects'[56].

However, the political motivation to develop a less monetarist EMU was not translated into practice. Due to the resistance of several Member States, mainly the UK,[57] the notion of wage policy was banned from public documents; and the ECB, careful not to violate its mandate, only agreed to 'cooperate' without committing to ex-ante coordination. Along these lines, the ECB only argued for light-touch coordination insofar as only price stability – its main objective – is supposed to solve economic problems and eventually boost investment and employment. Finally, the obstructive stance of the ECB, but also of the Commission and finance ministers, has resulted in the exclusion of European trade unions from the coordination of wage and monetary policies.

Accordingly, this weak political arrangement translated into a weak form of soft coordination which resembles the OMC, but with few constraints. It also favoured

[56] ECB, *Annual Report 1999* (Frankfurt: ECB, 2000).
[57] Stefan Collignon, *Wage developments in Euroland or: the Failure of the Macroeconomic Dialogue* (Pisa: Sant'Anna School of Advanced Studies, 2009).

confidential exchanges of information, mainly at the EU level. There is no adequate link between the European and the national level, where wage and fiscal policy are decided.

Furthermore, the main agent of the MED is the Economic Policy Committee of the Council, a political institution. As a result, the MED was aligned with the interests of the major economies and was therefore unsuccessful at building adequate links between the European level and the national level.

In light of this biased approach, the MED does not fulfil the preconditions for reflexive and soft coordination.[58] While there is an exchange of information, there is no joint 'target-setting'. MED is not a coordination mechanism, but rather a discussion forum that produces only general "understanding" and no binding commitments. It was thus was unable influence wage determination and mitigate the damaging macroeconomic developments that exacerbated the EMU crisis (Section I).

These developments therefore raise the question of whether the MED can play a more constructive role. In that respect, the reflexive foundation of the MED can play a significant role in spite of its soft nature. The next section will attempt to offer a revised version of the MED and draw lessons from the experience of more effective reflexive instruments.

B – Deepening Reflexive Governance: Building a Multi-level Dialogue

It is our view that domestic wage agreements must take into account EU-wide economic and monetary conditions, the competitive positions of national economies, and the policy reactions of the ECB. This is now impossible, not due to the diversity of wage setting mechanisms at national level, but because of the inadequate link between wage and monetary policy at both the EU and national levels. Accordingly, a crucial improvement to the MED would be the development of a greater link between wage and monetary policy both at the *horizontal level*– encouraging discussion between the ECB, the Commission and trade unions (**1**) – and at the *vertical level* – creating a facilitation process between EU macroeconomic players and actual negotiators (**2**). In addition, this

[58] K Sisson & P Marginson, *Coordinated bargaining: a process for our times? ESRC One Europe or Several Programme* (Sussex: Working Paper 14/00, European Institute, University of Sussex, 2000).

section will draw upon past reflexive experiences to explore several procedural improvements to the MED and discuss their reflexive and policy-learning implications.

1. Horizontal Coordination at the EU Level

• Encouraging a Reflexive Process through Institutional Reinforcement

At the European level, an important aspect already mentioned by Watt is that the limited ***time*** devoted to the MED should be reconsidered.[59] As proposed by ETUC, the MED should be transformed into a forum in which in-depth discussion takes place on the euro and the consequences of monetary and fiscal conditions for individual Member States. In that respect, meetings should shift away from heated economic discussion about the 'facts' and their interpretation toward a more policy-oriented debate concerning wage-pattern scenarios for the core and the periphery. While the monetarist approach discussed above may still be dominant, this would nevertheless facilitate cross-policy coordination within the EMU, notably addressing the problem of internal competitiveness divergence between the core and the periphery in the context of a unified monetary policy.

Another important element would be the appointment of a permanent ***secretariat*** – perhaps at the ECB, the Commission or the Parliament – with facilitating capacity along with a research budget for conducting targeted research.[60] This evidence-based learning process[61] would provide more political legitimacy for the MED based on technical expertise and knowledge. This would also make the process more transparent. The outcomes of the MED should be available to the public, especially investors, in order to encourage a reflexive discussion of monetary conditions and competitiveness.

Finally, the facilitating role of the ECB should be strengthened. Both neoclassical economists and Keynesian economists recognise the need for some degree of

[59] Andrew Watt, "The coordination of economic policy in EMU. What contribution can Macroeconomic Dialogue make to higher growth and employment?" in *Deliv Lisbon Goals Role Macro Econ Policy*, etui ed (Brussels, 2006) 199.
[60] *Ibid*.
[61] D Dolowitz & D Marsh, "Who Learns What from Whom: A Review of the Policy Transfer Literature" (1996) 44:2 Polit Stud 343.

coordination between economic and monetary policies to the extent that cross-policy coordination permits the ECB to collect reliable information. While neoclassical economists oppose genuine cross-policy coordination, Keynesians believe that nominal wage adjustments only have an impact on prices, and thus can only exert an influence on growth and employment if the ECB rewards this wage policy with a corresponding monetary policy.

Accordingly, a new MED in which the ECB and wage negotiators could reliably exchange information would offer more control over inflationary trends, thereby 'helping the central bank to do its job'. In other words, the ECB must recognise social partners as strategic allies in achieving its price stability goals. As discussed below (B), the ECB has already taken a more intrusive stance in the field of economic policy, including wage policy. The question remains whether this new MED raises concerns regarding the treaty-based independence of the Bank.

- **Linking MED to the European Semester**

Finally, the relevance of the MED can be enhanced by systematically linking the discussions to other coordination mechanisms of the ***European Semester,*** especially the MIP. Within the framework of the European Semester, the MIP monitors macroeconomic developments in EU countries in light of pre-set learning targets, that is, a macroeconomic scoreboard of indicators. Based on this scoreboard, the Commission makes Country Specific Recommendations (CSRs), including recommendations on wage policy. In that regard, the MED could serve as a basis for elaborating upon CSRs as part of the MIP. This would increase awareness of macroeconomic conditions for national wage-setters and trigger a well-informed discussion between the Commission and the national ministries on competitiveness adjustments.

Another important variable for the MED is the disciplinary nature of the MIP. In contrast to other reflexive instruments such as the OMC, the MIP is accompanied by financial sanctions if Member States fail to comply with CSRs. That said, linking the

MED with the MIP could lend a disciplinary slant to the macroeconomic discussion and thereby increase the relevance of the MED.

However, we argue that the linking of the MED to the MIP could help to challenge the current deflationary bias of the MIP and shift the content of the CSRs towards more expansionary wage coordination. Recent evidence suggests that the MIP has mainly exerted pressure toward internal devaluation without genuinely encouraging expansionary wage growth where needed.[62] For instance, in the CSRs of 2014-2015, wage moderation remains the dominant suggestion. In addition, Germany is exempted from the 2015 MIP even though its wage restraint strategy has contributed to the development of macroeconomic imbalances.[63]

It is important to notice a slight, recent change of attitude in the Commission. The Alert Mechanism Report of 2016 acknowledges that Germany and the Netherlands' sizeable surplus and growing net foreign assets stocks may suggest rising creditor risks and have potential relevance for the rest of the euro area.[64] In its Country Specific Report for Germany,[65] the Commission recommends further sustained wage increases and suggests that cost competitiveness has been broadly consistent with external adjustment needs.[66]

While recent evidence suggests an expansionary effort on the part of the Commission, internal devaluation seems still to be the dominant bias. Against that background, a more efficient reflexive MED could help to further influence the dynamic of the MIP towards more solidaristic and expansionary rebalancing. An in-depth discussion between domestic and EU-level actors may raise awareness of the damaging consequences of the internal devaluation approach of recent years.

As a result, if economists were to agree on that point, the Commission now has the quasi-legal power, thanks to the MIP, to enforce both wage devaluation and wage re-

[62] S. Dahan, *supra* note 5 at 50.
[63] Germany's wage cost stayed close to 2% in the 2000s, and fell in 2005. While wages have grown dynamically in the past years, they are still below their 2000 levels.
[64] European Commission, *Alert Mechanism Report 2016*, COM (2015) 691 final (Brussels: European Commission, 2015) at 19.
[65] European Commission, *Country Report Germany 2016*, SWD (2016) 75 final (Brussels: European Commission, 2016) at 2.
[66] European Commission, *supra* note 64 at 11.

evaluation. We are advocating a solidaristic rebalancing process that would take the form of an EMU-wide wage re-evaluation process. On the one hand, surplus countries would have to actively boost domestic demands though wage re-evaluation and public investment; on the other hand, deficit countries would not be subject to negative wage growth in order to avoid cumulative deflation.[67]

2. Vertical Coordination: Towards More Transparency at the EU and National Levels

A key issue with the MED is its insufficient link between EU and domestic policy making. It takes place behind closed doors and there is little information trickling down at the domestic level.[68] Against that background,, diverging wage developments can last for too long and require a more drastic adjustment – with high social cost – when divergences become unsustainable, as seen during the EMU crisis.

As we argue above, thanks to the weakness of wage setting in certain countries, wage developments have not followed the formula of the Golden Rule. Rather, wage setters in the periphery have taken into account national union labour costs rather than European inflation targets, mainly because they are accountable to national audiences and not to a European constituency. While this is part of the nature of wage agreements, it is also true that the confidential nature of the MED has prevented actual wage-setters from referring to European norms as negotiating constraints.

Accordingly, Watt[69] and Collignon[70] have proposed the establishment of a multi-level MED with parallel macro-dialogues at the national level, whereby both levels should be *conducted publicly and subject to permanent public scrutiny*.

[67] As stated above, pushing for a pan-European export-led model is doomed to fail as only half of EMU states can be successful, and in the long term, it encourages beggar-thy-neighbour policies. See Engelbert Stockhammer, "Peripheral Europe's debt and German wages: the role of wage policy in the Euro area" (2011) 7:1 Int J Public Policy 83.
[68] Stefan Collignon, *supra* note 57.
[69] Watt, *supra* note 59.
[70] Stefan Collignon, *supra* note 57.

Disseminating Information through EU Public Debate

At the EU level, the debate on macroeconomic policies must be conducted in the public sphere. This would encourage the development of European wage norms that can influence domestic wage negotiators. For Collignon, the only public sphere capable of offering such a level of transparency is the European Parliament. He therefore claims that the MED should be transferred from the European Parliament to the Council. Specifically, he believes that the Committee on Economic and Monetary Affairs of the European Parliament should make recommendations on fiscal and wage policies in line with EMU monetary conditions and in consultation with both European social partners and the ECB.[71] We believe the Collignon proposal to be compatible with our suggestion to integrate the MED into the European Semester. In particular, the Parliament could add recommendations on wage policy in the parliamentary debate on the Annual Growth Surveys of the CSRs. However, we believe that the Commission should play a key role in steering the debate on wage policy, especially since it has been given indirect influence thanks to the Macroeconomic Imbalance Procedure. The question remains which institutions should steer the MED process. Considering the role of the Commission in the European Semester, one can argue that the Commission could play such a role while remaining with the limits of its mandate, which is to say, not directly influencing wage policy (Article 153 TFEU).

- **National-level Parallel Dialogues**

As for the national level, parallel domestic MED structures should permit a transposition of the EU discussions on wage policy at the domestic level. As argued by Watt, regular meetings of the national fiscal authorities, national central banks and social partners should be held to 'shadow' the MED at the EU level. The idea is to enhance the degree of commitment at the national level by sharing relevant data on monetary conditions and wage constraints with domestic wage-setters. Providing an adequate forum for discussion between wage setters, governments and the central banks

[71] The President of the ECB is already audited five times a year.

is crucial in order to mitigate the damaging effects of a pro-cyclical monetary policy, that is, not to repeat the mistakes of the EMU crisis.

More broadly, the MED has the potential to promote *vertical arrangements of coordination* between levels of governance at the state level, which may result in the creation of formal or informal bodies of coordination between national and regional levels. The underlying assumption is that wage policies need to be territorially calibrated. In various Member States, subnational authorities would therefore be formally consulted, especially in countries where wage bargaining is a state-led process.

Furthermore, if the MED were to be included in the European Semester, the CSRs would automatically influence the domestic debate on wage policy and encourage a reflexive process for labour and economic ministries in the drafting of their responses (mainly via the National Reform Program). In line with the OMC experience, the obligation to draft NPRs for wage policy might promote collaboration among multiple actors, including NCBs and labour and fiscal authorities. It could even lead to the creation of new formal coordination bodies and inter-ministerial working groups (including in new Member States).

As for the involvement of national social partners, this should be a core principle for a revised MED. As argued by the ETUC Resolution of 2015, early consultation with the social partners should take place at least at the drafting stages of the AGSs. National social partners could, in fact, consider the production of a joint text and incorporate it directly into the NRPs, or else attach it as a separate appendix. In that sense, the national MED could have *reflexive* effects on national social dialogue through the creation of bi-/trilateral consultative *fora* or the revalorization of existing participatory arrangements.

Finally, a revised MED would benefit from horizontal networking between social partners through the organisation of roundtables and cross-border facilitation platforms. Along these lines, the new MED should offer resources for unions to strengthen internal coordination at the European national and sectoral levels. An EU-funded project specifically aimed at reinforcing the role of the unions in the EU Semester has already been implemented (October 2015-March 2017). The objective is to

enhance trade union capacity to make an impact in early-stage and ex-post consultations on strategic documents. According to this perspective, reflexive learning would not only enhance moves towards more participation; it would also serve as a cognitive and organizational template for redefining the governance of vertical relationships between fiscal authorities, wage setters and central banks.

It is worth noting that several union-led initiatives for cross-border union collaborations have already taken place.[72] These initiatives constitute an opportunity for *policy mimicking* insofar as they could serve as a reflexive base for a revised version of the MED. The experience of the European metal sector, for instance, is of particular relevance. Since the 1990s, the metal sector has played a pioneering role in the field of sectoral cross-border coordination.[73] Against the background of the introduction of the euro, the European Metalworkers Federation (EMF) struck a crucial deal in which wage agreements were pegged to annual compensation for price increases in order to protect real wages.[74] While the case of the metal sector is hardly reproducible at the EMU level, it has important policy implications for sectoral-transnational collective agreements and could help prevent a repetition of the same mistake, namely asymmetric wage growth.[75]

C – Legal Implications of a Revised MED

This section is not concerned with the new interventionist role of the Commission resulting from the creation of the MIP.[76] Instead, we wonder whether a greater goal of the ECB in the context of a revised MED would be compatible with the Treaty, and particularly the monetarist legal interpretation of the ECB's original mandate. According to the Treaty, the ECB cannot overstep its monetary policy mandate.[77] Furthermore, the ECB may not request or receive instructions from societal organs or

[72] Significant research has been conducted on these issues, reviews of which may be found elsewhere.
[73] European Metalworkers' Federation 'Collective bargaining policy in a changing Europe; Statement of principle on collective bargaining, adopted at the 1st EMF Collective Bargaining Conference' Luxemburg' 11–13 March 1993.
[74] ibid.
[75] A. Watt, 'The Road to Europe: Can Wage-setting Save the Monetary Union?', November 2011.
[76] This question has already been addressed elsewhere. S. Dahan, *supra* note 5.
[77] Article 119 TFEU

institutions, member governments, or other bodies.[78] Regarding the coordination of economic policy, the ECB interprets these boundaries in such a way that the relationships between the ECB and other economic policy decision-makers cannot go beyond non-binding dialogue.[79] This would therefore rule out any form of ex-ante coordination of the kind that is taking place with the MIP. As noted above, the MIP has a strong disciplinary procedure that allows for economic sanctions. If the ECB were to play an influential role in the MED, it might exert pressure on the Commission or Social partners, which could constitute a violation of its mandate.

Such a legal argument can be seen as misguided insofar as cross-policy coordination does not encroach on economic policy competences as long as the ECB is only pursuing 'soft coordination'. In fact, the ECB already takes part in the MED and contributes to an exchange of information about economic policy. One might assume that the ECB collects information from the unions and set its policy accordingly. For instance, in case of wage restraint, the ECB might feel compelled to take monetary policy measures to alleviate the consequences of deflationary wage spirals. While the MED would not result in ex-ante agreements or any strict commitment that would violate the ECB mandate, it is plausible to imagine the ECB playing a more intrusive role in the drafting of CSRs, thanks to the linking of the MED with the MIP. Thus, the legality of the ECB action could become debatable, especially as the CSRs are quasi-binding.

At the same time, it can be argued that if necessary, the ECB would participate more intrusively in the coordination of economic policies. In fact, it has already attempted to gain more influence in the field of wage growth. The ECB regularly warns unions against demanding excessively inflationary wages. Moreover, it criticizes 'institutional rigidities' and has openly favoured the dismantling of wage-setting mechanisms, as well as voicing its opposition to a minimum wage.[80]

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[78] Article 127 TFEU
[79] ECB, *The ECB's relations with European Union institutions and bodies – trends and prospects*, ECB Monthly Bulletin (Frankfurt, 2010).
[80] Armin Steinbach, *supra* note 30.

If a more genuine cross-policy coordination were necessary, the EU legal framework offers sufficient flexibility to allow the ECB to assume a more influential role, notably through the MED. Recent case law of the Court of Justice of the European Union has confirmed that claim. In the *Gauweiler*[81] case on the legality of the sovereign bond-buying program of the ECB – namely the Outright Monetary Transaction – the Court found that the OMT is within the monetary policy mandate of the ECB[82] and does not violate the prohibition against the monetization of public debt[83]. The flexibility of the judgement – recently confirmed by the German Constitutional Court – may be welcomed by a supporter of a greater Union for the sake of the survival of the euro insofar as it signals an innovative stance regarding greater macroeconomic coordination. While the greater constitutional meaning of this judgment is yet to be determined, it is worth noting that the legal framework of the EU does not preclude the development of a more effective MED with a significant disciplinary component and a more influential role for the ECB.

VI – Conclusion

Designing constructive proposals is not an easy task, and we recognise that lawyers and political scientists can play only a limited role in this endeavour. Nonetheless, lawyers should not confine themselves to making pessimistic predictions on the legal consequences of the economic crisis. Indeed, it is the role of lawyers to offer legal solutions, however modest, to economic problems, especially since the euro crisis has its roots in the legal (mis)construction of the EMU. Our core claim is that the euro crisis calls for a radical solution, one that challenges the EMU paradigm. However, a suitable solution would not require a fully-fledged Political Union accompanied by a harmonised Social Europe. It could take the form of a *reflexive rebalancing*, a solution that challenges the EMU paradigm while reconciling the market with labour law.

Drawing on human-developmental theory, we have found economic and legal arguments for wage coordination as a solution to the crisis. If there were sufficient

[81] Judgment of the Court (Grand Chamber) of 16 June 2015, C-62/14.
[82] Art. 119 TFEU.
[83] Art. 123 TFEU.

political support for more cross-policy coordination, it would be legally feasible insofar as the Treaty offers sufficient flexibility to implement a reflexive approach. A solution of this kind is already being implemented through the European Semester, but it does not genuinely advocate for expansionary and solidaristic wage growth.

Nonetheless, while the human-developmental dimension has remained side-lined, we do not rule out the (re)emergence of a Social Europe (with competences on wage policy) in the near future. If this shift were to take place, the EU might find sufficient political will to design a suitable solution with the instruments available in the Treaty. One approach would be to learn from the coordinated-learning experience of the OMC and develop a solidaristic MED that could monitor and control wage-setting systems across all sectors at the transnational level.

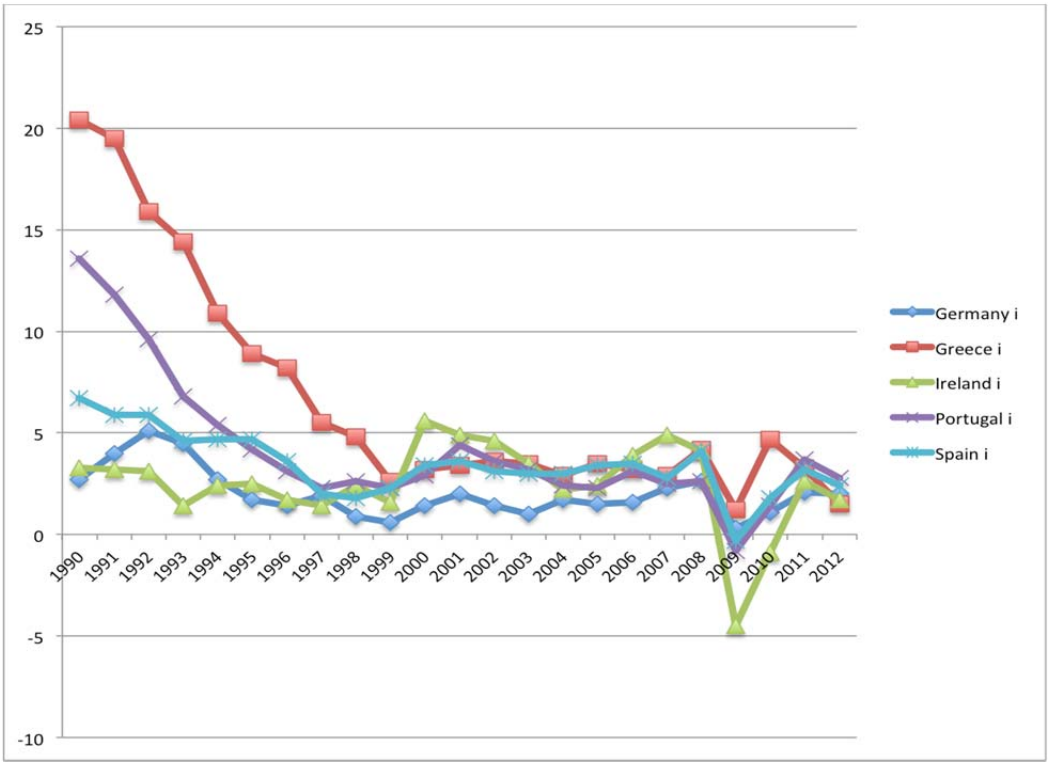
This brings us to the question of the effectiveness of this learning initiative, an issue that deserves further research. In particular, it raises the question of whether these new instruments will effectively counterbalance the internal devaluation dynamic underlying the economic governance system. On the one hand, this proposal can be viewed as a missed opportunity to restore the social foundation of the integration project; it is obvious that soft social benchmarking is no match for hard economic sanctions aimed at encouraging internal devaluation. On the other hand, we argue that while most authors have criticised those reflexive instruments for their inability to rebalance the inflationary pressures resulting from the euro, they have in fact produced significant results.[84]

We are, however, sceptical that the unsubstantiated Social dimension of the EMU will produce similar results in the current context. In addition to soft- (and hard-)law instruments, there must be sufficient political will to advance Social Europe – including cross-policy coordination – as a crucial component of the crisis response. Ultimately, EU decision-makers must go beyond a mere soft-law approach if some form of Social Europe is to be preserved.

[84] S. Dahan, *supra* note 5.

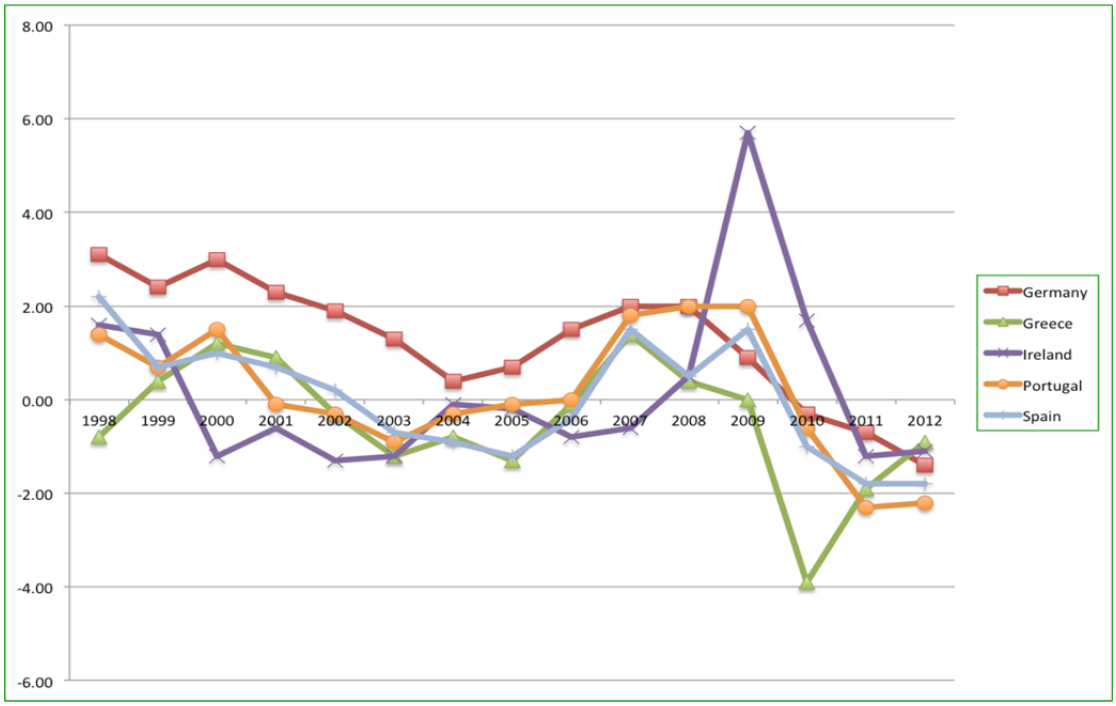
Figures

Figure 1 – Consumer Price Inflation



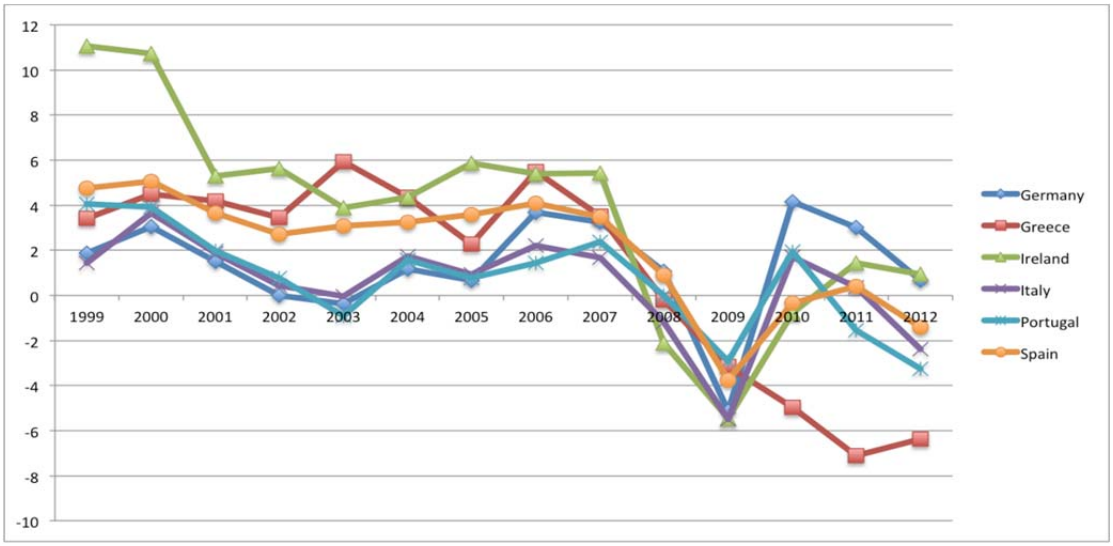
Source: OECD

Figure 2 – Real Interest Rates



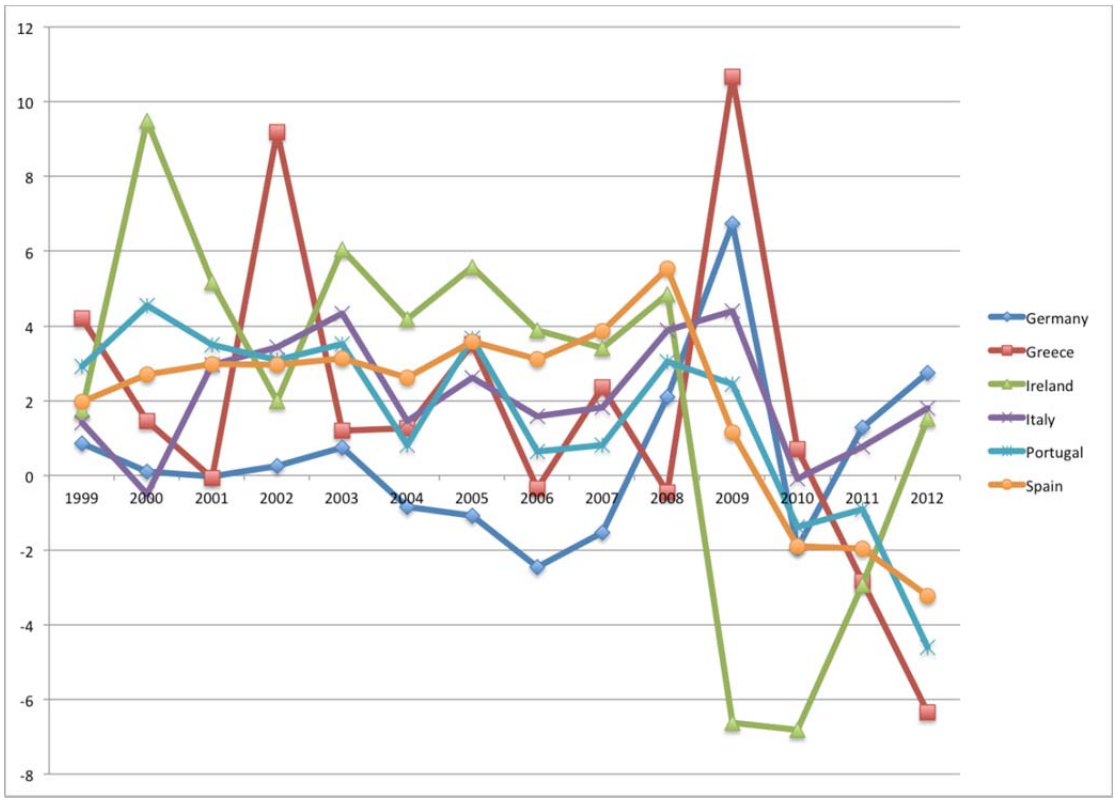
Source: OECD. Own calculation

Figure 3 – Gross Domestic Product (GDP): GDP, Volume – Annual Growth Rates in Percentage



Source: OECD

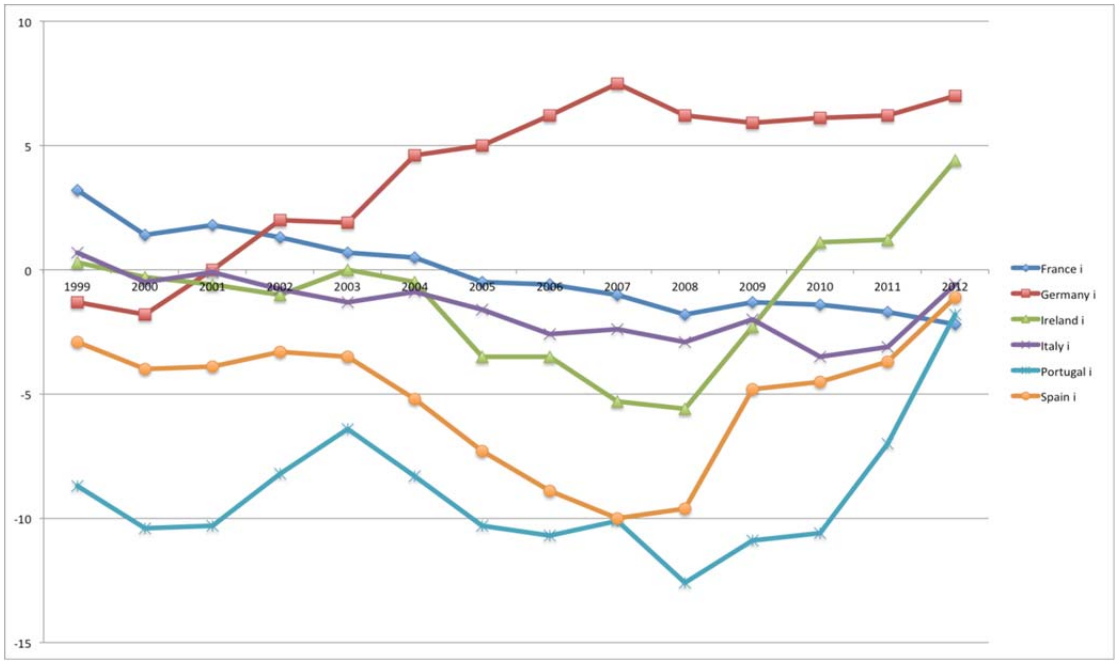
Figure 4 – Unit Labour Cost (Total Economy, Annual Growth Rate)



Source: OECD

Ratio of compensation to annual growth rate per person employed

Figure 5 – Current Account % of GDP



Source: OECD

Figure 6 – Wage Restraint under ERM and EMU

Wage restraint is the change in nominal wage growth minus the change labour productivity. A negative outcome indicates wage *restraint;* a positive outcome indicates wage *excess.*

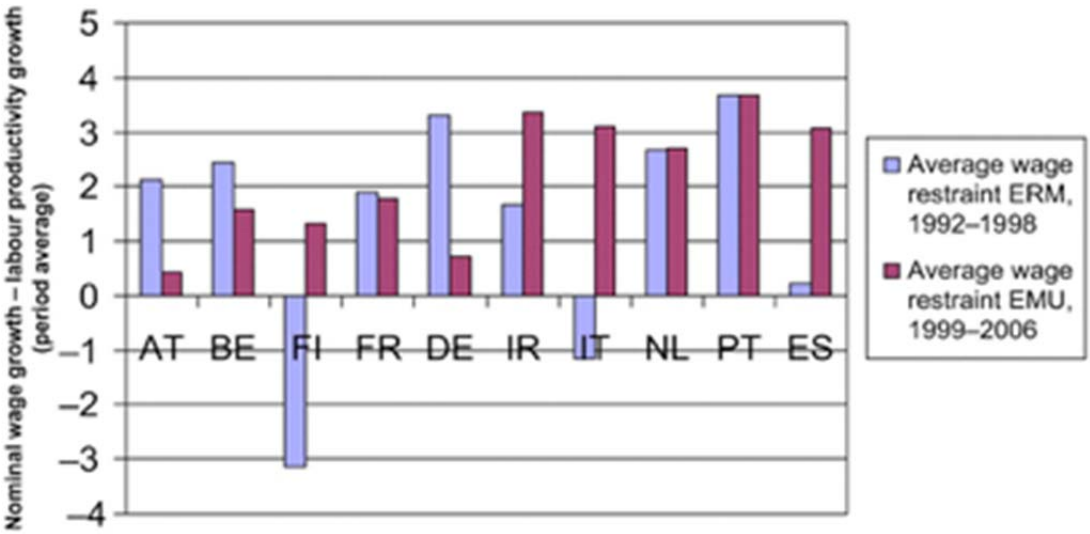


Table 1 – Wage-Coordination Institutions and Policies

High wage moderation (below EMU average of 2%)	Low wage moderation (above EMU average of 2%)
AU: pattern bargaining	IR: time-irregular social pacts
BE: law setting 'hard' wage target	IT: weak inter-associational bargaining
FI: time-regular social pacts	NL: time-irregular social pacts
FR: coordinated bargaining, competitive sectors in the lead	PO: weak inter-associational bargaining
DE: coordinated bargaining, competitive sectors in the lead	ES: weak inter-associational bargaining
(source: Johnston and Hancke 2009)	

Source: Nominal wage growth data from AMECO and labour productivity growth data from OECD. Calculation by Hancke and Johnston 2009.

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