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…is social justice at stake?

The cases of Greece and the Netherlands

Master thesis Labour Law

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Understanding Society

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PREFACE

Hereby I present to you my master thesis "The right to free collective bargaining in times of crisis…is social justice at stake?" I wrote this thesis as final part of the master labour law at Tilburg University. Before I went to Tilburg University, I obtained my bachelor diploma in law at the Juridische Hogeschool. During this study I became interested in labour law and social security law. After obtaining my diploma, I got the opportunity to gain work experience in these fields and I decided to continue studying at Tilburg University. After finishing my premaster I decided to start the master labour law. During my master I became interested in international labour law and I became especially interested in the subjects of free collective bargaining and trade union freedom as fundamental rights in national, European and international industrial relations. One of the goals of this research was to determine whether a violation of fundamental rights can be justified by exceptional (economic) conditions. Recently, practice has shown that this is possible. However, this raises questions about the value of fundamental rights, such as the right to free collective bargaining and social justice, in the future. In order to determine to what extent the right to collective bargaining and social justice was violated by (mandatory) austerity measures, a comparative research has been carried out between Greece and the Netherlands. This provided the basis for answering the research question.

The writing of this thesis was a great challenge. The combination of working at a law firm, chronic health issues, exciting developments in my private life and a perfectionist attitude, made writing my thesis not as I envisioned. At some moments the writing process became a struggle, but I managed to pull through. Following this, I would like to take this opportunity to thank some people. At first, I would like to thank my first mentor, em. prof. dr. R. Blanpain. He has helped me concretise my research object and set up the research design. Secondly, I would like to thank my current mentor, mr. dr. Rombouts. He was very enthusiastic about the subject of this thesis and came up with useful comments in order to improve my thesis. I would like to take him for his advice and critical notes. I would also like to thank Daphne for her time to read my thesis and correct grammatical mistakes. Additionally, I would like to thank my employer, mrs. mr. Bredo, for her patience with regard to finishing my thesis and her flexibility. Lastly, I would like to thank my husband, Klaas, who I met during the writing process of my thesis. Without his love, patience and encouragement I could not have finished my thesis.

Annelies Jong - de Hullu

Tilburg, November 2015

ABSTRACT

During the current economic crisis, supranational institutions in the European Union (EU) and national governments interfere with the right to free collective bargaining by imposing (mandatory) austerity measures. This has devastating effects on the right to free collective bargaining as an internationally recognised fundamental right and threatens social justice in the EU. The following research question was derived from this statement: *"To what extent social justice is threatened by the interference with the right the free collective bargaining through (mandatory) austerity measures and what are the possible consequences?"* Various sub questions are formulated regarding the imposition of austerity measures, the right to free collective bargaining and social justice. The research is a literature study and a comparative study between Greece and the Netherlands. The comparative study aimed to compare the legal systems of collective bargaining, the imposition of austerity policies and the (impact of the) violations on the right to free collective bargaining and social justice.

The right to free collective bargaining and social justice are closely related. Social justice should be pursued through implementation of the rights and principles that are present in eight fundamental conventions of the International Labour Organisation (ILO). The right to free collective bargaining is anchored in two of these fundamental conventions. The comparative study has made clear that there is a huge difference between Greece and the Netherlands with respect to the consequences of the adopted austerity measures for the right to free collective bargaining. As a result of the loan agreements with the Troika, consecutive laws were introduced that fundamentally changed the legal framework of collective bargaining in Greece. This has led to an almost complete decentralised and dismantled collective bargaining system. The legal framework work of the Dutch collective bargaining system remained during the crisis to a large extent intact. The government and the social partners modified the parameters of collective bargaining, without harming the essentials of the system. Although the interference with the right to free collective bargaining is less far-reaching than in Greece, there are signs of weakened collective bargaining and trade union power in the Netherlands. The trends that were observed in Greece and the Netherlands, were also observed in other EU countries. Based on this, it is concluded that the right to free collective bargaining is violated during the crisis throughout the EU.

From the definition of social justice six elements are derived. Discussing these elements led to the conclusion that social justice has declined in the EU during the crisis. The decrease of social justice is, among others, due to the severe consequences of the violation of the right to free collective bargaining. It was observed that these violations had not only consequences that are related to industrial relations, but had also consequences in the social field. Growing social inequality, high unemployment rates, widespread poverty, less perspective, growing insecurity and social unrest were observed in many Southern EU countries with a spill over effect to the rest of the EU. Especially the Greek situation has led to multiple widespread political and economic crises in the EU. It is therefore essential that the EU develops an integrated strategy to combat social injustice. The prospects for a common approach are poor, because the EU seems to have structural problems that prevent them to reach agreements about fundamental issues. In the absence of a common approach, it is likely that the EU is heading for a catastrophe of unprecedented proportions. In the medium long term the prospects for growth, stability and social cohesion are under pressure. In the long term even long lasting peace and the existence of the EU is threatened. The ILO, as international peace organisation, should play an important role in the process towards a common approach. However, in recent years the ILO have created some space for deficit countries to deviate negatively from fundamental rights and thus from the path towards social justice. When the ILO is not unconditionally fighting for fundamental rights and the EU is not able to create a common approach, what future is left for the EU?

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LIST OF ABBREVIATIONS

ADEDY	Supreme Administration of Civil Servants' Trade Union
AOW	General Old Age Law
CAS	Conference Committee on the Application of Standards
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CoE	Council of Europe
CS	Council of State
CSR	Country Specific Recommendations
DWA	Decent Work Agenda
EC	European Commission
ECB	European Central Bank
ECHR	European Convention of Human Rights
ECSR	European Committee of Social Rights
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EGSSE	National General Collective Agreement
ESM	European Stability Mechanism
ESC	European Social Charter
EU	European Union
Europe 2020	European Strategy 2020
GSEE	General Confederation of Greek Labour
HLM	High Level Mission
ILC	International Labour Conference
ILO	International Labour Organisation
IMF	International Monetary Fund
MoU	Memorandum of Understanding
MTO	Medium-Term budgetary Objective
SGP	Stability and Growth Pact
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance
UN	United Nations

GLOSSARY

Specialised Agency of the United Nations (UN): the UN consists of the UN itself and many affiliated programs, funds and Specialised Agencies. The Specialised Agencies are legally independent international organisations with their own rules, membership, organs and financial resources, which were brought into relationship with the UN through negotiated agreements.[1]

Eurozone: the Eurozone consists of the members of the European Union (EU) with the Euro as currency. At this moment there are 19 Eurozone countries: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain.

European Union: the EU consists of the following 28 member states: Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Supranational institutions: institutions that have been established by two or more governments. These governments agreed to relinquish a certain amount of their power to the created institution. The supranational institution pursue the aims that were agreed upon by the member states and the member states agree to abide by norms which are adopted by this higher institution. Briefly, supranational institutions are institutions that stand above countries.

Troika: the Troika consists of three institutions, namely the European Commission (EC), the International Monetary Fund (IMF) and the European Central Bank (ECB). The Troika determines whether EU member states with budgetary problems make sufficient progress in implementing the agreed austerity measures and reforms. If the progress is not sufficient according to the Troika, the financial support can be (temporarily) suspended.[2]

Social partners: the bodies representing the two sides of the industry, namely the employers and employees. On the employers' side, there are several organisations representing employers in a certain occupation, sector or branch. On behalf of the employees, these bodies are mainly trade unions operating at national, European and/or international level.[3]

Social dialogue: includes all types of negotiation, consultation and exchange of information between, or among, representatives of governments, employers and employees on issues of common interest. According to the ILO, successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress. Effective social dialogue depends, among others, on: respect for the fundamental rights of freedom of association and collective bargaining, strong and independent workers' and employers' organisations, political will and commitment to engage in social dialogue, and appropriate institutional support.[4] Social dialogue can take place at national and

[1] UN Chief Executives Board for Coordination, 'Specialized Agencies', www.unsceb.org/members/specialized-agencies.
[2] Europa Nu, 'Trojka (Europese Commissie, ECB en IMF)', www.europa-nu.nl (search for: *Trojka,* second option) (in Dutch).
[3] ETUC, 'Who are the European social partners?', www.etuc.org/who-are-european-social-partners.
[4] ILO, 'Social dialogue', www.ilo.org/global/about-the-ilo/decent-work-agenda/social-dialogue/lang--en/index.htm.

sectoral as well as European level. Bipartite social dialogue brings together employees and employers, whereas tripartite social dialogue also involves government of EU representatives.[5]

International Labour Conference (ILC): the ILC consists of governments', workers' and employers' delegates of all the ILO member states. Each member state is represented by a delegation consisting of two government delegates, an employer delegate, a worker delegate and their respective advisers. The ILC sets the broad policies of the ILO in its annual meeting in June in Geneva. Furthermore, the ILC establishes and adopts international labour standards and is a forum for discussion of key social and labour questions. Lastly, it adopts the ILOs budget and elects the Governing Body.[6]

Freedom of association: this is one of the fundamental principles according to the ILO and closely linked to the right to free collective bargaining. Because these principles are closely connected it is important to define what freedom of association is. Freedom of association includes the right to organise and form and/or join employers' and workers' organisations. Workers' and employers' organisations shall organise freely and not be liable to be dissolved or suspended by administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organisations of workers and employers.[7]

Governing body of the ILO: this is the executive body of the ILO and it is composed of 56 titular members (28 governments, 14 employers and 14 employees) and 66 deputy members (28 governments, 19 employers and 19 employees). Ten of the titular government seats are permanently held by states of industrial importance and the other governments' members are elected by the ILC every three years. The Governing Body takes decisions on ILO policies, determines the agenda of the ILC, adopts the draft program and budget of the ILO for submission to the ILC and elects the Director-General of the ILO. The Governing Body meets three times a year, in March, June and November.[8]

The degree of centralisation of collective bargaining: collective bargaining can be largely centralised or decentralised.

- Centralised collective bargaining: this occurs when employers in a sector get together and bargain with one or more trade unions representing the employees of these employers. Centralised collective bargaining can also occur at the level of a group of companies, at national or regional level.[9]
- Decentralised collective bargaining: this can be described as the shift from industry level (national or regional) bargaining towards enterprise level bargaining and is characterised by a delegation of competences to union workplace representatives.[10]

Severance pay: the legality of the dismissal of an employee with an employment contract of indefinite duration depends on the payment of severance to the dismissed employee. The severance pay is a sort of financial compensation for the dismissal. If the compensation is not duly paid, the dismissal is null and void.[11]

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[5] ETUC, 'What is Social Dialogue?', www.etuc.org/what-social-dialogue.
[6] ILO, 'International Labour Conference', www.ilo.org (search for: *how labour conferecen,* first option).
[7] ILO, 'International Labour Standards on Freedom of Association', www.ilo.org (search for: *international labour standards on freedom of association,* first optoin).
[8] ILO, 'About the Governing Body', www.ilo.org (search for: *governing body,* first option).
[9] Buchler e.a. 2002, p. 24.
[10] Wergin-Cheek, 'Collective bargaining has been decentralised in the UK and Germany over the past three decades. But in Germany, unions have retained much more power', 12 April 2012, http://blogs.lse.ac.uk/europpblog/2012/04/12/germany-uk-unions/.
[11] European Labour Law Network, 'Severance pay', 3 December 2012, www.labourlawnetwork.eu (search for: *severance Greece,* third option).

Associations of persons: these are small groups of employees in a company. They are not trade unions, but in some cases these associations are allowed to conduct collective agreements. Associations of persons are not subjected to necessary regulations that guarantee their independence.

Medium Term Fiscal Strategy 2012-2015: the Medium Term Fiscal Strategy is an inseparable part of the major reform in the management of public finances in Greece established in 2010.[12] The strategy includes medium term fiscal targets for the general government, macroeconomic and fiscal forecasts over a three year period following the current fiscal year, contingency reports on the fiscal forecasts as well as annual expenditure ceilings for public entities and institutions. The program aims to revert the unsustainable public debt dynamics and to enhance the long term growth potential of the economy. This fiscal strategy aims also at mitigating the impact on debt developments of the autonomous movements in expenditure and revenue due to high debt servicing costs, ageing costs, increases in social transfers and unemployment benefits.[13] The goal of the Medium Term Fiscal Strategy for the period 2012-2015 is to create a public sector that will provide the best possible services to the citizens without mortgaging the future of future generations. The goal is a state that can finance its own needs, a state without deficits and excessive borrowing needs.[14]

Internal devaluation: when a country seeks to regain competitiveness through lowering wage costs and increasing productivity and not reducing value of exchange rates. In practice internal devaluation refers to a situation where there is much pressure to cut government spending and pursue fiscal austerity. This deflationary fiscal policy puts a downward pressure on wages and inflation and gets close to actual deflation.[15]

[12] Hellenic Republic Ministry of Finance 2011a, p. 20.
[13] Hellenic Republic Ministry of Finance 2011b, p. 10.
[14] Hellenic Republic Ministry of Finance 2011a, p. 20.
[15] Pettinger, 'Internal Devaluation Definition',14 June 2013, www.economicshelp.org/blog/2495/economics/internal-devaluation-definition.

CHAPTER 1: INTRODUCTION

This introduction will successively describe the problem analysis, research questions and purpose, the social and scientific relevance, methods and the outline of this thesis.

§ 1.1 PROBLEM ANALYSIS

The First World War was put to an end with the signing of the peace Treaty of Versailles on 28 June 1919. According to the preamble, the main aim of this treaty was international cooperation and the establishment of international peace and security. It was stated that the injustice, hardship and privation of a large number of people produced such unrest that the harmony of the world was imperilled. In this regard, improvement of labour conditions was urgently required. The treaty was based on the conviction that universal and lasting peace could only be achieved if it was based upon social justice. To improve the conditions of labour a permanent organisation, named the International Labour Office, was established by article 387 and 388 of the treaty. Today this office is called International Labour Organisation (ILO). The ILO has a unique tripartite structure, meaning that it consists of representatives of governments, employers and employees. Part XIII of the Treaty of Versailles formed the original constitution of the ILO and since 1919 it has been amended six times and has become a separate instrument. Subsequently, the General Conference of the ILO adopted the Declaration of Philadelphia in 1944[16], which restated the fundamental aims and purposes of the ILO.[17] Following the devastation of the Second World War, a new international peace organisation was founded in October 1945, called the United Nations (UN). The UN had, and still has, one central mission: to maintain international peace and security.[18] In 1946 the ILO became the first Specialised Agency (see glossary) of the UN and in that year the ILO Constitution was revised and the Declaration of Philadelphia was annexed to the Constitution. Currently the main aim of the ILO is to promote social justice and to human and labour rights internationally recognised.[19] Social justice is a relatively vague term, but in short it is based on equality of rights for all people and the possibility for all human beings to benefit from economic and social progress everywhere without discrimination.[20] Chapter 2 will zoom in on the meaning of social justice.

Since 2008 the global economy is in crisis. This crisis started in the United States of America when the housing market collapsed. After this collapse, the crisis developed into a banking crisis, which spread through Europe. After a short period of recovery in 2009, a new crisis developed in Greece: the Eurozone (see glossary) crisis. In 2010 the confidence in the euro diminished, because several countries in the Eurozone had large budget deficits and high public debt. The economic recovery in the EU (see glossary) was also going slower than expected and only in 2014 the economy steadily improved.[21] Due to the Eurozone crisis several (mostly Southern) EU countries had enormous financial problems. Because of extremely high debt, some countries were forced by an alliance of three supranational institutions (see glossary) to make drastic budget cuts to avoid bankruptcy or sanctions of the EU. This alliance is called the Troika (see glossary) and consists of the EC, the IMF and the ECB. Governments were forced to adopt mandatory austerity measures, among others leading to the decentralisation of wage setting arrangements, in return for financial rescue packages.[22] These so called deficit countries, have received loans from an emergency fund that was set up by governments

[16] Full: The Declaration concerning the Aims and Purposes of the International Labour Organisation, *adopted at the 26th session of the ILO*, 10 May 1944.
[17] ILO, 'Tripartite constituents', www.ilo.org (search for: *tripartite constituents,* first option).
[18] UN, 'Maintain International Peace and Security', www.un.org/en/sections/what-we-do/maintain-international-peace-and-security/index.html.
[19] ILO, 'Tripartite constituents', www.ilo.org (search for: *tripartite constituents,* first option).
[20] ILO 2011a, p 1-2.
[21] Europa Nu, 'Economische crisis', www.europa-nu.nl/id/vhrtcvh0wnip/economische_crisis (in Dutch).
[22] Ségol, Jepsen & Pochet 2013, p. 43-56.

of the Eurozone. This emergency fund is called the European Stability Mechanism[23] (ESM) and at this moment every member of the Eurozone is a member of the ESM. So far Cyprus, Greece, Ireland, Portugal and Spain have asked for a loan from the ESM.[24] Western EU countries, called surplus countries, have not lent money from the ESM fund. Nevertheless, these countries are also struggling to recover from the crisis and adopted extensive austerity measures, in order to reduce budget deficits.

Summarising, it became clear that national governments and supranational institutions were both targeting collective bargaining outcomes and procedures, which fundamentally weakened the position of employees. The (mandatory) austerity policies have significantly altered the collective bargaining landscape in the EU.[25] This runs against the fundamental right to bargain collectively, as recognised by the ILO. After all, it is up to the social partners (see glossary) to conduct collective agreements and substantial interference of a government or any other third party is precluded. The question is how this interference with the right to free collective bargaining by austerity measures affects social justice. Is social justice at stake as the result of the curtailment of the right to free collective bargaining?

§ 1.2 RESEARCH QUESTION

The national and international interference with the right to free collective bargaining through (mandatory) austerity policies, constitutes a violation of the right to free collective bargaining and threatens social justice. This statement leads to the following research question: *"To what extent social justice is threatened by the interference with the right the free collective bargaining through (mandatory) austerity measures and what are the possible consequences?"*

In order to answer the main research question there are four sub questions formulated:

1. What is the (relevance of) the right to free collective bargaining according to the ILO, the EU and the Council of Europe (CoE)?
2. What is the legal basis for (mandatory) austerity measures?
3. What are the differences and similarities between Greece and the Netherlands with regard to the legal system of collective bargaining and the imposition of (mandatory) austerity?
4. In what way is the right to free collective bargaining changed as a result of the economic crisis and what are the consequences for social justice?

§ 1.3 PURPOSE

The first aim of this research is to clarify what the right to free collective bargaining includes according the ILO, the EU and the CoE. To make this clear, the main conventions, recommendations, charters and treaties of these three institutions in the area of free collective bargaining will be discussed. Furthermore, it has to become clear what austerity measures are and what kind of austerity measures are imposed that restrict the right to free collective bargaining. The explanation of this general framework will mainly have a descriptive and explanatory character. The second aim of this research is judging. As the problem analysis clarifies, the right to free collective bargaining is breached as a result of the imposition of (mandatory) austerity measures by governments and supranational institutions. The main objective of this research is to assess to what extent social justice is threatened and to what consequences that (may) lead. The last part contains a glimpse into the future, in the light of current economic developments.

[23] The ESM was preceded by two temporary loan mechanisms: the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM). The EFSF was established in June 2010 by the EU as a temporary crisis resolution. The EFSF could granted loans until 30 June 2013. Loans were granted to Ireland, Portugal and Greece. The EFSM granted loans to Ireland and Portugal in the period between 2011 and 2014. In 2013 the EFSM was replaced by the ESM. In July 2015 the EFSM was used to provide a short-term loan to Greece. Both the EFSF as the EFSM remained in force for loans that are already granted.

[24] Rijksoverheid, 'Financiële steun aan noodlijdende landen', www.rijksoverheid.nl/onderwerpen/europa-financieel-gezond/inhoud/financiele-steun-aan-noodlijdende-landen (in Dutch).

[25] Ségol, Jepsen & Pochet 2013, p. 43-56.

§ 1.4 SOCIAL AND SCIENTIFIC RELEVANCE

Currently, the governments of EU member states and several supranational institutions are desperately trying to resolve the debt crisis, through the imposition of austerity measures. The social relevance of this thesis arises from the fact that the position of employees is fundamentally weakened by austerity measures targeting collective bargaining outcomes and procedures. On the one hand, this study may lead to an internationally renewed focus on, and a wider recognition of the right to free collective bargaining and social justice. On the other hand, this thesis can lead to new perspectives that may lead to negative alterations. At least, this thesis will contribute to the current debate on the relevance of the right to free collective bargaining and social justice. So far, not much has been written about the relation between the violation of the right to free collective bargaining, social justice and the imposition of austerity policies. A scientific study of the consequences of the violation of this right, from a legal perspective, has not been carried out yet. Lastly, this thesis will show the differences between the violations of the right to free collective bargaining and the impact of these violations in deficit and surplus countries.

§ 1.5 METHODS

This research will be conducted as a literature study. A list of literature that is used during this study can be found in the bibliography. In addition to this, a comparative study will be conducted which aims to compare the legal systems of collective bargaining, the imposition of austerity policies and the (impact of the) violations on the right to free collective bargaining in deficit countries and surplus countries. Greece has been chosen as deficit country, because Greece was the first country that was confronted with uncontrollable high debt and was threatened with bankruptcy. Greece has lent money from the ESM multiple times and has adopted far-reaching mandatory austerity measures. Despite the slight recovery of the European economy, the situation in Greece is still unstable and there are enormous financial and economic problems. The Netherlands has been chosen as surplus country, because the Netherlands has not lent money from the ESM and is not subjected to supranational supervision. Nevertheless, the Dutch government imposed austerity measures in order to cut the deficits.

§ 1.6 THESIS OUTLINE

At first, the theoretical framework will be explained in chapter 2. This chapter will describe what social justice is and what the right to free collective bargaining includes according to the ILO, the EU and the CoE. Secondly, chapter 3 will explain what the legal basis is for those policies. After these explanatory and descriptive chapters, chapter 4 contains the comparative study between Greece and the Netherlands. In the last chapter all preceding chapters will be combined and the focus will be on the relation between the implemented austerity policies and the infringement with the right to free collective bargaining and social justice. In chapter 5 the research question will be answered. This thesis contains a number of appendices that contain additional information related to the thesis subject. In the footnotes an abbreviated referral system is used, an extensive bibliography is included at the end of this thesis. In this thesis, the terms employee(s) and worker(s) are both used. These terms are interchangeable. Therefore there is no substantive difference between these concepts.

CHAPTER 2: THEORETICAL FRAMEWORK

In this chapter the terms social justice and free collective bargaining will be defined. The first section will explain the term social justice. The second to fourth section will define free collective bargaining, according to three major international institutions. In the fifth section a conclusion will be drawn.

§ 2.1 DEFINING SOCIAL JUSTICE

In this section will be explained what social justice is according to four sources, namely the ILO Constitution and the Declaration of Philadelphia, the Decent Work Agenda (DWA) and the Declaration of Social Justice for a Fair Globalization. The important sections with respect to social justice of each document can be found in annex 1. The last document that will be elaborated on is the Social Justice Index 2014.

§ 2.1.1 THE ILO CONSTITUTION AND THE DECLARATION OF PHILADELPHIA

Since its founding in 1919 the pursuit of social justice and promoting internationally recognised human and labour rights has been the main goal of the ILO. The preamble of the ILO Constitution stated that: "Universal and lasting peace can be established only if it is based upon social justice". In order to achieve this, labour peace is essential. The preamble states that existing conditions of labour involved such injustice, hardship and privation to large numbers of people that the peace and harmony of the world was imperilled. According to the ILO Constitution, an improvement of those condition was urgently required, among others by the regulation of the hours of work, provisions for an adequate living wage, recognition of the principles of equal remuneration for work of equal value and freedom of association. The ILO tries to achieve these goals by promoting the implementation of fundamental principles, encouraging decent employment opportunities, enhancing social protection and strengthening social dialogue (see glossary) on work related issues.[26] On 10 May 1944 the traditional objectives of the ILO were restated and reaffirmed in the Declaration of Philadelphia and added as an annex to the ILO Constitution. From the preamble of the ILO Constitution and article 1 of the Declaration of Philadelphia, the following fundamental principles can be derived:

- Universal and lasting peace cannot be achieved unless it is based on social justice, grounded in freedom, dignity, economic security and equal opportunity;
- Larbour is not a commodity;
- There should be freedom of association for employees and employers, along with freedom of expression and the right to collective bargaining;
- Poverty anywhere constitutes a danger to prosperity everywhere and must be addressed through national and international action;
- These principles are applicable to all human begin, irrespective of race, creed or sex.[27]

§ 2.1.2 THE DECENT WORK AGENDA

After 55 years since the introduction of the Declaration of Philadelphia, the former Director-General of the ILO introduced the DWA in 1999. In his first report to the International Labour Conference (see glossary), he wrote that "the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity".[28] The DWA recognises the fact that work is central to people's wellbeing. This central role of work is not only about providing an income, but work enables people

[26] ILO, 'Mission and objectives', www.ilo.org (search for: *mission and objectives,* first option).
[27] Rodgers e.a. 2009, p. 7.
[28] ILO 1999, chapter 1: The primary goal.

to improve their social and economic situation and work strengthens individuals, families and communities. In order to reach such progress, it is essential that the work is decent. The DWA is put into practice through the implementation of four strategic objectives:

- Creating jobs: build an economy that generates opportunities for investment, entrepreneurship, skill development, job creation and sustainable livelihoods;
- Guaranteeing rights at work: obtain recognition and respect for the rights of workers, all workers, in particular disadvantaged or poor workers, need representation, participation and laws that work for their interests;
- Extending social protection: promote both inclusion and productivity by ensuring that woman and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare;
- Promoting social dialogue: strong and independent social partners are essential to increase productivity, avoid disputes at work and build cohesive societies.[29]

The DWA takes up many of the same challenges that the ILO faced at its foundation. The corner stones of social justice as formulated in the Declaration of Philadelphia and the strategic objectives of the DWA shows many similarities. It can be concluded that the definition of decent work is an extension of the definition of social justice and that is why the ILO believes that social justice can be promoted and achieved through the DWA.

§ 2.1.3 The Declaration of Social Justice for a Fair Globalization

On 10 June 2008, the ILO unanimously adopted the ILO Declaration of Social Justice for a Fair Globalization which specifically aims to achieve social justice in a globalised world.[30] This declaration is a powerful reaffirmation of the ILO values and it emphasised the key role of the ILO to achieve progress and social justice.[31] The Declaration determined four important strategic objectives with respect to achieving social justice, expressed through the DWA:

- Promoting employment by creating a sustainable institutional and economic environment;
- Developing and enhancing sustainable measures for social protection, social security and labour protection, which are adapted to national circumstances;
- Promoting social dialogue and tripartism;
- Respecting, promoting and realising the fundamental principles and rights at work, which are particular significance, as both rights and enabling conditions that are necessary for the full realisation of all of the strategic objectives;[32]

§ 2.1.4 The Social Justice Index 2014

The Social Justice Index is not an ILO document, but is nonetheless important to discuss. The Social Justice index is designed to measure the progress that has been made and the ground that has been lost on issues of social justice in each of the 28 EU member states on a regular basis. The Social Justice Index is a cross-national survey that comprises several indicators that are related to one of the six dimensions of social justice:

- Poverty prevention: social participation and self-determined life are difficult to reach under conditions of poverty. Poverty is the strongest determinant of social and economic exclusion of young people. This dimension weights the heavies in the survey.

[29] ILO, 'Decent work agenda', www.ilo.org (search for: *decent work agenda*, first option).
[30] ILO 2011a, p. 1-2.
[31] ILO, 'The need for social justice', www.ilo.org (search for: *need for social justice,* first option).
[32] Declaration of Social Justice for a fair Globalization, article 1, p. 9-11.

- Equitable education: equal access to good-quality education is an essential factor in providing equitable opportunities for advancement. It is critical to end hereditary social exclusion, support integration and include lifelong learning.
- Labour market access: the degree of inclusiveness is essential since an individual's status is largely defined by his or her participation on the labour market. Exclusion from the labour market substantially limits opportunities for self-realisation, contributes to an increased risk of poverty and can even lead to serious health problems.
- Health: the conditions in which people live and die are shaped by political, social and economic forces. Social and economic policies have a determining impact on the developmental opportunities of especially children.
- Social cohesion and non-discrimination: this dimension examines social polarisation, exclusion and if discrimination of specific groups is successfully countered.
- Intergenerational justice: it is necessary that contemporary generations lead their lives as they value without compromising the chances of future generations.[33]

§ 2.2 THE RIGHT TO FREE COLLECTIVE BARGAINING ACCORDING THE ILO

This section will elaborate on the definition of the right to free collective bargaining according to the ILO. Subsequently, the core conventions, the regular and special ILO supervisory system and the definition according the Committee on Freedom of Association (CFA) will be discussed.

§ 2.2.1 FUNDAMENTAL CONVENTIONS

To reach its goals the ILO can draft conventions and recommendations. Conventions are legally binding international treaties that may be ratified by member states, while recommendations are non-binding guidelines.[34] The preamble of the ILO Constitution determines that the recognition of the principle of freedom of association (see glossary) is necessary for the establishment of social justice. Article 1 of the Declaration of Philadelphia stated that the ILO is, among others, based on the freedom of expression and of the freedom of association. In addition, article 3(e) of this declaration acknowledges that, among others, "the effective recognition of the right to collective bargaining (…) and the collaboration of workers and employers in the preparation and application of social and economic measures" are important goals to achieve.[35] Based on the idea to pursue social justice and improve people's lives, the ILO has adopted eight so called fundamental conventions. With respect to the right to bargain collectively and social justice, the ILO has adopted two fundamental conventions, namely the "Freedom of Association and Protection of the Right to Organise Convention" (C87) and the "Right to Organise and Collective Bargaining Convention" (C98). The fundamental values of the ILO were reaffirmed and embedded in the 1998 Declaration on Fundamental Principles and Rights at Work, which establishes that all states, by virtue of their membership of the ILO, should aim to respect and promote the fundamental conventions, whether or not they ratified them. The declaration underlines that the rights in these conventions are universal and that they apply to all people in all states, regardless the level of economic development. This purpose is supported by a follow-up procedure, meaning that member states that have not ratified one or more fundamental conventions are asked to report annually on the status of these rights and principles.

The right to bargain collectively is the right of employees to bargain freely with employers. This is a voluntary process through which employers and employees discuss and negotiate their

[33] Schraad-Tischler & Kroll, 'Social Justice Index', www.social-inclusion-monitor.eu/social-justice-index.
[34] The following fundamental conventions has been adopted: Freedom of Association and Protection of the Right to Organise Convention, Right to Organise and Collective Bargaining Convention, Forced Labour Convention, Abolition of Forced Labour Convention, Minimum Age Convention, Worst Forms of Child Labour Convention, Equal Remuneration Convention and Discrimination (employment and occupation) Convention.
[35] ILO, 'About the Declaration', www.ilo.org (search for: *about the declaration*, third option).

relations, in particular terms and conditions of work. It can involve employers directly, or representatives of their organisations, trade unions, or, in their absence, representatives who are freely designated by the employees. Collective bargaining can only function effectively if it is conducted freely and in good faith by all parties.[36] The right to free collective bargaining and the right to freedom association, in combination with the right to strike[37], are undeniably linked to each other. The right to free collective bargaining is even an essential element in freedom of association. After all, the right to free collective bargaining is the key to the representation of collective interests and it is built on the freedom of association. Without the right to free collective bargaining, freedom of association would be in vain, because of the lack of a suitable platform for social dialogue. It could be said that the right to organise and form employers' and workers' organisations is the prerequisite for collective bargaining and social dialogue. After all, effective collective bargaining would not be possible without freedom of association, because no independent trade unions would exist and government interference would be a real threat.[38]

§ 2.2.1.1 CONVENTIONS 87 AND 98

Convention 87, about freedom of association and protection of the right to organise, has been adopted by the General Conference of the ILO on 9 July 1948 and entered into force on 4 July 1950. In this context article 2 and article 5 are particularly important. Article 2 determines that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation". Article 5 determines that "workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers". One year later, on 1 July 1949, Convention 98, concerning the right to organise and to collective bargain, has been adopted by the General Conference of the ILO and entered into force on 18 July 1951. Article 1 states that "workers shall enjoy adequate protection against acts of anti-unions discrimination in respect of their employment". Additionally, article 4 determines that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of a machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

§ 2.2.1.2 OTHER RELEVANT CONVENTIONS AND RECOMMENDATIONS

In addition to the aforementioned conventions, the ILO adopted the following relevant conventions and recommendations, listed in chronological order:

- The Collective Agreements Recommendation (R091), adopted on 29 June 1951, defines the binding effect of collective agreements and determines that stipulations in an employment contract that are contrary to a collective agreement should be regarded as null and void. These stipulations should automatically be replaced by the corresponding stipulations of the collective agreement, except when the clause in the employment contract is more favourable to the employee (article 3). Furthermore, measures should be taken to extend the application of all or certain stipulations of a collective agreement to all employers and employees within the industrial and territorial scope of the agreement (article 4).

[36] ILO, 'Right to collective bargaining', www.ilo.org (search for: *right to collective bargaining,* second option).
[37] The right to strike is among the most fundamental human rights. Trade unions can reinforce their demands and strengthen their negotiation position towards employers' associations (as a last resort) by striking. It falls without the scope of this thesis to elaborate further on the right to strike.
[38] ILO, 'Freedom of association and the effective recognition of the right to collective bargaining', www.ilo.org (search for: *effective recognition*, third option) and ILO, 'International Labour Standards on freedom of association', www.ilo.org (search for: *international labour standards on freedom of association*, first option).

- The Consultation Recommendation (R113), adopted on 20 June 1960, regulates the consultation and cooperation between public authorities and employers' and workers' organisations at industrial and national level.
- The Workers' Representative Convention (C135), adopted on 23 June 1971, determined that workers' representatives are either trade union representatives or representatives who are freely elected by the workers of the company and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions (article 3). Additionally, if in the same undertaking both trade union representatives and elected representatives exist, appropriate measures must be taken to ensure that the elected representative body is not used to undermine the position of trade unions (article 5). On 23 June 1971 another recommendation about workers' representatives has been adopted (R143). This recommendation protects workers' representatives against dismissal based on their status or activities as a worker representative and determines the facilities that have to be provided to them, such as time off from work without loss of pay and access to all workplaces.
- The Labour Relations (Public Service) Convention (C151) has been adopted on 27 June 1978 and became effective on 25 February 1981. This convention contains special provisions with regard to the freedom of association and collective bargaining for public servants. Firstly, public servants shall enjoy adequate protection against discriminatory acts of anti-unionism (article 4). Secondly, public employees' organisations shall be completely independent from public authorities and should enjoy adequate protection against any acts of interference by public authorities in their establishment, functioning or administration (article 5). On 27 June 1978 the Labour Relations (Public Service) Recommendation (R159) has been adopted as well, which contain a number of provisions that are not relevant for this thesis.
- Lastly, the Collective Bargaining Convention (C154) has been adopted on 19 June 1981 and came into force on 11 Augustus 1983. Given the importance of the existing international standards regarding to the freedom of association and the right to free collective bargaining, it was considered necessary to make greater efforts to achieve the objectives of these standards. According to the ILO these standards should be complemented by appropriate measures aiming to promote free and voluntary collective bargaining. In the articles 5 to 8 measures are described that promote and encourage the development of collective bargaining. On 19 June 1981 also the Collective Bargaining Recommendation (R163) has been adopted. In this recommendation the means of promoting collective bargaining are described, such as measures to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organisations.

§ 2.2.2 THE REGULAR ILO SUPERVISORY SYSTEM

The implementation and compliance of international labour standards, such as freedom of association and the right to free collective bargaining, is backed by two supervisory systems. This section will elaborate on the regular supervisory system. According to article 19 paragraph 5(d) of the ILO Constitution, governments are obliged to "take such action as may be necessary to make effective the provisions of ratified conventions". This means ensuring their implementation in practice, as well as giving them effect in law or other means that are in accordance with national practice (such as court decisions, arbitration awards or collective agreements). According to article 22 of the ILO Constitution, each member of the ILO have agreed to draw up an annual report about the measures they have taken to give effect to the provisions in the conventions to which they take part. Furthermore, every member state is obliged to submit a report on the eight fundamental and the four priority conventions, among others about freedom of association and free collective bargaining every two years. The Committee of Experts on the Application of Conventions and Recommendations

(CEACR) examines those reports.[39] The CEACR receives comments from workers' and employers' organisations on the application of the freedom of association and the right to free collective bargaining conventions. The Committee considers those comments in their examination of governments' reports. Finally, the CEACR requests member states that are not fully applying the relevant provisions to take the necessary action to do so.[40] The CEACR makes two types of comments, namely observations and direct requests. Observations consist of comments on fundamental questions about the application of a particular convention by a member state. These observations may involve the principle of freedom of association or collective bargaining. All these observations are published in the annual report of the CEACR. Direct requests are more technical or are requests for more information. The direct requests are not published in het annual report, but are directly communicated to the concerned governments.[41] The CEACR submits its report to the ILC, where it is examined by the Conference Committee on the Application of Standards (CAS). This conference has a tripartite setting, which means that it consists of delegates from governments, employees and employers of the ILO member states.[42] The CAS selects a number of observations for discussion. Subsequently, the governments concerned are invited to respond and provide information on the situation. After that, the CAS discusses the individual cases and will draw up conclusions recommending that governments take specific steps to remedy the problem.[43] Since 2012 there have been heavy debates about the right to strike in the ILO and the regular supervisory system of the ILO has been challenged and put under pressure by employers' organisations. The 2012 report of the CEACR contained passages on the right to strike, but no new interpretation of the right to strike was presented. Eventually this report led the employers' organisations to question the mandate and authority of the CEACR. Consequently, no list was drawn up for discussion by the CAS, because employers' organisations were unwilling to cooperate since trade unions were unwilling to participate in a review of the CEACR mandate. In subsequent years the problems reoccurred. In 2014 the CAS noted in its report that it had not addressed the right to strike, because the employers did not agree that there was such a right recognised by Convention 87.[44] Only at the end of February 2015 this problem was solved and the right to strike was reaffirmed in a special tripartite meeting of the ILO with a common statement of all parties as a result. This makes clear that even systems of the ILO are fragile and depending on the will of all parties to overcome their differences. If such will is absent, the existence of the ILO is threatened.

§ 2.2.3 THE SPECIAL ILO SUPERVISORY SYSTEMS

The special supervisory mechanisms are based on the submission of a complaint by member states and enable the ILO to respond to specific allegations. The Governing Body of the ILO (see glossary) is involved in handling all cases using special supervisory mechanisms.[45] There are three main special supervisory mechanisms, which will be described below.

§ 2.2.3.1 THE REPRESENTATION PROCEDURE ON THE APPLICATION OF RATIFIED CONVENTIONS

Article 24 of the ILO Constitution determines that every industrial association of employers or workers has the right to present a representation against any member state which "has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party". A tripartite committee of the Governing Body may be set up to examine the representation and the government's response. The committee will make a report with the legal and practical aspects

[39] ILO, 'Committee of Experts on the Application of Conventions and Recommendations', www.ilo.org, (search for: *committee of experts*, third option).
[40] Tajgman & Curtis 2000, p. 1.
[41] ILO, 'Committee of Experts on the Application of Conventions and Recommendations', www.ilo.org, (search for: *committee of experts*, third option).
[42] ILO, 'International Labour Conference', www.ilo.org (search for: *how labour conference*, first option).
[43] ILO, 'Conference Committee on the Application of Standards,www.ilo.org (search for: *applying application standards*, first option).
[44] Van der Heijden 2013, p. 3–5 .
[45] Tajgman & Curtis 2000, p. 2.

of the case, the submitted information and its recommendations. If the government's statement is not considered satisfactory, the Governing Body is entitled to publish the representation and the response (article 25). Representations about Conventions 87 and 98 are usually referred to the CFA (see § 2.2.3.3).[46]

§ 2.2.3.2 THE COMPLAINTS PROCEDURE OVER THE APPLICATION OF RATIFIED CONVENTIONS

The procedure for complaints over the application of ratified conventions is governed by articles 26 to 34 of the ILO Constitution. A complaint can be filed against any member state for not complying with a ratified convention by another member state which ratified the same convention. Upon receipt of a complaint the Governing Body may form a Commission of Inquiry (article 26). A Commission of Inquiry is the highest level investigation procedure of the ILO and is generally set up when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them. The Commission has to fully investigate the complaint, ascertaining all the facts and then prepare a report embodying its findings on all questions and give recommendations about measures that have to be taken to address the problems raised by the complaint and the time within they should be taken (article 28).[47] The Commission shall send its report to the Governing Body of the ILO and to the governments concerned. Subsequently, each of the concerned governments shall inform the Director-General of the ILO whether or not it accepts the recommendations in the report of the Commission within three months (article 29). If the governments does not accept these recommendations, than the complaint may be referred to the International Court of Justice (article 29, article 31 and article 32).

§ 2.2.3.3 THE PROCEDURE FOR COMPLAINTS REGARDING FREEDOM OF ASSOCIATION

In order to make sure that member states complied with the right to freedom of association, it was necessary to develop an additional supervisory mechanism which would also cover situations in which the relevant conventions had not been ratified. As a result, the Fact-Finding and Conciliation Commission on Freedom of Association was established by the ILO in January 1950.[48] This commission is composed of independent persons and has a mandate to examine any complaint concerning alleged infringements of trade union rights. These complaints are referred to the Commission by the Governing Body. The commission only needs consent of the government concerned, if they had not ratified the conventions on freedom of association. This procedure has only dealt with six complaints so far and the procedure is relatively long and costly.[49] Of greater importance was the establishment of the CFA by the ILO in 1951. This committee was established as a result of the ILOs claim that another (special) supervisory procedure was necessary to exclusively ensure compliance with the founding principles of freedom of association and collective bargaining.[50] The current procedure for the examination of alleged infringements of the principles of trade union rights is described in an outline, which content is based on a dozen reports of the ILO. The full outline can be found in annex 2. One of the most important tasks of the CFA is to investigate allegations of infringements of the principles of freedom of association and/or the right to free collective bargaining by ILO member states submitted by employers' and workers' organisations. It is not relevant whether or not the conventions concerned have been ratified by the member state in question and prior consent of the state is not required.[51] After receiving an allegation the CFA reviews the case and determines if the allegation has to be referred to the Fact-Finding and Conciliation Commission. If the CFA handle the case itself, they draw conclusions and give recommendations based on the provided information

[46] ILO, 'Representations', www.ilo.org (search for: *representations*, first option).
[47] ILO, 'Complaints', www.ilo.org (search for: *complaints*, third option).
[48] Gravel, Duplessis & Gernigon 2001, p. 8.
[49] ILO 2006, p. 2.
[50] ILO, 'Committee on Freedom of Association', www.ilo.org (search for: *committee freedom association*, first option).
[51] Gravel, Duplessis & Gernigon 2001, p. 10.

and asks the concerned governments to take steps to implement those recommendations. The conclusions and recommendations will be brought before the Governing Body. If the member state concerned has ratified the relevant freedom of association conventions, than the CFA may pass aspects of the case to the CEACR for follow up.[52]

§ 2.2.4 FREE COLLECTIVE BARGAINING ACCORDING TO THE CFA

The CFA handled several cases about the right to free collective bargaining, and this has led to a fixed interpretation of the free collective bargaining principle. On 28 May 1997 the Canadian teachers' federation filed a complaint of violations of freedom of association against the government of Canada. The allegation was that the government of Canada denied the right of teachers to bargain collectively and that there was legislative interference with the independence of arbitration. In the Committee's conclusion the CFA "recalls firstly that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right of impede the lawful exercise thereof".[53] This is still the current interpretation of the free collective bargaining principle and this definition is reiterated in many cases of the CFA.

§ 2.3 THE RIGHT TO FREE COLLECTIVE BARGAINING ACCORDING TO THE EU

The EU is concerned with the protection of freedom of association and the right to free collective bargaining on two different grounds. On the one hand, the EU is coordinating collective bargaining at European level, the so called cross-border collective bargaining. This subject is beyond the scope of this thesis.[54] On the other hand, the EU has anchored the right to free collective bargaining in three charters, according to which each member state have to ensure the right to free collective bargaining. The provisions in the three charters will be explained below.

§ 2.3.1 THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

The Community Charter of the Fundamental Social Rights of Workers has to be regarded as the foundation of the European labour law model, since it established the major principles on which the model is based. The Community Charter was adopted on 9 December 1989 by a declaration of all EU member states, except the United Kingdom. Under this Charter, the community is obliged to guarantee the fundamental social rights of workers, among others, the right to free collective bargaining and the freedom of association. The Community Charter has no legal binding effect, but is mere a political declaration. The Charter represents a commitment of member states to a set social policy and labour law objectives.[55] Articles 11 to 14 are about freedom of association and collective bargaining. Article 11 defines the freedom of association by stating out that "employers and workers of the European Community shall have the right of association in order to constitute professional organisations or trade unions of their choice for the defence of their economic and social interests. Every employer and every worker shall have the freedom to join or not to join such organisations without any personal or occupational damage being thereby suffered by him". Article 12 describes the right to collective bargaining and states that "employers or employers' organisations, on the one hand, and workers' organisations, on the other, shall have the right to negotiate and conclude collective

[52] Tajgman & Curtis 2000, p. 67.
[53] Gravel, Duplessis & Gernigon 2001, p. 55; ILO 2006, p. 177.
[54] For additional information: Eichhorst, Kendzia & Vandeweghe 2011
[55] EurWORK, 'Community Charter of the Fundamental Social Rights of Workers', 12 January 2011, www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/community-charter-of-the-fundamental-social-rights-of-workers.

agreements under the conditions laid down by national legislation and practice. The dialogue between the two sides of industry at EU level which must be developed, may, if the parties deem it desirable, result in contractual relations in particular at inter-occupational and sectoral level".

§ 2.3.2 The Charter of Fundamental Rights of the EU

The fundamental social rights in the Community Charter are further elaborated on in the Charter of Fundamental Rights of the EU that was signed on 7 December 2000. At this time, this charter was only a political commitment and not legally binding. On 1 December 2009 the Treaty of Lisbon came into force and with its ratification the Charter became legally binding for EU institutions and national governments. Article 6 paragraph 1 of the Treaty of Lisbon determines that the EU has to recognise the rights, freedoms and principles set out in the aforementioned charter and that the charter shall have the same legal value as the Treaty. Article 12 of the charter is about the freedom of assembly and association and determines that "everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests". In addition, article 28 is about the right of collective bargaining and stated out that "workers and employers, or their respective organisations, have, in accordance with Union law and nationals laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including striking action".

§ 2.3.3 The Treaty on the Functioning of the EU

The Treaty on the Functioning of the EU (TFEU)[56] was originally signed on 25 March 1957 and entered into force on 1 January 1958. Article 156 of the TFEU determines that the EC shall encourage cooperation between the member states and facilitate the coordination of their action in all social policy fields, particularly in matters related to the right of association and collective bargaining between employers and workers. However, according to article 153 paragraph 5 of the TFEU the EU has no regulatory competences in the area of wage policies, freedom of association, the right to strike and the right to impose lockouts. Nevertheless, since the early-90s the EC and the ECB gave non-binding recommendations on wage policy.[57] Finally, article 151 of the TFEU refers to the European Social Charter (ESC) (see § 2.4.2) and the Community Charter of the Fundamental Social Rights of Workers (see § 2.3.1) and determines that it is one of the EU objectives to promote the fundamental social rights in these charters.

§ 2.4 The right to free collective bargaining according the CoE

The third major institution in Europe that is concerned with freedom of association and the right to free collective bargaining, is the CoE. The CoE is not an institution of the EU. As result of the signing of the Statute of the CoE (also known as the Treaty of London) the CoE was founded on 5 May 1949. According to article 1 of the Statute the aim of the CoE is to achieve a greater unity between its members for the purpose of safeguarding and realising the principles which are their common heritage and facilitating their economic and social progress.

§ 2.4.1 The European Convention for the Protection of Human Rights and Fundamental Freedoms

Shortly, this convention is called the European Convention on Human Rights (ECHR). It was adopted in 1950 and every member state of the CoE has signed and ratified this convention. Article

[56] Originally the Treaty on the Functioning of the EU was called the Treaty establishing the European Community. In the signing process of the Treaty of Lisbon the Treaty establishing the European Community was renamed to the TFEU.
[57] Schulten & Müller 2013, p. 182.

11 paragraph 1 of the convention determines that everyone has the right of peaceful assembly and the freedom of association with others, including the right to form and to join trade unions for the protection of his interests. The right to free collective bargaining is not explicitly mentioned in the ECHR. This convention has led to the establishment of the European Court of Human Rights in Strasbourg. According to article 34 of the ECHR, any individual can file a complaint to the Court claiming that he or she is the victim of any violation of the rights included in the convention or the protocols. In the case Wilson vs. United Kingdom of 2 July 2002, the Court unanimously decided that article 11 of the ECHR encompasses a right to collective bargaining and a right to strike for trade unions. The Court reiterated this view several times in different cases and it can be said that this became established case law.[58]

§ 2.4.2 THE EUROPEAN SOCIAL CHARTER AND THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

The CoE adopted the ESC on 18 October 1961 and it was revised in 1996. The ESC guarantees fundamental social and economic human rights in the field of social policy and specifically in the fields of employment and industrial relations, including the right to organise (article 5) and bargain collectively (article 6). According to article 6, the signing parties have to ensure effective exercise of the right to bargain collectively, by:

- promoting joint consultation between workers and employers;
- promoting, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- promoting establishment and use of appropriate machinery of conciliation and voluntary arbitration for the settlement of labour disputes and;
- recognising the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

The ESC includes an enforcement system. Independent experts, the European Committee of Social Rights (ECSR), examine regular reports submitted by the member states. The ECSR refers to the treaties and charters above by interpreting the right to free collective bargaining. On the basis of this assessment, the Committee of Ministers issues recommendations requesting particular states to bring national law and practice into conformity with the charter. This enforcement system does not depend on the willingness or availability of resources of an individual complainant, it is policy-oriented and might provide a broader perspective than a case-based procedure. However, it remains to be seen to what extent states are willing to respect the recommendations, which have not the same legal force as court decisions.[59]

§ 2.5 CONCLUSION

Social justice was the main aim of the ILO since its founding in 1919. Since then the principle is mainly defined through the adoption of four documents, namely the ILO Constitution, the Declaration of Philadelphia, the DWA and the Declaration of Social Justice for a Fair Globalization. In this respect, also the Social Justice Index is a relevant report, with important indicators to define social justice. According to the ILO, social justice is based on equality of rights for all people and the possibility for all human beings to benefit from economic and social progress everywhere without discrimination. Promoting social justice is not only about increasing income and creating jobs, it is also about rights, dignity and giving a voice to employees, as well as about economic, social and

[58] Hunko 2015, p. 5.
[59] 'EurWORK, 'European Social Charter", 6 February 2012,www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/european-social-charter.

political empowerment.[60] This definition of social justice will be the leading definition in this thesis, since it contains all relevant terms relating to social justice. The definition can be divided in six elements. All these elements are explicitly or implicitly derived from the above mentioned documents.

- Promoting employment by creating jobs and a sustainable institutional and economic environment that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods;
- Poverty prevention: poverty anywhere constitutes a danger to prosperity everywhere. Under conditions of poverty, social participation and self-determined life are difficult to reach;
- Promoting social dialogue and tripartism: strong and independent social partners are essential to increase productivity, avoid disputes at work and build cohesive societies. There should be freedom of association for workers and employers, along with freedom of expression and the right to collective bargaining;
- Respecting, promoting, realising and guaranteeing fundamental principles and rights at work: obtain recognition and respect for the rights of all workers and in particular disadvantaged or poor workers;
- Developing and enhancing measures of social protection, social security and labour protection, which are sustainable and adapted to national circumstances. Social security must be extended by promoting both inclusion and productivity. It must be ensured that woman and men enjoy decent and safe working conditions, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare;
- Labour market access: the degree of inclusiveness is essential since an individual's status is defined in large part by his or her participation in the workforce. Exclusion from the labour market substantially limits opportunities for self-realisation, contributes to an increase of the risk of poverty and can even lead to serious health stresses.

In chapter 5 the research question will be answered by testing these elements.

The right to free collective bargaining is one of the fundamental and universal rights and therefore it has to be protected, respected and promoted by every member state. The right to free collective bargaining is of great importance for the stability on national, European and international level, because it is one of the cornerstones of industrial relations, social dialogue and social justice. Without (the broad recognition of) the right to free collective bargaining and/or without effective monitoring, industrial relations would be subjected to government interference, employment conditions would be determined unilaterally by employers and exploitation, hardship and forced labour were real threats.

[60] ILO 2011a, p. 1-2.

CHAPTER 3: THE LEGAL BASIS FOR AUSTERITY POLICIES

In order to answer the research question, it is necessary to zoom in on the differences between deficit and surplus countries (section 1) and the legal basis for mandatory austerity measures (section 2). Lastly, section 3 will draw the conclusion.

§ 3.1 THE DISTINCTION BETWEEN DEFICIT COUNTRIES AND SURPLUS COUNTRIES

When talking about the crisis, a distinction should be made between deficit countries and surplus countries. In the first section a description of deficit countries will be given. Deficit countries are subjected to supranational supervision. The three forms of supranational interventionism will be described in the first section. Surplus countries are also subjected to one form of supranational supervision. This will be described in the second section.

§ 3.1.1 DEFICIT COUNTRIES

As a result of the crisis, especially Southern EU countries were faced with uncontrollable debt. In order to avoid bankruptcy, these countries have been granted loans from the ESM. In return for the financial support the Troika forced a wide range of austerity measures upon these countries, such as drastic budget cuts and far-reaching labour market reforms. These so called deficit countries have been subjected to supranational interventionism. All forms of supranational interventionism decreases the national governments' discretion over policy choices and create a framework for imposing austerity measures. There are three forms of supranational interventionism:

Firstly, a new system of economic governance was established by the EU towards the end of 2009. This system contains mechanisms for monitoring, sanctioning and coordinating economic policies. As a result, economic decision-making powers shifted increasingly from national to EU level.[61] Both deficit and surplus countries are subjected to this new economic governance system. As explained above, the TFEU explicitly determines that the EU has no competences in the area of wage policy. However, this legal framework never prevented supranational institutions of the EU to make general, non-binding statements and recommendations about wage policy. This situation started to change fundamentally with the emergence of the new EU economic governance system (see § 3.2).[62]

The second type of supranational interventionism only applies to deficit countries. These countries are forced to introduce far-reaching labour market reforms as a precondition for (more) financial support. These imposed reforms are either laid down in a Memorandum of Understanding (MoU) or in a Stand-By Arrangement.[63] A MoU is an agreement between an EU member state and the Troika that expresses a shared will about an intended common line of action. A MoU can be used in situations where it is not possible to create a legal enforceable agreement.[64] For example, Greece has concluded a MoU with the Troika. A Stand-By Arrangement is concluded between an EU member state and the IMF in order to address short-term balance or payment problems. The member state has to agree to adjust their economic policy based on program targets that are set by the IMF (and laid down in a letter of intent). Disbursements are made if these targets are reached.[65]

The last form of interventionism is the ECB's practice of making the purchase of government bonds depending on 'voluntary' policy reforms. Although this approach was first pursued unofficially in the cases of Italy and Spain, it became quasi-official in the autumn of 2012. The ECB announced

[61] Ségol, Jepsen & Pochet 2013, p. 44.
[62] Schulten & Müller 2013, p. 182.
[63] Ségol, Jepsen & Pochet 2013, p. 44.
[64] LawTeacher, 'Memorandum of understanding', www.lawteacher.net (search for: *memorandum*, second option).
[65] IMF, 'IMF Lending', 21 September 2015, www.imf.org/external/np/exr/facts/howlend.htm.

that it would buy state bonds without limits if the affected countries agreed on certain political reforms.[66]

§ 3.1.2 SURPLUS COUNTRIES

National governments of surplus countries have been taking (drastic) measures to recover from the crisis as well. Surplus countries do not have to comply with requirements from supranational institutions that results from the second type of supranational interventionism. Nevertheless, the EC is still interfering with national policies of those countries as a result of the new EU system of economic governance that applies to both deficit and surplus countries. The EC analyses the economic situation of the EU member states yearly in the context of the European Semester (see § 3.2.3) and provides Country Specific Recommendations (CSR) on measures they should adopt. The recommendations can cover a broad range of topics, including wage policies, wage setting systems and collective bargaining. The wage standards of the EC are based on the idea that wages are an instrument of economic adjustment and should become more flexible to regain competitiveness and increase the number of jobs.[67] However, this idea is not uncontroversial. The European wage recommendations of 2013 were reviewed by the European Federation of Public Service Unions and they concluded that it is a questionable approach to use wages as the main instrument of adjustment. On the one hand it is enhancing the danger of promoting higher inequalities and on the other hand it has a particular adverse effect on the state and the macro economic performance of the Eurozone economy. The CSRs can be related to the national labour market in a broader sense. For instance, the EC gives recommendations about improving the access to the labour market for specific groups of employees. They encourage national governments, among others, to reform social benefit systems, create jobs and reduce unemployment, reduce labour costs, raise the retirement age, reform tax systems, stabilise pension systems and increase access to education. In 2013 the EC was partially satisfied with the reformation of wage formation systems that have taken place, but they still insist on continuing, deepening or at least monitoring these reforms.

It can be concluded that surplus countries are subjected to high political pressure from the EC to reform their labour markets. It is important to be aware of the contradiction between what the EC does (putting member states under high pressure to reform their labour market) and what the EC says it is doing (respecting nationals systems of wage bargaining).[68] The EC makes sure that every recommendation is accompanied by the standard reference that reforms should be carried out in consultation with the social partners and that national systems need to be respected. Despite this standard phrase, the recommendations are so precise and detailed that they cause a series of imposed changes in national wage setting systems and systems of collective bargaining.

§ 3.2 THE LEGAL BASIS FOR AUSTERITY POLICIES

The EU response to the current economic crisis has four aspects. At first, financial reforms are necessary. As a result, a legislative framework has been adopted, which established a European banking authority. Secondly, the situation should be stabilised by the establishment of a permanent emergency fund that can loan money to EU member states with financial problems. As mentioned before, this facility is called the ESM. The third aspect, and arguably the most important from an employment point of view, contains measures to facilitate growth. It is, however, the least developed aspect. It has been argued that a stable economic policy creates the best environment for growth. Yet, this policy is accompanied by stringent austerity measures which makes it unlikely for the economy to grow as long as employees are losing or at risk of losing their jobs. The traditional tool to ensure rapid growth is devaluation of the currency, but that tool is not available for Eurozone member states.

[66] Ségol, Jepsen & Pochet 2013, p. 44.
[67] ETUC, 'European wage recommendations: the 2012 governance cycle, p. 1.
[68] ETUC, 'European wage recommendations: the 2013 governance cycle, p. 1–3.

The only real possibility to enhance growth is by regulating (or deregulating) labour law, because it is one of the few areas over which member states retain competence. The EU has been encouraging this view, among others, through several adopted legislative packages and through the MoUs for countries that turn to the Troika for financial assistance. The last aspect of the EU response to the crisis was focused on improving economic governance.[69] In this regard, the new EU system for economic governance was set up by the EU and its member states in the end of 2009, in order to increase coordination of economic policies and ensure effective implementation of austerity policies in the EU. The emergence of the new economic governance system was shaped through adoption of several policy packages compiled by the EU and its member states.[70] These packages will be described below.

§ 3.2.1 THE STABILITY AND GROWTH PACT

The Stability and Growth Pact (SGP) aimed to maintain fiscal discipline of member states after introduction of the Euro. The implementation of the SGP started on 1 January 1999.[71] The SGP contains a preventive and a corrective arm:

- Firstly, the preventive arm seeks to ensure that fiscal policy is conducted in a sustainable manner. To realise this, a medium-term budgetary objective (MTO) is established for each member state every three years. The MTO is a maximum balance rate. The EC examines whether governments meet their MTO and/or if sufficient improvement has been made towards the MTO. Moreover, member states should comply with an expenditure benchmark, meaning that the growth in public expenditure must remain below the (expected) economic growth until the MTO is reached. A significant deviation from the path towards the MTO and/or the growth in expenditure, can lead to a significant deviation procedure. This procedure starts with a warning containing recommendations for additional measures and can eventually lead to financial punishments.[72] Lastly, member states must outline their medium-term budgetary plans in stability and convergence programs, which are submitted and assessed annually in the context of the European Semester (§ 3.2.3).[73]
- The corrective arm sets out the following framework in order to avoid excessive deficits:
    - The general government budget deficit cannot exceed 3% of the gross domestic product. If this is not possible, then the deficit should be as close as possible to 3%.
    - The general government debt cannot exceed 60% of the gross domestic product. If government debt exceeds this percentage, the difference between the real debt and the norm of 60% must decline with 5% per year.

Non-compliance with these criteria can lead to sanctions. The Council of Ministers can start an excessive deficit procedure if a member state does not undertake appropriate measures in order to reduce excessive deficits. In the beginning these measures have the form of a non-interest-bearing deposit that can be turned into a fine if the deficit is not corrected within a period of two years.[74]

§ 3.2.2 THE LISBON 2000 STRATEGY

In March 2000 the European Council[75] adopted the Lisbon 2000 Strategy. This strategy formulated new strategic goals for the upcoming 10 years and consisted of a global and long-term agenda of reforming and modernisation. The Lisbon Strategy aims to make the EU the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic

[69] Barnard, *Industrial Law Journal* 2012, 41/1, p. 99–103.
[70] Schulten & Müller 2013, p. 181–182.
[71] Kesner-Škreb, *Financial Theory and Practice* 2008, 32/1, p. 83.
[72] *Kamerstukken II,* 2014/15, 34200, 1, p. 27-28.
[73] European Commission, 'Stability and Growth Pact ', 30 July 2015,
http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm.
[74] Kesner-Škreb, *Financial Theory and Practice* 32/1, 2008, p. 83-84.
[75] The European Council must not be confused with the Council of Europe (CoE). The European Council is an institution of the EU. Among others, the Council negotiates and adopts EU laws, coordinates EU countries' policies and adopts the annual EU budget.

growth, with more and better jobs, greater social cohesion and with respect to the environment. The EUs leaders agreed on a detailed agenda including topics as technology (ICT and internet access), knowledge (education, research and innovation), competition (internal market), finances and macro-economic (risk capital markets and the SGP) and the European social model (social cohesion and sustainable pensions). The strategy set common (non-binding) goals for the whole EU and each country is free to decide how to reach these goals. In order to achieve the goals, the Open Method Coordination was adopted as one of the most important innovations presented by the Lisbon Strategy. It is a voluntary coordination mechanism to implement measures and policies over which the EU has no competence. To implement these measures both legislative and non-legislative mechanisms are used. At that time, the Lisbon Strategy was one of the most far-reaching political initiatives, because of its dimension, ambition and complexity. On the downside, the strategy contained mere political ambitions than a legal framework based on treaties, directives and regulations. The Lisbon Strategy objectives were nonetheless incorporated into various EU policies and programs, so the strategy was increasingly being reflected within EU law.[76] In March 2005, the Lisbon Strategy was relaunched. This revised Lisbon Strategy is based on a report from 2004 of a group of independent experts from across Europe. The report concluded that, given the amount of progress, the EU was very unlikely to meet its 2010 goals. The results were disappointing, mainly due to a lack of determined political action, caused by an overloaded agenda, poor coordination and conflicting priorities. The report pointed out that structural reform has become a code word for deregulation and weakening workers' rights instead of supporting structural change.[77] The revised Lisbon 2000 Strategy did not change the original intentions, but it was decided that future orientations of the strategy should focus on growth and jobs. Lastly, a new method of governance, involving the adoption of Integrated Guidelines for Growth and Jobs, was introduced in June 2005. The newly Integrated Guidelines became the basis for member states to produce National Reform Programs.[78]

§ 3.2.3 THE EUROPEAN SEMESTER

The European Semester was developed in 2010 and first applied during the beginning of 2011. The European Semester is a yearly cycle of economic policy coordination, aimed to ensure that the EU and its member states coordinate their economic policies and their efforts to promote growth and create jobs. Every year the cycle starts with the ECs Annual Growth Survey, which sets out the priorities for the EU.[79] Subsequently, the EC issues CSRs for the next 12 to 18 months for all EU member states based on a detailed economic analysis of the state's programs of economic and structural reforms. Each member state has to transform the CSRs into national reform programs whose effectiveness will again be assessed by the EU in het next yearly cycle.[80] The main steps of the European Semester are shown in annex 3. Since the implementation of the European Semester, some progress has been made:

- The combination of the Annual Growth Survey and CSRs have provided for a credible framework for policy implementation. The specific circumstances of each member states are taken into account. In terms of policy reforms the first results have been achieved.
- The European Semester provides integrated surveillance and helps to reconcile economic growth and budgetary priorities.
- Contacts between the EU and its member states has been reinforced and the Semester contributes to greater interaction between member states. The program provides for proactive discussions to prevent problems and regular monitoring of progress.

[76] Rodriguez, Warmerdam & Triomphe 2010, p. 11, 15 and 33.
[77] Ivan-Ungureanu & Marcu, *Romanian Journal of Economic Forecasting* 2006, 1/2006, p. 79.
[78] EAPN, 'The Lisbon Strategy: A general overview', www.eapn.eu/en/what-we-do/issues-we-focus-on/the-lisbon-strategy-a-general-overview.
[79] European Commission 2014, *COM(2014) 130 final/2,* p. 18.
[80] Schulten & Müller 2013, p. 2.

- Analysing and monitoring capacities have been strengthened at EU level by the new economic governance system.[81]

§ 3.2.4 THE EUROPE 2020 STRATEGY

With the adoption of the European Strategy 2020 (Europe 2020) in 2010, the new EU economic governance system began to emerge. This 10-year growth strategy is about exiting the economic crisis and addressing the shortcomings of the current growth model. Europe 2020 has three mutually reinforcing priorities, namely creating the conditions for a smart (based on knowledge and innovation), sustainable (more resource efficient, greener and more competitive) and inclusive growth (high-employment delivering social and territorial cohesion) of the economy of the EU. To reach these goals, five headline targets have been set in the field of employment, research/development, climate/energy, education/social inclusion and poverty reduction. The EC considers the targets relevant to all member states. However, due to the extreme diversity of the 27 EU member states, each member state has to adapt the Europe 2020 strategy to its particular situation and translate the EU goals into national targets. In addition to the priorities and targets, the EC is putting forward seven flagship initiatives to catalyse progress under each priority theme. For the achievement of the Europe 2020 goals it is deemed necessary that each member state file reports on the progress they have made. To avoid a very heavy burden on member states, the Europe 2020 and SGP-reporting will be done simultaneously in order to bring the means and aims together. The EC can issue policy recommendations to member states, regarding the progress towards the goals and regarding the obligation to report. The strategy will be established institutionally by a small set of integrated Europe 2020 guidelines.[82] On 19 March 2014 the EC published a communication to the EU institutions that describes the impact of four years economic crisis and evaluates the progress that has been made since the adoption of the Europe 2020 strategy. So far, mixed progress has been achieved. The crisis still has a clear impact on unemployment rates, the level of poverty and in the field of research and development. Furthermore, it has constrained progress towards the other targets. Only in the fields of education and climate/energy more positive and structural trends are visible.[83] The goals of Europe 2020 are discussed and embedded as part of the European Semester (§ 3.2.3).

§ 3.2.5 THE SIX PACK

The EU system of economic governance has been further enhanced in 2011, when the economic and financial crisis revealed a number of weaknesses in the economic governance system. As a result, the European Parliament adopted the Six Pack, which entered into force on 13 December 2011. This package contains five Regulations and one Directive and has five main components to intensify economic policy coordination:

- Stronger preventive action through the reinforced SGP and deeper fiscal coordination was introduced. As a result, member states are required to make significant progress towards MTO and financial sanctions may be imposed on non-compliant member states.
- Stronger corrective action through the reinforced SGP. Member states with excessive debt are obliged to reduce their debt and progressive financial sanctions, such as fines, may be imposed in an earlier stage to non-complying countries.
- Minimum requirements for national budgetary frameworks were introduced, which means that member states have to ensure that their fiscal frameworks are in line with minimum quality standards and cover all administrative levels.
- An enhanced alert system that enables early detection of imbalances was established to prevent and correct macroeconomic and competitive imbalances. The aim of this alert system is to identify

[81] European Commission 2014, *COM(2014) 130 final/2,* p. 18–19.
[82] European Commission 2010, *COM(2010) 2020,* p. 8–9 and p. 25–26.
[83] European Commission 2014, *COM(2014) 130 final/2,* p. 11.

potential risks at an early stage, prevent the emergence of harmful imbalances and correct the imbalances that already exist. The system aims to ensure that appropriate policy responses are adopted by member states in a timely manner to address the issues raised by (macroeconomic) imbalances.[84]

- An automatic procedure has been introduced for imposing financial sanctions on countries that fail to comply with policy recommendations based on the alert system.

As a consequence of the Six Pack, the CSRs of the EC have lost their voluntary character and reach a much higher degree of liability, because non-complying may result in financial sanctions.[85]

§ 3.2.6 THE EURO-PLUS PACT

In March 2011, the former 23 EU member states, including six states outside de Eurozone (Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania) signed the Euro-Plus Pact to give an extra impulse to the governance reforms. The pact commits signatory parties to even stricter economic coordination for competitiveness and convergence. The Euro-Plus Pact primarily focusses on areas that fall under national competence, with concrete goals agreed on and reviewed by the Heads of State of governments on a yearly basis.[86] The EU can facilitate change through peer pressure, targets and guidelines, but it cannot put mechanisms in place to order change. The crucial point of this pact is that the selection of the policy measures that must be implemented will remain the responsibility of each country, but the choice will be guided (or forced?) by considering the issues mentioned below.[87]

Wage policy plays a prominent role within the new system of EU economic governance and this is particularly the case in the Euro-Plus Pact. The pact explicitly defines wages as the main economic adjustment variable to overcome economic imbalances and to foster competitiveness. Consequently, the Euro-Plus Pact calls for a close monitoring of wages and wage setting institutions at EU level. The Euro-Plus Pact is integrated into the European Semester and the EC monitors the implementation.[88] The Euro-Plus Pact includes four objectives:

- Foster competitiveness: in this field progress will be assessed on the basis of wage and productivity developments and competitiveness adjustments. In order to assess if the wages are evolving in line with productivity, the unit labour costs will be monitored over a period of time and compared with developments in other Eurozone countries and with the main comparable trading partners. The following reforms are highlighted:
    - While respecting national traditions of social dialogue and industrial relations, measures must be taken to ensure costs development is in line with productivity,:
        - Review the wage setting arrangements, and, where necessary, the degree of centralisation in the bargaining process (see glossary) and indexation mechanisms. The autonomy of social partners in the collective bargaining process must be maintained;
        - Ensure that wage settlements in the public sector support the competitiveness efforts in the private sector (bearing in mind the important signalling effect of the public sector wages).
    - Measures to increase productivity, such as:
        - Further opening of sheltered sectors by measures taken at national level to remove unjustified restrictions on professional services and the retail sector, to foster competition and efficiency;

[84] European Commission 2011, *MEMO/11/647,* p. 1-4.
[85] Schulten & Müller 2013, p. 2–3.
[86] Buzás-Németh e.a. 2014, p. 102.
[87] Barnard, *Industrial Law Journal* 2012, 41/1, p. 105.
[88] Schulten & Müller 2013, p. 3.

        - Specific efforts to improve educational systems and promote research and development, innovation and infrastructure;
        - Measures to improve the business environment, particularly for small and medium enterprises, by improving the regulatory framework.
- Foster employment: a well-functioning labour market is the key for a competitive Eurozone. Progress will be assessed on the basis of long term (youth) unemployment rates and labour participations rates. The reforms below are emphasised:
    - Labour market reforms to promote flexi-curity, to reduce undeclared work and to increase labour participation;
    - Lifelong learning;
    - Tax reforms, such as lowering taxes on labour to make work pay while preserving overall tax revenues and take measures to facilitate the participation of second earners in the work force.
- Contribute to the sustainability of public finances, with the highest attention for:
    - Sustainability of pensions, health care and social benefits;
        - Aligning the pension system to the national demographic situation, for example by aligning the retirement age with life expectancy or by increasing participation rates;
        - Limiting early retirement schemes and using incentives to employ older workers.
    - National fiscal rules.
- Reinforce financial stability: a strong financial sector is the key for overall stability of the Eurozone. A comprehensive reform of the EU framework for supervision of the financial sector supervision has been launched.[89]

§ 3.2.7 THE FISCAL COMPACT

The Fiscal Compact (TSCG)[90] entered into force on 1 January 2013 and is the next step in the EU economic governance system. The TSCG aims to enhance the measures in the SGP by introducing stronger fiscal discipline and stricter surveillance within the Eurozone. The Fiscal Compact is an international agreement, so the treaty is legally binding for all member states that have ratified it, and is open to EU countries which did not sign it yet. The TSCG is the result of the decision of euro leaders in December 2011 that stronger measures were needed to reinforce the stability in the Euro area. The TSCG contains stricter fiscal rules:

- The TSCG requires that national budgets must be in balance or in surplus. This is called the balanced budget rule, meaning that national budgets must be in line with the MTO. Temporary deviation from this rule is allowed in exceptional economic circumstances, for example during the current economic crisis.
- The Fiscal Compact reinforces budgetary rules by incorporating a commitment to fully adopt EC proposals and recommendations, in case the budget deficit exceeds 3%.
- If a member states deviates from the balanced budget rule, an automatic correction mechanism will be triggered. The concerned member state will have to correct the deviations over a defined period of time.
- Member states will have to incorporate the requirements for budgetary discipline and the automatic correction mechanism into their legal systems, preferably at constitutional level. In case a member state fails to do so, the European Court of Justice will have jurisdiction to take a decision.[91]

[89] European Council 2011, *EUCO 10/1/11 REV 1,* p. 13–19.
[90] Full: The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG).
[91] Council of the European Union 2012, *18019/12 PRESSE 551,* p 1-2.

§ 3.2.8 THE TWO PACK

On 30 May 2013 the Two Pack entered into force to further improve the EU economic governance system. The Two Pack comprises two regulations that are designed to further enhance economic integration and convergence amongst Eurozone member states. These regulations builds on and complement the Six Pack, by introducing extra surveillance and monitoring procedures for the member states. Additionally, increased transparency on budgetary decisions is required, as well as stronger coordination in the Eurozone. The Two Pack introduces a common budgetary timeline and common budgetary rules for Eurozone member states. The following steps in the timeline can be distinguished:

- By 30 April of each year, the member states must publish their medium-term fiscal plans, together with their policy priorities for growth and employment for the next 12 months in the context of the European Semester.
- By 15 October of each year, the member states must publish their draft budgets for the following year. The EC assesses and gives opinions on each draft budget. If the EC detects severe non-compliance with the obligations, it will ask the member state to submit a revised plan.
- By 31 December of each year, member states must adopt their budgets for the following year.

For the Eurozone as a whole, the EC will publish a comprehensive assessment of the budgetary outlook for the forthcoming year. The Two Pack explicitly strengthens the monitoring and surveillance for member states threatened with, or experiencing, serious difficulties regarding their financial stability. This includes, but is not limited to member states receiving financial assistance.[92]

§ 3.3 CONCLUSION

The emergence of the EU system of economic governance aims to ensure the effective implementation of austerity policies and structural reforms. This new system has fundamentally changed the framework conditions for national collective bargaining. Since 2010 several packages have been adopted. The first packages contain relatively vague standards and objectives. Since the adoption of the Six Pack the nature of the regulations have fundamentally changed from voluntarily towards obligatory. Financial sanctions were added to the competences of the EU and it became possible to sanction member states if they do not comply with the regulations. With respect to the right to free collective bargaining, it can be concluded that the Euro-Plus Pact explicitly determined that the wage setting arrangements and the degree of centralisation of the collective bargaining process has to be reviewed. The process of decentralisation is thus stimulated from EU level and the EU seems to deliberately restrict the right to free collective bargaining. In chapter 5 the consequences for the right to free collective bargaining and social justice will be described in more detail.

[92] European Commission 2013, *MEMO/13/457,* p. 1-**3**

CHAPTER 4: COMPARATIVE STUDY

In the United States of America the housing market collapsed in the second half of 2007, which resulted in a stock market crash and banking crisis that passed on through Europe. Due to this crisis many EU countries had to deal with negative growth numbers and negative prospects. Especially Southern EU countries struggled with the effects of the crisis. In the last months of 2009 it became impossible for Greece to refund or refinance the government's debt without assistance from third parties which threatened Greece with bankruptcy. This resulted in a decreased confidence in (the financial system of) Greece, the value of the Euro and the stability of the Eurozone and the EU in general. Eventually the ongoing crisis that affected several parts of the market changed into a widespread financial and economic crisis. In this chapter a comparative study will be conducted between Greece (deficit country) and the Netherlands (surplus country). The first section describes the Greek system of collective labour law and the second section will elaborate on the Dutch system. The third section gives an overview of austerity measures that are adopted in the EU during the crisis. In the last section conclusions are drawn.

§ 4.1 GREECE

Today, Greece still has huge economic and financial problems and has lent money from the ESM multiple times. As a condition to receive loans, the Troika imposed mandatory austerity measures upon Greece and they are strictly monitoring whether Greece implements the reforms. In chronological order, this section will elaborate on the Greek social partners and union density, the collective bargaining system before the crisis, the implemented austerity measures, relevant jurisprudence and lastly, the consequences of the consecutive austerity policies.

§ 4.1.1 GREEK SOCIAL PARTNERS AND UNION DENSITY

The major social partners in the private sector of Greece represent employees and employers at different levels. There are three levels of trade union organisation for employees under private law contracts. At the base there are primary level unions, which are local unions, organised either in a sector, occupation or enterprise. Each primary level union can be a member of one secondary-level Federation and one Labour Centre of their choice. Federations comprise local unions and are organised by enterprises, sectors or occupations. They may negotiate sectoral, occupational and enterprise collective agreements. Labour Centres are cross-occupational organisations, organised by geographical area and they may not negotiate collective agreements.[93] Federations and Labour Centres are in their turn members of the only tertiary confederation, called the General Confederation of Greek Labour (GSEE).[94] The trade union movement, with approximately 4,500 primary level unions, reflects severe organisational fragmentation. Public servants are entitled to join primary-level trade unions that may belong to the highest labour organisation for civil servants, called Supreme Administration of Civil Servants' Trade Union (ADEDY). GSEE and ADEDY are the most representative trade unions on behalf of the employees. On the employers' side there are three high ranked organisations. One of the most important is the Federation of Greek Industries which is the most representative organisation in manufacturing and service industry. Its members are mainly small- and medium-size businesses, which are 93% of all Greek industrial enterprises.[95] Other federations are the National Confederation of Greek Commerce and the General Confederation of Professional Craftsmen and Small Manufacturers (for the self-employed).[96] The threshold for legal

[93] Patra 2012, p. 9.
[94] Fulton, 'Trade Unions', 2013, www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Trade-Unions.
[95] Yannakourou & Soumeli 2005, p. 3–5.
[96] Ioannou 1999, p. 21.

recognition of a trade union is 21 members.[97] The vast majority cannot form unions, because a total of 97% of the private firms in Greece employ up to 20 employees. Greece has a large unofficial economy with high percentages of undocumented and informal labour, in combination with numerous small family-run firms and a high percentage of self-employment.[98] A large section of the labour force is therefore not unionised and remains outside collective bargaining. The general union density in Greece was 21.3% in 2013, but there is a wide variation between density rates across sectors.[99] The average trade union density of Greek employees declined from 43.3% in 1986 to only 24.5% in 2007. During the crisis the union density declined further to 21.3% in 2013.[100] Nonetheless, there is an extremely high union density in the banking and utilities sector (these sectors employ over 75% of all wage earners), while in other private sectors union density is below average. Union density in the public sector is substantial higher, because most civil servants are automatically member of ADEDY. The military and the judiciary remain strictly non-unionised.[101] In 1983 union density among civil servants was 26.9%, it reached its highest percentage of 51.3% in 1992 and dropped to 42% in 2007.[102] Well before the crisis the ongoing restructuring process, successive privatisations of public sector utilities (where Greek unions had their strongholds) and the trend towards smaller businesses, new forms of employment, high unemployment and low inflation, caused union density to continue shrinking.

§ 4.1.2 COLLECTIVE BARGAINING IN GREECE BEFORE THE ECONOMIC CRISIS

In order to determine the impact of the changes in the Greek collective bargaining system during the economic crisis, it is necessary to elaborate on the characteristics of the Greek collective bargaining system before the economic crisis.

§ 4.1.2.1 HISTORICAL DEVELOPMENT OF COLLECTIVE BARGAINING

Historically, the Greek system of labour relations was characterised by the intervening and active role of the government. Fundamental elements of the labour relation system, such as trade union freedom, democracy in the workplace, the structure of trade unions, the right to strike and collective bargaining, were regulated by statutory law. As a result, collective agreements have always played a secondary role in regulating labour relations. Until 1990 there was a centralised, hierarchical and highly fragmented labour relation system[103], with weak social protection, a lack of cooperation between social partners and inequality of incomes and opportunities.[104] The state intervened to control the leadership of trade unions, because it was determined by law that the majority of the GSEE members should be sympathetic towards the government in-office.[105] As a result, trade unions had close ties to political parties and were subjected to significant political influence, of which a large part of their strength was derived. Their collective bargaining power with private employers was nonetheless not strong and was weakened further by the economic crisis and industrial restructuring. These practices were the product of decades of dictatorship up to 1974, but persisted even after the transition to democracy. This system had resulted in highly adversarial labour relations, demonstrated by the exceptionally high rates of strikes towards the end of the 70s and 80s. By the 90s it became clear that the prevailing model of industrial relations had to change. Since then the government sought to disengage from the collective bargaining process and the role of social actors was strengthened. Employers supported the disengagement of the state from the collective bargaining process, because

[97] Zambarloukou, *European Journal of Industrial Relations* 2006, 12/2, p. 218.
[98] Matsaganis, *British Journal of Industrial Relations* 2007, 45/3, p. 541.
[99] OECD.Stat, 'Trade Union Density', http://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.
[100] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 207–208.
[101] Matsaganis, *British Journal of Industrial Relations* 2007, 45/3, p. 542–543.
[102] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 207–208.
[103] Yannakourou & Soumeli 2005, p. 2.
[104] Zambarloukou, *European Journal of Industrial Relations* 2006, 12/2, p. 215–216.
[105] Ioannou 1999, p. 16.

they believed that governmental interference caused industrial conflict and had ceased to be effective in achieving wage restrained. Nevertheless, nearly all employer organisations wanted to maintain the central collective agreements, because they believed that decentralisation would lead to greater uncertainty and tension, which was particular adverse for the numerous small employers.[106] The disengagement process has led to a significant increase in the participation of social partners in policy making.[107] However, as will become apparent, Greek trade unions are still rather weak compared to other countries.[108]

§ 4.1.2.2 LEGAL FRAME

The former highly centralised and hierarchical system of collective bargaining was regulated through Law 3239/1955.[109] Until 1991, under this law, only remuneration issues could be subjected to collective bargaining. This law was characterised by a system of compulsory arbitration in case negotiations between employers' and employees' organisations did not lead to a collective agreement. At its maximum over 50% of the collective settlements were the result of arbitration, causing social conflict, successive strikes and judicial interventions.[110] After the return to democracy in 1974, the development of enterprise trade union and enterprise collective agreements became a part of an unofficial collective bargaining system.[111] The Constitution of Greece of 1975 democratised labour relations and the existing list of fundamental rights was extended. Since then, the right to work and the right to bargain collectively was included in article 22 paragraph 2 of the Constitution. According to the definition in the Constitution, collective agreements remain to play a secondary role compared to (statutory) law. Next to this, the right to collective autonomy was guaranteed by the Constitution, by determining that trade unions and employer organisations have the legal capacity to determine the terms of work by contracting collective agreements that are considered as rules of law. Article 23 of the Constitution protects the right to associate, trade union freedom, the right to strike and collective labour freedom.[112]

In the 1990s, Law 1876/1990 was adopted as a successor of Law 3239/1955. This law created the legal conditions for a more decentralised bargaining system. Firstly, the law determined that the right to collective bargaining concerned all workers with a private law employment contract who were employed in the private or public sector. Secondly, only the foremost representative trade unions (determined by the number of voting members by the last elections of the board administration) were entitled to conclude collective agreements. The other trade unions were only entitled to intervene during the collective bargaining process. On the employers' side, the capacity to sign a collective agreement was assigned to any employer association that had legal personality, is representative and to single employers who occupied at least 50 employees.[113] The law also stipulated that both parties had to bargain in good faith, with the intention of resolving the collective dispute and employers were obliged to provide employees with full and accurate information in order to bargain effectively. Lastly, Law 1876/1990 created three extra-judicial mechanisms in order to settle labour disputes by involving a neutral and independent third party. Firstly, parties could request conciliation. This voluntarily process aimed to settle individual or collective labour disputes. If the parties reached an agreement, a legally non-binding protocol or a collective labour agreement was signed. Secondly, they could request mediation in case of a collective labour dispute. The mediator had an active role and could submit a proposal of his own if the parties did not reach an agreement. In case an agreement was reached or

[106] Zambarloukou, *European Journal of Industrial Relations* 2006, 12/2, p. 215–216 and p. 219.
[107] Yannakourou & Soumeli 2005, p. 2.
[108] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 207–208.
[109] Yannakourou & Soumeli 2005, p. 18.
[110] Koukoules & Yannakourou 2002, p. 4–50.
[111] Ioannou 1999, p. 24–55.
[112] Patra 2012, p. 5.
[113] Yannakourou & Soumeli 2005, p. 5–7, 9–10 and 18. Note: for the signing of sectoral and occupational agreements are additional requirements in force.

the mediator's proposal was approved by both parties, a collective agreement was signed. If only one party accepted the proposal, than the other party had the right to resort to arbitration under certain conditions. If both parties rejected the mediator's proposal or there was no mediator proposal, the parties could only jointly appeal for arbitration. Otherwise the collective dispute remained unsolved. By mutual consent it was possible to appeal for arbitration at any point in the bargaining process or during mediation. The right to request arbitration was, just as the right to seek mediation, attributed to the most representative trade union and one or more employers' organisations or the individual employer in the sector. The arbitrator had the same rights as the mediator. The arbitrational procedure was completed with the issuing of a binding arbitrational award that was fully equivalent to a collective agreement or the signing of a collective agreement. Lastly, neither the arbitrator nor the mediator could propose or decide to award benefits that were in excess of the parties' demands.[114] By Law 1876/1990, the system of compulsory arbitration was abolished and replaced by a system with more voluntary and mild compulsory characteristics.[115] Civil servants and their trade unions were originally not covered by Law 1876/1990, since the right to collective bargaining in the public sector had only been recognised since the implementation of Law 2738/1999.[116]

Before the implementation of Law 2738/1999, ILO Conventions C150 and C151 had a provision for collective bargaining in the public administration. Although these conventions were ratified by the Greek government in 1985 and 1996, they were never implemented in the legal order.[117] The legislative framework of Law 1876/1990 was supplemented by the ratification of two ILO Conventions by the Greek government in 1996, namely Promotion of Collective Bargaining (C154) and Workers' Representatives (C135). At that time Greece had already ratified ILO Conventions 87 and 98 concerning the Freedom of Association and Protection of the Right to Organise and the Right to Organise and Collective Bargaining.

§ 4.1.2.3 OTHER CHARACTERISTICS OF COLLECTIVE BARGAINING BEFORE THE CRISIS

- By Law 1876/1990 four types of collective agreements can be distinguished:
    - The national general collective agreement (EGSSE) is an important tool to regulate labour relations. It is concluded by the most representative social partners of employees and employers. It fixes and annually readjusts the minimum wage and working conditions for all dependent employees, regardless whether they are member of a trade union. The EGSSE also covers employees under private law contracts in the public sector, legal entities of public law and local government organisation, but no civil servants. The EGSSE must be regarded as a safety net with minimum provisions, from which cannot be negatively deviated by other type of agreements. The EGSSE traditionally plays a crucial and stabilising role in regulating labour relations.
    - Sectoral collective agreements cover employees in similar sectors in a particular city, region or the country, such as employees in the metal industry.
    - Occupational collective agreements cover employees in a certain profession in the country or in a particular region or city.[118] Sectoral and occupational agreements are concluded by first or second level trade unions and the corresponding employers' associations and are only binding to the members of the signatory social partners.[119]
    - Enterprise collective agreements regulate the terms of employment of all employees of a certain enterprise. Only employers with a staff of more than 5 employees have the legal obligation to enter bargaining of such agreements.

[114] Koukoules & Yannakourou 2002, p. 5, 9–18.
[115] Zambarloukou, *European Journal of Industrial Relations* 2006, 12/2, p. 217–218.
[116] Ioannou 1999, p. 23.
[117] Yannakourou & Soumeli 2005, p. 5–7.
[118] Yannakourou & Soumeli 2005, p. 10–11 and p. 21.
[119] Patra 2012, p. 6.

- Historically, occupational agreements were dominant. This changed when Law 1876/1990 gave priority to sectoral and enterprise agreements. In the period until 2004 the number of enterprise agreements had steadily increased and had outnumbered occupational agreements, which gradually became marginal. At the same time the number of collective agreements at sectoral level declined significantly.[120]
- Content of a collective agreement: Law 1876/1990 established the full freedom of negotiation and since then any issue regarding the terms and conditions of work could theoretically be subject to collective bargaining (except some wage aspects, pensions and methods of employment due to legal restrictions).[121] Regardless this extension, the Greek social partners were not able to put contemporary issues, such as flexi-curity, temporary agency work, the use of fixed term contracts, transfer of undertakings, company restructuring, collective dismissals or career breaks on the bargaining agenda. Greek collective agreements still mainly deal with remuneration issues and the content of collective agreements in Greece remains poor compared to other EU countries. The EGSSE has proven to be the most innovative agreement, because it contains issues as protection against racism, vocational training, lifelong learning, expansion of leaves, health and safety at work, active aging policies, protection of the environment and (sexual) harassment. However, the majority of these provisions are formulated as intentions on which initiatives should be taken. Sectoral and occupational collective agreements simply reiterate the terms of the EGSSE without any significant innovations. Enterprise collective agreements deal with more issues, by linking remuneration to productivity, individual or collective performance, company profits or special perquisites for employees.
- Legal nature: most provisions of the EGSSE are ratified by law and acquire the force of law. Other collective agreements are either regarded as contracts or as laws, depending on the type of agreement. When a collective agreement only binds the signatory parties, than it has to be considered as a contract. When a collective agreement is directly[122] and compulsory[123] binding for all employees, the agreement acts as law. There is a hierarchical order of different sources of law that regulate the employment relationship between employers and employees in Greece. First in rank is the Greek Constitution, followed by international regulations, treaties and EU law and ordinary labour law. An individual employment contract should respect all mentioned sources including collective agreements when they act as law. Individual employment contract are in hierarchy followed by customary practice in a company. When there is a conflict between sources of law, the regulation which is hierarchically lower only overrides a higher one if it provides more favourable terms for the employees.[124]
- Coverage: the coverage rate of the EGSSE is 100%, because this agreement has the force of law and covers all salaried employees.[125] In the absence of official data, unionist have estimated that 85% of the total workforce was covered by other collective agreements or arbitration decisions. Academics estimated that only a percentage of 65 to 70% was covered.[126]
- Favourability: in cases where more than one collective agreement was applicable to one employee, the employee was subjected to the collective agreement with the most beneficial provisions. There is one exception: in the case that either an enterprise or a sectoral agreement and an occupational

[120] Yannakourou & Soumeli 2005, p. 10–11, p.18 and p. 20.
[121] Yannakourou 2004, p. 20.
[122] Directly binding means that the terms of the collective agreement automatically applies in the individual work relationships, regardless the terms of the individual employment contract.
[123] Compulsorily binding means that any contradicting agreement is void, except in the situation that the terms of the individual employment contract provide greater protection for the workers.
[124] Yannakourou & Soumeli 2005, p. 11–17 and p. 20.
[125] Lampousaki, 'Greece: Industrial relations profile', 21 October 2014, www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/greece/greece-industrial-relations-profile.
[126] L. Fulton, 'Collective Bargaining Greece', 2013, www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining .

agreement both apply, than the occupation agreement applies, even if the terms are less favourable for the employees.
- Extension: if a collective agreement was already binding on employers employing 51% of the employees in the sector or occupation than the Minister of Labour could declare that collective agreement generally binding for all employees in that sector or occupation.
- Aftereffect: after expiration a collective agreement remained in force for six months and applied to employees engaged during this period. After expiry of this period, all conditions of work prescribed by the collective agreement continued to apply and became a legally binding part of the individual employment contract.[127]

§ 4.1.3 THE IMPLEMENTED AUSTERITY MEASURES

The first measures that were taken by the Greek government before the full onset of the crisis, aimed to protect (the most vulnerable) employees from the harmful effects of the crisis by strengthening the protective rules. After signing the MoUs, the Troika believed that the labour market regulation in Greece constituted a significant barrier to growth and imposed a wide range of labour law reforms. As a result, the protective function of labour law was completely wiped out.[128] The most important and far-reaching changes in the field of individual labour law and collective bargaining will be described next. A more complete overview of the Greek austerity measures is present in annex 4.

§ 4.1.3.1 CHANGES IN THE FIELD OF INDIVIDUAL LABOUR LAW

The main changes in the field of individual labour law are described below. The changes are divided in five categories, namely wage reductions, minimum wage, working conditions, layoff and severance pay and pensions.

- Wage Reductions. Wages and allowances of civil servants and employees under private law contracts employed in the (wider) public sector were reduced by 7% to 12%.[129] The wages were further reduced by the introduction of wage ceilings per occupational category.[130] Christmas, Easter and Annual (the 13th and 14th wage) bonuses were decreased by 30% and later replaced by a flat amount.[131] Maximum paid overtime in the public sector was decreased with 30% and later replaced by compensatory time off[132] and the bonus for working on Saturday was cut by 30%.[133] Additionally, any salary increase was prohibited during 2010 and 2011 and all arbitral awards which granted wage increases in this period were cancelled.[134] Automatic salary increases based on seniority were frozen until the unemployment rate falls below 10%. Any collective agreement, arbitration award or legislative statute that contained a maturity provision was suspended.[135]
- Minimum wage. The generally applicable and mandatory binding minimum wage established by the EGSSE was abolished. Minors between the ages of 15 and 18 years of age could be hired under apprenticeship contracts for a maximum period of one year. They may be remunerated with 70% of the minimum wage in the EGSSE, with scant social security coverage and without any other guarantees.[136] In addition to this, the net wages of employees younger than 25 years who were recruited for the first time was established 20% lower than the minimum wage in the EGSSE.[137]

[127] Lampousaki, 'Greece: Industrial relations profile', 21 October 2014, www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/greece/greece-industrial-relations-profile.
[128] Papadimitriou 2013, p. 4.
[129] ILO 2011b, p. 10.
[130] Papadimitriou 2013, p. 12.
[131] Karantinos 2012, p. 14.
[132] ILO 201b1, p. 13–14.
[133] ECSR 10 October 2014, Complaint No. 111/2014, Case Document No. 1 (*Greek General Confederation of Labour (GSEE) v. Greece*), p. 17.
[134] ILO 2011b, p. 12.
[135] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 343.
[136] GSEE, '*Urgent observations under Articles 22 and 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) regarding the implementation of ratified ILO core Conventions No. 98, No. 87 and No. 154, as well as ratified ILO Conventions No. 81, No. 95, No. 100, No. 102, No. 111, No. 122, No. 138, No. 150 and No. 156',* 29 July 2010, p. 7.
[137] Papadimitriou 2013, p. 8.

Moreover, the minimum wages were immediately reduced by 22% for the general workforce and by 32% for people under 25 years. These levels are frozen until the completion of the fiscal adjustment program. Provisions contrary to these provisions were automatically abolished.[138] From 2012, if the EGSSE contains more favourable provisions for the minimum wage, these provisions are only applicable to those employers that belong to organisations that have concluded the agreement. Lastly, the minimum wage will be determined by an Act of the Parliament instead by means of the EGSSE until 2017. From 2017, the Minister of Labour, Social Security and Welfare will determine the minimum wage after consultations between social partners and the government.[139]

- Working conditions. Firstly, employers who are affected by the economic crisis, gained the right to reduce full-time working hours to part-time hours for nine months (instead of six months) per calendar year, following information and consultation procedures with workers' representatives.[140] The period during which the employer could unilaterally decide to employ his employees a number of days less than laid down in the employment contracts and pay them only a part of their contractual salary[141], was extended from six to nine months. In addition to this, the probationary period of open-ended contracts was increased from 2 to 12 months, the increased pay rate for part time employees who worked less than four hours per day or worked overtime was abolished, the working hours in the (wider) public sector were extended from 37,5 to 40 hours, the period before a fixed term employment contract converted into an open-ended contract was extended from two to three years[142], the minimum daily rest period was reduced from 12 to 11 consecutive hours per 24 hours, overtime work no longer needed to be justified by exceptional needs specified by law and became permitted in all other cases and collective agreements could establish a six-day work week for employees of commercial shops.[143] Lastly, the maximum period of apprenticeship-contracts for people under 25 years was doubled from 12 to 24 months, on the condition that the employer had not dismissed employees during these 24 months and during three months preceding the contract. Employers do not have to pay any social contribution and employees are not entitled to unemployment benefits at the end of the contract.[144]
- Layoff and severance pay. In the event of shortage of business activity, an employer can layoff all or part of its staff for a maximum of three months per year while paying 50% of their salaries, if he had prior consultation with unions' representatives. The legal threshold for collective dismissals was raised. Additionally, the notice period was reduced from 24 months (with 28 or more years of service) to four months regardless the duration of the contract. For employees with an open-ended contract who have been working between one and two years at the company, the notice period was reduced from four to one month.[145] Basically, a probationary period of 12 months was introduced, because the obligation to notice and severance pay (see glossary) started only after 12 months of service under an open-ended contract.[146] The amount of severance pay was significantly limited from 24 to 12 monthly salaries[147], because of the significant shortening of the notice

[138] ECSR 10 October 2014, Complaint No. 111/2014, Case Document No. 1 (*Greek General Confederation of Labour (GSEE) v. Greece*), p. 6-7.
[139] European Labour Law Network, '*Act 4174/2013 describes a new procedure to establish the minimum wage from 2017*', www.labourlawnetwork.eu (search for: *act 4174/2013,* first option).
[140] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 208.
[141] Papadimitriou 2013, p. 9 and 11.
[142] ILO 2011b, p. 12–13.
[143] European Labour Law Network, '*Severance pay*', 3 December 2012 www.labourlawnetwork.eu (search for: *severance Greece,* third option).
[144] ILO 2011b, p. 13–14.
[145] Clauwaert & Schömann 2012, p. 3.
[146] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 349–350.
[147] European Labour Law Network, '*Severance pay*', 3 December 2012, www.labourlawnetwork.eu (search for: *severance Greece*, third option).

period.[148] Seniority which exceeded 16 years (previously 28 years) of employment was no longer taken into account by calculating the amount of severance pay.[149] With respect to the dismissal of older employees it was determined that the number of dismissed employees over 55 years for economic reasons may not exceed 10% of the total number of dismissed employees, otherwise the dismissal may be regarded as unlawful. In case the dismissed older employee remained unemployed, the employer must bear 50% to 80% of the costs of social insurance during a maximum period of three years after the dismissal.[150] Lastly, a labour-reserve was introduced, in which any surplus staff with an open ended private law contract in the public sector was placed during 12 months receiving only 60% of their basic wage. If these people did not find a new employment within a year, they were dismissed.

- Pensions. The retirement age for all employees was increased significantly to 65 years.[151] Permanent pension reductions were introduced: pensions over the amount of € 1,000 received by persons below 55 years were reduced by 40% and of persons above 55 years by 20%. Supplementary pensions were also reduced. Furthermore, all public employees in the (wider) public sector, who turned 55 years and completed 35 years of service by 31 December 2013, were automatically suspended until retirement and received only 60% of their basic salary.[152] Pensions were frozen during several years and it was determined that any pension increase must be in conjunction with gross domestic product increases. Lastly, pensions higher than € 1,400 were charged with an extra 3% to 9% (depending on the amount of pension) and the penalty for early pension was increased from 4.5 to 6%.[153]

§ 4.1.3.2 CHANGES IN THE FIELD OF COLLECTIVE BARGAINING

In this section the changes in the field of collective bargaining, resulting from the adopted austerity measures, are described. The section describes the changes in the field of collective bargaining and arbitration.

- Collective bargaining. It was determined that all provisions in collective agreements contrary to law were cancelled and negotiation of wage increase (through collective agreements or individual contracts) in the (wider) public sector was prohibited until 31 December 2010.[154] Next to this, the favourability principle was overturned. Meaning that in case of plurality of collective agreements priority was given to enterprise agreements even if it did not favour the employee (as long as the minimum provisions of the EGSSE were respected).[155] The special enterprise collective agreement was introduced, in which pay and terms of employment could (negatively) deviate from those of sectoral agreements, however, a later law abolished this provision.[156] Additionally, all collective agreements in force were abolished and renegotiation was imposed within thirty days with the two most representative organisations in each newly created enterprise. If renegotiation was not carried out within thirty days, the terms of employment would be regulated by law. Unilateral recourse to arbitration was prohibited for these negotiations. It was determined that associations of persons (see glossary) were allowed to negotiate working time arrangements at enterprise level in the absence of enterprise trade unions. Later, associations of persons were even allowed to

[148] GSEE, '*Urgent observations under Articles 22 and 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) regarding the implementation of ratified ILO core Conventions No. 98, No. 87 and No. 154, as well as ratified ILO Conventions No. 81, No. 95, No. 100, No. 102, No. 111, No. 122, No. 138, No. 150 and No. 156',* 29 July 2010, p. 6.
[149] European Labour Law Network, '*Severance pay* ', 3 December 2012, www.labourlawnetwork.eu (search for: *severance Greece*, third option).
[150] Papadimitriou 2013, p. 7.
[151] GSEE, '*Urgent observations under Articles 22 and 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) regarding the implementation of ratified ILO core Conventions No. 98, No. 87 and No. 154, as well as ratified ILO Conventions No. 81, No. 95, No. 100, No. 102, No. 111, No. 122, No. 138, No. 150 and No. 156',* 29 July 2010, p. 38.
[152] ILO 2011b, p. 13–15.
[153] Karantinos 2012, p. 18–19.
[154] Patra 2012, p. 14–15.
[155] Clauwaert & Schömann 2012, p. 4.
[156] Patra 2012, p. 17.

conclude enterprise collective agreements as long as 60% of the employees in the enterprise participated in these associations. The possibility of the Minister of Labour to extend the scope of collective agreements towards all employees and employers in a sector has been repealed until the end of the Medium Term Fiscal Strategy 2012-2015 (see glossary).[157] The period of the aftereffect of expired collective agreements was reduced from six to three months[158] and after that only the basic salary and four general allowances continue to apply[159] until replaced by a new collective agreement or individual employment contract.[160] Thus, in the case of non-renewal of the collective agreement, the wages will drop and the other terms contained in collective agreements will be considered deleted.[161] Lastly, collective agreements could no longer be of an indefinite period. A maximum duration of three years for all collective agreements was introduced. As a result all open-ended collective agreements were automatically terminated and wages were forced to revert back to the basic wage plus the four general allowances. Renegotiation has to take place under the new conditions.[162]

- Arbitration. Firstly, it was provided that employees and employers could resort to arbitration unilaterally if both parties participated in mediation.[163] Later, recourse to arbitration was only allowed if both parties agreed.[164] Furthermore, arbitration was limited in defining basic wage, for other terms of employment collective bargaining must continue.[165] The arbitrator (and mediator) have to take the economic and financial conditions, the development of competitiveness and the production activity in which the collective dispute operates and the need to reduce unit labour costs of about 15% during the program into account.[166] Lastly, the right to strike is suspended for 10 days from the day of resorting to arbitration.

§ 4.1.4 JUDGMENTS CONCERNING ADOPTED AUSTERITY POLICIES

Several domestic and European courts and ILO supervisory bodies have ruled on different aspects of the austerity policies and the impact on collective bargaining. In this section the main conclusions of these cases and reports will be discussed. For other (semi) relevant reports, reference is made to annex 5.

§ 4.1.4.1 OBSERVATIONS OF THE ILO HIGH LEVEL MISSION

In September 2011 a High Level Mission (HLM) visited Greece in order to collect information, among others on the application of the conventions about freedom of association and collective bargaining. The mission aimed to facilitate a comprehensive understanding of the exceptional situation which Greece has to cope with. They investigated the impact of the policies of international organisations, with an aim to make constructive proposals to support Greece. The legislative interventions in the freedom of association and collective bargaining, raised a number of questions. Some particular questions related to the need to ensure the independence of social partners, the autonomy of the bargaining parties, the proportionality of the measures imposed in relation to their objectives, protection of the most vulnerable groups and finally, the possibility to review the measures after a specific period of time. The HLM recalled that if a government, as part of its stabilisation policy, considered that wage rates could not be settled freely through collective bargaining, such restrictions should be imposed as exceptional measures and only to the extent that is necessary,

[157] ILO 2011b, p. 13-15.
[158] Papadimitriou 2013, p. 16.
[159] Karantinos 2012, p. 20.
[160] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 359–360.
[161] Papadimitriou 2013, p. 16 and Karantinos 2012, p. 20.
[162] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 212.
[163] Patra 2012, p. 18.
[164] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 211–213.
[165] Clauwaert & Schömann 2012, p. 3.
[166] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 363

without exceeding a reasonable period. The restriction should be accompanied by adequate safeguards to protect workers' living standards. Furthermore, the HLM noted that many concerned parties emphasised the need to ensure the recognition of the role of social dialogue to maintain social cohesion and the need to safeguard the role of the industrial relations system and its institutions by providing support to social partners. The HLM emphasised that the government made great effort over the last year to ensure that alterations to the industrial relations framework would respect the practices and traditions of the social partners. However, the HLM expressed its deep concern about the developments that took place after their visit, such as empowering associations of persons to conclude collective agreements at enterprise level. The HLM feared that this would have a detrimental impact on collective bargaining and the capacity of trade unions to respond to the concerns of its members, on existing employers' organisations, and for that matter, on any base on which social dialogue may take place in the country. In this regard, the HLM echoed that it is likely that the introduced changes to the industrial relations system in the current circumstances will have a spill over effect on collective bargaining as a whole, to the detriment of social peace and society at large. The HLM referred to the obligation of Greece under ratified Conventions to promote the practice of collective bargaining in general. The desire expressed by all social partners is to evaluate the impact of the reforms introduced in the framework of industrial relations and social dialogue in general.[167]

§ 4.1.4.2 Council of State and the European Court of Human Rights

In February 2012 the Greek Council of State (CS), the supreme administrative court of Greece, concluded that domestic authorities could determine the amount of pension benefits in line with economic and social conditions, because they have a wide margin of appreciation in implementing social policies and finding a balance between public spending and public revenues. The CS created a new instrument for legitimising austerity policies, limited by the right of human dignity and the right to a decent living, by integrating immediate cash need within the scope of public interest. According to the CS no infringement of the ECHR (article 1 of Protocol 1) and the Constitution (article 2 and 17) had occurred. The pension reductions were lawful, pursued a legitimate aim in the public interest, were necessary and proportional and did not compromise the rights of human dignity and decent living. Nevertheless, the CS emphasised that the Parliament's power to further reduce pensions and wages of public employees was limited, since the measures should not focus on only one category of citizens and should respect human dignity.[168] In other cases dealing with pension cuts, the CS confirmed the compatibility of the measures with the principle of equality (article 4[1] of the Constitution), the obligation of Greek citizens to contribute to public charges in accordance with their means (article 4[2] of the Constitution) and the state's obligation to provide for a social security system (article 22[5] of the Constitution). Interestingly, the CS did not observed any violation of the right to social security and social assistance and the right to an adequate standard of living according to the ESC, the International Covenant on Economic, Social and Cultural Rights and the Charter of Fundamental Rights of the EU.[169] In May 2013 the European Court of Human Rights fully adopted the above described reasoning of the CS. The court concluded that the disputed measures constituted a justified interference with the right to peaceful enjoyment of possessions. Even in this exceptional crisis the Greek state had not overstepped the limits of its margin of appreciation.[170]

In September 2013, the CS declared the preretirement labour reserve contrary to article 103 of the Greek Constitution.[171] This article determines, among others, that the positions of civil servants are permanent so long as these positions exists. The CS found the labour reserve discriminatory. Even

[167] ILO 2011b, p. 4 and 58–59.
[168] Council of State (Greece) 23 February 2012, *Case 668/2012.*
[169] Council of State (Greece) 4 April 2012 *Case 1285/2012;* and Council of State (Greece) 4 April 2012 *Case 1286/2012.* See also: Council of State (Greece) 4 April 2012 *Case 1283/2012;* and Council of State (Greece) 4 April 2012 *Case 1284/2012.*
[170] Yannakourou 2014, p. 9–11 and 22–24 and ECHR, 7 May 2013, 57665/12 and 57657/12 (*Koufaki and Adedy v. Greece*).
[171] Council of State (Greece) September 2013 *Case 3354/2013.*

though the reorganisation of the public sector and the reduction of governmental expenditure constitutes a legitimate purpose, no objective procedures were introduced to evaluate the qualifications, skills, efficiency or experience of the public servant.[172] The Court determined that the labour reserves and consequent dismissals were based on the incidental criteria of the employees' date of birth and date of recruitment and thus violated the principles of equality and proportionality. This was not adequate and proportionate to the pursued goal. As a result of this decision, the vindicated civil servants returned to their jobs. The second labour reserve plan that was introduced after this decision also violated the Greek Constitution and the ESC according to the CS.[173]

In June 2014, the CS gave a ruling about the austerity measures that have been adopted under the second MoU.[174] Only the provision amending the unilateral recourse to arbitration was declared incompatible with the principle of collective autonomy as guaranteed by the Constitution (article 22[6]). All other labour law measures resulting from the second MoU were declared in compliance with the Constitution, the TFEU, the ECHR, the ESC and ILO Conventions 87 and 98 by the CS, due to "reasons of higher social interest". The CS recognised that the provisions introduced under the second MoU limited the social partners' power to regulate working conditions and constituted a serious decline in workers' rights, as well as a weakening of their position against employers. The provisions were integrated in a broader set of arrangements aiming at serving the public and general social interest and were adopted under very exceptional circumstances. The CS underlined that the provisions in question served a legitimate objective and appeared to be proportionate, since they were appropriate for the achievement of the pursued goal and they could be considered necessary. The Court even stressed that the contested provisions did not affect the core of the right to freedom of association and the right to strike. Employees were still granted the right to pursue improvement of their job position and the mitigation of the negative impacts on their working conditions, either through collective bargaining or the exercise of their right to strike. [175]

§ 4.1.4.3 The Court of Justice of the EU

In November 2012, the Court of Justice of the EU dismissed an action for annulment of two Council Decisions by ADEDY. These decisions were addressed to Greece with a view to reinforce and deepen fiscal surveillance and to take necessary measures to remedy the situation of excessive deficit. The Court of Justice of the EU ruled that these Councils Decisions were not of direct concern to the applicants.[176]

§ 4.1.4.4 Observations of the CFA in Case 2820

After several complaints of trade unions, the CFA issued a report in November 2012. The complainants alleged that numerous violations of trade union and collective bargaining rights have been imposed within the framework of austerity measures that were implemented in the context of the international loan mechanism for Greece. The complainants argued that the government has gone beyond what might be considered as acceptable limitations in urgent circumstances. The measures were not imposed for a defined and limited period of time, were neither proportionate nor adequate, have been adopted without real and substantial social dialogue and without sufficiently examining more appropriate alternatives. Neither the measures were accompanied by adequate and concrete safeguards nor by guarantees that could protect the living standards of workers and reinforce the ability of vulnerable groups. The combination of measures has led to dismantling the system of workers' fundamental rights, such as the right to free collective bargaining, the right to uniformly binding

[172] Iodice, *Boston University International Law Journal* 2014, 32/2, p. 566–568.
[173] Yannakourou, *Irish Employment Law Journal* 2014, 11/2, p. 41.
[174] Council of State (Greece) 27 June 2014 (*Case 2307/2014*).
[175] Yannakourou 2015, p. 1-2.
[176] Yannakourou 2014, p. 11–12 and General Court 27 November 2012, T-541/10 (*ADEDY, Papaspyros and Iliopoulos v. Council of the European Union*).

minimum standards of decent work through the EGSSE and the action and functioning of trade unions. The measures violated the core of individual and social rights and endangered social peace and cohesion.

In its reaction, the government stressed its commitment to the observance of international labour standards and stated that the measures were necessary in order to meet with the conditions of the Troika. The government emphasised that the structural measures in the field of industrial relations, such as enhancing flexibility and decentralising collective bargaining, were proportional to the severity of the crisis. The measures were taken in a manner that was compatible with the right to bargain collectively and terms of collective agreements. Lastly, the government emphasised that they tried to pursue social dialogue, but that the terms of the loan left too little space for this. In their latest reply to the CFA, the Greek government acknowledged that the financial crisis and the international economic environment reduced the quality of labour rights and thereby reduced the quality of the life of the citizens.

Although deeply aware of the grave and exceptional circumstances, the CFA was concerned that systematically favouring decentralised bargaining, in combination with repeated and extensive (statutory) interventions, could lead to global destabilisation of labour relations and the collective bargaining framework. The CFA noted that the introduction of legal obstacles for collective bargaining at industry level, was not consistent with the principles of freedom of association and collective bargaining. The CFA concluded that the government should persuade parties and not force unilateral statutory changes upon them. According to the CFA, measures adopted in these exceptional circumstances must be provisional, considering the severe negative impact. Overall, the CFA concluded that the principles of freedom of association and collective bargaining were weakened in a manner contrary to Conventions 87 and 98. The CFA reminded the government to promote and strengthen the institutional framework for collective bargaining and social dialogue. The CFA urged that permanent and intensive social dialogue should be held on all issues, in order to develop a common vision for labour relations in full conformity with the principles of freedom of association and collective bargaining.[177] The CFA also gave its opinion about specific austerity measures, for this overview reference is made to annex 6.

Summarising, the CFA found no direct violation of the principles of freedom of association. However, it has expressed its concern about the weakening of freedom of association and collective bargaining and pointed to the risk of potential violation. Even when a violation of the principle of free collective bargaining was established, in the case of the immediate realignment of the minimum wage level through statutory law, the conclusions and recommendations have no binding effect and their enforceability depends on the governments' political will to make changes. So far, the Greek government is unwilling to review measures that have been implemented as a result of the MoUs.[178]

§ 4.1.4.5 COURT OF AUDITORS

In its opinion of 30 October 2012 on the draft law "Public sector pension issues", the Court of Auditors concluded that the numerous acts to reduce pensions, other benefits and public wages, were breaching several rights. For example, the right of human dignity, the principles of equality and proportionality, and the state's right to claim fulfilment of a duty to social and national solidarity by all citizens were violated. Lastly, the court was concerned about the compatibility of this draft law with the state's duty to provide for a social security system. The court followed a similar line of reasoning in its opinion on another pension related bill in 2013.[179]

[177] Committee on Freedom of Association 2012, 365th Report, Case no. 2820, p. 262–264, 266, 268 and 271-274.
[178] Yannakourou 2014, p. 27.
[179] Yannakourou 2014, p. 12.

§ 4.1.4.6 ECSR

In May 2012, the ECSR concluded that extension of the probationary period was in breach with the right of all employees to a reasonable period of notice (article 4[4] ESC). Secondly, with regard to the introduction of the apprenticeship contracts, the ECSR observed that the refrain of three weeks paid annual leave was in breach with article 7(7) ESC. Furthermore, the ESCR ruled that the apprenticeship contracts were similar to employment contracts and did not constitute a genuine vocational program, which was a violation of article 10(2) ESC. The ESCR noted that minors who engaged in those apprenticeship contracts received less social security coverage and concluded that this was a violation of article 12(3) ESC. Additionally, the ESCR concluded that the sub-minimum wage for people under 25 years was below the poverty level, which was not allowed. The ESCR stated that the less favourable pay of persons under 25 years was age discrimination and pay discrimination, which constituted a violation of the right to fair and equal remuneration (article 4[1] ESC).[180]

In December 2012, the ESCR stated that the economic crisis may not lead to reduction of the protection of social rights. The ESCR observed that the government did not consider alternative measures that would limit the cumulative burden and did not carry out sufficient research to the impact of the measures on vulnerable groups. The government had refrained from debating with various international and national organisations. This resulted in a significant degradation of the standards of living of many pensioners. The ESCR concluded that the Greek state had taken inadequate steps to maintain a sufficient level of protection for the most vulnerable members of society (violation of article 12 paragraph 3 ESC).[181]

Lastly, in September 2014 the GSEE filed a new complaint to the ESCR, concerning violations of the ESC with respect to the right to work (article 1), conditions to work (article 2), the right to fair remuneration (article 4) and the right of children and young persons to protection (article 7), as well as the right to take part in determining and improving working conditions and working environment (article 3 of the 1988 Additional Protocol). The complaint was declared admissible on 19 May 2015.[182] The complaint focusses on key legislative interventions into the labour relations framework of the private sector and the (wider) public sector over the period 2010-2014. This will be the first time that the ESCR examines measures adopted under the second MoU.

§ 4.1.4.7 OBSERVATIONS OF THE CAS

The CAS issued two reports about the application of convention 98 and more specific about the reform of the legal framework of the collective bargaining system. Governments' representatives emphasised in both cases that the critical economic situation and the complicated negotiations at international level provided no room for consultation with the social partners prior to the legislative reforms. In both observations the CAS recalled that the interference in collective agreements and the collective bargaining system as part of a stabilisation policy should be imposed as an exceptional measure and to the extent that is necessary, without exceeding a reasonable period. These measures should be accompanied by adequate safeguards to protect workers' living standards. In both cases, the CAS concluded that the government should intensify its efforts and undertake full and frank dialogue with the social partners to review the impact of the austerity measures and to ensure that the provisions of the convention are fully taken into account in future action. In 2013, the CAS requested the government to intensify its efforts to establish a functioning model of social dialogue on all issues of concern with a view to promoting collective bargaining, social cohesion and social peace in full conformity with the convention. Lastly, the CAS urged the government to enable the social partner

[180] ECSR 23 May 2012, Decision 66/2011 (*GENOP-DEI and ADEDY v. Greece*), paragraph 25-69 and ECSR 23 May, Decision 65/2011 (*GENOP-DEI and ADEDY v. Greece).*
[181] ECSR December 2012, Decisions 76/2012 to 80/2012 and Yannakourou 2014, p. 12–14 and 25–28.
[182] ECSR 19 May 2015, Complaint No. 111/2014, (*Greek General Confederation of Labour (GSEE) v. Greece*).

to be fully involved in the determination of any further alterations in major aspects of labour relations and social dialogue.[183]

§ 4.1.4.8 OBSERVATIONS OF THE CEACR

Between 2010 and 2015, the CEACR issued several observations regarding the Greek industrial relation system. Arranged by subject, the main observations, will be discussed below.

- Social dialogue. The CEACR emphasised that "it fully understands the very difficult, challenging, exceptional and grave circumstances in Greece". However, it deeply regrets that far-reaching changes were introduced without full and thorough discussions with the social partners.[184] The CEACR underlined the importance of holding full and frank consultations with the social partners on revising the collective bargaining system. This should be done in accordance with the principle of the autonomy of the parties to the collective bargaining process and in light of the long-ranging implications of such revision for the living standard of workers.[185] According to the CEACR, it was critical to engage in intensive social dialogue in order to develop a comprehensive vision for labour relations in the future. The CEACR requested the government to review the unilaterally taken measures with the social partners in the near future. In consultation with the social partners they should determine which measures can limit the impact of these provisions and how adequate safeguards for the protection of workers' living standards can be implemented. Lastly, the CEACR trusts that the social partners would be fully involved in the determination of any new alteration within the framework of the MoUs that touch upon fundamental aspects with respect to labour relations, social dialogue and social peace.[186]
- Collective bargaining. The CEACR deeply regrets all interventions in voluntary concluded agreements. They recalled that if a government, as part of its stabilisation policy, considered that wage rates could not be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period. These restrictions should be accompanied by adequate safeguards to protect workers' living standards. Social partners should review the measures to assess if it is necessary to continue them after a certain period.[187] The CEACR also emphasised that the authorities should give preference to, as far as possible, collective bargaining by determining the conditions of employment of public servants. Where circumstances rule this out, interfering measures should be limited in time and protect the living standard of workers who affected are the most.[188]
- Favourability. With respect to abolition of the favourability principle, the CEACR recalls the general principle, enunciated in the Collective Agreements Recommendation (C91) that collective agreements should bind the signatories and those on whose behalf the agreement is concluded. Employers and employees bound by a collective agreement should not be able to include in contracts of employment stipulations contrary to those contained in the collective agreement. The CEACR considers that the favourability principle should also apply to lower level collective agreements, unless the same parties were involved in the negotiations.
- Associations of persons. The CEACR considers that collective bargaining with representatives of non-unionised employees should only be possible when there are no trade unions at the respective level. Guarantees with respect to independency and protection are not granted to associations of persons. This can lead to discrimination of officers and members of these associations. By granting collective bargaining rights to other types of workers' representatives, the position of trade unions as the representative voice of the workers in the collective bargaining process is likely to be

[183] CAS 2011, 100th Session, p. 68-72 and CAS 2013, 102nd Session, p. 76-80 .
[184] ILC 2012, *ILC.101/III1A,* p. 159-164.
[185] ILC 2011, *ILC.100/III/1A,* p. 81-83.
[186] ILC 2012, *ILC.101/III1A,* p. 159-164 and ILC 2013, *ILC.102/III(1A),* p. 106-110.
[187] ILC 2011, *ILC.100/III/1A,* p. 81-83, ILC 2012, *ILC.101/III1A, p. 159-164* and ILC 2013, *ILC.102/III(1A),* p. 106-110.
[188] ILC 2012, *ILC.101/III1A,* p. 159-164.

undermined. Given the prevalence of small enterprises in the Greek labour market (approximately 90% of the workforce), the facilitation of associations of persons combined with the abolition of the favourability principle has a severe detrimental and potential devastating impact on the foundation of collective bargaining. The Committee therefore requests the government, in consultation with the social partners, to ensure that trade union can be formed in small enterprises in order to guarantee the possibility of collective bargaining through trade union organisations.[189]

- Extension. According to the CEACR, the temporary abolition of the extension mechanism of sectoral and occupational collective agreements is not in contravention with the provisions of the convention, because this is a matter of the national policy makers.
- After effect. The CEACR considers that the use of a 'retainability-clause' with respect to non-wage matters, in order to ensure continuity of the employment conditions of individual employees and to avoid a legal vacuum, is not in conflict with the convention. According to the CEACR, elements in collective agreements that concern the relation between social partners should be subjected to renegotiation. An obligatory and automatic perpetuation of worker representation that may not reflect an evolution in the workers' free and independent choice must be avoided. The CEACR requests the government to ensure that the 'retainability-clause' is used in the case of unilateral requests for arbitration.[190]
- Arbitration. The CEACR considers that the government is allowed to place restrictions on arbitrators relating to the maximum increase of the basic wage, in the absence of a common agreement among the parties concerned. Especially in the current circumstances of extreme austerity, these restrictions can be imposed as an exceptional measure if it not exceeds a reasonable period. The fact that arbitration concerning basic wage issues at national, sectoral and/or occupational level could only be carried out at the request of both parties, was compatible with the convention in the absence of a system to fix the minimum wage. The CEACR emphasises that, as a general rule, legislative provisions which permit either party unilaterally to request compulsory arbitration for the settlement of a dispute does not promote voluntary collective bargaining and is thus contrary to the convention. The CEACR trusts that the government will take judgments of the CS fully into account and adapt the measures. With respect to the arbitrator's obligation to adapt the award to the need of reducing unit labour cost by 15% and to close/archive all pending arbitration cases at the time of the new law, the CEACR underlines the importance of an efficiently functioning independent and impartial arbitration machinery without governmental interference. The CEACR requests the government to review the restrictions with the social partners to ensure that the arbitrators were not given such rigid instructions by law that they were unable to independently determine the matters voluntarily brought before them.[191]

§ 4.2 THE NETHERLANDS

The Netherlands has not lent money from the ESM and is not subjected to supranational supervision. Nevertheless, the Dutch government imposed austerity measures in order to cut the deficits. This section will discuss the Dutch social partners and the aspect of union density, the collective bargaining system before the crisis, the implemented austerity measures and the observations of the ILO supervisory bodies.

§ 4.2.1 DUTCH SOCIAL PARTNERS AND UNION DENSITY

In the Netherlands, trade unions are organised per sector, such as education, construction etcetera. Usually there are multiple trade unions active in one sector, which means that employees

[189] ILC 2012, *ILC.101/III1A,* p. 159-164, ILC 2013, *ILC.102/III(1A),* p. 106-110, ILC 2014, *ILC.103/III(1A),* p. 111-112 and ILC 2015, *ILC.104/III(1A)*, p. 85-87.
[190] ILC 2012, *ILC.101/III1A,* p. 159-164.
[191] ILC 2012, *ILC.101/III1A,* p. 159-164, ILC 2013, *ILC.102/III(1A),* p. 106-110 and ILC 2015, *ILC.104/III(1A),* p. 85-87.

can choose which trade union they want to join. There is no compulsory trade union membership in the Netherlands.[192] Most trade unions are affiliated to a federation. These federations are umbrella organisations representing union transcendent matters on behalf of its members, for example, consultation with the Dutch government and employers federations, influence legislation and policies, participate in several advisory bodies and organising the central strike funds. There are currently three federations in the Netherlands.[193] The largest federation is the Dutch Trade Union Federation. The other two federations are called Christian National Labour Union and the Federation of Managerial and Professional Staff. There are also several independent trade unions.[194] Civil servants are also entitled to be member of special trade unions. The largest trade union for civil servants is called the ABVAKBO-FNV. Most civil servants trade unions are member of the previously mentioned federations. The system described above applies for the most part to the employers' organisations. Nearly 80% of the employers is member of an inter-branch organisation or an employers' organisation.[195] The employer organisations are also umbrella organisations that represent the interest of its members. Each sector has its own inter-branch organisations. The most important employer organisation is the result of a merge between the Federation of Dutch Enterprises and the Dutch Christian Employers Federation and is now called VNO-NCW. Other import employer organisations are MKB-Nederland who represents small and medium enterprises and LTO-Nederland for agriculture and horticulture.[196] There are only two legal criteria in order to be recognised as a trade union: the trade union must have full legal capacity and the trade union should have the statutory authority to conclude collective agreements. However, in order to be permitted collective bargaining partner, the trade union must represent a large number of employees in the sector and must be more representative than other unions.[197] According to case law, trade unions are sufficiently represented when they represent 20% of the employees in the sector.[198] Only in exceptional circumstances the employer or employer organisations can refuse a party to join the negotiations.

Aside from the period between 1989 and 1995, there is a downward trend in union density percentages from 37.5% in 1967 to 24.7% in 1998 and 17.6% in 2013.[199] These percentages do not make any distinction between civil servants and employee. The percentages do also not reflect the differences in union density between different sectors. There is a wide variation in union density rates by sector. Among civil servants the organisation level is historically high. For example in public administration the trade union density was 34% in 2011 and in education it was 30% in 2011. In construction and in the energy industry also many employees are member of a trade union (31% in 2011). However, in the hospitality industry and corporate services, the union density is substantially lower than average, respective 7% and 11% in 2011.[200]

§ 4.2.2 COLLECTIVE BARGAINING IN THE NETHERLANDS BEFORE THE ECONOMIC CRISIS

The collective bargaining system in the Netherlands before the crisis will be discussed below. In chronological order, the historical development, the legal framework and the characteristics of the collective bargaining system before the crisis will be elaborated on.

[192] B9, 'Vakbonden, vakorganisaties in Nederland', www.b9.nl/vakbonden/index.htm?paginanummer=10 (in Dutch).
[193] Loonwijzer, 'Vakbonden, wat heb je eraan?', www.loonwijzer.nl/home/arbeidsvoorwaarden/cao/vakbond-wat-is-het-en-wat-heb-je-er (in Dutch).
[194] Parlement & Politiek, 'Werknemersorganisaties', www.parlement.com (search for: *werknemersorganisaties,* first option) (in Dutch).
[195] Van Riel, *SER Magazine* 2013, 53/9, p. 5.
[196] Parlement & Politiek,'Werkgeversorganisaties', www.parlement.com (search for: *werkgeversorganisaties,* first option) (in Dutch).
[197] Mantel, *SMA februari* 2008*,* afl. 2, p. 77 (in Dutch).
[198] De Rechtspraak, 'De aanbevelingen van de Kring van Kantonrechters', paragraph 3.7, p. 11 (in Dutch).
[199] OECD.Stat, 'Trade Union Density', http://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.
[200] Ter Steege e.a. *Sociaaleconomische trends* 2012, 4e kwartaal 2012, p. 16–18 (in Dutch).

§ 4.2.2.1 HISTORICAL DEVELOPMENT

The trade union movement in the Netherlands arose about 150 years ago. After the year of 1872 trade unions could develop in freedom, but they were still opposed for years by employers. Only after the end of the First World War, the trade union movement started to grow rapidly and was recognised by employers.[201] In the period between the First and Second World War there was a system of decentralised collective bargaining. Collective bargaining mainly consisted of arrangements between individual employers and employees, with an emphasis on enterprise collective agreements. Furthermore, there was freedom of wage setting, because the amount of pay was either determined unilaterally by the employer or the result of collective bargaining.[202] After the Second World War the trade union movement was fully integrated and recognised as a social partner in the process of social and economic control.[203] The system of collective bargaining changed from decentralised towards largely centralised. All collective agreements had to be approved by a board of independent experts, before they could be applied. Employees were exclusively protected through standard collective agreements, which could not be derogated from, neither positively or negatively. The government had, motivated by the post war economic situation, a dominant and intervening role in the wage setting system.[204] Since the mid-70s, occupational trade unions increased in number and obtained more power at the expense of the traditional sector-wise organised unions.[205] During the 70s and 80s a law was introduced that gradually reduced the controlling role of the government on the wage setting system. This resulted in the full restoration of the right to bargain collectively. After 1982, the system of collective bargaining changed again towards a more decentralised system. During this period a system of consultations between civil organisations and the government was introduced in an attempt to agree on social and economic policies. Several agreements were reached as a result of this consultation system. However, these agreements were concluded on the initiative of the government and after constant governmental interference. After losing its controlling role, the government still tried to achieve its socio-economic objectives through intensive accompaniment of the collective bargaining process. In the following years, this system of consultations remained intact, but the intervening role of the government diminished. Recently, there has been a growing need of businesses for customised benefits packages, which gives employees the opportunity to compose their own benefits package. Due to this kind of decentralisation tendencies, a lot of pressure is put on trade unions to represent the interests of their constituents as good as possible.[206] With respect to the system of collective bargaining, it is important to describe how the normal wage setting system functions. An important player in this system is the Labour Foundation[207]. This is a consultative body, where trade union federations and employers' organisations discuss the terms for a so-called central agreement. This agreement contains nationwide recommendations on the socio-economic development for the upcoming years and defines the wage policy framework for the upcoming year. Almost every spring and autumn, the social partners have discussions with the government in order to reach a central agreement.[208]

§ 4.2.2.2 LEGAL FRAME

Article 10 of the Constitution of 1848 recognised the right of association for the first time. The law treated all associations equally and trade unions were no exception. There were no legal requirements to establish a trade union, but the establishment of a trade union could not be a threat

[201] Jacobs 2013, p. 3 (in Dutch).
[202] Fase & Van Drongelen 2004, p. 37–38 (in Dutch).
[203] Jacobs 2013, p. 3 (in Dutch).
[204] Fase & Van Drongelen 2004, p. 38–41 (in Dutch).
[205] Van Drongelen 2012, p. 109 (in Dutch).
[206] Fase & Van Drongelen 2004, p. 38–41 (in Dutch).
[207] In the Netherlands this Foundation is called 'Stichting van de Arbeid' (STAR).
[208] Parlement & Politiek, 'Stichting van de Arbeid', www.parlement.com (search for: *stichting*, second option) (in Dutch).

for the public order. The legislator was instructed to further develop the constitutional right of association and assembly. This was done by the adoption of the "Law on association and assembly" of 22 April 1855. This law cancelled the penalisation of establishing an association, including trade unions, without permission of the government. An association contrary to the public order remained prohibited and participation of such associations was punishable. Until 1872, employers could not conspire in order to insist on wage cuts and employees were not allowed to strike. This law was repealed in 1976 and since then only the constitutional provisions were in force. As a result, there could no longer be any thresholds in order to establish a trade union. Complementary, it became possible to verify the establishment of a trade union afterwards and if necessary the judge could dissolve the trade union. Eventually, in 1907, the "Law on employment contract" was adopted. As the first country of the EU, the Netherlands legally recognised the collective labour agreement, even though it was only in one article. The article included a description of a collective agreement and regulated the legal consequences of a collective agreement. Matters that were not regulated, were later supplemented by case law and became the fundaments of the "Law on collective agreements" of 1 September 1928.[209] This law defined, among others, what a collective agreement is, who is entitled to conclude such an agreement, who are bound by al collective agreement and what the legal thresholds are. Additionally, this law determined that provisions in employment contracts that are contrary to provisions in a collective agreement are null and void. A rule was introduced that employers, which are bound by a collective agreement, are obliged to apply the collective agreement on employees who are not member of a trade union.[210] At last, important subjects such as the aftereffect became legally regulated.

After a long debate, that started in 1922, about the desirability of declaring collective agreements generally binding, the "Law on declaring generally binding and non-binding collective agreements" entered into force on 1 October 1937. When provisions of a collective agreement are declared general applicable, the employer who is not bound by a collective agreement and his employees will be subjected to the same legal regime as those who are bound by the collective agreement. The law stipulates the requirements for declaring provisions of a collective agreement generally binding. One of the most important legal requirements is the majority requirement. This means that the collective agreement must be applied on a significant majority of the employers and employees in the sector. Due to the extension of collective agreement provisions, the collective agreement is protected from competition on working conditions by undercutting of employers and employees who are not bound by the collective agreement. It could be said the extension mechanism supports and protects collective bargaining. This resulted in balanced work relations and industrial peace.[211]

On 12 February 1970, the "Law on wage formation" entered into force. This law abolished the wage policy controlled by the government. The emphasis shifted towards free collective bargaining and freedom of social partners. However, the government retained the competence to intervene in wage setting if necessary. In the early-80s this last part of governmental interference was abolished, because it was conflicting with trade union freedom and the right to free collective bargaining. Initially, civil servants were treated differently than employees under a private law contract. From 1988 public employers must negotiate with social partners (instead of only consult them) and since 1993 the agreements became more similar to collective agreements for employees under private law contracts.[212] Civil servants of the national government and municipalities have their own collective agreements now. The above mentioned legislative framework is supplemented by several ILO

[209] Van Drongelen 2012, p. 23-25 and p. 30–31 (in Dutch).
[210] FlexWijzer, 'Wet op de collectieve arbeidsovereenkomst | Wet cao', 21 May 2013, www.flexnieuws.nl/2012/03/25/wet-op-de-collectieve-arbeidsovereenkomst-wet-cao (in Dutch).
[211] Van Drongelen 2012, p. 23–29, 212–213 and 217 (in Dutch).
[212] Tros, Albeda & Dercksen 2006, p. 71–72, 85, p. 89 and p. 124–125 (in Dutch).

conventions and recommendations. In 1950 the Dutch government already ratified Convention 87 concerning the Freedom of Association and Protection of the Right to Organise. The other fundamental collective bargaining convention concerning the Right to Organise and Collective Bargaining (C98), was only ratified in December 1993. The Dutch government also ratified the ILO conventions concerning the Promotion of Collective Bargaining (C154), the Workers' Representatives Convention (C135), the Labour Relations (Public Service) Convention (C151) and the Labour Administration Convention in 1980.[213]

§ 4.2.2.3 CHARACTERISTICS OF COLLECTIVE BARGAINING BEFORE THE CRISIS

- In the Netherlands two types of collective agreements occur:
    - Sectoral collective agreements: these agreements cover employees in similar sectors in a particular city, region or the whole country, such as employees in the metal industry or commerce.
    - Enterprise collective agreements: these agreements regulate the terms of employment of all the employees of a certain enterprise.[214]

  Historically, sectoral collective agreements are dominant in the Netherlands. At the moment, there are around 1000 collective agreements, of which 200 are sectoral agreements and 800 are enterprise collective agreements.[215] Of all employees about 91% is covered by a sectoral collective agreement. This makes that the sectoral collective agreement is still dominant over the enterprise agreement.[216]
- Content of a collective agreement: according to law, the parties in a collective agreement have freedom of contract with respect to the content of the agreement. Collective agreements may exclusively derogate from three-quarter mandatory law[217], but not from other mandatory legal provisions. In this case the provisions of the collective agreement are considered null and void. Each collective agreement has three types of terms, namely normative provisions, obligatory provisions and diagonal terms. The most important provisions are the normative clauses, because these provisions determine the rights and obligations between the individual employer and the individual employee. The great majority of these provisions relate to primary, secondary and tertiary working conditions. Obligatory provisions contain rights and obligations between the parties by the collective agreements and diagonal provisions determine obligations between the individual employer or employee and parties by the agreement or other collective identities.[218] The content of collective agreements can vary widely among different enterprises, occupations and sectors. However, nowadays many collective agreements are adapted to the current developments regarding decentralisation, differentiation and flexibility. Collective agreements contain modern aspects, such as early retirement, educational leave, organisation of leave over the whole working life of the employee, position of women, protecting those with disabilities and environmental aspects. An increased number of agreements provide for a range of benefits, from which individual employees can choose.[219]
- Legal nature: a collective agreement can be a minimum agreement or a standard collective agreement. If the collective agreement is a minimum agreement, the provisions must be regarded as minimum requirements (a safety net), from which the employer can positively deviate. It is not allowed to deviate from provisions of a standard collective agreement, neither negatively nor

[213] ILO, 'Ratifications for Netherlands', www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102768.
[214] Fase & Van Drongelen 2004, p. 42 (in Dutch).
[215] Cao Advieslijn, 'Wat is een CAO en hoeveel CAO's zijn er?', www.caoadvieslijn.nl/caoinfo.htm (in Dutch).
[216] De Beer 2013, p. 20 (in Dutch).
[217] Fase & Van Drongelen 2004, p. 71–72 (in Dutch).
[218] Van Drongelen 2012, p. 125-126 and 147 (in Dutch).
[219] 'Collective Bargaining the Netherlands', www.worker-participation.eu/National-Industrial-Relations/Countries/Netherlands/Collective-Bargaining.

positively, except when the possibility of derogation is specifically included. This makes it clear that there are numerous variations between minimum and standard collective agreements, which can make it difficult to determine the legal nature of a collective agreement.[220] In the Netherlands there is a hierarchical order of different sources of law. Most important are the international laws, treaties and charters, followed by Dutch (labour) law, collective agreements, working regulations and individual employment contracts.[221] The individual employment contract should respect all mentioned sources. When there is a conflict between sources, the regulation which is hierarchically higher overrides the lower one.

- Coverage: according to Ministry of Social Affairs and Employment, about 80% of the Dutch employees (6.1 million employees) are bound by a collective agreement.[222] This is due to the fact that extending mechanisms were introduced. As a result collective agreements are applied to non-unionised employers or employees in a sector. The legislators chose this construction because they feared that employers would circumvent collective agreements on a large scale by only hiring unbound employees. Despite the low level of organisation (around 17%), the coverage rate of collective agreements is high. It can be concluded that the union power in the Netherlands exceeds the membership percentages by far.[223] As a result, questions can be raised about the representativeness of trade unions, but this subject falls outside the scope of this thesis.
- Extension: the Minister of Social Affairs and Employment can declare some provisions of collective agreements generally binding for the whole sector. All normative provisions can be extended, but most of the obligatory provisions cannot be extended. Whether diagonal terms can be extended depends on their nature.[224]
- Aftereffect: with respect to normative clauses the aftereffect is since a ruling of the Supreme Court in 1987 widely accepted.[225] The individual employment contract is modelled and shaped by the (generally binding) provisions of collective agreements. After the duration of the collective agreement, the individual employment contract is still governed by the provisions in that collective agreement. Only the enforceability options disappears after the collective agreement has ended, in which case the individual freedom of contract revives. In general, obligatory and diagonal clauses do not have an aftereffect. There are numerous variations on these rules, for example in relation to unbound employees, the use of an incorporation clause, the extension mechanism and in case of a transfer of an enterprise.
- A Dutch employee can be bound to a collective agreement on different grounds. This is regulated through a complex system of laws, policies and regulations. Below, only the headlines will be described.
    - Membership: employers and employees who are member of the party that concluded the collective agreement are bound by that collective agreement.
    - Contractual: according to law, an employer that is bound by a collective agreement is obligated to apply that agreement to unionised and non-unionised employees. Another contractual option is the usage of an incorporation clause, by which the individual employee accepts the applicability of a collective agreement voluntarily.[226]
    - Extension: see above on page 52.
    - Plurality: there is an extensive system of rules that determines which collective agreement is applicable in case of plurality of agreements, but this falls outside the scope of this research.

[220] Van Drongelen 2012, p. 148 (in Dutch).
[221] HR-kiosk.nl, 'Hiërarchie wetgeving', www.hr-kiosk.nl (search for: *hiërarchie*, first option) (in Dutch).
[222] Verhulp e.a. 2013, p. 11 (in Dutch).
[223] HR-kiosk.nl, 'CAO (bereik)', www.hr-kiosk.nl (search for: *cao,* third option) (in Dutch).
[224] Van Drongelen 2012, p. 153–156 (in Dutch).
[225] NJ 1988, 70 (*HR 19 juni 1987*) (in Dutch).
[226] Van Drongelen 2012, p. 178, 187, 199, 279–280 and 285 (in Dutch).

§ 4.2.3 THE IMPLEMENTED AUSTERITY MEASURES

In the beginning of the crisis the Dutch government chose to stimulate the economy through several capital injections and investment policies, instead of implementing a strict regime of austerity measures. Due to the continuation of the crisis, the investment policies led to a significant deterioration of public finances. This resulted in a multitude of austerity measures that were introduced in the following years. Below, only measures in the field of the labour market and social security will be described. For a complete overview of the measures, reference is made to annex 7.

- Individual labour law. A major new law, called the "Law work and security", entered partially into force on 1 January 2015 and 1 July 2015.[227] This law changed the system of individual labour law drastically.
    - Fixed-term contracts: employees with a labour contract lasting at least six months, should receive a written confirmation about whether the contract will be extended at least one month before the expiration date. If this condition is not respected, the employee is entitled to the salary for the period the notice was too late, with a maximum of one month. In fixed-term contracts of less than six months a probationary period is no longer allowed and a non-competition clause is only allowed if this is necessary because of important business interests. Furthermore, an employee is entitled to a contract of indefinite duration after two (instead of three) years and the interval period is extended from three to six months. By collective agreement the maximum of three contracts can be extended to six contracts and the period of two years can be extended to four years. This rule does not apply to employees younger than 18 years with an average contract of 12 hours per week or less.
    - Layoff: the dismissal route depends on the reason of dismissal. For dismissal of economic reasons or long-term sickness, it became obligatory to request a dismissal permit from the Employees Insurance Agency[228]. Dismissals for other reasons require the employer to go to court.
    - Severance pay: if the employer terminates an employment contract that existed for two years of longer, the employee is entitled to a transition allowance (severance pay). During the first 10 years of service, the amount of severance pay consists of one-sixth of a monthly salary for every six months. After 10 years a quarter of a monthly salary for every six months is awarded. The maximum severance pay is restricted to € 75,000. [229] This new rule is in many cases significantly worse than the previous rules. An example when employees benefit from this rule is in the case of long-term disabled who are now entitled to severance pay.
- Collective labour law. The "Collective redundancy notification act" is now applicable in case employment relationships were ended by a contract of termination.[230]
- Working conditions. At first, a short term working arrangement was introduced (applicable until 31 March 2009). Employers who were hit by the crisis could request to (temporary) reduce the amount of working hours for their employees. Secondly, this working arrangement was followed by introducing the partially unemployment benefit (applicable from 1 April 2009 until 30 June 2010). Under certain conditions, an employee could receive a partial unemployment benefit during a maximum period of 4 times 13 weeks. Both schemes required that the employee was placed in an educational program that should lead to a broader employability.[231] Thirdly, from 9 June 2010 until 31 December 2011 it became possible for employers to offer people under the age

[227] *Kamerstukken II*, 2014/15, 34200 XV, 1, p. 11-14 (in Dutch).
[228] In the Netherlands this institution is called 'Uitvoeringsinstituut Werknemersverzekeringen'.
[229] E. Izeren, 'Hoofdlijnen Wet werk en zekerheid', 19 June 2015, www.weanaaldwijk.nl/hoofdlijnen-wet-werk-en-zekerheid (in Dutch).
[230] *Kamerstukken II,* 2012/13, 33605 XV, 1, p. 31 (in Dutch).
[231] Arbeidsrechter.nl, 'Werktijdverkorting', www.arbeidsrechter.nl/werktijdverkorting-personeelskosten-werknemers-deeltijd (in Dutch).

of 27 four fixed-term contracts (instead of three), during a maximum period of four years (instead of three years).[232]

- Unemployment benefit. From 1 January 2016, the maximum duration of the unemployment benefit will be gradually decreased from 38 to 24 months in 2019. During the first 12 months the benefit will be related to the last earned salary and after that to the statutory minimum wage. Additionally, it is determined that in the first ten years of employment, employees receive one month of unemployment benefit per year of service and after that they obtain only a half month per year of service.[233] Moreover, since 1 January 2015 all work is considered suitable after six months (currently 12 months) of unemployment. This means that the unemployed have to accept every job available.
- Older employees. The 'continue to work-bonus' and its proposed successor, the 'work-bonus'[234] for the working elderly, were cancelled. The work-bonus for employers that employ people over 62 years was abolished since 2013 and the work-bonus for employees ranging from 61 to 64 years was abolished on 1 January 2015.[235] The general 'mobility-bonus'[236] for employees older than 55 years was waived. Additionally, money has been saved on the special mobility-bonuses for benefit recipients over 50 years and for disabled.[237] This age limit was raised to 56 years on 1 January 2015.[238] Older job seekers (since June 2014 55+ instead of 50+) can receive an education contribution, can participate in job (application) training and can go to network-days to meet employers. As a stimulant, temporary work agencies will receive a bonus if they successfully mediate an employee over 50 years.[239] Lastly, the 'elderly-discount' will be lowered and the 'elderly-allowance' will be cancelled per 1 January 2016.[240]
- Youth unemployment. Due to a sharp rise of youth unemployment, a Youth Unemployment Action Plan was implemented in 2009. This plan focused on young employees, unemployed young people and early school leavers.[241] A 'premium-reduction' for employers that hired people aged 18 to 26 years with an unemployment benefit or social assistance was introduced. From 1 July 2015, this discount can be applied on contracts of 24 hours per week (instead of 32 hours or more).[242]
- Reintegration. On 1 March 2009 30 Mobility centres and a national network consisting of 40 training and employment helpdesks were established to mediate people as soon as possible to a new job. Since 1 January 2011 these tasks were integrated into the regular services of the Employees Insurance Agency.[243] The government invested to create apprenticeships, traineeships and extra recourses for retraining.[244] Furthermore, the training bonus, the experience certificate and the experience profile were temporarily available (June 2009 until 31 December 2010)[245]. Lastly, a special unemployment benefit was introduced for the hours the employee followed training. In that case the employer only have to pay the salary over the hours the employee works.[246]

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[232] Rijksoverheid, 'Tijdelijke crisismaatregel niet verlengd ' 9 December 2011, www.rijksoverheid.nl/actueel/nieuws/2011/12/09/tijdelijke-crisismaatregel-niet-verlengd (in Dutch).
[233] Samsom & Rutte 2012, p. 33–35 (in Dutch).
[234] The work-bonus' gives employers a premium discount as they keep older workers employed.
[235] Begrotingsafspraken 2014, 11 October 2013, p. 4-12 (in Dutch).
[236] The mobility-bonus gives employers a premium discount if they hire an older employee.
[237] *Kamerstukken II,* 2011/12, 33280*,* 1, p.17-19 (in Dutch).
[238] Ondernemersplein, 'Premiekorting voor werkgevers', www.ondernemersplein.nl/subsidie/premiekorting (in Dutch).
[239] *Kamerstukken II,* 2014/15, 34200 XV, 1, p. 12 (in Dutch).
[240] *Kamerstukken II,* 2014/15, 34000, 1, p. 101–102 (in Dutch).
[241] *Kamerstukken II,* 2008/09, 31965, 1, p. 5 (in Dutch).
[242] UWV, 'Werknemer met uitkering: premiekorting voor jongere werknemer', www.uwv.nl/werkgevers (search for: *premiekorting,* first option) (in Dutch).
[243] *Kamerstukken II,* 2010/11, 32710 XV, 1, p. 91 (in Dutch).
[244] *Kamerstukken II,* 2009/10, 32387, 1, p. 3-5 (in Dutch).
[245] *Kamerstukken II,* 2010/11, 32710 XV, 1, p. 16–21 (in Dutch).
[246] UWV, 'Met brug-WW geen loonkosten tijdens scholing', 9 March 2015, www.uwv.nl (search for: *brug-ww loonkosten*, first option) (in Dutch).

- Pensions. With respect to the General Old Age Law (AOW) the government has decided to raise the retirement age to 67.[247] After this decision, several legal propositions were made and cancelled. For an overview of these propositions, reference is made to annex 8. By an act of November 2012, it was decided to increase the retirement age with one month for every year, starting on 1 January 2013. This must lead to a retirement age of 66 years in 2019 and 67 years in 2023. Subsequently the retirement age would be linked to life expectancy.[248] Later, it was decided to raise the retirement age accelerated from 2016, to 66 years in 2018 and to 67 years in 2021 and linked to life expectancy afterwards.[249] By law the start date of the AOW-benefit was altered towards the date that the pensioner turned 65 (instead of the first day of the month in which the pensioner turned 65).[250] The retirement partner-allowance for households with a yearly income above € 30,000 was reduced by 10% since 1 August 2011.[251] On 1 April 2015 the retirement partner allowance for new pensioners was abolished. This decision was already made in 1995. For people that already receive the allowance it is determined that they are no longer entitled to the allowance if they earn together more than € 46,000 (excluding the AOW). There were also several alterations in regulations about income support for AOW-recipients. Now, the allowance (on top of the AOW) is linked to the number of years one has lived in the Netherlands.[252] Some pensioners might be entitled to a social assistance supplement, in case of an incomplete pension.[253] In order to compensate for the gap between the stop of early pensions (at 65 years) and the start of the AOW (65 years and a few months) regulation was made. First, a temporary 'advanced payment regulation' was introduced (until 1 January 2015), by which people could receive a loan for this period.[254] A permanent regulation was introduced as a replacement of the advanced payment regulation. This regulation entered retroactively into force on 1 January 2013 and will end on 31 December 2022.[255] Next to this, the benefit for people who cohabite with one or more adults (even if it are first-degree relatives) was established at 50% of the statutory minimum wage instead of 70%.[256] This rule does not apply if a couple stays much together and they both have a house that is freely available to them and that they pay for themselves. In that case there is no joint household and each will receive an AOW-benefit of 70% of the statutory minimum wage, on the condition that no other people are registered at the address or live with them.[257] Lastly, many pension funds deemed it necessary to reduce pension and pension entitlements, in order to timely meet the requirements of the law.[258]
- Social security. For dismissed employees who are older than 55 years of age the act 'Income Provision for Older Unemployed' applies without partner or asset test and without the obligation to seek work. This law entered into force on 1 December 2009 and will be abolished on 1 July 2016. The act on 'Income Provisions for Older Partial Disabled Workers'[259] was intended to be abolished and replaced by the income provision for older unemployed persons[260], but this was reversed. The criteria are tightened as a consequence of the implementation of the Law Work and Security on 1 January 2015. Now only people who are born before 1965 are entitled.[261]

[247] *Kamerstukken II*, 2008/09, 31700 XV, 66 (in Dutch).
[248] *Kamerstukken I,* 2011/12, 33290, A, art. 1D (in Dutch).
[249] *Kamerstukken II,* 2014/15, 34083, 3, p. 3–4 (MvT) (in Dutch).
[250] *Kamerstukken II,* 2011/12, 32486, 3 (MvT) (in Dutch).
[251] *Kamerstukken II,* 2011/12, 33240 XV, p. 19 (in Dutch)
[252] *Kamerstukken II*, 2013/14, 29389, 74, p. 2 (in Dutch).
[253] *Kamerstukken II*, 2012/13, 33605 XV, 1, p. 79 (in Dutch).
[254] HR-kiosk.nl, 'Voorschotregeling AOW', 25 December 2012, www.hr-kiosk.nl (search for: *voorschotregeling*, first option).
[255] *Stcrt.* 2015, 15137 (Tijdelijke regeling overbruggingsuitkering AOW) (in Dutch).
[256] *Kamerstukken II*, 2013/14, 33801, 3, p. 13 (MvT) (in Dutch).
[257] *Kamerstukken II*, 2014/15, 34200 XV, 1, p. 62 (in Dutch).
[258] *Kamerstukken II*, 2012/13, 33605 XV, 1, p. 39 and p. 41 (in Dutch).
[259] In the Netherlands this law is called 'Wet inkomensvoorziening oudere of gedeeltelijk arbeidsongeschikte werkloze werknemers (IOAW)'.
[260] Samsom & Rutte 2012, p. 33–35.
[261] Rijksoverheid, 'Wat is de overheid van plan met de IOAW en IOW?', www.rijksoverheid.nl/onderwerpen/uitkering-oudere-werklozen-ioaw-iow-ioaz/vraag-en-antwoord/wat-is-de-overheid-van-plan-met-de-ioaw-en-iow (in Dutch).

Furthermore, social assistance was made to be more activating by introducing strict requirements to find a job[262] and by applying the work and reintegration obligation and the obligation to provide a contribution to society. The social assistance can be stopped for three months if the obligation to seek work is not respected. When there is severe misbehaviour against civil servants who implement the regulation, this will inevitably lead to termination of the benefit.[263] Since 2009 the 'Law investing in youth' was applied. The law determined that everyone under the age of 27 years must receive an offer to work or learn from their municipality, before they could receive income support. If the youngster rejected this offer, he was not entitled to income support. This law was abolished on 1 January 2012.[264] On 1 January 2015 the law "Measures work and social assistance act and other laws" entered into force. The obligation to work was clarified and standardised. For welfare recipients who have a household with several people, it was determined that the number of people in the household was taken into account in order to determine the amount of welfare. This system will also be introduced for other benefits, such as for AOW. This measure is intended to enter into force on 1 July 2016.[265] Additionally, from 1 January 2015 municipalities became fully responsible for support, guidance and care of their residents. This is covered by the Social Support Act[266]. The claims for these provisions are limited and the services will be retrenched. Claims for domestic help are replaced by a customised provision and only for those who are not able to pay for it.[267] On 1 January 2015 the "Participation Law" entered into force. With this law one regulation for all employees that stand far away from the labour market was created. The municipalities, as executive bodies, have been given the tool of wage-cost subsidy in order to make it financial attractive for employers to hire employees with a disability.[268] Lastly, several allowances were altered, lowered and/or abolished, such as child arrangements, the allowance for retired people, relatives of a passed family member, the elderly allowance and the allowance for disabled persons. It falls outside the scope of this study to explain these alterations in details, but examples can be found in annex 7.

§ 4.2.4 JUDGMENTS CONCERNING ADOPTED AUSTERITY POLICIES

In the Netherlands domestic courts have not (yet) issued judgments about specific austerity measures. Nevertheless, several ILO supervisory bodies have issued reports about some aspects of adopted austerity policies. In this sector the main conclusions of these reports will be discussed.

§ 4.2.4.1 OBSERVATIONS OF THE CEACR

During the crisis, the CEACR did not have any observations about the application of conventions C87 and C154. In 2011 and 2014 the CEACR issued two observations with respect to anti-union discrimination as enshrined in convention C98. In 2011 the CEACR requested the Dutch government to provide information on any progress made to ensure a comprehensive protection against acts of anti-union discrimination. As a result from an earlier comment of the CEACR, discussions with the most representative employers' and workers' organisations should be initiated. These discussions should identify appropriate measures to enhance the protection against acts of anti-union discrimination other than dismissal (for instance, transfer, relocation, demotion, and deprivation or restriction of remuneration, social benefits or vocational training) of trade union members who are not trade union representatives. In 2014 the government established several procedures after consultations with employers' and workers' organisations. In this regard, the CEACR

[262] *Kamerstukken II,* 2011/12, 33240 XV, 1, p. 15 (in Dutch).
[263] Samsom & Rutte 2012, p. 5–6 (in Dutch).
[264] *Stb.* 2009, 282 (Wet investeren in jongeren) (in Dutch).
[265] *Kamerstukken II,* 2014/15, 34200 XV, 1, p. 11–14 (in Dutch).
[266] In Dutch this law is called the 'Wet maatschappelijke ondersteuning' (WMO).
[267] Samsom & Rutte 2012, p. 58 (in Dutch).
[268] *Kamerstukken II,* 2014/15, 34200 XV, 1, p. 11–14 (in Dutch).

requested the government to provide details on the established procedures. The last point of concern was about a lawsuit that was filled by a division of the FNV due to an opinion published by the Netherlands Competition Authority discouraging collective bargaining on terms and conditions of contract labour[269]. In 2014 the government replied that they requested preliminary rulings of the Court of Justice of the EU and that was still pending. In its next report, the CEACR requested the government again to provide more information on the outcome of the judicial process.[270]

§ 4.2.4.2 OBSERVATIONS OF THE CFA IN CASE 2905

This complained was filed during the crisis by an employers' federation, but the matter was not related to the crisis or any austerity measures that were taken by the Dutch government. This research is limited to the effect of austerity measures on collective bargaining and social justice, so there will not be any further elaboration on this case.

§ 4.3 THE EU

Before drawing conclusions, it is interesting to look at the labour law reforms throughout the EU. In general, four main areas of labour law reforms can be distinguished: fundamental reforms and changes to working time (sector 1), atypical employment (sector 2), rules of (collective) redundancies (sector 3) and industrial relations structures and processes (sector 4).[271]

§ 4.3.1 CHANGES IN WORKING TIME

In order to enhance flexibility in organising working time, 22 of 28 EU member states have altered the organisation of working times at the end of 2013.[272] The following alterations have been introduced:

- The maximum allowed working time per day has been extended (mostly without proper compensation). The following measures were taken, especially by Southern EU countries: a six-day work week, an increased amount of working hours per week, shorter obligatory daily rest periods, modification of provisions relate to disrupted working time, increasing the maximum limit of authorised overtime, reducing the overtime pay rate, changing rules on compensation for overtime in time off or in kind and redefining the requirement for working on days or at times that are considered as non-working time. Finally, there was a trend to cut public holidays and reduce annual leaves.
- In other parts of the EU, a trend towards creating short-time working schemes during the crisis became visible. This gave employers (under certain conditions) the right to adjust the working hours and salary of employees when they were temporarily faced by low demand. The employees, on the other side, were protected against job loss, because in return the employers had to maintain the employment contract. Most countries have created conditions regarding the use of the scheme, the role of social partners and/or work councils, the duration of the scheme, the reduction of salary and subsidies for training.
- A trend was observed towards a greater flexibility in the allocation of working time, enabling employers to unilaterally modify their employees' work schedules. A popular measure concerns the extension of reference periods, which allows employers to vary the weekly working time, as long as the average working time over the reference period does not exceed the limit. According to the Working Time Directive of the EC (2003/88/EC) the maximum reference period to average out weekly working time is four months. This period can be extended to six months for certain types of employees and to 12 months by collective agreement (under certain conditions). Member

[269] Contract labour is work that is performed by individuals who do not necessarily work under the strict authority of an employer and who may have more than one workplace.
[270] ILC 2011, *ILC.100/III/1A,* p. 123-124 and ILC 2015, *ILC104/III(1A),* p. 123.
[271] Clauwaert & Schömann 2012, p. 5 and 8.
[272] Ségol, Jepsen & Pochet 2014, p. 62.

states have made extensive use of this possibility. A number of EU member states have taken measures that allows employers to post and/or change work schedules on short notice.[273]

§ 4.3.2 CHANGES IN ATYPICAL CONTRACTS

In 2014, 24 out of the 28 EU member states changed the rules on atypical contracts to create a more flexible labour market.[274] During the economic crisis more employees are working under atypical contracts. An atypical contract is any non-standard contract that deviates from the standard of an open-ended contract on full-time basis. For example, fixed-term work, temporary agency work or part-time work. Atypical employees have the weakest position on the labour market, because they are the first to suffer changes to their status and employment relationship.[275] Three changes in the field of atypical contracts can be distinguished:

- Changes in fixed-term and part-time contracts were introduced. These types of contracts are regulated by two directives of the EC[276], which are converted by all EU member states. Both directives aim to improve the quality of part-time and fixed-term work by eradicating discrimination and preventing abuse. With respect to fixed-term contracts, the term objective measures is used to justify the renewal of an atypical contract. This term has been expanded and the maximum duration and the number of successive fixed-term contracts have been increased. This is contrary to the anti-abuse aim of the directive. Furthermore, part-time work has been used as a tool against unemployment and it is closely related to the implementation of short-time working schemes.
- Governments introduced new forms of (atypical) contracts, in order to support certain weak categories of employees on the labour market. However, these contracts are mostly applied to bypass existing legal frameworks. These contracts offer less employment protection, by weakening social rights to unemployment benefits, social benefits and severance pay, reduced wages, a longer probationary period, exclusion from annual leave and waiving off fundamental employment rights (regarding unfair dismissal, severance pay, flexible work and time off) in exchange for shares.
- Rules for apprenticeships and traineeships were changed, because of the dramatically rise of youth unemployment rates during the economic crisis. Theoretically, traineeships and apprenticeships could play an important role by increasing skills, competences and chances of young people to find a decent and sustainable job. Despite the potential of these provisions, there are serious concerns that traineeships and apprenticeships may be abused by employers to replace permanent workers and take advantage of cheap (or free) labour. To improve transparency of the system many new measures have been adopted.[277]

§ 4.3.3 CHANGES IN REDUNDANCY RULES

In 2014, 20 of the 28 EU member states adopted (or announced) changes in the field of redundancy rules. According to employers, job cuts are the primary way to reduce wage costs and as a result the number of redundancies has increased rapidly during the economic crisis. The following three main areas of legislation are involved (sometimes in combination):

- At first, administrative dismissal procedures have been made easier, notice periods and the amount of severance pay and redundancies benefits have been reduced. Secondly, new individual dismissals grounds were added, the requirements for advance notification were reviewed and the

[273] Lang, Schömann & Clauwaert 2013, p. 11–14 and p. 20–27.
[274] Ségol, Jepsen & Pochet 2014, p. 62.
[275] Broughton, Biletta & Kullander, 'Flexible forms of work: 'very atypical' contractual arrangements', 4 March 2010, www.eurofound.europa.eu/observatories/eurwork/comparative-information/flexible-forms-of-work-very-atypical-contractual-arrangements.
[276] Directive 1997/81/EC on Part-Time Work and Directive 1999/70/EC on Fixed-Term Work.
[277] Lang, Schömann & Clauwaert 2013, p. 9–10 and p. 14–24.

right to demand compensation or reinstatement and/or the possibility of out-of-court dispute resolution procedures were limited.

- With respect to collective redundancies, particularly the concept of economic reasons as a basis for collective redundancies have been expanded and now allows more grounds for dismissals. At first, the thresholds for qualifying dismissals as collective redundancies were raised and the criteria for the selection of employees for dismissals have been relaxed. Secondly, the employers' obligation to conclude social plans and inform and consult workers' representatives was (partially) lifted. Thirdly, the requirement of prior administrative authorisation by a third-party was alleviated, abolished or replaced by authorisation afterwards. Finally, the access to employment tribunals has been restricted or made more expensive.[278]
- Sanctions have been lifted, for example the obligation to replace the employee after a wrongful dismissal is solely replaced by a financial compensation. In some countries charges have been introduced for appeals to employment tribunals.[279]

§ 4.3.4 REFORMS IN INDUSTRIAL RELATIONS STRUCTURES AND PROCESSES

In total, 18 out of 28 EU member states have implemented changes to industrial relations and collective bargaining systems.[280] Throughout the EU there is a tendency to decentralise collective bargaining systems, in order to increase flexibility and ease adaptation to changing labour market conditions.[281] In some cases industry level bargaining and national collective agreements were almost completely dismantled.[282] This process was most present in countries which have been subjected to direct supranational intervention. The following changes have been implemented:

- Abolition or termination of national collective agreements;
- Introduction of more restrictive criteria for the extension of collective agreements;
- Reduction of the aftereffect of expired collective agreements;
- Suspension of the favourability principle, affecting the relation between industry and enterprise agreements;
- Derogation of enterprise level agreements from higher collective agreements or legislative (minimum) provisions was facilitated through opening or hardship clauses or by generally giving enterprise agreements priority over other types of agreements;
- The role of certain (tripartite) social dialogue institutions was diminished or abolished, since the government withdrew from these bodies;[283]
- Promotion of bargaining capacities of enterprise level actors to negotiate enterprise level collective agreements in addition to or independently from trade unions;
- Reviewing of representativeness criteria for social partners and trade union prerogatives were extended to other bodies of workers' representation;
- Alternative dispute resolution mechanisms were imposed instead of tribunals and in some countries the regulations on collective disputes have been reviewed.[284]

§ 4.4 CONCLUSION

In this chapter the comparative research between Greece and the Netherlands has been conducted. Additionally, an overview of the austerity measures that have been adopted in the EU was given. The comparative study made clear that there is an enormous difference in the collective

[278] Ségol, Jepsen & Pochet 2014, p. 62–64.
[279] Clauwaert & Schömann 2012, p. 12–13.
[280] Ségol, Jepsen & Pochet 2014, p. 90.
[281] Wergin-Cheek, 'Collective bargaining has been decentralised in the UK and Germany over the past three decades. But in Germany, unions have retained much more power', 12 April 2012, http://blogs.lse.ac.uk/europpblog/2012/04/12/germany-uk-unions/.
[282] Clauwaert & Schömann 2012, p. 13.
[283] Schulten & Müller 2013, p. 11.
[284] Ségol, Jepsen & Pochet 2013, p. 46.

bargaining system of both countries before and after the crisis. The austerity measures that have been adopted in Greece (under pressure of the Troika) have far-reaching consequences on fundamental rights and the living standards of its residents. The Dutch government also implemented a wide range of austerity measures, but the scope of these measures is much less far-reaching than in Greece. The impact on existing systems and living standards were less devastating. In the last sector of this chapter an overview of austerity measures that were taken in the EU during the crisis was given. It can be concluded that the measures that were introduced throughout the EU were largely similar to the measures that were adopted in Greece and the Netherlands. However, the scope and consequences of these measures depended on the specific situation of the country and whether or not the country was under surveillance of the Troika. In the next chapter the findings of the foregoing chapters are linked and conclusions will be drawn with respect to the right to free collective bargaining and social justice.

CHAPTER 5: ANALYSIS

This chapter will combine the previous four chapters. In the first section there will be elaborated on the consequences of austerity measures on collective bargaining and social justice in a comparative perspective. The second section will describe the consequences for collective bargaining and social justice in the context of the EU. The last section will answer the research question: "To what extent is social justice threatened, based on a comparative study between Greece and the Netherlands, by the violations of collective bargaining through (mandatory) austerity measures?"

§ 5.1 THE CONSEQUENCES FOR COLLECTIVE BARGAINING AND SOCIAL JUSTICE IN COMPARATIVE PERSPECTIVE

The first and second section will describe the consequences of the adopted austerity measures on collective bargaining and social justice in Greece. The third and fourth sector will elaborate on the consequences of the austerity measures on collective bargaining and social justice in the Netherlands.

§ 5.1.1 THE CONSEQUENCES OF AUSTERITY MEASURES ON COLLECTIVE BARGAINING IN GREECE

Collective agreements used to be the backbone of labour relations in Greece, until relentless austerity measures were introduced. These austerity measures severely damaged the fundamental right to bargain collectively and negatively affected the freedom of association. As a result, the existing system of collective bargaining has been largely dismantled. The institutional role of trade unions weakened and their competence as bargain actor was disputed. The CEACR observations with respect to conventions 87, 98 and 154 were mostly related to fundamental subjects, such as social dialogue, collective bargaining and the characteristics of the system of collective bargaining. Several ILO supervisory bodies noted violations of the principles of freedom of association and collective bargaining related to convention 87, 98 and 154. The most important consequences of the austerity measures on collective bargaining will be discussed below.

The Greek collective bargaining system was built on four aspects, namely the favourability principle, the extension of collective agreements, the aftereffect of collective agreements and the unilateral recourse to arbitration. These principles were all overturned by law. Firstly, the favourability principle was abolished. In case of plurality of collective agreements priority was given to enterprise agreements, even if this agreement did not favour the employee. As a safeguard it was determined that the provisions of enterprise collective agreements may not be below the minimum provisions of the EGSSE. Secondly, the possibility to extent collective agreements has been repealed until the end of the Medium Term Fiscal Strategy in 2015. Although this suspension is intended to be temporary, it is difficult to envision how the Greek government will reintroduce the extension mechanism.[285] Thirdly, the aftereffect of expired collective agreements was reduced from six to three months. Moreover, the aftereffect no longer relates to all working conditions, but only to four general allowances. Lastly, unilateral recourse to arbitration was abolished and since that recourse to arbitration was only allowed with mutual consent. Furthermore, the scope of arbitration was limited in defining basic wage issues. Later on, some of these provisions were judged unconstitutional by courts, such as the provisions with respect to arbitration.

The austerity measures in the field of industrial relations have led to decentralisation of collective bargaining to the lowest level. This means that collective bargaining has shifted from national, sectorial and occupational level towards enterprise level. The most far-reaching decentralisation act granted bargaining rights to association of persons without sufficiently protection. Decentralisation was one of the most important conditions forced upon Greece by the Troika and the

[285] Koukiadaki & Kokkinou 2014, p. 22.

Euro-Plus Pact. A major consequence of the decentralisation of collective bargaining was the enormous increase of enterprise collective agreements during the crisis. Even before the crisis the number of enterprise collective agreements outnumbered the number of sector level agreements. During the crisis the number of enterprise collective agreements grew significantly, while the number of sectoral agreements substantially declined.[286] Between 2008 and 2011, the number of enterprise agreements almost halved from 462 to 241. Since 2011 this number showed an enormous increase to 975 agreements in 2012, due to the introduction of new regulations.[287] From the 975 agreements, 706 were signed by associations of persons and 269 by trade unions. A total of 701 agreements signed by associations of persons and 76 signed by trade unions included wage cuts.[288] In 2013, the number of new enterprise collective agreements fell back to 409, of which 218 were signed by associations of persons and 191 by trade unions. Once again a large majority was signed by associations of persons and included wage cuts.[289] Summarising, it can be said that a major part of the enterprise collective agreements were closed by association of persons,[290] which caused deteriorated employment conditions. The number of newly concluded sectoral collective agreements declined from 202 in 2008 to only 14 in 2013. During 2014 also very few sectoral agreements have been signed.[291] Unfortunately, more recent data were not available. These numbers show that the level of collective bargaining shifted more towards the level of the individual employer. Collective regulation of the employment relation through free collective bargaining has started to decline. This left space for the development of the free contractual relationship between employer and employee. Employment conditions were more regulated by the individual employment contracts instead of through collective bargaining.[292] Additionally, the total number of collective agreements declined substantially during the crisis. This has led to the so called de-collectivisation of labour relations. As a result of the trends described above, trade union representation at national and sectoral level has been weakened and the structure of trade unions as well as their institutional means of protecting and representing employees has been affected.[293]

The decentralisation of collective bargaining did have some additional consequences. Firstly, the decentralisation trend has led to a significant decrease in the number of people that were covered by a collective agreement other than the EGSSE. In Greece the coverage rate dropped from around 85% in 2000 to 50% in 2012 and this trend is still continuing. This is probably due to the fact that the extension mechanism was suspended.[294] Secondly, the systematically decentralisation of collective bargaining, including enterprise level representation and unionisation, together with limits on the use of arbitration, provided room for internal devaluation (see glossary).[295] According to the Troika, internal devaluation should be an explicit policy objective that has to take place in order to restore unit labour cost competitiveness. International devaluation can be pursued via, among others, reduction in prices and production costs, a shift from a consumption-led to an export-led economy and an immediate reduction in nominal wage and non-wage.[296] The subsequent austerity package specifically targeted the wage setting system and collective bargaining and aimed "to protect employment, to close Greece's competitiveness gap more rapidly and to achieve a reduction of about 15% in unit labour costs".[297]

[286] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 366–369.
[287] Ségol, Jepsen & Pochet 2015, p. 49.
[288] ILC 2014, *ILC.103/III(1A),* p. 112.
[289] ILC 2015, *ILC.104/III(1A)*, p. 87.
[290] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 366–369.
[291] Koukiadaki & Kokkinou 2014, p. 37.
[292] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 366–369.
[293] Clauwaert & Schömann 2012, p. 12–13.
[294] Ségol, Jepsen & Pochet 2015, p. 49–50.
[295] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 210–211.
[296] European Commission 2012, *Occasional Papers 94,* p. 2.
[297] Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 211–212.

It can be concluded that the system of collective bargaining in Greece has been nearly completely demolished. Consecutive laws with far-reaching austerity measures changed the legal framework of collective bargaining and the wage setting system fundamentally, causing the decentralisation of collective bargaining. This has resulted in deteriorated employment conditions on a large scale.

§ 5.1.2 THE CONSEQUENCES OF AUSTERITY MEASURES ON SOCIAL JUSTICE IN GREECE

The decentralisation of collective bargaining has several consequences in the social field. One of the main problems in Greece is the fact that mandatory austerity measures have been adopted without effective social dialogue. The government emphasised that it has tried to pursue social dialogue, but underlined that the conditions of the loan, which were determined by the Troika, left too little space for any real social dialogue. All ILO bodies underlined that the Greek government should intensify its efforts and undertake full and frank social dialogue with the social partners. The impact of the austerity measures should be evaluated by the social partners in light of the severe consequences of such measures on the standard of living of workers. Although the ILO supervisory bodies and the ECSR have stated multiple times that the government should proceed to social dialogue, the government did not take any steps to meet these requirements. It seems that the lack of social dialogue is caused by the anti-crisis measures and should be regarded as a significant collateral damage of the crisis.[298]

Before the onset of the crisis, Greek labour law had an important protective function towards employees, especially with respect to vulnerable groups of employees. As the crisis worsened, this protective function was more and more forgotten and the emphasis shifted towards regaining competitiveness by reducing labour costs and increasing flexibility of labour relations. Especially the last wave of austerity measures almost completely vanished the protective measures.[299] The weakening of labour protection is generating a widespread precariousness in the labour market. Under conditions of severe recession and unemployment, job seekers are more vulnerable and they tend to accept sub-standard jobs and/or extreme flexible work arrangements. The increased flexibility in labour relations was one of the main aims of the Troika.[300]

As a result of the ongoing decentralisation trend, the employment conditions of employees deteriorated. Fundamental employment rights and conditions related to working time, pay, work organisation, working environment and (social) protection were negatively affected. These aspects, combined with other austerity policies, had a significant spill over effect on the social situation of employees. Employees were institutionally disempowered by the loss of crucial social and trade union rights. When these trends continue for a longer period of time, this can eventually lead to health and safety risks at work. Furthermore, living standards have dramatically declined due to deep wage and pension cuts combined with relentless taxation, exceptionally high unemployment rates and numerous new laws that further undermine the position of employees.

Due to the magnitude of the crisis, its duration and the poor prospects, the crisis is now causing social unrest among the residents of Greece. Firstly, this is reflected by the high strike activity. It is important to note that Greece has always been high on the list of strike prone countries. This demonstrates a significant potential for conflict.[301] In the period before the crisis, between 1980 and 2008, Greece had 38 general strikes (from a total of 85 general strikes in 16 core countries of the EU[302]) and was ranked first as the country with the most general strikes.[303] From February 2010 to January

[298] Lanara-Tzotze 2012, p. 9.
[299] Papadimitriou 2013, p. 8.
[300] Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 366–369.
[301] Kousis & Karakioulafi, p. 3.
[302] Namely: Greece, Italy, France, Belgium, Spain, Austria, the Netherlands, Portugal, Luxembourg, Norway, Denmark, Finland, Germany, Ireland, Sweden and the UK.
[303] Kelly & Hamann 2010, p. 3.

2013, Greece even counted 13 general strikes.[304] Unfortunately, there are no specific data of recent strike numbers outside the general strikes in Greece.[305] Secondly, the consecutive austerity packages have led to a sharp decline of household income and purchasing power. In 2009, before the full onset of the crisis, the average household income in Greece was € 15,697 a year. In 2012 the household income was € 10.503 a year, which is a decrease of third. From 2013 the net average household income was expressed in American dollars. In 2013 the average net income was 20,400 American dollar a year, while in 2015 this decreased to 18,575 American dollar a year. [306] Taking the exchange rates into account, there is a clear declining trend that still continues at this moment. This situation widens existing inequalities and results in a sharp increase in poverty, homelessness, suicide and crime rates. About 32% of the Greek people between 16 and 24 year experience severe deprivation in 2014.[307] In 2013 around 35% of the Greek population was at direct risk of poverty and/or social exclusion and Greece still has the highest poverty rate in the EU.[308] At the same time, social protection was weakened considerably following the evolving deconstruction of labour institutions and sizeable cuts in all kinds of social expenditures, education and health services. Lastly, the negative impact of the anti-crisis measures were magnified, because these measures were enforced upon existing shortcomings of the economy and particularly upon a segmented labour market. This is characterised by low job growth, wage inequalities, substantial undeclared labour and high youth unemployment.[309]

§ 5.1.3 THE CONSEQUENCES OF AUSTERITY MEASURES ON COLLECTIVE BARGAINING IN THE NETHERLANDS

Unlike in Greece, the Dutch system of collective bargaining remained, to a large extent, unharmed. Fundamental laws and characteristics in the field of collective labour law and the collective bargaining system were not altered. For example, the extension mechanism, regulation of the aftereffect and the rules for being bound to a collective agreement did not change. The austerity measures that were introduced in the Netherlands were mostly related to individual labour law, working conditions, specific categories of employees, social security benefits and pensions. During the crisis, there were also no allegations filed to one of the special ILO supervisory bodies by the social partners relating to the rights and principles in conventions 87, 98 and 154. As a result of the regular supervisory system, the CEACR examined the Dutch reports about the state of affairs with respect to the fundamental conventions. The observations of the CEACR were related to the protection of anti-union discrimination and there were a few requests to obtain information. Although no complaints were filed and the CEACR made no real comments, it remains doubtful whether the right to free collective bargaining is sufficiently respected in the Netherlands. As mentioned before, the austerity measures in the Netherlands did not target the legal framework of collective bargaining, but have been targeting, among others, individual labour law and employment conditions. Less employment protection and deteriorated employment conditions can potentially lead to a breach of article 4 of Convention 98. Although the right to free collective bargaining was not breached according to the ILO, it can be concluded that the system is under pressure and weakened during the crisis.

According to some experts, there was a trend towards a more decentralised system of collective bargaining. This trend started in 1982, when the Dutch government and the social partners agreed upon decentralisation of the collective bargaining system. However, a serious decentralisation trend has never been observed. Even during the recent crisis there were still not many signs of a more

[304] Kousis & Karakioulafi, p. 3.
[305] ETUI, 'Strikes in Europe (version 2.1, January 2015)', January 2015, www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-version-2.1-January-2015.
[306] OECD.Stat, 'Income Distribution and Poverty' and 'Better Life Index', http://stats.oecd.org/Index.aspx?DataSetCode=BLI .
[307] Rodgers & Stylianou, 'How bad are things for the people of Greece', 15 July 2015, www.bbc.com/news/world-europe-33507802 .
[308] Eurostat, 'People at risk of poverty or social exclusion', January 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion.
[309] Lanara-Tzotze 2012, p. 6–8.

decentralised system of collective bargaining. This appears from the following aspects. Firstly, the coverage rate of collective agreements remains almost stable around 80%. Secondly, the central coordination of trade unions (such as the consultations within the Labour Foundation about a central agreement) did not lose its importance. Thirdly, 91% of the employees that are covered by a collective agreement are covered by a sectoral agreement. Since the late eighties the number of enterprise collective agreements increased, but after the year 2000 this number declined again. The importance of enterprise collective agreements is still very limited in the Netherlands. At fourth, there is no large variation in collective wage increase across different sectors and the actual wage increase does not deviate much from the contractual wage increase.[310] Although decentralisation clauses are frequently included in collective agreements, this is limited to incidental articles about specific issues. The provisions in these articles give works councils additional competences to a limited extent, but the level of decentralisation is often limited by the collective agreement itself. For example, the works council may only choose from specific options provided in the collective agreement or it is determined that the collective agreement always applies as a safety net. Unconditional decentralisation provisions almost never occur.[311] Decentralisation may also relate to the content of working conditions: the content may be the same for every employee, different per category of employees or different for each employee. The last variant is clearly the most decentralised version. Research has shown that primary working conditions are almost never decentralised, this remains the field of social partners. Decentralisation occurs more with respect to secondary working conditions. Another (exceptional) form of decentralisation is dividing a central collective agreement in several collective agreements for subsectors. The healthcare sector, the banking and the energy sector do, for example no longer have one central collective agreement.[312]

The role of social partners in the collective bargaining process remained important during the crisis, even though their bargaining power diminished as a result of the severe conditions. During the crisis trade unions were given less space to negotiate beneficial agreements for their members. In general, it must be said that trade unions in the Netherlands are known to be extremely moderate. They are willing to make compromises with the government, employers' organisations or individual employers. The main goal of trade unions during the crisis is to reach consensus with the other bargaining actors in order to stabilise the economy. In such cases, trade unions are willing to agree with modest wage increase, in exchange for job security, minimising (or excluding) forced redundancies, training opportunities and incentives for youngster and/or older employees.

Summarising, the legal framework in the Netherlands has not been altered during the crisis and the main characteristics of the bargaining system remained intact. The position of trade unions has been affected for a short period of time, but it has since recovered. It became clear that the government and the social partners are willing to modify the parameters of collective bargaining without harming the essentials of the collective bargaining system. During the crisis a trend towards more flexibility became visible. This is not due to a decentralisation trend, but mainly due to the growing insecurity and governmental interventions. As a result of the negative economic prospects that were accompanied by a growing insecurity, employers only hired employees on a temporary basis, so that they could terminate the contracts easily when faced with a loss of demand. As a result the number of fixed contracts sharply declined.[313] The Dutch government tries to protect the employees with a temporary contract by introducing new laws. Despite these new regulations, it is expected that employers are going to circumvent the laws, by not extending the contract of the employee and instead hire new employees, again on temporary basis.

[310] De Beer 2013, p. 22–23 and p. 26–31 (in Dutch).
[311] Rayer & Leeuwen-Scheltema 2011, p. 24–27 (in Dutch).
[312] Volkerink e.a. 2014, p. 15 and p. 20 (in Dutch).
[313] Van den Berge e.a. 2014, p. 11–12 (in Dutch).

§ 5.1.4 THE CONSEQUENCES OF AUSTERITY MEASURES ON SOCIAL JUSTICE IN THE NETHERLANDS

In the Netherlands austerity measures had a number of consequences in the social field. These aspects are related to social justice, as will become clear in § 5.2.2. During the peak of the crisis, in 2011 and 2012, several measures were implemented without effective social dialogue. On 25 March 2009, as a result of the significantly worsened forecasts for 2009, the social partners and the government adjusted the central agreement for 2009. In this central agreement work was given priority over income and the social partners agreed with wage moderation out of solidarity. A maximum wage increase of 1% was agreed (equal to the expected inflation) for new collective agreements in 2009. For 2010 it was agreed that salaries would not be increased, but it was determined that collective agreements that were already in force would not be altered.[314] In June 2010 a central pension agreement was reached between the social partners and the government in the context of the Labour Foundation. This agreement was unilaterally adjusted by the government in 2012, when it became clear that public finances were worse than expected.[315] During 2011 and 2012 there were barely any central consultations with the social partners about socio-economic policies. Due to the deteriorating economic situation and the rising debt and budget deficits, the government put their austerity agenda before social dialogue with the social partners. The social partners were not invited to talk about the terms of the budget agreement for 2013 in April 2012. Remarkably, the social partners were involved during the coalition negotiations in October 2012.[316] As a result of this involvement, the social partners and the government reached a new central agreement in the Labour Foundation on 11 April 2012. This agreement contained specific measures to stimulate economic recovery in the short-term and to reform the labour market. This social agreement provided the basis for the Law Work and Security, whereby major changes in the field of individual labour law were implemented (see § 4.2.3).[317] In several coalition agreements and parliamentary documents the government underlined the important role of the social partners and emphasised its intention to cooperate and discuss with the social partners.[318] Next to this, the government has to report what has been done to promote stable and balanced employment relations every year, for example in the field of collective bargaining. Summarising, the social partners were excluded from social dialogue during key moments at the peak of the crisis. This weakened their influence and bargaining power on the policy making process during crucial times. Since the government attaches great value to their strong ties with social partners, they re-invited them to the bargaining table after a period of absence, which restored their relation. Overall the role of social partners remained important and in recent years they participated in discussions about central agreements again, which formed the basis for fundamental reforms. It is known that the trade unions in the Netherlands are moderate and willing to cooperate with the government and employers' organisations, even during periods of crisis. This led to consensus, central agreements and subsequently to industrial peace.

Traditionally, there are few strikes in the Netherlands each year. Although the strike numbers show a variation from year to year, there was no general trend of increasing strike activity during the crisis. In 2012, 219,000 days were lost because of strikes. This highest number since 2000 was due to major strikes in the cleaning industry and among teachers.[319] In 2013 and 2014 the strike activity declined again. In 2014 there were 25 strikes, which comprised 10,000 employees and 41,000 days were lost, this was a little above the average of 21 strikes a year.[320] In 2015 a few major sector strikes took place, such as the police, the post, ambulance staff and a major money transporter. It is known that the negotiations in the graphic arts industry, hospitality sector, sheltered workplace, construction,

[314] Harteveld, *Tijdschrift voor Arbeidsvraagstukken* 2012, 28/2, p. 143–145 (in Dutch).
[315] *Kamerstukken II,* 2012/13, 33605 XV, 1, p. 13–14 (in Dutch).
[316] Woldendorp, *S&D* 2013, 70/2, p. 48–50 (in Dutch).
[317] *Kamerstukken II,* 2013/14, 33930 XV, 1, p. 20 (in Dutch).
[318] For example: Samsom & Rutte 2012, p. 35 (in Dutch).
[319] CBS, 'Veel stakingsdagen in 2012', 23 May 2013, www.cbs.nl (search for: *stakingsdagen 2012,* first option) (in Dutch).
[320] CBS, 'Weinig stakingsdagen in 2014', 1 May 2015, www.cbs.n (search for: *stakingsdagen 2014,* first option) (in Dutch).

nursery and secondary schools have been stuck. As a result, more strikes are announced by the FNV.[321] Generally spoken, the Netherlands still has one of the lowest levels of industrial conflicts in the EU.

The Dutch austerity measures were subjected to many changes, following consultation and evaluation with the social partners and the formation of new Cabinet with a different political colour. During the crisis, different legal propositions were waived, withdrawn of cancelled. For example, it was proposed to restrict the duration of the survivors' benefit, merge all allowances into one household allowance, abolish the health care allowance and the retirement partner-allowance for people with higher incomes, introduce an income related healthcare contribution, introduce a fine for students who studied too long and introduce a system in which employers were going to pay for (up to) six months of the unemployment benefits. However, all above mentioned proposition were repealed. In addition, the Law Work Capacity was cancelled, the Law Invest in Youth was abolished after only two years and there were numerous legal propositions with respect to the retirement age introduced and cancelled. This has led to inconsistent policies and increased uncertainty among citizens.

Lastly, the social situation of employees has deteriorated during the crisis, but not to the same extent as in Greece. Firstly, the household income and purchasing power of many Dutch families declined during the crisis. This was the result of the many interventions of the government in taxes and social security. Especially the living standards of youngsters and elderly suffered from the crisis. These groups were confronted with long term unemployment, social assistance and poverty. Simultaneously, the prospects for unemployed to find a job decreased significantly. For elderly and youngsters, the situation on the labour market was particularly depressing. Although the trend became more positive in recent months, many people are still faced with long-term unemployment and are still struggling to find a job. As a result more people are faced with debt, the amount of the total debt increases and more people need debt counselling in order to regain control over their finances. The government launched several special programs in order to address poverty, but so far it seems difficult to solve this problem. Secondly, more people became homeless during the crisis. Between 2010 and 2012 the number of homeless people increased from about 23,000 to 27,000. At the end of 2013 the number of homeless people declined again to around 25,000.[322] In periods of continuing crisis, high unemployment rates, increasing debt problems and poverty, the government has to stay alert in order to preserve social cohesion, to prevent social unrest, higher crime rates and an increase of the amount of homeless people.

§ 5.2 THE VIOLATION OF COLLECTIVE BARGAINING AND SOCIAL JUSTICE IN EUROPEAN PERSPECTIVE

It is clear that the fundamental conventions of the ILO and the term social justice are closely related. According to the ILO Constitution and the Declaration of Philadelphia, universal and lasting peace could only be established if it is based on social justice. This goal could be achieved through implementation of the fundamental rights and principles, which are enshrined in the eight fundamental conventions. These conventions contain the most fundamental rights and principles with respect to pursuing social justice. The right to collective bargaining is enshrined in two fundamental ILO conventions and therefore one of the cornerstones of social justice. Obviously, the other conventions and recommendations of the ILO are important as well with respect to social justice. Later, the Declaration of Social Justice and Fair Globalization and the DWA specified the term social justice, by determining four strategic objectives, which are closely linked to the principles established by the ILO Constitution and the Declaration of Philadelphia. Regarding the importance of the right to free collective bargaining in relation to social justice, it could be argued that violation of this right irrevocable leads to the violation of social justice. However, is this not too short-sighted?

[321] J. Kager, 'FNV-voorzitter Ton Heerts: 'Grens is bereikt aan cao-tafels', 16 May 2015, www.fnv.nl (search for: *cao tafels,* first option) (in Dutch).
[322] CBS, 'Stijging aantal daklozen lijkt voorbij', 4 maart 2015, www.cbs.nl (search for: *daklozen 2015,* first option) (in Dutch).

§ 5.2.1 THE VIOLATION OF COLLECTIVE BARGAINING IN EUROPEAN PERSPECTIVE

Various ILO supervisory bodies made comments about the implemented austerity measures relating to collective bargaining and freedom of association in Greece. In September 2011 the HLM expressed its deep concern about the developments in Greece. The HLM feared that some austerity measures would have a detrimental impact on collective bargaining. This could lead to a negative impact on the capacity of trade unions to respond to concerns of its members at all levels, on employers' organisations and on social dialogue. In November 2012 the CFA found just a few direct violations of the principles of freedom of association and collective bargaining, but concluded that these principles were weakened in a manner that was contrary to convention 87 and 98. Furthermore, the CFA pointed to the risk of potential violations of certain austerity measures. In 2011 and 2013 the CAS concluded that the government should intensify its efforts to establish and undertake full and frank social dialogue with the social partners to review the impact of the austerity measures. The government has to ensure the promotion of collective bargaining, social cohesion and social peace in full conformity with convention 98. The CAS urged the government to enable social partners to be fully involved in the determination of any new alterations concerning major aspects of labour relations and social dialogue. Lastly, between 2010 and 2015 the CEACR issued several observations regarding the implemented austerity measures. The CEACR regretted that far-reaching changes were introduced without full and thorough discussions with the social partners and regretted all interventions in voluntary concluded agreements. The CEACR reviewed several austerity measures and considered most measures not in breach with the conventions. Nevertheless, the CEACR underlined the potential risks of some austerity measures. According to the ILO supervisory bodies, only a few specific austerity measures constituted a direct violation of the right to bargain collectively. As a general trend the ILO observed that the principles of freedom of association and collective bargaining were weakened in a manner that was not compatible with conventions 87 and 98. The lack of social dialogue constitutes a danger to social cohesion and social peace and significantly weakens (the promotion of) collective bargaining according to the ILO supervisory bodies. In addition to the supervisory bodies of the ILO, the local and European courts reviewed a number of the adopted austerity measures. Some provisions were found unconstitutional, but the majority of the provisions were declared not contrary to the Greek Constitution, the ESC, the ECHR or ILO Conventions. Only the ESCR declared several provisions adopted under the first MoU contrary to the ESC. The supervisory bodies of the ILO did not observe any violations of the right to bargain collectively in the Netherlands. Nonetheless, there are signs of weakened social dialogue in the Netherlands as well, which harms to collective bargaining system. Due to the fact that the principles of free collective bargaining were weakened in Greece and in the Netherlands (on a smaller scale), the only justified conclusion could be that the right to free collective bargaining is violated. As a result convention 87 and 98 are breached.

The question can be posed if a violation of the right to free collective bargaining can be justified. In the Greek jurisprudence jurisprudential exemptions has been created. For example, the CS argued that the disputed austerity measures constituted a "justified interference because of the exceptional crisis". Later the CS ruled that several austerity measures implemented under the first MoU were compatible with the Greek Constitution and international treaties and conventions due to "reasons of higher social interest". The CS seems to apply a 'theory of exceptional circumstances' that justifies restrictions to fundamental rights, such as the right to free collective bargaining. This theory can only be applies under strict prerequisites: the state intervention must be exceptional and provisional, the restrictive measures must be proportionate and the core of the constitutional right must not be neutralised. In its last decision the CS examined all prerequisites except whether the austerity measures were provisional. Nonetheless, the CS concluded that all prerequisites were present and as a result the CS detected no violation. It became clear that the national court is struggling to

find a balance between the justification of political choices in times of crisis and the protection of fundamental rights.

Based on the Declaration on Fundamental Principles and Rights at work, all states should aim to respect and promote the principles derived from the fundamental conventions, whether or not they have ratified them. The declaration underlines that the rights in the fundamental conventions are universal and that they apply to all people in all states, regardless of the level of economic development. It can be said that the right to free collective bargaining, together with freedom of association, are absolute rights that should apply to all people. However, article 4 of convention 98 is not formulated as an absolute right. This article determines that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations […]". This means that governments have a discretionary power to take national conditions into account by adopting policies that promote collective bargaining. Article 5 of convention 154 creates a similar discretionary power. The question rises what conditions can be taken into account and to what extent. For example, can an exceptional economic crisis be a 'national condition' that can be taken into account? Article 4 of convention 98 explicitly determines that national conditions can only be taken into account by taking measures that promote collective bargaining. After all, measures that do not promote collective bargaining are not compatible with the aim of the article and the convention. Nevertheless, the ILO supervisory bodies determined that "interference in collective agreements and the system of collective bargaining as part of a stabilisation policy should only be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period and accompanied by adequate safeguards to protect workers' living standards". It is clear that a measure that interferes in a collective bargaining system can never promote collective bargaining at the same time, otherwise there would be no interference. Apparently, under strict conditions it can be justified to take measures that do not promote collective bargaining as a result of specific national conditions. According to the ILO these measures should be part of stabilisation policy, exceptional, necessary, provisional and accompanied by adequate safeguards. If the measures do not comply with these requirements, the government has overstepped its discretionary power and breached the convention. Summarising, the promotion of collective bargaining is not an absolute right. Under specific national condition it is allowed to take measures that do no promote collective bargaining, if these measures comply with the strict requirements the ILO has set.

Except from this legal discretionary power, the ILO supervisory bodies also seem to have created (unknowingly) an option that can be described as a jurisprudential exemption. In several rulings the ILO supervisory bodies explicitly emphasised the "grave and exceptional economic circumstances" of Greece. By emphasising these circumstances, the ILO seemed to want to create a possibility to derogate from the legally binding principles in their conventions under special circumstances, such as grave and exceptional economic circumstances. Apparently, by determining if rights of ILO conventions were breached, the grave and exceptional economic circumstances were taken into account. To which extent these circumstances are taken into account depends on the specific merits of the case and it is up to the ILO for determination. The ILO underlined that measures that were not compatible with the aim of the conventions could never be justified, neither by the legal nor by the jurisprudential discretionary space that has been created. This statement from the ILO is questionable. As a result of the continuing crisis, the Greek government adopted many austerity measures. These measures seemed to oppose the promotion of collective bargaining and thus were not compatible with the aim of the convention. It is unclear to what extent the measures were temporary, necessary and accompanied by safeguards. Nevertheless, the ILO found only a few direct violations and the grave and exceptional circumstances seemed to condone the far-reaching interventions in the labour market and the collective bargaining system. This leads to the conclusion

that measures that are not compatible with the aim of the conventions can also be justified. In addition to this, the ILO concluded that the principles of free collective bargaining were weakened. The difference between weakening, opposing and the phrase 'incompatible with the aim of the convention' is unclear. It is obvious that there is a large grey area between the scope of the exemptions and the scope of the obligation to promote collective bargaining at any time. However, it seems hard to reconcile the exemptions with the aim of the convention. To put it even stronger: given the nature of the conventions, any exemption seems to be contradictory to the aim of these conventions.

The trends that have been observed in Greece and the Netherlands have also been observed in the rest of the EU. For all EU countries the new economic governance system entered into force equally. The EU seems to deliberately weaken and/or violate the right to free collective bargaining, by determining that all countries have to decentralise their collective bargaining systems in context of the new economic governance system. The actual influence of EU institutions on policy making and collective bargaining depends on the question to which form of supranational intervention a country is subjected. In some (Southern) deficit countries industrial level bargaining and national collective agreements are almost completely vanished. In surplus countries decentralisation trends became also visible, but less far-reaching. This leads to the conclusion that in European perspective the right to free collective bargaining is significantly weakened. Different ILO supervisory bodies had the opportunity to condemn individual European countries, for example Greece, with respect to their compliance with ILO conventions. The ILO let these opportunities pass and at crucial moments the ILO supervisory bodies came up with vague definitions, generalisations, naming potential violations and creating exemptions for struggling countries. It is remarkable that the ILO has created exemptions. As the only international peace organisation, fundamental rights lay at the heart of their foundation. It should be expected of such organisation that they go to extremes to protect fundamental rights, such as the right to free collective bargaining, in order to keep the peace and pursue social justice. If the ILO does not protect fundamental rights unconditionally, which organisation is? The inability of the ILO to condemn relentless austerity policies that violate, among others, the right to free collective bargaining, is obviously a result of the structure of the ILO. The ILO is a tripartite organisation, which means that governments, trade unions and employers' organisations are equally represented in ILO bodies. Therefore the ILO lacks strong mechanisms in order to penalise certain violations. However, what is bothering the most is the fact that the ILO seems to have compassion with the struggling EU-countries and justifies violations of fundamental conventions by referring to the "grave and exceptional economic circumstances". Other rules seems to apply in times of economic crisis. However, the ILO should emphasise that in times of crisis the fundamental principles and rights must be respected without distinction, in order to avoid social unrest and social injustice. This goes to the heart of the existence of the ILO. For the fact that the ILO has not done so, it should blame itself.

§ 5.2.2 The violation of Social Justice in European perspective

As determined in § 2.5, in this thesis the following definition of social justice applies: "social justice is based on equality of rights for all people and the possibility for all human beings to benefit from economic and social progress everywhere without discrimination. Promoting social justice is not only about increasing income and creating jobs, it is also about rights, dignity and giving a voice to employees, as well as about economic, social and political empowerment". This definition contains six elements, which are all explicitly or implicitly included in the ILO Constitution, the Declaration of Philadelphia, the DWA, the Social Justice Index and the Declaration of Social Justice and Fair Globalization. Below, all elements of the above mentioned definition of social justice will be discussed. Every aspect of the definition is linked to one of the six elements of social justice, as described in § 2.5.

The first element of social justice that can be derived from the definition of social justice is 'increasing income and creating jobs'. This element is about promoting employment by creating a sustainable and economic environment that generates opportunities for investment, entrepreneurship, development of certain skills, job creation and sustainable livelihoods. During times of crisis and recession, it is clear that the promotion of employment is threatened. Throughout the EU, employment declined significantly, unemployment rates increased sharply, wages were under pressures (and declined in many sectors) and for many years there were negative economic and negative social prospects. There has been a negative investment climate and many companies went bankrupt. Only in recent months these prospects became a little more positive. The training facilities for employees diminished, because this was not one of the priorities for the government and employers during the crisis. In some countries, an incentive policy was pursued, aiming at improving training facilities and enhancing employability. The results have been disappointing, because the development of employment and the confidence of consumers continued to worsen. Due to the lagging economic development and the above mentioned factors, the living standard of EU citizens is severely damaged.

The deteriorating living standards of EU citizens led to an increase of poverty rates throughout the EU. The second element that can be derived from the definition of social justice refers to the prevention of poverty and determines that 'all human beings have to benefit from economic and social progress everywhere'. Already since its foundation the ILO states that poverty constitutes a danger to prosperity everywhere. Due to the consequences of the economic crisis, economic progress has been stagnated for years. This is characterised by low growth percentages, shrinking employment and a low confidence of consumers. Yet, this situation continued for seven consecutive years. As a result of the economic crisis, also social progress is hampered in many countries. Social progress is also hampered in many countries during the crisis, because of high unemployment rates and decreasing wages in combination with relentless austerity programs in various sectors. Many families have spent their savings in the early years of the crisis. At this moment these families have no safety net anymore to cope with the financial consequences of the ongoing crisis. The living standards of many Southern EU countries under control of the Troika, deteriorated so much, that many citizens are living in poverty or are at risk of poverty. Living in poverty or at risk of poverty for a long period of time impedes social progress even further and results in isolation and a variation of socio-economic problems, such as problematic behaviour, an increased risk of dropping out of school, health risks and an increased risk of coming into contact with criminality. In other EU countries these trends are less obvious. It is however clear that throughout the EU growth rates declined substantially in combination with a sharp increase of unemployment. Nevertheless, the overall situation in these countries is substantially better than in deficit countries, because the crisis had less devastating impact and these countries are not controlled by the Troika.

The third aspect of social justice aims to 'give a voice to employees'. Social dialogue and tripartism must be promoted. In order to realise this, strong and independent social partners are essential to increase productivity, avoid disputes at work and build cohesive societies. There should be freedom of association for employees and employers, along with the right to collective bargaining. These aspects reflect the importance of the right to bargain collectively with respect to social justice. It has been indicated in § 5.2 that social dialogue was hindered during the crisis. In some countries almost the entire basis for social dialogue was wiped away by austerity measures and these measures were introduced without any involvement of the social partners. In other countries, mostly the surplus countries, social dialogue was temporarily weakened and/or hindered by the crisis, but the legal basis of the system remained in force. Nevertheless, the conclusion must be drawn that both deficit as surplus countries did not meet their obligation to promote social dialogue at any time. As determined previously, the discretionary power that has been created cannot be used to take measures that oppose the aim of the (fundamental) convention. Especially during times of crisis, social dialogue is needed in order to monitor the impact of austerity measures on the living standards of employees, limit these

impacts and review the measures with a view to alter them. In times of crisis social dialogue can contribute to regain competitiveness and stability. Due to the degradation of social dialogue, many austerity measures in the field of employment and decent work were implemented in Southern EU countries without the involvement of social partners. It has been shown that this led to a significant worsening of employment conditions. In combination with the systematic decentralisation of the collective bargaining system, social progress, economic development and the promotion of good industrial relations were impaired. Lastly, the budgets of labour inspectorates were drastically curtailed, leading to less protection and further deterioration of employment conditions.

The fourth aspect that can be derived from the definition of social justice is 'rights'. This includes respecting, promoting and realising the fundamental principles and rights at work. Recognition and respect for the rights of all workers and in particular the disadvantaged or poor workers are essential. In 1998 the ILO adopted the Declaration on Fundamental Principles and Rights at Work, which commits member states to respect and promote the principles and rights enshrined in the fundamental conventions. Related to this thesis, freedom of association and effective recognition of the right to collective bargaining are the most important fundamental principles and rights at work. In many Southern EU countries these rights are impaired by consecutive austerity packages that undermine the institutional labour law framework. In Greece the fundamental principles and rights at work are severely deteriorated by the imposition of mandatory austerity measures in the field of collective bargaining. In the Netherlands the practical collective bargaining framework was weakened, but the legal framework was not impaired. The fundamental principles and rights at work were respected to a large extent during the crisis. In Greece the right to collective bargaining was breached several times, while in the Netherlands there was 'only' a temporary weakening of the system. In the Declaration of Social Justice of 2008 it is explicitly determined that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage. In deficit countries, it seemed that fundamental principles were deliberately violated and used to generate financial and economic advantage at the expense of social dialogue and the right to bargain collectively during the crisis. By dismantling the collective bargaining systems, systematically ignore social dialogue and introduce consecutive austerity packages that, among others, interfered with fundamental employment rights, the fundamental principles and rights at work, as far freedom of association and the effective recognition of the right to collective bargaining concerns, are not realised, promoted or respected.

Fifthly, social justice is about developing and enhancing measures of social protection (social security and labour protection) that are sustainable and adapted to national circumstances. Social security must be extended to all. A part of social security that should be ensured is that woman and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare. In the definition of social justice this objective is reflected by the element of 'economic, social and political empowerment'. During the crisis, the social protection of EU residents has significantly diminished. On the one side, as a result of consecutive austerity measures in the field of individual and collective labour law, the labour protection of employees was substantially weakened. Laying off staff became easier and cheaper and the number of employees under atypical contracts with less protection grew significantly. On the other side, governments interfered in national social security systems with far-reaching austerity measures. Social security provisions were retrenched or abolished, leading to less household income and less allowances in case of sickness, unemployment and/or retirement. This runs against the aim to extent social security to all. Furthermore, basic income provisions were curtailed by austerity measures. These provisions were lowered, abolished and/or the scope and coverage of these provisions was restricted. Additionally, many working conditions were negatively adjusted. For example, working time arrangements were altered, allowing workers to work more hours a day, less obligatory rest periods and introducing a the

introduction of a six-day work week without proper compensation. In combination with a continuing threat of redundancy and poverty, this can lead to health and safety risks with respect to the personal wellbeing of employees and working conditions. The effects of these policies are problematic, because in the field of healthcare also many new regulations were adopted, which impeded the free access to healthcare and made healthcare more expensive. As a result, Greece remained one of only two EU countries that could not guarantee a minimum living wage to all employees.[323]

The sixth and last aspect is about labour market access. This aspect cannot be derived from one particular clause of the definition of social justice. However, it can be directly derived from the complete definition. Social justice is about benefiting from economic and social progress, increasing income and creating jobs, rights, dignity, giving a voice to employees, as well as about economic, social and political empowerment. In order to reach social justice, labour market access is essential. The status of an individual is largely defined by his or her participation in the labour market. Exclusion of certain individuals and/or groups of individuals from the labour market is not compatible with the aim to increase income and create jobs, to respect fundamental rights, to respect human dignity and give a voice to employees, as well as about economic, social and political empowerment. Exclusion from the labour market substantially limits opportunities for self-realisation, contributes to an increase of the risk of poverty and can even lead to serious health stresses. Exclusion from the labour market can eventually lead to exclusion from the possibility to benefit from economic and social progress. This inevitably leads to the conclusion that social justice is harmed when specific groups are permanently unable to enter the labour market.

Recently, the Social Justice Index 2014 has shown that social justice declined in the member states of the EU. Nevertheless, the report showed that social justice was realised to substantially different degrees within the EU. In 2014 Greece was ranked last on the social justice scale, because of the high youth unemployment rate, a rapid increase in the risk of poverty (especially among children and adolescents), a health system that has been hit hard by austerity measures, discrimination towards minorities due to increasing radical political forces and huge debt as mortgage for future generations. Many other Southern EU countries were also ranked low, such as Spain and Italy, as well as Ireland and Hungary. This underlines the severity of the crisis in these countries. The deterioration of social justice has certainly been intensified by the rigid austerity policies implemented in the course of the crisis, as well as the structural reforms aimed at economic and budget-policy stabilisation. In these countries, the measures have not been successfully administered in a socially just manner. In contrast, the report said, the top rankings are the Nordic countries and the Netherlands, mainly due to good policy outcomes in the fields of poverty reduction, labour market access, social cohesion and non-discrimination.[324]

Summarising, it can be concluded that during the crisis no progress has been made on the six objectives that can be derived from the definition of social justice. Discussing the above mentioned six elements leads to the conclusion that the development of social justice was impeded as a result of the economic crisis. Although there was a wide variation in the performance of the EU member states, many implemented austerity measures were not compatible with the aim to pursue social justice. The ILO has determined that all member states should pursue social justice at any time, even (especially) in times of crisis and economic downturn. One of the main problems during the recent crisis is the fact that all elements related to social justice were violated or weakened during the crisis. Wages have been under pressure and were lowered, the employment declined, fundamental workers' rights have been eroded and in some cases overturned by law, human dignity has been threatened by increasing poverty rates and exceptional unemployment rates, and the voice of employees and existing systems of social dialogue have been ignored at a large scale. Consequently, the economic, social and political

[323] EuroActive.com, 'Social justice index reveals 'highly explosive situation' in Europe', 25 September 2014, www.euractiv.com (search for: *social justice index*, first option).
[324] Schraad-Tischler & Kroll 2014, p. 84.

situation of countries has been deteriorating fast, which has led to widespread instability. This instability spread through the EU and affected even countries that were successfully minimizing the effects of the crisis. This leads to the conclusion that social justice is violated as a result of the crisis.

§ 5.3 Is social justice in the EU at stake?

After the conclusion that social justice was violated during the crisis, the question can be posed whether social justice is at stake, bearing in mind the violations of the right to free collective bargaining. Of course this is a very broad question that is difficult to answer, due to a multitude of possible perspectives. Nevertheless, general conclusions about the consequences for social justice can be drawn. There are some signs that the EU is recovering from the crisis. It is however questionable whether this recovery is permanent and stable. In the beginning of 2015 a new crisis emerged in Greece and this made clear how fragile the recovery is. In January 2015 the Greek political party 'Syriza' won the elections and Alexis Tsipras became the new Greek prime minister. He promised the Greek people that he would stop the austerity measures that were enforced upon the country by the Troika. By the end of February 2015 the second major financial rescue packages expired and in March 2015 the negotiations started about a third MoU. The Greek government reiterated multiple times that it would stop the relentless austerity measures and they would nog longer comply with the harsh conditions that were connected to the rescue packages. The European Ministers held on to their believe that a new rescue package would only be granted if it was accompanied by strict austerity policies and reform programs. The negotiations continued in the following months, but a minimum of progress was achieved. In June 2015 several EU countries believed it was a real possibility that Greece would leave the Euro-area. Due to the continuing unrest, Greek citizens withdrew al their cash, which led to enormous financial problems for the Greek banking sector. On 26 June 2015 the Greek government aborted the negotiations about the extension of the loan program and they announced a referendum about the proposition of the Troika. In that period the stock market was closed to avoid a crash. On 30 June 2015 the Greek loan program expired and due to its financial problems the Greek government could not repay 1.6 billion euro to the IMF. It was the first time in the history of the IMF that a developed country could not meet their obligations. Due to an accumulation of problems, the Greek banks were eventually closed and citizens could only withdraw small amounts of money per day. The Greek population was seriously divided, but on 5 July 2015 62% of the people that voted were against the European rescue package. After the outcome of the referendum, the Greek prime minister announced that he wanted to continue the negotiations about an alternative agreement and that he wanted to talk about new reforms. It was remarkable that in the official Greek proposition for a new loan of 9 July 2015 the commitments were barely different from the demands of the Troika that were rejected earlier by the referendum. After long debates the EU and the Greek Parliament agreed with this Greek proposition, which opened the way for new negotiations about a third MoU and a new financial rescue package. In the meantime the Greek Parliament agreed on new austerity measures that served as preconditions for the new negotiations. On 20 July 2015 the Greek banks reopened, but the amount of cash withdrawal was still limited. After a closure of one month, the stock market reopened on 3 Augusts 2015. The market opened with an initial loss of 23%. On 11 Augusts 2015 the Greek government reached an agreement with the Troika about a third MoU and a financial rescue package of 86 billion euro. This package was also approved by the EU ministers. This resulted in massive demonstrations of the Greek citizens against the upcoming austerity measures. Due to internal unrest within Syriza about the new agreement, Tsipras finally resigned. In new elections Tsipras was re-elected and created a new mandate to implement the necessary measures.[325]

[325] ANP, 'Overzicht van de Griekse crisis: nieuw verkiezingen', 15 June 2015 (last update: 28 August 2015), www.nu.nl/economie-achtergrond/4068829/overzicht-van-griekse-crisis-nieuwe-verkiezingen.html (in Dutch).

This recent crisis shows that Greece still has enormous financial problems to overcome. This crisis affected not only Greece. Due to the growing uncertainty about the Greek future in the Euro-area, the fragile recovery of other countries was also affected. Growth rates declined and stock market went downwards. For now, the new crisis is solved, but it is questionable if a new rescue package will solve the structural problems in Greece. More and more EU countries seem to question the approach of lending money in combination with strict austerity measures and reform programs. However, at this moment there are no alternative plans and the EU does not dare to risk the exit of Greece from the Euro-area. Money from previous loans was supposed to buy Greece time to stabilise its finances and restore the international confidence in Greece and the Euro-area. However, most of the money goes towards paying off other international loans, instead of improving the economy. Although the loans helped Greece and prevented them from bankruptcy a long time ago, more structural problems of the Greek economy system became visible.[326] With a new wave of a dozen austerity measures enforced upon Greece by the Troika, it is unlikely that the implementations will be preceded by extensive social dialogue. New violations of the right to free collective bargaining and other fundamental rights seem a certainty based on previous experiences. Except of the fact that the recovery in other EU countries is very fragile and hindered by the recent Greek crisis, the previous seven consecutive years of crisis has already left its marks. For deficit countries it became the first priority to comply with the conditions of the Troika in order to receive financial support. Complying with the ILO Conventions and promoting social justice were subordinated to that goal. As established in § 5.1, social justice is also threatened in surplus countries. In view of the described developments, it is not expected that social justice will be a priority in the upcoming years. This leads to the conclusion that the achievement of social justice is further away than it was before the crisis. After this conclusion the question remains whether social justice is at stake.

Historically, several periods of economic growth and economic downturn alternated each other. During these periods priorities shifted together with the economy. During times of economic growth, low unemployment rates and widespread prosperity, national governments are more focused on fundamental workers' rights and social justice for everyone. The focus is more on work for everyone, spreading and increasing prosperity, especially towards people at the bottom of society. In periods of economic downturn, the emphasis shifts more towards regaining growth, competitiveness and stabilisation at any costs. Compliance with fundamental conventions and labour rights are less of a priority for member states. It could be argued, that the problems in Greece are solely theirs, with no spill over effects to the rest of the EU. This opinion should lead to the conclusion that social justice is not at stake and it is expected that social justice becomes more important again, when the economy starts to recover. However, this opinion cannot be justified. At first, the situation in Greece is not merely a Greek situation, because other Southern EU countries are dealing with a similar, but less severe, situation. Secondly, the Greek government implemented such far-reaching austerity measures as part of the MoUs that it is likely that many of these measures have structural effects on the Greek labour market, economy, stability and social situation of its residents. Given this, it cannot be substantiated that the Greek problems are a solely internal matter. After all, the Greek situation has led to a widespread political and economic crisis in the EU and growing insecurity multiple times. The Greek situation hindered other countries in their development. Thirdly, during the crisis, the gap between participation opportunities in the still wealthy Northern countries of the EU and in the crisis-struck Southern nations has significantly increased. Social inequality, high unemployment, high poverty rates and social unrest are a huge threat for the recovery of the Greek economy and lead to political unrest. If this situation continues, or gets worse, this can result in a highly explosive situation with regard to social cohesion and social stability within the EU. Even a social crisis is a realistic

[326] New Your Times, 'Greece's Debt Crisis Explained, 9 November 2015, www.nytimes.com/interactive/2015/business/international/greece-debt-crisis-euro.html.

possibility, when millions of European people are left vulnerable and are confronted with growing inequalities, long term unemployment, no real perspective, insufficient social security systems and poverty.[327] The problems increase by the fact that millions of refugees are entering Europe and need provisions that are hardly available for the residents, such as housing, work and benefits. Coming back to the research question, it must be concluded that the short term and long term stability of the entire EU is threatened when social justice will continue to be ignored on a large scale. Social justice is dangerously threatened, by the consecutive violations of the right to free collective bargaining. It is likely that social justice will be continue to be threatened in the future, to the extent that eventually the viability of the European Integration project and consequently the existence of the entire EU is endangered.

Therefore it is important that the topic of social justice is going to play a bigger role in EU politics and EU policymaking in the future. An EU-wide awareness of the problems is the basis for solutions. The EU should not be perceived as a guardian of economic stability only, but it should develop an integrated strategy that includes, for the first time, a consistent policy to combat social injustice. To achieve social justice, a common approach of all EU countries is crucial. Based on this common approach, individual member states should be encouraged to make the right choices between necessary budget consolidation and important investment in the field of social justice.[328]. Past experience has shown that the chances of a common approach are poor. Many Eastern EU countries are substantially less developed than Northern and Western EU countries. Due to the diversity in economic development and cultural aspects, it seems hard to determine a common approach. This has been demonstrated in recent discussions about the refugee problem, the establishment of a banking authority and discussions about enhancing collaboration in the field of criminality. When the discussion is more fundamental and for example touches upon human rights, it is more difficult to reach an agreement. For example, in the refugee debate the EU even seems unable to reach agreement. This indecisiveness may be catastrophic, because the problems only increase over time. The prospects for a common approach to combat social injustice are therefore downright bad. In the absence of a common policy, it is likely that the EU is heading for a catastrophe of unprecedented proportions. The EU must fear for its stability and growing prospects in the long term, since social justice is essential to economic growth and prosperity. In the long term the existence of the EU and long lasting peace could be threatened by inadequate policy making and the total disregard of the value of social justice within the EU and its member states. Although the prospects are poor, the ILO should play an important role in this process. It is the ILOs job to point out the value of social justice and the necessity to pursue social justice at any time. However, in recent years the ILO tended to create some space for deficit countries to deviate negatively from the fundamental rights in its conventions and thus from the path towards social justice. This is a dangerous trend: when the ILO does not fight unconditionally for fundamental rights and the EU is not able to create a common approach, what future is left for the EU?

[327] Social justice index reveals 'highly explosive situation' in Europe, 25 September 2014, www.euractiv.com (search for: *social justice index*, first option).
[328] Schraad-Tischler & Kroll 2014, p. 87-88.

REFERENCES

Books, articles and reports

Barnard, *Industrial Law Journal* 2012, 41/1
C. Barnard, 'The financial crisis and the euro plus pact: a labour lawyer's perspective', *Industrial Law Journal* 2012, 41/1, p. 98–114, DOI: 10.1093/indlaw/dws002.

De Beer 2013
P.T. de Beer, '30 jaar na Wassenaar: de Nederlandse arbeidsverhoudingen in perspectief', in: *Arbeidsverhoudingen onder druk*, Den Haag: Sdu Uitgevers 2013 (in Dutch).

Van den Berge e.a. 2014
W. van den Berge e.a., *The Dutch labour market during the Great Recession* (CBP Background Document, June 2014), The Hague: CBP Netherlands Bureau for Economic Policy Analysis 2014 (in Dutch).

Begrotingsafspraken 2014, 11 October 2013
J.V.RA. Dijsselbloem, *Begrotingsafspraken 2014*, 11 October 2013 (in Dutch).

Buchler e.a. 2002
L. Buchler e.a., *Know your RLA. A guide to the Labour Relations Act, 1995 (as amended)*, Department of Labour 2002.

Buzás-Németh e.a. 2014
A. Buzás-Németh e.a., *European Economic and Monetary Integration*, Budapest: National University of Public Service 2014.

CAS 2011, 100th Session
Committee on the Application on Standards at the Conference, *Provisional Record, 18 part two. Observations and information concerning particular countries,* Part 1B concerning Convention No. 98, Geneva: International Labour Conference 2011.

CAS 2013, 102nd Session
Committee on the Application on Standards at the Conference, *Extracts from the proceedings*, PartII concerning Convention No. 98, Geneva: International Labour Conference 2013.

Clauwaert & Schömann 2012
S. Clauwaert & I. Schömann, *The crisis and national labour law reforms: a mapping exercise*, Brussels: ETUI 2012.

Committee on Freedom of Association 2012
Committee on Freedom of Association, 'Case No. 2820 (Greece): Reports in which the Committee requests to be kept informed of developments', in: Governing Body, *Reports of the Committee on Freedom of Association. 365th Report of the Committee on Freedom of Association*, Geneva: International Labour Office 2012, p. 232-274.

Van Drongelen 2012
J. van Drongelen, *De collectieve arbeidsovereenkomst en het algemeen verbindend verklaren van bepalingen daarvan*, Zutphen: Uitgeverij Paris 2012 (in Dutch).

Eichhorst, Kendzia & Vandeweghe 2011
W. Eichhorst, M.J. Kendzia & B. Vandeweghe, *Cross-Border Collective Bargaining and Transnational Social Dialogue*, Brussels: IZA 2011.

ETUC, 'European wage recommendations: the 2012 governance cycle
ETUC, *European wage recommendations: the 2012 governance cycle* (unpublished discussion paper).

ETUC, 'European wage recommendations: the 2013 governance cycle
ETUC, *European wage recommendations: the 2013 governance cycle* (unpublished discussion paper).

European Commission 2010, *COM(2010) 2020*
European Commission, *Europe 2020. A European strategy for smart, sustainable and inclusive growth*, COM(2010) 2020, Brussels: European Commission 2010.

European Commission 2011, *MEMO/11/647*
European Commission, '*EU Economic governance 'Six Pack' - State of play*, MEMO/11/647, 2011

European Commission 2012, *Occasional Papers 94*
European Commission, *The Second Economic Adjustment Programme for Greece*, Occasional Papers 94, Brussels: European Commission 2012, DOI: 10.2765/20231.

European Commission 2013, *MEMO/13/457*
European Commission, '*'Two-Pack' enters into force, completing budgetary surveillance cycle and further improving economic governance for the euro area*', MEMO/13/457, 2013.

European Commission 2014, *COM(2014) 130 final/2*
European Commission, *Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth*, COM(2014) 130final/2, Brussels: European Commission 2014.

European Council 2011, *EUCO 10/1/11 REV1*
European Council, *Conclusions*, EUCO 10/1/11 REV1, Brussels: European Council 2011.

European Council 2012, *18019/12 PRESSE 551*
European Council, *'Fiscal compact enters into force'*, 18019/12 PRESSE 551, 2012.

Fase & Van Drongelen 2004
W.J.P.M. Fase & J. Van Drongelen, *CAO recht*, Deventer: Kluwer 2004 (in Dutch).

Gravel, Duplessis & Gernigon 2001
E. Gravel, I. Duplessis & B. Gernigon, *The Committee on Freedom of Association: It's impact over 50 years*, Geneva: International Labour Office 2001.

GSEE 2010
GSEE, 'Urgent observations under Articles 22 and 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) regarding the implementation of ratified ILO core Conventions No. 98, No. 87 and No. 154, as well as ratified ILO Conventions No. 81, No. 95, No. 100, No. 102, No. 111, No. 122, No. 138, No. 150 and No. 156.', 29 July 2010,.

Harteveld, *Tijdschrift voor Arbeidsvraagstukken* 2012, 28/2
L. Harteveld, 'Loonvorming in tijden van crisis', *Tijdschrift voor Arbeidsvraagstukken* 2012, 28/2, p. 138–161 (in Dutch).

Van der Heijden 2013
P.F. van der Heijden, *International Right to Strike Under Stress*, Leiden: Social Justice Expertise Center 2013 (in Dutch).

Hellenic Republic Ministry Of Finance 2011a
Hellenic Republic Ministry of Finance, *Medium Term Fiscal Strategy 2012-2015*, June 2011.

Hellenic Republic Ministry Of Finance 2011b
Hellenic Republic Ministry of Finance, *Hellenic National Reform Programme 2011-2014*, April 2011.

Hunko 2015
A. Hunko, *Protection of the right to bargain collectively, including the right to strike*, (Doc. 13633, 9 January 2015), Straatsburg: Parliamentary Assembly of the Council of Europe 2015.

ILC 2011, *ILC.100/III/1A*
International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Geneva: ILC 2011.

ILC 2012, *ILC.101/III1A*
International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Geneva: ILC 2012.

ILC 2013, *ILC.102/III(1A)*
International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Geneva: ILC 2013.

ILC 2014, *ILC.103.III(1A)*
International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Geneva: ILC 2014.

ILC 2015, *ILC.104/III(1A)*
International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Geneva: ILC 2015.

ILO 1999
ILO Report of the Director-General, *Decent Work* (Chapter 1. The primary goal), Geneva: International Labour Office 1999.

ILO 2006
ILO, *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva: International Labour Office 2006.

ILO 2011a
ILO, The International Labour Organisation and Social Justice , Geneva: International Labour Office 2011.

ILO 2011b
ILO, *Report on the High Level Mission to Greece (Athens, 19-23 September 2011)*, Geneva: International Labour Office 2011.

Ioannou 1999
C.A. Ioannou, *Trade unions in Greece: development, structures & prospects*, Athens: Friedrich Ebert Stiftung 1999.

Ioannou, *The International Journal of Comparative Labour Law and Industrial Relations* 2012 28/Issue 2
C.A. Ioannou, 'Recasting Greek industrial relations: internal devaluation in light of the economic crisis and European integration', *The International Journal of Comparative Labour Law and Industrial Relations* 2012, 28/Issue 2, p. 199–222.

Iodice, *Boston University International Law Journal* 2014, 32/2
M. Iodice, 'Solange in Athens', *Boston University International Law Journal* 2014, 32/2, p. 539–569.

Ivan-Ungureanu & Marcu, *Romanian Journal of Economic Forecasting* 2006, 1/2006
C. Ivan-Ungureanu & M. Marcu, 'The Lisbon Strategy', *Romanian Journal of Economic Forecasting* 2006, 1/2006, p. 74–83.

Jacobs 2013
A.T.J.M. Jacobs, *Collectief arbeidsrecht*, Deventer: Kluwer 2013 (in Dutch).

Karantinos 2012
D. Karantinos, *Ad hoc paper: The impact of the crisis on the Greek labour market*, (EEO ad hoc request) 2012.

Kelly & Hamann 2010
J. Kelly & K. Hamann, *General Strikes in Western Europe, 1980-2008*, (Paper for European Regional Congress of the International Relations Associations, Copenhagen, 28 June - 1 July 2010), 2010.

Kesner-Škreb, *Financial Theory and Practice* 2008, 32/1
M. Kesner-Škreb, 'Stability and growth pact', *Financial Theory and Practice* 2008, 32/1, p. 83–85.

Koukiadaki & Kokkinou 2014
A. Koukiadaki & C. Kokkinou, *The impact of the labour market reforms on collective bargaining in manufacturing: The case of Greece*, (Employment, Social Affairs and Inclusion DG 'Industrial Relations and Social Dialogue') 2014.

Koukoules & Yannakourou 2002
G. Koukoules & M. Yannakourou, *E.U. Project for the Study of Conciliation, Mediation and Arbitration. National Report Greece*, 2002.

Kousis & Karakioulafi
M. Kousis & C. Karakioulafi, *Labour Unions confronting Unprecedented Austerity in Greece, 2010-2013*, (Paper for panel 301, Southern European Labour Contention: New and Old Repertoires, Social Alliances, and Party Relations, ECPR General Conference, Bordeaux, Sept. 4-8), 2013.

Lanara-Tzotze 2012
Z. Lanara-Tzotze, *The impact of anti-crisis measures, and the social and employment situation: Greece*, Brussels: European Economic and Social Committee 2012, DOI: 10.2864/24518.

Lang, Schömann & Clauwaert 2013
C. Lang, I. Schömann & S. Clauwaert, *Atypical forms of employment contracts in times of crisis*, Brussels: ETUI 2013.

Mantel, *SMA* 2008, afl. 2
P.T. Mantel, 'Recht op toelating tot cao-onderhandelingen: meer dan representativiteit?', *Sociaal Maandblad Arbeid* 2008, afl.2, p. 74–81 (in Dutch).

Matsaganis, *British Journal of Industrial Relations* 2007, 45/3
M. Matsaganis, 'Union structures and pension outcomes in Greece', *British Journal of Industrial Relations* 2007, 45/3, p. 537–555, DOI: 10.1111/j.1467-8543.2007.00627.x.

Papadimitriou 2013
C. Papadimitriou, *The Greek labour law face to the crisis: A dangerous passage towards a new juridical nature*, Frankfurt am Main: European Labour Law Network (ELLN) 2013.

Patra 2012
E. Patra, *Social dialogue and collective bargaining in times of crisis: The case of Greece*, Geneva: International Labour Office 2012.

Rayer & Leeuwen-Scheltema
C.W.G. Rayer & M. van Leeuwen-Scheltema, 'De cao en de gedelegeerde rol van de ondernemingsraad', in: A.P.C.M. Jaspers & M.F. Baltussen, *De toekomst van het cao-recht*, Deventer: Kluwer 2011, p. 19-40 (in Dutch).

De Rechtspraak
De Rechtspraak, *De aanbevelingen van de kring van kantonrechters* (in Dutch).

Van Riel, *SER Magazine* 2013, 53/9
E. van Riel 'Collectiveren heeft nut', in: T. Bennink e.a., *SER Magazine* 2013, Den Haag: SER Huisdrukkerij, p. 4-6 (in Dutch).

Rodgers e.a. 2009
G. Rodgers e.a., *The International Labour Organisation and the quest for social justice, 1919–2009*, Geneva: International Labour Office 2009.

Rodriguez, Warmerdam & Triomphe 2010
R. Rodriguez, J. Warmerdam & C.E. Triomphe, *The Lisbon Strategy 2000 - 2010: An analysis and evaluation of the methods used and results achieved*, Brussel: European Parliament's Committee on Employment and Social Affairs 2010.

Samsom & Rutte 2012
D. Samsom & M. Rutte, *Regeerakkoord 'Bruggen slaan'*, 2012 (in Dutch).

Schraad-Tischler & Kroll 2014
D. Schraad-Tischler & C. Kroll, *Social Justice in the EU: A Cross-national Comparison*, Gütersloh: Bertelsmann Stiftung 2014.

Schulten & Müller 2013
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, *Social developments in the European Union* 2012*,* Brussel: ETUI aisbl 2013, p. 181-213.

Ségol, Jepsen & Pochet 2013
B. Ségol, M. Jepsen & P. Pochet, *Benchmarking Working Europe 2013*, Brussels: ETUI aisbl 2013.

Ségol, Jepsen & Pochet 2014
B. Ségol, M. Jepsen & P. Pochet, *Benchmarking Working Europe 2014*, Brussels: ETUI aisbl 2014.

Ségol, Jepsen & Pochet 2015
B. Ségol, M. Jepsen & P. Pochet, *Benchmarking Working Europe 2015*, Brussels: ETUI aisbl 2015.

Ter Steege e.a., *Sociaaleconomische trends* 2012, 4e kwartaal 2012
D. ter Steege e.a., 'Vakbeweging en organisatiegraad van werknemers', in: CBS, *Sociaal economische trends. Statistisch kwartaalblad over arbeidsmarkt sociale zekerheid en inkomen* 2012, 4e kwartaal 2012, Den Haag/Heerlen: Centraal Bureau voor de Statistiek, p. 9-25 (in Dutch).

Tajgman & Curtis 2000
D. Tajgman & K. Curtis, *Freedom of association: A user's guide. Standards, principles and procedures of the International Labour Organization*, Geneva: International Labour Office 2000.

Tros, Albeda & Dercksen 2006
F.H. Tros, W. Albeda & W.J. Dercksen, *Arbeidsverhoudingen in Nederland*, Alphen aan den Rijn: Vakmedianet 2006 (in Dutch).

Verhulp e.a. 2013
Verhulp e.a., *Advies verbreding draagvlak cao-afspraken,* Advies 13/03, Den Haag: Huisdrukkerij SER (in Dutch).

Volkerink e.a. 2014
M. Volkerink e.a., *Beweging in cao's. Een verkenning van ontwikkelingen in decentralisatie, differentiatie, duurzame inzetbaarheid en mobiliteit*, SEO-rapport nr. 2014-56, Amsterdam: SEO Economisch Onderzoek 2014 (in Dutch).

Woldendorp *S&D* 2013, 70/2
J. Woldendorp, 'De polder is nog lang niet dood', *S&D* 2013, 70/2, p. 46–51 (in Dutch).

Yannakourou 2004
M. Yannakourou, *The Evolution of Labour Law in the European Union: 1992 - 2003. Country study on Greece*, Employment and Social Affairs General Directorate of the European Commission 2004.

Yannakourou 2014
M. Yannakourou, Challenging austerity measures affecting work rights at domestic and international level. The case of Greece, in: C. Kilpatrick e.a., *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges*, (LAW 2014/05), Rochester, NY: EUI Department of Law Working Paper 2014.

Yannakourou 2015
M. Yannakourou, *Labour measures of memorandum II before the Greek Council of State: Decision 2307/2014 (plenum),* European University Cyprus 2015.

Yannakourou, *Irish Employment Law Journal,* 2014 11/3
M. Yannakourou 'Austerity measures reducing wage and labour costs before the Greek courts: a case law analysis', *Irish Employment Law Journal* 2014, 11/3, p. 36–44.

Yannakourou & Soumeli 2005
M. Yannakourou & E. Soumeli, *The evolving structure of Collective Bargaining in Europe 1990-2004. National Report Greece and Cyprus*, 2005.

Yannakourou & Tsimpoukis, *Comparative Labor Law & Policy Journal* 2014, 35/3
M. Yannakourou & C. Tsimpoukis, 'Flexibility without security and deconstruction of collective bargaining: the new paradigm of labor law in Greece', *Comparative Labor Law & Policy Journal* 2014, 35/3, p. 331–370.

Zambarloukou, *European Journal of Industrial Relations* 2006, 12/2
S. Zambarloukou, 'Collective bargaining and social pacts: Greece in comparative perspective', *European Journal of Industrial Relations* 2006, 12/2, p. 211–229, DOI: 10.1177/0959680106065042.

Electronic sources

ANP, 'Overzicht van de Griekse crisis: nieuw verkiezingen', 15 June 2015 (last update: 28 August 2015), www.nu.nl/economie-achtergrond/4068829/overzicht-van-griekse-crisis-nieuwe-verkiezingen.html (in Dutch).

Arbeidsrechter.nl, 'Werktijdverkorting', www.arbeidsrechter.nl/werktijdverkorting-personeelskosten-werknemers-deeltijd (in Dutch).

A. Broughton, I. Biletta & M. Kullander, 'Flexible forms of work: 'very atypical' contractual arrangements', 4 March 2010, www.eurofound.europa.eu/observatories/eurwork/comparative-information/flexible-forms-of-work-very-atypical-contractual-arrangements.

Cao Advieslijn, 'Wat is een CAO en hoeveel CAO's zijn er?', www.caoadvieslijn.nl/caoinfo.htm (in Dutch).

CBS, 'Stijging aantal daklozen lijkt voorbij', 4 March 2015, www.cbs.nl (search for: daklozen 2015, first option) (in Dutch).

CBS, 'Veel stakingsdagen in 2012', 23 May 2013, www.cbs.nl (search for: stakingsdagen 2012, first option) (in Dutch).

CBS, 'Weinig stakingsdagen in 2014', 1 May 2015, www.cbs.nl (search for: stakingsdagen 2014, first option) (in Dutch).

EAPN, 'The Lisbon Strategy: A general overview', www.eapn.eu/en/what-we-do/issues-we-focus-on/the-lisbon-strategy-a-general-overview.

ETUC, 'What is Social Dialogue?', www.etuc.org/what-social-dialogue.

ETUC, 'Who are the European social partners?', www.etuc.org/who-are-european-social-partners.

ETUI, 'Strikes in Europe (version 2.1, January 2015)' January 2015, www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-version-2.1-January-2015.

EurActiv.com, 'Social justice index reveals 'highly explosive situation' in Europe ', 25 September 2014, www.euractiv.com (search for: *social justice index*, first option).

Europa Nu, 'Economische crisis', www.europa-nu.nl/id/vhrtcvh0wnip/economische_crisis (in Dutch).

Europa Nu, 'Trojka (Europese Commissie, ECB en IMF)', www.europa-nu.nl (search for: *Trojka*, second option) (in Dutch).

European Commission, 'Stability and Growth Pact', 30 July 2015, http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm.

European Labour Law Network, 'Act 4174/2013 describes a new procedure to establish the minimum wage from 2017', www.labourlawnetwork.eu (search for: *act 4174/2013,* first option).

European Labour Law Network, 'Severance pay', 3 December 2012, www.labourlawnetwork.eu (search for: *severance Greece*, third option).

Eurostat, 'People at risk of poverty or social exclusion', January 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion.

EurWORK, 'Community Charter of the Fundamental Social Rights of Workers', 12 January 2011, www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/community-charter-of-the-fundamental-social-rights-of-workers.

EurWORK, 'European Social Charter ', 6 February 2012, www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/european-social-charter.

FlexWijzer, 'Wet op de collectieve arbeidsovereenkomst | Wet CAO', 21 May 2013, www.flexnieuws.nl/2012/03/25/wet-op-de-collectieve-arbeidsovereenkomst-wet-cao.

L. Fulton, 'Collective Bargaining Greece', 2013, www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Collective-Bargaining.

L. Fulton, 'Collective Bargaining the Netherlands, 2013, www.worker-participation.eu/National-Industrial-Relations/Countries/Netherlands/Collective-Bargaining.

L. Fulton , 'Trade Unions', 2013, www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Trade-Unions.

HR-kiosk.nl, 'CAO (bereik)', www.hr-kiosk.nl (search for: *cao*, third option) (in Dutch).

HR-kiosk.nl, 'Hiërarchie wetgeving', www.hr-kiosk.nl (search for: *hiërarchie*, first option) (in Dutch).

HR-kiosk.nl, 'Voorschotregeling AOW', 25 December 2012, www.hr-kiosk.nl (search for: *voorschotregeling*, first option) (in Dutch).

ILO, 'About the Declaration', www.ilo.org (search for: *about the declaration*, third option).

ILO, 'About the Governing Body', www.ilo.org (search for: *governing body*, first option).

ILO, 'Committee of Experts on the Application of Conventions and Recommendations', www.ilo.org (search for: *committee of experts*, third option).

ILO, 'Committee on Freedom of Association', www.ilo.org (search for: *committee freedom association*, first option).

ILO, 'Complaints', www.ilo.org (search for: *complaints*, third option).

ILO, 'Conference Committee on the Application of Standards', www.ilo.org (search for: *applying application standards*, first option).

ILO, 'Decent work agenda', www.ilo.org (search for: *decent work agenda*, first option).

ILO, 'Freedom of association and the effective recognition of the right to collective bargaining', www.ilo.org (search for: *effective recognition*, third option).

ILO, 'International Labour Conference', www.ilo.org (search for: how labour conference, first option).

ILO, 'International Labour Standards on Freedom of Association', www.ilo.org (search for: *international labour standards on freedom of association*, first option).

ILO, 'Mission and objectives', www.ilo.org (search for: mission and objectives, first option).

ILO, 'Ratifications for Netherlands', www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102768.

ILO, 'Representations', www.ilo.org (search for: *representations*, first option).

ILO, 'Right to collective bargaining', www.ilo.org (search for: *right to collective bargaining*, second option).

ILO, 'Social dialogue', www.ilo.org/global/about-the-ilo/decent-work-agenda/social-dialogue/lang--en/index.htm.

ILO, 'The need for social justice', www.ilo.org (search for: *need for social justice*, first option).

ILO, 'Tripartite constituents', www.ilo.org (search for: tripartite constituents, first option).

IMF, 'IMF Lending', 21 September 2015, www.imf.org/external/np/exr/facts/howlend.htm.

E. Izeren, 'Hoofdlijnen Wet werk en zekerheid', 19 June 2015, www.weanaaldwijk.nl/hoofdlijnen-wet-werk-en-zekerheid/ (in Dutch).

J. Kager, 'FNV-voorzitter Ton Heerts: ‘Grens is bereikt aan cao-tafels’, 16 May 2015, www.fnv.nl (search for: *cao tafels*, first option) (in Dutch).

LawTeacher, 'Memorandum of understanding', www.lawteacher.net (search for: *memorandum*, second option).

S. Lampousaki, 'Greece: Industrial relations profile', 21 October 2014, www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/greece/greece-industrial-relations-profile.

Loonwijzer, 'Vakbonden, wat heb je eraan?' www.loonwijzer.nl/home/arbeidsvoorwaarden/cao/vakbond-wat-is-het-en-wat-heb-je-er (in Dutch).

New Your Times, ‘Greece’s Debt Crisis Explained, 9 November 2015, www.nytimes.com/interactive/2015/business/international/greece-debt-crisis-euro.html.

OECD.Stat, 'Trade Union Density', http://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.

OECD.Stat, ‘Income Distbution and Poverty and 'Better Life Index', http://stats.oecd.org/Index.aspx?DataSetCode=BLI.

Ondernemersplein, 'Premiekorting voor werkgevers', www.ondernemersplein.nl/subsidie/premiekorting (in Dutch).

Parlement & Politiek, 'Stichting van de Arbeid', www.parlement.com (search for: *stichting*, second option) (in Dutch).

Parlement & Politiek, 'Werkgeversorganisaties', www.parlement.com (search for: *werkgeversorganisaties*, first option) (in Dutch).

Parlement & Politiek, 'Werknemersorganisaties', www.parlement.com (search for: *werknemersorganisaties*, first option) (in Dutch).

T. Pettinger, 'Internal Devaluation Definition', 14 June 2013, www.economicshelp.org/blog/2495/economics/internal-devaluation-definition.

Rijksoverheid, 'Financiële steun aan noodlijdende landen', www.rijksoverheid.nl/onderwerpen/europa-financieel-gezond/inhoud/financiele-steun-aan-noodlijdende-landen (in Dutch).

Rijksoverheid, 'Tijdelijke crisismaatregel niet verlengd', 9 December 2011, www.rijksoverheid.nl/actueel/nieuws/2011/12/09/tijdelijke-crisismaatregel-niet-verlengd (in Dutch).

Rijksoverheid, 'Wat is de overheid van plan met de IOAW en IOW?', www.rijksoverheid.nl/onderwerpen/uitkering-oudere-werklozen-ioaw-iow-ioaz/vraag-en-antwoord/wat-is-de-overheid-van-plan-met-de-ioaw-en-iow (in Dutch).

Rodgers & Stylianou, 'How bad are things for the people of Greece', 15 July 2015, www.bbc.com/news/world-europe-33507802 .

D. Schraad-Tischler & D. Kroll, 'Social Justice Index', www.social-inclusion-monitor.eu/social-justice-index.

UN, 'Specialized Agencies', www.unsceb.org/members/specialized-agencies.

UN Chief Executives Board for Coordination, 'Maintain International Peace and Security', www.un.org/en/sections/what-we-do/maintain-international-peace-and-security/index.html.

UWV, 'Met brug-WW geen loonkosten tijdens scholing', 9 March 2015, www.uwv.nl (search for: *brug-ww loonkosten*, first option) (in Dutch).

UWV, 'Werknemer met uitkering: premiekorting voor jongere werknemer', www.uwv.nl/werkgevers (search for: *premiekorting*, first option) (in Dutch).

N.E. Wergin-Cheek, 'Collective bargaining has been decentralised in the UK and Germany over the past three decades. But in Germany, unions have retained much more power', 12 April 2012, http://blogs.lse.ac.uk/europpblog/2012/04/12/germany-uk-unions/.

B9, 'Vakbonden, vakorganisaties in Nederland', www.b9.nl/vakbonden/index.htm?paginanummer=10 (in Dutch).

REGULATION REGISTER

ILO

- Declaration concerning the Aims and Purposes of the International Labour Organisation (Declaration of Philadelphia) adopted on 10 May 1944.
- Declaration on Fundamental Principles and Rights at Work, adopted on 18 June 1998.
- Declaration of Social Justice for a fair Globalization, adopted on 10 June 2008.
- ILO Constitution, adopted 28 June 1919.
- C087 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), adopted 9 July 1948
- C098 Right to Organise and Collective Bargaining Convention, 1949 (No. 98), adopted on 1 July 1949
- R091 The Collective Agreements Recommendation, 1951 (No. 91), adopted on 29 June 1951.
- R113 The Consultation Recommendation, 1960 (No. 113), adopted 20 June 1960.
- C135 The Workers' Representative Convention, 1971 (No. 135), adopted on 23 June 1971.
- C151 The Labour Relations (Public Service) Convention, 1987 (No. 151), adopted on 27 June 1978.
- C154 The Collective Bargaining Convention, 1981 (No. 154), adopted on 19 June 1981.
- R163 Collective Bargaining Recommendation, 1981 (No. 163), adopted on 19 June 1981.

EU

- Charter of Fundamental Rights of the EU, entered into force on 7 December 2000.
- Community Charter of the Fundamental Social Rights of Workers, entered into force on 8 December 1989.
- Euro-Plus Pact, entered into force in March 2011
- European Semester, developed in 2010, first applied in 2011.
- European 2020 Strategy, entered into force in March 2010
- Lisbon 2000 Strategy, agreed upon on 23/24 March 2000.
- Revised Lisbon 2000 Strategy, agreed upon on 25/26 March 2005.
- Six Pack, entered into force on 13 December 2011.
- Stability and Growth Pack, entered into force from 1 January 1999.
- Treaty on the Functioning of the EU
- Treaty of Lisbon, entered into force on 1 December 2009.
- Treaty on Stability, Coordination and Governance in the Economic Monetary Union (The Fiscal Compact), entered into force on 1 January 2013.
- Two Pack, entered into force on 30 May 2013.

CoE

- European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, entered into force on 3 September 1953.
- European Social Charter, adopted on 18 October 1961.

Greece Legislation

- Greek Constitution
- Law 3237/1955
- Law 1876/1990
- Law 2738/1999
- Law 3833/2010, adopted on 15 March 2010
- Law 3845/2010, adopted on 6 May 2010
- Law 3846/2010, adopted on 11 May 2010
- Law 3847/2010, adopted on 11 May 2010

- Law 3863/2010, adopted on 8 July 2010
- Law 3871/2010, adopted on 17 August 2010
- Law 3899/2010, adopted on 17 December 2010
- Law 3920/2011, adopted on 3 March 2011
- Law 3979/2011, adopted on 16 June of 2011
- Law 3986/2011, adopted on 1 July 2011
- Law 3996/2011, adopted on 5 August 2011
- Law 4002/2011, adopted on 22 August 2011
- Law 4024/2011, adopted on 27 October 2011
- The Board of Ministers' Decision 6/2012 of 28 February 2012
- Law 4046/2012, adopted on 12 February 2012
- Law 4052/2012
- Law 4093/2012 of 12 November 2012
- Law 4144/2013 of 18 April 2013
- Law 4172/2013 of 23 July 2013
- Law 4225/2014 of February 2014
- Law 4250/2014
- Law 4254/2014 of 7 April 2014

The Netherlands

- Constitution of the Netherlands
- Kamerstukken I 2011/12, 33290, A
  Changed legislative proposal "Law increasing AOW and retirement age".
- Kamerstukken II 2008/09, 31700 XV, 66
  Memo about the AOW.
- Kamerstukken II 2008/09, 31965, 1
  Spring memo 2009
- Kamerstukken II 2009/10, 32387, 1
  Annual report Ministry Employment and Social Affairs 2009.
- Kamerstukken II 2010/11, 32710 XV, 1
  Annual report Ministry Employment and Social Affairs 2010.
- Kamerstukken II 2011/12, 33240 XV, 1
  Annual report Ministry Employment and Social Affairs 2011.
- Kamerstukken II 2011/12, 33280, 1
  Spring memo 2012.
- Kamerstukken II 2011/12, 32846, 3 (MvT)
  Law about the amendment of the AOW pension start date; explanatory memorandum.
- Kamerstukken II 2012/13, 33605 XV, 1
  Annual report Ministry Employment and Social Affairs 2012.
- Kamerstukken II 2013/14, 29389, 74
  Government letter: aging and integral elderly policies.
- Kamerstukken II 2013/14, 33801, 3 (MvT)
  Law Measures WWB and some others laws; explanatory memorandum.
- Kamerstukken II 2013/14, 33930 XV, 1
  Annual report Ministry Employment and Social Affairs 2013.
- Kamerstukken II 2014/15, 34000, 1
  Government letter: note on the central governments' budget.
- Kamerstukken II 2014/15, 34200, 1
  Financial annual report 2014.
- Kamerstukken II 2014/15, 34200 XV, 1
  Annual report Ministry Employment and Social Affairs 2014

- Kamerstukken II 2014/15, 34083, 3 (MvT)
  Modification of the AOW, the Wage Tax Act 1964, the Law increasing AOW and retirement age in connection with the acceleration of the gradual increase of the AOW-age; explanatory memorandum.
- Law on association and assembly (Wet vereniging en vergadering) of 22 April 1855.
- Law on collective agreements (Wet op de collectieve arbeidsovereenkomst) of 1 September 1928.
- Law on declaring generally binding and non-binding collective agreements (Wet op het algemeen verbindend en onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomst) of 1 October 1937.
- Law on employment contract (Wet op de arbeidsovereenkomst) of 13 July 1907.
- Law on wage formation (Wet op de loonvorming) of 12 February 1970.
- Law work and security (Wet werk en zekerheid) of 1 July 2014 and 1 January 2015.
- *Stb.* 2009, 282; Law investing youth (Wet investeren in jongeren)
- *Stcrt.* 2015, 15137; Temporary scheme transitional payment AOW (Tijdelijke regeling overbruggingsuitkering AOW).

JURISPRUDENCE REGISTER

ECHR 7 May 2013, 57657/12 and 57665/12 *(Koufaki and Adedy v. Greece).*

ECSR 23 May 2012, Decision 65/2011 *(GENOP-DEI and ADEDY v. Greece).*

ECSR 23 May 2012, Decision 66/2011 *(GENOP-DEI and ADEDY v. Greece).*

ECSR December 2012, Decision 76/2012

ECSR December 2012, Decision 77/2012

ECSR December 2012, Decision 78/2012

ECSR December 2012, Decision 79/2012

ECSR December 2012, Decision 80/2012

ECSR 10 October 2014, Complaint no 111/2014, Case Document No. 1, *(Greek General Confederation of Labour v. Greece).*

ECSR 19 May 2015, Complaint No 111/2014 *(Greek General Confederation of Labour v. Greece).*

General Court 27 November 2012, T-541/10 (*ADEDY, Papaspyros and Iliopoulos v. Council of the European Union*).

Council of State (Greece) 23 February 2012, Case 668/2012.

Council of State (Greece) 4 April 2012, Case 1285/2012.

Council of State (Greece) 4 April 2012, Case 1286/2012.

Council of State (Greece) 4 April 2012, Case 1283/2012.

Council of State (Greece) 4 April 2012, Case 1284/2012.

Council of State (Greece) September 2013, Case 3354/2013.

Council of State (Greece) 27 June 2014, Case 2307/2014.

HR 19 June 1987, NJ 1988, 70.