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## **Final Report**

# **Prospects for a new employment relations and labour market model in Greece**

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The contents of this report, including any opinions and/or conclusions expressed, are those of the author(s) alone and do not necessarily reflect the views of the staff at the LSE, the Hellenic Observatory or the National Bank of Greece. The authors are responsible for any errors or omissions.

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## **List of Abbreviations**

CJEU: Court of Justice of the European Union

EGSSE: National General Collective Agreement

EPL: Employment Protection Legislation

ESEE: National Confederation of Greek Commerce

EU: European Union

EUCFR: Charter of Fundamental Rights of the European Union

GSEE: Greek General Confederation of Labour

GSEVEE: Hellenic Confederation of Artisans

ILO: International Labour Organization

OIYE: Federation of Private Sector Employees of Greece

OECD: Organisation for Economic Cooperation and Development

OKE: Economic and Social Committee

OMED: Organisation for Mediation and Arbitration

PD: Presidential Decree

SETE: Association of Greek Tourism Enterprises

SEV: Hellenic Federation of Enterprises

SME: Small Medium-sized Enterprise

TFEU: Treaty on the Functioning of the European Union

WTD: Working Time Directive



## Executive Summary

- Unemployment in Greece skyrocketed to 25 per cent, reflecting the collapse of its labour market during the period of the severe economic crisis and the implementation of far-reaching labour market reforms.
- Nearly half of the young people that participate in the labour market were unable to find a job in 2015. A similarly high unemployment rate is also observed in Spain.
- Only about 7.5 percent of employees in Greece in 2015 state that their jobs offer them autonomy and learning opportunities.
- Physical working conditions, work intensity and working time quality are also particularly low in Greece, in many cases of worse quality than in 'new member states' with a significantly lower GDP per capita.
- Econometric studies on the effects of the collective bargaining framework and minimum wage levels on employment performance are quite inconclusive. Academic economists are quite cautious in the policy interpretation of their results, but international organizations such as the IMF derive strong policy implications from their results.
- A balanced assessment suggests that the implications of alternative structures of collective bargaining are poorly understood, and therefore, the IMF should tread carefully in its policy advice in this area, particularly since governments may have limited ability to reform existing systems. Moreover, trust among social partners appears to be just as important in bringing about macro flexibility at the structure of collective bargaining.
- In contrast, a relative consensus seems to exist among researchers on the merits of coordinated bargaining, stressing theoretically and empirically the beneficial effects of coordinated bargaining between different unions and employers' associations on labour market performance.
- Due to the far-reaching labour market reforms in Greece, the collective bargaining coverage declined from 83 percent in 2009 to 42 percent in 2013, while ILO estimates a coverage rate of 10 percent in 2015.

- Coordination declined significantly in Greece from an average index of 4.0 (2005-09) to an average of 1.8 (2010-14). This relates to the abolition of the general applicability of the EGSSE, which was acting as a coordinating mechanism by setting the annual increases in the national minimum wage and guiding in this way the wage developments resulting from lower-level bargaining.
- The evolution of the minimum wage as a ratio to median wage since the beginning of the '90s suggests a broad policy of wage moderation exhibited by the social partners negotiating the national collective agreement.
- This moderation is also evident in relation to productivity; up to 2007, we can observe relatively lower increases in the real minimum wage relative to the growth in productivity, suggesting that the social partners adopted a responsible approach to minimum wage setting, avoiding “excessive” increases.
- In contrast, some “rigidity” in the system is apparent during the years 2008-2010, at a period when real minimum wage increased at a higher rate than productivity.
- As regards minimum wage setting, there seems to be consensus among actors: all social actors support the return to the previous institutional framework and setting of the minimum wages by national general collective agreement (EGSEE).
- As regards the mediation and arbitration system, the views are more ambivalent. The employers' side was unanimously against the compulsory arbitration system, whereas the employees' side was in favour.
- As regards collective bargaining centralization and decentralization, there is a range of views. GSEVEE is in favour of sectoral agreements and a complementary role for company-level agreements. ESEE is in favour of sectoral agreements and ambivalent with regard to occupational agreements, envisaging a complementary role for company-level agreements. SEV is more favourable to company-level agreements, but accepts the importance of sectorals when there are no company agreements. GSEE is in favour of

sectoral and occupational agreements with a complementary role for company-level agreements.

- The empirical literature and OECD have reached a relative consensus that there is no significant impact of employment protection legislation (EPL) on aggregate unemployment. Instead, evidence suggests that labour market reforms may result in the substitution of the “more expensive” workers with “cheaper” ones, without any significant gains in total employment. EPL can have a beneficial impact on the quality of jobs by increasing the feelings of job security among employed persons.
- A series of laws in Greece after 2010, again related to the conditionality imposed by the loan agreements with the “Troika”, substantially liberalised EPL by reducing the notification period for individual dismissals and the related severance pay, and by increasing the trial period for employees on open-ended contracts.
- In individual dismissals, EPL in Greece is more relaxed than in Denmark, France, Germany, Portugal, and Sweden.
- In collective dismissals, EPL in Greece is more relaxed than in France, Germany, Ireland, and Spain.
- In temporary contracts, EPL in Greece is more relaxed than in France and Spain.
- Concerning the strictness of working time regulation, Greece stands at about the same level as Germany and Spain, with only the UK and Ireland having lower protection, while Portugal, France, Denmark and Sweden have higher protection.
- Firms have always made limited use of part-time employment in Greece; however, we can also observe a doubling of the part-time employment share during the crisis years. Job destruction during the deep recession of the Greek economy has been extremely severe and the vast majority of the few new jobs created have been on part-time contracts.
- The CJEU found that Greece was in violation of its obligations under the Working Time Directive in the public healthcare system.

- The CJEU decision regarding collective dismissals in Greece suggests that the current system of prior authorisation cannot offer businesses an acceptable degree of legal certainty, and requires the Greek legislator to devise ways in which the ministerial decision to refuse authorisation will depend on more precisely defined criteria.
- Law 3863/2010 raised the collective dismissal thresholds by increasing the number of employees that can be dismissed, as well as speeding up the process of dismissals.
- In a joint declaration, the social partners argued against any further deregulation of the system on collective redundancies.
- Most of the social partners highlighted some potentially positive aspects of flexible working, both for employers and employees, but they insisted on how part-time work in times of crisis and in the context of the Greek labour market realities is used as bogus full-employment to get tax and social insurance advantages.
- In relation to the debate on flexibilization in the interest of competitiveness, social partners were adamant that a rationalisation of the taxation system and of non-wage costs are more important than any discussion about labour market flexibility or further wage cuts.
- The undeclared economy in Greece in 2013 was the equivalent of 24% of GDP, which puts Greece among the countries with the largest undeclared economies in Europe.
- According to the latest ARTEMIS report (2015), between Q4 of 2013 and Jan 2015, 13% of all inspected companies employed undeclared workers.
- According to the 2013 Eurobarometer survey, 67.3% of all undeclared work was waged employment, of which: 13.3% was wholly undeclared waged employment, and 54% was under-declared employment. 10.2% was under-declared self-employment, and 22.5% paid favours conducted for close social relations, such as kin, friends, acquaintances and neighbours.
- The prevalence of undeclared work appears to be concentrated in specific sectors of economic activity, namely, retail, food services (catering, bartending, table waiting) or apparel manufacturing.

- The reasons that facilitate the development of informality and undeclared work in Greece include *inter alia*: high levels of self employment; the small size of enterprises and family businesses; high unemployment rates, especially among young people; seasonality and dispersion of operations, especially in agriculture and hospitality; the immigration flow into the Greek labour market; high levels of non-wage labour costs (social security contributions for both employers and employees); high tax rates; reduction of real wages.
- Evidence suggests that under-declared employment increased rapidly during the crisis: employment contracts are being transformed from full-time into part-time; with 'envelope wages' to avoid and evade tax and social security contributions. This may happen even with the agreement/consent of the employee.
- Evidence suggests that a major problem with SEPE (the Labour Inspection Authority) is that it is under-resourced. As a result, it is understaffed and does not have an independent budget to support its inspection and enforcement role. Evidence further suggested that this is also intertwined with organizational politics within the Ministry of Employment.
- The current penalty of €10,550 for every undeclared employee is used as a deterrent, but is deemed to be too high by employers' representatives. In practice, the disincentive effects 'do not bite' as the probability of being caught is low. Moreover, it appears that, even if caught, there are other options (e.g. shutting down business), which should also be seen within the context of a very slow judicial system. So penalties, even if applied, are rarely paid.
- One practice to fight undeclared work that needs to be extended and which gained the support of employers and employees is the (proper) use of the 'Ergosimo' (work voucher).

# 1. Introduction

## 1.1. Policy Background and the Context of the Study

The labour market in Greece suffers from a variety of problems. Apart from the obvious ones, such as high unemployment, high level of informality and undeclared work and low job quality, it also suffers in terms of its institutional characteristics, such as weak culture of social dialogue or inefficient labour regulations. Not surprisingly, the country is far from attaining any of the EU2020 targets. Recent reforms in the past five years did not rectify any of these problems and failed to develop a coherent employment model (Kornelakis and Voskeritsian, 2014).

Instead, the context of permanent fiscal austerity intensified the shift further away from any possible application of the original “Flexicurity model” as advocated by the pathways of the European Commission (European Commission, 2007) or the relevant academic literature (Madsen, 2002; Sels and Van Hootegeem, 2001; Wilthagen and Tros, 2004). At the current juncture, the conditions are anything but favourable to apply the generous Flexicurity models. Neither the shape of the public finances nor the economic climate make the implementation of some of the components of these models likely, given their requirements for generous social spending on Active Labour Market Policies and unemployment insurance. As a result, the Greek employment relations and labour market model is left between a rock and a hard place. This is not to say, however, that improvements in key institutions of the labour market cannot be recalibrated to rectify some of the structural weaknesses and improve the overall functioning of the labour market.

The overall aim of this report is to sketch the possible directions of institutional change in the Greek labour market towards reconciling flexibility and security and combining equity and efficiency. To this end, we are interested in investigating how the power resources of the major employment relations actors (trade unions, employers’ associations and the state) may be utilized to bring about positive changes to the Greek employment relations and labour market model, in line with the Europe 2020 agenda for more and better jobs. Our research is largely guided by

the insight that the success of a policy or institutional change largely depends on two interrelated factors: first, on the relevance of the policy to and suitability for the institutional context in which it will be implemented; and, second, on the acceptance of the policy by the key actors it will affect (Becker, 2009; Hall and Soskice, 2001; Hancké et al., 2007; Lallement, 2011; Streeck and Thelen, 2005). Although, in reality, these two criteria are not always met – or, at least, not met to their full extent – it is important to take them into consideration at all stages of policy assessment, evaluation, planning and implementation.

Our thematic chapters move conceptually beyond the comparative political economy literature and adopt a broad interdisciplinary perspective drawing on the strengths of a uniquely multi-disciplinary team: labour economics, employment relations and human resource management, sociology of work, politics, political economy, labour law and European law. The study started with the assumption that the variation in comparative labour market performance is largely explained by differences in institutional arrangements. In other words, institutions and regulations can be considered as the “inputs”, and labour market performance and outcomes (in terms of both the quantity and quality of jobs) as the “outputs” in any given employment relations and labour market model. Of course, we recognize that “outputs” (e.g. unemployment) are also affected by a wide range of other factors that fall beyond the scope of this report. We also assumed, however, that there are no “one-size-fits-all” policies that should be mainstreamed, but a variety of possibly optimal arrangements. This means that the different policies or institutions are not readily transferable from one country to another; instead, new institutional configurations should be engineered to “fit” the host institutional context. There are significant benefits in engaging with a broader comparative perspective, as this will allow delineating the transferability of good practices/policies into Greece.

## **1.2. Research Objectives and Questions**

### *1.2.1. Research Objectives*

The project had the following objectives:

- I. To critically discuss the structural problems and weaknesses of the current employment relations and labour market model in Greece and identify good practices in Europe based on the 'state of the art' of relevant academic and policy literature.
- II. To quantitatively analyse relevant labour market indicators of labour market and employment relations' performance; and to compare and contrast them with a selected subset of European countries.
- III. To conduct semi-structured interviews with informants in key positions that will enrich the analysis and contextualise the policy proposals, shedding light on the dynamics of institutional change.
- IV. To elaborate evidence-based policy recommendations and propose changes tailored to the Greek context, informed by relevant theory and in line with international or European practice.
- V. To disseminate findings to relevant stakeholders and engage with potential users and beneficiaries of this research.

### *1.2.2. Research Questions*

Our overall research question has been:

- What should be the direction of institutional change for a future Greek Employment Model?

The project sought to answer the following sub-questions:

- i. How does the Greek labour market performance (from a quantity and quality perspective) compare to other European countries?
- ii. What are the key structural weaknesses and dysfunctional elements in the current system of collective bargaining and minimum wage-setting? What does the academic evidence suggest? What is the view of the key labour market actors? Which are the possible solutions?
- iii. What are the key structural weaknesses and dysfunctional elements in the current system of employment protection and working time? What does the academic evidence suggest? What is the view of the key labour market actors? Which are the possible solutions?



- iv. What are the key structural weaknesses and dysfunctional elements in the current system of Labour inspection and the problem of undeclared work? What does the academic evidence suggest? What is the view of the key labour market actors? Which are the possible solutions?
- v. Overall, how should the institutional/legal framework be reconfigured with a view to increasing flexibility, while providing adequate levels of protection?

### 1.3. Methods of Analysis

The study's aims and objectives were suitable to a **mixed methods approach** combining both quantitative data analysis (descriptive statistics and indicators), and qualitative data analysis (face-to-face interviews and primary sources). Thus, the overall approach was attuned to achieve the maximum possible **triangulation**, as we had three distinct sources of data: (i) statistical data and indicators, (ii) data from interviews, and (iii) primary sources based on actors' position papers and/or labour market regulations/laws.

#### 1.3.1. Quantitative Analysis

More specifically, the quantitative analysis sought to explore and analyse the labour market performance in Greece vis-à-vis selected countries utilising data from the EU Labour Force Survey (for the job quantity aspect), the European Working Conditions Survey (for the job quality aspect). Concerning institutions and regulations, we examined both regulatory flexibility based on standardised indicators (OECD's EPL) as well as novel indicators (e.g. working time, etc.). The quantitative analysis followed simple descriptive statistics to chart the evolution of key labour market variables. This analysis provides the context of the subsequent economic, institutional, legal and qualitative analysis.

The theoretical frames that guide the case selection criteria of countries that we compare draw on different varieties of capitalism and employment models literature. More specifically, our key interest is Greece but we are also looking at a diverse range of countries: UK, and Ireland (representative of Liberal Market models); Germany and France (Coordinated Market models); Denmark and Sweden (Nordic

Coordinated models); Portugal and Spain (Southern model) and Bulgaria (Eastern Europe).

### 1.3.2. Qualitative Analysis

The qualitative analysis sought to investigate how the social partners (trade unions, employers, and the state) perceive the current direction of labour market reforms situation, and what they believe could be done to improve the direction of institutional change. The fieldwork took place between July and August 2016 and was led by Dr. Horen Voskeritsian with inputs from the other members of the team. The total duration of interviews was 19.5hrs and the total number of interviews was 13 with average interview duration of 1.5hr. The total number of informants was 17 and we contacted two of the informants for a follow-up interview. The 19.5 hours of interviews were digitally recorded and then transcribed into more than 220 pages of interview transcripts. Ms. Konstantina Georgaki undertook painstakingly the transcription of the interviews. Additionally, the analysis was supplemented by a wide range of primary sources. In particular the preliminary analysis relied on: 64 press releases, 5 position papers, 8 official announcements, letters and memos, and 8 other documents (resolutions, reports, speeches and media interviews).

In short, we conducted single person face-to-face interviews (or group interviews) with key informants from peak representative associations (GSEE, SEV, GSEVEE, ESEE, SETE) and relevant agencies and institutions (the Ministry of Labour, the Labour Inspectorate (SEPE) and OMED). Their perspectives and views about the condition of the Greek labour market helped us gain a better understanding of the key issues and problems with the current labour market reform agenda. As expected with in-depth qualitative interviews, our fieldwork reached a *saturation point*, whereby the final additional interviews did not add much information to what we gathered from previous informants.

The material from the interviews is vast, but this report represents a 'first cut' of this analysis. The interviews are analysed following a 'thematic' approach and crosscut the main problems and weaknesses in the Greek labour market framework along the key themes: collective bargaining and minimum wages (chapter 3), employment

protection legislation and working time (chapter 4) and informal employment and labour inspection (chapter 5), with more specific themes emerging within those topics. Finally, based on this analysis, we elaborate our recommendations and policies that stand a more realistic chance of successful implementation in the short or long-term (chapter 6).

### *1.3.3. Research Ethics*

Prior to the data collection, the King's College "Social Science and Public Policy, Humanities and Law" Research Ethics Subcommittee has reviewed our project and has provided full approval for the commencement of the fieldwork. The REC Reference Number is: LRS-15/16-2967. The documents that we submitted for review included: the main interview guide (Appendix I), information sheets, interviewee consent forms, gatekeeper cover letter and summary of intended research.

## **1.4. Structure of the Report**

The remainder of the report is structured as follows:

Chapter 2 examines the comparative performance of the Greek labour market vis-à-vis a selected subset of EU28 countries. More specifically, it reviews its performance both on the quantity side (unemployment) and the quality side (job quality aspects). This chapter prepares the ground for the subsequent analysis of key labour market institutions: collective bargaining and minimum wages, employment protection legislation and labour inspection.

Chapter 3 examines the theme of Collective Bargaining and Minimum Wages. It begins with a review of relevant theory and evidence from international academic and policy literature. It then moves on to consider a range of statistics and indicators charting changes over time with regard to key elements of collective bargaining and minimum wages. The quantitative analysis is, then, supplemented with a review of comparative labour law and regulations in our selected sample of EU countries. Finally, the section concludes with a qualitative analysis of interview quotes, which flesh out empirically the different positions, and unveil the fault lines between and within social actors.

Chapter 4 examines the theme of Employment Protection Legislation and Working Time. It begins with a review of relevant theory and evidence from international academic and policy literature. It then moves on to consider a range of statistics and indicators charting changes over time with regard to key elements of EPL and working time. The quantitative analysis is, then, supplemented with a review of comparative legal frameworks in terms of provisions and regulations for collective dismissals and working time. The next section considers the question of collective dismissals and working time in light of European Union Law. Finally, the section concludes with an analysis of interview quotes, which flesh out empirically the different positions, and unveil the fault lines between and within social actors.

Chapter 5 examines the theme of Informal Employment and Labour Inspection. It begins with a review of relevant theory and evidence from international academic and policy literature. It then moves on to sketch a snapshot of the phenomenon based on available data. The quantitative analysis is, then, supplemented with a review of comparative legal frameworks regulations for undeclared work and labour inspection. Finally, the section concludes with an analysis of interview quotes, which flesh out empirically the different positions, and unveil the fault lines between and within social actors.

Chapter 6 recapitulates the aims and objectives of this study. Then it provides a summary of the key empirical findings and conclusions. The final section articulates general guidelines and brief recommendations that rely on the evidence-base that we assembled for this report. The Appendix includes a specimen of the interview guide and a list of key informants with whom we had interviews.

## 2. The Performance of the Greek Labour Market in Comparative Perspective

### 2.1. Introduction

Labour market regulation is considered an important aspect of a country's overall regulatory framework due to (mainly) its hypothesized impact on labour market performance. In the following sections of this report we will outline the theoretical arguments and empirical evidence related to this link. However, before proceeding with that, it is worth outlining briefly the recent labour market performance of selected European countries and, of course, the relative standing of Greece in the overall picture.

Although labour market performance is usually equated with aspects of the *quantity* side of the labour market (i.e. unemployment, employment, and wages), this section will also look at comparative data related to the *quality* of jobs each labour market creates.<sup>1</sup> We believe that this choice can provide a more complete picture of the outcomes that can in principle be related to the regulatory framework, as well as a fuller account of the welfare of labour market participants. It is also in line with the “more and better jobs” policy objective of the European Union in the last two decades (Green, 2006; Green and Mostafa, 2012). The ten countries we select for our comparison (Greece, Bulgaria, Denmark, France, Germany, Ireland, Portugal, Spain, Sweden, and the UK) throughout this report cover all different European

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<sup>1</sup> Both the level and the distribution of wages are usually considered important aspects of job quality (Green and Mostafa, 2012). However, the (also obvious) relationship between wages and the quantity side of the labour market directed us in choosing to focus here on different indicators of both quantity and quality. Wages will be briefly considered in the following sections of this report. A similar vagueness is evident in relation to the case of productivity. Hence, we do not directly consider productivity as a measure of labour market performance in this report, although we refer to it at various points.

labour market models and can be considered as representative of the diverse regulatory frameworks observed in the continent.

## **2.2. The ‘quantity side’ of Greek labour market performance**

Starting from the *quantity* side, Tables 1, 2, and 3, provide a brief overview of the recent labour market performance in Greece and the rest of Europe. Starting from a relatively high level in 2000, unemployment in Greece declined by a significant margin and stood at around 8 percent in 2008 (Table 1). Similar improvements were also observed in the majority of European countries, reflecting the favourable economic conditions before the onset of the 2007-2008 financial crisis. Particularly low unemployment was observed in 2008 in Denmark, the UK, and Bulgaria. The subsequent picture, however, is radically different. The Great Recession was accompanied with an increase in unemployment in all countries, except for Germany.<sup>2</sup> Unemployment in Greece skyrocketed to 25 percent, reflecting the collapse of its labour market during the period of the severe economic crisis and the implementation of far-reaching labour market reforms due to the conditionality imposed by the loan agreements with the “Troika” (see the following sections). Relatively large increases during the same period can also be observed in Portugal and, mainly, Spain. Ireland and the UK also experienced an earlier recessionary period but this is not reflected in the unemployment data presented in Table 1, since unemployment has now stabilised to relatively lower levels than the ones observed at the peak of their recession.

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<sup>2</sup> See Dustmann et al. (2014) for a detailed account of Germany’s recent labour market experience.

**Table 1 Unemployment in selected countries (% of labour force)**

	<b>2000</b>	<b>2008</b>	<b>2015</b>
Greece	11.5	7.9	25.1
Bulgaria	16.4	5.7	9.2
Denmark	4.5	3.5	6.3
France	10.3	7.1	10.4
Germany	8.0	7.6	4.7
Ireland	4.4	6.5	9.6
Portugal	4.0	8.0	12.9
Spain	13.9	11.3	22.2
Sweden	5.5	6.3	7.6
UK	5.6	5.7	5.4

Source: Eurostat online database, available at <http://ec.europa.eu/eurostat/data/database> (accessed on 22/01/2017). Data refer to the 15-64 years old labour force

The aggregate picture, however, hides important inequalities relating to labour market opportunities that are present to a smaller or larger extent in all European countries. Table 2 shows the recent performance of the youth labour market. Greece has always been a country with relatively high unemployment and low employment and participation rates for the youth. The low participation rate reflects to some extent the relatively longer stay of people aged 15-24 years in the education system. A similar picture is also observed in the rest of the countries of Southern Europe. The crisis made this picture even worse and youth employment in Greece collapsed to around 13 percent of the youth population. Nearly half of the young people that participate in the labour market were unable to find a job in 2015. A similarly high unemployment rate is also observed in Spain. In contrast, the performance of the youth labour market is substantially better in the Scandinavian countries, Germany and the UK.

**Table 2 Unemployment, employment, and labour force participation for young workers in selected countries (15-24 years old)**

	Unemployment (%)		Employment rate (%)		Labour force participation rate (%)	
	2008	2015	2008	2015	2008	2015
Greece	21.9	49.8	23.5	13.0	30.1	26.0
Bulgaria	12.7	21.6	26.3	20.3	30.1	26.0
Denmark	8.0	10.8	66.4	55.4	72.2	62.1
France	18.3	24.7	31.4	27.9	38.5	37.1
Germany	10.6	7.2	46.6	45.3	52.2	48.8
Ireland	13.3	20.9	46.2	28.7	53.3	36.3
Portugal	16.7	32.0	34.1	22.8	40.9	33.5
Spain	24.5	48.3	36.0	17.9	47.7	34.7
Sweden	20.2	20.4	42.2	43.9	52.8	55.1
UK	15.0	14.6	52.0	50.1	61.2	58.6

Source: Eurostat online database, available at <http://ec.europa.eu/eurostat/data/database> (accessed on 22/01/2017).

Significant gender gaps in employment are also observed in some European countries (Table 3). With the exception of the Nordic countries, Germany, France and the UK, all performance measures are worse for women relative to the aggregate picture in the rest of the countries. Some deterioration during the latest crisis period is also observed, but not to the same extent as the deterioration that took place among the younger workers. Again, Greece appears as the country with the highest unemployment rate and lowest employment and participation rates in both years (with the exception of the Spanish female unemployment rate in 2008). The low participation of women in the Greek labour market reflects, according to some analysts, long-standing norms concerning the position and role of women in society, the absence of family-friendly public policies, and wage discrimination that increases the opportunity cost of employment for women (Nicolitsas, 2005; 2006; Karamessini, 2008).



**Table 3 Female unemployment, employment and labour force participation**

	Unemployment (%)		Employment rate (%)		Labour force participation rate (%)	
	2008	2015	2008	2015	2008	2015
Greece	11.6	29.1	48.6	42.5	55.0	59.9
Bulgaria	5.8	8.5	59.5	59.8	63.1	65.4
Denmark	3.8	6.5	74.1	70.4	77.0	75.3
France	7.5	10.0	60.3	60.6	65.2	67.3
Germany	7.7	4.3	64.3	69.9	69.7	73.1
Ireland	5.0	7.7	60.1	57.9	63.3	62.8
Portugal	9.3	13.1	62.5	61.1	68.9	70.3
Spain	12.9	23.7	55.4	52.7	63.6	69.0
Sweden	6.6	7.4	71.8	74.0	76.9	79.9
UK	5.2	5.2	65.7	67.9	69.3	71.7

Source: Eurostat online database, available at <http://ec.europa.eu/eurostat/data/database> (accessed on 22/01/2017). Data refer to the 15-64 years old female population.

### 2.3. The ‘quality side’ of Greek labour market performance

Turning now to the *quality* side of the labour market, the relevant literature has identified various job characteristics that are associated with what can be viewed as a meaningful and high-quality work experience (Green, 2006). These characteristics include job autonomy, skills use and development, physical working conditions, working time quality, low work intensity, and job security (Gallie, 2003; Green, 2006; Green and Mostafa, 2012; Horowitz, 2016). Consistent, harmonised and comparable cross-country data on job quality are hard to come by. However, the available data paint a bleak picture for Greece. Table 4 presents such a picture, utilising some

recently assembled indicators of job quality<sup>3</sup> by the OECD (OECD, 2014). In essence, the numbers in Table 4 combine aspects of employee autonomy and skill development. The percentage of employees with autonomy and learning opportunities in their jobs is the lowest in Greece in all years presented. Moreover, this percentage seems to also decline through the years. Only about 7.5 per cent of employees in Greece in 2015 state that their job offers them autonomy and learning opportunities. In contrast, this percentage is particularly high in the Scandinavian countries. Denmark and Sweden are usually considered as the European countries offering the highest quality jobs (Gallie, 2003; Green, 2013) and this is reflected in the data reported here.

Further examinations of job quality indicators confirm the above picture for other dimensions as well. Veliziotis and Kornelakis (2016) show that physical working conditions, work intensity and working time quality are also particularly low in Greece. In many cases, Greece seems to have worse quality than other EU-28 countries with a significantly lower GDP per capita. Explanations for this comparative standing are not always straightforward, since it is quite difficult to isolate the relative importance of differences in institutions, managerial choices, and human resource practices. The purpose of the following sections is to try to offer some insights on the relationship between labour market institutions and both the quality and quantity sides of the labour market.

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<sup>3</sup> The OECD gives the following details on the items used for the calculations: “Work autonomy refers to the ability of employees to influence the way they carry out their immediate work activities such as the order of tasks and the methods of work. Learning opportunities capture both informal learning at work by doing the job and formal training opportunities provided by the employer or during work hours.”

**Table 4 Work autonomy and learning opportunities in selected countries (% of employed)**

	<b>2005</b>	<b>2010</b>	<b>2015</b>
Greece	11.5	9.4	7.4
Bulgaria	-	-	-
Denmark	37.3	48.5	48.5
France	21.1	20.2	33.0
Germany	20.4	29.6	28.6
Ireland	29.9	26.3	35.2
Portugal	12.9	22.2	15.5
Spain	11.6	23.3	22.2
Sweden	56.2	52.2	44.7
UK	31.6	47.3	40.1

Source: OECD.Stat, available at <http://stats.oecd.org/Index.aspx> (accessed on 22/01/2017).

Notes: Percentages are based on data from the European Working Conditions Surveys.

## 2.4. Summary

- Unemployment in Greece skyrocketed to 25 percent, reflecting the collapse of its labour market during the period of the severe economic crisis and the implementation of far-reaching labour market reforms.
- The Great Recession was accompanied with an increase in unemployment in all countries, except for Germany.
- Relatively large increases in unemployment during the same period can also be observed in Portugal and, mainly, Spain.
- Greece has always been a country with relatively high unemployment and low employment and participation rates for the youth, which reflects to some extent the relatively longer stay of people aged 15-24 years in the education system
- Nearly half of the young people that participate in the labour market were unable to find a job in 2015. A similarly high unemployment rate is also observed in Spain.

- In contrast, the performance of the youth labour market is substantially better in the Scandinavian countries, Germany and the UK.
- With the exception of the Nordic countries, Germany, France and the UK, all performance measures are worse for women relative to the aggregate picture in the rest of the countries.
- Only about 7.5 percent of employees in Greece in 2015 state that their job offers them autonomy and learning opportunities.
- In contrast, this percentage is particularly high in the Scandinavian countries. Denmark and Sweden are usually considered as the European countries offering the highest quality jobs.
- Physical working conditions, work intensity and working time quality are also particularly low in Greece, in many cases of worse quality than in 'new member states' with a significantly lower GDP per capita.

### **3. Collective Bargaining Framework and Minimum Wages**

#### **3.1. Theory and Evidence**

In most OECD countries, and especially in Europe, the pay and benefits of a large proportion of employees are the outcome of collective bargaining between unions and employers' associations. According to standard economic theory, this is a practice considered harmful to the competitive nature of the market and its efficiency, since bargained wages do not necessarily reflect the productivity of labour (Siebert, 1997). In the textbook labour market model of economic theory, trade union activity and different practices of collective bargaining should lead to an inefficient allocation of resources, and to a lower employment level compared to an ideal, free from regulation, perfectly competitive labour market. This is the "monopoly face" of unions, according to the seminal Freeman and Medoff's (1984) framework. The upward pressure on wages that union bargaining exerts will be particularly stronger the less competitive the product market is (something that enables firms to pass onto consumers the higher wages; Booth, 1995), and the stricter the employment protection legislation is (and, hence, the higher the bargaining power of unions; Aidt and Tzannatos, 2002: 24-25). In other words, in this crude conceptualization of the labour market, "rent-seeking" is considered as the only function and activity of trade unions.

A similar reasoning applies to minimum wage legislation. A wage floor is again considered as rigidity, which is inconsistent with the efficient functioning of the market mechanism. Its existence, and particularly its setting at a relatively high level, prices low-productivity and younger workers out of the labour market and contributes to higher unemployment and lower employment levels.

In contrast to these perspectives, theories that stress the imperfect nature of labour markets point to the efficiency enhancing effects of institutions and legislation related to pay determination and employee representation (Agell, 1999; Gregg and Manning, 1997). Inefficiencies arising from monopsonistic/oligopsonistic situations, transaction costs and externalities, mean that institutional and legislative regulation can lead to

better outcomes in terms of quantity and quality relative to an unregulated labour market. For example, in a monopsonistic situation, both the equilibrium wage and employment are lower than the optimal level. Collective bargaining and minimum wage legislation in this case can lead to both higher wages and employment (Gregg and Manning, 1997). Related to this, trade unions can also have a beneficial, “voice” effect (Freeman and Medoff, 1984). Dissatisfied employees that are unionised are more likely to express their dissatisfaction to their employer than opt for the “voiceless” option of exiting the firm. This enables the existence of long-term relationships between firms and employees and the investment in firm-specific skills through continuous training (Aidt and Tzannatos, 2002; Howell, 2005) that can ultimately have a positive effect on productivity, firm performance in general, and the quality of working life for individual employees (e.g. through increased job security).

The above discussion, thus, leads to the conclusion that theory cannot consistently predict the impact of the collective bargaining framework on labour market performance. Empirical evidence is needed to clarify the issues involved and shed light to the relative importance of the different mechanisms behind the above-described relationships. The cross-country empirical literature on collective bargaining and labour market performance has focused on specific variables as the most representative of any country’s collective bargaining system. These include union density (the proportion of each country’s employees that are trade union members), union coverage (the proportion of each country’s employees covered by a collective bargaining agreement), and the degree of centralization or coordination of collective bargaining (Aidt and Tzannatos, 2002; 2008). Sometimes, this literature also examines the impact of the relative level of the national minimum wage on labour market outcomes, but this is a rarer practice. According to Nickell et al. (2005: 7), this is because the minimum wage level in all countries is not considered high enough to have a substantial impact on employment, while only a fraction of

countries has a national minimum wage in place, something that constrains the empirical examination of the effect of its cross-country variation.<sup>4</sup>

Table 5 summarises the results of the most recent cross-country, econometric work on the effects of the collective bargaining framework and minimum wage levels on employment performance.<sup>5</sup> The results concerning union density and coverage are quite inconclusive. While Baccaro and Rei (2007) and Avdagic (2015) find a positive association between density and unemployment, the rest of the studies fail to estimate a robust effect. Gal and Theising (2015) report an adverse effect of (excess) coverage on employment, but this is not replicated by Stockhammer and Klär (2011), who report the opposite finding. This inconclusiveness of findings echoes the main argument of Baker et al. (2005), Howell et al. (2007), and Baccaro and Rei (2007). These authors persuasively argue that the policy case of “deregulating labour markets” cannot be borne out of the various studies (such as those summarised in Table 5) that examine the relationship between various aspects of labour market flexibility (such as the collective bargaining system) and labour market performance. The relationships estimated in any such study are particularly sensitive to slight changes in the modelling choices and econometric specifications employed, the time period of analysis, or the estimators used. Consequently, the estimated results are not robust to minor changes in the above aspects, something that renders any policy conclusions unwarranted. This is something acknowledged in the earlier work of, for example, Blanchard and Wolfers (2000) who are quite cautious in the policy interpretation of their results. IMF (2003), on the other hand, derive strong policy implications from their results. As a conclusion to this discussion,

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<sup>4</sup> In contrast, there is a voluminous micro-econometric literature that examines the impact of minimum wages on employment in specific countries and years and that still debates the issue. For summaries of the earlier work, see Dolado et al. (1996), Card and Krueger (1995), and Neumark and Wascher (2007). This literature will not be reviewed in detail in this report, since we are mainly focusing on macro-level, cross-country studies.

<sup>5</sup> For summaries of the earlier literature, see OECD (2004) and Aidt and Tzannatos (2002; 2008).

it is worth quoting the IMF economists Blanchard et al. (2014), who discuss IMF's advice on collective bargaining for the advanced economies:

“This being said, the implications of alternative structures of collective bargaining are ***poorly understood*** [emphasis added]. This suggests that the IMF should tread carefully in its policy advice in this area, particularly since governments may have limited ability to reform existing systems. Moreover, ***trust among social partners appears to be just as important*** [emphasis added] in bringing about macro flexibility as the structure of collective bargaining.” (Blanchard et al., 2014: 16).

In contrast to trade union bargaining power, proxied by density or coverage, a relative consensus seems to exist among researchers on the merits of coordinated bargaining. Although this is not a unanimous conclusion (see e.g. Aidt and Tzannatos, 2008), most studies theoretically and empirically stress the beneficial effects of coordinated bargaining between different unions and employers' associations on labour market performance. In some conceptualisations, coordination can “correct” for the negative consequences of autonomous union action (OECD, 2004; Nickell and Layard, 1999). On the one hand, this beneficial effect can be achieved through *centralised* bargaining at the national level, i.e. bargaining that takes place between peak associations of unions and employers, occasionally with the participation of the government as in the traditional corporatist settings (Cameron, 1984). Calmfors and Driffill's (1988) famous “hump-shape hypothesis” posits that countries with either decentralised bargaining at the level of the individual firm or centralised bargaining at the national level, will record lower wage growth and, hence, lower aggregate unemployment than countries where bargaining predominantly takes place at the level of each industry.<sup>6</sup>

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<sup>6</sup> Only a handful of studies have actually confirmed empirically the Calmfors and Driffill (1988) theoretical hypothesis. Most work has failed to find evidence in favour of it. See OECD (2004) and Aidt and Tzannatos (2008) for comprehensive reviews.



On the other hand, and irrespective of the level of bargaining, *coordinated* bargaining between different unions and employers' associations can lead to better labour market performance than uncoordinated bargaining. Since Soskice (1990) introduced this concept, coordination is the main variable that is examined in the relevant cross-country empirical research, as can be seen in the results summarised in Table 5. These results also show that higher bargaining coordination is generally found to be negatively related to unemployment. One way this is achieved is through the avoidance of "leap frogging", where uncoordinated firms are competing between them by paying higher wages in order to extract more effort from existing employees or attract more productive employees from other firms (Aidt and Tzannatos, 2002: 28).<sup>7</sup> The result then would be a significantly higher aggregate level of wages and, thus, reduced employment. Recent evidence also shows that coordinated bargaining systems can also lead to significant productivity gains for individual firms/workplaces (Braakman and Brandl, 2016; see also ILO, 2016).<sup>8</sup>

Finally, some of the most recent cross-country studies have also examined the impact of the level of the minimum wage. The results are not always clear-cut, echoing also the inconclusiveness of the relevant micro-econometric literature (see footnote 3 above). While Bassanini and Duval (2006) and Avdagic (2015) do not find evidence for a harmful effect of a high minimum wage on aggregate and youth unemployment respectively, Bolton and Bondibene (2012) report a significantly negative relationship between the minimum wage and the youth employment rate. However, an authoritative review by Croucher and White (2011) of the international literature on the impact of minimum wages on the youth labour market concludes that:

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<sup>7</sup> Leap frogging can also be the result of the uncoordinated actions and bargaining strategies of different local unions.

<sup>8</sup> Kornelakis et al. (2016) do not find evidence of a harmful effect of either employee representation or union bargaining on workplace productivity in Europe. They point instead to the beneficial role of various human resource practices, such as workers' training.

“The size of employment effects from the introduction of or increases in minimum wages for young people in general are extremely small and on the margins of statistical significance in the great majority of studies surveyed.” (Croucher and White, 2011: 8)

In contrast to the voluminous literature examining the relationship between collective bargaining and the *quantity* side of the labour market, very few comparative studies are actually interested in the *quality* aspect. A reason for this may be the fact that relatively little theoretical work has examined the relationship between unions and bargaining and the quality of working life. An example of this latter work is the one by Gallie (2003) who relates the strength of Scandinavian unions and their active involvement in job design and work organisation to the distinctive quality of work observed in countries such as Sweden and Denmark. Notwithstanding this limitation, the last two rows of Table 5 report results from two cross-country studies on the relationship between union strength and job autonomy. Both Ollo-López et al. (2011) and Esser and Olsen (2012) report a positive association between various measures of union strength and the degree of job autonomy. Esser and Olsen (2012) also report a positive (but not equally robust) association between union density and job security. It is obvious, however, that more work is needed in this field, possibly by combining both time-series and cross-country data and relating them to other indicative measures of job quality.<sup>9</sup>

The following section examines in more detail the comparative standing of the Greek labour market concerning its collective bargaining and minimum wage legislative framework. Before proceeding with that, it is worth referring here to a few country-specific results concerning the impact of the institutional framework on the

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<sup>9</sup> As mentioned earlier, since both the level and the distribution of wages can be considered aspects of job quality (Green and Mostafa, 2012), union strength is even more clearly related to a better quality of working life for employees through its increasing and equalizing effect on wages. Because of the link, however, between wages and employment, i.e. the quantity side of the labour market, we do not consider this issue in more detail.

performance of the Greek labour market. On the employment effects of collective bargaining, no relevant study could be identified. Daouli et al. (2013) report a significant wage premium among firms with firm-level bargaining agreements, a premium that is comparable with estimates from other countries with similar collective bargaining systems (e.g. Spain). The message from the overall discussion in this section, however, is that it would not be prudent to infer a possible aggregate employment effect from this result.

On the other hand, some limited evidence has accumulated over the years on the employment effects of minimum wages in Greece. While Koutsogeorgopoulou (1994) reports some negative estimates for employment in the manufacturing sector, Karageorgiou (2004) fails to uncover any significantly negative impact on teenage or youth employment. More recently, both Yanellis (2014) and Karakitsios (2015) report that the larger reduction in the minimum wage for young adults (younger than 25 years) in 2012 (see below), may have had a positive effect on their relative employment, putting a break on the collapse of employment during the current crisis. It remains an open question whether these results are robust enough to withstand further and more detailed examinations.

***Table 5 Summary of latest econometric work on the impact of CB systems and minimum wages on employment performance and job quality***

<b>Study and authors</b>	<b>Countries and years covered</b>	<b>Dependent variable</b>	<b>Effect of characteristics of collective bargaining system</b>
<b>Nickell et al. (2005)</b>	20 OECD countries, 1961-1995	Unemployment rate	<i>No robust effect</i> of union density; Higher bargaining coordination <i>reduces</i> unemployment; Higher bargaining coordination interacted with higher union density <i>reduce</i>

			unemployment
<b>Bassanini and Duval (2006)</b>	20 OECD countries, 1982-2003	Unemployment rate	“High corporatism” (i.e. centralised or coordinated bargaining) <i>reduces</i> unemployment and <i>dampens the negative effect</i> of macro shocks; <i>no robust effect</i> of union density; <i>no direct effect</i> of high minimum wages; high minimum wages interacted with high tax wedges <i>increase</i> unemployment
<b>Baccaro and Rei (2007)</b>	18 OECD countries, 1960-1998	Unemployment rate	Higher union density <i>increases</i> unemployment; some evidence, however, that higher bargaining coordination interacted with higher union density <i>reduce</i> unemployment
<b>Stockhammer and Klär (2011)</b>	20 OECD countries, 1982-2003 (additional analysis)	Unemployment rate	Higher union density <i>increases</i> unemployment, but higher bargaining coverage <i>reduces</i> it; bargaining coordination <i>reduces</i> unemployment but the result is not robust across specifications

	for 1960-1999)		
<b>Dolton and Bondibene (2012)</b>	23 OECD countries, 1971-2009 (not all countries available in all years)	Adult and youth employment rate	A higher minimum wage <i>reduces</i> youth employment; no robust result for adult employment
<b>Avdagic and Salardi (2013)</b>	32 EU and OECD countries, 1980-2009	Unemployment rate	Higher bargaining coordination <i>reduces</i> unemployment; Higher union density <i>increases</i> unemployment, but the result is not robust to further checks
<b>Avdagic (2015)</b>	31 EU and OECD countries, 1980-2009	Aggregate and youth unemployment rate	Higher bargaining coordination <i>reduces</i> aggregate unemployment, no robust relationship with youth unemployment; Higher union density <i>increases</i> aggregate unemployment, but there is <i>no relationship</i> with youth unemployment; High minimum

			wages <i>not related</i> with youth unemployment
<b>Gal and Theising (2015)</b>	26 OECD countries, 1987-2010	Unemployment rate, employment rate, labour force participation rate	Higher excess coverage has an <i>adverse effect</i> on measures of performance; Higher minimum wages <i>not related</i> to unemployment, but <i>negatively related</i> to employment and labour force participation; no variable for coordination/centralisation in models
<b>Ollo-López et al. (2011)</b>	16 European countries, 2005	Job autonomy	Higher “participation of workers” (proxied by density, coverage, and representation) is <i>positively</i> and significantly related to more job autonomy
<b>Esser and Olsen (2012)</b>	19 European countries, 2004	Job autonomy, job security	Higher union density is <i>positively</i> and significantly related to more job autonomy and job security (the latter result is less robust)

Source: Author's compilation from cited sources.

### 3.2. Quantitative Analysis

This section presents the relevant characteristics of the collective bargaining system in Greece relative to a number of selected European countries. We focus on the main variables of interest, already mentioned in the previous section. Beginning from Table 6, we can see that union density is highest in the Scandinavian countries (Sweden and Denmark). Around 70 per cent of employees in these countries belong to a trade union, pointing to the distinctiveness of these countries as regards employee representation and union presence in the workplace and the overall bargaining system (Western, 1997). In contrast, less than one third of employees are union members in all other countries. Apart from the Anglo-Saxon countries (Ireland and the UK) and Bulgaria, a distinctive characteristic of both Continental and Southern Europe is also the “excess” coverage observed there: union coverage is much larger than union density (see also Boeri and van Ours, 2013), with the most extreme examples observed in Spain and, mainly, France. Although union membership is low in these countries, the predominance of multi-employer bargaining and the existence of various extension mechanisms (Visser, 2016) mean that many more employees are covered by a collective bargaining agreement. Such mechanisms are usually legally mandated, but they can also be a *de facto* reality based on traditional practice (Visser 2016; Expert Group, 2016).

Not much has changed in the past decade concerning density and coverage in the countries examined here (Table 6). Both union density and coverage have been relatively stable. This is because the framework and practice of collective bargaining has also been relatively stable in most European countries in recent years. There are two important exceptions to the above. Due to statutory limitations in the extension mechanism imposed in Portugal as part of the loan conditions imposed by the “Troika” there (Molina, 2014), union coverage declined by more than 15 percentage points during the crisis years. Specifically, Visser (2015) reports that while coverage in Portugal was around 85 per cent in 2008, it stood at around 67 per cent in 2014.

**Table 6 Union Density and Coverage in Selected Countries**

	Density (%)		Coverage (%)	
	2005-2009	2010-2014	2005-2009	2010-2014
Greece	23.9	22.1	82.6	54.3
Bulgaria	17.5	17.5	35	31.7
Denmark	68.2	66.8	82.3	83.5
France	7.6	7.7	98.0	98.0
Germany	20.1	18.0	62.6	58.6
Ireland	31.9	34.4	41.1	-
Portugal	20.7	18.7	82.7	72.2
Spain	15.9	17.0	77.9	77.5
Sweden	71.9	68.1	92.5	88.5
UK	27.2	26.3	33.8	30.2

Source: Visser (2015), ICTWSS Database. Notes: Data are not available in all years for all countries; numbers calculate means for the relevant period for available years in each country.

However, nothing compares with the evolution of collective bargaining in the crisis-stricken Greece since 2010. The radical deregulation of the labour market through a series of legislative changes due to the conditionality imposed by the loan agreements with the “Troika” severely altered the collective bargaining landscape. The *de facto* abolition of the applicability of the national-level agreement (the “EGSSE”), the freezing of the extension mechanism and the abolition of the favourability principle, led to a “disorganised decentralisation” of the system (Visser et al., 2015), a collapse in collective bargaining and a consequent radical decline in coverage.<sup>10</sup> Table 6 clearly reflects this decline, but the picture is even clearer if we look at the yearly data. According to Visser (2015), union coverage declined from 83

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<sup>10</sup> Details on the specific legislative changes in the post-2010 period in Greece can be found in, *inter alia*, Koukiadaki and Kretsos (2012), Dedoussopoulos et al. (2013), Kornelakis and Voskeritsian (2014), Koukiadaki and Kokkinou (2016), and Expert Group (2016).



percent in 2009 to 42 percent in 2013. ILO (2016b) paints an even more radical picture, pointing to a more abrupt collapse in bargaining in recent years: it estimates a coverage rate of 10 percent in 2015. In other words, while the proclaimed aim of the reforms was to decentralise collective bargaining and align wage adjustments with local needs (with the final aim of regaining competitiveness through a process of “internal devaluation”), the result has been the near disappearance of collective bargaining in the Greek labour market.

A similar evolution can be observed in the coordination of bargaining in Greece, presented in Table 7. While coordination has been more or less constant in the rest of European countries during the past decade, coordination declined significantly in Greece. This relates to the abolition of the general applicability of the EGSSE, which was acting as a coordinating mechanism by setting the annual increases in the national minimum wage and guiding in this way the wage developments resulting from lower-level bargaining. A similar picture can also be observed in Ireland, due to the recent collapse of social partnership (Geary, 2016). The “Irish miracle” of strong growth and rapidly declining unemployment since the ‘90s is sometimes credited to the wage moderation resulting from this partnership tradition (Glyn, 2005). In contrast, in the rest of the countries presented in Table 7, bargaining coordination remained stable. High degrees of coordination are observed in Germany and the Scandinavian countries, while low degrees are a reality in the fragmented systems of France, Portugal, and the UK.

**Table 7 Wage Bargaining Coordination Index in Selected Countries**

	2005-09	2010-14
Greece	4.0	1.8
Bulgaria	2.4	1.6
Denmark	4.0	4.0
France	2.0	2.0
Germany	4.0	4.0
Ireland	4.2	1.0
Portugal	2.0	2.0
Spain	3.6	3.0
Sweden	4.0	4.0
UK	1.0	1.0

Source: Visser (2016). Note: Data on the wage bargaining coordination index<sup>11</sup> are not available in all years for all countries; numbers calculate means for the relevant period for available years in each country.

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<sup>11</sup> The index values are coded as follows in the data source: 5 = maximum or minimum wage rates/increases based on: a) centralized bargaining by peak association(s), with or without government involvement, and/or government imposition of wage schedule/freeze, with peace obligation; b) informal centralization of industry-level bargaining by a powerful and monopolistic union confederation; c) extensive, regularized pattern setting and highly synchronized bargaining coupled with coordination of bargaining by influential large firms; 4 = wage norms or guidelines (recommendations) based on: a) centralized bargaining by peak associations with or without government involvement; b) informal centralization of industry-level bargaining by a powerful and monopolistic union confederation; c) extensive, regularized pattern setting coupled with high degree of union concentration; 3 = negotiation guidelines based on: a) centralized bargaining by peak associations with or without government involvement; b) informal centralization of industry-level bargaining; c) government arbitration or intervention; 2 = mixed industry and firm-level bargaining, with no or little pattern bargaining and relatively weak elements of government coordination through the setting of minimum wage or wage indexation; 1 = fragmented wage bargaining, confined largely to individual firms or plants.

Turning to minimum wage, the systems of its determination differ substantially across European countries (Schulten, 2014). Some countries have no uniform national minimum wage, but instead rely on sectoral and occupational minima decided through collective bargaining (e.g. Denmark, Sweden, and Germany before 2015). Most European countries, however, have a universal national minimum set by law, either unilaterally by the state or through a consultation process with the social partners (Expert Group, 2016). Before 2012, the minimum wage in Greece was set through peak-level collective bargaining resulting in the EGSSE, with no government involvement. A similar system is still in place in Belgium and introduced in Germany in 2015 (Expert Group, 2016).<sup>12</sup> The Greek system was abolished in 2012 and replaced by a system of unilateral determination by the government. At the same time, the minimum wage for the 25+ year old adults was reduced by 22 per cent, while that for workers aged less than 25 reduced by 32 per cent (Karakitsios, 2015).

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<sup>12</sup> Recent evidence presented by Boeri (2012) shows that the level of the minimum wage is higher when trade unions are involved in the process relative to the case where the minimum is unilaterally set by the government.

**Table 8 Minimum wage level in selected countries (Kaitz index)**

	2008	2015
Greece	0.48	0.47
Bulgaria	-	-
Denmark	-	-
France	0.63	0.62
Germany	-	0.48
Ireland	0.52	0.44
Portugal	0.49	0.57
Spain	0.39	0.37
Sweden	-	-
UK	0.46	0.49

Source: OECD.Stat, available at <http://stats.oecd.org/Index.aspx> (accessed on 18/01/2017). Notes: The Kaitz index calculates the ratio of minimum wages to median earnings of full-time employees.

The usual measure of the level of the minimum wage for comparative purposes is the Kaitz index, presented in Table 8. The Kaitz index essentially measures the “bite” of the minimum wage by calculating the ratio of the minimum to the median (or average) wage. A relatively high minimum can be observed in France, while a relatively low one is observed in Spain. Greece is somewhere in the middle of the ranking, with a bite of the minimum similar to that in Germany and the UK.<sup>13</sup> The large decline in the minimum wage in the post-2012 period is not reflected in the data presented due to, first, a sharp increase in the Kaitz index during 2010-2011, and, second, the equally large (but more gradual) decline in the median wage. This evolution is shown in Figure 1, along with a longer-term decline in the Kaitz index since the beginning of the ‘90s, resulting from the wage moderation exhibited by the

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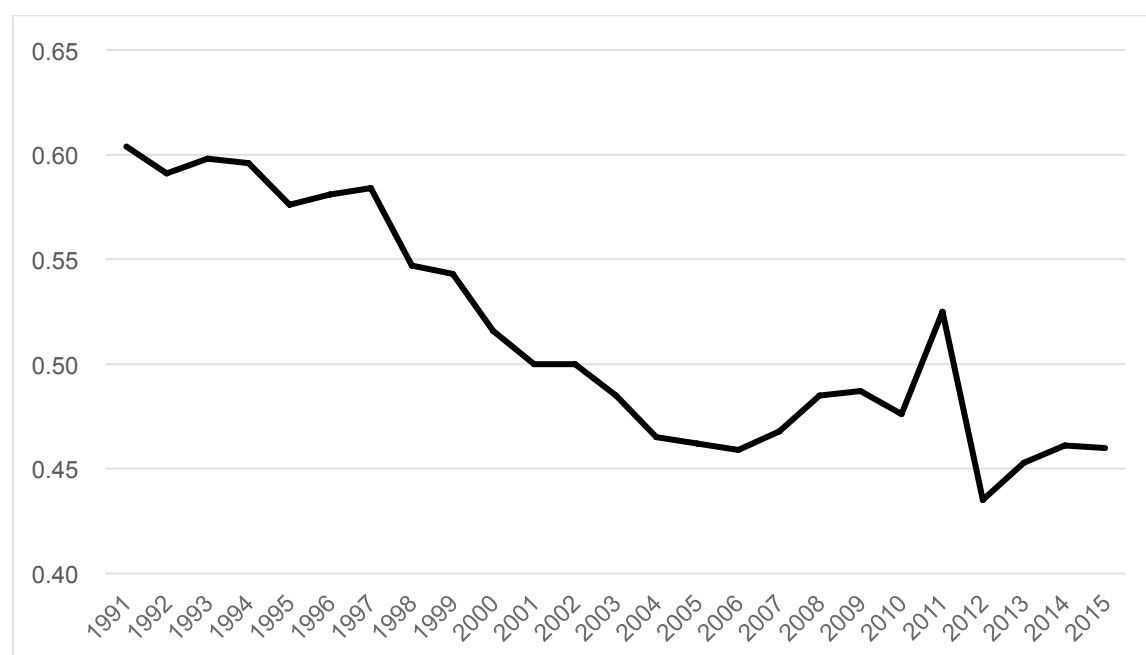
<sup>13</sup> Note that data are not reported for Sweden, Denmark and Germany (in 2008) since no national minimum wage is in place for these countries in these years. Data for Bulgaria are not available in the source.

social partners negotiating the national collective agreement. This moderation is also evident in Figure 2. The real value of the minimum wage since 2000 is plotted there alongside the contemporaneous evolution in the level of productivity. Up to 2007, we can observe relatively lower increases in the real minimum wage relative to the growth in productivity.<sup>14</sup> Obviously, the social partners adopted a cautious approach to minimum wage setting, avoiding “excessive” increases.<sup>15</sup> In contrast, some apparent “rigidity” in the system is evident during the years 2008-2010, in a period when productivity was declining rapidly while the minimum wage remained relatively stable. The change to the new lower minima after 2012 is also evident in the Figures.

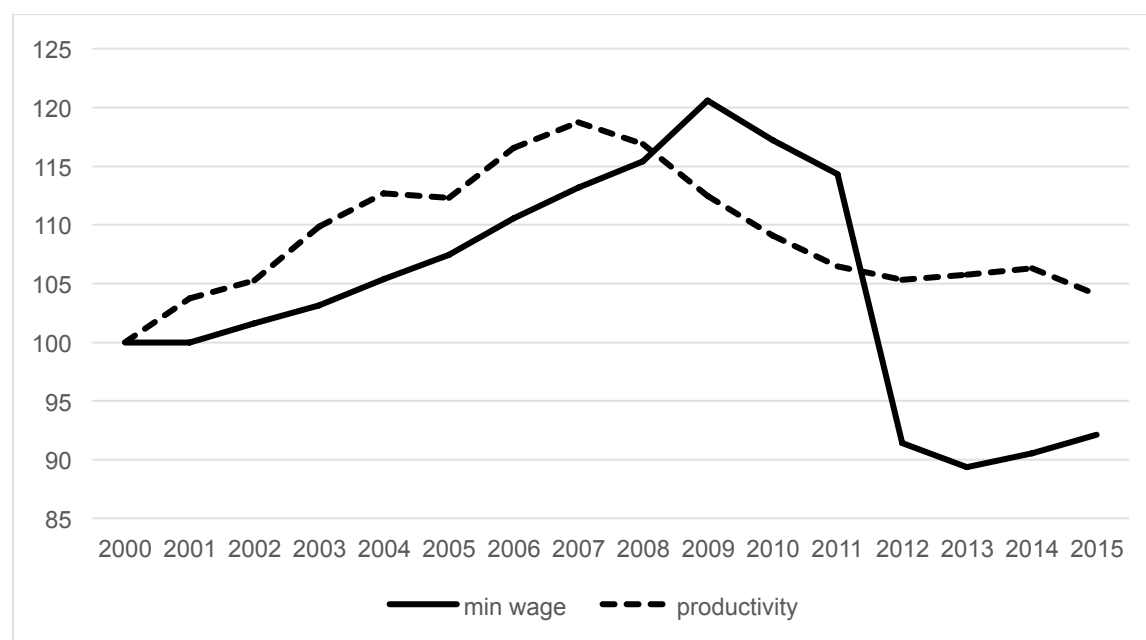
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<sup>14</sup> Extending the calculations back to the '90s (not shown in Figure 2) also reveals that while productivity grew by 13 percent during that decade, the real value of the annual minimum earnings remained stable.

<sup>15</sup> It should be noted here that Troika's conceptualization is different from what Figure 2 presents. The whole argument for internal devaluation is the gradual decline in Greece's competitiveness during its era of membership in the European Monetary Union. This decline was the result of excessive *nominal* wage increases that far outpaced productivity growth and led to an increase in unit labour costs. See Theodoropoulou (2016) for a detailed account of this.

**Figure 1 The evolution of the minimum wage in Greece (Kaitz index)**

Source: OECD.Stat, available at <http://stats.oecd.org/Index.aspx> (accessed on 18/01/2017). Notes: The Kaitz index here is the ratio of minimum wages to median earnings of full-time employees.

**Figure 2 Real minimum wages and productivity in Greece (2000=100)**

Source: Real minimum wage from OECD.Stat, available at <http://stats.oecd.org/Index.aspx> (accessed on 13/10/2016); productivity from AMECO database (series RVGDE), available at

[http://ec.europa.eu/economy\\_finance/ameco/user/serie/SelectSerie.cfm](http://ec.europa.eu/economy_finance/ameco/user/serie/SelectSerie.cfm) (accessed on 13/10/2016).

Notes: 2000=100; "Real minimum wage" is the annual minimum wage of full-time employees in 2014 constant prices at 2014 US dollar PPPs. "Productivity" is real GDP per person employed.

### 3.3. Comparative Labour Law and Employment Regulation

#### Greece

- Law no 4024/2011, Article 37, reverting the favourability principle as between the sector and company levels for the duration of the country's programme of financial assistance.
- Law no 4093/2012, Subparagraph IA 11 para. 1, regarding minimum wage regulation centrally by the State through legislative measures.
- Law no 4046/2012, regarding the ratification of the country's second MoU.
- Act of the Cabinet no 6/2012, introducing changes in collective bargaining. In Greece, prior to 2012, minimum wage was set through the cross-sector collective agreement. Law no 4093/2012 introduced the statutory setting of the minimum wage. In addition, article 1 of the Act of the Cabinet no 6/2012 introduced cuts in the minimum wages by 22% and froze them until 2016. Today, minimum wage is set by the State, with the social partners only retaining a consultative role.

The prevalent bargaining regime in Greece remains the Multi-Employer Bargaining model. However, since 2008 there has been a shift in the main bargaining levels from the sector to the company (Eurofound, 2014). Legislative measures have prioritised bargaining on company level and permitted negotiations with unspecified employee representatives in smaller companies (associations of employees). In the same vein, Law no 4024/2011 has inverted the favourability principle in favour of company level bargaining. Along the same lines, extension of collective agreements is suspended to members of the employers' associations.

## United Kingdom

- The National Minimum Wage Regulations 2015.

The government, following a recommendation by the Low Pay Commission, decides the minimum wage in the UK. The Low Pay Commission (LPC) is an independent body that advises the government about the National Living Wage<sup>16</sup> and the National Minimum Wage. LPC submits a report to the government each October making recommendations on the future level of the National Living Wage and National Minimum Wage rates, and related matters. There are 9 Low Pay Commissioners drawn from a range of employee, employer and academic backgrounds. The Commission comprises 3 representatives from employer organizations/CBI, 3 from the trade unions/TUC, 2 academic experts and a chairperson agreed by both sides. The Commission's recommendations are not binding on the government; however the latter rarely opts not to abide by them.

## Ireland

- National Minimum Wage Order 2015.

In Ireland the National Minimum Wage Act was passed in 2015 to introduce the Low Pay Commission, which comprises representatives of the social partners, academics and other experts in the area. The Minister is free to accept the Commission's

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<sup>16</sup> The term "living wage" denotes an independently calculated minimum that reflects what employees and their families need to live in the UK (with a separate calculation for London). These rates, which are typically considerably higher than the statutory national minimum wage in the UK, are calculated annually by the Resolution Foundation and overseen by the Living Wage Commission, on the basis of evidence regarding living standards in London and the UK. From April 2016, however, the British government introduced a new compulsory minimum wage premium for all workers over 25, which is referred to as a 'national living wage'. Without going into semantics, the increase in the minimum wage for over-25s that this compulsory premium has brought about is still well below the levels of the independently calculated living wage.



recommendation, decline it or decide not to make any change. If the Minister decides not to accept the Commission's recommendation, a statement with justifying reasons must be laid before the parliament.

When making a recommendation, the Commission must have regard to aspects such as changes in earnings, currency exchange rates, income distribution, unemployment rates, productivity and national competitiveness.

With regard to collective bargaining, in Ireland over 20 years of wage setting through cross sector agreements came to an end in 2009, when Ibec, the employers' organisation, formally withdrew from the national agreement. The collapse of the national agreement led to wage negotiations moving to company level, with Ibec and ICTU (the Irish Congress of Trade Unions), concluding protocols in order to provide guidance to company-level negotiations. Furthermore, the sector wage-setting mechanisms, which feature in a few sectors, have been suspended indefinitely.

## **Germany**

- The Minimum Wage Act (Mindestlohngesetz).

Currently, the minimum wage in Germany is set in accordance with the Minimum Wage Act, which gives a strong role to the social partners and stipulates that any increase in the level of the minimum wage will be decided by a Minimum Wage Commission. The Commission will analyse the economic and labour market impact of such rise and decide accordingly. The Commission comprises 3 representatives from employer organisations, 3 from the trade unions, 2 research experts and a chairperson agreed by both sides.

## **France**

- Decree no 2015-1688.
- Fillion Law (2004)

The French system for the determination of the minimum wage is a mixed one, whereby the government adjusts the minimum wage based on advice by an expert committee automatically once a year. The committee's advice is not binding. In

addition, according to 2004 Fillion Law, the favourability principle has been inverted, giving precedence to agreements concluded at company level over the provisions specified in higher-level agreements.

With regard to extended bargaining competence to non-trade union representatives, in France a 2008 law implementing a cross-sector agreement allows management of smaller companies to negotiate with the works council or other formally elected representatives in companies where there is no trade union presence.

## **Denmark**

In Denmark there is no statutory minimum wage. The level of the minimum wage is set by sectoral collective agreements.

## **Sweden**

In Sweden there is no statutory minimum wage. The level of the minimum wage is set by sectoral collective agreements.

## **Portugal**

- Decree-Law no 254-A/2015.
- Labour Code 2012

In Portugal the minimum wage was determined by the government, yet the social partners were consulted. In 2012, the Labour Code inverted the favourability principle, specifying that the provisions of agreements concluded at company level take priority over those contained in sector and cross-sector agreements. However, the social partners retained the option to re-establish the principle under the relevant sector or provincial agreement if they so wished.

With regard to the possibility of non-trade union representatives to conclude agreements, in 2009 a law was passed conferring bargaining competence to work councils in larger companies (150+ employees) with the consent of the trade union.

In the same vein, extension of collective agreements was suspended in sectors where employers' organisations employ over 50% of the relevant workforce.

## **Spain**

- Royal Decree no 1171/2015, approving an increase of 1% in the minimum wage for 2016.

In Spain, minimum wage is determined unilaterally by the State, however the latter seeks the social partners' consultation. In 2015, the social partners were informed and consulted about the increase in the minimum wage, however they were not consulted with regard to the percentage of the increase.

Insofar as collective bargaining is concerned, in Spain there has been a legislative change prioritizing company level bargaining over the provisions specified in sector or territorial agreements, thus leading to decentralization. In addition to that, in 2012 a cross-sector agreement between the social partners encouraged the development of wage bargaining at company level. Moreover, in Spain the favourability principle has been suspended in favour of company level bargaining. However, the social partners retained the option to re-establish the principle under the relevant sector or regional (provincial) agreement, if they so wished.

## **Bulgaria**

- Ministerial decree no 139/2015, approving minimum wage increases.

In Bulgaria the minimum wage is set through negotiations between the State and the social partners. The Bulgarian National Council for Tripartite Cooperation (NCTC) has an advisory role in the determination of the minimum wage. The government is under an obligation to consult with the NCTC, however the latter's opinion is not binding.

With regard to collective bargaining, there has been a tendency these past few years in the manufacturing sector for sector agreements to be replaced by agreements on company level, particularly in sectors such as chemicals, food processing and electrical equipment manufacturing.

### 3.4. Qualitative Analysis

One of the key issues that has been the object of labour market reforms as part of the bailout packages and associated Memoranda signed between the creditors and the Greek government concerns the level of minimum wages and the mechanism through which minimum wages are determined. In short, the pre-crisis system provided that minimum wages were set by the National General Collective Agreement (*Ethniki Geniki Syllogikh Symvasi Ergasias*-EGSSE). The agreement was part of negotiations taking place between GSEE, on the one hand, as representative of employees, and SEV, ESEE and GSEVE, on the other, as representatives of business.

Law 1876/1990 on free collective bargaining described the minimum wage determination process in detail. This Law conferred the autonomy to social partners to freely determine minimum wages without state intervention or statutory regulation. This institutional framework remained in force up until 2012, when the Memoranda imposed an obligation on the Greek government to decrease the minimum wage and determine it via statutory regulation. As of 14<sup>th</sup> February 2012 the legal minimum wage for wage earners over 25 years' old was set at €586 gross (€490 net), which represents a decrease of 22%. The legal minimum wage for wage earners up to 25 years' old was set at €511 gross (net €440), which represents a decrease of 32%.

The motivation of the Troika/institutions behind this reform was to restore the 'cost-competitiveness' of the Greek economy. According to the Second Memorandum of 2012 (p.104):

"These reforms should support the on-going adjustment of the labour market, with the aim of reducing nominal unit labour costs in the economy by 15 per cent over the period 2012-14, and thus help restore cost-competitiveness and boost employment in the medium to long term."

Against this background, the positions of the social partners regarding the future determination of the minimum wage do generally converge on their support for social dialogue and the return to the prior system of free collective bargaining without state intervention. However, this broad agreement conceals the nuances, fault lines and

hidden fractures between and within social partners. For this reason, we turn to the material from the fieldwork to shed further light on this issue.

### *3.4.1 Minimum Wages – Wage Setting Mechanism*

Starting with the peak employers' associations, all of them agree that they need to return to the previous system of setting the minimum wage via free collective bargaining. As the representative from SEV indicated:

“The point to which we all agree is the return to the universality of the National General Collective Agreement (EGSSE), and by this we mean that the national minimum wage should be defined by the EGSSE. At the moment, this [universality] has changed with the latest legal framework; the minimum wage, if we were to set it at the national level by the EGSSE, it would be applicable only to our members, whereas the national minimum wage that is applicable to all the employees in the country, is defined by the decision of the Ministry of Employment. The [proposed] system by which the minimum wage will be set has not started functioning yet. We have our reservations, for various issues, predominantly regarding how the advisory part will be structured, because it appears that the role of the social partners will be advisory and consultative.” (Interviewee SEV, 29/7/2016)

The importance of the role of the social partners under a proposed new system appears to be a critical objection to the proposed reforms and this reflects a broad consensus across both employer representatives and trade union representatives. As the SEV representative explains further:

“... there is an advisory/consultative body, in which the social partners participate, along with higher education institutions, the Bank of Greece, and others. We suggest that this body should be comprised only by the social partners, who are signatories to the EGSSE and no-one else, because these are the representatives of Greek entrepreneurship, on the one hand, and the employees of the country, on the other. Everyone else should be able to provide evidence and data, but should not be able to provide an opinion or advise the State so as to set minimum wages.” (Interviewee SEV, 29/7/2016)

“The objections that have been put forward do not concern the whole system, but the part of that suggests that the Minister engages into consultation with all the previous institutional actors that I mentioned.” (Interviewee SEV, 29/7/2016)

Interestingly, other employers’ associations representing small medium sized enterprises or commercial firms share this position. As the representatives from the GSEVEE and ESSE suggested:

“The bold intervention of the state in 2012, with a pretext of [increasing] competitiveness and reducing unemployment, was mandated by the creditors and the interests of large corporations in the country. It did not bring the expected results. Besides, GSEVEE, also in their discussions with the then Prime Minister, Mr. Loukas Papademos, had categorically emphasised that it does not consent to the state intervention in [i.e. statutory regulation of] the national minimum wage and, in the words of the then President [of GSEVEE], declared to the Prime Minister, that, if the country is unable to guarantee €751, then it should formally declare bankruptcy, because in essence it is already bankrupt. We are requesting to return the wage-setting system to the social partners, taking into account the (economic) situation as it has developed.” (Interviewee GSEVEE, 4/8/2016).

Although we will return to the question of the level of the minimum wage, the representative of ESEE has also argued along these similar lines:

“As far as the issue of free collective bargaining and the setting of the level of the minimum wage is concerned, you are very well aware of the fact that when there was an agreement between the social partners, this agreement ended up with the competent Minister for a simple ratification. We request the restoration of this process, [we do] not [want] the setting of the level of the minimum wage by the creditors, and then the simple acceptance of this proposal by the competent Minister without the participation of the employers and employees. The EGSSE has, I believe, been based on this exact philosophy, to allow the existence of social dialogue, as it happens in most countries in Europe and even in Germany, where, as you said, there is no EGSSE, but there are

sectoral agreements and free collective bargaining. I do not understand why we should not have this freedom of self-regulation of the market in our hands. I hold the view that no Minister and no government is fully aware of the real conditions of the market and is not able to make sense of them.” (Interviewee ESEE, 21/7/2016)

Finally, the consensus in favour of returning to the previous status quo of setting minimum wages by collective bargaining is shared by the representatives of employees:

“Firstly, we have to make an acknowledgement. Since 1990, by the voting of the Law 1876/1990 on free collective bargaining, this law has been one of the most democratic at the level of the European Union, which gives the opportunity to the social partners, either at the national level or at the industry-level or at the firm-level, to negotiate among themselves and agree the terms and conditions of work. [...] There was no problem with the implementation of this law, which was embraced by all social partners. Admittedly, there were some irregularities or abnormalities, as it may happen with the implementation of any legal framework, and we would have been open, if we were invited to a discussion of the improvement of this legal framework” (Interviewee GSEE, 30/8/2016).

“Now, as far as the role of the state is concerned. The state may have the role of the regulator; [setting] the rules of the game, but it cannot, however, be the actor who imposes the decisions, who intervenes for the minimum wage and will set the minimum wage. And here there is a contradiction, that is why I spoke before about ideological obsessions. On the one hand, we speak about free markets, liberal economy, for enterprises and an economy that is not subject to restrictions, and, on the other hand, we are heading towards something that is totally different from what we assert, we are heading towards the imposition of state decisions, which should have been taken by the players who are part of this game. The state is not just taking the role of the arbitrator, but functions as an authoritarian state with the change of all the rules of the game, especially in the collective agreements. (Interviewee GSEE, 30/8/2016).

To sum up, it transpires from the interviews that there is a deep mistrust towards the role of the state by all social partners. In an unusual degree of consensus among social partners, all key actors require the setting of minimum wages freely by themselves without any state intervention. They justify this on the “logic of appropriateness”: they are better informed about the labour market, and thus, better placed to set the minimum wage. Although there are some hidden fractures in the details, all seem open to improvements of the wage setting system. They are open (for instance SEV) to accept data and evidence from other actors (academics, Bank of Greece, etc.). But the bottom line is that they want to be the ones who set the minimum wage. Unlike several other countries in the European Union (cf. previous section/table), which offer a statutory regulation, there seems to be a deep mistrust in the state. This mistrust is best explained historically, as a residue of the way that ‘state corporatism’ has operated in Greece. The next section turns to the more contentious issues of the level of the minimum wage.

#### *3.4.2 Level of Minimum Wages/Unit Labour Costs*

As regards the issue of the level of the minimum wage, there seems to be a deep fracture *between* employers and trade unions and *within* employers themselves. Some of the social partners would be positive to the gradual restoration of the minimum wage to the levels of 2012, while others offer a more ambivalent position. Indicatively, the interviewee of SEV suggests that:

“De facto, the situation cannot be returned to the previous *modus operandi*, because of the condition of the economy and generally the dynamics, which moves forward and not backward. Thus, we do not enter into a debate of whether we agree with returning the wage at any particular level.” (Interviewee SEV, 29/7/2016)

By contrast, the representatives from ESEE are in favour of a gradual return to the level of wages in 2012:

“ESEE has a clear position in favour of the restoration of the level of the minimum wage to pre-crisis levels, and especially given how it was reduced from 751 Euros to 586 and 510 for young people under 25 years’ old, and



return in the same way and gradually within a three year timeframe, so that the economic conditions allow this. In other words, to increase the level of the wage to 586 and then to 684 and reach 751 Euros. We believe this is a sustainable threshold (living wage) for an employee to live with decency.” (Interviewee ESEE, 21/7/2016)

Closely connected to the debate around the level of wages is a parallel debate of whether the increases in the previous years have been inflationary and led to a disproportionate rise in unit labour costs compared to productivity or other European countries. This is usually the line of argument adopted by the Troika/institutions and especially prevalent in the analyses of the IMF (cf. footnote above on Troika’s conceptualization of productivity and unit labour costs). We asked social partners their views about these issues, and gathered a variety of perspectives. As the GSEE representative noted:

“As regards the inflationary pressures, I would say that the average of the increases that we discussed in the good times, was about at the level of inflation; essentially, we were bargaining for increasing wages at the level of inflation or, in some sectors where there was high growth and productivity, there was something on top at the level of agreement, but there was never anything above the productivity increase. We need to remind [everyone] that there was a “rally” of the Greek economy since the early 2000s, when for about an 8-year period we had a dramatic increase in the financial results of companies and a rise in productivity and economic growth rates [which meant that Greece ranked] very high at the level of the European Union.” (Interviewee GSEE, 30/8/2016)

This balanced assessment is not necessarily shared by employers’ representatives. For instance ESEE:

“...frankly, there were exaggerations in the past with what the employees requested. Pushing, and because of frequent elections in Greece, pushing politically, we had arrived at a level of exaggeration. Whatever increases they wanted [they would get]. We may be putting a break in the collective

agreements, but in the end it always turned out whatever the employees wanted, because they were closely affiliated with some political party.” (Interviewee ESEE, 21/7/2016)

Similarly, the representatives of GSEVEE:

“Firstly, they are right those who say that there was an inflationary pressure in the determination of sectoral agreements. In other words, in Greece there was a wrong practice, and the social partners shared this understanding, on the basis of which there was a connection between the increases of sectoral agreements with the increases which were given to the EGSSE which, as a result, operated regressively in the minimum wage. For example, the minimum wage would increase by 5%, in the sectoral, either directly or during the mediation and arbitration process; [the social partners] took as a base the increase of the minimum wage and the negotiation started for levels above 5%. This created an inflationary trend. Admittedly, this also reflected the logic of employers pre-crisis, who could very easily rollover the labour cost increases to consumption [price increases].” (Interviewee GSEVEE, 4/8/2016)

This discussion highlights a number of issues. First, while increases in the minimum wage may not have been inflationary, as there were ‘cripple effects’ in the rest of the wage structure through sectoral agreements, the total impact of increases may have been inflationary. Second, it highlights the role of product markets and how the employers have the ability (in oligopolistic or monopolistic settings) to transmit the cost increase to prices. Finally, it highlights the importance of the institutional framework and institutional practice regarding the processes of mediation and arbitration under OMED (Organization for Mediation and Arbitration). The recent reforms included a reform of the system towards abolishing the right of trade unions to seek unilaterally a compulsory arbitration decision.

### *3.4.3 Conciliation and Arbitration Process*

The peak employers’ representative SEV suggested that this was a problem that they have highlighted even back in the 1990s during the enactment of the legal framework around OMED:

“... Since before the law was enacted [Law 1897/1990] we had warned that it would create a problem and it would lead to distortion of the collective bargaining structure, which would be built because of the compulsory arbitration.” (Interviewee SEV, 29/7/2016)

“This is exactly what happens with the arbitration, that is there is now evidently the assumption that, insofar as there is compulsory arbitration to which I can get very easily and which can give me more than what I can get with the negotiation and much more easily, the negotiation is rendered redundant”. (Interviewee SEV, 29/7/2016)

This view of arbitration as a distortion of the system echoes also the views of other employers' associations such as GSEVEE:

“This culture, which has been embedded, is distortive at the level of arbitration and mediation. [...] I mean that the [independent experts serving as] mediators and arbitrators have in their majority the inclination to function neither as mediators nor as arbitrators, but as protectors of the employees only and we do not have a balanced functioning of OMED” (Interviewee GSEVEE, 4/8/2016)

By contrast, GSEE appears to offer a slightly different side of the story as regards the established practice of OMED:

“Even at the stage of the mediation, in which there is detailed and exhaustive discussion, the mediator concludes in their proposal, the powerful side is the employers' side. They [the employers] are the ones who ‘call the shots’, they have the right to impose a range of issues in the workplace, because they are the ones with the decision-making power. There are very few acceptances of mediator proposals from the employers' side. (Interviewee GSEE, 30/8/2016)

Moving on, in the next section we will discuss the issue of the structure of the collective bargaining system.

#### *3.4.4 Collective Bargaining Centralization/Decentralization*

One of the key changes as part of labour market reforms that affect the function and structure of collective bargaining related to the so-called ‘principle of favourability’, which was abolished. In a nutshell, the pre-crisis institutional framework suggested that sectoral/industry-wide collective agreements minima should not be set below the level set by the national minimum wage, whereas company-level agreements’ minima could not be set below that of sectoral agreements. In the case of cumulative application of different agreements (*συρροή συμβάσεων*) the most favourable to employees would apply.

More specifically, Law 3899/2010 and then Law 4024/2011 “Regulations of Collective Bargaining” enacted the following institutional framework:

- a) the possibility of signing company-level agreements with non-trade union representative bodies termed “associations of employees” (*ενώσεις προσώπων*);
- b) the possibility of concluding company-level agreements for enterprises which employ fewer than 50 employees (which used to be covered by sectoral agreements);
- c) the suspension of the “favourability principle” (*αρχή της εύνοιας*) for as long as the mid-term framework for fiscal strategy is in effect and the primacy of company-level collective agreements over sectoral agreements in the case of cumulative application (i.e. the special company level agreements are no longer valid);
- d) the suspension of the “extension principle” (*αρχή της επεκτασιμότητας*) of coverage of sectoral and occupational collective agreements.

On these and other changes in the collective bargaining system, the peak employers’ association appeared to defend the logic of the direction of institutional change. As the employers’ interviewee noted:

“We believe that company-level agreements should be the ones that predominate, because every single enterprise is aware of its capacity and up to which point the level of wage can get. If there is no company-level agreement,

then there may be coverage by sectoral collective agreements.” (Interviewee SEV, 29/7/2016)

However, this direction of change appears in direct confrontation with what the trade unions’ side holds about this issue. As the interviewee from GSEE suggested:

“In other words, what has happened now with the “associations of employees”, in which the employer puts 5 executive/managerial employees, they set up an association of employees and then sign a company agreement tailored to its needs, which is imposed to the rest of the workforce, which may not be in agreement, but is unable to react; this is where there is greater need for sectoral collective agreements. These agreements have broad coverage and they serve fair competition.” (Interviewee GSEE, 30/8/2016)

### 3.5. Summary

- In the textbook labour market model of economic theory, trade union activity and different practices of collective bargaining should lead to an inefficient allocation of resources, and to a lower employment level compared to an ideal, free from regulation, perfectly competitive labour market.
- In contrast to these perspectives, theories that stress the imperfect nature of labour markets point to the efficiency enhancing effects of institutions and legislation related to pay determination and employee representation.
- Econometric studies on the effects of the collective bargaining framework and minimum wage levels on employment performance are quite inconclusive.
- The relationships estimated in any such study are particularly sensitive to slight changes in the modelling choices and econometric specifications employed, the time-period of analysis, or the estimators used. Consequently, the estimated results are not robust to minor changes in the above aspects, something that renders any policy conclusions unwarranted.
- Academic economists are quite cautious in the policy interpretation of their results, but international organizations such as the IMF derive strong policy implications from their results.

- A balanced assessment suggests that the implications of alternative structures of collective bargaining are poorly understood, and therefore, the IMF should tread carefully in its policy advice in this area, particularly since governments may have limited ability to reform existing systems. Moreover, trust among social partners appears to be just as important in bringing about macro flexibility at the structure of collective bargaining.
- In contrast, a relative consensus seems to exist among researchers on the merits of coordinated bargaining, stressing theoretically and empirically the beneficial effects of coordinated bargaining between different unions and employers' associations on labour market performance.
- Recent evidence also shows that coordinated bargaining systems can also lead to significant productivity gains for individual firms/workplaces.
- Few studies have looked at the relation between job quality and collective bargaining; but some associate the strength of Scandinavian unions and their active involvement in job design and work organization with the distinctive quality of work observed in countries such as Sweden and Denmark.
- Not much has changed in the past decade concerning density and coverage in other European countries; both union density and coverage have been relatively stable.
- Due to the far-reaching labour market reforms in Greece, the collective bargaining coverage declined from 83 per cent in 2009 to 42 per cent in 2013, while ILO estimates a coverage rate of 10 per cent in 2015.
- Similarly, coordination has been more or less constant in other European countries during the past decade.
- Coordination declined significantly in Greece from an average index of 4.0 (2005-09) to an average of 1.8 (2010-14). This relates to the abolition of the general applicability of the EGSSE, which was acting as a coordinating mechanism by setting the annual increases in the national minimum wage and guiding in this way the wage developments resulting from lower-level bargaining.
- A similar picture can also be observed in Ireland, due to the recent collapse of social partnership.

- The evolution of the minimum wage as a ratio to median wage since the beginning of the '90s, suggests a broad policy of wage moderation exhibited by the social partners negotiating the national collective agreement.
- This moderation is also evident in relation to productivity; up to 2007, we can observe relatively lower increases in the real minimum wage relative to the growth in productivity, suggesting that the social partners adopted a responsible approach to minimum wage setting, avoiding “excessive” increases.
- In contrast, some “rigidity” in the system is apparent during the years 2008-2010, at a period when productivity was declining rapidly while the minimum wage remained relatively stable.
- As regards minimum wage setting, there appears to be consensus among actors, as all social actors support the return to the previous institutional framework and setting of the minimum wages by national general collective agreement (EGSEE).
- As regards the question of inflationary pressures, there are different readings; most of the employers suggested that the previous system may have led to some inflationary pressures, whereas the trade union side suggested that the increases always followed inflation and productivity increases.
- As regards mediation and arbitration, the employers' side was unanimously against the compulsory arbitration system, whereas the employees' side was in favour.
- As regards collective bargaining centralization and decentralization, there is a range of views. GSEVEE is in favour of sectoral agreements with a complementary role for company-level agreements. ESEE is in favour of sectoral agreements and against occupational agreements, with a complementary role for company-level agreements. SEV is representing companies and, as such, is more favourable towards company-level agreements. GSEE is in favour of sectoral and occupational agreements with a complementary role for company-level agreements.





## 4. Employment Protection Legislation and Working Time

### 4.1. Theory and Evidence

Employment protection legislation (EPL) is often considered one of the most important labour market rigidities since it constrains firms from hiring and firing workers at will and reacting quickly and efficiently to their changing needs (Lindbeck, 1996; Siebert, 1997; IMF, 1999). Laws relating to firing (such as dismissal costs, notification periods, procedures relating to collective dismissals) can have a harmful effect on labour demand. In the presence of strict and costly dismissal rules, firms view hiring as an “irreversible investment” (Siebert, 1997: 49), since they will not be able to freely and cheaply fire workers if the market conditions become unfavourable in the future. Hence, firms anticipate this and hire fewer people in the first place, even if conditions are favourable and the optimal level of employment should be higher.

EPL also increases the bargaining power of “labour market insiders”, i.e. already employed workers with significant job security (Lindbeck, 1996: 620-621). Turnover costs for insiders are increased through a stricter EPL and this gives them the bargaining power to demand higher wages. Hence, labour demand declines and unemployment increases or persists at a high level. EPL restrictions can thus lead to unemployment “hysteresis”, i.e. persistent unemployment even when the business cycle is favourable.

Saint-Paul (1997) also offers a “political economy” dimension to the debate on EPL. Starting from the assumption that institutional rigidities, such as EPL, contribute to a higher unemployment level, he tries to offer an answer to why such rigidities (and, specifically, high firing costs) are not removed for a more efficient allocation of resources to be attained. He argues that this happens because the population group most severely affected by a high unemployment level, that is the unemployed persons, is a minority and heterogeneous group that cannot easily be organised and demand the “necessary” reforms.<sup>17</sup> Hence, for the reforms to be promoted and

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<sup>17</sup> This echoes the classic Olsonian collective action problem. See Olson (1965).

enacted, support from the much more numerous employed persons is needed. However, these are labour market insiders that are protected from unemployment due to this specific labour market rigidity, the EPL. Thus, they have no incentive to support EPL reforms, even if unemployment persists at an inefficiently high level.<sup>18</sup>

Having as benchmark the perfectly competitive ideal of the textbook labour market model, working time regulation can also be considered a source of an inefficiently low employment level. Restrictions such as legal maximum daily or weekly working hours, annual leave entitlements and mandatory overtime premia, disrupt the matching of hours demanded with hours supplied. For example, if the only available choice is between a full-time job and no job due to legislative restrictions, a worker with a high reservation wage may decide not to enter the labour market (Boeri and van Ours, 2013: 130). Similarly, if only the option of part-time work is available, a worker with a low reservation wage may involuntarily end up in such a job (ibid: 131). In both cases, demand is not efficiently matched with supply. Consequently, the optimal level of employment and/or working hours will not be attained.

Contrary to the above theoretical arguments, the related empirical literature has failed to find any negative relationship between the strictness of EPL or working time regulations and various measures of labour market performance. For EPL, a summary of the most recent findings is presented in Table 9.<sup>19</sup> A reading of the last column of this Table and of the arguments found in the relevant work leaves no doubt

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<sup>18</sup> It should be noted here, however, that in spite of Saint-Paul's (1997) assertion that the unemployed would be in favour of labour market deregulation, the empirical evidence from attitudinal surveys contradicts this view. The unemployed, and labour market "outsiders" in general, seem to be in favour of more regulation and stricter employment protection. See e.g. Emmenegger (2009) for the attitudes of unemployed in Europe and Svalund et al. (2016) for those of workers in insecure jobs in the Nordic countries.

<sup>19</sup> For the rest of this section we will refer to working time regulations only in passing. The reason for this is that the relevant literature on labour market institutions and performance has largely neglected the examination of the effect of such regulations on the aggregate level of employment or unemployment.

concerning the consensus in the literature. This is neatly summarised in the following quote by Bassanini and Duval (2006: 46):

“...in line with a number of previous studies, no significant impact of employment protection legislation (EPL) on aggregate unemployment is found.”

The same conclusion is also reached by the OECD who have radically altered their initial theoretical arguments and policy prescriptions, which were more emphatically laid out in their influential *Jobs Study* (OECD, 1994). Summarising in 2004 the then available evidence, they also point to the inconclusiveness of the relevant work concerning the relationship between EPL and measures of labour market performance (OECD, 2004). Their subsequent publications also reach similar conclusions (OECD, 2006; 2013).

Even within the mainstream theoretical framework then, the relationship between EPL and the aggregate unemployment level is not as clear-cut as the above discussion of relevant theories and empirical results implied. A stricter EPL reduces both inflows into and outflows from unemployment by, respectively, protecting existing jobs and constraining the ability of unemployed people to find employment (OECD, 2004: 63; Nickell, 1997; Nickell et al., 2005). Moreover, according to the OECD (2013), labour market reforms that aim in concurrently lowering the employment protection of specific groups of workers (e.g. young workers) and liberalising the use of temporary forms of employment, can lead to an increase in the employment of such workers and a heavier use of temporary contracts, respectively. However, the end result is the substitution of the “more expensive” workers with such “cheaper” ones, without any significant gains in total employment. Evidence for this substitution effect is reported in Kahn (2010). He studied the impact of the liberalisation in the use of temporary contracts in nine European countries during the 1996-2001 period and concluded that, while the probability of working on a temporary contract increased after the reforms, the aggregate level of employment remained stable. A similar result for a longer time period (1992-2012), a larger set of countries examined (19 European countries), and a specific focus on young people, is reported by Gebel and Giesecke (2016).

Taking into account market imperfections, such as the existence of public goods, externalities and monopsonistic/oligopolistic situations, alternative conceptualisations of actual labour markets can lead to opposite conclusions (compared to those posited by the mainstream approach) regarding the relationship between EPL, working time regulations and labour market performance. These accounts view such regulations as potentially beneficial (Streeck, 1997; Agell, 1999), as they can lead to a more efficient allocation of resources than what the case is in an unregulated labour market. For example, a worker will not choose to invest in firm-specific skills when there is a high probability that she can lose her job. A strict EPL enables the establishment of more long-term relationships that give the incentive for more on-the-job training and, consequently, higher productivity. Relatedly, collective dismissals have negative externalities, since they impose a serious burden on the public budget (through the payment of unemployment benefits) and important societal costs on the workers and communities affected. Hence, regulation of their extent and of the necessary procedures to be followed by the firm before putting them into effect is necessary (Expert Group, 2016). Moreover, in the presence of monopsonistic power (Gregg and Manning, 1997), both a stricter EPL and more protective working time regulations (Boeri and van Ours, 2013) can lead to a higher level of both wages and employment, closer to the optimal one. Finally, in an unregulated labour market, job insecurity is pervasive, while workers cannot easily be insured against labour market risk due to the standard problems of adverse selection and moral hazard. In such a setting, EPL can offer the necessary insurance and lead to a more efficient outcome (Blanchard and Tirole, 2008).

This latter point about job security paves the way for a discussion on the relationship between regulation and job *quality*. As mentioned in previous sections, various accounts consider job security an important aspect of job quality (Green, 2006; Green and Mostafa, 2012). EPL then can have a beneficial impact on the quality of jobs by increasing the feelings of job security among employed persons. The last two rows of Table 9 report relevant results from two recent studies. Anderson and Pontusson (2007) indeed find a positive relationship between stricter EPL and job security in their analysis of cross-country survey data. Esser and Olsen (2012), however, fail to find such a link. As in the case of the relationship between collective

bargaining and job quality, it is apparent that more research is needed to settle the issues involved.

Indirect evidence on the positive link between EPL and the quality of work also comes from studies of job or life satisfaction. Both Ochsén and Welsch (2012) and Boarini et al. (2013) report a positive relationship between the strictness of EPL and life satisfaction. These results are nicely reconciled with relevant results from micro-level studies. Temporary employees generally report lower levels of life and job satisfaction and a worse health status than similar employees in permanent contracts. This well-being gap is often attributed to their higher job insecurity (Origo and Pagani, 2009; Green and Heywood, 2011; Dawson et al., 2014). There is also evidence that workers' job satisfaction primarily depends on *job* security and not *employment* security (or "employability") (Chadi and Hetschko, 2016), something that may point to the inadequacy of the "Flexicurity" perspective in taking account of workers' well-being.

Finally, and though research is lacking, a relationship between working time regulation and job quality can also be inferred. On the one hand, constraints on the amount of hours an employee can work can lead to unmet workers' preferences and, hence, lower well-being. On the other hand, limits on the maximum length of the working day, on weekend or unsocial hours' working, and on the amount of overtime allowed, can have a beneficial impact on worker's health and well-being. This latter result will be even stronger if the employer unilaterally sets the pattern of working or the working hours themselves, with little employee leeway regarding the timing of her work. We should also note that the working time aspect is also included in analyses of the quality of jobs (Green and Mostafa, 2012) since it is clearly related to important theoretical and policy concepts such as "work-life balance".

To conclude this section, we need to note that very few studies have actually examined the link between EPL, working time regulation, and labour market performance in Greece. Greek data are also in general absent from the cross-country analyses reviewed above and summarised in Table 9. One relevant recent study, however, is that of Anagnostopoulos and Siebert (2015). The authors report results from a survey of workplaces in a specific Greek region that show that workplaces

which employ more temporary employees do so because they judge that temporary employees are easier to dismiss if needed. Hence, Anagnostopoulos and Siebert (2015) interpret this result as evidence supporting the restrictive nature of EPL in Greece. Apart from the fact that such a conclusion is unwarranted, given that the basic result may just be reflective of an *ex-post* rationalisation of managerial strategy concerning the hiring of temporary workers, the limited geographical focus of the study also constrains the ability to generalise from these results for the whole country.

**Table 9 Summary of latest econometric work on the impact of EPL strictness on employment performance and job quality**

Study and authors	Countries and years covered	Dependent variable	Effect of strictness of EPL (Employment Protection Legislation)
Nickell et al. (2005)	20 OECD countries, 1961-1995	Unemployment rate	<i>Insignificant</i> in all specifications
Bassanini and Duval (2006)	20 OECD countries, 1982-2003	Unemployment rate	<i>Insignificant</i> in all specifications
Baccaro and Rei (2007)	18 OECD countries, 1960-1998	Unemployment rate	<i>Insignificant</i> in all specifications
Stockhammer and Klär (2011)	20 OECD countries, 1982-2003 (additional analysis for 1960-1999)	Unemployment rate	<i>Insignificant</i> in all specifications
Avdagic and Salardi (2013)	32 EU and OECD countries,	Unemployment rate	<i>Insignificant</i> in all specifications

	1980-2009		
<b>Avdagic (2015)</b>	31 EU and OECD countries, 1980-2009	Aggregate and youth unemployment rate	<i>No robust evidence</i> of any adverse effect on either aggregate or youth unemployment
<b>Gal and Theising (2015)</b>	26 OECD countries, 1987-2010	Unemployment rate, employment rate, labour force participation rate	<i>No robust evidence</i> of any adverse effect, different results for different demographic groups
<b>Anderson and Pontusson (2007)</b>	15 OECD countries, 1997	Job insecurity	Stricter employment protection legislation is associated with <i>less</i> job insecurity
<b>Esser and Olsen (2012)</b>	19 European countries, 2004	Job security	<i>Insignificant</i> in all specifications

Source: Author's compilation from cited sources.

#### 4.2. Quantitative Analysis

We now turn to a description of the institutional and legislative regulation of the Greek labour market as concerns its strictness of EPL and its working time regulation. Table 10 presents the relevant data for EPL for two years (2008 and 2013) and for our selected comparator countries. These data correspond to the widely used OECD index of the strictness of EPL.

**Table 10 Strictness of EPL in selected countries**

	Individual dismissals (regular contracts)		Temporary contracts		Collective dismissals (additional restrictions)	
	2008	2013	2008	2013	2008	2013
Greece	2.69	2.07	3.17	2.92	3.25	3.25
Bulgaria	-	-	-	-	-	-
Denmark	2.03	2.10	1.79	1.79	2.88	2.88
France	2.67	2.60	3.75	3.75	3.38	3.38
Germany	2.53	2.53	1.54	1.75	3.63	3.63
Ireland	1.37	1.50	0.71	1.21	3.50	3.50
Portugal	4.17	3.01	2.29	2.33	1.88	1.88
Spain	2.22	1.95	3.50	3.17	3.75	3.38
Sweden	2.52	2.52	0.79	1.17	2.50	2.50
UK	1.31	1.18	0.42	0.54	2.88	2.88

Source: OECD.Stat, available at <http://stats.oecd.org/Index.aspx> (accessed on 20/01/2017). Notes: Index ranges from 0 ("least strict") to 6 ("strictest"). Values correspond to Version 3 of the OECD index.

Greece has traditionally been regarded as a rigid labour market concerning its EPL. OECD's past recommendations have always included proposals for a further liberalisation of EPL through a reduction in dismissal costs (see e.g. OECD, 2005: 105-106; 115). Burtless (2001) also argued that EPL in Greece is particularly restrictive and linked it to the lower employment level observed in the country relative to other OECD countries. The same argument was more recently made by Fotoniata and Moutos (2010). However, Table 10 presents a more nuanced picture. The regulation of individual dismissals for regular contracts was not particularly strict in 2008, with Greece depicting a similarly rigid framework as that observed in countries such as France, Germany and Sweden. Relatively light regulation was observed in the liberal Anglo-Saxon countries (UK and Ireland), as well as in "flexicure" Denmark. Portugal, on the other hand, stood out as the country with the highest value in the respective index. A similar picture is also observed for 2008 for the index measuring



the strictness of EPL for collective dismissals. Greece is located somewhere in the middle of the ranking, with countries such as Spain, Germany, Ireland and France, being more heavily regulated.

While the regulation of collective dismissals does not seem to have significantly changed in any country (apart from Spain) during the crisis years, the picture concerning individual dismissals for regular contracts is different in 2013. A series of laws in Greece after 2010, again related to the conditionality imposed by the loan agreements with the “Troika”, substantially liberalised EPL by reducing the notification period for dismissals and the related severance pay, and by increasing the trial period for employees on open-ended contracts (Dedoussopoulos et al., 2013; ILO, 2014). These changes are reflected in the value of the index for 2013. Greece now stands out as a country with a relatively light regulation in this regard, with only Ireland and the UK showing lower levels of regulation.

On the other hand, Greece stood out in 2008 as a country with a relatively strict legislative framework concerning the use of temporary contracts. Although this framework had gradually been made less strict since 2003 (Brandt et al., 2005: 50), Greece occupied a place close to the top of the index ranking in 2008. However, recent reforms have also led to a reduction in the value of the index in 2013 (ILO, 2014). Moreover, there does not seem to exist a close relationship between the strictness of EPL regarding temporary contracts and the actual extent of use of such contracts by firms. Table 11 reports the extent of temporary employment in each country in both years (see last column of Table 11). Countries such as France and Spain, with a relatively rigid framework, have a relatively high incidence of temporary employment. On the other hand, temporary employment is much lower in the UK and Denmark, two countries with relatively lax regulation.

**Table 11 Part-time and temporary employment in selected countries**

	Part-time employment (% of total employment)		Involuntary part-time employment (% of total part-time)		Temporary employment (% of total employees)	
	2008	2015	2008	2015	2008	2015
Greece	5.4	9.4	44.1	72.6	11.6	11.9
Bulgaria	2.0	2.2	51.0	60.6	4.9	4.4
Denmark	23.8	24.7	12.7	15.7	8.5	8.7
France	16.8	18.4	34.9	43.7	15.0	16.0
Germany	25.1	26.8	23.0	13.8	14.8	13.2
Ireland	18.2	22.2	13.6	37.8	8.6	8.7
Portugal	8.8	9.8	40.3	50.1	22.8	22.0
Spain	11.6	15.6	36.0	63.2	29.2	25.2
Sweden	25.7	24.3	26.1	29.4	15.8	16.6
UK	24.2	25.2	10.6*	17.9	5.3	6.1

Source: Eurostat online database, available at <http://ec.europa.eu/eurostat/data/database> (accessed on 21/01/2017). Notes: Data refer to the 15-64 years old labour force.

\* Value for 2007.

Turning now to working time regulation, we should first note that similarly harmonised comparative data on the extent of such regulation did not exist until recently. Researchers relied on data on the legal maximum working day or week, overtime premia, or the extent of part-time employment (see e.g. Boeri and van Ours, 2013). However, a recently assembled database by Adams et al. (2016) enables us to construct a working time regulation index for all the countries of interest. The index averages the values of seven items related to protective regulation for workers through working time legislation and it covers aspects of annual leave and public holiday entitlements, overtime limits and premia, weekend working, duration of the working week, and maximum daily working time. These calculations are presented in Table 12. Based on this index, Greece is again not found to offer a particularly protective legislative framework for workers. Instead, if we exclude the liberal Anglo-Saxon countries, the level of workers' protection related to working time is particularly

low compared to that observed in the Nordic countries or France. Not much change is also observed throughout the years. The basic characteristics of working time regulation seem to have remained relatively unchanged in all countries, with the exception of Bulgaria. Changes in this country should be related to the adaptation of EU law (e.g. the Working Time Directive (WTD), see next section) during its accession years.

**Table 12 Working time regulation index in selected countries**

	<b>2000</b>	<b>2007</b>	<b>2013</b>
<b>Greece</b>	0.55	0.56	0.51
<b>Bulgaria</b>	0.59	0.71	0.71
<b>Denmark</b>	0.72	0.72	0.72
<b>France</b>	0.78	0.75	0.75
<b>Germany</b>	0.50	0.50	0.50
<b>Ireland</b>	0.35	0.35	0.35
<b>Portugal</b>	0.53	0.63	0.59
<b>Spain</b>	0.48	0.48	0.48
<b>Sweden</b>	0.70	0.77	0.77
<b>UK</b>	0.18	0.22	0.22

*Source: Adams et al. (2016) and authors' calculations. Notes: The index averages the values over seven items relating to working time regulation (on annual leave entitlements, public holiday entitlements, overtime premia, weekend working, limits to overtime, duration of normal working week, and maximum daily working time). The values range from 0 ("no or lowest protection offered to workers") to 1 ("maximum or highest protection offered to workers").*

As a conclusion to this section, it is worth discussing briefly the developments concerning part-time employment in Greece and its comparator European countries. Recent legislative changes in Greece made the relevant framework for employers more favourable, in an effort to boost job creation during the crisis years (ILO, 2014). The relevant part-time employment numbers can be seen in Table 11. Firms have always made limited use of part-time employment in Greece, in contrast with what the case is in the Nordic countries or the UK. However, we can also observe a doubling of the part-time employment share during the crisis years. Job destruction

during the deep recession of the Greek economy has been extremely severe and the greatest majority of the few new jobs created have been on part-time contracts (helped also by the changes in the legislative framework). Such big changes are not observed in the rest of the countries presented in Table 11, with the probable exceptions of Spain and Ireland, which also experienced severe economic downturns and changes in their relevant legislation.

A further defining characteristic of the Greek labour market is its share of involuntary part-time employment. More than 70 per cent of its part-time workers in 2015 are in such a contract involuntarily, i.e. due to their inability of finding a full-time job. The share of involuntary part-time employment has increased in all countries, reflecting the recent cyclical downturn, but is in general lower than the share observed in Greece. This was also the case in 2008 (with the exception of Bulgaria). Some recent evidence shows that this relatively distinctive characteristic of Greece may be related to the poor quality of part-time jobs in the country (Veliziotis et al., 2015; see also ILO, 2014). This poor quality reflects a greater segmentation in the labour market and a greater proportion of part-time jobs with “secondary” labour market characteristics (such as low pay, insecurity, and low access to associated social benefits) (Veliziotis et al., 2015).

### **4.3. Comparative Labour Law and Employment Regulation**

#### *4.3.1. Working Time*

##### **Greece**

- Law 3846/2011, article 2 (part-time work).

In Greece working time standards are set by law. Statutory legislation is the most important institutional level in determining working time standards; however some adjustments may be made through collective agreements at different levels.

According to article 2 para. 2 of Law 3846/2011, an employee is working part-time in cases that its daily, weekly or monthly hours of working time are less than those of an employee working full-time. Article 2 also regulates cases whereby the employee

works full time daily hours but for fewer days per week/month (*shift working/ εκ περιτροπής εργασία*).

In order for an existing contract of a full-time employee to be transformed into a part-time one, the agreement of the latter is required. However, the employer is entitled to unilaterally reduce the employee's working days (not its working hours within the same day), thus imposing shift working.

### **United Kingdom**

In the UK there are collective agreements covering annual hours. However, sectoral or company level negotiations on work duration only play a limited part in specific sectors, with the most important institutional level regarding working time regulation in the UK being the individual level.

### **Ireland**

- Organization of Working Time Act 1997.
- Protection of Employees (Part-time Work) Act 2001.

In Ireland statutory legislation remains the most important tool of working time regulation, with collective agreements only covering annual hours regarding specific professions, e.g. train drivers.

### **Germany**

- The Working Time Act
- The Mini Jobs Reform 2003.

In Germany statutory legislation is still relevant for the definition of working time conditions; however, the former plays the role of setting the general framework for further working time regulation through collective agreements. The Working Time Act allows certain sectors to deviate from the working time regulations (eg hotels and restaurants) and also allows deviations through collective agreements.

In the same vein, mini-jobs have been an increasingly common feature in the German labour market since 2003, aiming to reduce unemployment and tackle

undeclared work. Marginal part-time employees: those earning not more than €400 a month are exempt from paying social security contributions, i.e. contributions to the statutory health, pension and unemployment insurance. In the case of the statutory pension scheme, the employer pays all of a reduced contribution of 15% (as opposed to half of the regular 19.6%) of the monthly gross wage.

## **France**

In France working time standards (in particular maximum working time) are set by law. In 2014 a new law was introduced in the country, which amounted to changes in the regulatory framework for part-time contracts, providing for a minimum working time of 24 hours a week or the equivalent over the month.

## **Denmark**

In Denmark working time is regulated through collective bargaining, by the Industry Agreement between all major trade unions and employers' organizations. The standards adopted there are improved and subsequently passed on other sectors.

## **Sweden**

- The Working Hours Act 1982.

In Sweden, the Working Hours Act sets the main working standards, yet deviations can be made through collective agreements, except in relation to overtime and resting periods. The optional nature of the Act has encouraged social partners to negotiate flexible working time arrangements at the industry or company level.

## **Portugal**

In Portugal working time standards (in particular maximum working time) are set by law and may be supplemented by collective agreements, either sectoral or at company level, provided that the latter define more favourable rules.

## **Spain**

- The Workers' Statute 1980.

In Spain working time regulation tends to be defined sectorally, being subsequently upheld at a national scale. In addition, according to article 34.2 of the Workers' Statute, the employer is entitled to unilaterally determine or alter the working hours of its workers that were initially established in the collective agreement or employment contract.

## **Bulgaria**

In Bulgaria working time is almost exclusively regulated by statutory legislation. Labour law not only regulates standard working time duration and work organization but also includes specific rules for specific categories of workers on the basis of their work characteristics. Collective bargaining regarding working time rarely exists and when it does it is limited to specific working time aspects.

### *4.3.2. Employment Protection Legislation – Collective Dismissals*

## **Greece**

- Law 3899/2010, article 17 para. 5
- Law 3863/2010, article 74 para. 1

In Greece, dismissal of an employee under a regular contract is possible upon the service of a relevant notice to the employee and notification of the dismissal to the local OAED office. The severance pay that has to be paid in such cases depends on the duration of the employee's contract.

Under Law 3899/2010, art. 17 para. 5, the first 12 months of employment constitute probationary period; in cases an employee is dismissed within this period, it is not entitled to severance pay.

Under Law 3863/2010, art. 74 para. 1, additional requirements need to be met. In cases that firms employ 20-150 employees if they dismiss more than 6 employees/month they are considered collective. In cases that firms employ over 150 employees the dismissal will be collective if it affects either 5% of the total workforce or at least 30 employees (whichever is the lowest). In such cases, a prior notification of the reasons behind the dismissals has to be made to the employees'

representative and the Prefect and Labour Inspection, whereas if the company has branches in different regions the former notification has to be made to the Minister of Labour. There is no difference in the required severance pay in cases of collective dismissals.

### **United Kingdom**

- Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992

In the UK no formal notification of the dismissal is required, yet employees with 2 years' continuous service are entitled, upon request, to a written statement of reasons regarding their dismissal. Employees are not entitled to severance pay, unless in cases of redundancy with regards to workers with 2 years' tenure. In such cases, the amount of severance pay that the company is legally required to pay depends on the employee's age. In the UK trial periods are freely agreed between the employer and the employee, yet the employee's statutory employment rights are not affected.

With regards to collective dismissals, specific regulations apply for dismissals of over 20 employees within 90 days. In such cases, the employer is under a duty to inform and consult with the recognised trade union or other elected employee representatives whereas the Department of Business, Innovation and Skills (BIS) needs to be notified thereof as well. Dismissals cannot take effect until 30 days after notifying BIS if 20-99 employees are concerned or 45 days, in cases that 100 or more employees are dismissed. There is no difference in the required severance pay in cases of collective dismissals.

### **Ireland**

- Minimum Notice & Terms of Employment Act 1973

In Ireland there is no prescribed notification procedure regarding individual dismissals of employees, so long as the dismissal is certain. The length of the notice period depends on the duration of the employee's contract whereas severance pay is only due in cases of redundancy for employees with at least 2 years' tenure, with the amount thereof depending on the duration of the employee's contract.



The trial period in Ireland is 12 months, but this time limit does not apply in certain dismissal cases, e.g. pregnancy.

With regards to collective dismissals, specific regulations apply for dismissals of over 5 employees for firms of 20-49 employees, 10 for firms of 50-99 employees, 10% of the personnel for firms of 100-299 employees and over 30 employees in firms with 300 or more employees. In such cases, the competent trade union and the Ministry need to be notified thereof 30 days before the dismissals are effected, whereas there also need to be consultation on potential alternatives and of ways to mitigate the effects of the dismissal.

## **Germany**

In Germany notification of individual dismissals need to be in writing, after oral or written warnings in cases of dismissal due to lack of performance. Previous notification of the dismissal is also required to the work council. Before notification, the employer has to wait for a week so that the works council can make a statement. There is no right to severance pay when dismissal is made for personal reasons, unless dismissal is based on business needs or compelling operational requirements.

The length of the trial period in Germany is 6 months for all employees.

For dismissals of employees to be considered collective, they have to involve over 5 employees in firms of 21-59 employees, 10% or over 25 employees in firms of 60-499 and over 30 in firms of over 500 employees. In such cases there needs to be a minimum of 2 weeks of negotiations with the Works Council prior to the notification of the dismissals to the local Employment office. The above negotiations involve the examination of alternatives to redundancy and ways to mitigate effects.

## **France**

- Labour Code

In France there is a strict procedure regarding the notification of individual dismissals, with a differentiation depending on whether the above dismissal is based on personal or economic grounds. for more information see

<http://www.oecd.org/els/emp/France.pdf> . Severance pay is only paid to employees with at least one year of tenure.

Article L1221-19 of the French Labour Code regulates the maximum duration of trial periods, which can be renewed once by a relevant provision under the applicable branch level collective bargaining agreement.

With regards to collective dismissals, there are different regulations providing for different procedures according to the number of employees concerned, the size of the company and the presence or not of staff representative bodies. In any case, there needs to be prior notification and consultation with staff representatives and notification to the administrative authorities (Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi).

## **Denmark**

In Denmark specific notification procedures regarding employee dismissals apply depending on the latter's status. In general, the employer has to serve the employee with a written notice and the employee's trade union organization needs to be notified thereof. The length of the notice period and the amount of severance pay due in such cases depends on the duration of the employee's contract.

The probationary period in Denmark is 3 months for white collars and 9 months for blue collars.

For dismissals of employees to be considered collective they have to involve up to 9 workers/month for firms with 20-99 employees, up to 9% of the personnel for firms of 100-299 employees and up to 29 workers for firms of over 300 workers. In such cases, the Regional Employment Council as well as the Union and the employer's organisation have to be notified of the dismissal. There is no difference in the required severance pay in cases of collective dismissals.

## **Sweden**

- Employment Protection Act (EPA)
- Act on Employment Promoting Measures.

In Sweden the notification procedure regarding individual dismissals differs based on whether the latter is effected on personal grounds or due to redundancy. In the latter case, the employer has to provide the employee with a written notification and initiate negotiations with the trade union before making an official decision regarding the dismissal. There is no legal entitlement to severance pay, however relevant provisions are often included in collective agreements in the form of fee-based insurance schemes, with employers' contribution payable as a percentage of payroll.

The trial period in Sweden is 6 months, upon which the employee's contract is transformed into a regular one of infinite duration (article 6 EPA).

In Sweden there is no particular definition for collective dismissals, however specific regulations apply for dismissals of 5-20 workers within 90 days (Act on Employment Promoting Measures, article 1). Regardless of the number of employees made redundant, there is an obligation to inform and consult with trade unions for firms covered by collective agreements. In addition, there needs to be a notification to the Employment Agency. The consultation with the trade unions include examination of alternatives, the selection criteria applied as well as ways to mitigate the effects if the dismissals. The waiting periods for the dismissals to become effective vary, from 2 months (for 5-24 employees) to 6 months (for 100+ employees involved) from the notification to the Employment Agency.

## **Portugal**

- Labour Code

In Portugal, the notification procedure for individual dismissals as well as the delay before the dismissals are effected differ based on whether the latter are effected on grounds of unsuitability of the employee or because of the extinction of its work position. The amount of severance pay in such cases differs based on whether the contract at issue was concluded after or prior to 1.11.2011. For contracts concluded after that date, the worker is entitled to severance payments corresponding to 20 days base wage and tenure-based increments for every year of tenure.

The trial period in Portugal is regulated under article 112 of the Labour Code, providing for a period of 180 days for workers that hold positions of technical complexity, 240 for workers who hold directorship and 90 days for all other workers.

In Portugal, collective dismissals are considered those who involve, within a period of 3 months, the termination of the contract of at least 2 workers in small companies and at least 5 in medium-sized ones, whenever the dismissal takes place as a result of the closure of one or more divisions of the company or due to the reduction of the number of workers as a result of market, structural or technological motives (art. 359 of the Labour Code). In such cases the employer notifies the workers committee, the inter-union committee or, in their absence, the individual employees concerned, who may appoint a representative committee. In addition, the employer also has to notify the ministerial department responsible for the labour area entrusted with the monitoring and fostering of collective contracting. The employer must promote a period of negotiations with the workers' committee, with the view of reaching an agreement on the dimensions and effects of the dismissals. Once such agreement is reached or in its absence within 15 days since the date of notification of the dismissal intention the employer notifies the individual workers concerned.

## **Spain**

- Statute of Workers' Rights

In Spain, for individual dismissals of employees a written statement with the reasons of dismissal is to be provided to the employee concerned, whereas the workers' representatives need also be notified for dismissals based on technical, organizational, economic or production-related grounds. The severance pay is 2/3 of a month's wage for every year of service up to a maximum of 12 months.

The length of the trial period shall be established by collective agreements. In the absence of a relevant provision, the trial period cannot exceed 6 months for qualified technicians or 2 months for all other workers. In cases of the Permanent Employment Contract to Support Entrepreneurs (available to SMEs that employ less than 50 workers), the trial period can be up to 12 months.

In Spain dismissals of employees are considered collective in cases involving the dismissal of 10 or more employees for firms of less than 100 workers or 10% of the personnel for firms of 100-299 workers or more than 30 workers for firms of more than 300 employees. In such cases there needs to be a period of prior consultation with the workers' representatives (30 days) and a relevant notification to the competent labour authority (Labour and Social Security Inspectorate).

## **Bulgaria**

- The Labour Code
- The Employment Promotion Act

In Bulgaria dismissals of employees are considered collective in cases involving the dismissal over a period of 30 days of 10 or more employees for firms of less than 100 workers or 10% of the personnel for firms of 100-299 workers or more than 30 workers for firms of more than 300 employees. In such cases, the dismissals have to be notified to the representatives of the workers as well as to the public authorities. However, the latter's approval is not a prerequisite. There are no specific selection criteria regarding the employees that will be dismissed, yet the employer is under an obligation to prior examine alternatives, eg. alternative placement programmes.

## **4.4. European Union Law: Working Time and Employment Protection**

### *4.4.1 The case of Working Time Directive and CJEU case-law*

The first EU law instrument that set common standards in the organisation of working time – the predecessor of the current Working Time Directive – dates back to 1993.<sup>20</sup> This is the year that is widely regarded as a milestone in the history of the European

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<sup>20</sup> Council Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993, p. 18). This Directive was amended by Directive 2000/34/EC of the European Parliament and of the Council (OJ L195, 1.8.2000, p. 41), which extended the common standards to all sectors of the economy.

project, not only because the Treaty of Maastricht<sup>21</sup> marks the realisation of the internal market, but also because it is the beginning of the transformation of (what was originally conceived as) an economic community into a political union.<sup>22</sup> This on-going process of transformation of the European project is inextricably linked with the development of the Community social dimension and what is often termed EU Social law. Harmonisation of employment protection legislation across national legal systems through secondary EU law has played a key role in entrenching this social dimension in the European project.

### Working Time Directive: Scope and basic normative content

The Working Time Directive<sup>23</sup> described by the European Commission as a “cornerstone of Social Europe”,<sup>24</sup> forms part of the nexus of secondary EU law instruments designed to lay down minimum standards of protection for the health and safety of workers.<sup>25</sup> The WTD guarantees several rights connected to the organisation of working time to workers across all sectors of activity<sup>26</sup> both in the public and in the private sector. The scope of the WTD, however, is limited by the

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<sup>21</sup> The Treaty of Maastricht was signed on 7 February 1992 and entered into force on 1 November 1993.

<sup>22</sup> The entry into force of the Treaty of Maastricht is generally considered to be a turning point in this process of constitutional transformation. See generally R. Schutze, *European Union Law* (2015), Cambridge University Press, p. 22 et seq.

<sup>23</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9) – hereinafter WTD. The WTD repeals the two earlier Directives from 1993 and 2000.

<sup>24</sup> European Commission, “Reviewing the Working Time Directive (Second-phase consultation of the social partners at European level under Article 154 TFEU)” (2010), Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. COM(2010) 801, p. 2.

<sup>25</sup> These so-called Workplace Directives include the Framework Directive on Health and Safety (Directive 89/391/EEC, OJ, 1989, L183/1), which has been the normative basis for the adoption of several other instruments that address concrete aspects of health and safety in the workplace.

<sup>26</sup> Article 1 (3) Working Time Directive.

possibility of derogations and exceptions<sup>27</sup> for some of its provisions<sup>28</sup> in relation to particular categories of workers,<sup>29</sup> as well by the fact that more specific sectoral legislation exists for “mobile” workers in certain transport sectors,<sup>30</sup> such as civil aviation,<sup>31</sup> railways,<sup>32</sup> commercial sea transport<sup>33</sup> and road transport.<sup>34</sup> Sectors and activities that are excluded from the material scope of the WTD<sup>35</sup> and are not covered by any of the afore-mentioned sectoral instruments, are covered by a further, “residual” Directive.<sup>36</sup>

The main provisions of the WTD are the following:<sup>37</sup>

- a limit to weekly working hours, which must not exceed 48 hours on average, including any overtime;<sup>38</sup>
- a minimum daily rest period of 11 consecutive hours in every 24;<sup>39</sup>
- a rest break during working hours if the worker is on duty for longer than 6 hours;<sup>40</sup>

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<sup>27</sup> Articles 17 et seq Working Time Directive.

<sup>28</sup> Articles 3-6, Article 8 and Article 16 of the Working Time Directive.

<sup>29</sup> Limitations to the personal scope of the Working Time Directive relate, most notably, to managing executives, family workers and religious officials, due to the nature of the activities these categories of workers perform and to the consequent inability to measure or predetermine their working time. See Article 17 (1) Working Time Directive.

<sup>30</sup> These limitations relate to the material scope of the Working Time Directive.

<sup>31</sup> Council Directive 2000/79/EC (OJ [2000] L302/57).

<sup>32</sup> Council Directive 2005/47/EC (OJ [2005] L195/15).

<sup>33</sup> Council Directive 1999/63/EC (OJ [1999] L167/33).

<sup>34</sup> Directive 2002/15/EC (OJ [2002] L80/35).

<sup>35</sup> E.g. activities related to mobile or offshore work or workers on board sea-going fishing vessels.

<sup>36</sup> Directive 2000/34/EC (OJ [2000] L195/41).

<sup>37</sup> The following summary of the normative content of the Directive can be found at: DG Employment, Social Affairs & Inclusion, “Working conditions – Working Time Directive” <<http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>> accessed 25 January 2017.

<sup>38</sup> Article 6 Working Time Directive.

<sup>39</sup> Article 3 Working Time Directive.

- a minimum weekly rest period of 24 uninterrupted hours for each 7-day period, in addition to the 11 hours' daily rest;<sup>41</sup>
- paid annual leave of at least 4 weeks per year;<sup>42</sup>
- extra protection for night work.<sup>43</sup>

It is important to note that the core rights enshrined in the WTD are also protected as a matter of EU primary law. Article 31 of the EU Charter of Fundamental Rights protects the right to working conditions, which respect health and safety,<sup>44</sup> the right to limitation of maximum working hours<sup>45</sup> and the right to paid annual leave.<sup>46</sup> These requirements for maximum working time and annual leave have been described by the CJEU as “rules of Community social law of particular importance, from which every worker must benefit”.<sup>47</sup>

This notwithstanding, the WTD offers the possibility of some flexibility in the organisation of working time,<sup>48</sup> including, most notably, an ‘opt-out’ for individual workers from the maximum 48-hour per week limit,<sup>49</sup> as well as the possibility of averaging working hours over longer reference periods (up to 12 months) for the purposes of calculating the 48-hour per week limit.<sup>50</sup> It is also possible to derogate

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<sup>40</sup> Article 4 Working Time Directive.

<sup>41</sup> Article 5 Working Time Directive.

<sup>42</sup> Article 7 Working Time Directive.

<sup>43</sup> Articles 8-12 Working Time Directive.

<sup>44</sup> Article 31 (1) EUCFR.

<sup>45</sup> Article 31 (2) EUCFR.

<sup>46</sup> Ibid.

<sup>47</sup> Case C-14/04 *Dellas* [2005] ECR-I-10253, paras 40-41 and 49

<sup>48</sup> For an overview see European Commission, “Review of the Working Time Directive”, MEMO/11/789, 15 November 2011 [http://europa.eu/rapid/press-release\\_MEMO-11-789\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-789_en.htm)> accessed 25 January 2017.

<sup>49</sup> Article 22 Working Time Directive. The “opt-out” is effectively a derogation from the Directive that the Member State may take advantage of, by allowing individual agreements between workers and their employers to exceed the 48-hour limit.

<sup>50</sup> Articles 18 and 19 Working Time Directive.



from the double requirement<sup>51</sup> for 11 hours minimum daily rest<sup>52</sup> and 24 hours minimum weekly rest<sup>53</sup> under the conditions laid down in Article 17(4) of the Directive. In general, derogations are permissible when they are prescribed either by national law or by collective agreements and only when ‘equivalent periods of compensatory rest’ (to the ones provided for in the WTD) or ‘appropriate protection’ is ensured by the Member State.<sup>54</sup>

#### Meaning of working time under the WTD: The SIMAP and Jaeger rulings of the CJEU

It is well documented that the WTD has been a controversial piece of legislation,<sup>55</sup> especially in relation to particular sectors of employment, such as healthcare, that involve unpredictable or irregular working hours and often require work done on an ‘as-needed’ basis. What counts as ‘working time’, therefore, has become a key consideration in the application of the WTD provisions across the EU-28.

‘Working time’ is defined in the WTD as “any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice”.<sup>56</sup> The normative scope of this definition has been delineated by the CJEU in a series of rulings that deal with ‘on-call’ time in the medical profession<sup>57</sup> and, more recently, in a ruling dealing with travel time.<sup>58</sup>

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<sup>51</sup> It should be noted, however, that the requirement for daily rest breaks under Article 4 of the Working Time Directive is non-derogable.

<sup>52</sup> Article 3 Working Time Directive.

<sup>53</sup> Article 5 Working Time Directive.

<sup>54</sup> Article 17(2) Working Time Directive.

<sup>55</sup> M. Rönmar, “Labour and Equality Law” in C. Barnard and S. Peers (eds), *European Union Law* (OUP 2013), p. 607.

<sup>56</sup> Article 2 (1) Working Time Directive.

<sup>57</sup> Case C-303/98 Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana (SIMAP) [2000] ECR I-07963; Case C-151/02 Landeshauptstadt Kiel v Norbert Jaeger [2003] ECR I-08389; Case C-397/01 Pfeiffer and others [2004] ECR I-08835; Case C-14/04 Dellas [2005] ECR I-10253. Please note that Pfeiffer was one of several

*SIMAP* was the first in this string of rulings that permitted the Court to clarify that:

“time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime, provided that on-call doctors are expected to be physically “present at the health centre” during this period.”<sup>59</sup>

The Court’s underlying rationale on why on-call time must count as working time, if the objectives of the WTD are to be achieved,<sup>60</sup> is loud and clear:

“the fact that such doctors are obliged to be present and available at the workplace with a view to providing their professional services means that they are carrying out their duties in that instance”.<sup>61</sup>

This broad reading of working time under the WTD is confirmed and, perhaps, even extended three years later in the case of *Jaeger*. *Jaeger* concerned a doctor working at a hospital in Kiel, who regularly carried out several periods of on-call duty every month that required him to be on hospital premises and do work as and when required. Mr. Jaeger was, however, entitled to rest or sleep during the intervals of inactivity within the on-call periods and the hospital provided a room and a bed in the premises for this purpose. The CJEU was, once again, unequivocal in finding that on-call time constitutes working time in its entirety for the purposes of the WTD, insofar as the doctor needs to be physically present in the hospital. This is the case even where on-call doctors are permitted to rest during the period when their services are

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cases decided together: Joined cases Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01) and Matthias Döbele (C-403/01) v Deutsches Rotes Kreuz, Kreisverband Waldshut eV.

<sup>58</sup> Case C-266/14 Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA [2015] EU:C:2015:578.

<sup>59</sup> *SIMAP*, para 52.

<sup>60</sup> *SIMAP*, para 49.

<sup>61</sup> *SIMAP*, para 48.

not required, “as such periods of professional inactivity are inherent in on-call duty performed by doctors”.<sup>62</sup> In fact, the Court went so far as to explain that periods when the doctor is on-call but not working should not be treated as rest periods for the purposes of article 17 and Article 2 of the WTD<sup>63</sup> and that compensatory rest periods must “be characterised by the fact that [...] the worker is not subject to any obligation vis-à-vis his employer”.<sup>64</sup> Such compensatory rest periods, therefore, “must not only be consecutive but must also directly follow a period of work”,<sup>65</sup> if the health and safety objectives of the Directive are to be met, save for “entirely exceptional circumstances”.<sup>66</sup>

More recently, in the case of *Tyco*,<sup>67</sup> the CJEU confirmed that travel time for mobile workers (workers that “are not assigned to a fixed or habitual place of work”) “travelling between home and [their first and last] customers”<sup>68</sup> should also be treated as working time for the purposes of the WTD. The issue arose when the employer (Tyco) decided to shut down its regional offices and attach all of its employees to its central offices,<sup>69</sup> thereby considerably increasing the distance between some workers’ homes and the Tyco customers.<sup>70</sup> The Court reiterated the conceptual components of working time under the WTD,<sup>71</sup> namely that “the worker is at work, at

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<sup>62</sup> *Jaeger*, para 61.

<sup>63</sup> *Jaeger*, para 91.

<sup>64</sup> *Jaeger*, para 94.

<sup>65</sup> *Jaeger*, para 95.

<sup>66</sup> *Jaeger*, para 98.

<sup>67</sup> Case C-266/14 Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA [2015] EU:C:2015:578.

<sup>68</sup> *Tyco*, para 21.

<sup>69</sup> *Tyco*, para 9.

<sup>70</sup> *Tyco*, para 11 et seq. Tyco is a Spanish security company and the technicians it employs are required to install and maintain security equipment in private homes and on industrial and commercial premises within a specified geographical area.

<sup>71</sup> Already established in *Jaeger*, para 48 and in *Dellas*, para 42.

the employer's disposal and carrying out his activity or duties",<sup>72</sup> are satisfied insofar as journey time is concerned for mobile workers.<sup>73</sup> Any different conclusion, according to the Court, would be contrary to the health and safety objectives of the WTD.

#### Working time and the public healthcare system: Commission v. Greece

The preceding discussion was useful to prepare the ground for the case of Commission v. Greece in the area of working time. The Court in *Jaeger* was careful to dispel any potential normative resistance on the part of national systems by stating that both the concepts of 'working time' and 'rest period' are autonomous concepts of EU law<sup>74</sup> that cannot be defined unilaterally by national legislation.<sup>75</sup> Nonetheless, the regulation of working time at the national level for the medical profession in general, as well as compliance with the WTD in particular, has been fraught with difficulties,<sup>76</sup> not least so in Greece well before the onset of the post-2010 crisis. In 2008 the Commission, after receiving several complaints from Greek medical associations in the public sector,<sup>77</sup> initiated enforcement proceedings against Greece<sup>78</sup> for failure to comply with EU rules on maximum working time under the WTD with regard to doctors in public health services.<sup>79</sup> In 2013, and after noting that no concrete

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<sup>72</sup> *Tyco*, para 25.

<sup>73</sup> *Tyco*, paras 34, 42 and 46.

<sup>74</sup> *Jaeger*, para 58.

<sup>75</sup> *Jaeger*, para 59.

<sup>76</sup> For an account of the state of affairs in the UK immediately after *Jaeger* see European Union Committee, House of Lords, "European Union – Ninth Report" (House of Lords, March 2004) <<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldcom/67/6702.htm>> accessed 29 January 2017, esp. chapter 3.

<sup>77</sup> European Commission, "Commission acts on excessive working time in Greece", Press Release, 16 October 2008. Complaints were lodged by ten Greek medical associations.

<sup>78</sup> Under Article 258 TFEU.

<sup>79</sup> The complaints stated that doctors working in public hospitals and health centres in Greece often had to work a minimum average of 64 hours per week – and, in some cases, in excess of 90 hours per week – with no legal ceiling for maximum hours of work per week. It was also reported to the

progress had been made in the interim, the Commission decided to refer Greece to the CJEU.<sup>80</sup>

Unsurprisingly, the CJEU found that Greece was in violation of its obligations under the WTD.<sup>81</sup> The Court, in line with the Commission's assessment, does not doubt that Article 6 of the Greek Presidential Decree 88/1999<sup>82</sup> provides for a maximum average working time of 48 hours including overtime (calculated over a four-month period) and a regular 35-hour working week for doctors in the public healthcare system, which is well within the limits set by the WTD.<sup>83</sup> Despite formally setting an upper limit for weekly working time, however, the Greek law in question also stipulates that both 'active on-call hours' and hours of 'on-call availability'<sup>84</sup> are *in addition to* the regular 35-hour working week.<sup>85</sup> Under that system doctors are actually required to perform 'on-call availability' duty several times a month, which has the effect of extending the time spent at their place of work when they are called to the hospital to provide medical services.<sup>86</sup> The *effect*, then, of PD 88/1999 is to allow the possibility of working weeks in excess of the 48-hour limit prescribed by

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Commission that minimum rest periods were not being respected, with doctors often required to work up to 32 continuous hours at their workplace without being entitled to minimum daily and weekly rest periods or the equivalent periods of compensatory rest. See CJEU, "By allowing doctors to work 24 hours or more consecutively, Greek law infringes EU law", Press Release No 152/15, 23 December 2015.

<sup>80</sup> European Commission, "Working time: Commission refers Greece to Court for not respecting EU rules in public health services", Press Release, 20 November 2013.

<sup>81</sup> Case C-180/14 *Commission v. Greece* [2015] EU:C:2015:840.

<sup>82</sup> Hereinafter PC 88/1999.

<sup>83</sup> *Commission v. Greece*, para 32.

<sup>84</sup> 'On-call availability' time consists in hours that doctors actually spend at the hospital in readiness to provide medical services there if and when required.

<sup>85</sup> *Commission v. Greece*, para 38.

<sup>86</sup> *Commission v. Greece*, para 39.

Article 6 WTD, as there is no concrete provision to ensure that the on-call hours doctors spend at the hospital do not result in exceeding the limit.<sup>87</sup>

The Greek system was also found to be in breach of EU law with regard to the minimum daily rest period stipulated in the WTD. It was evident that PC 88/1999 effectively authorises periods of working time that may last for 24 consecutive hours or more (up to 32 hours in cases where the regular shift starts immediately after the on-call period). In addition to that, the PC allows for the compensatory rest period to be postponed until one week after the completion of the on-call period, contrary to Article 17 WTD, which sets out the conditions for permissible derogation from the minimum rest and compensatory rest periods enshrined in Article 3 WTD.<sup>88</sup>

#### Working time and Sunday work (Sunday trading)

Neither the WTD nor any other secondary EU law instrument contains any specific provisions regarding Sunday work (or weekend work more generally). The 1993 predecessor of the WTD<sup>89</sup> did include a provision stipulating that: “the minimum rest period [...] shall in principle include Sunday”.<sup>90</sup> This requirement, however, was successfully challenged before the CJEU, which held that the apparently special status of Sunday work is not necessary to achieve the health and safety objectives of the Directive.<sup>91</sup> The subsequent Directive 2000/34 amended the original Working Time Directive to remove this provision.

It is worth noting, however, that the European Social Charter guarantees the right to just conditions of work and, in this context, stipulates that Signatory Parties should “ensure a weekly rest period which shall, as far as possible, coincide with the day

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<sup>87</sup> Commission v. Greece, para 40.

<sup>88</sup> Commission v. Greece, para 54.

<sup>89</sup> Council Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993, p. 18).

<sup>90</sup> Article 5 (2) Dir 93/104/EC.

<sup>91</sup> Case C-84/94 *UK v Council* (Working Time Directive) [1996] ERC 1996 I-05755.

recognised by tradition or custom in the country or region concerned as a day of rest".<sup>92</sup>

### Review of the Working Time Directive

For the last decade the European Commission has been working towards reviewing the WTD, as it acknowledges that difficulties in implementing some of the WTD provisions undermine the effectiveness of the current regime.<sup>93</sup> In 2010 the Commission adopted a Communication<sup>94</sup> launching a consultation with the social partners at EU level, with a view to amending the WTD. The consultation revealed that all the main cross-sectoral workers' and employers' representatives were in favour of negotiating the review of the WTD themselves, an option provided for in Article 155 TFEU.<sup>95</sup> This notwithstanding, the consultation was completed without an agreement in 2012, which left the future of the WTD in the hands of the Commission. A draft for a revised WTD is yet to be tabled by the Commission at the time of writing.

#### *4.4.2 CJEU and the case of Collective Dismissals in Greece*

### The AGET Iraklis ruling of the CJEU

The regulation of collective redundancies in Greece has reportedly been a prominent item in the negotiations agenda between the Troika and the Greek government for quite some time. The current Greek system, whereby collective redundancies can only go ahead after ministerial approval, has now been put under the scrutiny of the CJEU in the recent case of AGET Iraklis. With its preliminary ruling that came out in

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<sup>92</sup> Article 2 (5) European Social Charter (ETS 163).

<sup>93</sup> See European Commission, "Reviewing the Working Time Directive" [2010] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2010) 801 final, p. 2.

<sup>94</sup> COM(2010) 106, 24.3.2010.

<sup>95</sup> European Commission, Directorate-General for Justice and Consumers, "2014 Report on the application of the EU Charter of Fundamental Rights" [2015, Publications Office of the European Union] pp. 110-111.

December<sup>96</sup> the CJEU identifies two problematic aspects of the Greek system that render it incompatible with EU law (at least in its current form). The significance of the CJEU ruling cannot be overstated, not only because it effectively imposes an obligation on the Greek government to re-envisage the regulatory framework for collective redundancies as a matter of priority, but also because the balance between flexibility and security that the Court attempts to strike here may have wider implications for employment relations across the EU-28.

### Factual and Legal Background

Law No 1387/1983<sup>97</sup> constitutes the principal instrument in Greek law regulating collective redundancies. As such, it effectively incorporates into the domestic legal order the provisions on collective redundancies of Directive 98/59,<sup>98</sup> despite the fact that it predates the Directive by a good fifteen years.<sup>99</sup> Article 5 of the law sets out the procedure for collective redundancies and its paragraphs 3 and 4 in particular introduce a prior authorisation regime for redundancy schemes that have not been agreed upon by the parties. In such cases, it falls upon the competent authority (Minister of Labour or Prefect) to consider the scheme in question and issue a reasoned decision within ten days, which will either authorise the projected redundancies or extend the consultations for an additional twenty days<sup>100</sup> or refuse authorisation for some or all of the projected redundancies. The competent administrative authority will examine the documents in the file and will also take into

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<sup>96</sup> C-201/15 - Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v Ypourgos Ergasias, Koinonikis Asfalis kai Koinonikis Allilengyis, 21 December 2016. Hereinafter *AGET Iraklis*.

<sup>97</sup> Law No 1387/1983 on the review of collective redundancies and other provisions (Έλεγχος ομαδικών απολύσεων και άλλες διατάξεις).

<sup>98</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

<sup>99</sup> The apparent oxymoron is, of course, easily explained, as the Greek law in question already contained much of the core normative content of the Directive. Law No 1387/1983 was also amended by subsequent legislation (e.g. Article 9, Law No 2874/2000) intended to complete implementation of the Directive.

<sup>100</sup> Upon the request of one of the parties.



account *three criteria* in reaching its reasoned decision: a) the conditions in the labour market, b) the situation of the undertaking and c) the interests of the national economy.<sup>101</sup>

AGET Iraklis, whose principal shareholder is the French multinational group Lafarge, is in the business of cement production and distribution and the owner of three cement plants in Greece. Due to economic and business reasons pertaining to the new market realities in the construction sector brought about by the crisis,<sup>102</sup> the AGET Iraklis board of directors approved on 25 March 2013 a restructuring plan that provided for the permanent closure of the Chalkida plant that, at the time, employed 236 workers. After an (apparently) unsuccessful attempt<sup>103</sup> at collective consultation with the competent trade union,<sup>104</sup> AGET Iraklis sought ministerial approval of the collective redundancies scheme, as required under Law No 1387/1983. When the Greek Minister of Labour refused authorisation of the projected redundancies following the opinion of the Supreme Labour Council on the matter,<sup>105</sup> AGET Iraklis sought the annulment of the ministerial refusal by the Greek Council of State (Συμβούλιο της Επικρατείας), the supreme administrative court in Greece.<sup>106</sup> The Council of State decided to stay proceedings and referred two preliminary questions to the CJEU.

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<sup>101</sup> Art. 5(3) Law No 1387/1983.

<sup>102</sup> AGET invokes a “contraction in construction activity” (especially in the region of Attica), coupled with “the existence of surplus production capacity” and “the need to safeguard the undertaking’s viability” and the group’s economic interests in Greece and abroad. See *AGET Iraklis*, para 14.

<sup>103</sup> Whether or not said consultation took place was apparently a highly contested issue in the hearing before the CJEU Grand Chamber. See I. Antonaki, “Collective redundancies in Greece – a difficult balancing exercise for the EU legal order” (Leiden Law Blog, 17 May 2016) <<http://leidenlawblog.nl/articles/collective-redundancies-in-greece-a-difficult-balancing-exercise-for-the-eu>>

<sup>104</sup> Union of Cement Workers of Chalkida (Ένωση Εργαζομένων Τσιμέντων Χαλκίδας).

<sup>105</sup> *AGET Iraklis*, para 19.

<sup>106</sup> Greek Council of State (Fourth Chamber) Decision no 1254/2015.

The *first question* is whether a national provision, such as Article 5(3) of Law No 1387/1983, that subjects collective redundancies to a prior administrative authorisation regime is compatible with EU law and, more precisely, with Directive 98/59 (on collective redundancies) and freedom of establishment (Art. 49 TFEU) and / or free movement of capital (Art. 63 TFEU).

The *second question* is whether such an incompatibility can still be exceptionally justified, if there are serious social reasons, such as an acute economic crisis and very high unemployment.<sup>107</sup>

#### The Court's decision: Key points, rationale and analysis

In dealing with the *first question* the CJEU disaggregates the applicable primary and secondary EU law and addresses the issues arising in relation to the Directive separately from those arising in the context of the free movement provisions of the TFEU. This is a wise, albeit perhaps inevitable, interpretive choice. As the Court points out, the principal aim of the Directive, according to its second recital,<sup>108</sup> is “to strengthen the protection of workers in the event of collective redundancies”,<sup>109</sup> while the principal aim of the free movement provisions of Articles 49 and 63 TFEU is none other than the establishment and maintenance of the internal market. It is evident that, if both sets of rules were applicable, the Court would have to engage with its usual balancing act between economic freedoms and labour rights.

There is, however, an additional, more “technical”, reason why such decoupling of the Directive from Treaty law here is necessary. When it comes to questions

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<sup>107</sup> On the formulation of the second question please see further below.

<sup>108</sup> Recital 2 of Directive 98/59 explains that “it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community”.

<sup>109</sup> *AGET Iraklis*, para 27.

pertaining to any of the four freedoms,<sup>110</sup> the Court will engage in a two-stage enquiry. It will, first, attempt to determine whether the national law in question constitute a *restriction* of the relevant freedom.<sup>111</sup> If the Court is satisfied that the national law does constitute a restriction, it will then move on to examine whether said restriction can still be justified by way of an “objective justification” test. In this second stage, the Member State will need to prove that the national law in question pursues a legitimate aim and that it is a proportionate means of achieving this legitimate aim. The legitimate aim must correspond to either a Treaty-based derogation ground<sup>112</sup> or to a CJEU-recognised ground pertaining to the public interest.<sup>113</sup> The national law will meet the proportionality requirement, if it can be shown to constitute the least restrictive mechanism through which the legitimate aim can be achieved.<sup>114</sup>

This second stage of enquiry – which the Court engages with in the present case as part of its analysis on the second limb<sup>115</sup> of the *first question* – should not be confused with the *second question* that the referring (national) court is asking.<sup>116</sup> The latter is effectively inviting the CJEU to consider whether a violation of EU Treaty law on freedom of movement (by national legislation such as the one at issue here) that

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<sup>110</sup> Free movement of goods (Art. 34 TFEU), free movement of workers (Art. 45 TFEU) and freedom of establishment (Art. 49 TFEU), free movement of services (Art. 56 TFEU) and free movement of capital (Art. 63 TFEU).

<sup>111</sup> Thereby establishing whether the national law constitutes a *prima facie violation* of the relevant Treaty provision.

<sup>112</sup> E.g. Articles 51 TFEU and 52 TFEU provide explicit grounds to justify restrictions on freedom of establishment.

<sup>113</sup> E.g. the “overriding reasons pertaining to the public interest” doctrine, which is applicable in the present case and which includes justificatory grounds such as the protection of workers or the encouragement of higher levels of employment.

<sup>114</sup> See *AGET Iraklis*, paras 79 et seq, especially para 92 on appropriateness / suitability and para 93 on proportionality *stricto sensu*.

<sup>115</sup> In other words, whether the national law in question violates Art. 49 TFEU or Art. 63 TFEU.

<sup>116</sup> See Figure 3 for a schematic presentation of the analytical process.

cannot be justified under the standard “objective justification” test described above, can still be “excused” due to exceptional socioeconomic reasons that are unique to that particular Member State. Simply put, the Greek Council of State is asking whether a violation of EU legislation that would not be justified under “normal” circumstances, might perhaps be subject to an *ad hoc* justification specifically tied to the crisis Greece is currently facing.

Let us now return to the Court’s examination of the first limb of the first question, namely the compatibility of the Greek system with the Directive. Following the Advocate General’s Opinion on the matter,<sup>117</sup> the Court explains that the Directive “provides for only a partial harmonisation”<sup>118</sup> of the national rules on collective redundancies, as it does not in any way affect “the employer’s freedom to effect or refrain from effecting collective redundancies”.<sup>119</sup> In other words, the Directive is designed to set out minimum standards only insofar as information and consultation rights in the case of collective redundancies are concerned.<sup>120</sup> National rules, therefore, that confer “upon a public authority the power to prevent collective redundancies”,<sup>121</sup> such as the Greek law in question, are in principle outside the regulatory scope of the Directive.

The only exception to this reading of the Directive would occur if the detailed content or the *modus operandi* of the national rules, is such that “Articles 2 to 4 of Directive 98/59 [are] deprived of their practical effect”.<sup>122</sup> In that case, the national rules would be incompatible with the Directive, even if they “ensure[d] an enhanced level of protection of workers’ rights against collective redundancies”.<sup>123</sup> Whether or not the *AGET Iraklis* situation falls within said exception is a matter for the national court to

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<sup>117</sup> AG Opinion in *AGET Iraklis*, paras 23, 27 and 30-32.

<sup>118</sup> *AGET Iraklis*, para 29.

<sup>119</sup> *Ibid*, para 30.

<sup>120</sup> *Ibid*, para 32.

<sup>121</sup> *Ibid*, para 34.

<sup>122</sup> *Ibid*, para 35.

<sup>123</sup> *Ibid*, para 37.

ascertain, in light of the specific manner in which the competent public authority applied the three assessment criteria enshrined in Article 5(3) Law No 1387/1983.<sup>124</sup>

The second limb of the *first question* relates to the potential incompatibility of the Greek regime with the Treaty provisions on free movement. The Court opts to focus on freedom of establishment under Article 49 TFEU, explaining that any restrictive effects of the legislation in question on free movement of capital (Art. 63 TFEU) would be: “the unavoidable consequence of [restrictions] on freedom of establishment and would not warrant independent examination”.<sup>125</sup> The standard first step in the Court’s approach to freedom of establishment cases is to reiterate that both discriminatory and indistinctly applicable national measures<sup>126</sup> may constitute a restriction within the meaning of – and, therefore, be prohibited by – Article 49 TFEU.<sup>127</sup> When it comes to a national law, then, that is intended to regulate “a fundamental decision in the life of an undertaking”,<sup>128</sup> such as the decision to effect collective redundancies, finding that such a law constitutes a “significance interference [on the part of the national legislator] in certain freedoms which economic operators generally enjoy” was always going to be a foregone conclusion.<sup>129</sup> The real issue, in this regard, is whether such an interference can be justified, which is the subject matter of the second preliminary question.

In discussing this second limb of the *first question*, the Court begins – once again following the standard formulation of its rationale in free movement case – by setting

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<sup>124</sup> Ibid, para 43.

<sup>125</sup> Ibid, para 59.

<sup>126</sup> Discriminatory restrictions involve less favourable treatment on grounds of nationality. In other words, natural or legal persons that do not hold the nationality of the “host” Member State are treated less favourably than the “host” Member State’s own nationals. Indistinctly applicable restrictions, on the contrary, do not involve less favourable treatment per se, but they “are liable to impede the exercise of freedom of establishment or render it less attractive” (*AGET Iraklis*, para 48).

<sup>127</sup> *AGET Iraklis*, para 48.

<sup>128</sup> Ibid, para 54.

<sup>129</sup> Ibid, para 55.

out the conditions that must be met so that a *prima facie violation*<sup>130</sup> of Article 49 TFEU can be justified. The Member State must convince the Court that the grounds for the restriction correspond to “overriding reasons in the public interest”<sup>131</sup> and that the national legislation in question satisfies a test of suitability<sup>132</sup> and a test of proportionality.<sup>133</sup> Even when the afore-mentioned conditions are met, the national legislation will be justified “only if it complies with the fundamental rights” enshrined in the EU Charter of Fundamental Rights [EUCFR],<sup>134</sup> including the freedom to conduct a business.<sup>135</sup>

The grounds for the restriction in this case correspond to the three criteria enshrined in Article 5(3) Law No 1387/1983 that may allow the competent Greek authority to refuse authorisation to a redundancy scheme. Reiterating settled case-law on the matter and emphasising the “social purpose” of the Union,<sup>136</sup> the Court confirms that purely economic grounds<sup>137</sup> “cannot serve as justification for obstacles prohibited by the Treaty”,<sup>138</sup> while the protection of workers<sup>139</sup> and the reduction of unemployment<sup>140</sup> have been recognised as overriding reasons in the public interest.<sup>141</sup> On these latter two grounds, therefore, the national law in question could be justified,<sup>142</sup> if the principle of proportionality is also satisfied. This is not the case

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<sup>130</sup> In other words, a national rule that constitutes a restriction on freedom of establishment.

<sup>131</sup> *AGET Iraklis*, para 61.

<sup>132</sup> “[T]he restriction should be appropriate for ensuring the attainment of the objective in question [...]” (ibid).

<sup>133</sup> “[T]he restriction should [...] not go beyond what is necessary to attain that objective [...]” (ibid).

<sup>134</sup> *AGET Iraklis*, para 63

<sup>135</sup> Article 16 EUCFR.

<sup>136</sup> *AGET Iraklis*, para 77.

<sup>137</sup> Third criterion in Article 5(3) Law No 1387/1983 (safeguarding the interests of the national economy).

<sup>138</sup> *AGET Iraklis*, paras 72 and 96.

<sup>139</sup> Second criterion in Article 5(3) Law No 1387/1983 (situation of the undertaking).

<sup>140</sup> First criterion in Article 5(3) Law No 1387/1983 conditions in the labour market).

<sup>141</sup> *AGET Iraklis*, paras 73-75.

<sup>142</sup> As a permissible restriction on freedom of establishment.

here. Importantly, however, the Court's rationale on this occasion matters more than its final answer.

This is because the Court explicitly suggests that the prior authorisation regime *is not per se contrary* to either Article 49 TFEU or to the freedom to conduct a business under Article 16 EUCFR.<sup>143</sup> Such a regime does not entirely curtail the ability of businesses to effect collective redundancies,<sup>144</sup> nor does it affect the essence of the freedom to conduct a business,<sup>145</sup> which is anyway not absolute and “must be viewed in relation to its social function”.<sup>146</sup> As such, a prior authorisation regime is both an appropriate<sup>147</sup> and a proportionate<sup>148</sup> means to achieve its legitimate aims. The assessment, however, is different when it comes to the “particular detailed rules”<sup>149</sup> that the Greek law lays down. Although it was established that the two out of the three criteria in Article 5(3) Law No 1387/1983 do constitute overriding reasons in the public interest, they are also the reason why the proportionality assessment fails.<sup>150</sup> This is because they “are formulated in very general and imprecise terms”<sup>151</sup> and they are not “founded on objective, verifiable conditions”,<sup>152</sup> which leaves too broad a margin of discretion to the competent national authorities. When the Court concludes, therefore, that Art. 49 TFEU must be interpreted as precluding national legislation such as Article 5(3) Law No 1387/1983, it is careful to couch this conclusion in very

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<sup>143</sup> *AGET Iraklis*, para 83.

<sup>144</sup> *Ibid*, para 88.

<sup>145</sup> *Ibid*, para 84.

<sup>146</sup> *Ibid*, para 85.

<sup>147</sup> *Ibid*, para 92.

<sup>148</sup> “[I]t is not apparent that measures of a less restrictive kind would ensure attainment of the objectives” (*ibid*, para 94).

<sup>149</sup> *Ibid*, para 95.

<sup>150</sup> The proportionality of the restriction is a requirement both for restrictions on freedom of establishment and for restrictions on fundamental rights (including the freedom to conduct a business) under Article 52 (1) EUCFR.

<sup>151</sup> *Ibid*, para 99.

<sup>152</sup> *Ibid*, para 100.

precise terms and highlight that this is the case “*in a situation such as that at issue in the main proceedings*”<sup>153</sup> [emphasis added].

If the first preliminary question took 79 paragraphs to address, the *second question* is dispensed with in a rather more concise fashion. Four paragraphs suffice to consider and reject the possibility of creating an exception to the application of either Treaty rules or secondary EU law on grounds of an acute economic crisis or particularly high unemployment. In a rather interesting turn of phrase, the Court dismisses the notion that primary EU law “may purely and simply be disregarded”<sup>154</sup> on account of national circumstances such as the ones at issue here. One cannot but notice that the Court seems not entirely convinced – perhaps slightly incredulous even – that the Greek CoS with its second question does in fact entertain the hope that such an aggressively activist interpretation, whereby the application of Treaty law is effectively suspended, might be adopted. From a doctrinal point of view the Court is, of course, absolutely correct. Exceptional economic or socio-political circumstances in a particular Member State may be taken into account as “mitigating factors” in assessing whether a *prima facie* violation of (primary or secondary) EU law can be justified. It would, however, be well outside the boundaries of the Court’s mandate to read a derogation into primary law where no such derogation exists.

The crux of the matter, then, is that the current system of prior authorisation cannot offer businesses an acceptable degree of legal certainty, as the circumstances in which the competent minister can exercise the power to refuse authorisation to a collective redundancies scheme are “potentially numerous, undetermined and indeterminable”.<sup>155</sup> It is this lack of legal certainty that the three criteria set out in Article 5(3) Law No 1387/1983 generate that renders the system incompatible with Article 49 TFEU. Curing the incompatibility with EU law, therefore, does not require the Greek legislator to abandon prior administrative authorisation altogether, but to

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<sup>153</sup> Ibid, para 104.

<sup>154</sup> Ibid, para 107.

<sup>155</sup> *AGET Iraklis*, para 100.



devise ways in which the ministerial decision to refuse authorisation will depend on more precisely defined criteria.<sup>156</sup> This will increase the degree of objectivity in the decision-making process and, consequently, render the outcome of the authorisation process more predictable for employers.

Finally, it is important to bear in mind that the administrative intervention model<sup>157</sup> is not without historical precedent in Europe.<sup>158</sup> A similar requirement for prior authorisation for collective redundancies was a standard feature of Spanish Labour law, for instance, until it was repealed in the 2012 reforms.<sup>159</sup> The way the Spanish system worked in practice may, in fact, offer useful insights ahead of the inevitable overhaul of the Greek law. According to the OECD, the Spanish system was often bypassed as employers exercised an option to declare the dismissal(s) unfair and pay the statutory compensation without entering into a collective redundancies process.<sup>160</sup> If a revamped prior authorisation system in Greece is to retain its core normative meaning, while remaining within the boundaries of legitimacy set by the CJEU in *AGET Iraklis*, it must be designed so that it maximises the trust and confidence of social partners in the objectivity of the deciding authority.

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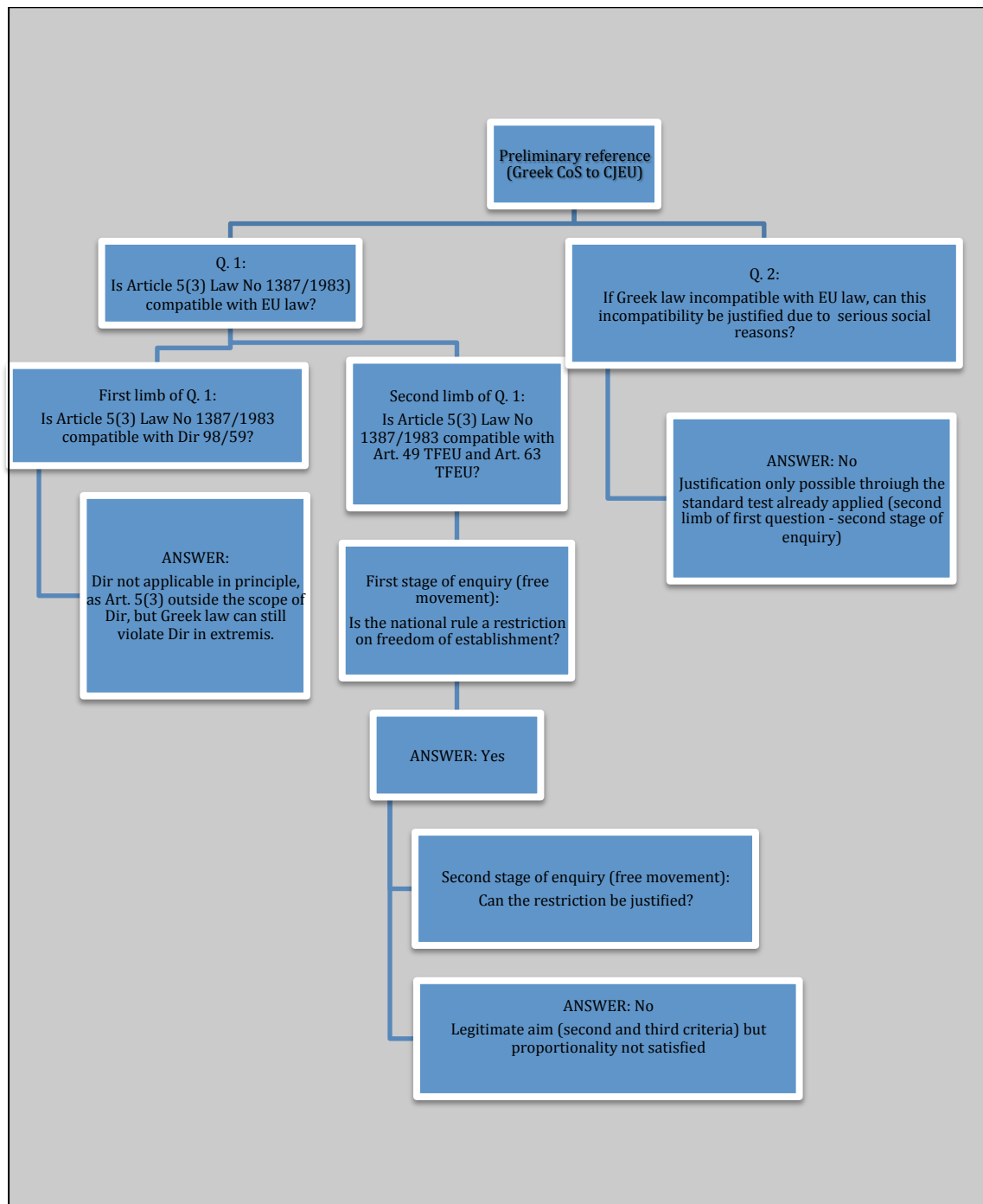
<sup>156</sup> Excluding, of course, the current third criterion relating to the interests of the national economy, which does not constitute an overriding reason in the public interest.

<sup>157</sup> D. Gallie, *Resisting Marginalization: Unemployment Experience and Social Policy in the European Union* (OUP 2004), p. 177.

<sup>158</sup> Although it should be said that it has not been particularly popular in EU Member States since the early 2000s. See Gallie, *op. cit.* n. 61.

<sup>159</sup> OECD (2014), *The 2012 Labour Market Reform in Spain: A Preliminary Assessment*, OECD Publishing, p. 11.

<sup>160</sup> OECD (2016), *OECD Employment Outlook 2016*, OECD Publishing, Paris, p. 139.

**Figure 3 Schematic representation of the CJEU analysis**

#### 4.5. Qualitative Analysis

EPL regulation in Greece was extensively modified since the signing of the first Memorandum of Understanding (MoU) in 2010. In fact, changes in the regulation of individual and collective dismissals were some of the first measures that were adopted (together with changes in the regulation of working time and contractual flexibility), to boost the competitiveness of the Greek labour market.

The said changes have been presented and analysed in detail elsewhere (Ioannou, 2013; Koukiadaki and Kretsos, 2012; Kornelakis and Voskeritsian, 2014). In a nutshell, the deregulation of EPL primarily aimed to reduce labour costs and to allow companies some flexibility to adjust their costs and labour process to the demands of the market. To this end two fundamental EPL features were modified: the *first* was a change in the calculation of dismissal compensation (Law 3845/2010 and Law 4093/2012), rendering the process much cheaper for the employer. The *second* was modification of the regulation on collective dismissals. This last point is of particular importance, as a re-appreciation of the collective dismissals framework is central to the current negotiations with the Troika.

Up until 2010, collective dismissals in Greece were regulated by Law 1387/1983 (as amended by Law 2874/2000 and Law 3844/2006), which transposed to the Greek legal framework the Council Directive 75/129 (for a more thorough analysis of the framework on collective dismissals see ILO, 2017). Collective dismissals are defined as “dismissals effected by an employer for one or more reasons not related to the individual workers concerned” (ILO 2017: 81; Law 1387/1983, Art. 1). Under this regime companies employing in between 20 to 200 employees could collectively dismiss 5 employees per month, and companies employing 50 or more employees could dismiss 2-3% of their workforce and up to 30 employees per month. In 2010 however, Law 3863/2010 increased the above thresholds as follows: companies employing 20 to 150 employees could dismiss 6 employees per month, whereas companies employing more than 150 employees could dismiss 5% of their workforce and up to 30 employees at any calendar month. As can be appreciated, this change not only increased the number of employees that could be collectively dismissed each month but also introduced the potential to increase the *velocity* of collective

dismissals in the same period. The rationale behind this was that companies that faced financial difficulties could adapt their labour costs and production process to their particular situation much quicker.

Apart from defining the quantitative criteria for collective dismissals, the existing framework governs in detail the process that must be followed should such a decision is to be reached. Thus, for a company to implement collective dismissals it must first inform and consult with the employees' representatives, and disclose to them the reasons for this decision, the number of employees who will become redundant, the time period over which the collective dismissals plan will be implemented and the criteria for the selection of the redundant employees (Law 1387/1983, Art 3(1) & 3(2)). The process of information and consultation plays a crucial role in mediating the socio-economic effects that collective redundancies could have both for the individual employees and for the company as whole. Since, however, this is not a negotiation, an agreement is not necessary to be reached for the plans to materialise. Through this process, however, alternative ways to manage the problems the company may be facing, and to address any social consequences that such a decision may have, can be found. Indeed, as one of our interviewees commented:

“there are cases of collective dismissals that do not end in disagreement between the two parties...in the past years there were 12 cases in which the process [of collective dismissals] was carried out with the mutual agreement of both parties.” (Interviewee, Ministry of Employment and Social Affairs, 29/7/2016).

Once the consultation process has been concluded (either successfully or unsuccessfully) the employer must notify the public authority (the prefecture or the Ministry of Labour, or as the case stands at the moment, the Supreme Labour Council) about the outcome of the deliberations (cf. previous section on CJEU decision regarding AGET Iraklis). If an agreement has not been reached between the parties, then the public authority can (i) extend the consultations for an additional 20-day period; (ii) prohibit all or part of the dismissals; (iii) abstain from issuing a

decision (ILO 2017: 90). If the public authority decides to abstain from issuing a decision, the employer may still proceed with the collective dismissals.

The public authority's decision should be based on an evaluation of the documents submitted by the employer, the condition of the (local) labour market, the condition of the enterprise, and the interest of the national economy. The rationale behind these arrangements is that due to the possible social and economic consequences that collective dismissals may have for the local communities (especially the rise in unemployment), as well as the local and national economy (in case the enterprise in question occupies a strategic role in the country's infrastructure), the public authority should have the final saying in the process, after providing the parties some additional time to reach an agreement.

To sum up, therefore, the collective redundancies framework in Greece, as it now stands, stipulates three criteria for such redundancies to take place: *first*, a *quantitative criterion*, which determines the number of employees a company may dismiss within a specified calendar month. *Second*, a *procedural criterion*, according to which consultation with the employees' representatives must take place prior to the implementation of collective redundancies. *Finally*, an *arbitration criterion*, to address the situation in case the two parties do not reach an agreement. As can be appreciated, all of the above criteria determine the extent and the quality of flexibility in a specific labour market. The stricter they are, the less flexible the framework is; it is exactly because of this that discussions about the relaxation of the first and third criteria are now taking place between the Greek government and the Troika. How necessary however is a further deregulation of the current framework? To this issue we now turn.

#### 4.5.1 *Is a new collective redundancies framework necessary?*

The discussion about the further deregulation of the EPL framework re-emerged in 2016, with the Troika arguing that the collective dismissals framework remains quite restrictive, especially in view of the criteria previously analysed. Their recommendations were to align the threshold for the definition of collective dismissals with the applicable EU Directive (98/59/EC), which stipulates a maximum threshold of 10% of employees to be eligible for collective redundancy per month (instead of 5%

as the current law provides); and to abolish the requirement for administrative approval prior to the implementation of collective redundancies.

The rationale behind the above recommendations is both economic and legal. Exempting more potential cases from the collective dismissal mechanism could make firms more confident in their ability to adjust to future shocks and encourage further investment and employment growth. Moreover, the complex collective dismissal mechanism makes downsizing operations for large businesses in Greece very costly during a downturn and, as a result of the need for administrative approval many firms are deterred from applying and have been forced to relocate, enter bankruptcy with all employees losing their jobs and severance pay, or implement costly voluntary exit schemes. The thesis against the retention of the administrative approval was further strengthened by the opinion of the Advocate General of the European Court of Justice, according to which the EU framework precludes the approval requirement as it exists in the Greek Law. Since then, the CJEU has ruled on the case brought before it by AGET Iraklis, and due to its importance the decision has been discussed in detail in the previous section. In addition to the legal analysis, it is important to consider the validity of the economic arguments brought forward.

#### *4.5.2 The reality of collective dismissals in the Greek employment relations system*

To evaluate the suggestions brought forward by the Troika, it is imperative to examine them within the institutional context of Greek employment relations. To this end, each of the arguments will be independently assessed and contrasted with the reality of the Greek labour market.

The *first argument* to justify the reappraisal of the administrative approval in the case of collective redundancies is based on the view that such a policy *deters firms from initiating the procedure*, thus creating externalities that hinder the enterprise's smooth operation. Three immediate problems become apparent in close examination of this thesis. The first is that this suggestion cannot be adequately justified by reference to the theory of rationality. Since a firm is considered a rational actor – in the sense that it tries to maximise its potential gains (or minimise its potential costs) – the non-initiation of a procedure that could lead to its potential survival makes no sense whatsoever despite any externalities. In this case, the possibility of not being allowed

to conduct collective dismissals by the public authority constitutes a risk for the company. Non-initiation of the procedure implies that the company has judged that the risk of bankruptcy due to the opposition of the public authority to its proposal is to be preferred over the risk of actually being allowed to pursue its redundancy policy. This further implies that a company that decides not to initiate the procedure for collective redundancies values bankruptcy more than the possibility of actually reaching a settlement with regards to redundancies (the nature of the settlement should not concern us at this stage – i.e. whether an agreement with the employees' representatives will be reached, or whether the administrative approval will be gained). In this case, we are dealing with a company that does not necessarily care about the continuation of its business. However, as our interviewee from SEV remarked:

“any enterprise that considers to conduct collective dismissals means that it cannot survive without them. This is really the ultimate [measure], for any enterprise will try to find another way to operate, as all enterprise operate through their personnel... Consequently, this is a measure that any good-willing enterprise does not wish [to use]” (Interviewee, SEV, 29/7/2016).

The term ‘good-willing enterprise’ is crucial in our consideration; for any good-willing enterprise – and by this we understand any enterprise that wishes to continue its operations in the market – will try to pursue any avenue possible to ensure its survival. Not initiating the procedure, and choosing bankruptcy or relocation instead, either means that the enterprise has come to the rational conclusion that even if collective dismissals take place the firm will not be able to survive, or because of whatever reasons the enterprise does no longer wish to continue its operation. This, however, is a problem that concerns the firm's decision-making process and not the law.

The *second* problem has to do with an apparent misunderstanding regarding the process of collective redundancies. As previously discussed, before reaching the administrative approval stage, the firm must consult its employees, providing both parties with an opportunity to reach a mutually beneficial agreement. As the last column of Table 13 reveals, since 2010 there were ten such cases.

**Table 13 Collective Redundancies applications submitted to the Ministry of Employment 2010-15**

<b>Year</b>	<b>Extension of Consultation</b>	<b>Non-approval</b>	<b>Non-issuance of decision</b>	<b>Total</b>	<b>Agreed between the parties</b>
<b>2010</b>	3	1	-	4	-
<b>2011</b>	-	1	-	1	1
<b>2012</b>	-	-	-	-	6
<b>2013</b>	-	3	1	4	1
<b>2014</b>	1	-	1	2	2
<b>2015</b>	2	1	-	3	-
<b>Total</b>	6	6	2	14	10

Source: Ministry of Employment and Social Affairs

The data in the above table posit to the *third problem* with the ‘deterrent’ argument; namely the supposition that the public authority uses the provisions of the law to stop collective redundancies from materialising. Although this is indeed the case in some instances, in others the Minister provides for an extension of the consultation period or abstains from issuing a decision. Practically this means that after a certain period of time the employer can proceed with the dismissals. This was, for instance, the case in 2013 and 2014 with the *METRO Thessaloniki* and *Helliniki Chalyvourgia*.

The *second argument* that the Troika put forward is that as a result of the administrative deterrence, companies decide to relocate or to enter into bankruptcy or to implement costly exit schemes. This position is supported by reference to some well-known cases whose closures occupied public opinion in summer 2016, namely the cases of *Ilektroniki Athinon* and *Sprider*. As per the previous argument, the theoretical considerations previously developed apply in this case as well. In addition,



however, it is also important to examine in more detail the suggestion that these two companies ceased their operations due to the inflexibility of the collective redundancies framework.

Our research revealed that the empirical basis of this argument is unsubstantiated. As the GSEE interviewee argued:

“As far as I am aware of, [*Ilektroniki Athinon* never submitted] such a request [i.e. for collective redundancies]. There was not even an attempt to reduce the number of its employees. All of a sudden, one morning, a bankruptcy request was submitted... And the employers' argumentation does not coincide with that of the IMF that the seizing of the firm's operations was due to the collective redundancies framework. There was not even an attempt for collective redundancies. Suddenly, the firm's owners claimed that the banks ceased financing its operations and its debt defaulted... There was no attempt or a discussion on whether the number of its employees should be reduced. That is why I claim that the IMF's approach on this matter is rather destructive and serves different interests” (Interviewee, GSEE, 30/8/2016).

This view was also supported by one of our GSEVEE interviewees, who claimed that:

“These firms [i.e. *Ilektroniki Athinon* and *Sprider*] did not shut down because of this [i.e. the inflexibility of the collective redundancies framework]... *Ilektroniki Athinon* found itself in a difficult financial position, it could not import goods and, consequently, could not withstand the competition. This was not an employment relations issue” (Interviewee, GSEVEE, 4/8/2016).

The Troika's *third, and final, argument* concerns the level of the threshold for collective redundancies. According to this, an increase of the threshold (from 5% to 10%) will make firms more confident in their ability to adjust to future shocks. Although this argument may have a theoretical validity, if examined under the prism of neo-classical economics, it still begs the question: the various thresholds regarding collective redundancies (or any other employment relations issue) are usually dependable on specific socio-economic conditions that pertain in a certain historical point. Before the implementation of any increase in the threshold, detailed research

needs to be conducted to evaluate the possible consequences that this increase may have in the labour market and the economy as a whole. As an interviewee from the Ministry of Labour said, such research has not been undertaken.

A starting point for such an endeavour would be to examine how many companies could use the collective redundancy framework. As can be seen in Table 14, approximately 99% of Greek firms do not fall under the provisions of the collective redundancy framework<sup>161</sup>.

**Table 14 Size of enterprises in Greece (2012)**

Size	Number of enterprises
0-9	702,936 (96.7%)
10-19	14,251 (2%)
20-49	6,447 (0.9%)
50-249	2,544 (0.4%)
250 and more	402 (0.1%)
Total	726,581

Source: Eurostat. Data not available for 2013-2016.

Secondly, from our interviews it became apparent that the attempts to change the collective redundancy framework possibly have an underlying agenda that serves particular interests or sectors. As an interviewee from GSEVEE noted:

“Who wants collective dismissals in Greece? The banks and, in the context of the privatisation of DEKO, the new owners, who want to reduce [DEKO’s] personnel. Because of the big cost of voluntary retirements they put in the negotiation table the issue of collective redundancies; not even SEV raises this issue” (Interviewee GSEVEE, 4/8/2016).

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<sup>161</sup> Although in recent years the number of businesses has decreased, the aggregate percentages do not change significantly.

This view was also sounded out by the GSEE interviewee:

“Which large businesses in our country could use such a regulation for collective dismissals? Certainly the banks and some DEKOs, but we are not talking here about the vast majority of the private sector. We are talking about a specific intervention that happens for very specific reasons, to provide flexibility to one or two sectors. When 92% of businesses are small or medium [enterprises], the collective redundancies procedure does not apply to them, they have the capability to fire certain employees per month and within some months they can get rid of their whole staff without needing the Minister’s approval” (Interviewee GSEE, 30/8/2016).

It is not our purpose in this report to examine this argument further. However, it is important to note, as many of our interviewees also suggested, that the current framework of labour law provides several alternatives to businesses to adjust their labour costs –through, for example, working time or contractual flexibility – without the need to revert to collective redundancies. Even if collective redundancies are unavoidable, however, the current framework provides enough opportunities to companies to plan their transition from one state to another without necessarily incurring high social and economic costs.

The regulation of collective redundancies is a highly contested issue that need not be taken light-heartedly. Because of its social and economic consequences, especially in a labour market with high unemployment levels, special care and attention is required when dealing with the matter. This was a point that was recognised by all social partners who, in a joint declaration in summer 2016, argued against any further deregulation of the system. Despite this, however, cracks in the employers’ front were observed while conducting our empirical research. Thus, ESEE, for example, seemed to be in favour of an increase to the threshold at the levels of the EU directive “for the framework to be better aligned with the European standards” (Interviewee, ESEE, 21/7/2016), while SEV argued that “when you build your legal framework you [should] provide every potential, even if you never use it” (Interviewee, SEV, 29/7/2016). These positions, taken together with the recent decision of the CJEU, introduce a further complexity to the management of collective

redundancies. As these lines are written, the Greek government still negotiates with the Troika on the issue; what will happen remains to be seen.

#### 4.5.3 Working Time Flexibility

Recent labour market reforms have also included an effort to increase labour market flexibility from the perspective of working time or temporal flexibility. Already in the implementation of the first memorandum (e.g. Law 3846/2010 and Law 3899/2010) there was an increase in working time flexibility including: the extension from 18 months to 36 months of the maximum time for the agency/subcontracting of workers, the extension from 2 to 3 years of the maximum time of renewals of fixed-term contracts, the extension from 6 to 9 months of shift-work (*ek peritropis ergasia*, 4-day, 3-day), the abolishment of overtime pay in part-time work and in work less than 20hrs per week (mini-jobs).

Most of the interviewees highlighted some potentially positive aspects of flexible working, both for employers and employees, but they insisted on how part-time work in the times of crisis and in the context of the Greek labour market realities, is used as bogus full-employment to get tax and social insurance advantages (fuelling tax-evasion and contribution-evasion). More specifically, the interviewee from the GSEVEE employers noted:

“The solution of flexible employment cannot operate in all the sectors [...] In large enterprises there are specific examples which just exploit the possibility of part-time employment. In essence, these [jobs] are full-time employment, but the pay is to the level of part-time. There are, however, sectors of economic activity and several occupations, which could increase the quality of services delivery by operating with “real” part-time employment. However, this is an issue of culture of the employers, but also of the employees. Today in our country part-time employment is a way to circumvent full-time employment, [...] About 40% is full time employment, 40% is part-time and the rest 20% is shift-work.” (Interviewee 1 GSEVEE, 4/8/2016)

“Additionally, at the same time one gets 1,100,000 jobs created and 1,000,000 jobs destructed (redundancies). For instance, in a large enterprise the Labour

Inspectorate entered for inspection and found that they had 2-hour contracts, as soon as these 2-hour contracts were ending, they were signing new 2-hour contracts” (Interviewee 2 GSEVEE, 4/8/2016)

“Large hotel chains in Athens employ waiters on daily contracts. The employees come in every day and sign a new contract every morning.” (Interviewee 3 GSEVEE, 4/8/2016)

Whilst the SME employers appear quite sceptical towards the application of flexible employment forms, the large employers representatives (SEV) appear quite positive:

“On the question of flexibility at work we believe that this gives dynamism in the workplace, and gives the opportunity to see it under a different light –I refer mainly to investors, both domestic and foreign- how one may set up their enterprise. The question of undeclared work/informality is the one that has given a negative connotation and it is very important, because I believe that if there was no unlawfulness on this issue, there would be a much more positive attitude from the society. There are many individuals, who would like to have a stable job with reduced working time to cover other needs e.g. new parents, students, prime age, older age, etc.” (Interviewee SEV, 29/7/2016).

By contrast the view from the peak trade unions is as follows:

“We are not fixed obsessively behind particular issues. Naturally, we are fighting for workers and our members for full-time jobs with good pay. Beyond this, yes, if the use of flexible forms of employment is implemented as it happens in developed and well-governed European countries, we would not have any objection. What happens, however, in the last few years with the possibilities that the national legal frame has provided? Full-time jobs are transformed in thousands and on a daily basis into flexible jobs, either shift-work or part-time. And even this, we could accept it [only] because some of these enterprises encounter very serious problems and due to the levelling of the economic activity need to substantially reduce their operating costs.” (Interviewee GSEE, 30/8/2016)

#### *4.5.4 Concluding remarks: does flexibility lead to growth?*

When the MoU was signed, the argument that was provided as a justification for the deregulation of working time and EPL was that further flexibility would lead to growth, development and sustain – if not reduce – unemployment levels. As was discussed in previous sections, however, the empirical research showing any strong correlation between these variables is, at best, inconclusive. We do not doubt that flexibility might have helped restrain the rise in unemployment, although a more rigorous analysis that is beyond the scope of this report, needs to be undertaken to establish any possible links.

However, during our discussions with the social partners, an alternative picture about the realities of working time and collective redundancies emerged. What was very apparent was the uniform agreement of all our participants that the economy, and the labour market more specifically, does not require further deregulation; on the contrary, what is required is a re-evaluation of other macro-economic policies that influence labour market outcomes. As our interviewee from SEPE said:

“Countries that have sustained their unemployment levels at the European level did not tear apart their labour markets” (Interviewee, SEPE, 25/7/2016).

Our interviewees from GSEVEE, for instance, were adamant that a rationalisation of the taxation system and of non-wage costs are more important than any discussion about labour market flexibility or further wage cuts. Whereas the participants from the Ministry of Employment and Social Affairs focused on the need for more in-depth discussions about the future of the country’s productive model, discussion that, as the SEPE interviewee also mentioned, had not seriously taken place during the MoU years. Moreover, the need to focus on policies that could boost internal demand seemed to be a common point of reference between all social partners. Finally, as several of our interlocutors claimed, the deregulation of the labour market not only did it not succeed in enhancing growth, but also had some unintended consequences of skyrocketing informality. This will be the subject matter of the next chapter.

#### **4.6. Summary**

- Employment protection legislation (EPL) is often considered in the standard economic textbook model as one of the most important labour market rigidities since it constrains firms from hiring and firing workers at will and reacting quickly and efficiently to their changing needs
- Alternative theoretical positions view those regulations as potentially beneficial, as they can lead to a more efficient allocation of resources than what the case is in an unregulated labour market. For example, by investment in firm-specific skills and higher productivity.
- The empirical literature and OECD have reached a relative consensus that there is no significant impact of employment protection legislation (EPL) on aggregate unemployment.
- Evidence suggests that labour market reforms may result in the substitution of the “more expensive” workers with “cheaper” ones, without any significant gains in total employment.
- EPL can have a beneficial impact on the quality of jobs by increasing the feelings of job security among employed persons.
- A series of laws in Greece after 2010, again related to the conditionality imposed by the loan agreements with the “Troika”, substantially liberalised EPL by reducing the notification period for individual dismissals and the related severance pay, and by increasing the trial period for employees on open-ended contracts.
- These changes are reflected in the values of the EPL index for 2013.
- In individual dismissals, EPL in Greece is more relaxed than in Denmark, France, Germany, Portugal, and Sweden.
- In collective dismissals, EPL in Greece is more relaxed than in France, Germany, Ireland, and Spain.
- In temporary contracts, EPL in Greece is more relaxed than in France and Spain.
- As regards the strictness of working time regulation Greece stands at about the same level as Germany and Spain, with only the UK and Ireland having lower protection, while Portugal, France, Denmark and Sweden have higher protection.

- Firms have always made limited use of part-time employment in Greece, in contrast with what the case is in the Nordic countries or the UK. However, we can also observe a doubling of the part-time employment share during the crisis years. Job destruction during the deep recession of the Greek economy has been extremely severe and the greatest majority of the few new jobs created have been on part-time contracts.
- The CJEU found that Greece was in violation of its obligations under the Working Time Directive in the public healthcare system.
- The CJEU decision regarding collective dismissals in Greece suggests that the current system of prior authorisation cannot offer businesses an acceptable degree of legal certainty, and requires the Greek legislator to devise ways in which the ministerial decision to refuse authorisation will depend on more precisely defined criteria.
- Law 3863/2010 increased the collective dismissal thresholds by increasing not only the number of employees that could be dismissed, but also increasing the velocity of dismissals.
- In a joint declaration among the social partners, they argued against any further deregulation of the system as regards collective redundancies.
- The fieldwork suggested that ESEE was in favour with the alignment of the threshold to 10% level of the EU Directive.
- Most of the interviewees highlighted some potentially positive aspects of flexible working, both for employers and employees, but they insisted on how part-time work in the times of crisis and in the context of the Greek labour market realities, is used as bogus full-employment to get tax and social insurance advantages.
- In relation to the debate of flexibilization in the interest of competitiveness, social partners were adamant that a rationalisation of the taxation system and of non-wage costs are more important than any discussion about labour market flexibility or further wage cuts.





## 5. Informal Employment and Labour Inspection

### 5.1. Theory and Evidence

Undeclared work is a problem that has increasingly attracted the attention of both policymakers and academics. In 1998 the European Commission published its first Communication on undeclared work (COM(98) 219 final) and the topic started gaining momentum in the European agenda. Following this, the item was prioritized as one of the ten Employment Guidelines of the revised European Employment Strategy, while the Council also adopted a Resolution on 'transforming undeclared work into regular employment' in 2003. Subsequently, the European Commission published another Communication at the end of 2007 with the title 'Stepping up the fight against undeclared work' (European Commission, 2007b) encouraging member-states to pursue policies and engage into mutual learning from best practices. Finally, among the 2010 Recommendations that the Council made to Greece to tackle the sovereign debt crisis was to take 'immediate measures to fight undeclared work'.

Apart from the increasing importance attached to the topic from European policymakers, undeclared work has also attracted the interest of academics. Crucially, the literature does no longer examine the prevalence of the 'shadow economy' in developing and transition countries, but also looks at the incidence of undeclared work within advanced European countries (Williams and Windebank, 1998; Pfau-Effinger *et al*, 2009). Recent scholarly work on this topic has examined several themes such as: the motives for undeclared work and explanations for its persistence (Kimmel and Conway, 2001; MacDonald, 1994; Ram *et al*, 2007) different 'varieties' or 'geographies' of undeclared work (Pfau-Effinger, 2009; Williams, 2009); efforts to measure the extent of the shadow economy (Husmanns, 2004; Schneider, 2004), and finally, the range of policies available to tackle the problem (Sepulveda and Syrett, 2007; Williams, 2005; 2008).

The major institutional mechanism to tackle undeclared work in Greece is the Labour Inspectorate, which was established -in its current form- in 1998. Since then there has been surprisingly little progress with innovative policies to enhance its operation and ultimately address the problem of undeclared work. However, the lack of reform efforts in this policy domain is left unexplained by prevalent hypotheses emphasising

blockages from vested interests (e.g. Matsaganis, 2007). From a 'reform politics' point of view combating undeclared work remains one of the few policy-issues that enjoys a widespread consensus among labour and business interests (GSEE, SEV) and the government. It is (almost) the perfect win-win game, since everyone seems to benefit from such a policy: increased revenues from reduction of tax-evasion and insurance contributions-evasion for the government; increased security, healthcare coverage, and pension rights for the workers; increased productivity from effort/loyalty effects, and penalties-avoidance for firms. In fact, nobody objects the need to take measures to combat undeclared work; and yet, minimal progress is observed in this domain. Additionally, this case seems to resound analyses emphasising the 'limits of Europeanization' (Featherstone and Papadimitriou, 2008). Despite the fact that the policy has been part of the European agenda for a long time, Greece has lagged behind comparable countries (e.g. Belgium, Italy, Spain), which have pursued a range of innovative policies to address the same problem. All in all, the most promising avenue to explain the stalemate is perhaps a very deficient policy-making process (Monastiriotis and Antoniadis, 2009), whereby the government does not take up policy proposals. The 2007 Koukiadis Report is a case in point: while it made some policy recommendations on how to combat undeclared work, this part was overshadowed by the public outcry and the Ministry chose to dismiss the whole report, thus 'throwing away the baby with the bathwater'.

#### *5.1.1 Beyond Undeclared Work: Illegal Practices and Law Enforcement*

Illegal practices in the labour market are by no means a new phenomenon in Greece. They preceded the crisis and, in all certainty, they will outlive it as well. As the recent ILO report on undeclared work in Greece states, "the undeclared economy in Greece in 2013 was the equivalent of 24% of GDP, which puts Greece among the countries with one of the largest undeclared economies in Europe" (ILO 2016: 22). Within this context, it is not surprising that undeclared work and other illegal practices prevail in the labour market.

Measuring and tackling illegal labour market practices is a challenging exercise, for due to their nature, these practices can be difficult to be observed. If, however, one

wants to create a framework for addressing illegality, one needs to properly appreciate why these practices exist in the first place.

The purpose of this section is not to provide an estimation of illegal activities in the Greek employment relations context. It should be stressed that what follows is just a *first approximation* to a very complex phenomenon, and in no circumstances do we make the claim that our results and considerations depict the full reality of illegal labour practices in Greece. To better appreciate the extent and nature of illegality, and to offer targeted and specific recommendations for its abatement, further research is necessary. What we will try to do instead is to briefly explore the *changing nature of illegality* during the Memoranda years, and to try and understand why such practices persist.

#### *5.1.2 Explaining illegal activities in the Greek labour market*

A prominent theoretical framework that has been used in the relevant literature to explain illegal practices (and undeclared work more specifically) is the ‘state morality’ vs. ‘civil morality’ dichotomy (Helmke and Levitsky, 2004; Williams, 2015; Williams and Horodnic, 2015a, b). According to it, it is the failure of formal (i.e. state) and informal (i.e. civil society) institutions to be aligned that lead to the emergence of illegal practices. Hence, when there is a misalignment between the interpretations of the ‘rules of the game’ as set by these different institutions, illegality emerges. The formal institutional failings are of four types: formal institutional voids (e.g. non-existence of a welfare state, which forces people in undeclared work to compensate the lack of income); formal institutional inefficiencies (e.g. when formal institutions appear or seek to protect the interests of an elite); formal institutional uncertainty; and formal institutional weaknesses and instability (i.e. their lack of capability to enforce legislation) (see Webb et al., 2009).

Although this framework may offer plausible explanations regarding the behaviour of the parties in the employment relationship, it lacks in two respects: first, it offers a very simplistic understanding of the complex social dynamics that may define the rules of the game in an employment relations system, disregarding for instance the role of other institutions – such as the trade unions or the employers’ associations – that occupy a ‘middle ground’ position in between the state and the civil society.

Second, it does not consider the importance of power in formulating certain behaviours in society. In a social setting where the power balance between capital and labour has been disturbed (for whatever reasons), illegality may become more prominent as a way to redefine one's position in the employment relations arena.

Having said that, however, the state morality vs. civil morality theory does offer some interesting breakthroughs, especially regarding the role of formal and informal institutions in determining one's actions. In what follows we will see that both approaches have merit in the Greek case. Before proceeding, however, it is imperative to set out some preliminary definitions.

### *5.1.3 Preliminary definitions: Types of Illegality in the Labour Market*

- Illegal or unlawful activities in the labour market: any practice that breaches any aspect of individual or collective labour law. This is a general term that describes the whole universe of illegality as defined by the national legal framework governing employment. It is concerned with any kind of labour law violations (e.g. equality and discrimination; health and safety regulations; trade union rights etc) and not only with wage-related or working-time related violations.
- Undeclared work: work that generates value but is not revealed in the proper authorities either for taxation or social security reasons, or because its nature or its products are illegal (e.g. human trafficking, drug dealing, smuggling etc.). For purposes of simplicity we will employ the European Commission's definition of undeclared work – which is also the one adopted by art.32 of Law 3996/2011: “productive activities that are lawful as regards their nature, but are not declared to the public authorities, taking into account the differences in their regulatory systems between the Member States” (European Commission 2007b: 2).
- Undeclared employment: waged employment that generates value but is not revealed to the proper authorities for reasons of taxation, social security or labour law. It is a narrower concept to undeclared work, as it is only concerned with waged employees/workers. Hence in this category we do not include self-employed people (such as doctors, lawyers, etc.). The question of bogus self-

employment is of particular interest here. For taxonomical purposes these activities are to be considered undeclared work.

- Under-declared employment: employment that is not declared in its totality to the proper authorities. This may be (i) under-declaring an employee's wages; (ii) under-declaring an employee's working hours. In the first case, an employee may receive part of one's wages 'under the table' (envelope wages), and in the second an employee may be working for more hours than the ones officially declared for (for instance, working an 8-hour shift while they are registered as working a 4-hour shift; working unpaid overtime etc). Whether the employee receives compensation for the undeclared part of one's working hours is an empirical question (i.e. they may or they may not).
- False declaration of employment: the practice of declaring an employee as doing one particular type of job (for example, working as a secretary) while in reality doing another (usually more specialised) job (for instance, working instead as an accountant).

As can be appreciated, the boundaries between these categories can be quite blurred and usually a person may be classified as belonging to more than one category. Hence, the declaration of a student as an 'intern' (when, in reality, this person works full-time for the company), is both a false declaration of employment and undeclared (or under-declared) employment at the same time. As it will become evident in the analysis of our interviews, the blurring of the boundaries is a common practice in various sectors, and creates multiple problems both for the practice of employment relations and for tackling illegality.

#### *5.1.4 Illegal practices in Greek Employment Relations*

Estimating the magnitude and type of illegal activities in a labour market is a precarious and, sometimes, futile exercise. Due to the nature of these activities their full extent is never revealed and one can only talk of an approximation to the reality of illegality.

With reference to estimating undeclared work, the European Commission (2007b: 4), identifies two broad methods that can be used:

“Undeclared work can be measured both directly and indirectly. Indirect methods are based on the comparison of macroeconomic aggregates (such as national accounts, electricity consumption, cash transactions) ... Direct methods, on the contrary, are based on statistical surveys and have advantages in terms of comparability and detail, but tend to under-report the extent of undeclared work”.

Apart from surveys, however, an appreciation of the extent and type of illegality can also take place through data collected either from official government bodies that conduct inspections in the market (such as the Labour Inspectorate, the Inland Revenue or the relevant bodies of the social security and pensions organisations), or from an analysis of the court cases that deal with issues of illegality. A third method that can be used is in-depth interviewing of the relevant social partners (either at the national or the local level) who, due to their role and position in the respective industry, have an insider’s appreciation of the labour market conditions.

However, as ILO (2016: 25) has rightly argued, “these data are not based on a representative or random sample of businesses. As such, it is erroneous to extrapolate from the SEPE data to the population”. Although there is methodological merit in this observation, the very nature of the topic makes it almost impossible to evaluate its true and full extent. In this context, therefore, any information – no matter how problematic it may be in a strict methodological sense – that can help us better appreciate the situation in the labour market is extremely valuable. Needless to say that a generalisation about the extent of illegality cannot be made using these methods; but their value lies to the fact that they may point to specific directions regarding the magnitude and form of illegality, as well as to the reasons that magnify it, helping, therefore, formulate relevant policies and strategies for addressing this phenomenon.

## 5.2. Quantitative Analysis

Official statistics about unlawful labour practices are primarily derived from SEPE. In between 2009 and 2013 SEPE published an annual report that included detailed information about its activities, and detailed statistics on the various violations that were observed in the market. This annual report has since been discontinued, and has been replaced by a summative report taken from the ARTEMIS database, which is only concerned, however, with instances of undeclared work.

According to the latest ARTEMIS report (Ministry of Employment and Social Affairs 2015), in between the fourth quarter of 2013 and January 2015, 13% of all inspected companies employed undeclared workers (see Table 15). Undeclared workers constituted 4.2% of the sample (2.7% were Greek nationals and 1.5% migrant workers).

**Table 15 Undeclared employment in Greece Sep 2013 - Jan 2015**

	<b>15 Sep 2013 – 31 Jan 2015</b>	<b>1 Jan 2015 – 31 Jan 2015</b>
Inspected enterprises	36.007	1.854
No of enterprises employing undeclared workers	4.672 (12.98%)	267 (14.40%)
Total no of workers	180.856	5.649
No of undeclared workers	7.544 (4.17%)	460 (8.14%)
Total amount of fines (€)	€78.672.952	€4.854.043

*Source: Adapted from Ministry of Employment and Social Affairs (2015: 5)*

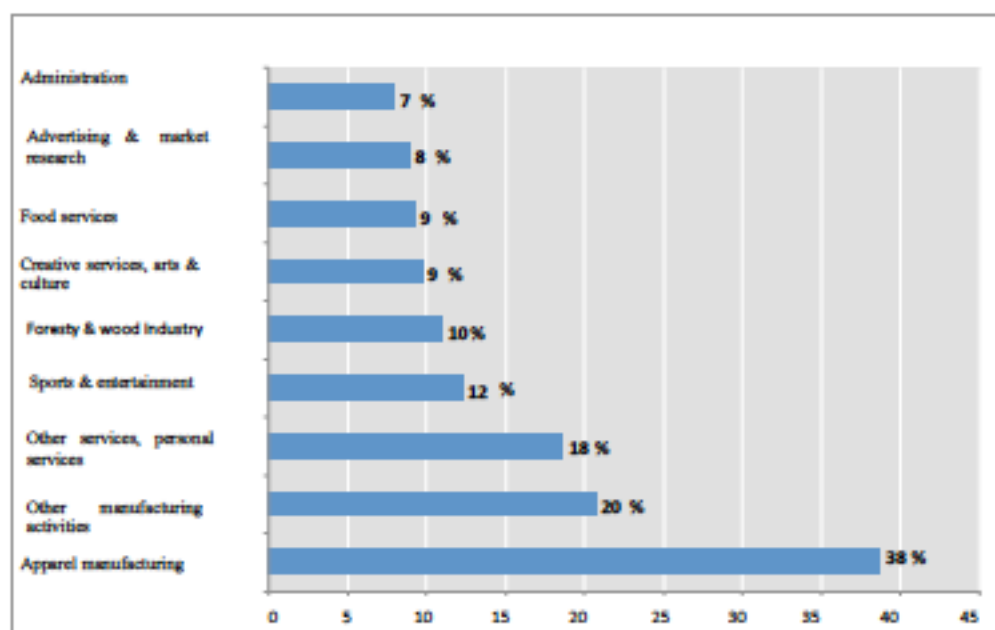
The recent ILO report on undeclared work in Greece (ILO, 2016), supplements the above picture by reference to a recent Eurobarometer (conducted in 2013), which followed a more reliable and valid methodology to reach its results. According to this (ILO 2016: 26):



“67.3% of all undeclared work was waged employment, of which: 13.3% was wholly undeclared waged employment, and 54% was under-declared employment. 10.2% was under-declared self-employment, and 22.5% paid favours conducted for close social relations, such as kin, friends, acquaintances and neighbours”.

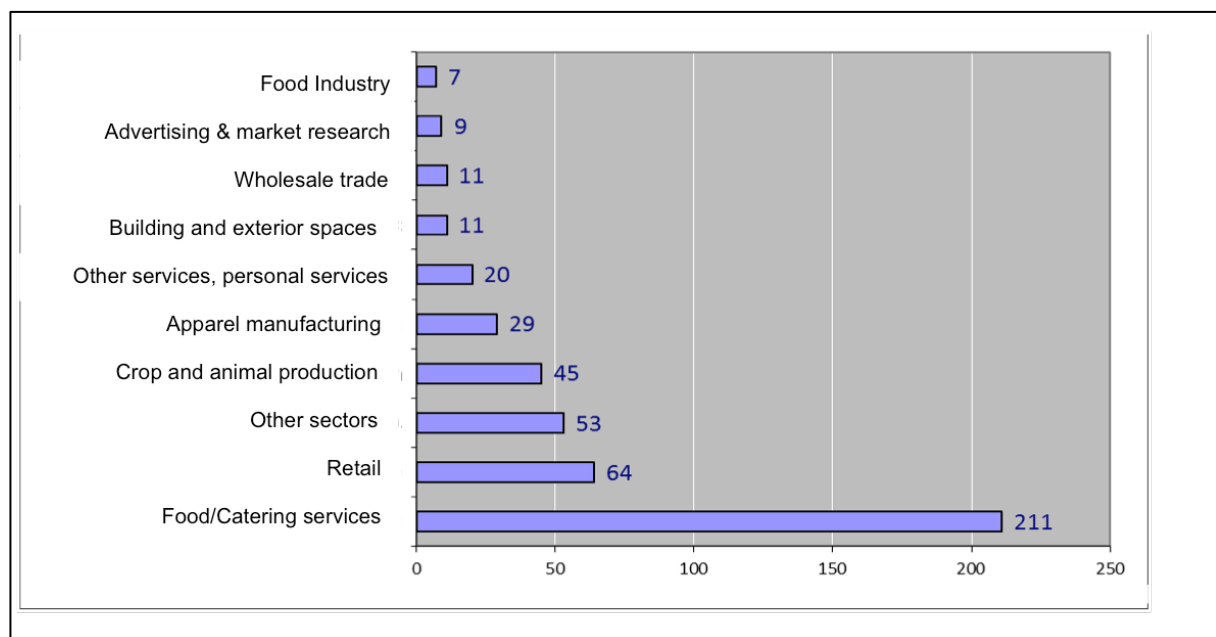
Undeclared and under-declared employment is concentrated in certain industries that occupy an almost permanent position in the relevant statistics, although the magnitude of these practices varies from one year to another. Figure 4 presents the industries with the greater instance of undeclared employees in between 2013 and 2015, while Figure 5 presents the same data for January 2015.

**Figure 4 Undeclared employees per sector Sep 2013-Jan 2015 (results of labour inspections)**



Source: ILO (2016:25).

**Figure 5 Undeclared employees per sector, Jan 2015 (results of labour inspections)**



Source: Ministry of Employment and Social Affairs (2015: 26)

Most of the firms that participate in such activities (although by no means all of them) have certain common characteristics: they are small or very small firms, engaged in production activities that may require the use of flexible forms of employment, and usually employ low-skilled workers since they have a very simple (or simplistic) labour process that does not require the use of experienced personnel. Food services (such as catering, bartending, table waiting) or apparel manufacturing are two prone examples.

SEPE is not concerned only with monitoring undeclared employment, but investigates all aspects of employment relations and health and safety law. Violations of health and safety law, apart from being illegal per se, may result to fatal consequences for the individuals involved. Data available up to 2013 reveal the picture about industrial accidents in various workplaces (see Table 16). Although SEPE's annual reports include more detailed information about the sectors in which industrial accidents take place, the type of accident, demographic characteristics of the victims etc., they do not explicitly reveal the causes of the accidents (i.e. whether a violation of the relevant legal provisions was responsible for the accident) (SEPE

2009; 2010; 2011; 2012; 2013). Further investigation that is beyond the scope of this project, is required to determine this.

**Table 16 Industrial Accidents 2007-13 (declared to SEPE)**

	2007	2008	2009	2010	2011	2012	2013
<b>Declared Industrial Accidents</b>	6561	6657	6381	5721	5203	4858	5126
<b>Fatal Industrial Accidents</b>	115	142	113	94	70	64	67
<b>Fatal Industrial Accidents (<i>pathological causes</i>)</b>	21	38	29	31	31	19	25
<b>Fatal Industrial Accidents (<i>non-pathological causes</i>)</b>	94	104	84	63	39	45	42

Source: SEPE Annual Reports, 2009-2013

### 5.3. Comparative Labour Law and Employment Regulation

#### Greece

- Law 1558/1985, article 28
- Law 3996/2011

In Greece Article 28 of Law 1558/1985 founded SEPE, a regulatory authority empowered to ensure compliance of businesses with the legislative framework regulating the labour market. The inspectors of SEPE are entitled to freely enter the premises of businesses 24/7.

In addition, article 26 of Law 3996/2011 introduced the electronic labour card, aiming at ensuring compliance with the labour and social security legislation and the timely fulfilment of the respective obligations of the employers. The card depicts the time of arrival and departure of the employees as well as their work hours and sends the

relevant data to an integrated central system for the three actors concerned with the labour market (IKA-ETAM, SEPE, OAED).

### **United Kingdom**

- Management of Health and Safety at Work Regulations 1999.
- The Health and Safety Regulations 1996.
- The Employment Agencies Act 1973.
- The Conduct of Employment Agencies and Employment Business Regulations 2003.
- The National Minimum Wage Act 1998.

There are 5 bodies in the UK that conduct inspections on labour law matters, i.e. the Health and Safety Executive (HSE), The Employment Agency Standards Inspectorate (EAS), Her Majesty's Revenue and Customs (HMRC), the Department for Food and Rural Affairs (DEFRA) and the Gangmasters' Licensing Authority (GLA).

The HSE is responsible for the monitoring of health, safety and working time issues, aiming to secure the health, safety and welfare of people at work.

The EAS focuses on agency workers.

The HMRC inspects the enforcement of the National Minimum Wage Act 1998, on behalf of the Department of Business, Innovation and Skills (BIS), including compliance and enforcement. The HMRC is informed by the Low Pay Commission.

The DEFRA inspects the enforcement of the Agricultural Minimum wage in agriculture under the National Minimum Wage Act 1998.

The GLA regulates those individuals that supply labour or use workers in the fields of agriculture, horticulture, shellfish gathering, food processing and packaging.

The above enforcement bodies secure compliance first by raising awareness and providing consultation and second through targeted inspections and imposition of fines in cases of non-compliance.

**Ireland**

In Ireland NERA labour inspectors conduct workplace inspections to ensure compliance with employment rights legislation. The inspections also inform employers of the requirements of legislation, discuss best practice for compliance and deal with queries they may have. NERA labour inspectors also conduct inspections in collaboration with other actors, such as the Revenue Commissioners, the Department of Social Protection and An Garda Siochana (police).

**Germany**

- Act to Combat Illegal Employment.

In 2013, social partners have agreed to join forces and fight undeclared work through a series of agreements. These agreements aim at raising awareness of undeclared work. The partners seek closer institutional co-operation (exchange of information), regular visits to establishments checking for cases of undeclared work as well as for adherence to minimum wages.

**France**

- Law 2011-672
- National Plan to Fight Undeclared Work of the 26th June 2009

In 2009, France adopted the National Plan to Fight Undeclared Work, aiming at 5 specific sectors, i.e. construction, hotels and restaurants, the private security and cleaning industry, live performance and recorded entertainment and seasonal work in agriculture. In addition, the government have adopted several bills aiming at strengthening measures to identify infringements of the legal requirements to pay taxes and social security contributions.

In addition, law 2011-672 on immigration, integration and nationality has increased penalties for employers that employ illegally third-country nationals.

## **Denmark**

Since 2012 a series of measures have been implemented in Denmark in order to battle undeclared work, among the most prominent of which are the following:

- Services that amount to 10.000 DKK or more must be paid digitally.
- The Ministry of Taxation has the right to inspect visible outdoor housework of a professional nature.
- Young people of 16 years of age may do domestic work of childcare without paying taxes.
- Pensioners may earn up to 10.000 DKK by working in private homes.
- Helping out family members and neighbours in private homes is also tax-free.

## **Sweden**

In Sweden undeclared work for about half of the country's total tax gap. In order to tackle undeclared work, the government has implemented a series of tax deductions (RUT) with regards to domestic services.

## **Portugal**

- Inspection Action Plan 2008-2010 of the Authority for working conditions

The Portuguese Inspection Action Plan is the main instrument of reference of the Authority for Working Conditions to accomplish its mission 'Promotion of the Improvement of Working Conditions'. Its main aim is to develop strategies to combat undeclared work (either completely or partially undeclared or remunerations that are underdeclared) and irregular contractual flexibilities, in order to integrate such cases into regular employment.

## **Spain**

- Royal Decree 5/2011

By the enactment of Decree 5/2011, the Spanish government aimed to battle undeclared work. The plan was enacted in 2 phases. In the first phase, undeclared work was defined as paid work undertaken outside the social security system. Thus,

employers were given the incentive to register undeclared employees without phasing penal sanctions. In the second phase additional measures were implemented, among which the imposition of stricter sanctions and fines for cases of undeclared work.

## Bulgaria

- Labour Inspection Act (2011)

In Bulgaria it has been an increasingly common phenomenon over the past few years and since the outbreak of the economic crisis to falsely declare employees working full time as part time workers. Against this background several measures have been adopted with the aim to control undeclared (or falsely declared) work, among the most prominent of which the adoption of a new Labour Inspection Act and changes in the labour code. The measures adopted include the imposition of sanctions and increased penalties (up to 15000 BGN per worker) when offences are committed.

## 5.4. Qualitative Analysis

Our interviews with the social partners shed some additional light to the realities of illegality in the Greek labour market. Five themes clearly emerged from our discussions: the *first* concerned the issue of *undeclared work* and the reasons for its occurrence; the *second* concentrated on instances of *under-declared work* (especially regarding envelope wages and under-declared working time); the *third* focused on the *false declaration of employment*, while the *fourth* raised the issue of the *delay in the payment of wages*. Finally, *health and safety* in employment was also briefly discussed.

***Undeclared work and employment*** was a reality that all our interlocutors considered to be a common characteristic of the sectors they represented. Their view was that the official figures – as published in SEPE's reports – actually underestimate reality, something that was not surprising *per se*. Asked further, however, about an estimation of the actual extent of this practice, they were unable to provide more concrete details. The major reason was the nature of the Greek labour market and of

the Greek capital, which is dominated by very small and small enterprises, mostly family owned.

The family-oriented nature of small businesses in Greece is an important factor to be considered when discussing illegality for two reasons: first, the social relationships that are developed between the firm-owner and the firm's staff are such that allow the development of a mutual 'understanding' about the condition of the firm and the realities of the market in which it operates. Hence, it is much easier for the employer or the employee to agree on the implementation of an illegal practice that serves both ends. This is particularly important in the case of under-declared employment, as will be shortly analysed. Second, the vast majority of family-owned businesses usually employ family members (usually first degree relatives – wife/husband, son/daughter, mother/father), who may voluntarily agree not to appear as the company's employees. Family businesses may constitute, at least for the owner's family members, a parallel source of (illegal) income, in addition to their legitimate employment. As one of our interviewees from GSEVEE stated:

"Most of the self-employed also work in 'black employment', which comes either from non-relatives but primarily from relatives. An emerging issue, therefore, is what kind of motives you provide to the relative who works in a business, and may be also registered as unemployed, to have social security" (GSEVEE interviewee, 5/8/2016).

The reference to the self-employed is of particular interest in this respect. As other interviewees also commented, recent years have seen an exponential increase in the number of people who define themselves as 'self-employed'. The question however, which is not adequately addressed by the existing data, concerns the nature of self-employment. Thus, apart from the 'true' self-employed people (like doctors, lawyers, software engineers etc.), many can be regarded as 'bogus' self-employed – i.e. employees who work for a particular employer and whose work is totally dependent on that employer (both in terms of income, and the control of the labour process). The reason for this is that the employment of a self-employed person does not incur social security contributions for the employer, and the wage rate does not depend on a specific collective agreement but is freely determined in the market. It is, therefore,



possible (although more research is required to establish this) that self-employed people may be paid below the national minimum wage. As a consequence, reverting to the family business to supplement their income can be a fruitful way forward. Similar considerations apply to the case of all those who may be registered as self-employed but may be out of work (i.e. have no clients, hence no income at all).

An interesting finding from our research concerned the process through which one finds itself working illegally. Two reasons became apparent: the first, and the one that could be expected under conditions of high unemployment, is the pressure that the employers themselves may exert on the employee to take up undeclared or under-declared employment. Fear of losing one's job, or of not finding alternative employment, is central to this scenario, allowing therefore the emergence of exploitation. However, and this is particularly important especially regarding the policies to tackle the phenomenon, many employees voluntarily request, and agree with, their employer to be employed in the 'black market'.

The explanations brought forward for this activity focused around the issues of taxation and non-wage costs. On the one hand, employers do not have to pay social security contributions (or may have to pay a limited amount), whereas employees increase their 'take home' income as this is not be taxed and they do not pay social security contributions. For our interviewee from SEPE, this is a result of the deregulation of the labour market, of incomplete controls, and of the destruction of a 'social security consciousness.

“when you cannot enforce even the minimum compliance of both the employers and the employees in legality, when there is absolutely no motive to comply with the minimum requirements of labour law, when there is no social security consciousness, when the prospect of receiving a decent pension fades away then...all the measures [we are discussing] are at best fragmentary that may somehow improve things but do not address the problem” (SEPE interviewee, 25/7/2016).

Similarly to undeclared work, ***under-declared employment*** appears to be quite prevalent in the labour market. Under-declared employment manifests itself in two different ways: first, through the payment of '*under the table*' or '*envelope wages*'

and, second, through *under-declaration of working time (or, concealed full time employment)*.

The aforementioned practices are not, of course, new in the Greek labour market. However, the crisis and the changes in the institutional framework of employment relations seem to have accentuated their use. As an interviewee from GSEVEE argued:

“In the official data it may appear that...in our country companies have adopted the 586 euros [i.e. the national minimum wage], in practice however this is not the case. This had as a result to use the national minimum wage as a measure to reduce non-wage costs but not so much wage costs. To be more specific I will give you an example: if the wage in a sector was 1,000 euros, it remained 1,000 euros under the table but on paper it appeared as having dropped to 586 euros” (GSEVEE interviewee, 4/8/2016).

Although one cannot easily determine the full extent of this practice – and indeed as our SEPE interlocutor argued, these numbers do appear excessive – it was a common belief across the spectrum of the social partners that such behaviours do pertain. Apart from the reasons previously discussed (i.e. avoidance of taxation and social security contributions, and an increase in ‘take-home’ income), two more reasons were put forward to explain this phenomenon: first, the family nature of the SMEs, which allows the development of close relationships between the owner and the employees and, second, the attempt by the employer to retain the skill base in the company and to avoid dissatisfaction that may lead to informal conflicts or sabotage in the company. This appears to be a ‘win-win’ situation for both parties: the employee sacrifices social security for the net value of his or her wage and retains his or her job, while the employer saves money, retains human capital, and avoid conflicts that could have arisen if the wage had been actually decreased. It is important to note, however, that this is only one possible scenario that manifests in the labour market, whose extent cannot be determined, and which is not necessarily a faithful representation of reality. The fact however that it seems to exist should inform any discussion about addressing the existence of ‘envelope wages’.

In the case of *under-declared working time*, similar considerations apply. It seems that the substitution of full-time employment for 'bogus' flexibility is a common practice in the Greek labour market. As an interviewee from SEPE commented:

"What we also constantly observed, and to me this constitutes the Greek paradox, [is that the employers] used flexible forms of employment, either temporary employment or part time employment, to reduce wage costs. They declared, for example, the employee as a working part time for 4 hours, they paid him and insured him for 4 hours, but they asked him to work for 8 hours... we tried to fight this, but it was not easy" (SEPE interviewee, 28/7/2016).

A similar picture was portrayed by our interviewee in the Ombudsman for social affairs:

"What has happened in many cases is that the employment contract became part-time from full-time. The employer, to survive the crisis, made a substitution; he made the employee appear as typically working part time but in reality he employs him full time, giving him the rest of the money under the table, to save on social security contributions. This happens extensively, not through blackmail but in agreement [with the employee]" (Ombudsman interviewee, 21/7/2016).

Another practice that can be classified within this context is the exploitation of the institutions of internships by certain employers, especially those in the tourist industry (although it may be possible that similar practices may exist in other industries as well, where internships or apprenticeships are in common use). Our SEPE interviewee provided a typical example:

"I remember we had a very good collaboration with the island of Rhodes because there, all the legitimate employers felt that they were being undermined by the methods that the others [i.e. the non-legitimate ones] were using and they provided us with all the information regarding these methods. I remember, for instance, the 'jobbery' according to which they declared employees from ex-communist countries as interns and they paid them for the whole season 120 euros plus food, water etc." (SEPE interviewee, 28/7/2016).

As in the case of the envelope wages, two scenarios seem to account for this practice: first, that there is some kind of voluntary or involuntary cooperation between the two parties of the employment relationship; and second, that many of these actions constitute exploitation from the part of the employer of the adverse conditions in the labour market.

This seems to be the case in instances of **false declaration of one's employment**. As a respondent from the GSEVEE commented:

“A profession is...what the employer says it is! What the employer does, for instance, is the following: for example, an audit firm has a big contract and requires staff. If it hired 100 people as accountants it should give them the wage that is set by the accountants' occupational-level collective agreement. It hires them, therefore, as secretaries with 586 euros but they agree that they will work in accounting” (GSEVEE interviewee, 4/8/2016).

The same respondent argued that this appears to be a common practice among firms, leading among other things to the destruction and devaluation of occupations. In our view this is a practice that has been overlooked in the relevant literature and which can create adverse consequences for the country's human capital. The pertinent question in this case is why employees agree in this practice. And an answer comes from our SEPE interlocutor: in times of high unemployment the employee will do anything necessary to gain or retain his or her employment status – even work for free (SEPE interviewee, 25/7/2016).

Unthinkable as it may seem, 'working for free' also appears to be a practice that prevails in the Greek labour market. This may take three general forms: the first, which we did not explore in our project, has to do with forced labour – with prominent examples being the use of trafficking victims and their exploitation predominantly in the sex industry. The second, which closely resembles the first, is the employment of undocumented migrants in certain jobs (usually low skilled and of temporary nature) and their subsequent reporting to the relevant migration authorities once the job is completed (resulting, of course, in the non-payment of any outstanding wages). Again, this was an issue that we did not explore in the current research but for which various infamous cases have been reported in the media (as for example the case of

the workers in the strawberry fields of Manolada). The third form is the **delay in the payment of one's wages**, which amounts – if one typically examines it under the lens of labour law – as ‘unpaid work’. Both our SEPE interviewees agreed that wages in the labour market are not always paid on time, the delay ranging from one week to a year. As one of them argued:

“According to estimations by INE-GSEE [i.e. the institute of employment of the GSEE], [there exist] 1 to 1,2 million employees who are unpaid for 2 to 15 months. It is a huge number. There are legal consequences, but how can you enforce them? The wage is protected both by the civil and criminal law. But how can you impose this protection when this phenomenon has acquired a certain universality and has been transformed to a social phenomenon?” (SEPE interviewee, 25/7/2016).

By the phrase ‘social phenomenon’ our interlocutor meant that this is such a common practice nowadays that carries with it a certain ‘social legitimacy’, making the said behaviour acceptable (or, at least, understandable) by both parties of the employment relationship. The social legitimacy of illegality is something that is linked to the ‘state mentality/civil mentality’ framework but is not necessarily directly related to it. For in this case we do not observe a common front of the civil sphere against the will and actions of the political sphere, but a (partial) justification of the actions of the employer as a ‘natural’ consequence of the socio-economic environment that currently prevails. Such a behaviour can be crucial in an attempt to tackle any form of illegal actions as the ‘victim’ identifies with the interests of the ‘abuser’ and may construct a rationalisation framework that inhibits them from taking adverse action against their employer. Although, of course, further research is required to better evaluate the situation we, nevertheless, believe that this consideration should be part of any policy to tackle illegality.

A final topic that emerged in our conversations concerned **health and safety** in employment. As discussed in the previous section (see Table 11) the number of industrial accidents reported to SEPE seem to have steadily declined over the years, especially in the case of non-pathological industrial accidents. Although this may reflect a change in the implementation of the relevant legislation by the companies,

or a change in the culture towards health and safety by the employees themselves, the SEPE interviewee had a more cynical appreciation of the situation. According to it, this trend was primarily a result of the fact that there was a huge decline in the economic activity of the sectors that were predominantly responsible for industrial accidents (such as construction and building sites):

“There was a decline in the sector. I say this because in the beginning we were very happy with the numbers and we had stated this publicly back then. We conducted, however, a research on why the numbers had fallen and we saw that there was a decline in the economic activities of the sector” (SEPE interviewee, 28/7/2016).

### **5.5 Explaining illegality in the Greek labour market**

According to the *ILO Diagnostic Report on Undeclared Work in Greece*, the view of the Greek stakeholders on the determinants of undeclared and under-declared work in Greece can be summarise as follows (ILO, 2016: 39):

- "High levels of self employment and the small size of enterprises and family businesses
- High unemployment rates, especially among young people
- Seasonality and dispersion of operations, especially in agriculture and hospitality
- The immigration flow into the Greek labour market
- High levels of non-labour costs – social security contributions for both employers and employees
- High tax rates
- Changes in the determination of wages through legislative means rather through social dialogue
- The reduction of real wages and
- The lack of trust in state mechanisms and the mind set developed because of these factors.”

Indeed, as the preceding analysis revealed, most of these points emerged in our research as well. However, although the above may constitute the causes behind

instances of illegality, they do not adequately explain the emergence of illegality. In other words, what is the mechanism that links, say, the lack of trust to the state, to the adoption of illegal practices?

As it was repeatedly mentioned before, a thorough answer to this question requests deeper research into the causal mechanisms of illegality, as well as a different methodological approach, to better appreciate the motives behind such activities. This is something that the current project does not aspire to address, but should constitute an avenue for future research.

The material deprivation of the parties involved in such activities – and the possible opportunity to improve them – could constitute a promising starting point however. As could also be the fact that the current socio-economic framework (high unemployment and a deregulated labour market with problematic enforcement mechanisms), provides opportunities to ill-willing employers to exploit their staff.

The ILO report partially supports this conclusion, especially with reference to the role of high tax rates, the decline of the welfare state and the rise in inequality in nurturing illegality. With respect to the role of high tax rates, the authors of the report bring forward evidence that it is not the level of taxes that is correlated with undeclared work but, rather, “the lack of trust in the state and belief that they receive appropriate public goods and services for the taxes they pay” (ILO 2016: 35). Greece being a nation where its citizens tend not to trust the state, where the “effectiveness of social transfers in reducing poverty is considerably low than in the EU as a whole” and where income inequality has considerably increased in recent years (see ILO 2016: p.32ff), the prevalence of undeclared work is not surprising. The earlier discussion (see section 5.1) about the divergence between state morality and civil morality seems to apply in this case and to explain illegal behaviours.

However, in our opinion, this framework needs to be treated somehow carefully in evaluating the situation. For although there is indeed ample ground to argue that society may define its own *modus operandi* in contrast to the one promoted by the state, for reasons that have to do with culture, the economy or one's financial state, one should consider the *role of power* in determining certain actions. By this we mean that one should not overrule the role of exploitation and power politics in

persuading an employee to engage in an illegal activity, or even to change an employee's cognitive structure and perception about the legitimacy of a phenomenon. The fact, for example, which became apparent in our conversations, that employees are afraid to denounce their employers or that they accept as legitimate certain (illegal) actions, points to this direction.

Another interesting opinion that was sounded by one of our interlocutors, and contradicts the explicit focus on the state/civil morality dichotomy, is that perhaps, in reality, such a dichotomy does not necessarily exist in Greece:

"I do not agree with this interpretation [i.e. the state morality vs civil morality dichotomy]. For here, in Greece, these two moralities coincide with each other. The state never wanted to fight illegality and undeclared work, it considered it a factor of development, especially with regards to migrants in the 2000s; and secondly both the employers' and the employees', and the society's, consciousness has concurred with any form of illegality... this points to the following, that in Greece this divergence between the state and civil morality does not exist" (SEPE interviewee, 25/7/2016).

Although the above opinion may sound excessive and over-generalising the situation, it points to a direction that, in our opinion, should be further researched. For, as the same interlocutor argued:

"All 3 MoU included an obligation to reduce illegality in the labour market. Let me, therefore, ask a provocative question: all 3 MoU included an obligation to reduce labour costs. Were they reduced? Yes. They also included an obligation to deregulate dismissals. Were they deregulated? By all means. They also included the clause to combat illegality. Was this achieved? No. Why? How can you be successful in all but miss one? And this [i.e. tackling illegality] would be the easiest of the three, since there is a relevant commitment and the agreement of the social partners, of the IMF, the ILO, the World Bank, and the ECB etc. In this case, therefore, where everybody agrees we cannot do anything about it, but where we disagree the MoU succeeds" (SEPE interviewee, 25/7/2016).



Although the above analysis does not necessarily take into account a series of factors that would ensure the successful implementation of anti-illegality policies, it contains an interesting point that merits further investigation: namely, an evaluation not only of the policies that have been diachronically used to address the issue but, primarily, an evaluation of the motives in actually tackling illegality. As we will see in more detail below, organisational politics and organisational institutionalisation may have been partially responsible for the slow steps towards addressing unlawful activities.

## **5.6 Tackling unlawful practices**

The current framework for tackling illegal employment practices is characterised by a ‘deterrent’ culture, which primarily aims at punishing such behaviours once discovered. The law provides for a series of mechanisms and measures – usually in the form of fines – to deter firms from implementing such practices. However, as the preceding analysis has shown, these are by no means enough to ensure legality in the labour market. The primary reason for this, as is the case with any form of illegal activity, is that the law only functions once the existence of such an activity has been established. Even then, the rule of law does not necessarily mean that these activities will render the expected results or that they will not be repeated in the future. To achieve this, other measures need to be in place, such as incentives not to engage in such activities, or changes in the social mentality of the actors participating in them (see ILO 2016: 78ff, for some proposals). Although the latter may be difficult to be achieved, the former is something that can easily be implemented in the Greek case. In what follows we will briefly examine the core framework for tackling illegality, we will discuss the evaluation of the social partners regarding the current situation, together with some proposals that have been put forward to address the emerging problems, and we will conclude with some further considerations on addressing the issue at hand.

### ***5.6.1 The current framework for controlling and monitoring illegal employment practices***

Greek law contains a series of very detailed provisions on what shall happen in case an illegal practice is being discovered. This nexus of regulations builds both on

labour law, civil law and penal law, depending on the nature and seriousness of the offence. The rules of the game are, therefore, not only clearly set out but are also very specific on how to address the various problems. As previously mentioned, however, the law can only function once a violation has been observed and established as such. The bodies responsible for doing so are the labour courts, the SEPE, the inspection branches of IKA and, in some case, the Ombudsman for social affairs.

It must be noted that the effectiveness of these institutions is highly determined on their available resources and the effectiveness of their controls (in the case of SEPE and IKA). For instance, the workload of the labour courts in Greece is such that a decision on a specific case may take a considerable time to be issued, leaving both parties of the employment relationship in a state of limbo with all the consequences that this implies (e.g. loss of income, possible victimisation of the employee, conflictual relationships between the parties and so on). The delay in the issuing of a court's decision may also mean that the employee's claims may never be satisfied. Our SEPE interviewee explained why:

“Before the crisis, until 2007-2008, the average age of a company in Greece was around 7 years, today is 4-5 years. When the issuing of a decision may take 7 years, there is high probability that within this timeframe the company may not exist. On average, a company in Greece ‘lives’ less than the time required for a court ruling to be issued” (SEPE interviewee, 25/7/2016).

This is an important issue that needs to be broadly considered in any policy that aims to revitalise the existing framework; but it should not be considered a panacea for, as the same participant rightly argued, other structural changes need to simultaneously take place if the court rulings are to be enforced (such as the codification of the labour law).

Although the courts are one of the possible avenues one may take to resolve conflicts, they are not without their problems, the most important being access to justice (which can be quite expensive, time consuming and frustrating especially for the low-paid workers) and the possible breakdown in the relationship between the parties. To this end, SEPE plays a crucial role.

Together with IKA – which is responsible for monitoring the proper implementation of the social security legislation – and the Ombudsman for social affairs – which deals with other aspects of labour law, such as equal treatment – SEPE constitutes the primary body responsible for monitoring the implementation of employment relations and health and safety legislation. The core of SEPE's activities are concentrated around targeted controls in certain sectors or companies, conducted after a risk evaluation, or after direct complaints (usually anonymous) by employees. Law 3996/2001 introduced the opportunity of SEPE and IKA to conduct common inspections with the use of 'joint teams' that include inspectors from both bodies. Inspections may be also supported by the local police force if such a need arises.

Apart from being a control mechanism, however, SEPE also has a conciliatory and advisory role, acting as the 'middleman' between the two parties of the employment relationship. As both our SEPE interviewees claimed, the conciliation process works very smoothly and has delivered very good results, leading to the resolution of conflicts without the need to revert to the labour courts. This view was equally shared by the rest of our interlocutors, despite the fact that official statistics regarding the effectiveness of the method are not available.

Although SEPE plays an important role in targeting illegality in the labour market, its function is not without problems. A common theme that emerged in our discussions with the SEPE interviewees was that the work of SEPE is not adequately supported; resulting in lower quality and quantity inspections than the organisation could actually conduct. Asked to elaborate this further, one of our interlocutors said that a major problem with SEPE was its understaffing. Both also agreed that the dependence of SEPE on the Ministry's budget hinders its operations:

"SEPE does not have its own budget. You need to file a request to the central financial department of the Ministry [of Employment and Social Affairs], wait for its clearance etc. Let me give you an example: SEPE's central department has 2 vehicles. When petrol runs out, until we file the request to the Ministry to receive credit, we fund the purchase of petrol ourselves, to be able to move in cases of emergency. SEPE is not financially independent whereas this could be a great help under certain conditions" (SEPE interviewee, 25/7/2016).

Although this may seem a trivial example, if one considers the fact that many inspectors need to travel around Greece to conduct inspections, one may appreciate the problems that may emerge. When asked further why SEPE is not financially independent, our interlocutor said:

“Because it is a ‘special secretariat’. The Ministry never wanted SEPE to have the role it deserves. There are specific economic and political interests in the Ministry that want this mechanism [i.e. SEPE] to be ‘annoying’ for the employers up to a certain point... There are specific interest groups within the Ministries with an old mentality” (SEPE interviewee, 25/7/2016).

The allegations about the function of certain interest groups in the Ministry that may resist the organisational development and change of SEPE were also shared by the second SEPE interviewee. As he recalled, similar interests (although it was not made clear which) also resisted the attempts to modernise the organisation, and to introduce certain changes that would promote its effectiveness, back in 2010-2011. The view of both our interlocutors was that these practices did not necessarily have to do with serving other interests [i.e. the employers] but were primarily attempts of certain groups to retain their power bases and secure their position in the organisational structure (organizational politics). Although these views do not necessarily describe reality in its full extent, the fact that they come from two different persons, with different political affiliations, point to something that perhaps needs to be further investigated in any attempt to re-configure the function, structure and effectiveness of SEPE.

#### *5.6.2 Proposals by the social partners*

Dealing with illegal employment practices requires a national strategy that must involve every part of the employment relationship: from the individual employee and employer, to the trade unions, employers’ associations and, of course, the state. However, during our interviews, there was a sense that the tackling illegality seems to be regarded by the social partners as belonging to the predominant domain of the state. Thus, a common argument across the spectrum was centred on the need for the inspection mechanisms to do their job properly. Although no one can doubt that, the role of the social partners in this process is particularly crucial. However we

believe that up until now the social partners – be it the trade union movement or the employers – have not adequately engaged with the problem, preferring instead to pass responsibility for the situation to the state apparatus. This being said, however, it does not mean that certain proposals, and criticisms of the existing framework, have not been discussed with respective governments.

The most important consideration, especially for the employers' associations, concerned the function and level of the fine for undeclared employment. According to the existing legislation, a firm employing undeclared workers faces a fine of €10,550 per undeclared employee if such a violation is observed. All employers' associations argued that this is a huge fine that can lead companies to shut shop. In contrast to that, and as can be expected, the views of the SEPE interviewees were quite the opposite. According to them, if the fine were smaller it would send the wrong message out in the market. There is some merit in this view, for as discussed before, labour market inspections cannot find all the culprits – a high fine, therefore, could act as a deterrent in engaging into such an activity. However, what has also become obvious in our discussions, is that many companies prefer to take the risk of violating the law than to be legal – one reason being that inspections are usually probabilistic, and the other being that the fine may need to be paid. One of the SEPE interviewee explains that although a company may be found employing undeclared workers, next day it may cease operations and transfer all its capital to a new company under a different name. In that case it may be very difficult for the fine to be collected.

However, an interesting point also emerged from our discussion with the GSEVEE interviewees, who pointed out the specificities of certain sectors and the fact that the bureaucratic red-tape may make it very difficult for employers to declare on time an employee in the relevant authorities, thus risking being fined without necessarily having a fraudulent intention:

“Take the catering sector for instance: if a waiter, for whatever reason, does not come up for work and needs to be replaced at the last moment by somebody else, there shouldn't be a problem with SEPE; you should be able to hire on the spot... for example if I pay social contributions for 17 employees in a reception, and only 15 show up, if I need to use another one to replace one of the two who

did not come, and SEPE comes in the reception I will be fined, even if I have already paid additional social security contributions than the ones I eventually required and the state does not lose but earns money” (GSEVEE interviewee, 4/8/2016).

This posits to an interesting issue that perhaps needs to be further examined by the relevant authorities – namely the fact that certain sectors may be facing special circumstances that perhaps need to be taken into consideration when implementing the law. Further research is required to establish the validity of this proposal and to evaluate the possible benefits from its implementation.

A solution that has been proposed by at least two employers’ associations (ESEE and GSEVEE) and is supported by SEV and SETE as well, is the adoption of the ‘Ergosimo’. This functions like a work coupon that an employer can purchase from the relevant authorities, and can assign it to a specific employee without needing to go through the bureaucratic process of hiring them. The price of the ‘Ergosimo’ should also incorporate social security contributions, making the employment of the said individual legitimate. A concern with this method that has been raised by the GSEE, is that the ‘Ergosimo’ may be used as a substitution mechanism for full-time employment, leading to precariousness and low wages. In response to this criticism our interlocutors argued that it can be regulated that the ‘Ergosimo’ should only be used under special circumstances and conditions.

GSEE’s positions on the matter of illegality revolve on the other hand around two policies that have been tabled to the state and the employers’ associations. The first concerns, what they term, the ‘*minimum composition of personnel*’. An algorithm should be created that will calculate what is the required minimum staff that a company – based on its size – should be employing in order to function properly. This algorithm could then be used by the relevant authorities, in relation to the official data that any company must submit to the ERGANI system, to determine whether the said company may be employing undeclared employees. Thus, for example, if it is calculated that a company, to function properly, needs to be employing, say, 20 employees but appears as employing 5, then this could be an indication that the

company may be using undeclared employment, thus helping inspections to be more targeted.

A second proposal concerns the outcome of an inspection that establishes that undeclared employees are being employed by a firm. A proposal that had been recently tabled by the employers' associations was that instead of paying the 10,550 fine, the company should be made to officially hire the undeclared employees. GSEE's counter-proposal was that a combination of both the fine and the obligation to hire the undeclared employee should be in place. The reason for this is that the fine should exist as a deterrent mechanism from engaging into similar activities in the future. How this will be collected and managed; however, could be open to discussion.

### *5.6.3 Further considerations*

The British trade union movement has long argued that to tackle illegality in the labour market three things must be in place: strong laws, strong enforcement and strong trade unions. Although in Greece the legal framework includes adequate provisions to punish illegal practices, the issue of its enforcement and the role of the trade unions in the process are somehow problematic.

If we want to take this a step further, we could argue that enforcement requires the collaboration of both social partners with the state. This implies, however, that the social partners must have in place certain policies and strategies to ensure that legality is observed. In the case of Greece, this is a highly contested issue. As our interlocutor from SEPE argued:

“A serious strategy [from the trade union movement] to address undeclared employment was never in place. For two reasons. The first is their inability to intervene where they are really needed. The unions are strong in Greece in two sectors, in the public sector and in the DEKOs... in these context they face different kind of problems, not undeclared employment and illegality in general, they never faced the pressure that they would have faced if they operated in the private economy” (SEPE interviewee, 25/7/2016).

This raises the very important issue of organising and representation in the shop-floor. Indeed, due to the structural characteristics of the Greek capital (with 97% of companies employing less than 20 employees) the unions may find it difficult to represent the vast majority of workers, and to be the 'eye and the ear' of the employees in their workplaces. But it is not impossible; what is required is a different approach to organising and a different perception of their role in employment relations. This is an issue, however, that goes beyond the purposes of this project.

The role of the employers' associations should not be overlooked in this respect. When asked whether they have in place any mechanisms to ensure that illegality is being addressed, all the employers' associations argued that this is not provided for in their statute. They all said however that they officially denounce illegality and try to pass this message to their respective members. Although it may be indeed difficult for tertiary associations, like the ones we interviewed, to establish such mechanisms, this is by no means impossible for secondary and primary associations, whose members are individual firms or employers. If the issue of illegality is to be successfully addressed, then all social partners, at any representation level, must put in place policies to ensure the monitoring of illegality.

Even if this takes place however, it does not in any way ensure that illegal practices will be abolished. A drastic change in the system is also required, which will ensure that the employment relations' institutions are strong enough to support workers' rights. It appears that the flexibilisation and deregulation of the labour market that took place in recent years further accentuated the problem, as it changed the balance of power in the employment relationship to the benefit of the employer, leading ill-willing employers to adopt practices like the ones described earlier in the chapter. A reconsideration, therefore, of the role of collective institutions in managing illegality is imperative.

Moreover, it may be necessary to review the structure and function of SEPE, with particular emphasis on the various forces that may inhibit its reorganisation. Although this may create conflicts with the existing domain, it is by no means an impossible exercise. It requires proper research, good organisational skills, sound planning and, above all, the political will to move forward with the changes.



Finally, and as the ILO report (ILO 2016) rightly proposes, the framework governing illegality should also include certain incentives to companies not to engage in such activities. The nature and extent of these incentives is debatable, but it is our belief that if illegality is to be targeted once should use the 'carrot' in conjunction with the 'stick'.

## 5.7 Summary

- The undeclared economy in Greece in 2013 was the equivalent of 24% of GDP, which puts Greece among the countries with one of the largest undeclared economies in Europe.
- According to one theoretical framework, the morality of formal institutions (i.e. state) and informal institutions (i.e. civil society) need to be aligned to deter informality. Hence, when there is a misalignment between the interpretations of the 'rules of the game' as set by these different institutions, illegality emerges.
- There are four broad types of institutional failure: *formal institutional voids* (e.g. nonexistence of a welfare state, which forces people in undeclared work to compensate the lack of income); *formal institutional inefficiencies* (e.g. when formal institutions appear or seek to protect the interests of an elite); *formal institutional uncertainty*; and *formal institutional weaknesses and instability* (i.e. their lack of capability to enforce legislation).
- The phenomenon of informality is complex and multi-dimensional, but we identified five types of illegality/informality: Illegal or unlawful activities; Undeclared work; Undeclared employment; Under-declared employment; False declaration of employment.
- According to the latest ARTEMIS report (2015), between Q4 of 2013 and Jan 2015, 13% of all inspected companies employed undeclared workers.
- According to the 2013 Eurobarometer survey 67.3% of all undeclared work was waged employment, of which: 13.3% was wholly undeclared waged employment, and 54% was under-declared employment. 10.2% was under-declared self-employment, and 22.5% paid favours conducted for close social relations, such as kin, friends, acquaintances and neighbours.
- The prevalence of undeclared work appears to be concentrated in specific sectors of economy activity, namely, *Retail, Food services* (such as catering, bartending, table waiting) or *Apparel Manufacturing*. Common characteristics of firms are: small or very small size, engaged in production activities that may require the use of flexible forms of employment, and usually employing low-skilled or unskilled workers.

- The conditions that allow the development of informality and spread undeclared work in Greece include *inter alia*: high levels of self employment; the small size of enterprises and family businesses; high unemployment rates, especially among young people; seasonality and dispersion of operations, especially in agriculture and hospitality; the immigration flow into the Greek labour market; high levels of non-wage labour costs (social security contributions for both employers and employees); high tax rates; reduction of real wages.
- Evidence suggests that under-declared employment increased rapidly during the crisis: employment contracts are transformed from full-time into part-time; employees keep working full-time but receive 'envelope wages' to save on tax and social security contributions. This may happen even with the agreement/consent of the employee.
- Evidence suggests that a major problem with SEPE (the Labour Inspection Authority) is that it is under-resourced. As a result, it is understaffed and does not have an independent budget to support its inspection and enforcement role. Evidence also suggested that this is also intertwined with organizational politics within the Ministry of Employment.
- The current penalty of €10,550 is deemed as too high by employers representatives, while state representatives suggested that it is high so that it acts as a strong disincentive.
- However, in practice, the disincentive effects 'do not bite' as the probability of being caught is low. Moreover, it appears that even if caught there are other options (e.g. shutting down business), which then interacts with a very slow judicial system. So penalties, even if applied, are rarely paid.
- One practice that gained the support by employers and helps overcome the red tape of hiring on the spot or for a few hours includes the 'Ergosimo'. This functions like a work voucher that an employer can purchase from the relevant authorities, and can assign it to a specific employee without needing to go through the bureaucratic process of hiring them. The price of the 'Ergosimo' also incorporates social security contributions.

## **Chapter 6: Conclusions and Recommendations**

### **6.1. Aims and Objectives of the Study**

The project had the following objectives:

- I. To critically discuss the structural problems and weaknesses of the current employment relations and labour market model in Greece and identify good practices in Europe based on the 'state of the art' of relevant academic and policy literature.
- II. To quantitatively analyze relevant labour market indicators of labour market and employment relations' performance; and to compare and contrast with a selected subset of European countries.
- III. To conduct semi-structured interviews with informants in key positions that will enrich the analysis and contextualize the policy proposals shedding light on the dynamics of institutional change.
- IV. To elaborate evidence-based policy recommendations and propose changes tailored to the Greek context, informed by relevant theory and in line with international or European practice.
- V. To disseminate findings to relevant stakeholders and engage with potential users and beneficiaries of this research.

Our overall research question has been:

- What should be the direction of institutional change for a future Greek Employment Model?

The project sought to answer the following sub-questions:

- i. How does the Greek labour market performance (from a quantity and a quality perspective) compare to other European countries?
- ii. What are the key structural weaknesses and dysfunctional elements in the current system of collective bargaining and minimum wage? What does the

academic evidence suggest? What is the view of the key labour market actors? Which are the possible solutions?

- iii. What are the key structural weaknesses and dysfunctional elements in the current system of employment protection and working time? What does the academic evidence suggest? What is the view of the key labour market actors? Which are the possible solutions?
- iv. What are the key structural weaknesses and dysfunctional elements in the current system of Labour inspection and the problem of undeclared work? What does the academic evidence suggest? What is the view of the key labour market actors? Which are the possible solutions?
- v. Overall, how should the institutional/legal framework be reconfigured with a view to increasing flexibility, while providing adequate levels of protection?

## 6.2. Summary of Findings

- Unemployment in Greece skyrocketed to 25 per cent, reflecting the collapse of its labour market during the period of the severe economic crisis and the implementation of far-reaching labour market reforms.
- Nearly half of the young people that participate in the labour market were unable to find a job in 2015. A similarly high unemployment rate is also observed in Spain.
- Only about 7.5 percent of employees in Greece in 2015 state that their job offers them autonomy and learning opportunities.
- Physical working conditions, work intensity and working time quality are also particularly low in Greece, in many cases, worse quality than 'new member states' with a significantly lower GDP per capita.
- Econometric studies on the effects of the collective bargaining framework and minimum wage levels on employment performance are quite inconclusive. Academic economists are quite cautious in the policy interpretation of their results, but international organizations such as the IMF derive strong policy implications from their results.

- A balanced assessment suggests that the implications of alternative structures of collective bargaining are poorly understood, and therefore, the IMF should tread carefully in its policy advice in this area, particularly since governments may have limited ability to reform existing systems. Moreover, trust among social partners appears to be just as important in bringing about macro flexibility at the structure of collective bargaining.
- In contrast, a relative consensus seems to exist among researchers on the merits of coordinated bargaining, stressing theoretically and empirically the beneficial effects of coordinated bargaining between different unions and employers' associations on labour market performance.
- Due to the far-reaching labour market reforms in Greece, the collective bargaining coverage declined from 83 percent in 2009 to 42 percent in 2013, while ILO estimates a coverage rate of 10 percent in 2015.
- Coordination declined significantly in Greece from an average index of 4.0 (2005-09) to an average of 1.8 (2010-14). This relates to the abolition of the general applicability of the EGSSE, which was acting as a coordinating mechanism by setting the annual increases in the national minimum wage and guiding in this way the wage developments resulting from lower-level bargaining.
- The evolution of the minimum wage as a ratio to median wage since the beginning of the '90s suggests a broad policy of wage moderation exhibited by the social partners negotiating the national collective agreement.
- This moderation is also evident in relation to productivity; up to 2007, we can observe relatively lower increases in the real minimum wage relative to the growth in productivity, suggesting that the social partners adopted a responsible approach to minimum wage setting, avoiding "excessive" increases.

- In contrast, some “rigidity” in the system is apparent during the years 2008-2010, at a period when real minimum wage increased at a higher rate than productivity.
- As regards minimum wage setting, there seems to be consensus among actors, all social actors support the return to the previous institutional framework and setting of the minimum wages by national general collective agreement (EGSEE).
- As regards the mediation and arbitration system, the views are more ambivalent. The employers’ side was unanimously against the compulsory arbitration system, whereas the employees’ side was in favour.
- As regards collective bargaining centralization and decentralization there is a range of views. GSEVEE is in favour of sectoral agreements and a complementary role for company-level agreements. ESEE is in favour of sectoral agreements and against occupational agreements, with a complementary role for company-level agreements. SEV is representing companies and is more favourable to company-level agreements. GSEE is in favour of sectoral and occupational agreements with a complementary role for company-level agreements.
- The empirical literature and OECD have reached a relative consensus that there is no significant impact of employment protection legislation (EPL) on aggregate unemployment. Instead, evidence suggests that labour market reforms may result in the substitution of the “more expensive” workers with “cheaper” ones, without any significant gains in total employment. EPL can have a beneficial impact on the quality of jobs by increasing the feelings of job security among employed persons.
- A series of laws in Greece after 2010, again related to the conditionality imposed by the loan agreements with the “Troika”, substantially liberalised EPL by reducing the notification period for individual dismissals and the related severance pay, and by increasing the trial period for employees on open-ended contracts.

- In individual dismissals, EPL in Greece is more relaxed than Denmark, France, Germany, Portugal, and Sweden.
- In collective dismissals, EPL in Greece is more relaxed than France, Germany, Ireland, and Spain.
- In temporary contracts, EPL in Greece is more relaxed than France and Spain.
- As regards the strictness of working time regulation Greece stands at about the same level as Germany and Spain, with only UK and IE having lower protection, while Portugal, France, Denmark and Sweden have higher protection.
- Firms have always made limited use of part-time employment in Greece; however, we can also observe a doubling of the part-time employment share during the crisis years. Job destruction during the deep recession of the Greek economy has been extremely severe and the greatest majority of the few new jobs created have been on part-time contracts.
- The CJEU found that Greece was in violation of its obligations under the Working Time Directive in the public healthcare system.
- The CJEU decision regarding collective dismissals in Greece suggests that the current system of prior authorisation cannot offer businesses an acceptable degree of legal certainty, and requires the Greek legislator to devise ways in which the ministerial decision to refuse authorisation will depend on more precisely defined criteria.
- Law 3863/2010 increased the collective dismissal thresholds by increasing not only the number of employees that could be dismissed, but also increasing the velocity of dismissals.
- In a joint declaration the social partners argued against any further deregulation of the system as regards collective redundancies.



- Most of the social partners highlighted some potentially positive aspects of flexible working, both for employers and employees, but they insisted on how part-time work in the times of crisis and in the context of the Greek labour market realities, is used as bogus full-employment to get tax and social insurance advantages.
- In relation to the debate of flexibilization in the interest of competitiveness, social partners were adamant that a rationalisation of the taxation system and of non-wage costs are more important than any discussion about labour market flexibility or further wage cuts.
- The undeclared economy in Greece in 2013 was the equivalent of 24% of GDP, which puts Greece among the countries with one of the largest undeclared economies in Europe.
- According to the latest ARTEMIS report (2015), between Q4 of 2013 and Jan 2015, 13% of all inspected companies employed undeclared workers.
- According to the 2013 Eurobarometer survey 67.3% of all undeclared work was waged employment, of which: 13.3% was wholly undeclared waged employment, and 54% was under-declared employment. 10.2% was under-declared self-employment, and 22.5% paid favours conducted for close social relations, such as kin, friends, acquaintances and neighbours.
- The prevalence of undeclared work appears to be concentrated in specific sectors of economy activity, namely, retail, food services (catering, bartending, table waiting) or apparel manufacturing.
- The reasons that facilitate the development of informality and increase of undeclared work in Greece include *inter alia*: high levels of self employment; the small size of enterprises and family businesses; high unemployment rates, especially among young people; seasonality and dispersion of operations, especially in agriculture and hospitality; the immigration flow into the Greek labour market; high levels of non-wage labour costs (social security

contributions for both employers and employees); high tax rates; reduction of real wages.

- Evidence suggests that under-declared employment increased rapidly during the crisis: employment contracts are being transformed from full-time into part-time; with 'envelope wages' to avoid and evade tax and social security contributions. This may happen even with the agreement/consent of the employee.
- Evidence suggests that a major problem with SEPE (the Labour Inspection Authority) is that it is under-resourced. As a result, it is understaffed and does not have an independent budget to support its inspection and enforcement role. Evidence also suggested that this is also intertwined with organizational politics within the Ministry of Employment.
- The current penalty of €10,550 for every undeclared employee is used as a deterrent, but it is deemed to be too high by employers' representatives. In practice, the disincentive effects 'do not bite' as the probability of being caught is low. Moreover, it appears that even if caught there are other options (e.g. shutting down business), which then interacts with a very slow judicial system. So penalties, even if applied, are rarely paid.
- One practice to fight undeclared work that needs to be extended and gained the support by employers and employees includes the 'Ergosimo' (work voucher).

### **6.3. Proposals and Recommendations**

On the basis of the findings of this report the authors have elaborated on some proposals and recommendations that will help to recalibrate the institutional framework governing the labour market and improve its overall functioning towards delivering the aim of more and better jobs. These recommendations are generic guidelines that we put forward to contribute to the debate between social partners, policy-makers and academics:

### 6.3.1 *Collective Bargaining and Minimum Wage*

- The main purpose of the national minimum wage should be to address low pay and protect from working poverty. Therefore, increases in the minimum wage should be decoupled from increases in other sectors of the economy.
- Although we note that in most of Europe, the norm is statutory regulation, it appears that the mistrust towards the state would hinder the system. For this reason we cautiously propose that the minimum-wage-setting system responsibility return to the hands of the social partners.
- The social partners may form a Minimum Wage Committee that deliberates annually or biennially to decide on the level of the minimum wage.
- When making a recommendation, the social partners shall have regard to aspects such as changes in European wages and inflation, currency exchange rates, wage distribution, unemployment rates, productivity and national competitiveness.
- To this end, the Committee should be required to accept and take into account evidence and advice from a range of actors and authorities such as: the Bank of Greece, OMED, OAED, academics and higher education institutions, the Ministry of Employment, etc. However, the final decision on the setting of the minimum wage should rest with the signatories of the National Collective Bargaining Agreement i.e. GSEE, SEV, ESEE, GSEVEE, and SETE.
- The minimum wage set by the social partners may be ratified by the Ministry of Employment and should have universal applicability. This will deter free-riding tendencies or the dualization of the labour market. This will also act as a check-and-balance mechanism in case of excessive increases. In case the recommendation is rejected, this should be duly justified and discussed in parliament and/or fall back to the Minimum Wage Committee.
- Beyond the universal minimum wage, the collective bargaining system should be centred on two pillars: Sectoral agreements (setting sectoral minima) and company level agreements. Trade unions and employers associations should work together to enhance the coordination of the system.
- Most of the empirical evidence, suggest that wage coordination is good for a national economy. Ideally sectoral wage increases should be in tandem with

increases in productivity growth. To this end, the European Trade Union Confederation<sup>162</sup> (ETUC) has provided useful guidance to its members so as to enhance wage coordination in the context of the Economic and Monetary Union. More specifically, the wage increases should follow the 'golden rule' and not be above inflation + productivity. An open question, however, is whether the inflation rate should follow the Eurozone average or the national inflation rate, and this reflects some of the architectural flaws of the EMU.

- Ideally, sectoral wage increases should follow productivity growth. The pattern in the economy should be set by industries, which operate in the export-oriented (exposed) sectors of internationally tradable goods.
- The type of occupational collective agreements should be reconsidered and requires further research. It reflects a craft-based approach, and it just adds to the complexity and fragmentation of the system and likely undermines sectoral-based wage coordination.
- The applicability of sectoral agreements should be across the whole sector, rather than only to members of signatory associations. This will ensure fair competition and a level-playing field and avoid free-riding behaviour or dualization of sectoral labour markets.
- The principle of favourability should be re-instated at the level of sectoral and company level agreements. Therefore, company level agreements minima cannot be allowed to be lower than sectoral agreements.
- However, an exception should be written into this rule, whereby companies that face severe economic difficulties can negotiate an 'opt-out' from the sectoral agreement. Granting the opt-out should be coordinated to avoid artificial competitive advantages. This should be granted by the relevant signatories of the sectoral collective agreement, after carefully considering the evidence put forward by the company requiring the opt-out. The opt-out should

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<sup>162</sup> See: <https://www.etuc.org/documents/etuc-coordination-collective-bargaining-and-wages-eu-economic-governance#.WKLQbGcaRs>

be fully justified. *Note that this is similar to the German system of opt-out clauses vs. the Portuguese/Spanish opt-in.*

- The role of the ‘associations of employees’ needs to be reconsidered; as evidence suggests that their function is primarily employer-led.
- This is a *sui generis* institutional body; it is neither a trade union (it does not enjoy the right to strike neither are its leaders protected under the trade unions act) nor a works council (involved only in processes of information or consultation). As a result, it does not reflect ‘European best practices’ and is more liable to paternalistic practices that may hinder the outcomes of any negotiation and distort the balance in the employment relationship.
- The question of arbitration and mediation process and the future role of OMED is a more complex issue. On the one hand, the practice of compulsory arbitration may have disadvantaged the employers’ side with exaggerated arbitration decisions. On the other hand, the suspension or abolition of compulsory arbitration has been deemed unconstitutional by the Supreme Administrative Court (Council of State) and creates disincentives for the social partners to reach an agreement. For this reason, we recommend that a Committee should be set up by the social partners to deliberate on the most suitable institutional framework regarding mediation and arbitration that will best serve social dialogue in the long term.

### 6.3.2 Employment Protection Legislation and Working Time

- The national legislator should comply with the CJEU preliminary ruling in AGET Iraklis and reform the process of authorization of collective dismissals. Thus, the current system under Law No 1387/1983 will need to be reviewed with a view to rendering it compatible with the proportionality requirements stemming from EU law. It should be noted that, at the time of writing, the “substantive” case is still pending before the Greek Council of State, which may offer more detailed and ad hoc guidance to the legislator with its decision on the matter.
- The evidence does not suggest any relationship between employment protection legislation and unemployment. However, a recalibration of the

system may facilitate other objectives e.g. facilitate the mobility of labour when moving from one job to another during economy-wide restructuring.

- The EPL regarding individual dismissals should not be deregulated further, as it already is one of the most flexible in Europe. In fact, it should be strengthened in the near future. Thus, this will help avoid abusive behaviour by employers, who may resort to individual dismissals regularly.
- The EPL regarding temporary contracts may be reviewed in order to avoid tendencies towards dualization of labour markets. A slight relaxation might be possible given that the current regime is among the strictest in Europe.
- The EPL regarding collective dismissals could remain intact, insofar as provision is made to comply with the CJEU preliminary ruling in AGET Iraklis. By European standards the current system can be regarded as neither too strict nor too relaxed.

### *6.3.3 Informal Employment and Labour Inspection*

- One of the main problems of labour law enforcement relates to the low probability of being caught and, even if caught, of being punished. Therefore the enforcement and sanctions mechanisms should be reinforced. More specifically:
- The Labour Inspectorate should be demerged from the Ministry of Employment. It should become an independent administrative authority (similar to the Competition Authority, etc.) and have full administrative autonomy and own budget. In other words, it should be given full resources (including specialized personnel) so as to perform the important role of inspecting and policing the labour market.
- The Labour Inspectorate should collaborate with local trade unions and employers' associations and jointly investigate cases of breach of labour law.
- The processes within the judicial system should be accelerated, as this will have positive effects in the cases of undeclared work. It is worth considering the role of early conciliation services (perhaps offered by OMED) or alternative dispute resolution mechanisms, as well as the introduction of specialised courts (along the lines of the Employment Tribunals system in the UK) that would help speed up the judicial process in labour law breaches.

- Employers should be given incentives to formalize undeclared employees with some sort of waiver of penalties. The example of vouchers (Ergosimo) is a case in point, the use of which could be further extended e.g. to operate in an electronic form.

As a final remark, improving the competitiveness of the Greek economy is not only dependent on labour market reforms in the areas that we considered in this report. One of the findings of this report is that there are closely connected policy areas regarding the high non-wage labour costs (taxes and social security contributions) that are even more important than the level of wages. Relatedly, the operation/competitive intensity of product markets and the ability of producers to transfer wage hikes into prices, affect in large extent the price-competitiveness of Greek products and services. Although these areas were beyond the scope of this report, a fuller reconsideration of those is needed and any attempt to reform labour markets without addressing these issues may prove to be futile.

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## Appendix I: Interview Guide

The following semi-structured guide is intended for use in interviews with key informants from: trade unions (TU), employers associations (EA), and government officials/agencies (GOV). The guide is organized by themes to be discussed with specific questions.

### INTRO / ICE-BREAKING

1. Information Sheet explanation and Consent Form signing
2. Position and role/seniority in the organization

### THEME I: COLLECTIVE BARGAINING SYSTEM

1. (TU, EA, GOV) Prior to the introduction of statutory minimum wage, the floor was set by the NGCLA (EGSSE). What was the weakness linked to this mechanism? Was there any prior consultation between the govt and the social partners? What were the results? Why?
2. (TU, EA, GOV) Most other EU countries have a statutory national min wage (notably, FR, LU, NL, IE, UK, MT, PT, ES) (only Belgium has min wages set by collective bargaining). E.g. this seems to be an EU practice, why are trade unions and/or employers opposed to this? Are they? Can you identify a tradition/system that you would consider as the most desirable for Greece? Why?
3. (TU, EA) Do both unions and employers would like to revert back to the “EGSSE system”? And if yes, why? Does it have to do with the outcomes or the process of bargaining?
4. (TU, EA, GOV) The problem is likely to be the level of min wage and not the mechanism. Even so, what further changes in the system can be made to improve the level of protection? e.g. moving towards a Low Pay Commission style of consultation that includes TUs and EAs?
5. (GOV) The early SYRIZA government had plans to revert the system of minimum wage determination to its previous state. Which is the current plan?

6. (TU, EA, GOV) Can trust between social partners, and between state and partners, be restored (if it ever was an important element)? Do you think trust is indeed an important variable? How could we move to a more cooperative system of collective employment relations? What about trust in other institutions e.g. OMED, Inspectorate, Courts.
7. (TU, EA) Coll bargaining derogation and/or opt out of sectoral minima at enterprise-level seems to be a practice in Germany. What is wrong with this practice and what is the alternative that TUs/employers suggest (if any)? Is there a problem of trust to enterprise unions? Differential power? Yellow unions? Enterprise agreements may be necessary to save jobs in times of recession? What's the view of social partners?
8. (TU, EA) The new system of collective bargaining is clearly a decentralized one, with significantly less focus on multi-employer bargaining than before. What do you think were the problems with the previous system? Do you think that it was responsible for excessive wage growth and rigid wages? Did employers view it as a straightjacket?
9. (TU) Assuming that this system remains, would you consider a strategy for more local level union presence? What will be the challenges in achieving that? What's your attitude towards the "associations of employees"?
10. (EA) assuming that this system remains, would you be in favour of more union presence and, possibly, enterprise-level bargaining at the workplace? Or are you happy with more individual employer discretion in determining wages?
11. (TU, EA) Why do you think some employers negotiate with newly formed associations of employees, since they are not obliged to do so under the new system and can go to arbitration if an association emerges?
12. (GOV) The new system of collective bargaining is clearly a decentralized one, with significantly less focus on multi-employer bargaining than before. The new SYRIZA govt promised to reverse that and this reality does not reflect the EU social

partnership model. How did this play out in the negotiations with Troika and what is the strategy now?

13. (TU, EA) What is wrong with decentralisation in practice? Does it serve the objectives of competitiveness and more and better jobs?

14. (TU, EA) Would enhanced statutory protection be an adequate substitute for the absence / lack / diminution of centralisation in the CB system (e.g. floor of statutory rights, possibly at a higher threshold; statutory minimum wage etc.)? If not, why not? If yes, under what caveats / conditions?

15. (TU, EA) Are the reintroduction of the favourability principle and / or the provision of an extension mechanism sufficient for a workable “compromise” - esp. on the part of social partners?

16. (TU) What has been the strategic response of the trade unions to the new policies on collective bargaining? Strikes and industrial conflict? What have the unions managed to win out of this strategy? What were the hopes of the new Syriza govt? What is the position of trade unions now after MoU3?

17. (GOV) What is the interplay between the mediation and arbitration processes and the CB system?

## THEME II: WORKING TIME REGULATIONS

1. (TU, EA) The MoU2 claims that the reforms to working time flexibility are made in order to allow working hours to better adjust to demand and production patterns that may vary over time as well as across sectors and firms. Are these concerns unfounded? Was there adequate flexibility as it was? Where do TUs disagree with this? Are there any disagreements among employers (SEV vs. GSEVEE)? Why?

2. (TU, EA) Short-time working is used extensively in Germany, Italy etc. as part of CB agreements in order to save jobs during periods of recession. Can this a practice be adopted in the Greek context? Why/Why not?

3. (TU, EA, GOV) Working time flexibility (flexitime, etc.) has also the potential to cater employees' work-life balance needs. Are there any indications or recent policy initiatives that this has/will be used in the Greek context?
4. (TU, EA): Working time flexibility seems that it is now both a de jure and de facto reality. For example, the few jobs that have been created during the crisis have predominantly been part-time jobs. Evidence shows that, in contrast with what the case is in other European countries, part-time workers in Greece are involuntarily so in such a state. Why is that? How can part-time jobs be made more desirable for employees?
5. (EA) Are you constrained by overtime premium pay regulations? Do you think that more expensive overtime can lead to more hirings? Or will it just lead to less overtime being used for existing employees (or unpaid overtime)?
6. (TU) Seems that trade unions in Greece have traditionally been quite suspicious regarding part-time work and other flexible working time arrangements <list>. Are you in practice opposed to these? If yes, why? If not, how would you envisage the policy framework regulating such arrangements?
7. (TU) What is the impact of the regulated changes in the actual working time schedules of employees? What messages do you get from your affiliated organisations?
8. (TU, EA) What do you propose re working time regulation to cater competitiveness and work-life balance? Why?

### THEME III: EMPLOYMENT PROTECTION LEGISLATION

1. (TU, EA) EPL is more or less reduced to average EU levels (ESDE, 2015, p.92). Recent reports suggest that the problem that remains is not the overall level of EPL but some aspects of it (temp work) and the effectiveness/capacity of the judicial system to deal with cases (ESDE, 2015). What is the agenda of TUs/employers in this respect?



2. (TU, EA) The MoU2 policies required that the Government reduces the maximum dismissal notification period to 4 months. Taking into account EU practices, what are the views and policy suggestions of social partners?
3. (TU, EA) Hiring and firing became much less costly for employers after the reforms. For the regulations regarding individual dismissals for regular contracts Greece is now the fourth most flexible EU-15 country (after the UK, IE, and ES while it was the third stricter, after PT and the NL). What is the view of social partners on this policy?
4. (EA) Evidence suggests that EPL strictness is not harmful for overall employment. What's your opinion on this? In which, if any, ways was the past EPL framework restrictive for businesses?
5. (TU) Would you consider desirable the current framework of cheaper hiring and firing if it led to more jobs in the aggregate? What's the TUs position on the trade-off between protection of insiders and employment of outsiders?
6. (GOV) Several Labour Ministers (across the political spectrum including the current govt) were in principle opposed to many of the policies of deregulating EPL as a matter of principle. Have you consider an evidence-based approach in your dealings with the Troika, and what were the results?
7. (TU, EA, GOV) Is the level of protection the only problem with the EPL system? Are there inconsistencies in the current EPL system?
8. (TU, EA, GOV) How does the absence of a singular Labour Law code play out with regard to EPL strictness especially in view of the increasing complexity of relevant legislation?
9. (TU, EA, GOV) Is the prospect of establishing UK-style Employment Tribunals desirable in this respect?

## THEME IV: COMPLIANCE, UNDECLARED WORK &amp; INFORMALITY

1. (TU, EA) Given MoU2 policies on labour inspectorate, why informality is not reduced? What do TUs/employers think?
2. (TU, EA, GOV) MoU2 required the elimination of several administrative burdens (e.g. eliminate the obligations to ex-ante submit work schedules to the Labour Inspectorate; to require pre-approval by the Labour Inspectorate of: overtime work, itinerary books of trucks and buses, the work book of daily employment of construction workers, and split of annual leave). What are the views/policy suggestions of TUs/employers? Have these been legally enacted? Implemented? If not, why?
3. (GOV) MoU2 required the undertaking of an independent external assessment of the Labour Inspectorate, to be completed by 2012. Has this taken place and if yes with what results and follow-up measures?
4. (TU, EA, GOV) MoU2 required a single Labour Code compiling all existing legislation relevant for labour and industrial relations to ease interpretation, reduce compliance costs and increase enforceability of labour law. What are the views/policy suggestions of TUs/Employers?
5. (GOV) Enforcement needs money, people and standardized practices. How are you planning to deal with the challenges of each one of these elements? What other problems does the labour inspectorate face? What is the reality of tackling informality in the field?
6. (GOV) Policing and fines is the “stick” aspect of enforcement of labour law. What can be a supplementary “carrot” approach (e.g. incentives to regularize undeclared workers)?
7. (GOV) Has there been any instance of closer cooperation between countries with similar problems for the purpose of exchanging information about practices and policies?

8. (TU) How can unions safeguard compliance with labour law if they are largely absent from the workplace? Or is this just a matter for the state to deal with?
9. (EA) Non-compliance with the labour law implies that the non-compliant employers have an unfair competitive advantage over compliant ones. Do you have any policies and guidelines in practice that try to deal with this issue?
10. (EA) Arguments (consistent with a neoliberal perspective) have been made that non-compliance is the result of overly restrictive legislation. Do you think that was and still is the issue in Greece? Would you expect non-compliance to decrease under the present, more flexible regulatory environment?
11. (GOV) Is the Artemis programme on-going? Has it been it been successful / effective / what has its impact been?
12. (GOV) Have there been problems with the collection of fines?
13. (GOV) Is informality / undeclared work primarily a sectoral problem? According to Artemis data (Report, p. 18) the vast majority of undeclared workers seem to come from the restaurant sector. If this is indeed the case (in the experience of the social partners), what are the reasons? Have these been identified as part of the consultations with the Troika?
14. (TU, EA, GOV) In an interview of 18 May 2015 (EurWork) the Secretary of SEPE suggested that the overall decrease in undeclared work recorded in official statistics was largely due to the introduction of high fines. Would that also reflect the views of the partners?
15. (TU, EA) What do the social partners do to tackle informality? Do they?

END.