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HUGO SINZHEIMER INSTITUT FÜR ARBEITSRECHT

Wiederaufbau statt Deregulierung in Griechenland

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Vorwort

Mit diesem Working Paper möchten wir auf eine aktuelle Entwicklung im Rahmen der europäischen Krisenpolitik aufmerksam machen. Hintergrund ist ein Memorandum of Understanding (MoU) aus dem Jahr 2015 zu Griechenland. Dieses MoU war insoweit außergewöhnlich, als vereinbart wurde, eine Expertengruppe einzusetzen, die die bestehenden Institutionen auf dem Arbeitsmarkt überprüfen und eine Empfehlung für die Neuregelung unterbreiten sollte. Die Kommission bestand aus acht Experten, die jeweils zur Hälfte von der griechischen Regierung und von den Institutionen nominiert wurden.

Hintergrund war, dass die zuvor durchgeführten Deregulierungen die Situation auf dem Arbeitsmarkt weiter verschlechtert hatten. Unter anderem war die Tarifautonomie faktisch abgeschafft worden. Im September 2016 hat die Expertenkommission nun ihre Empfehlungen vorgelegt. Diese enthalten erstmalig ein klares Konzept für eine Reregulierung der Arbeitsmarktinstitutionen in Griechenland. Im Vordergrund steht dabei die Wiederherstellung einer funktionierenden Tarifautonomie durch die Erleichterung der Allgemeinverbindlichkeit von Tarifverträgen sowie die Einbeziehung der Sozialpartner bei der Festsetzung des Mindestlohns. Es bleibt abzuwarten, inwieweit die Empfehlungen der Kommission umgesetzt werden. Die Chancen dafür stehen jedenfalls nicht schlecht, da sie sich mit der explizit herbeigeführten Beschlusslage der griechischen Sozialpartner decken. Insoweit könnte dieses Vorgehen Modellcharakter bei der Krisenbewältigung haben, indem nicht auf Deregulierung, sondern auf die Schaffung von verlässlichen rechtlichen Strukturen und eine funktionierende Tarifautonomie gesetzt wird.

Wir möchten uns an dieser Stelle bei Prof. Wolfgang Däubler bedanken, der einer der acht Experten der Kommission war. Er hat es übernommen, die Arbeit der Kommission und die Struktur der Empfehlungen darzustellen. Daran schließt der Originalwortlaut der Empfehlungen der Expertenkommission in englischer Sprache an. Wir wünschen eine anregende Lektüre.

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I. Die Kommission und ihr Auftrag

Am 14. August 2015 unterzeichneten die griechische Regierung und die EU-Kommission ein sog. drittes Memorandum[1], das neben den üblichen Sparauflagen auch eine neue Bestimmung enthielt, die aufhorchen ließ: Es sollte eine Gruppe von acht unabhängigen Experten eingesetzt werden, die die bestehenden Institutionen auf dem Arbeitsmarkt einer Überprüfung unterzieht. Dabei soll sie sich „insbesondere" auf Arbeitskampf, Massenentlassungen und die Möglichkeit zu Kollektivverhandlungen konzentrieren. Orientierungspunkt für die Neugestaltung sollen die „besten Erfahrungen" („best practice") in Europa und darüber hinaus sein; eine Rückkehr zum Rechtszustand vor 2010, also vor der großen Krise, durfte nicht stattfinden. Die Kommission sollte ihre Arbeit im Oktober 2015 beginnen. Bevor ihr Bericht vorlag, sollten keine Veränderungen am bestehenden Rechtszustand vorgenommen werden.[2]

Die Kommission bestand aus acht Mitgliedern; vier von ihnen wurden von der griechischen Regierung, vier von den „Institutionen" bestimmt, die man früher „Troika" nannte.[3] Irgendwie schien es schwierig zu sein, die adäquaten Personen zu finden und sich über den Vorsitz zu verständigen; jedenfalls konnte die Kommission ihre Arbeit erst am 22. April 2016, also mit rund neun Monaten Verspätung, aufnehmen. Dennoch wurde von den Institutionen, deren Abgesandte bei allen Sitzungen anwesend waren, die dringende Bitte geäußert, die Arbeiten bis September 2016 abzuschließen. Die Kommission traf sich anschließend am 30. Mai in Amsterdam und dann zu zwei dreitägigen Sitzungen in Athen vom 20. bis 22. Juni und vom 18. bis 20 Juli. In der Juni-Sitzung wurden insbesondere die griechischen Sozialpartner und zahlreiche andere Institutionen angehört, um die nötigen Informationen über die heutige Situation in Griechenland und die politische Haltung der Akteure zu gewinnen.

Die Anhörungen wie die Diskussionen fanden ausschließlich auf Englisch statt. Dass keines der Kommissionsmitglieder ein „native speaker" war, erwies sich eher als Glücksfall denn als Handikap: Es entsteht keine rhetorische Überlegenheit einer Person, wenn alle gleichermaßen sprachlich nicht perfekt sind. Schwierig kann es werden, wenn man Nuancen zum Ausdruck bringen, etwa einem Mitglied ganz höflich sagen möchte, dass man seinen Vorschlägen nicht folgen will. Die direkte deutsche Art, die weniger sprachlichen Aufwand erfordert, kommt da nicht gut an. Was andere schreiben oder sagen, muss in aller Regel als „gut und

[1] Offizielle Bezeichnung: „Memorandum of Understanding" oder abgekürzt MoU.
[2] Erste Überlegungen zur Bedeutung der Kommission bei Thorsten Schulten, Opportunities for a Restauration? The Future of Greek Collective Bargaining after the Third Memorandum, Friedrich-Ebert-Stiftung, September 2015.
[3] Die Troika bestand aus der EU-Kommission, der Europäischen Zentralbank und dem Internationalen Währungsfonds. Auf Wunsch der griechischen Regierung war ab Februar 2015 nur noch von „Institutionen" die Rede, zu denen im Juli 2015 der ESM (= Europäischer Stabilitätsmechanismus) hinzukam.

weiterführend“ bezeichnet werden, aber man könnte vielleicht noch einen bestimmten Aspekt hinzufügen…

Die vier von der griechischen Regierung benannten Personen fanden sich relativ schnell zusammen; das Gefühl, dass den Griechen durch die Memoranden in den letzten Jahren Unrecht getan wurde, war unausgesprochener Konsens. Die andere Seite war heterogener. Zu ihr gehörte ein griechischer Professor, kein Syriza- sondern ein Pasok-Mann, der die Verhältnisse in seinem Land genau kannte. Dazu kamen ein Portugiese, der als Staatssekretär im Rahmen der früheren Regierung in Portugal die Deregulierung aktiv mitbetrieben hatte, sowie ein Wissenschaftler aus der Forschungsabteilung der spanischen Zentralbank – beide neoliberalen Vorstellungen recht eng verbunden. Der Vorsitzende stammte aus den Niederlanden und hielt sich lange Zeit bedeckt – wohl auch aus der Erwägung heraus, dass es ein wenig misslich ist, wenn in einer paritätisch zusammengesetzten Kommission eine Seite den Vorsitzenden stellt; man hätte ja auch einen abwechselnden Vorsitz vereinbaren oder eine neutrale Person ohne Stimmrecht einschalten können.

Vom fachlichen Schwerpunkt her waren beide Gruppen unterschiedlich zusammengesetzt: Drei der vier von der griechischen Regierung benannten Mitglieder waren Arbeitsrechtler, nur einer Arbeitsmarktexperte. Auf der Seite der Institutionen waren drei der vier Mitglieder Ökonomen mit Schwerpunkt Arbeitsmarkt; nur einer war Arbeitsrechtler.

II. Die Ausgangslage in Griechenland

Griechenland gehört zur Euro-Zone. Bei wirtschaftlichen Schwierigkeiten beschränkt dies die Handlungsmöglichkeiten. Hätte es noch die Drachme als eigenständige Währung gegeben, wäre 2010 eine Abwertung erfolgt, um die Konkurrenzfähigkeit der griechischen Exporte wieder herzustellen. Die Importe wären sehr viel teurer geworden, aber die einheimischen Produkte hätten sich wenig verändert: Das in Griechenland gebackene Brot und die Grundversorgung mit Wasser, Strom usw. wären im Preis mehr oder weniger konstant geblieben, was für den ärmeren Teil der Bevölkerung von großer Bedeutung ist. Die Preise in den Gaststätten und Hotels hätten im Normalfall ebenso das bisherige Niveau beibehalten, das Land wäre für ausländische Touristen noch attraktiver geworden.

Gehört ein Land zur Eurozone, steht das Instrument der Abwertung nicht mehr zur Verfügung. Um wieder konkurrenzfähig zu werden, müssen die Produkte auf andere Weise billiger gemacht werden. Dies geschieht durch Senkung der Lohnkosten: Die Löhne werden herabgesetzt, die Renten gekürzt, um so die finanziellen Belastungen des Staates zu reduzieren.

Statt durch die „besseren Angebote“ neue Aufträge zu gewinnen, vergrößert sich die Armut; dadurch fällt Nachfrage weg, weil sich die durchschnittliche Familie deutlich weniger leisten kann. Dies mindert nicht nur die Gewinne. Unternehmen bauen Personal ab, manche müssen Konkurs anmelden. Es entsteht eine Art Spirale nach unten: Je höher die Zahl der Arbeitslosen, umso geringer die Nachfrage, umso mehr Betriebe müssen Mitarbeiter kündigen oder ihre Aktivitäten beenden.

Diese „interne Abwertung“, die viel schwerer zu verkraften ist als die frühere Abwertung der eigenen Währung, wurde in der Weise durchgeführt, dass weitere Finanzhilfen für den griechischen Staat von entsprechendem „Fortschritt“ beim Sozialabbau abhängig gemacht wurden. Dies war im Wesentlichen erfolgreich: Die Löhne liegen heute im Durchschnitt bei 75 % des Niveaus von Anfang 2010. Diesem Rückgang entspricht eine Arbeitslosenquote von knapp 25 %. Da fast keine neuen Arbeitskräfte mehr eingestellt werden, liegt die Arbeitslosigkeit bei Personen zwischen 15 und 25 Jahren nunmehr bei rund 50 %. Was dies für die individuellen Schicksale bedeutet, pflegt im Weltbild neoliberaler Ökonomen keine Rolle zu spielen.

Anders als in Irland, Portugal und Spanien erfolgte die Absenkung der Arbeitskosten durch einen brutalen Eingriff in die bisherigen Strukturen; die bestehenden Institutionen einschließlich Gewerkschaften und Arbeitgeberverbänden verloren weithin ihre Funktion.[4] Das Rezept war im Grunde relativ einfach:

Bis 2010 gab es in Griechenland in fast allen Branchen Tarifverträge, die regelmäßig für allgemeinverbindlich erklärt wurden. Dies ist angesichts der Struktur der griechischen Wirtschaft unabdingbar, weil die allermeisten Beschäftigten bei kleinen und kleinsten Unternehmen tätig sind, die oft keinem Verband angehören. Würden beispielsweise in einer Branche nur 30 % aller Beschäftigten von einem Tarif erfasst, weil sehr wenige Arbeitgeber Mitglied im tarifschließenden Verband sind, so könnte der Tarif unschwer unterlaufen werden: Wer ihn befolgt, hätte einen deutlichen Konkurrenznachteil. Dies würde weitere Unternehmen veranlassen, den Verband zu verlassen. Um dies zu vermeiden, war die Allgemeinverbindlicherklärung generelle Praxis. Rechtlich hing sie zwar wie bis vor kurzem in Deutschland davon ab, dass der Tarif mindestens 50 % der Beschäftigten der Branche erfasste, doch schauten die griechischen Behörden da wohl nie so genau hin; es bestand Konsens, dass alle den Tarifvertrag zu beachten hatten. Auf betrieblicher Ebene waren zwar Tarifverträge möglich, doch konnten sie das Niveau des Flächentarifs nicht unterschreiten; insoweit galt

[4] Dazu aufschlussreich im deutschen Schrifttum Travlos-Tzanetatos, Die Tarifautonomie in kritischer Wende, FS Säcker, 2011, S. 325 – 342; s. weiter Ioannou, Recasting Greek Industrial Relations: Internal Devaluation in Light of the Economic Crisis and European Integration, The International Journal of Comparative Labour Law and Industrial Relations, vol. 28 issue 2 (2012) pp. 199 – 222.

das Günstigkeitsprinzip. Dies führte dazu, dass knapp 90 % aller Arbeitnehmer von Tarifverträgen erfasst waren.[5]

Wie will man nun unter solchen Umständen drastische Lohnsenkungen bewerkstelligen, ohne einfach durch Gesetz die bestehenden Tarifverträge aufheben zu lassen, was Proteste bei der Internationalen Arbeitsorganisation (ILO) zur Folge gehabt hätte und möglicherweise sogar vom EuGH beanstandet worden wäre? Durch die Memoranden wurde der griechische Gesetzgeber stattdessen zu einer Reihe von Maßnahmen veranlasst, die sehr viel „eleganter" waren, aber den gleichen Effekt hatten:

- Die Möglichkeit, einen Tarifvertrag für allgemeinverbindlich zu erklären, wurde suspendiert. Dadurch galten neue Tarifverträge nur noch für Betriebe, deren Inhaber Mitglied im Arbeitgeberverband waren, und auch nur für die Beschäftigten, die eine Mitgliedskarte der Gewerkschaft hatten. Auf diese Weise war sichergestellt, dass es faktisch keine tariflichen Verbesserungen mehr geben würde; gleichzeitig wurde der beschriebene Unterbietungswettbewerb in Gang gesetzt.
- Nun gab es allerdings im Jahre 2010 eine ganze Reihe von Flächentarifen, die noch für ein bis zwei Jahre weitergalten. Die Gewerkschaften weigerten sich, diese Tarife vorzeitig abzusenken. Der Gesetzgeber schaffte deshalb das Günstigkeitsprinzip im Verhältnis zur betrieblichen Ebene ab: von jetzt ab war es möglich, den Flächentarif zu unterschreiten, ohne dass dafür besondere Bedingungen zu erfüllen gewesen wären. Die betriebliche Gewerkschaft war eher zu einem „Einlenken" zu veranlassen als die auf Branchenebene bestehende – so die allgemeine Einschätzung. Dort, wo es keine Gewerkschaft gab, benötigte man ein anderes Mittel, um die bestehenden Tarife aus dem Weg zu räumen. Der Gesetzgeber ging höchst „unkonventionell" vor, indem er die Möglichkeit schuf, in den Betrieben sog. Personenvereinigungen zu gründen. Voraussetzung war, dass sich drei Fünftel der Belegschaft zusammenschlossen. War dies der Fall, so konnte die Personenvereinigung Tarifverträge vereinbaren, die unter dem Niveau des Flächentarifs lagen. In einem Betrieb mit 20 Beschäftigten mussten sich mindestens 12 von ihnen zusammenfinden, um einen (Absenkungs-) Tarif abschließen zu können. Faktisch wurde davon in vielen Betrieben Gebrauch gemacht. Gerade in Kleinbetrieben ist es für jeden Beschäftigten schwierig, einer entsprechenden „Überlegung" oder „Anregung" des Arbeitgebers ein „Nein" entgegenzusetzen. Die Personenvereinigung ist ersichtlich kein unabhängiger Verhand-

[5] Zum Vergleich: In Deutschland sind es derzeit 58 %. Nachweise bei Däubler (Hrsg.), Tarifvertragsgesetz mit Arbeitnehmer-Entsendegesetz, Kommentar, 4. Aufl., Baden-Baden 2016, Einl. Rn. 61.

lungspartner; sie ist eine Art Wiedergeburt des „Werkvereins“, wie er vor 1918 auch in Deutschland existierte.[6] Dennoch fanden die Absenkungstarifverträge Anerkennung.

In ihrem Zusammenwirken hatten diese Mechanismen zur Folge, dass die Löhne innerhalb von eineinhalb Jahren um etwa ein Viertel abgesenkt wurden. Neue Tarifverträge der Gewerkschaften gab es kaum noch. Soweit sie abgeschlossen wurden, sahen auch sie fast immer eine Absenkung vor.[7]

Die Belegschaften setzten sich gegen die Gesamtentwicklung durch Demonstrationen und Streiks zur Wehr, wovon auch in den deutschen Medien berichtet wurde. Lohnstreiks im eigentlichen Sinne, die eine Beibehaltung des bisherigen Niveaus oder gar eine Verbesserung zum Gegenstand hatten, sind nicht ersichtlich. Dies mag ein wichtiger Grund gewesen sein, weshalb die Troika keine Änderungen im bestehenden Arbeitskampfrecht verlangte.

In der ersten Syriza-Regierung gab es Überlegungen, die Eurozone zu verlassen und zur Drachme zurückzukehren. Damit hätte man den Mechanismus der Abwertung wieder gewonnen. Weshalb die Regierung und die Parlamentsmehrheit davon keinen Gebrauch gemacht haben, war (auch am Rande der Kommissionsarbeit) nicht zu klären. Verbreitet ist die Vorstellung, dass die auf Euro lautende Verschuldung des griechischen Staates dadurch nicht beseitigt worden wäre und eine Rückzahlung in Drachmen wegen deren niedrigem Kurs noch belastender geworden wäre. Der eigentliche Fehler lag m. E. im Beitritt zur Eurozone: Der hier beschriebene Mechanismus, d. h. der Zwang zur internen Abwertung war voraussehbar. Dennoch hat sich die damalige griechische Regierung zum Beitritt entschlossen, wobei sich später herausstellte, dass dies zusätzlich noch auf der Grundlage falscher Zahlen erfolgte. Hatte das Gefühl „Wir wollen dazu gehören“ einen so hohen Stellenwert, dass die Vernunft ausgeschaltet wurde?

[6] Dazu Gamillscheg, Kollektives Arbeitsrecht, Bd. I, München 1997, § 9 II 7 (S. 406 ff.).
[7] S. Schulten, a.a.O., S. 4.

III. Die wesentlichen Empfehlungen der Expertenkommission

1. Überblick

Die Vorstellung, die Reduzierung der Arbeitskosten um ein Viertel würde dank besserer Exportchancen zu einem Aufschwung führen, realisierte sich nicht. Das neoliberale Modell versagte. Bruttosozialprodukt und Löhne stagnieren seit zwei Jahren.[8] Etwa 600.000 vorwiegend jüngere Arbeitskräfte haben seit Beginn der Krise das Land verlassen. Zeit zur Umkehr?

Die Expertenkommission war mit Rücksicht auf ihre Zusammensetzung auch ein Gremium, das diplomatische Gepflogenheiten zu berücksichtigen hatte. Anders als in wissenschaftlichen Diskussionen kam es deshalb nicht in Betracht, über die „Untaten" der Vergangenheit zu richten. Dies hätte nur zu einer Polarisierung innerhalb der Kommission geführt. Vielmehr war der Blick nach vorne das Gebot der Stunde. Im Rahmen des Möglichen war nach einem Konsens zu suchen, weil dies die Realisierungschancen von Vorschlägen erhöhen konnte. Manches steht daher nur zwischen den Zeilen, um keine empfindlichen Stellen zu berühren; auch hat die Terminologie durchweg „sozialpartnerschaftlichen" Charakter.

Die meisten Empfehlungen des Berichts sind einstimmig beschlossen worden. Wo es Meinungsverschiedenheiten gab, wurden Mehrheitsbeschlüsse gefasst. In diesen Fällen (Tarifautonomie und Mindestlohn) hat die Minderheit ihren Standpunkt jeweils im Einzelnen in einem separaten Votum begründet.

Während der Verhandlungen der Expertengruppe kamen die Spitzenorganisationen der Arbeitgeber und der Gewerkschaften zusammen. Unter Beteiligung des Arbeitsministers wurde ein Beschluss gefasst, wonach alle Beteiligten die Wiederherstellung einer funktionierenden Tarifautonomie verlangten. Außerdem sollte in Zukunft der Mindestlohn durch die Spitzenorganisationen der Tarifparteien selbst festgelegt werden, um so politische Einflüsse zu minimieren: Je nach politischer Ausrichtung der Regierung würde andernfalls entweder eine unverhältnismäßige Erhöhung erfolgen oder eine Stagnation eintreten. Auf die jeweilige gesamtwirtschaftliche Situation würde nicht ausreichend Rücksicht genommen. Deshalb seien die Sozialpartner eher berufen, eine sachgerechte Entscheidung zu treffen, die dann automatisch für alle gelten müsse. Mit dieser deutlichen Bekundung war der Mindestlohn zu einer Frage der Tarifverhandlungen geworden, die neu zu gestalten ja die besondere Aufgabe der Kommission war.

[8] S. neben der Schilderung im nachfolgend abgedruckten Bericht Koukiadaki/Kokkinou, Deconstructing the Greek system of industrial relations, in: European Journal of Industrial Relations, Mai 2016 (Zusammenfassung in Böckler Impuls 9/2016, S. 5).

Ein Grundgedanke der Empfehlungen war das Subsidiaritätsprinzip im Verhältnis EU – Nationalstaat; soweit den Umständen nach möglich, sollte die griechische Seite selbst entscheiden. Angesichts von mehr als fünf Jahren von außen diktierter Gesetzgebung war dies keine Selbstverständlichkeit.

Teil 1 des Berichts enthält eine kurze Einleitung, Teil 2 eine Zusammenfassung der Empfehlungen, gewissermaßen eine Kurzübersicht. Teil 3 bringt die konkreten Empfehlungen samt eingehender Begründung, Teil 4 gibt die Minderheitsvoten von zwei Mitgliedern wieder. Teil 5 enthält insbesondere persönliche Erklärungen.

2. Die Empfehlungen im Einzelnen

a) Arbeitskampfrecht

Das Arbeitskampfrecht war im Wesentlichen nicht kontrovers. Die griechische Verfassung enthält eine weit gefasste Streikgarantie, die jedoch von der Rechtsprechung mit Hilfe des Verhältnismäßigkeitsprinzips so gehandhabt wird, dass praktisch recht enge Grenzen für Streiks bestehen. Sie in Frage zu stellen und das Streikrecht auszudehnen, war nicht der Augenblick. Die Aussperrung ist nach der griechischen Verfassung ausdrücklich verboten. Dies wurde zwar innerhalb der Expertenkommission kritisiert, doch ging niemand so weit, von Griechenland eine Verfassungsänderung zu verlangen. Das Aussperrungsverbot soll bestehen bleiben. Wird in einem Teil eines Unternehmens gestreikt und kann deshalb in anderen Teilen desselben Unternehmens nicht weiter gearbeitet werden, so muss der Arbeitgeber den Lohn nicht fortbezahlen. Dies ist im Grunde selbstverständlich. Tritt derselbe Effekt aber in einem anderen Unternehmen ein, so gilt dieser Grundsatz nicht: Der Arbeitgeber trägt das Betriebsrisiko und muss deshalb bei allen Arten von Störungen das Entgelt weiterbezahlen. Wenn die griechische Rechtsprechung dies irgendwann anders entscheiden sollte, ist dies ihre Sache.

b) Massenentlassungen

Das griechische Recht sieht vor, dass Massenentlassungen nach erfolglosen Verhandlungen der Sozialpartner der Genehmigung des Arbeitsministers bedürfen. Dies ist für eine politische Instanz wie für einen Minister eine durchaus ambivalente Befugnis: Spricht er die Genehmigung aus, ist er der „Schuldige“ am Verlust von Arbeitsplätzen. Lehnt er ab und meldet das Unternehmen Insolvenz an, so ist er für den Verlust von noch mehr Arbeitsplätzen verantwortlich. Obwohl der Gedanke einer präventiven Kontrolle sehr zu begrüßen ist (und wir uns in Deutschland Entsprechendes überlegen sollten), ist es vorzuziehen, ein Expertengremium entscheiden zu lassen, das am ehesten beurteilen kann, ob die Massen-entlassung

notwendig ist, um wenigstens die übrigen Arbeitsplätze zu erhalten. Eine definitive Empfehlung wurde insoweit aber nicht abgegeben, da die Vereinbarkeit der griechischen Regelung mit dem Unionsrecht derzeit in einem Vorlageverfahren vom EuGH geprüft wird.[9] Bevor insoweit keine Klarheit besteht, sind konkrete Empfehlungen wenig sinnvoll.

Eine geplante Massenentlassung liegt nach der einschlägigen EU-Richtlinie[10] nur vor, wenn eine bestimmte Mindestzahl von Kündigungen ausgesprochen werden soll. Angesichts von 99 % Kleinbetrieben sind „kollektive Kündigungen“ (wie das Phänomen auch genannt wird) in Griechenland eine absolute Seltenheit. Die Kommission befasste sich deshalb zusätzlich mit der Frage, wie bei anderen Kündigungen aus wirtschaftlichen Gründen verfahren werden soll. Zwei wichtige Ergänzungen des griechischen Rechts wurden einstimmig vorgeschlagen:

- Die bisherigen griechischen Regeln zur Kurzarbeit sind wenig weiterführend. So kann etwa der Unternehmer für einen Zeitraum von neun Monaten die Arbeitszeit und die Vergütung auf die Hälfte reduzieren, muss dann aber drei Monate lang alle betroffenen Arbeitnehmer wieder Vollzeit beschäftigen. Dass die Auftragsflaute nicht immer neun Monate betragen wird und dass nicht plötzlich wieder volle Auftragsbücher da sind, wurde nicht bedacht. Konkret: Die Kurzarbeitsregelung ist nicht auf die realen Bedürfnisse ausgerichtet.[11] Auch ist es für die Arbeitnehmer nicht zumutbar, mit der Hälfte des bisherigen Verdienstes auskommen zu müssen. Die Kommission schlug daher einstimmig eine Lösung wie in Deutschland vor: für die ausfallenden Stunden soll es Kurzarbeitergeld in Höhe des Arbeitslosengeldes geben. Außerdem ist die verbleibende Arbeitszeit von der anfallenden Arbeit abhängig und kann auch null Stunden betragen. Die Dauer der Kurzarbeit hängt von den betrieblichen Umständen ab, doch kann Griechenland eine Höchstgrenze von beispielsweise zwei Jahren einführen. Die Regelung ist im Übrigen auf alle Betriebsgrößen, auch auf einen Betrieb mit einem Beschäftigten anwendbar.
- Lassen sich Kündigungen aus wirtschaftlichen Gründen nicht vermeiden, so ist ein Sozialplan zu vereinbaren, der Abfindungen, aber auch Möglichkeiten zur Umqualifizierung vorsehen muss. Auch ohne Sozialplan ist den Betroffenen die (bisher kaum vorhandene) Möglichkeit zu geben, sich umschulen zu lassen und sich so auf neue Arbeitsplätze vorzubereiten. Soweit die finanziellen Mittel des Unternehmens und der griechischen Arbeitsverwaltung nicht ausreichen, muss sich der Europäische Sozialfonds (oder ein anderer EU-Fonds) an den finanziellen Lasten beteiligen.

[9] Aktenzechen beim EuGH: C-201/15 – AGET Iraklis; vgl. hierzu Hinweis in HSI-Newsletter 2/2016.
[10] Richtlinie 98/59/EG des Rates vom 20. Juli 1998 zur Angleichung der Rechtsvorschriften der Mitgliedstaaten über Massenentlassungen (ABIEG Nr. L 225/16).
[11] Ähnliches gilt für ein zweites Modell, das Kurzarbeit nur bis zu drei Monaten vorsieht, wobei der Lohnausfall auch nicht teilweise ausgeglichen wird.

c) Mindestlohn

Der Mindestlohn beträgt derzeit in Griechenland bei einer Vollzeittätigkeit 586 Euro im Monat. Jugendliche bis 25 Jahren müssen einen Abschlag von 13 % hinnehmen und erhalten 511 Euro monatlich. Diese Beträge werden seit der Krise für alle diejenigen, die keiner Gewerkschaft angehören, vom Staat festgesetzt. Vorher war dies eine Angelegenheit der Sozialpartner.

Die Kommission schlägt mit Mehrheit vor, die Entscheidungsbefugnis den Sozialpartnern zu geben, die darüber Tarifverhandlungen führen. Die gefundene Einigung wirkt automatisch für und gegen alle Arbeitnehmer, gilt gewissermaßen als für allgemeinverbindlich erklärt. Für den Fall, dass keine Einigung zustande kommt, enthält der Bericht keine ausdrückliche Regelung. Da es sich um Tarifverhandlungen handelt, wird ein Schlichtungsverfahren durchgeführt, das auch in anderen Fällen der Verhandlungsblockade bemüht wird und das auf gewerkschaftlicher Seite hohe Anerkennung genießt.

Der abgesenkte Mindestlohn für jüngere Beschäftigte bis 25 wurde damit gerechtfertigt, nur auf diese Weise könnten Unternehmer zur Einstellung Jüngerer veranlasst werden. Die noch heute bestehende Arbeitslosenquote von 50 % zeigt jedoch, dass diese Erwartung mit der Realität wenig zu tun hat. Hinzu kommt ein diskriminierungsrechtliches Argument: Die schlechtere Bezahlung allein aufgrund (jugendlichen) Alters lässt sich nicht mit Unionsrecht vereinbaren.[12] Die Kommission schlägt daher vor, auf die Berufserfahrung abzustellen und bei Berufsanfängern im ersten Jahr 10 %, im zweiten Jahr 5 % in Abzug zu bringen. Auch dies ist letztlich ein Kompromiss; im Grunde besteht angesichts des geringen Mindestlohns für den Normalarbeitnehmer überhaupt kein Grund, bei bestimmten Gruppen noch weiter nach unten zu gehen.

d) Allgemeinverbindlicherklärung

Tarifverträge können wieder für allgemeinverbindlich erklärt werden. Wie nach früherem Recht gilt dies aber zunächst nur, wenn mindestens 50 % der Beschäftigten bereits vom Tarifvertrag erfasst sind. Dies soll in einem verlässlichen Verfahren überprüft werden. Die Schwierigkeit besteht nun darin, dass die Abschaffung der bisher praktizierten Großzügigkeit deshalb besonders gravierend ist, weil in sechs Jahren Krise die Arbeitgeberverbände von der Mitgliederzahl her aller Erfahrung nach nicht gewachsen, sondern eher geschrumpft sind. Ein genaues Nachzählen könnte also die Allgemeinverbindlichkeit in vielen Fällen unmöglich machen – in Deutschland hat dafür gerade das BAG Anschauungsmaterial gelie-

[12] So EuGH v. 8.9.2011 – C-297/10, C-298/10 – Hennigs (zu den Lebensaltersstufen nach dem BAT).

fert,[13] was deshalb entschärft wurde, weil inzwischen die 50 % - Klausel abgeschafft ist. Die Empfehlung Nr. 7 sieht deshalb auch einen zweiten Weg zur Allgemeinverbindlichkeit vor und lässt dafür ein öffentliches Interesse genügen. Für dieses werden einige Beispiele wie hohe Fluktuation, hoher Anteil an Niedriglöhnern und die Einführung einer Ausbildungsplatzabgabe genannt. Damit sollte in allen Fällen, in denen es im Interesse des Funktionierens der Tarifautonomie notwendig ist, eine Allgemeinverbindlichkeit möglich sein.

e) Abweichung vom Tarifvertrag

In Zukunft soll es grundsätzlich nicht mehr zulässig sein, auf betrieblicher Ebene vom Flächentarif zu Lasten der Arbeitnehmer abzuweichen. Die „Personenvereinigungen“ verlieren so ihre Funktion und werden in den Empfehlungen nicht mehr erwähnt. Auch diese Formulierung war ein Kompromiss, da es in der Kommission auch die Vorstellung gab, man solle die Personenvereinigungen beibehalten, aber ins Gesetz schreiben, dass der Arbeitgeber auf ihre Bildung und ihr Verhalten keinen Einfluss nehmen könne. Das wäre wahrhaft symbolisches Recht gewesen, weil im 20-Personen-Betrieb (für Griechenland schon ein „mittlerer“ Betrieb) natürlich private Gespräche möglich wären, die die Arbeitnehmer auf die „richtige“ Spur setzen würden.

Nun kann ein Unternehmen natürlich in wirtschaftliche Schwierigkeiten geraten, die so groß sind, dass die im Flächentarif vorgesehene Vergütung nicht mehr bezahlt werden kann. Für solche Fälle kann der Flächentarif eine Öffnungsklausel vorsehen, die insbesondere dann wichtig ist, wenn die Höchstfrist für die Kurzarbeit bereits erreicht ist.

f) Weitere Empfehlungen

Mit welcher Frist ein Tarifvertrag gekündigt werden kann, ob und wie lange er trotz Kündigung als solcher weiterwirkt und wie die sich daran anschließende Nachwirkung beschaffen ist, soll von den Tarifparteien selbst entschieden werden. Fehlt es an einer Festlegung, benötigt man eine Auffangregelung (z. B. Kündigung mit dreimonatiger Frist), die in Empfehlung Nr. 9 enthalten ist; insoweit bestand volle Übereinstimmung in der Kommission.

Jede Seite hat nach der griechischen Verfassung das Recht, eine unabhängige staatliche Schlichtungsinstanz anzurufen; vorzugswürdig ist, dass dies beide gemeinsam tun. Auch Empfehlung Nr. 10, die dies betrifft, wurde einstimmig verabschiedet.

Die Empfehlung Nr. 11 richtet sich an die Sozialpartner und fordert sie auf, sich um moderne Themen zu kümmern: Abschaffung unterschiedlicher Rechte von Arbeitern und Angestellten,

[13] BAG v. 21.9.2016 – 10 ABR 33/15; BAG v. 21.9.2016 – 10 ABR 48/15.

lebenslanges Lernen, Maßnahmen zur Förderung der Produktivität und der Innovation. Das System der Berufsbildung muss entscheidend verbessert werden.

Die Empfehlung Nr. 12 betrifft Verbesserungen in der Arbeitsverwaltung.

IV. Kurze Einschätzung

Die Chancen, dass den Empfehlungen der Kommission Rechnung getragen wird, sind nicht schlecht. Dies insbesondere deshalb, weil die griechischen Sozialpartner ein ähnliches Konzept vorgelegt haben. Auch für die Arbeitgeberseite sind das Verharren auf Niedriglöhnen und die faktische Lähmung der Tarifautonomie nicht mehr hinnehmbar: Mangels Nachfrage sinken in den meisten Branchen auch die Gewinne. Sich gegen die griechische Regierung, gegen die Expertenkommission und gegen die griechischen Sozialpartner zu wenden und auf Deregulierung zu beharren, wird der EU-Kommission und den anderen Institutionen ausgesprochen schwer fallen.

Wird den Empfehlungen der Kommission im Wesentlichen entsprochen, so ist dies das erste Mal, dass nach erfolgter massiver Deregulierung ein fast ebenso weitgehender „Wiederaufbau“ stattfindet. Dies kann auch für andere Länder Südeuropas von Bedeutung sein, die zwar in keine so extreme Situation wie Griechenland gebracht wurden, die sich aber gleichfalls einen umfassenden Sozialabbau gefallen lassen mussten.[14] Auch für Deutschland kann es von Bedeutung sein, dass es eben nicht nur die Alternative „Deregulierung“ oder „Abwehr der Deregulierung“ gibt. Vielmehr existiert die dritte Möglichkeit, fortdauernde Krisen durch Schaffung verlässlicher rechtlicher Strukturen und durch eine funktionierende Tarifautonomie zu bekämpfen. Auch werden auf diese Weise die unionsrechtlichen Bedenken ausgeräumt, die der praktizierten Total-Deregulierung entgegenstanden.[15]

[14] S. zuletzt Heinlein, Europäische „economic governance“ im Tarifvertragsrecht: das Beispiel Spanien, AuR 2016, 453 ff.

[15] Dazu Rödl/Callsen, Kollektive soziale Rechte unter dem Druck der Währungsunion. Schutz durch Art. 28 EU-Grundrechtscharta?, HSI-Schriftenreihe Band 13, Frankfurt/Main 2015; Fischer-Lescano, Austeritätspolitik und Menschenrechte. Rechtspflichten der Unionsorgane beim Abschluss von Memoranda of Understanding, Rechtsgutachten im Auftrag der Kammer für Arbeiter/innen und Angestellte für Wien, November 2013.

Anhang:

Recommendations Expert Group for the Review of Greek Labour Market Institution

Recommendations Expert Group for the Review of Greek Labour Market Institutions

27 September 2016

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27 September 2016

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1. INTRODUCTION

At the Euro Summit Statement of 12 July 2015 on labour markets, the Greek government agreed to "*undertake rigorous reviews and modernization of collective bargaining, industrial action and, in line with the relevant EU directive and best practice, collective dismissals, along the timetable and the approach agreed with the Institutions. On the basis of these reviews, labour market policies should be aligned with international and European best practices, and should not involve a return to past policy settings which are not compatible with the goals of promoting sustainable and inclusive growth.*"

In the Memorandum of Understanding (MoU; dated 19 August 2015) signed with the European Commission, the Greek Government committed to *"launch by October 2015, a consultation process led by a group of independent experts to review a number of existing labour market frameworks, including collective dismissal, industrial action and collective bargaining, taking into account best practices internationally and in Europe. Further input to the consultation process described above will be provided by international organizations, including the ILO. The organization, terms of reference and timelines shall be agreed with the institutions. Following the conclusion of the review process, the authorities will bring the collective dismissal and industrial action frameworks and collective bargaining in line with best practice in the EU. No changes to the current collective bargaining framework will be made before the review has been completed. Changes to labour market policies should not involve a return to past policy settings which are not compatible with the goals of promoting sustainable and inclusive growth*."

The "Expert Group for the review of the Greek labour market institutions" consists of eight members (see Annex I for an overview). The inaugural meeting of the Expert Group was in Athens, 22 April 2016. The next meeting took place in Amsterdam on 30 May 2016 where the Expert Group could meet thanks to the hospitality of Tinbergen Institute. The following meeting was organised in Athens from 20 to 22 June and was focused on hearing the position of the social partners and other institutions. The list of the organisations heard can be found in Annex II. From 18 – 20 July the committee held another three days´ meeting in Athens. The meetings were informative and discussions within the group were respectful and held in a friendly atmosphere. The group reached an agreement on parts of its analysis and most of its recommendations. However, in other areas there were fundamental differences in terms of interpreting events in the past, the present situation in the labour market and some of the recommendations to improve the Greek labour market institutions. Furthermore, members of the Expert Group based their opinions on at partly different set of principles.

The set-up of this report is as follows. Chapter 2 presents the chairman's summary overview of all proposals. Most proposals are supported by all members of the Expert Group. For some proposals there is a difference of opinion. Chapter 3 provides the proposals of five members of the Expert Group. Chapter 4 presents the proposals of two members of the Expert Group. The view of the chairman is provided in Annex III. Annex IV provides an overview with remaining comments by other members of the Expert Group.

The members of the group of independent experts thank the Greek government and the Institutions for their valuable support and hospitality provided during the meetings in Athens.

2. Summary of recommendations – Jan van Ours

This chapter presents a summary overview of the 12 recommendations in this report. Most of these recommendations are unanimous. On some recommendations there is disagreement in the Expert Group. One side of the group consists of Gerhard Bosch, Wolfgang Däubler, Ioannis Koukiadis, António Monteiro Fernandes and Bruno Veneziani. Another side of the group consists of Juan Jimeno and Pedro Silva Martins. The chairman does not belong to one particular side but does have preferences (see Annex III).

2.1 Collective Action

Recommendation 1. Current Greek law has an extensive regulation on the procedures for calling on strike. The Expert Group does not see the need for stricter rules on strikes. It is up to the Greek legislator to define the conditions of a legal strike by respecting the constitutional framework.

Recommendation 2. The Expert Group does not see any urgent reason to remove the prohibition on lock-outs. The provisions on industrial conflict in Greece have established a balance of power between employers and unions; its rules are accepted by both sides. The Greek legislator may clarify that the employer is entitled not to pay non-striking workers if they cannot continue to work because a strike is occurring in their enterprise or their establishment.

2.2 Collective Dismissals

Recommendation 3: Before implementing a collective dismissal, employers should consult and bargain in good faith with workers´ representatives. According to the economic possibilities of the enterprise, a social plan should be established providing compensations for workers who are confronted with unemployment for an uncertain period. Retraining should be offered to enhance the chances of the affected workers in the labour market. Collective dismissals should be regulated in view of its importance as an operative instrument for adjustment of firms in times of crisis. The current system of ex-ante administrative approval of collective dismissals is being discussed in the framework of the European Court of Justice. After the result of that lawsuit is known, the current system could be abolished or replaced by another ex-ante control system.

Recommendation 4. In temporary economic difficulties, short-time work can prevent collective dismissals. Short-time work has to be flexible according to the still existing needs of the enterprise. The employee shall get unemployment benefits from the labour administration or the social security system as a compensation for the hours he could not work. At the end of the crisis, the employer can restart his full activities with the help of an experienced workforce.

2.3 Minimum wages

Recommendation 5. There should be a statutory minimum wage which takes into account the situation of the Greek economy and the prospects for productivity, prices, competitiveness, employment and unemployment, income and wages. The Expert Group disagrees on the responsibility to decide on the level and the increases of the minimum wage. One part of group recommends that after consultations with independent experts the minimum wage is implemented under a national collective bargaining agreement with automatic erga omnes effects. Another part of the group recommends that the government decides on the minimum wage after consultation of the social partners and independent experts.

Recommendation 6. The Expert Group disagrees on the role of youth minimum wages. One part of the group recommends to replace youth minimum wages by experience-based subminimum wages for a maximum of two years. There would be an evaluation of sub-minimum wages after two years. Another part of the group recommends maintaining youth minimum wages with the present age thresholds.

2.4 Collective Bargaining

Recommendation 7. Representative collective agreements can be extended by the state upon the demand of one of the negotiating parties at sectoral or occupational level. Collective agreements are representative if 50% of the employees in the bargaining unit are covered. The decision on the extension of an agreement is taken by the Minister of Labour after having consulted the social partners. The government and social partners establish an administrative system that will allow for reliable monitoring of the share of employees represented in the bargaining unit. One part of the Expert Group proposes to make an extension possible, too, in

the case of severe problems in the respective labour market (high turnover, high share of low wage earners, distortion of competition) and in the case of another public interest (e.g. introduction of an apprenticeship system). The other part of the Expert Group is of the opinion that an extension can only be issued if the 50% threshold is met.

Recommendation 8. The Expert Group disagrees on the principle of favourability. One part of the group argues that lower level wage agreements cannot undercut higher level national/sectoral agreements unless social partners agree on opening clauses on specified issues which allow temporary derogations in the case of urgent economic and/or financial needs of the companies. Another part of the Expert Group argues that micro wage flexibility is important. Therefore, the hierarchy of collective bargaining should follow a subsidiarity principle, whereby agreements established at a level closer to the workers and firms directly involved override agreements established at a level further way to the workers and firms potentially involved.

Recommendation 9. The time extension, the after-effect and the duration of collective agreements are decided by the social partners themselves. If they do not take a decision on the first point the time extension will be six months; if the second point is not regulated by collective agreement the after-effect includes all agreed labour standards; if the third point is not regulated by a collective agreement, the latter can be denounced with a notice of three months.

Recommendation 10. If social partners cannot reach an agreement the terms of an agreement may be established through arbitration preferably if both social partners agree on this. Unilateral arbitration should be the last resort as it is an indication of lack of trust. The system of arbitration was renewed recently and should be evaluated by the end of 2018 to assess its role in collective bargaining.

Recommendation 11. The social partners should negotiate on the issues of seniority pay, equal treatment of white and blue collar workers, life-long learning, productivity and innovation and the integration of young people, considering the critical comments contained in this report. Since some of these issues are closely linked with strategies of the state to modernize the Greek economy and to improve the vocational training system, the strengthening of a genuine and sincere tripartite social dialogue is necessary. Within this framework a discussion about trade union law problems can be useful. In this field, we see, however, no contradiction with EU law and practices.

Recommendation 12. The Public Employment Service should also consider developing its efforts towards greater activation of the unemployed and promoting more vacancies in firms, including through well-designed hiring subsidies supported by the European Social Fund.

3. Recommendations of Gerhard Bosch, Wolfgang Däubler, Ioannis Koukiadis, António Monteiro Fernandes and Bruno Veneziani

3.1 Principles

We agree on ten guiding principles for our recommendations:

European Social Model and ILO-Norms: The proposals of the Expert Group should be in line with the basic principles of the European social model and ILO-Norms. This is not only necessary for the social stability in Greece but also for the future cohesion of the EU (after the Brexit).

Subsidiarity: According to article 5 § 3 of the Treaty on the European Union, social and political issues should be dealt with at the level of the Member States as far as it is possible without creating problems in other Member States. Concerning the mandate of the Expert Group, the proposals should try to set a flexible framework in which the Greek social partners themselves can negotiate labour standards and find solutions which are adequate to the needs of different industries and companies.

Balance of power between social partners: Autonomous collective bargaining requires strong and representative unions and employers who negotiate face to face and who are ready to take responsibility and risks. Social peace and trust cannot be established when one partner is continuously in an inferior position. The proposals of the expert group should help to establish a balance of power between the social partners.

Balance between efficiency and equity: Employment relations are not purely economic transactions with business wanting more efficiency. Only through a profound respect for human concerns can broadly shared prosperity, respect for human dignity, and equal appreciation for the competing human rights of property and labour be achieved.

Growth orientation: Social partnership is crucial to negotiate a socially balanced distribution of income in the labour market. Labour market regulations have, however, also a strong influence on the development of the economy. Therefore, the focus of mature labour market regulations, including collective bargaining, should include

efforts to increase economic growth and productivity as well as to enhance the skills of the workforce.

Inclusive labour markets: All people of working age should be encouraged to participate in paid work and a framework should be provided for their career development, for example through better access to lifelong learning. Achieving this type of labour market requires action on the part of workers and their representatives and other stake-holders including the public authorities which should be supported by the proposals of the expert group.

Equal pay: Individuals doing the same work should receive the same remuneration. *A*ny distinction, exclusion or preference made on the basis of sex, age, labour market status or contract, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, should be avoided.

Reliability: A stable regulatory framework is the precondition for long-term- investment decisions of companies as well as the planning of families for their future including many decisions on the investments in their own education and training as well as in the education of their children. It is also crucial for social peace and the joint development of norms of fairness. After many short term interventions in the regulation of the Greek labour market in the last years the return to a long-term growth path requires a stable regulatory framework.

Specificity: The expert group is asked to take into account in our recommendations best practice from other countries in Europe. A simple copying of best practice from other countries by Greece is, however, not recommendable. What works in one country may be wrong under different conditions. Proposals informed by best European practices have to be adapted to the specificities of the Greek economy and labour market.

Integrated approach: It is well known from scientific research that the impact of the institutions of the labour market depends on the interaction with other institutions in the labour market and in other fields like for example social welfare, education or innovation policy. Therefore, there is the need to develop an integrated approach with helps to create positive interactions between our proposals and also other policy fields. Picking out only some elements of an integrated approach and leaving out others might change the impact of the proposals of the Expert Group not accordingly to its

members' purposes.

3.2 Industrial conflict

3.2.1 Strikes

The rules on industrial conflict remained unchanged during the years of the economic crisis in Greece. A need to change them now could not be found. Both social partners did not touch this point when they expressed their opinions during the very detailed hearings. In their joint declaration dated July 19, 2016, they agreed that on the one hand the Law 1264/1982 as such should be modernized, but on the other hand "the right to strike and the constitutional protection of industrial action" must not be contested.

Article 19 of Law 1264/1982 and the Greek courts have established detailed rules about the proportionality of strikes. In particular, for calling a strike, a decision of the trade union preceded by secret ballot is required. Therefore, restrictions are imposed on the decision-making procedure. Secondly, in order to call a strike notice must be given to the employer and safety personnel must be made available. In particular, even stricter rules are provided for public utility undertakings. Violating any of these conditions, even issues concerning trade unions' internal procedures (decision-making methods), shall render the strike unlawful. Thirdly, a strike may be considered unlawful both on the basis of whether the objectives pursued are unlawful and on the principle of proportionality which allows judges to decide each time whether the benefit anticipated by the strikers is greater than the financial loss to the employer. There is a considerable volume of case-law according to which strikes are declared unlawful on the basis of the principle of proportionality.

Recommendation 1: Current Greek law has an extensive regulation on the procedures for calling a strike. We do not see the need for stricter rules on strikes. It is up to the Greek legislator to define the conditions of a legal strike by respecting the constitutional framework.

3.2.2 Lock-outs

Only in a few European countries, including Greece, are lock-outs explicitly prohibited. In

other countries lock-outs are possible only as a response to a strike while observing at the same time additional restrictions so must not be used as a means to render a strike ineffective. Considering the restrictions given to the right of strike in Greece there is no necessity for the employers to practice a lock-out. This corresponds to the German situation where lock-outs are permitted under certain circumstances but in practice not used during the last 25 years.

There is, however, an additional problem linked to the position of the employer in the case of a strike in his/her enterprise. It does not seem to be justified that the employer has the burden to pay the salaries of non-striking employees if they cannot continue to work because of the strike. This would be especially unjust in cases in which few persons in key positions go on strike making the work of all other employees of the firm impossible.

In such cases the Greek courts accept the employer's right to refuse the services of non-strikers and not to pay their wages, based on the principle of objective inability**.**

The Court of Appeal in Patras gives a typical example (213/1993, ΕΕΔ 52.978). According to its judgment « *in case of 1) a partial strike which leads to the employer's objective inability to accept the services and 2) a worker who is not member of the striking trade union or who states his/her intention to work or since business operation is not possible due to the partial strike, the employer's refusal to employ the non-striking workers shall not be considered as exercise of the prohibited right to lockout, but the exercise of the right, under article 656 of the Civil Code, to refuse the services of non-striking workers and not to pay them their wages, on condition that the employer shall prove that as a result of the partial strike of a number of specific workers and not due to personal reasons the operation of the business cannot continue».* The issue was obviously solved taking the Civil Code, i.e. its article 656 section a, into account, but this solution is not uncontested.

Based on case-law, the non-striking employees have no right to get paid if they can no more be employed during a strike in their enterprise. To give a right to lock-out in addition to this protection would endanger the balance between unions and employers during collective bargaining.

Recommendation 2: We do not see any urgent reason to remove the prohibition on lock-outs. The provisions on industrial conflict in Greece have established a balance of power between employers and unions; its rules are accepted by both sides. The Greek legislator may clarify that the employer is entitled not to pay non-striking workers if they cannot continue to work because a strike is occurring in their enterprise or their establishment.

3.3. Collective Dismissals

3.3.1 SOCIAL AND ECONOMIC ASPECTS

Collective dismissal is an instrument of the freedom of enterprise, which is particularly adjusted to situations of total or partial termination of business activities, and to situations of economic difficulties which require reorganization and urgent measures of cost reduction. On the other hand, it is generally the way by which massive unemployment is generated, affecting often workers with a limited employability transferring in this way important responsibilities to the social protection system of the country (ILO 2014). The freedom of enterprise is not an absolute right, and collective dismissal, without losing its potential of adjustment, should not be a free totally unrestricted resource for firms. It should e.g. not be used exclusively to increase the shareholder value by closing profitable parts of an enterprise. Collective dismissals may be legitimate in situations of structural changes, economic crisis or loss of competitiveness; for companies it may be an instrument to survive or to restructure their business.

Since collective dismissals often cause substantial social problems, it must be required that firms explore all other adjustment possibilities (like voluntary quits, internal replacement, cancelling of overtime work, voluntary leaves and retraining of workers) in order to reduce the number of dismissals. However, legislation should not prevent necessary collective dismissals, but rather impose certain procedures (like an ex ante check of the economic need, early information of unions, obligation to negotiate a social plan, etc.). There should be an adequate time for negotiations between the social partners. They should be supported in order to find alternative solutions or to cushion the negative social outcomes by redundancy payments or by measures of active labour market policy (placement, retraining) and regional policies (redevelopment of the region or the sites).

One of the key findings from the 2016 “Employment Outlook” of the OECD is that easier firing does not create jobs. Loosening job protection in the middle of an economic downturn results in immediate and substantial job losses (OECD 2016). Therefore, a fair regulatory intervention in the field of collective dismissals should address at least two issues: the ways and means by which the reasons invoked by the employer are evaluated, and, secondly, the

ways and means by which alternative measures aimed at reducing the social impact of dismissals can be defined and put into practice. Are there means to avoid dismissals, e.g. by introducing short-time work? If dismissals take place, which kind of measures can be taken in order to retrain workers and/or to give them an adequate severance pay? The need for this kind of measures is particularly strong in Greece, where compared to other European countries (Knuth, Kirsch and Mühge 2011) instruments are quite rare which aim at facilitating the mobility of redundant workers reintegrating them in the labour market and which guarantee the unemployed a decent standard of living until they find a new job. Apart from the compensation and the low unemployment benefits (which are limited to one year) those made redundant are most of the time abandoned to their fate.

3.3.2 LEGAL FRAMEWORK

Collective dismissals in Greece are governed by Law 1387/1983 which was later amended by subsequent laws, initially transposing Directive 75/129, afterwards Directive 92/56 and finally codifying directive 98/59. These directives are based on three key principles.

First, the obligation of informing the personnel and the competent authorities in order to avoid unexpected dismissals by establishing notice periods. Second, dismissal plans have to be considered jointly by the employer and the personnel in order to find a solution, and third, assistance by the competent public authority can be given.

The Law 1387/1983 provides that eventually collective dismissals should be approved by a public authority to be legal. The Greek legislator has obviously used art. 5 of the Directive which authorizes the Member States to enact rules which are more favourable to workers. Priority is given however to the information/consultation/negotiation process, involving the social partners and aiming at an agreement about the planned measures. If the social partners do not reach an agreement, it is up to the minister of labour or another administrative authority to decide whether the collective dismissal is justified or not. Three criteria have to be observed: the interest of the national economy; conditions in the labour market; the situation of the undertaking.

The intervention of a public authority in collective redundancy cases is well-known in most European national systems (ILO 2014). However, the nature of the intervention varies from Member State to Member State. In some countries, it may consist in assisting the parties to

find alternative solutions (e. g. Estonia and Portugal). In other countries, it may rise to the level of a decision-power, either on the correctness of the procedure or on the results as such, i.e. whether the collective dismissal is well-founded or not.

Waiting for a preliminary ruling

At this point it should be added that for the first time, following a recourse of the employers' side, the Greek Council of State by decision no. 1254/2015 referred the following questions to the Court of Justice of the European Union for a preliminary ruling:

« *1) Is a national provision, such as Article 5(3) of Law No 1387/1983, which lays down as a condition in order for collective redundancies to be effected in a specific undertaking that the administrative authorities must authorise the redundancies in question on the basis of criteria as to (a) the conditions in the labour market, (b) the situation of the undertaking and (c) the interests of the national economy, compatible with Directive 98/59/EC in particular and, more generally, Articles 49 TFEU and 63 TFEU?*

2) If the answer to the first question is in the negative, is a national provision with the aforementioned content compatible with Directive 98/59/EC in particular and, more generally, Articles 49 TFEU and 63 TFEU if there are serious social reasons, such as an acute economic crisis and very high unemployment?

In this case (Case C-201/15), the Advocate General delivered his opinion stressing that the Greek rule is in contradiction with the freedom of establishment. In his view, this restriction is neither appropriate nor necessary in order to obtain the objective to protect workers.

We think that it is not the task of the Expert Group to discuss whether the Advocate General is right or wrong. Anyway, the dominant opinion within the Group is that it does not seem very probable that the Court will follow the Opinion of the Advocate General, but a clear answer cannot be given. The legal situation is ambiguous.

Another "derogation" from the Directive is related to the required number of workers to be made redundant in accordance with the definition of collective dismissals.

Under Greek law, the term collective dismissal means that the number of workers dismissed is more than six (6) per month in enterprises employing twenty (20) to a hundred and fifty (150) workers and 5% of workers and up to thirty in enterprises employing over hundred fifty workers. These figures were five (5) workers and 2-3% respectively before the memoranda.

The Directive provides for at least ten (10) workers dismissed in enterprises employing twenty (20) to hundred (100) workers and at least 10% of workers for enterprises employing from a hundred (100) to three hundred (300) workers and a different percentage for enterprises employing over three hundred (300) workers. This modification is considered to be in compliance with the Directive and its article 5.

Additionally, it should be borne in mind that Greece ratified the Revised European Social Charter, whose Article 24 regulates the "right to protection in case of dismissal" by requiring ratifying States to recognize the "right of workers not to be dismissed without valid reason related to their ability or behaviour, or based on operational requirements of the undertaking, business or service". This means that the reasons for the collective dismissals – as well as for individual dismissals -- cannot be considered irrelevant and should be checked, both *ex ante* and – if feasible - *ex post*.

3.3.3 OUR FINDINGS

The system of administrative intervention in order to approve or prohibit collective dismissals, which, according to employers, seriously limits the freedom of enterprise, has been applied only in a comparatively small number of cases, and its abolition does not seem to be an actual priority of employers' organizations. In practice the problem created for employers by the veto of the administrative authority concerning their decision on collective dismissals has been solved in various ways, such as gradual dismissals every month, increased amounts paid for compensation in cases of voluntary departures from work, deliberate 'negligence' by the authority to issue a decision approving or not the dismissals within the provided deadline.

The current Greek system does not fully exhaust the possibilities to adopt measures in order to mitigate the consequences of the planned collective redundancies (ILO 2014). For instance, the existing short-time regime is restricted to three months a year. That is not sufficient to overcome a real crisis. The rotation model – as a second option - is a kind of forced part-time work which reduces the income of the employee to 50 %. It is restricted to nine months a year – a rule that does not correspond to the interests of both sides: For the employees it is difficult to live on 50 % of their normal income. For the employer it may be difficult to have enough work to continue with 50 % of his activities and to go to the full functioning of the enterprise during the following three months. These rules are quite rigid and should be replaced by a

more flexible model.

As collective dismissals within the terms of directive 98/59/EC happen rarely in Greece, because 99 % of all enterprises employ less than 20 employees, there should be a common regime for all kinds of dismissals for economic reasons. Possible measures must distinguish between temporary economic difficulties of the undertaking and permanent (structural) ones.

3.3.4 RECOMMENDATIONS

As noted above, the Greek system of administrative authorization for collective dismissals is currently discussed at the European level, in the framework of the Court of Justice. Independent from the positive or negative critiques on the position of the Attorney General of ECJ, it cannot be foreseen which will be the final verdict of ECJ, especially on the issue of the role of Public Administration. Before a decision is taken, we prefer not to make proposals on this point. Of course, a legality control will always be necessary whether the conditions, laid down by the Directive, are respected.

About other relevant aspects of the legal regime of (collective) redundancies, we make the following recommendations:

Recommendation 3: Before dismissing workers for economic reasons employers should consult and bargain in good faith with workers´ representatives. According to the economic possibilities of the enterprise, a social plan should be established providing compensations for workers who are confronted with unemployment for an uncertain period. Retraining should be offered to enhance the chances of the affected workers in the labour market. If the financial means of the enterprise and the labour administration are insufficient a European Fund should take over part of the burden.

If there is an economic need to reduce the workforce permanently or to close the enterprise, negotiations with the representatives of the workers are necessary to mitigate the social and economic consequences for the workforce. Besides a minimum compensation fixed by law, the employer and the unions could fix a certain amount of compensation according to the economic situation of the enterprise. They can also differentiate considering the chances of the individual workers on the labour market and the possibility of early retirement.

Compared to a legal compensation scheme, these rules are much more flexible taking into account the needs of the workers as well as the economic situation of the enterprise.

For many workers, retraining for getting a new job will be even more important. In a growing economy which develops new forms of activities and introduces new technologies this is a crucial measure of active labour market policy. In this context, it is an economic as well as a social and political question to decide who will pay the costs of retraining. Will it be exclusively the labour administration or is a mixed financing feasible? In Germany and some other countries, dismissed workers often continue with a so-called transfer company which is financed by the former employer as well as by the labour administration which pays short-time benefits. Indirectly, it is even financed by the workers themselves who renounce to a part of their salary or of their compensation. The transfer company tries to give a new qualification thus improving the chances on the labour market; in some cases, it only improves the ability of workers for making job applications. The individual worker may stay with the company up to one year. If the financial possibilities of the labour administration and the enterprises are relatively modest, one could image a European Fund to take over partially the financial burden.

Recommendation 4: In periods of temporary economic difficulties, short-time work can prevent collective dismissals. Short-time work has to be flexible according to the still existing needs of the enterprise. The employee shall get unemployment benefits from the labour administration or the social security system as a compensation for the hours s/he could not work. At the end of the crisis, the employer can restart full activities with the help of an experienced workforce.

For situations of temporary crisis, one of the alternative measures is short-time work. It means that the daily or weekly duration of work is reduced, even to zero hours. The employee gets unemployment benefits from the labour administration as a compensation for the hours s/he could not work (Eurofound 2009; Ghosheh and Messenger 2013). This is the main difference to the existing rules in Greece. Without this payment the employee would be struck too hard if the working time is reduced by more than one third: living on 50 % of the previous income will not be acceptable for most of the workers.

On the other hand, short-time work is also in the interest of the employer. It gives an incentive to qualified workers to stay with the enterprise instead of looking for another employment in Greece or abroad. Even more important: at the end of the crisis, the employer can restart full

activities based on an experienced workforce whose know-how is crucial for productivity. One can describe it in the following way:

- Production potential can be maintained during a recession, so that when the economy starts to pick up employment can be increased again without the delays associated with the development of new production capacity.

- Firm-specific skills, which, incidentally, are usually embodied not in individuals but in teams, are maintained, so that the eventual upturn is not delayed by protracted on-the-job learning processes.

- So-called scarring effects on employees, which can be observed in virtually all countries when structural change is effected through involuntary unemployment, albeit to varying extents, can be avoided. In this way the costs of the crisis can be reduced, not only for individuals but also for society as a whole, since less money has to be found for welfare benefits and public revenues are increased.

- Excessive demands on labour market policy in a recession can be avoided. When unemployment rises rapidly, the capacities of the labour offices to place unemployed workers in new jobs do not generally increase commensurately. As a result, the quality of active labour market services for unemployed individuals declines, although the labour market situation demands the opposite.

- Social cohesion is strengthened if the costs of the crisis are distributed more evenly among a greater number of employees. Experiences show that job losses tend to be concentrated among very vulnerable groups, such as young people, low-skilled workers and immigrants, who frequently fail to re-enter the labour market altogether, or only at high cost.

The maximum period of short-time work can be fixed by the national authorities. In Germany, it is between six months and two years. During the crisis of 2008/2009, the period was two years as it seemed not very probable that all enterprises would recover earlier. In Italy, short-time work may go until 48 months. As to the size of the enterprises concerned, one could follow German law which applies the short-time scheme even to firms with one employee.

Each model of short-time work has to consider budgetary possibilities and the benefits of alternative measures of labour market policies. In assessing the costs, one should bear in mind that without such a model the costs could even be higher because many more workers would be dismissed and would be entitled to full unemployment benefits. The concrete financial

results seem to be an open question but it is clear that short-time benefits cannot be regarded exclusively as a burden for the public budget.

In some cases, it can be doubtful whether an economic difficulty of the enterprise is of a temporary or a permanent character. It should be up to the social partners to decide this question. If they disagree or if their decision is obviously wrong the authorities granting short-time benefits have a de-facto power of definition: If they do not see any real chance of recovery they are entitled not to pay short-time benefits.

We consider it to be premature taking position on the possible role of the Public Administration in collective dismissals before the arguments of the ECJ become known. The control of legality can be either “ex ante” or “ex post”. The two recommendations given here do not depend on the outcome of the lawsuit pending at the ECJ.

3.4 Minimum Wage and Collective Bargaining

3.4.1 Introduction

In this chapter, we present a set of proposals on the minimum wage and on collective bargaining. Both issues are dealt with together taking into account the fact that the Greek social partners agreed in their joint declaration of 19 July 2016 that the minimum wage should be an object of collective bargaining. To develop and justify this set of proposals we describe first the pre-crisis system (section 2), the changes since 2012 (section 3), the European practice (section 4), the main results of comparative research on the impact of industrial relations (section 5), our findings in hearings with the representatives of the social partners and experts from the government (section 6), and the legal background which has to be taken into account for any reform in Greece (section 7). The chapter ends with the proposed recommendations (section 8).

We are aware that the changes of the minimum wage setting and the collective bargaining systems since 2012 were mainly driven by the intention to bring down wages in a short period for an internal devaluation within the EURO-Zone. The result was a fragmentation and destabilization of the system of collective bargaining and an increase of inequality and poverty. Of greatest concern is that the erosion of collective bargaining with all its negative consequences on wages will continue if the regulatory framework remains as it is.

After the substantial internal devaluation, the country needs a stable regulatory framework for

a recovery. This strategy requires strong, representative social partners, institutional stability and links of collective bargaining and social dialogue with a growth strategy. We do not recommend returning to the previous system, especially not to the wage levels that existed before the crisis, but a modernization in line with European best practice. With a recovery, however, the wage levels should increase with productivity growth and profits. We also propose the possibility of temporary derogations from collective agreements when companies are in serious economic difficulties.

3.4.2 The pre-crisis system

In the pre-crisis period, the extended National General Collective Labour Agreement (EGSSE) set minimum wage standards at the national level covering all employees including the unskilled workers who were not covered by a sectoral or another agreement. The minimum wage standards included seniority and marital allowances. The minimum wage was part of the Greek system of collective bargaining and not a separate institution. The state did not intervene in the negotiations of the social partners on the minimum wage but gave the minimum wage its *statutory* character by providing an automatic *erga omnes* effect in the original legislation.

Employers´ organizations and unions could improve these minimum standards in industry or occupational collective agreements. The coverage by collective agreements at 83% was relatively high according to international standards (Visser 2015). There was a strict hierarchy of bargaining levels through the "favourability principle". Lower levels of bargaining could only improve the standards of the higher level bargaining. Collective agreements could be extended if an agreement already covered 50% of the employees in the respective bargaining unit. When agreements were overlapping, both the sectoral and the firm-level collective agreements had priority over the occupational one. If bargaining failed, one side of the social partners had the right to call on the Organisation for Mediation and Arbitration (OMED) for arbitration.

When an agreement expired it continued to be enforced for six months ("time extension"). After these six months expired collective agreement continued to apply as terms of the individual contract between the employer and the employee. The duration of this "after-

effect" was indefinite until the two parties agreed on different terms.

This system was deeply embedded and accepted in the Greek society. It was adopted in 1990 (Law 1876/1990) with the unanimous support of all political parties. Such an unanimity on the collective bargaining and minimum wage systems as in Greece is rare in politics – since mostly distributional issues are highly controversial – and cannot be ignored by the Expert Group.

3.4.3 The changes since 2012

To bring down real and nominal wages for an internal devaluation in the Euro-Zone the Greek collective bargaining and minimum wage systems were fundamentally changed since 2012. The minimum wage was not negotiated anymore but set by the state. It was cut by 22% and frozen at the 2012 minimum wage rate and automatic progression on the seniority premium ladder was suspended. A subminimum wage for under 25 years old workers was introduced at 32% lower level than the previous standard rate. The extension mechanism of collective agreements was suspended and the unilateral recourse to arbitration was abolished.

The EGSEE and the sectoral collective agreements are applicable only to the members of the organisations of both sides. Firm level agreements obtained precedence over sectoral or occupational agreements even when they were less favourable. As well as trade unions "associations of persons" also had the right to negotiate firm level agreements. Former restrictions on the minimum size of the enterprise for collective bargaining were removed. Thus, any "association of persons" can represent employees in signing a firm level collective agreement, as long as three-fifths of the workers in the enterprise participate in such associations. The mechanism of arbitration (OMED) can only be used if both employers and employees agree. This provision was partly reversed in 2014 since the Council of State decided that unilateral appeal to arbitration procedures was guaranteed by the Constitution. The time-extension was reduced to 3 months and the after-effect included only the basic wage and four allowances (seniority, children, education and hazardous work) and not the whole employment terms as before.

The impact of these changes on wages and the architecture of collective bargaining was strong. The coverage by collective agreements fell sharply from 83% in 2009 to 42% in 2013 with a clear further downward trend. The main drivers for this fall were the abolition of the

extension mechanism and the favourability principle which turned around the hierarchy of norms. The number of sectoral agreements dropped from 163 in 2008 to only 12 in 2015. Firm level agreements are now dominating with a clear peak in 2012. In 2012 99% of the agreements signed by associations of persons provided for wage cuts. The removal of the restrictions on the minimum size of companies for firm level collective bargaining was very important taking into account the structure of the Greek economy in which approximately 95% of the enterprise were employing less than 19 employees in 2015.

According to the Hellenic Statistical Authority (2016) the index for wages (2012=100) fell from 116.2 in 2009 to 88.5 in 2015, which means an average decrease of gross wages of about 24%. The loss of purchasing power was even higher since taxes and contributions were raised. Inequality and poverty went up substantially. The income quintile share ratio (80% to 20%) raised from 5.6 in 2010 to 6.5 in 2014 and the risk of poverty or exclusion increased from 27.6% in 2009 to 36.0% of the population in 2014.

3.4.4 European Practice

The most controversial issues concerning the Greek wage system are: (1) the procedures in the determination of minimum wage levels; (2) subminimum wages for young employees; (3) the extension of collective agreements; (4) the favourability principle; and, (5) the duration, time extension and the after-effect of collective agreements. In order to learn from best practices in other countries the Expert Group has considered the regulations in several EU member states in these domains.

(1) Procedures in the determination of minimum wage levels

In all EU member states effective minimum wage levels are either fixed by collective agreements or by law (Eurofound 2016). In countries without a statutory minimum wage (Austria, Denmark, Finland, Italy, Sweden), minimum wage levels are set by collective agreements. In Austria the sectoral agreements and the agreed national minimum wage get general applicability through the mandatory membership of employers in the Chamber of Economy. In Denmark and Sweden, the sectoral agreements are a de facto generally binding norm because of the high trade union membership. In Denmark the social partners agreed on a minimum wage for workers who are not covered by a sectoral agreement. In Finland an independent commission under the Ministry of Social Affairs formally decides whether collective agreements are generally binding. In Italy collective agreements only apply to members of the bargaining social partners but case law adopts collectively agreed minimum

wages as a binding reference for other employees as well. Even in these countries, where there is no national minimum wage, the normative framework for wages setting is deemed to be a matter of collective bargaining.

In 22 out of 28 EU member states, there is a generally applicable statutory minimum wage. The involvement of social partners in determining the minimum wage levels is normal practice. This involvement is necessary since the social partners are the best informed actors on the needs of employees and the affordable minimum wage levels for companies across the industries. They are also important actors - often in close cooperation with the labour inspectiorate - in implementing and enforcing the minimum wage. Finally, the minimum wage sets the floor for autonomous sectoral and/or occupational collective bargaining. The governments are also highly interested in the involvement of the social partners because their participation is an effective buffer against political pressures to set the minimum wage either at a too high or a too low level.

According to different national traditions and also the different strength of the social partners their involvement in determining the minimum wage levels has taken different forms in the EU.

- In some EU-countries the social partners negotiate and decide autonomously on the level of minimum wage and the State implements it by statutory order. The procedure in Belgium is quite similar to the Greek tradition. Belgium does not have a minimum wage law. The social partners negotiate the minimum wage in the “Conseil National du Travail”. Also very similar is the German example. The national “Minimum Wage Commission”, with three delegates from the unions and three others from the employers, and an independent chairperson who is jointly proposed by the social partners and nominated by the state, decides on the increases of the MW. The two academics also in the commission do not have the right to vote. In both countries the negotiated minimum wage receives a statutory character by the quasi automatic extension of the agreement.

- In some countries the social partners negotiate on the minimum wage and the State only decides when they do not reach an agreement: such was the case in Slovakia and in Czech Republic in 2016.

- In all the other countries, the social partners are consulted like in France, but the final

decision on the increases is taken by the State. In the UK and also in Ireland an independent Low Pay Commission with selected members from the social partners (not delegated from their organizations) and academics propose each year the increases of the minimum wage. The State may, however, deviate from these recommendations.

All these models are in line with the ILO convention No 131 (Minimum Wage Fixing Convention, 1970). There is no empirical evidence that one model is superior to the other. Research shows, however, how closely the models are linked to the different history and architecture of national wage systems. The State mostly plays a stronger role in determining the minimum wage in countries where collective bargaining is weak and/or social partners have low trust in each other and are not willing to take jointly the responsibility to determine the minimum wage.

The disadvantage of a too strong role of the State may be that the minimum wage is more determined by political than by economic and social considerations. The sensitiveness of the issue to the electoral cycles and to the ideological options of governments is obvious. There are cases in which the state has decided for political reasons on high double-digit increases, like in Hungary in the past, with a negative impact on employment (Köllö 2010), or where the minimum wage was not increased for years, in spite of high productivity and price increases, like in the USA.

If social partners trust each other, one side is not blocking reasonable wage increases so that the State has to step in, and both sides agree to take the responsibility for the minimum wage, this instrument is protected against arbitrary political interventions and the minimum wage will increase smoothly according to economic conditions.

(2) Subminimum wages for young employees

The age threshold for the Greek subminimum wage (25 years) is higher than in other EU countries (Eurofound 2016). Only the UK introduced in April 2016 a lower living wage for young people between 21 and 24 years since this age group was excluded from the recent increase of the minimum wage. However, the level of this subminimum wage – 93 % of the standard rate (GBP 6.70 compared to GBP 7.20) – is higher than in Greece.

Other countries do not have a subminimum wage for young people or have a lower age threshold:

- Many EU countries do not differentiate at all between age groups (like Spain,

Portugal, Croatia) taking into account the low level of their minimum wages and the need to avoid discrimination

- In countries with subminimum youth wages the age threshold is mostly set much lower than in Greece. This is the case for example in France (18 years), Ireland (18 years), Luxemburg (18 years), Netherlands (23 years) and Germany (no MW for young people under 18 years).
- Some countries have subminimum wages for job starters. In Poland an 80% rate applies to persons in their first year of employment. In Belgium and France, besides age, work experience is an additional criterion for the level of the subminimum wage.
- Some countries have subminimum rates for apprentices (UK, Ireland, Portugal) or employees in structured training (Ireland, Portugal) independent of age.
- Some countries exempt apprentices (France, Germany) or students in internships up to three months as far as these are part of established university curricula (Germany). The training allowances of apprentices are set by collective bargaining in Germany and France and differ by industry.
- Some countries have higher rates for skilled workers (Luxemburg, Hungary).
- Subminimum wages seem often not helping young people to find a job and may lead in practice to a labour market discrimination of experienced young employees.

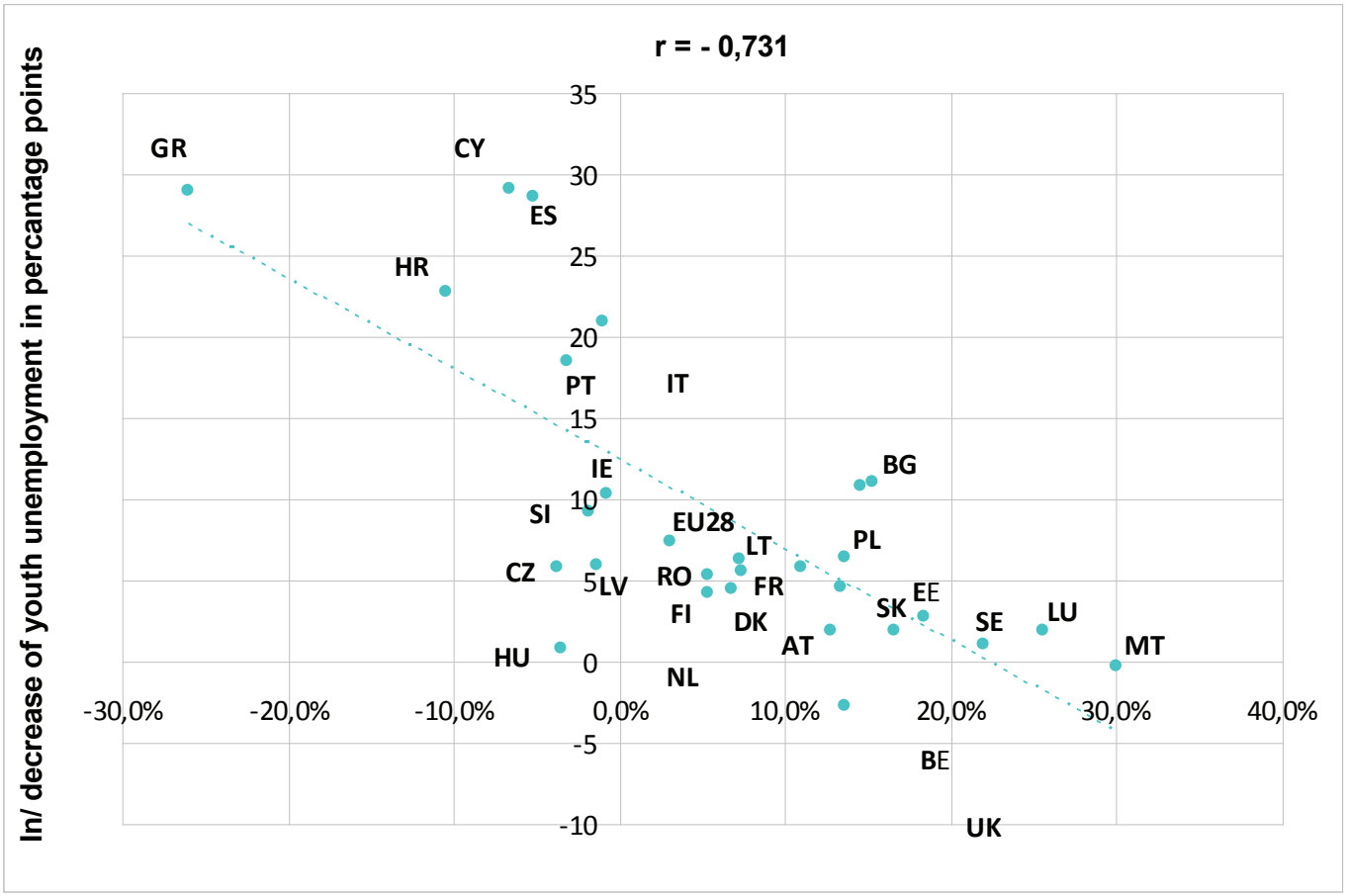
A summary of international research on youth minimum wages for the British Low Pay Commission came to the conclusion: *"The size of employment effects from the introduction of a minimum wage, or increases in existing minimum wages for young people in general are extremely small and in the margins of statistical significance in the great majority of studies survey"* (Croucher and White 2011: 91).

To our knowledge, the impact of the Greek subminimum wage has not been evaluated. However, sceptical voices may find support in a simple comparison of the employment rates of young people (without control of other factors). After the reform of 2012 had been implemented, it would be reasonable to expect a smaller increase of the unemployment of the young employees below the age threshold of the subminimum wage than of the age above this threshold (25-29). To take into account seasonal effects we compare the figures for the same quartile of the years for 2012 (q1) and 2016 (q1). According to data from the Greek Labour Force Survey from the Hellenic Statistical Authority, the employment rate for employees between 20-24 years went down by 13.04% and that for employees between 25-29 years by

9.60%. Although the younger workers received a subminimum wage their employment rate had suffered larger reduction than that of the older workers.

Although the debate on the impact of youth subminimum wages remains controversial, researchers mostly agree that other instruments to fight youth unemployment are more promising routes (see a summary of the literature in Anxo, Bosch and Rubery 2010: 14-22). These include the improvement and expansion of vocational training according to the needs of the future labour market, especially by introducing an apprenticeship system, and economic growth strategies which create more job opportunities for young people, The importance of economic growth for the highly varying youth unemployment rates in the EU is shown in Figure 1. This figure also supports the view that the extremely high youth unemployment in Greece cannot be effectively reduced by subminimum wages for young people.

Figure 1: Correlation between the change of the nominal GDP (in percentage points) and the increase in youth unemployment (15 to 24 years) (in percentage points) between 2008 and 2015 in the EU member states



Source: Bosch 2015 (calculations based on Eurostat 2015; European Commission 2015: Statistical Annex of European Economy, pp: 18-19)

(3) Extension of collective agreements

Only in six EU member states there are no legal rules about extension. In two of these six countries (Denmark and Sweden), the wide coverage by collective agreements is due to the high trade union density in these countries, and it is already so high that such an instrument is not needed.

The majority of the EU-member states has legal provisions to extend collective agreements. In some countries these provisions are frequently used for most sectoral agreements, in other countries the extension mechanism is only used in some industries. Other countries, finally, have functional equivalents to an extension mechanism which we partly already described in the section on the determination of minimum wages. As can be seen in Table 1 there has been considerable change in the availability of this instrument for the social partners since the recent crisis as a result of administrative suspension in some cases and regulatory changes in others.

Table 1: Use of extension of collective agreements in EU28, Norway and Switzerland

Frequently The majority of sectoral agreements are generally Applicable.	Belgium, Finland, France, Luxembourg, Netherlands (Spain until 2010; Slovakia 2006 -2011; and Greece, Portugal and Romania until 2011).
Limited Only a limited number of sectors have agreements that are generally applicable.	Austria*, Bulgaria, Croatia, Czech Republic , Germany, Norway, Ireland, Slovenia, Switzerland (Portugal since 2012; Slovenia since 2010; Slovakia 2011 – 2013; Spain after 2010 and regulatory reforms).
Rarely Agreements that are generally applicable are very rare	Estonia, Hungary, Latvia, Poland (Romania since 2012)
Functional equivalents Most sectoral agreements are de facto generally applicable	Austria, Italy (Slovenia until 2009).
No legal requirements for extension	Cyprus, Denmark, Malta, Sweden, United Kingdom, Lithuania (Greece: suspension of extension mechanism since 2012).

* Only in sectors and professions that are not members of the Austrian Economic Chamber.
Source: ILO (2016a: 10).

Because of concerns that "insiders" try to generalize their collective agreements at the expense of "outsiders", in all countries the extension is conditional on defined procedures and additional criteria of representativeness of the bargaining partners or of public interest. The procedures may require the involvement of other parties like a tripartite Commission in Croatia or Switzerland, or the Central Bargaining Committee in Germany. The criteria of representativeness require a certain size of unions across the country (Bulgaria, Norway) or of employers (Spain), a certain percentage of votes in workplace elections (Luxemburg, France) or a certain percentage of coverage (Netherlands 55%, Bulgaria 25%, Finland, Slovenia, Switzerland, Portugal and Germany 50%). Some countries have additional rules for sectors with less developed collective bargaining and lower representativeness. In these cases, extension is possible if there is a defined "public Interest" like in Germany, Croatia, France, and the Netherlands. In Norway a public interest in especially seen in sectors with high levels of foreign workers including posted workers, and in Switzerland in industries with high turnover (such as hotel, tourism and services sectors), because there had been strong evidence that in such industries it proved extremely difficult to develop autonomous collective bargaining.

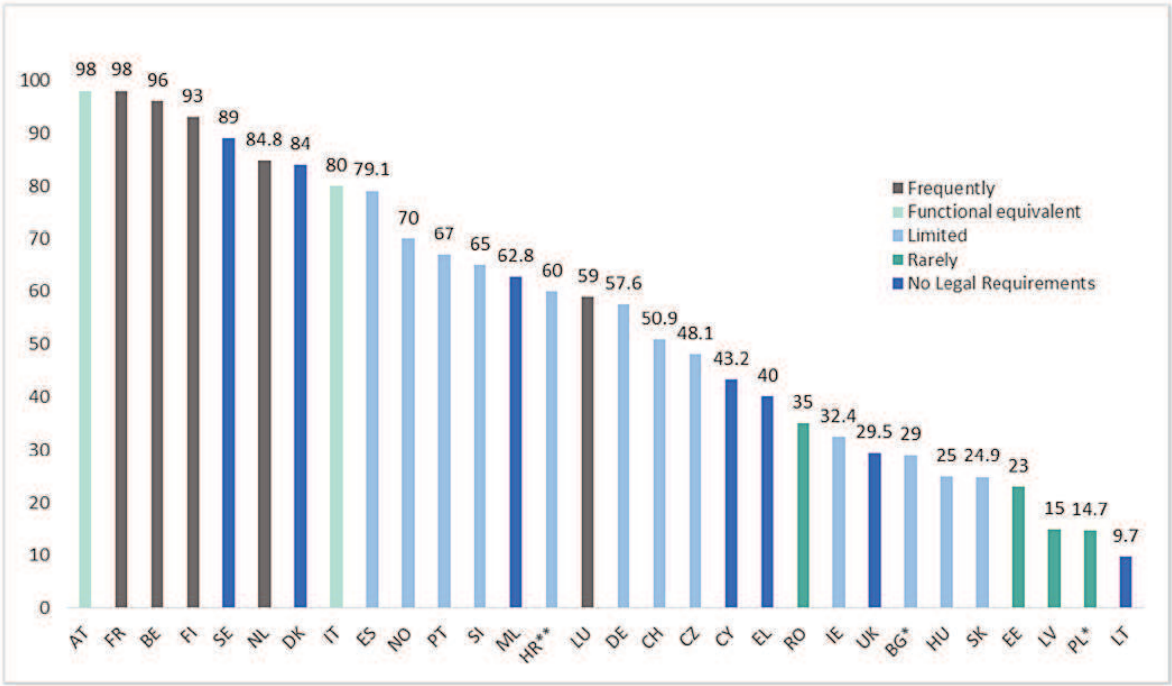
Exemptions from extension decisions -- for example for small or medium sized companies -- are not known in the EU, since the main goal of the extension rule is to cover all employers

and employees in one bargaining unit, including small and medium sized companies in which the bargaining power of employees is low. The "public interest" criterion for the extension of collective agreements has been introduced in some countries with the special focus on small and medium sized companies.

The use of the extension mechanism is high as can be seen in Figure 2. It clearly increases and stabilizes the coverage by collective agreements, while creating incentives for employer's to join an employers' association. Since employers do not have the possibility to opt-out they rather join the employer's association to have a voice in the negotiations.

In the literature on industrial relations it is often seen that also the scope of collective bargaining can be broadened with the help of the extension mechanism. Agreements on new issues like levy systems for apprentices, further training or occupational pensions can only be implemented with the erga omnes rule to avoid free-rider-positions (like poaching of trained workers) or competitive disadvantages of the covered companies. It can also help to modernize industries for example by introducing new compromises on working time flexibility and pay scales which are then implemented at a large scale and not firm by firm.

Figure 2: Collective bargaining coverage and extension EU 28, Norway and Switzerland



Source: ILO (2016: 11)

(4) Favourability principle

In most European countries collective agreements end up being legally binding. As a complement there is the favourability principle that requires collective bargaining agreements to be binding to the negotiating partners and apply to the employers and employees on whose behalf the agreement is concluded. The binding character of the agreements is the precondition for wholehearted negotiations without second thoughts of noncompliance after the negotiations.

According to the ILO (2016), Bulgaria, Cyprus, Latvia, Malta and Romania do not allow derogations from collective agreements. Most of the other countries leave it to the social partners to define the specific conditions under which a derogation may be possible and the specific labour standards from which can be deviated. A very recent law in France allows derogations in working hours through company agreements. In the last two decades, in some countries (e.g. Germany, Italy) the social partners agreed in some industries on so-called opening or hard-ship clauses that allow temporary derogations from the collective agreement if the company is in economic difficulties.

Opening or Hardship clauses in Germany

In the German engineering industry, for example, the company has to provide detailed information on its economic situation. Normally the union -- not the works council -- has to sign any deviating agreement. An evaluation of around 850 of such deviating company agreements in Germany shows that in most cases this leads to a "negotiated decentralization" since the unions negotiated, in return (*quid pro quo*) for concessions in working hours and wages, guarantees of continuity of the location, of absence of dismissals and/or investments promises in equipment or skills. IG Metall monitored these deviations thoroughly and could make sure that mostly only companies in economic difficulties made use of these derogations and went back to the agreed standards after the termination of such agreements (Lehndorff and Haipeter 2011).

It seems, however, difficult to assume that this good experience can be transferred to industries and countries with many small and medium sized companies and weak employee representation at the company level. In such an environment the employees may remain unprotected without the favourability principle, as it seems to be the case in Greece with the deviating agreements signed by the so-called "associations of persons", employee representatives without bargaining power.

(5) The duration, time extension and after-effects of collective agreements

In most EU countries the duration of the agreements is agreed upon by the social partners themselves (for example Austria, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Spain, Sweden, UK) (ILO 2016a). In many countries, the social partners have more than one agreement in one bargaining unit, with a different duration depending on the content of these agreements. In Germany for example wage agreements usually have a duration of one to 2 years while agreements on big reforms, like the introduction of a new joint pay scale for white and blue collar workers, have an unlimited duration and are only renegotiated if one party gives notice. Interventions on the freedom of social partners to decide on the duration of collective agreements reduce indirectly the scope of negotiations.

In most European countries, the duration of the time-extension is much longer than in Greece. In Germany, in the case of ending the membership in a union or an employers´ association, it is unlimited, until the rules of the collective agreement are changed. In Portugal, where unlimited duration existed as a general rule, the minimum duration of time extension is now 12 months and, if a collective bargaining process takes place, it can be extended to 18 months. In Spain, since the legislative reform in 2012, the time extension of collective agreements has a normal duration of one year. On the other hand, the scope of the after-effect – the "acquired rights" that remain in the sphere of each employee beyond the termination of the collective agreement, i. e. after the end of the time extension – is generally defined by the parties themselves, and law only intervenes when there is no agreement on the issue (e. g. Portugal, Spain, Germany). An imperative restriction by law excluding most of the clauses from the after-effect does not belong to the European regulatory models in this field.

The analysis of European practices on minimum wages and collective bargaining brings us to conclude that

- ☐ the determination of the minimum wage through the social partners is not unknown in Europe and is definitely a good practice if the social partners trust each other
- ☐ the age threshold of the youth subminimum wage is unusual and unnecessarily high in Greece
- ☐ the extension of collective agreements is common and an accepted practice in Europe and increases the incentives of employers to join employers' associations in order to have a voice in the negotiations

- ☐ the favourability principle is the guiding principle in European collective bargaining; derogations are increasingly accepted when the social partners determine the inherent conditions and procedures
- ☐ it is common practice that the social partners decide on the duration of the collective agreements; the time extension is generally longer than 3 months and the after-effect is not limited in its scope.

Our general conclusion that the traditional Greek model is not exceptional in the EU. It has many similarities with the Belgian, German and Finish models. It also worked well in the past. The Greek social partners always found a compromise on minimum wages without going to arbitration and without provoking state intervention. Another conclusion of us is that the extension of collective agreements is a widely and successfully used instrument in the EU. It has been weakened or abolished mainly in countries in crisis to bring down wages in a short time, which, however, is not a recommendable recipe for a sustainable system of collective bargaining in a process of economic recovery.

3.4.5 Main results of comparative research on the impact of collective bargaining

All relevant studies on the impact of collective bargaining on wage dispersion demonstrate that wage inequality is lower in countries with multi-employer bargaining and high-level minimum wages. A recent study of the IMF on the impact of different wage-setting procedures found that "the erosion of labour market institutions in the advanced economies is associated with an increase of income inequality" (Jaumotte and Buitron 2015: 27). The recent developments in Greece confirm these findings.

The changes to the Greek system of collective bargaining were driven by the consideration that a decentralization of the wage setting system would increase labour market flexibility and boost job creation. The higher income inequality was regarded as the price which unfortunately had to be paid for better employment outcomes.

The empirical comparative research on the impacts of collective bargaining does, however, not support the assumption of such a simple nexus between decentralization and economic efficacy. The main results of some of the most recent studies and reviews of existing empirical studies (ILO 2016b; Hayter and Weinberg 2011; Braakmann and Brandl 2016; Eurofound 2015; Traxler, Blaschke and Kittel 2001) are:

- The efficacy of centralized and coordinated wage-setting-systems is higher than of fragmented, uncoordinated and decentralized systems. Criteria for efficacy were mainly the reduction of unemployment, real wage increases in line with productivity growth, income distribution and productivity effects.

- The articulation between different levels of bargaining and the governability of the whole system is more important than a single institution for sustainability, flexibility and performance.

The statistically highly sophisticated studies on the economic impacts of national collective bargaining systems do often not explain the reasons for the positive outcomes of coordinated wage systems. Country and industry case studies on industrial relations have opened this "black box" and help us to understand these reasons. Collective agreements with a high coverage or general applicability:

- create a levelled playing field for companies. They can invest in skills and retain experienced employees by paying decent wages without being undercut by competitors who are not covered by a collective agreement;

- direct the competition between companies from wage reductions to improvements of the work organization and quality of the products or services;

- reduce transaction costs for companies in creating accepted procedures for setting labour standards. This is especially helpful for small and medium sized companies without own human resource departments and/or tight financial resources;

- establish social peace by the creation of accepted social norms;

- create incentives for employers to join employers' organizations in order to have a voice in collective bargaining;

- enlarge the distributional coalitions and increases the probability that macro-effects on employment and inflation are taken into account;

- reduce bureaucracy in the economy by adapting labour standards to the specific needs of different industries and unburden the state from interventions in wage setting;

- extend the scope and the time horizon of collective bargaining. This supports negotiations on new issues like skill improvement, innovation or productivity growth;

- may help to reduce the gender pay gap if the social partners agree on this issue and proactively undertake joint efforts to reduce this gap;

- helps implementing the principle of equal pay for equal work across sectors and the whole economy;

- improves the social protection of vulnerable workers who do not have bargaining power.

Research also shows that these positive impacts do not come automatically. With defensive actors centralized and coordinated collective bargaining might for example remain narrow in scope and be concentrated only on short-term distributional issues. Therefore, positive outcomes can only be expected when:

- strong, representative and reasonable social partners take into account the needs of different groups of employees as well as of different types of companies especially the needs of SME's;

- social partners develop trust so that they negotiate in good faith;

- social partners undertake joint efforts to include new issues on the bargaining table like the integration of young people, productivity, innovation, growth, skill enhancement and gender equality;

- the state unambiguously supports collective bargaining through a stable regulatory framework.

This short overview of the recent research shows that countries have choices and that there is no inevitable trade-off between inequality and employment. It also shows that coordinated wage-setting systems have better outcomes than fragmented collective bargaining as in the present Greek system. These positive outcomes, however, are not the automatic by-product of formal regulations but require committed pro-active actors and a stable, reliable and innovative institutional framework. It is also known from best practices, especially in the Northern European countries, that the state plays an important role in the creation of an innovative environment which encourages the social partners to extend the scope of negotiations on new issues like productivity or skill improvement.

3.4.6 Our findings

In our analysis of the Greek labour market and the system of collective bargaining, as well as in the hearings with experts from the government and the representatives of unions and employers´ associations at national and industry level, we came to the following conclusions:

- The trust between social partners is high in Greece. This has been expressed by the social partners with very strong emphasis and independently from each other. Such openly expressed exceptional high trust cannot be found in many other countries and is not a secondary matter in a difficult social and economic situation as in Greece today. This trust is a valuable social capital and an indispensable resource of all future growth strategies.

- The needs of the small and medium sized companies are taken into account. Big companies are not dominating in collective bargaining and setting unaffordable labour standards for SME's.

- The social partners are understanding the difficult situation of the Greek economy and they are willing to take responsibility without going back to the old system.

We, however, have also concluded that:

- the scope of collective bargaining in Greece, compared to other European countries, is relatively narrow and does not sufficiently include new issues like lifelong learning, integration of young people, working time flexibility, reduction of the gender pay gap, improvements of work life balance or productive improvements.

- the "National General Labour Collective Agreement 2014" is a promising step forward with its declared interest to cooperate on new issues like Vocational Training, Social Welfare, Competitiveness, Entrepreneurship and Innovation which, however, still have to be substantiated and implemented. This, however, depends also on the substantiation and implementation of a long term skill and growth strategy of the Greek state.

- white and blue collar employees are not always treated equally.

- the gender gap in the economy is high (ILO 2013).

- pay depends too much on seniority, which discriminates against young employees and may also disadvantage older employees if they compete with cheaper younger employees on the labour market -- which is increasingly the case in the hyper-flexible Greek labour market with its high turnover. However, we agree that work experience in a company or a sector helps accumulating knowledge and skills and improving productivity. Pay increases according to

improved productivity are not only rewarding higher productivity but also helping companies in retaining experienced workers.

Changing the content of a collective agreement and extending its scope has to be negotiated by the social partners themselves. They have to agree on these issues themselves and develop specific solutions for the Greek labour market. This is crucial for the acceptance of such changes by the companies and the employees and the precondition of a successful implementation of new modernized labour standards.

3.4.7 The legal framework for the recommendations

The guiding principles on wages are contained in the European Social Charter which refers to the "right of workers to such remunerations as will give them and their families a decent standard of living" (art. 4 § 1). The Community Charter of Fundamental Social Rights of Workers (1989) states that an "equitable wage" is a basic social right (art. 5). The EU Charter of Fundamental Rights clearly declares that "every worker has the right to working conditions which respect his/her health, safety and dignity" (art. 31 § 1).

The ILO-Conventions n. 26 (1928) and 131 (1970) provide for criteria which should be observed when fixing the minimum wage: the needs of workers and their families, the general level of wages in the country, the cost of living, social security benefits and the living standard of other social groups.

With regard to collective bargaining, no explicit guarantee can be found in the Greek Constitution. However, article 22 § 2 of the Constitution mentions collective agreements and art. 23 § 1 obliges the State to protect trade union rights. Art. 23 § 2 guarantees the right to strike exercised by the trade unions; as a general rule they use it within the framework of collective bargaining. In addition, as for other EU Member States Greece is surrounded by a huge set of rules on collective autonomy at European and international levels.

EU level:

Art. 28 of the EU Charter of Fundamental Rights guarantees the right to collective bargaining stemming

a) from art. 6 of the European Social Charter providing specific measures "with a view to

ensuring the effective exercise of the right to bargain collectively“ and

b) from the right to negotiate and conclude collective agreements in art.12 of the European Community Charter of 1989.

International level:

ILO Convention n. 98/1949 on the application of principles of the rights to organize and to bargaining collectively. They include a reference to a duty of states to “encourage and promote the full development and utilization of a machinery for voluntary negotiation between employers or employer’s organizations and unions with a view to regulation of terms and conditions of employment by means of collective agreements” (art.4).

ILO Convention n.150/1978 on the obligation of the States to make arrangements “to secure, within the system of labour administration, consultation, cooperation and negotiations between public authorities and the most representative organizations of employers and workers or, where appropriate, employers and workers representatives” (art.5 § 2).

ILO Convention n. 151/1978 concerning the protection of the above rights for public services imposes on the States the duty “to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between authorities concerned and public employees organizations or of such other methods as will allow representatives of public employees to participation in determination of these matters” (art.7).

ILO Convention n. 154/1981 gives a large definition of collective bargaining as implying: “all negotiations which take place between an employer, a group of employers or one or more employers’ organizations on the one hand, and one or more workers’ organization on the other, for

- determining working conditions and terms of employment and /or

- regulating labour relations between employers and workers and/ or

- regulating relations between employers or their organizations and workers´ organizations”

The same Convention states that “national practices may determine to which the term ‘collective bargaining’ also extends, for the purpose of this Convention, to negotiations with these representatives” (art.3(1) and in this case “appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers´ organizations concerned” (art. 3 §2).

ILO Recommendation n.91 (1951) states that appropriate machinery must be established "to negotiate, conclude, revise and renew collective agreements" (art. 1(1). It differs from the former Convention as regards the definition of the parties to collective agreements including among the negotiators also "in the absence of such an organization, the representatives of the workers duly elected and authorized by them in accordance with national law and regulations " (art. 2 §1) .

ILO Recommendation n.163 declares that members must take all measures "to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers´ organizations recognized for the purpose of collective bargaining" (art.2). According to this Recommendation collective bargaining is possible at any level including that of establishment, undertaking, branch of activity, industry or at regional or national level.

Autonomous collective bargaining is an essential element of the European social model. It is not only a source of provisions elaborated by free social partners, but also one of the Core Labour Standards binding all ILO-Member States. It serves as an instrument in facilitating the implementation and application of the law of the European Union (e. g. art. 11 Directive 2002/14/EC). But still more important is the fact that it is an essential part of democracy by giving working people a say. It is an instrument of participation in economic decision making, composed by substantial and procedural features and not just instrumental in reaching economic efficiency. This was confirmed by the European Court of First Instance in its decision of 17 June 1998 (Case T-135/96).

Collective autonomy cannot be ignored or brushed aside in the preparation of measures to respond to situations of economic, financial and social crisis. An economic emergency cannot justify a "state of exception" in relation to such a fundamental principle of all European regulatory systems. The structural role of collective autonomy is recognized not only by international and EU law but also by the written and unwritten constitutions of the EU-Member States.

3.4.8 The recommendations

The changes in the regulatory framework of the minimum wage and collective bargaining

since 2010 in Greece were mainly driven by short-term considerations to effect an internal devaluation. The internal devaluation was effected (a) by direct interventions in wage setting, and (b) by weakening the institutions of national and industry-wide collective bargaining to bring back wages into competition. The major instruments were: the reduction of the minimum wage and elimination of collective bargaining on the issue, the abolition of the principle of favourability, the abolition of the prerogative of unions in negotiating derogations at establishment level, restricting time-extension and the scope of the after-effect of collective agreements, the temporary suspension of the extension mechanism, weakening of the arbitration mechanism, and direct interventions in public collective agreements to cut agreed wages.

The former hierarchy of norms, with the predominance of national and sectoral agreements was abolished and company-level bargaining or unilateral decisions of employers not being members of an employers´ organization became the dominant mechanism of wage setting.

The impact of these interventions on wages was extremely strong. Between 2009 – 2013, average wages fell substantially. The intended internal devaluation was reached in a very short period. The negative side effects were a substantial increase of income inequality and increasing levels of poverty. In addition, the coverage by collective agreements decreased substantially and the social partners were weakened so much that they lost their capacity to set wages in the labour market.

With the current national rules, the erosion of national and sectoral collective bargaining has not come to an end and will even continue the next years, since employers are less and less able to sign collective agreements if not all companies of a sector are covered. In consequence inequality and poverty might even increase above the already high levels of today.

The changes of the minimum wage and the collective bargaining system in the last years can be characterized as a unilateral and defensive reaction to the crisis. After many short-term interventions in the Greek labour market during the last years, the necessary return to a long-term growth path requires a stable regulatory framework. Such a strategy requires strong, representative social partners, institutional stability and links of collective bargaining and social dialogue with a growth strategy.

The regulatory framework of minimum wages and collective bargaining needs to be revitalized and state interventions in areas that belong to the freedom of negotiation should come to an end. This is the precondition to enable the social partners to negotiate on the above

mentioned new topics as well as on the reduction of the unacceptable high levels of income inequality and poverty, to release SME' from transaction costs and to create a stable environment for investors as well as for the employees and their families.

On the base of these considerations, we propose the following changes of the legal framework for minimum wages and collective bargaining:

Recommendation 5: The social partners should decide on the increases of the Minimum Wage after consultations with independent experts taking into account the situation of the Greek economy and the prospects for productivity, prices, competitiveness, employment and unemployment, incomes and wages. Their agreement has automatically an erga omnes effect.

The involvement of the social partners in fixing the minimum wage is normal practice in Europe and many countries outside of Europe. This involvement is necessary, since the social partners are the best informed actors on the needs of employees and the affordable minimum wage levels for companies across the industries. According to different national traditions and wage systems, the involvement of social partners in the minimum wage setting has taken different forms in the EU. In some countries, social partners decide on the level of the minimum wage and the state implements it by statutory order. In other countries, social partners are consulted, but the final decision on the increases is taken by the state, like in France. Both models are in line with the ILO convention No 131 (Minimum Wage Fixing Convention, 1970).

There is no evidence that one model is superior to the other. Research shows, however, how closely the models are linked to the different history and architecture of national wage systems. The state mostly plays a stronger role in determining the minimum wage in countries where collective bargaining is weak and/or social partners have low trust in each other and are not willing to take jointly such responsibility. If social partners trust each other, one side will not block reasonable wage increases. The instrument of the Minimum Wage is protected against arbitrary political interventions and it will increase smoothly according to the economic conditions.

In the hearings of our commission with the social partners in Athens, both sides agreed unanimously that they would like to negotiate the minimum wage again in the future. We were concerned that probably the interests of small and medium sized companies were not sufficiently taken into account. The representatives of the employers' organizations and

especially those with many members from small firms assured us that their interests were taken into account and they often were the mediators between the unions and other employers. All organizations of the social partners agreed that these negotiations had taken place in full trust in the past and that this trust still exists. They also expressed their view that the economic situation has changed and that a fast return to pre-crisis minimum-wage levels, and increases of the minimum wage like before 2009, would not be recommendable nor possible in the near future.

To make sure that the situation of the Greek economy is taken into account, a consultation process with independent experts – as already fixed in Law 4172/2013 - should preceed the decision of the social partners.

Recommendation 6: The youth subminimum wage will be replaced by a subminimum experience rate of 90% in the first year of work experience and 95% in the second year of work experience. Apprentices and students in internships of up to three months which are formalized in their curricula are exempted. The social partners decide on the pertinent subminimum wages and their increases.

Subminimum wages for inexperienced people are justified as long as they are still learning on the job; the lower wages reflect their lower productivity. In this way, the transition from school to work can be facilitated. For legal reasons, we prefer a subminimum wage related to work experience instead of age although in practice mostly young people will receive this subminimum wage.

EU legislation prohibits discriminations based on (young or old) age. The European Court of Justice had to decide whether the German collective agreement (CA) for the public service was compatible with this principle: The CA had defined the salaries of newly hired persons according to their age. An employee starting to work at the age of 21 earned less than another person hired at the age of 27 both having no professional experience and doing the same job. The ECJ decided that there was discrimination for reasons of age (ECJ 8 September 2011 – C 297/10, C-298/10 – Hennigs). There is a high probability that the Court will decide in the same way, if the concrete case does not deal with clauses in a collective agreement but with a statutory subminimum wage based on age; the problem of an unequal starting point is the same.

This view is confirmed by a new study requested by the Committee on Constitutional Affairs of the European Parliament dealing with the role of the European Social Charter in the

process of implementation of the EU Charter of Fundamental Rights (de Schutter, 2016). It refers to a decision of the European Committee of Social Rights which expressed the opinion that the Greek subminimum wage might violate article 4 § 1 of the Social Charter guaranteeing a decent wage and then continued (de Schutter, op.cit. p. 34): "In addition, because ´the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, is disproportionate even when taking into account the serious economic crisis facing Greece´, the Committee considered that this measure, though it was introduced with the aim of encouraging the entry of young workers in the employment market, led to a discrimination on grounds of age, in violation of the reference to non-discrimination made in the preamble of the 1961 Charter."

Work experience is an objective reason used also in economic argumentation of subminimum wages to facilitate the transition from education to work. In addition, age is a less reliable indicator of work experience than in the past when most young people entered the labour market after secondary education. With the extension of higher education, and in periods of high unemployment, many young people enter the labour market later than in the past. If they are older than 25 years in their first job, they are entitled to get the adult rate of the minimum wage although they have no work experience; this could make their transition into the labour market quite difficult.

The social partners will have to bear in mind that article 4 § 1 of the European Social Charter has to be respected even in defining the wages of inexperienced workers.

The planned implementation of an apprenticeship system in Greece should not be hindered by the minimum wage regime. Companies will not engage in dual training and recruit apprentices if the costs are too high. At present the minimum wage for apprentices is set at 75% of the subminimum wage for young people for six hours of work a day. The social partners should decide on the concrete amount of the training allowances in the future. Article 4 § 1 of the European Social Charter does not apply in such a case.

Recommendation 7: Representative collective agreements can be extended by the state on the demand of one of the negotiating parties at sectoral or occupational level. Collective agreements are representative if 50% of the employees in the bargaining unit are covered. The government and the social partners establish an administrative system for a reliable monitoring of the number of employees. In the case of severe problems in the respective labour market (high turnover, high share of low wage earners, distortion

of competition) or in the case of another public interest (introduction of an apprenticeship system, etc.) extensions are also possible. The decision on the extension of an agreement is taken by the Minister of Labour after having consulted the social partners.

Collective agreements that extend beyond the immediate workplace or company level are rightly seen as one of the unique institutional features of the European social model. Our proposal is informed by good practice in many European countries. An extension because of a "public interest" also follows European best practice to guarantee decent wages in only loosely organized parts of the labour market, in which unions and employers are unable to develop stable industrial relations, and to encourage agreements in new fields (an occupational pension system, levy system for apprentices etc.). Such new agreements are in the general interest and only work if all companies in an industry are covered.

Recommendation 8: Wage agreements made at lower level cannot undercut national/sectoral agreements made at a higher level (favourability principle). The social partners, however, should agree on opening clauses on specified issues which allow temporary derogations from sectoral or occupational agreements (but not from statutory standards) in the case of urgent economic and/or financial needs of the company. Derogations can only be agreed upon by the social partners who signed the respective agreement.

The favourability principle guarantees that the labour standard agreed at national or sectoral and occupational level becomes the dominant norm and creates a level playing field for companies. This is the precondition for stable multi-employer collective bargaining and the dominant norm in the European Union. It creates incentives for employers to join an employers´ organization to have a voice in collective bargaining. The representativeness of collective bargaining will be improved. Without this principle, opting-out and/or a fragmentation of collective bargaining becomes the normal case.

In times of a severe company, industry or national economic crisis, however, temporary deviations from these norms might help companies to survive and return to profitability. Therefore, the possibility of derogations through so-called opening- or hardship clauses has been practiced by social partners in some EU countries. The conditions for these derogations must be strict, since otherwise permanent opt-out from collective agreements would become the norm, resulting in an erosion of collective agreements. Therefore, we propose that

derogations must have the approval of the unions and employers´ organizations which signed the respective agreement and are allowed only temporarily. The social partners should specify the issues, procedures and the time horizon of derogations. If they do not agree, arbitration is possible in the same way as in other cases of collective bargaining.

Recommendation 9: The time extension, the after-effect and the duration of collective agreements are decided by the social partners themselves. If they do not take a decision on the first point, the time extension will be six months; if the second point is not regulated by collective agreement, the after-effect includes all agreed labour standards; if the third point is not regulated by a collective agreement, the latter can be terminated with a notice of three months.

The reduction of the time extension to three months creates an unnecessary pressure on the social partners to negotiate a new collective agreement which can be a very complicated matter. As to the after-effect, it has been shown above that in most European countries its scope is much wider. In Germany the time extension is unlimited until the old agreement is replaced by a new one. In Portugal, where the same rule existed, the minimum duration of the time extension is 12 months and, if a collective bargaining process takes place, it can be extended to 18 months. In Spain, following the legislative reform in 2012, the time extension of collective agreements has a normal extension of one year.

Strict limits on the duration of collective agreements intervene in the freedom to negotiate of the social partners. Especially if they bargain on the new issues we mentioned above, there might be the need for collective agreements with a much longer duration. For example, agreements in Germany on the step-by-step reduction of seniority pay in the public service, the introduction of joint pay scales for white and blue collar workers in the chemical and in the metal industies have an unlimited duration if neither of the partners gives notice. In our view, the social partners should be free to define the duration of the collective agreement and the notice periods and procedures.

It makes sense to conclude wage agreements, especially in a turbulent environment, only for one year. However, even a shorter period may be desired by both sides in order to try a new rule or to have some framework conditions clarified after some months. Agreements on other issues than wages can be implemented only over a longer period and only under the condition of a stable and reliable regulatory framework. The existing strict time limits have the side

effects of preventing social partners from concluding more innovative, forward-looking agreements.

Recommendation 10: If social partners cannot reach an agreement, the terms of an agreement may be established through arbitration preferably when both social partners agree on this. Unilateral arbitration should be the last resort as it is an indication of a lack of trust. The system of arbitration was renewed recently and should be evaluated at the latest within two years to assess its role in collective bargaining.

According to the Supreme Court of Greece (Areios Pagos, Decision 25/2004), the unilateral right to arbitration for trade unions is guaranteed by the Greek Constitution. This principle provides both parties with the possibility to balance their opposing interests for the sake of industrial peace.

During the 1992-2008 period, arbitration decisions were widely used and were the basis for one in four occupational and sectoral agreements and for one in 20 enterprise collective agreements. Employers are critical that the arbitration system exhibits a 'shadow effect' in terms of the substance of voluntary negotiations, limiting the agenda of bargaining. Unions see the role of arbitration as having been an important instrument for addressing two issues. The first was the general lack of union representation in the private sector that would then have provided the basis for effective mechanism for the determination of wages and other terms and conditions of employment. In this respect, the arbitration system acted, in effect, as a mechanism to promote inclusiveness. The second issue concerned the high share of small and medium-sized enterprises in the Greek economy, where trade unions have been traditionally weak or mostly even absent: in this case, the arbitration system was seen as a means for protecting the economy from the development of competition on the basis of labour costs. In 2014, the Greek Council of State held that the abolition of the unilateral right to arbitration was unconstitutional.

Under the new legislation, the unilateral right to arbitration was re-instated. Furthermore, new procedures were introduced for the adjudication of disputes, including the following: where the application for arbitration was submitted unilaterally, the adjudication of the dispute would take place through a 3-member arbitration committee (and not a single arbitrator); additional business-related information should be submitted, including changes in the competitiveness, in unit labour costs and the economic situation of weak performing companies in the sector; appeal procedures were introduced, involving a 5-member committee

within OMED at a first level, but also the civil courts.

Following the decision by the Council of State and the introduction of legislation re-instating the unilateral right to arbitration (albeit with certain changes in the arbitration process), the number of arbitration decisions started to pick up in respect of sectoral and occupational agreements, but not to the extent as before 2010.

On the basis of the decision by the Greek Council of State that re-affirmed the constitutional recognition of the unilateral right to arbitration, the fact that the changes in the arbitration procedures were introduced only recently and the empirical evidence suggesting that trade unions have so far been cautious in using the amended procedures, it would not be advisable to consider further changes too quickly. Therefore, we propose a proper evaluation of the actual functioning and concrete implications of the new arbitration procedure by the end of 2018.

In addition, we formulate two recommendations which, by their nature and content, do not require specific justification beyond what is apparent from the considerations developed in this report.

Recommendation 11: The social partners should negotiate on the issues of seniority pay, equal treatment of white and blue collar workers, life-long learning, productivity and innovation and the integration of young people, considering the critical comments contained in this report. Since some of these issues are closely linked with strategies of the state to modernize the Greek economy and to improve the vocational training system, the strengthening of a genuine and constructive tripartite social dialogue is necessary. Within this framework a discussion about trade union law problems can be useful. In this field, we see, however, no contradiction with EU law and practices.

Recommendation 12: The Public Employment Services should also consider developing its efforts towards greater activation of the unemployed and attracting more vacancies from firms, including through well-designed hiring subsidies avoiding deadweight which are supported by the European Social Fund.

4. Recommendations of Juan Jimeno and Pedro Silva Martins

4.1 Principles

We think that any policy recommendations should consider the objectives at stake, the balance of trade-offs between them, and the relevant restrictions that condition the feasibility and the effectiveness of the proposed measures to achieve the objectives. Given the mandate of the Group of Independent Experts, in our case there are primary objectives, auxiliary guidelines, and stringent constraints derived from the challenging situation of the Greek economy and the very poor outcomes on the Greek labour market.

4.1.1 Objectives

The primary objectives of our recommendations are to facilitate inclusive labour markets, economic efficiency and growth, and social equity. In other words, this means that all people of working age should be encouraged to participate in paid work, and firms have incentives to create employment opportunities to all groups. There should be sufficient productivity growth so that there is development of employment conditions and living standards, as the income and wealth generated by growth are distributed in an equitable manner.

Functional labour markets play a key role in the achievement of productivity growth and social equity. Income inequality mainly comes from the differences in employment status, rather than from wage inequality. Social partnership is crucial to negotiate a socially balanced distribution of income in the labour market. Labour market regulations have, however, also a strong influence on employment and its distribution amongst different population groups. Therefore, the focus of mature labour market regulations, including collective bargaining, should also be to increase economic growth and productivity as well as to enhance the skills of the workforce.

4.1.2 Auxiliary guidelines

Under the framework of the European Social Model and ILO norms, there is some consensus on how the objectives above can be better serviced. A high concern for social cohesion, a very active role of representative social partners, the cooperation between them and Government in the management of labour market policies, are guidelines that rank high under this approach. Concerning the issues covered by the mandate of this group (industrial actions, collective dismissals, minimum wages, and collective bargaining), the subsidiarity principle stresses the need of a flexible framework within which representative social partners could adapt labour

standards and find solutions which are adequate to the needs of different industries, companies and workers.

For this framework to be successful, i.e. compatible with the sufficient achievement of the objectives sketched above, there should be representative unions and employer's associations, with a balanced bargaining power, that are ready to take responsibility and risks. It is also necessary that they agree on a stable regulatory framework that provides a favourable environment for long-term- investment decisions of companies, as well as the planning by families for their future including many decisions on the investments in their own education and training, as well as in the education of their children.

The mandate also asked the Group of Independent Experts to tailor recommendations to "best practices" from other countries in Europe. However, specific labour market arrangements cannot simply be adopted from other countries without due regard to the specific circumstances facing the specific country. Labour market institutions interact with each other (Boeri and Van Ours, 2013) and their effects depend very much on the whole institutional framework (including other regulations, like product market regulation, and policies, such as fiscal, monetary, tax, and social policies). Considerable importance among the latter should be attached to education, training, and innovation policies, and unemployment insurance schemes, as well as active labour market policies. Therefore, there is the need to develop an integrated, comprehensive, and fully consistent approach with helps to create positive interactions between renewed labour market institutions and other institutions and policies. Moreover, this approach has to take into account the overall situation and some structural elements of the Greek economy.

4.1.3. Constraints

The Greek membership of the Eurozone monetary union led to a period of significant economic growth. However, this was also underpinned by low productivity growth and resulted in losses of competitiveness and very high current account imbalances. Thus, following the financial and debt crises of 2008 and 2010, the Greek economy experienced a record recession, including extremely high unemployment (in particular in terms of youth and long-term unemployment) and outmigration. Despite the significant reductions in prices and salaries since 2011, competitiveness has not yet been fully restored.

For recovering growth, reforming labour market institutions is necessary but not sufficient. They are only one of the ingredients of a much wider economic program. Other reforms should also be high in the agenda, in particular product market reforms. However, the lack of

progress on other fronts should not be taken as a justification for reneging on the goal of improving the functioning of the labour market.

Although since 2010 a significant number of labour market reforms were implemented, and some of them were justified in terms of improving the functioning of the Greek labour markets, it was unfortunate that they had to be introduced in crisis times. The result is that some of them have not yet delivered fully and, on the contrary, since they were mostly targeted at accelerating wage adjustments rather than enhancing productivity, they might have backfired, by intensifying the fall in employment and wages needed to restructure the Greek economy. In fact, these reforms accelerated restructuring to an extent that employment losses amount to around 15% since 2008.

International assistance did little to complement restructuring efforts in the Greek economy with the productivity-enhancing measures and widening of the social benefits needed to somehow protect the population from all the sufferings attached to the adjustment. Noticeable shortcomings in education and training remain. Admittedly, productivity enhancing reforms should be led by the government of a country, regardless, or on top, of the reforms advocated by international lenders, as it is difficult if not impossible for international lenders to design and monitor reforms across several, heterogeneous product market sectors. Nevertheless, labour market measures advocated by international institutions may have put too much emphasis on wage adjustments and too little on productivity-enhancing measures.

As of today, and following this unfortunate sequence of events, there are poor prospects for growth. Given the limited ability to draw on domestic savings, the Greek economy is highly dependent on foreign direct investment and external surpluses on its current account for investment and growth. In this context, the development of a business-friendly environment that adequately rewards firms that invest in sustainable, growth-promoting ventures – and create jobs in the process – is extremely important so that Greece can come out from the current recession. To reduce unemployment rates there is a great need for economic growth, especially for young workers. Economic growth causes youth unemployment rates to go down more quickly than adult unemployment rates, i.e. economic growth benefits more those who need it the most (Van Ours, 2015). Also, reducing unemployment, both youth and overall, would contribute to push economic growth. Nevertheless, it is important to bear in mind that increasing economic growth and reducing unemployment go together and that both variables are determined jointly, and neither of the two are policy choice instruments but the outcomes of sensible macro policies and structural reforms. Thus, we disagree with interpretations that consider the lack of economic growth as the cause of high unemployment (as it is done, for

instance in Section 3.4.4. of this report, page 25, regarding the relationship between youth unemployment rates and nominal GDP growth across a sample of countries).Appeals to higher economic growth as "the" solution to the dismal situation of the Greek labour market are of little use.

Other characteristics of the Greek productive sector also make it difficult to restore growth. There is a very high proportion of micro/small firms and a very large informal sector. These two facts are both causes and consequences of low productivity. They are also driven by tax evasion at the same time that they lead to lower levels of tax collection (Artavanis et al., 2016). These two aspects are also frequently associated with non-compliance with employment law (even in the case of formal workers, not to mention that of undeclared work), damaging the level playing fields in product markets that are so important for productivity growth.

As for the social safety net, unemployment benefits in Greece are relatively weak, in terms of both duration and, especially, amount. In fact, replacement ratios are low even immediately after displacement. On the other hand, unemployment benefits are also poorly targeted in that they are not focused on individuals with no other income and are instead in many cases complemented with income from informal work. Other safety nets (assistance benefits, means-testing programs) are almost inexistent.

Finally, the Public Employment Services (PES), which can play an important role in the good functioning of the labour market, by promoting the matching of the unemployed with vacancies as well as providing training to and activating the unemployed, also remain underdeveloped. Despite the ongoing reforms of the PES, focused on the services delivered to the unemployed (registration, processing of unemployment benefits, and profiling) several challenges remain. One important challenge concerns the attraction of an increased number of vacancies to the job centres, so that the latter can perform their intermediation role fully. Another challenge concerns the lack of activation efforts to differentiate the unemployed that are effectively out of work and searching for a job and the unemployed that are working in the informal economy while receiving the unemployment benefit (Martins and Pessoa e Costa, 2014). Thus, even though it is not part of the mandate to the Group, we believe it is crucial to start with the recommendation to improve the function of the Public Employment Services given that the effectiveness of some of the other measures proposed below depend on the good functioning of Active Labour Market Policies:

Recommendation 12. The Public Employment Services should also consider developing their efforts towards greater activation of the unemployed and attracting more vacancies from firms, including through well-designed hiring subsidies supported by the European Social Fund.

4.2 Collective action: Strikes and lockouts

The general principles regarding industrial actions are to bring closer the responsibility for industrial conflicts to the bodies involved and to order the process in such a way that the relative bargaining power of the parties are not substantially changed. Calling for a vote in the production unit affected by strikes, organizing minimum services in case of strikes in public utilities and essential services, and allowing for the possibility of lockout should be part of the legislation of industrial action, always respecting the general principles outlined above. As to the recommendations on collective action we agree with the other members of the Expert Group:

Recommendation 1. Current Greek law has an extensive regulation on the procedures for calling on strike. We do not see the need for stricter rules on strikes. It is up to the Greek legislator to define the conditions of a legal strike by respecting the constitutional framework.

Recommendation 2. We do not see any urgent reason to remove the prohibition of lock-outs. The provisions on industrial conflict in Greece have established a balance of power between employers and unions; its rules are accepted by both sides. The Greek legislator may clarify that the employer is entitled not to pay non-striking workers if they cannot continue to work because a strike is occurring in their enterprise or their establishment.

However, since the social partners in their joint declaration dated 19 July 2016 recognised the needs of modernisation of the Law 1264/1982, there could be other implementation issues, besides those expressed in the recommendations above, that may also require some consideration. In particular, removing obstacles for bringing the decision and the responsibility of the strike to the undertaking unit should also be part of the modernisation efforts of the regulation on strikes and lock-outs.

4.3 Collective dismissals and short-time work

We agree with the view in Section 3.3.1 (page 11) that stresses that: "*Collective dismissal is an instrument of the freedom of enterprise, which is particularly adjusted to situations of total or partial termination of business activities, and to situations of economic difficulties which require reorganization and urgent measures of cost reduction…The freedom of enterprise is not an absolute right, and collective dismissal, without losing its potential of adjustment, should not be a free resource for firms… Collective dismissals may be legitimate in situations of structural changes, economic crisis or loss of competitiveness; for companies it may be an instrument to survive or to restructure their business. Since collective dismissals often cause substantial social problems, it must be required that firms explore all other adjustment possibilities (like voluntary quits, internal replacement, cancelling of overtime work, voluntary leaves and retraining of workers) in order to reduce the number of dismissals. However, legislation should not prevent necessary collective dismissals, but rather impose certain procedures (like ex ante check of the economic need, early information of unions, obligation to negotiate a social plan, etc.). There should be an adequate time for negotiations between the social partners. They should be supported in order to find alternative solutions or to cushion the negative social outcomes by redundancy payments or by measures of active labour market policy (placement, retraining) and regional politics (redevelopment of the region or the sites).*"

In fact, we would like to make this case stronger by pointing out that collective dismissals play a very important role for sectoral and firm restructuring since they may be the more effective way of dealing with permanent/structural changes that require employment reshuffling across (or, in some cases, within) sectors. Short-time working schemes may be an effective way of dealing with temporary shocks, but do not help with structural changes. The alternatives to organised, institutionalised, collective dismissals are typically bankruptcy and the liquidation of firms, which are even more harmful to workers and the economy at large. The legal definition of collective dismissals is typically based on the ratio of dismissed workers to firm's total employment (or the absolute number of workers to be dismissed). In the former case, if the corresponding thresholds are too low (in the standard settings in which collective dismissals are more restrictive than individual dismissals), there will be less restructuring, more individual dismissals, and more liquidations of firms. Investment – a

critical aspect of the economic recovery of Greece, as pointed out above - may also suffer, as exit costs imply entry barriers.

Ex-ante administrative approval of collective dismissals creates political and economic problems. Although it promotes negotiations between employers and workers' representatives, it also results in lower restructuring and higher adjustment costs for firms. From a political perspective, it may be very costly to approve a collective dismissal, as the politicians responsible would have to incur the short-run political costs of the dismissal but not benefit from the medium- and long-run benefits from more investment, productivity and employment. In most EU countries, ex-ante administrative approval of collective dismissals is not required (there are only notification procedures). For instance, it has been recently dismantled in Spain. An alternative to ex-ante administrative approval of collective bargaining is ex-post monitoring (by labour courts). However, this may create additional uncertainty about the restructuring process, which also adds to the adjustment costs.

The goal should be to make collective dismissals operative and used when needed, while promoting social dialogue, reducing uncertainty and ensuring that firms internalise the costs of the adjustment. Experience-rating schemes for financing unemployment benefits (based on higher payroll taxes for firms that systematically engage in higher levels of worker turnover) and making firms implement social and relocation plans for dismissed workers may be good practices in this regard.

In sum, because of structural changes, economic crisis or loss of competitiveness, companies may have to use collective dismissals to survive and to restructure their business. Since collective dismissals often cause substantial social problems because many workers are dismissed at the same time when reintegration is more difficult, it must be required that firms explore all other adjustment possibilities (like voluntary quits, internal replacement and retraining of workers, or temporary reduction of working hours -overtime, short-time work, etc.) in order to reduce the number of dismissals. However, legislation should not prevent collective dismissals, but rather impose certain procedures (like an ex ante check of the economic need of the dismissals, early information of unions/works counsellors, advance notices, obligation to negotiate a social plan, etc.), requiring adequate time for negotiations between the social partners, supporting social partners to find alternative solutions of the economic problems of the firm (for example by short-time schemes), and helping to cushion the negative social outcomes by cash (redundancy payments) or in kind by active labour market policy (placement, retraining) or regional policies (redevelopment of the region or the sites). The current Greek system is unsatisfactory in many of these dimensions. In particular,

it has been too restrictive and prevented many collective dismissals. Hence, our recommendation on collective dismissals broadly agrees with the recommendation is Section 3.3.4. (page 13) but we would like it to be more precise in the following terms:

Recommendation 3. Collective dismissal should be regulated in view of its importance as an operative instrument for adjustment of firms in times of crisis. Before implementing a collective dismissal, employers should consult and bargain in good faith with workers' representatives. According to the economic possibilities of the enterprise, a social plan should be established providing compensations for workers who are confronted with unemployment for an uncertain period. Retraining should be offered to enhance the chances of the affected workers in the labour market. The current system of ex-ante administrative approval of collective dismissals has been too restrictive and should be abolished. This revision is independent from the forthcoming views of the European Court of Justice on this matter.

On the recommendation about short-time work we agree with the other members of the Expert Group:

Recommendation 4. In temporary economic difficulties, short-time work can prevent collective dismissals. Short-time work has to be flexible according to the still existing needs of the enterprise. The employee has to get unemployment benefits from the labour administration or the social security system as a compensation for the hours s/he could not work. At the end of the crisis, the employer can restart full activities with the help of an experienced workforce.

4.4 Minimum wages

There are good reasons why statutory minimum wages should be a matter of economic policy. Besides, there are good reasons why minimum wages should be statutory and set by the Government. Either for achieving greater wage-setting coordination, setting wage inflation consistently with the stance of macro policies or for fighting inequalities, the Government should have the final say when setting a statutory minimum wage. The role of social partners should be to complement the statutory minimum wage by adding another layer of wage rates adapted to the particular circumstances and characteristics of the sectors covered, but not to substitute the function of setting a statutory minimum wage. However, precisely because collective bargaining and the statutory minimum wage interact, it is convenient that the latter is decided under an institutionalised tripartite process. Thus, although we accept that

representative social partners should also participate in the setting of the minimum wage, we failed to identify any EU country where a national minimum wage is autonomously, independently and exclusively decided by the social partners following standard collective bargaining practice and then implemented under a national collective bargaining agreement with automatic erga omnes effectiveness as proposed by Recommendation 5 in Section 3.4.8. (page 38).

Moreover, we believe it is important to bear in mind that in the fight against earnings inequality, rather than increasing minimum wages it may be more effective to introduce in-work benefits, like the Earned Income Tax Credit in the US or the Working Families Tax Credit in the UK, which favour (formal) labour market participation, can be tailored to personal and household characteristics, and have no negative effects on employment. On the other hand, the current Greek system of minimum wages is quite complicated and creates a number of distortions with negative effects on employment. The statutory minimum wage should be a single rate, without either seniority payments or any other top-ups related to workers' characteristics, as proposed in our alternative:

Recommendation 5. There should be a statutory minimum wage as planned, established by the government after consultation of social partners and independent experts. The statutory minimum wage should take into account the situation of the Greek economy and the prospects for productivity, prices, competitiveness, employment and unemployment, income and wages. The current system of minimum wages with differences between blue-collar workers and white-collar workers, with top-ups depending on work experience or sub-minimum wages for long-term unemployed is far too complicated. There should be one single minimum wage for adult workers.

Sub-minimum wages for young workers are frequent in many countries and highly recommendable in countries with high youth unemployment. We agree with the observations highlighted in Section 3.4.4. (page 21) that i) the age threshold for the Greek subminimum wage (25 years) is higher than in other EU countries, ii) some EU countries (like Spain, Portugal, and Croatia) do not differentiate at all between age groups when setting minimum wages, iii) in countries with subminimum youth wages, age thresholds are 18 years in France, Ireland and Luxemburg, and 23 years in the Netherlands, iv) some countries also have

subminimum wages for job starters: In Poland an 80% rate applies to persons in their first year of employment; in Belgium and France, beside age, work experience is an additional criterion for the level of the subminimum wage, and v) apprentices (UK, Ireland, and Portugal) and employees in structured training (Ireland, Portugal) are also under subminimum wages, independently of age; other countries (France, Germany) exempt apprentices or students in internships from minimum wages during up to three months as far as these are part of established university curricula (Germany); the training allowances of apprentices are set by collective bargaining in Germany and France and differ by industry.

Our view is that on the basis of available international empirical evidence, it is difficult to draw strong conclusions about the effects of a separate youth minimum wage and the optimal age gradient (Boeri and Van Ours, 2013). However, we cannot endorse the view that increases of youth unemployment rates and/or decreases of employment rates should be taken as an indication that age subminimum wages have been ineffective in promoting employment opportunities for young people in Greece. Moreover, there are specific features that lead to depart from the recommendation of suppressing age subminimum wages. One is that participation rates of Greeks below 24 years of age are extremely low. Secondly, apprenticeship and internship schemes and other means of facilitating the transition from school to work are not effectively in place. Thirdly, eliminating subminimum wages or lowering the associated age threshold would put at risk many jobs of young workers that accessed their jobs under the current system. Moreover, recent evidence for Greece suggests that the introduction of the youth minimum wage may have helped promote employment amongst this group of workers (Karakitsios, 2016). We have the alternative following recommendation:

Recommendation 6. In the current system there is a youth minimum wage, i.e. a sub-minimum wage for workers below age 25. Such a system of youth minimum wages should be maintained. A system of youth minimum wages should be maintained to avoid too many young workers losing their jobs and too few young workers being hired.

4.5. Collective bargaining

Sectoral and firm-level collective bargaining can provide an additional layer of minimum wages adapted to the circumstances and characteristics of the production units covered without precluding macro and micro wage flexibility. Macro flexibility means that wages should be aligned with productivity and the stance of other macro policies. Micro flexibility

means that wages could be changed when firms' economic conditions change. The structure and results of collective bargaining should be compatible with macro and micro wage flexibility. This is more often the case when wage setters (in particular employers' representatives) are sufficiently representative. When the latter are not fully representative, collective bargaining can be used strategically to limit market competition. However, potential competition, not only from existing firms but also new firms considering entry in a given market, is an important source of increasing productivity, stimulating innovation, and improving allocation of resources. These dynamics should not be precluded neither by product market regulation nor by social partners that do not internalise all the benefits from innovation and job creation by new establishments.

As for collective bargaining covering specific occupations and crafts, these are very unusual, as they may constitute an important barrier to entry and fundamentally limit product market competition. The principle "equal pay for equal work" cannot be a justification for this type of agreements, as job tasks and skills associated to the same "occupation" may change significantly across sectors and firms. The negative effects of the lack of representativeness of wage-setters is amplified when i) time extension of collective bargaining agreements is mandated, ii) they have an excessive duration, and iii) sectoral agreements are rigid and do not allow for effective opting-out clauses.

Micro flexibility is a matter of special concern regarding small firms, which typically are less influential in wage negotiations. Opting-out clauses, the main instrument for implementing wage concessions as economic conditions change, should be fully operative, rather than just a theoretical possibility under the exclusive control of wage setters at the higher levels. Limiting extensions of sectoral collective bargaining agreements to firms above a size threshold (number of employees) is not recommendable in general given the distortions it may create. It should be contemplated only when extension with low representativeness yields employment conditions not suitable to small firms and opting-out clauses cannot be made operative. Arbitration in collective bargaining may also be an effective way of solving conflict and disagreements between the social partners. However, it should be institutionalised in such a way that both parties find this route as a solution rather than the source of additional problems.

Firm-level bargaining is one of the sources of micro flexibility given that it allows wages to be adapted, upwards or downwards, to the specific economic circumstances of each production unit. The general labour law (collected under Workers' Codes or equivalent in

most countries) should be the main source for employment conditions of the less productive firms (micro firms), rather than sectoral collective bargaining agreements determined by not fully representative wage setters,. General labour law should establish the minimal criteria and delegate other issues to collective bargaining, therefore incentivising a flexible emergence of the most appropriate set of rules for each sector and time period in the context of a dynamic social dialogue. Finally, it is important to bear in mind that the quality of institutions matters for the good functioning of collective bargaining. Employers' associations and trade unions should have the incentives to provide more services other than collective bargaining agreements, to increase the number of affiliates (and therefore the direct impact of their collective bargaining, even without extensions) and adapt their structures to the new economic context.[1] The general, base labour law should be the main source for employment conditions of the less productive firms (typically micro and small firms) but that account for a large share of employment and employment growth in Greece and other countries. General labour law should establish the very minimum criteria and delegate other issues to collective bargaining, if applicable. In countries where the general, base labour law is slimmer, there will be greater need for collective bargaining; in other countries, the demand for collective bargaining will be less pressing, as firms will have already to comply with hundreds or thousands of law articles establishing workers' rights and responsibilities. Collective bargaining in the latter context may increase the risk of non-compliance and unlevelled playing fields.[2] The quality of institutions matters for the good functioning of collective bargaining. Employers' associations and trade unions should have the incentives to provide more services other than collective bargaining agreements and adapt their structures to the new economic context, therefore attracting more members and ensuring their collective agreements will be directly applicable even without the involvement of government in collective bargaining, so that we fully endorse Recommendation 11.

4.5.1 Extension

The use of the extension mechanism clearly increases and stabilizes the coverage of collective agreements, while creating incentives for employer's to join an employers' association,

1 It is also important to take into account recent evidence about the negative effects of extensions on employment in Portugal, a similar labour market to Greece (Martins, 2014, and Hijzen and Martins, 2016) and the positive effects of greater flexibility in collective bargaining, in particular in overtime pay (Martins, 2016a). See also Hijzen et al (2016) for a detailed comparison between collective bargaining in the Netherlands and Portugal.

2 See Martins (2016b) for evidence on the related trade-off between employees and contractors (service providers).

especially when there is not the possibility to opt-out. Hence, employers rather join the employer's association to have a voice in the negotiations. Nevertheless, workers tend to lose an important incentive to join unions, making the latter less representative. Moreover, extensions deny the workers' right of non-unionisation. As to the recommendation on extension of collective bargaining agreements we do not see any reason to disagree with the other members of the Expert Group in the following formulation:

Recommendation 7. Representative collective agreements can be extended by the state on the demand of one of the negotiating parties at sectoral or occupational level. Collective agreements are representative if 50% of the employees in the bargaining unit are covered. The decision on the extension of an agreement is by the Minister of Labour after having consulted the social partners. The government and social partners must establish an administrative system that will allow reliable monitoring of the share of employees represented in the bargaining unit.

4.5.2 Subsidiarity and favourability

In principle, a collective bargaining system consistent with low unemployment can be based on sectoral bargaining provided that opting-out clauses respect the needs of firms under negative circumstances to adapt wages and other employment conditions while those circumstances persist (see Jimeno and Thomas, 2013). However, opting-out clauses fail frequently to be operative because sectoral wage setters end up being too reluctant to recognise the needs of firms facing negative challenges, especially when the wage setters are not fully representative. For that reason, we believe it is important not to restrict the possibility of firm-level collective bargaining only to production units which could provide higher wages and better employment conditions.

Our interpretation of the subsidiarity principle is then that collective bargaining should provide instruments for firms to adapt employment conditions to their current economic circumstances. Similarly, because of the adverse consequences of imposing too stringent employment conditions to those firms, we are in favour of applying the favourability principle in a more global sense, not only by referring to the wage differences between sectoral and firm-level collective agreements. For that reasons, we propose the following alternative recommendation:

Recommendation 8. It is important to foster and create incentives for representative collective bargaining at all levels. Social partners and all agents involved in employment relations should increase their awareness of and respond appropriately to the challenges and opportunities faced by each and all firms. Firms - and their collective bargaining arrangements - should not be discriminated against based on their size, location, age, employer association affiliation status and other dimensions of differentiation. Given the above, firm-level bargaining should be entitled to reach and uphold globally more favourable agreements, including in terms of employment resilience and greater potential for employment creation. More generally, the hierarchy of collective bargaining should follow a subsidiarity principle, whereby agreements established at a level closer to the workers and firms directly involved override agreements established at a level more distant to the workers and firms potentially involved.

4.5.3 Timing & Arbitration

With respect to the recommendations on timing and arbitration, we generally agree with the other members of the Expert Group:

Recommendation 9. The time extension, the after-effect and the duration of collective agreements are to be decided by the social partners themselves. If they do not take a decision on the first point, the time extension will be six months; if the second point is not regulated by collective agreement the after-effect includes all agreed labour standards; if the third point is not regulated by a collective agreement, the latter can be denounced with a notice of three months.

Recommendation 10. If social partners cannot reach an agreement, the terms of an agreement may be established through arbitration, preferably if both social partners agree on this. Unilateral arbitration should be the last resort as it is an indication of lack of trust. The system of arbitration was renewed recently and should be evaluated ultimately within two years to assess its role in collective bargaining.

Recommendation 11. We recommend the social partners to negotiate on the issues of seniority pay, equal treatment of white and blue collar workers, life-long learning, productivity and innovation and the integration of young people and to consider our critical comments. Since some of these issues are closely linked with strategies of the state to modernize the Greek economy and to improve the vocational training system,

the strengthening of a wholehearted and truly representative tripartite social dialogue is necessary.

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Annexes

I. Members of the Expert Group

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II. List of Organizations

During the third meeting of the Expert Group in Athens (20 to 22 June 2016) the Expert Group spoke to Rania Antonopoulou, Greek Alternate Minister for Combatting Unemployment and to representatives of the following organizations:

- Greek Employment Agency (OAED)
- International Labour Organization (ILO)
- Hellenic Federation of Enterprises (SEV)
- Greek Tourism Confederation (SETE)
- Hellenic Confederation of Professionals, Craftsmen & Merchants (GSEVEE)
- Hellenic Confederation of Commerce & Entrepreneurship (ESEE)
- Hellenic Retail Business Association (SELPE)
- Athens Chamber of Commerce & Industry (EBEA)
- Institute of Labour (INE)
- Foundation for Economic & Industrial Research (IOBE)
- General Confederation of Greek Workers (GSEE)
- Federation of Greek Private Employees (OIYE)
- Athens Labour Centre

III. Statement of the chairman

Jan van Ours, the chairman of the Expert Group supports all common recommendations. For recommendation 5 on the minimum wage and recommendation 6 on youth minimum wages he supports the formulations presented in Chapter 4. For recommendation 7 on extension of collective agreements and recommendation 8 on the principle of favourability he supports the formulation presented in Chapter 3.

IV. Comments by individual members of the group

Gerhard Bosch, Wolfgang Däubler, Ioannis Koukiadis, António Monteiro Fernandes and Bruno Veneziani think that the expert group achieved an extraordinary result, in spite of the extremely short time available for its work and different opinions within the group. The group agrees on 8 of its 12 recommendations completely and on 1 partially. In the presentation of the dissenting votes we would have preferred to follow the internationally well-established procedure rule in which the majority decides on the report and the diverging opinions are added in dissenting votes. This is the normal rule for example in the U.S. Supreme Court and the Constitutional Courts of Germany, Greece and Portugal as well as in expert committees in most European countries.

Juan Jimeno and Pedro Silva Martins are responsible only for the arguments and opinions explicitly expressed in Section 4. Despite agreeing on some recommendations with the rest of the members of the expert group, Juan Jimeno and Pedro Silva Martins think that their views on the regulation of collective dismissals and collective bargaining highlight fundamental differences with Section 3 about how the integrated, comprehensive, and consistent approach to further Greek labour market reforms should proceed.