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The Responsibility and Accountability of International Institutions and Organisations for Austerity Measures in the Troika-Negotiated Financial Assistance Programmes to Greece, and for Their Impact on Human Rights Standards in the Country

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Abstract

Since requesting financial assistance from European and international partners in 2010, Greece has been involved in three consecutive macroeconomic adjustment programmes negotiated with the Troika of international institutions: the European Commission, the European Central Bank, and the International Monetary Fund. The European heads of states decided to provide the conditional assistance at the gatherings of the Euro Summit, an organisation where they also founded the Eurogroup and set conditions for Greece to start negotiations. After preparatory work by the Troika, the Eurogroup and the IMF shaped conditions and adopted decisions on the loan programmes. The Eurozone states, which contributed the majority of financing, channelled their financial assistance through the Greek Loan Facility, the European Financial Stability Facility, and the European Stability Mechanism. The IMF participated financially in the first two programmes, while remaining in stand-by in the third. Policy conditionality was specified in Memoranda of Understanding and formally adopted in Council Decisions adopted by the Council of the EU. It mainly consisted of Greece passing a number of austerity measures combined with specifically prescribed structural reform, a strategy based on the theory of expansionary austerity. The specific institutional rules and setup have given the international institutions the power to shape Greece's public spending and legislation in key areas such as labour, social field and more. Taking into account this impact and the consideration that institutions are the most important factors in the occurrence of poverty, while examining the theoretical and practical implications of austerity, this paper builds on the position proposed by Thomas Pogge that deliberate actions that deliberately lead to poverty can be deemed a violation of human rights. In particular, it explores whether the impacts of the conditionalities imposed on Greece by the mentioned international organisations can implicate their responsibility for the effect of their policies on the state of human rights in Greece, in particular the right to work and the right to social security.

Crisis Background and Onset

From the mid-1990s and up to the global financial crisis, Greece was experiencing an economic boom amplified by enhanced access to cheap credit that became even more available when the country adopted the Euro in 2001 (Crespi at al. 2014: 9). This period of economic growth positively affected social outcomes in the country and the unemployment rate fell to the Euro average of about 7% in 2008 (Ibid.).[1] Between 2000 and 2007, the country's GDP was growing at 4.5% (Ibid.). Nevertheless, in October 2009, the then Prime Minister George Papandreou disclosed that the previous Greek governments had been underreporting the country's budget deficit (Crespi et al. 2014: 10).[2] As a consequence, in combination with the global crisis (Ibid.), which caused a sudden stop effect to borrowing (Yilmaz 2016: 1028), Greece was struck by speculative waves of international investors who increased the interest rate on the Greek government debt to prohibitively high levels (Crespi et al. 2014: 10). Greek bonds were downgraded by international credit rating agencies, and the country's access to international financial markets became curtailed (Ibid.).

In 2008, Europe was reached (EC 2009: 24, Pradella 2015: 596) by the 2007 financial crisis (Marois and Pradella 2015: 6) in the deregulated US financial sector (Daumal 2018: 4), which began that year as the collapse of the US sub-prime mortgage market (Marois and Pradella 2015: 6) drove a few high-risk lenders to insolvency (Albo and Fanelli 2014: 13). [3] By 2009, it

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[1] At the same time, educational performance was improved, health status advanced above the OECD country average, and infant mortality decreased notably (Crespi at al. 2014: 9).

[2] He revised the deficit for 2009 from 5 to 13.5% of GDP (Crespi et al. 2014: 10).

[3] The "major bank and financial market liquidity crisis" (Albo and Fanelli 2014: 13) exploded into insolvency of a number of highly over-leveraged financial institutions (Ibid.). In September 2008, when the Lehman Brothers investment bank collapsed, the US subprime mortgage market crisis turned into a global financial crisis (Yilmaz 2016: 1018), but the roots of the latter can be traced back to the .com crisis (1995-2001) (Hayes 2019), after which the Federal Reserve (US central bank) started cutting the federal funds rate. This led to a credit boom and asset appreciation in the US, which contributed strongly to the increase in consumer spending attributable to borrowing against housing equity (Ibid.). The credit boom and housing bubble were additionally augmented by the surpluses of the developing countries that financed the increasing US current account deficit/GDP ratio between 1996 and 2006

transformed into a global economic crisis when the U.S. subprime mortgage-backed securities were found in bank and hedge fund portfolios around the world (Ibid.), including Greece (Kontogiannis 2007). The European Central Bank (ECB) then opted for a conservative approach toward banking interventions, i.e. the governments providing assistance to banks to avoid banking collapses (Yilmaz 2016: 1016).[4] Private debt was thus turned into sovereign one, turning the global financial crisis into a fully developed Sovereign Debt Crisis in Greece and several other European countries (Ibid.) that could not afford financially to bail out their banks to protect the French and German banks (Toussaint 2017). The possible alternatives of

(Yilmaz 2016: 1017). Another factor were financial products such as Credit Default Obligations (CDOs) and Structural Investment Vehicles (SIVs) that contributed to lower transparency of balance sheets (Ibid.). The banks providing mortgage credits used financial engineering to securitise those credits, and then traded mortgage-backed securities (MBS) to investment banks, who sold them repackaged to other investment banks, transferring the credit risk (Ibid.) Although this kind of securitization was a significant factor of systemic risk, it was under-estimated even by rating agencies (Ibid.), who gave these products that later proved virtually worthless and the buyers of which were also Greek banks, excellent ratings (EP 2012). They were also tolerated by the regulatory institutions (Yilmaz 2016: 1018). In July 2006, the over 5% federal funds rate led to an increase in the rates of adjustable-rates mortgage, which exceeded the payment abilities of mortgage debtors (Ibid.). When housing prices started to drop, this negatively affected the MBS values, fire sales ensued, and the banks started to deleverage (Ibid.). In August 2007, declaring they were unable to price the SIVs, BNP Paribas closed three mortgage market investment funds, marking the start of the financial crisis (Ibid.). Counterparty risks piled up, and the confidence in the markets waned, leading to a drop in the demand and supply of credit (Ibid.). In March 2008, the Treasury and the FED bailed out Bear Stearns, but on 15 September, Lehman Brothers was allowed to go bankrupt (Ibid.).

[4] In 2009, the French and German banks turned out even more insolvent than those of Wall Street or London (Varoufakis 2018). The ECB, however, lacked the legal authority or the backing of political will to save them (Ibid.). Arguably, “banks should have used bail-in mechanisms: organize an orderly kind of bankruptcy and call upon major private shareholders and creditors to pay for sanitizing the situation” (Touissant 2017). The opportunity could have also been used to “expropriate the private banking sector and turn it into a public service” (Ibid.).

creating a transfer union, Eurobonds, or a European Monetary Fund were abandoned largely because of how the EU institutional actors framed the crisis (Schmidt 2015: 13).[5]

The EU institutional actors attributed Greece's lack of competitiveness and failure to recover swiftly after the crisis to the rigidities of the labour market and the high level of employment protection legislation (Countouris and Freedland 2013: 176) rather than to the sudden stop in market finance (Schmidt 2015: 16) and the Eurozone's structural problems of tying together structurally very different economies with diverging trends in competitiveness,[6] thus generating huge imbalances (Yilmaz 2016: 1028). [7] In April 2009, in line with the Stability and Growth Pact (SGP),[8] the Council of the EU (the Council) opened the excessive deficit

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[5] Notably, in 2013, the ECB admitted the Eurozone financial crisis started as a private debt crisis rather than one of public debt in the EU periphery states (Schmidt 2015: 13).

[6] Due to Eurozone's structural interdependence, periphery deficit countries such as Greece faced increasing unit labour costs and decline in competitiveness (Schmitt 2015: 18). With the Global Financial Crisis, the imbalances could no longer be financed accordingly (Ibid.).

[7] The Memoranda "constituted an inappropriate treatment for an incorrectly diagnosed illness" (Dedoussopoulos et al. 2013: 3). Conceptualising the Greek crisis in the wider context of the international and European crisis would have been more productive, along with exploring a potential "alliance between the southern European countries and a renegotiation of European policies and institutional settings" (Dedoussopoulos et al. 2013: 1). In 2014, the EP Resolution on the report on Employment and Social Aspects of the Role and Operations of the Troika with regard to euro area Programme Countries noted "that the structural character of the crisis had been largely underestimated, leading to failed expectations of job creation and growth through austerity" (Housos 2015: 432).

[8] The SGP is a binding diplomatic agreement between the EU countries, a set of fiscal rules that prohibits a state's budget deficit to exceed 3% of GDP, and national debt to surpass 60% of GDP (Liberto 2019). "Failure to abide by the rules can lead to a maximum fine of 0.5% of GDP" (Ibid.). The SGP's legislative foundation are Articles 121 and 126 of the Treaty on the Functioning of the EU (TFEU) (Ibid.). The pact was formalized in July 1997 via council resolution and became fully effective on 1 January 1999 (Ibid.), amended in 2005 and 2011 (Braun and Hübner 2019: 44). "Protocol 12 of the Treaty gives further details on the excessive deficit procedure, including the reference values on deficit and debt. Article 136 of the TFEU provides for specific provisions to be adopted for the euro area. It is the basis for a sanctions regulation for euro area countries (included in the so-called six pack) and the

procedure[9] for Greece (EUbusiness 2017), demanding it correct its deficit by 2010 (COE 2017). In February 2010, the Council laid out a timetable of measures to be taken, while also extending the correction deadline to 2012 (Ibid.). However, in April 2010, to prevent a national default, the Greek government requested financial assistance from the country's European and international partners (Crespi et al. 2014: 10).[10] Greece's looming insolvency (Varoufakis 2018) was a threat to a contagion within Eurozone (Crespi et al. 2014: 5, Poulou 2014: 1145),[11] so the Troika of the European Commission (EC), the ECB and the International Monetary Fund (IMF) arranged loans for it via the Memoranda of Understanding (MoUs) (Braun and Hübner 2019: 14; Toussaint 2017). The latter, however, were conditional on austerity and structural reform [12] chosen over a viable alternative of growth-enhancing policies, e.g., macroeconomic stimulus, industrial investment, and socioeconomic support (Schmidt 2015: 14).

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so-called two pack regulation, which includes enhanced monitoring and surveillance" (EC I 2021). Yet the rules of the SGP are not implemented "automatically – decisions over compliance or noncompliance are genuinely political" (Braun and Hübner 2019: 50). Unlike Greece, large Member States such as France in 2004, Germany the same year and more, can violate the rules with impunity and on a regular basis, avoid the procedure of excessive deficit by exerting pressure on the EC (Ibid.), forming "coalitions in the Ecofin Council and the Eurogroup" (Braun and Hübner 2019: 53).

[9] The Excessive Deficit Procedure is the corrective arm of the SGP (EC II 2021).

[10] Notably, Article 123 TFEU prevented the ECB and national central banks from "extending overdraft facilities or any other types of credit facility to public authorities and EU or members state bodies, or directly purchasing debt instruments from Member States" (Crespi et al. 2014: 65).

[11] "The over-indebted Greek state was finding it impossible to roll over its debt" (Varoufakis 2018), moreover, the Greek sovereign debt crisis was spreading through the Eurozone rapidly (Poulou 2014: 1145). Due to the high exposure of European banks to peripheral debt, Greece's immediate default could have resulted "in major market commotion" (Blejer 2011). It would have prompted Italy, Ireland, Spain and Portugal to follow suit, so the EU governance prevented it by arranging for Greece "the largest loan in human history, to be passed on immediately to the German and French banks" (Poulou 2014: 1145).

[12] Between February and March 2010, prior to requesting any international financial assistance, Greece had already passed a first round of austerity measures (Crespi et al. 2014: 10).

In May 2010, the Eurogroup[13] agreed to provide bilateral loans from Eurozone countries, together with the IMF (EUbusiness 2017). The Eurozone states circumvented the 'no bailout' clause[14] (Bantekas and Oette 2020: 863) through a special vehicle, the Greek Loan Facility (GLF), later replaced by the European Financial Stability Facility (EFSF), and finally, the European Stability Mechanism (ESM) (Schumacher and Weder di Mauro 2015: 284). During 2010, the Greek authorities and the Troika negotiated the bilateral loan programme (Koukiadaki 2014: 8). The bailout[15] was made conditional on Greece implementing the economic adjustment programme, whereby the main components of policy conditionality were included in Memoranda[16] signed on 3 May between Greece and the EC on behalf of Eurozone states (Ibid.). On 6 May, the Greek Parliament adopted the MoU, and voted a number of policy measures for its implementation (Ibid.). Two days later, the Loan Facility agreement and an Inter-creditor Agreement[17] were concluded between Greece and the Eurozone States (Ibid.).[18] On 10 May, the Council adopted a Decision based on articles 126(9) and 136 TFEU, with the main elements of the policy conditionality (Ibid.). The Memoranda

[13] A formation of Eurozone's finance ministers that meet, since 1998, one day prior to every meeting of all EU finance ministers (the Ecofin Council) in Brussels (Braun and Hübner 2019: 4).

[14] The clause can be found in Article 125 TFEU that prohibits the EU "or its Member States from becoming liable or assuming commitments of other Member States" (Bantekas and Oette 2020: 863). Moreover, the EU treaties provided no legal basis for a bailout fund, so the latter was set up outside of them (Ban and Seabrooke 2017: 6). Notably, Article 122 TFEU only permits the EU granting financial aid to states in narrow circumstances (Crespi et al. 2014: 65).

[15] It consisted out of a €110 billion loan (Crespi et al. 2014: 10), with 5.5% interest (Ubriaco 2011).

[16] Memorandum of Economic and Financial Policies, Memorandum of Understanding on Specific Economic Policy Conditionality, and Technical Memorandum of Understanding (Koukiadaki 2014: 8).

[17] Notably, by concluding the inter-creditor agreement with Greece on 8 May 2010, Member States have sidestepped the EP as well as "national Parliaments, which have to be respected in amending the Treaties or in drafting and adopting secondary legislation" (Koukiadaki 2014: 14).

[18] "A loan facility agreement was signed and the deadline for correcting the deficit was extended to 2014" (EUbusiness 2017).

were further specified in a series of Council decisions in the context of the excessive deficit procedure"[19] (Ibid.). [20]

After March 2012, the Eurozone support took form of the EFSF[21] (COE 2017), "a temporary crisis resolution mechanism" (Ginsborg 2017: 105) created in 2010, following an inter-state agreement between the Eurozone states (BVerfG 2011), in line with the Ecofin Council's decisions taken on 9 May[22] (Eurogroup 2010: 1). It is a private company under the control of these states (Koukiadaki 2014: 7-8). According to its EFSF Framework Agreement, the conditions attached to the financial assistance (Koukiadaki 2014: 8), "including (…) 'budgetary discipline and economic policy guidelines'" (CEP 2011: 2), are to be included in a MoU negotiated by the Troika with the beneficiary State (Koukiadaki 2014: 8), whereby the EC acts on behalf of Eurozone states (EFSF 2010: 5). The second programme for Greece followed the same pattern as the first one. A loan[23] was decided on in the second half of 2011, and approved in March 2012 through a new MoU (Crespi et al. 2014: 10). In the second programme, "the EFSF loans are subject to compliance with the Council Decision 2011/734/ EU of 12 July 2011,[24] as amended, the MoU originally signed on May 3, 2010, as amended by

[19] Under Articles 126 and 136 TFEU (Koukiadaki 2014: 8).

[20] Later, in 2012, a temporary loan for €35 billion was extended to Greece as well (Colasanti 2016: 12).

[21] The EFSF's Board of Directors comprises a member for every EFSF Shareholder, i.e., for every Eurozone state (ESM I 2021). The EC and ECB "may participate as observers" (Ibid.)

[22] "The Economic and Financial Affairs Council (ECOFIN) is one of the oldest configurations of the Council" (IGI Global 2021). It consists of the economic and finance ministers from all EU states (COE II 2021). Relevant European Commissioners also take part in meetings (Ibid.). ECOFIN's responsibility includes EU's "economic policy, taxation issues and the regulation of financial services" (Ibid.). It coordinates the states' economic policies, fosters the convergence of their economic performance, and oversees their budgetary policies (Ibid.).

[23] €130 billion (Crespi et al. 2014: 10).

[24] "Council Decision of 12 July 2011 addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit" (COE 2011: 38).

the Supplemental MoU of 6 December 2011, and as amended periodically" (Koukiadaki 2014: 8). [25] Greece started receiving EFSF financing on 30 May 2013 (Bruun et al. 2017: 39).

After the first two programmes, Greece was still facing a declining economic scenario and a deteriorating prospect for its public finances (COE 2017).[26] In July 2015, it requested additional financial assistance, this time from the ESM (Ibid.), [27] created in 2012 as an autonomous international organisation (Ginsborg 2017: 105) and a permanent crisis resolution mechanism for the Eurozone states (Salomon 2015: 4).[28] The ESM Treaty was concluded between Eurozone states (but outside the EU legal framework), and came into effect on 27 September 2012 (Ban and Seabrooke 2017: 11).[29] Its Article 13(3) states that the Board of Governors entrusts the EC, "in liaison with the ECB and, wherever possible, (…) the IMF – with the task of negotiating with the ESM Member concerned" (Salomon 2015: 16) a MoU "detailing the conditionality attached to the financial assistance facility, as well as monitoring compliance" (Ibid.). [30] "The EC signs the Memoranda on behalf of the ESM, subject ultimately to approval

[25] "In December 2012, the Council granted Greece a further two years to correct its deficit" (COE 2017), setting the new deadline to 2016 and relaxing the previously determined annual adjustment path (Ibid.).

[26] In 2015, the Euro Summit highlighted the "the strongly deteriorated economic and fiscal position of the country" (ES 2015: 3) during 2014 (Ibid.). Still, the Greek government was again expected to "impose harsh austerity upon itself as a first step towards requesting another toxic bailout loan" (ES YV 2015: 2).

[27] "Greece made an official request for stability support, in the form of a loan facility, to the ESM" (EC 2021) on 8 July 2015 and a separate one to the IMF on 23 July 2015 (Ibid.).

[28] The interest rates on ESM loans are considerably lower than market rates (Ban and Seabrooke 2017: 6). To cover the financing needs until the launch of the ESM programme, "a short-term bridge loan of €7.16 billion was disbursed under the EFSM on 20 July 2015" (EC 2021).

[29] In 2013, a minor addition (Art.136) was added to TFEU, allowing the creation of a stability mechanism (Alcidi et al. 2017: 5).

[30] Although the ESM authorises the Troika to negotiate and monitor reform conditionality, the former started playing a more important role in monitoring – the Troika in the ESM programmes has become the Quadriga (Ban and Seabrooke 2017: 7).

by the Board of Governors" (Ibid.).[31] MoU3 started in August 2015, following the conclusion of an agreement on loan provision,[32] and was set to run until 20 August 2018 (European Council 2017). Under the excessive deficit procedure, the Council issued a recommendation with a new timetable of measures and extended the deficit correction deadline to 2017 (Ibid.).[33]

The austerity-focused approach of the three programmes was defended in the official communiqué of the April 2010 EU finance ministers meeting,[34] which included the Madrid paper (Ocampo et al. 2018: 228). In it, Alberto Alesina was promoting the theory of expansionary austerity by arguing that "many even sharp reductions of budget deficits have been accompanied and immediately followed by sustained growth rather than recessions even in the very short run" (Alesina 2010: 3), have occurred on the side of expenditure, and "been large, credible and decisive" (Ibid.).[35]

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[31] All the intergovernmental and EU-based loan agreements concluded by 2014 contain provisions on the tasks of the EC, the ECB, and the Court (Koukiadaki 2014: 16). The Preambles to the Greek Inter-creditor Agreement, the EFSF Framework Agreement and the ESM Treaty all make references to authorising the Member States' representatives to entrust the EC with implementation (Ibid.). However, these authorisations "raise the constitutional problem of sidestepping EU legislation through intergovernmental agreements in assigning new tasks to EU institutions" (Ibid.).

[32] It was agreed that up to €86 billion in loans would be provided (COE 2017).

[33] "On 25 September 2017, the Council repealed its 2009 decision on the existence of an excessive deficit" (European Council 2017), thus closing the procedure.

[34] The ECOFIN 2010 Madrid meeting (Blyth 2013: 171).

[35] One year earlier, in 2009, when Alesina and Ardagna acknowledged "the ballooning of debts and deficits across the OECD is due in large part to the 'bailout[s] of various types in the financial sector'" (Blyth 2013: 171), they presented cutting the state as the only solution (Ibid.).

Austerity in the History of Economic Thought

Austerity or fiscal consolidation stands for policies aimed at reducing fiscal deficits and debt levels (Ostry et al. 2016: 38). The economic theory of expansionary austerity promotes the idea that frontloading the cuts will positively contribute to the jumpstarting of stalling economies (Schmidt 2015: 35-36). Austerity measures prescribed to Greece in the form of loan conditionality comprised drastic "cuts in public social spending, social security benefits and social protection programmes, including pension schemes and labour market reforms and deregulation" (Ginsborg 2017: 99), along with selective tax rises and the privatisation of public services. These fairly specifically prescribed measures were enforced as the only possible strategy to boost competitiveness and increase revenue generation (Ginsborg 2017: 99-100).

As an active policy of budget cutting and deflation, austerity arose with the foundational ideas of economic liberalism (Blyth 2013: 116) and its fear of government debt leading to the destruction of accumulated wealth (Blyth 2013: 113). [36] In the 19th century, economic

[36] In economic theory, austerity can be considered a "derivative of a wider set of beliefs about the appropriate role of the state in the economy" (Blyth 2013: 30). The foundation for the liberal argument in favour of a minimalist state whose only role should be the protection of private property can be found in the 17th century reasoning of John Locke (Blyth 2013: 108). In the 18th century, David Hume pointed to the proneness of government debt to abuse since "it has no limit, at least until the interest rates on the debt become crushing" (Ibid.); it is also "easy to levy since its costs are hidden and intergenerational" (Ibid.). Adam Smith highlighted the issue of inflationary financing: to avoid the sovereign default, the state will pay lenders in devalued money (Blyth 2013: 114). He believed that saving automatically drives investment, growth, and the increase of capital, yet did not consider the possibility of lags, leakages, or hording of income (Blyth 2013: 110-111). In the 19th century, David Ricardo argued that an attempt by the government to stimulate an economy through increasing debt-financed public spending will be met by an unchanged aggregate demand because rational investors/taxpayers will anticipate future tax increases needed to pay off the debt, and will save more (Investopedia 2021). Thus, Ricardo's role for the state was limited to policing the frontiers of property, rather than attempting to change its distributions (Blyth 2013: 116). In the early 1960s (Sargent 2020), the hypothesis of rational expectations was proposed by John F. Muth (Muth 1961) and gained influence by its development and application in macroeconomics by Robert Lucas Jr (EB 2020).

liberalism split into two streams that continue to define the basic framework of the austerity debate: the interventionist British New Liberalism and the fundamentalist Austrian School (Blyth 2013: 117). According to the former, a recession can be ameliorated through more government spending, [37] which set the foundation for a comprehensive welfare state that reduces poverty and inequality (Ibid.).[38] In contrast, the Austrian School has maintained that state intervention destabilises the market by causing distortions and malinvestments that are "the source of credit booms and busts" (Ibid.).[39] Thus, it promotes exclusive reliance on real savings (maximum austerity) and encourages pro-cyclical adjustment policies rather than trying to compensate for the losses in a counter-cyclical manner (Blyth 2013: 121, 148, 150).

In the first decades of the 20th century, the business confidence [40] theory evolved, arguing that business confidence is crucial for the supply-side growth and that it could only be restored by

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Friedman implicitly used the concept in much of his work, heavily emphasising the role of expectations about future income (Sargent 2020). Notably, in 1990, Giavazzi and Pagano “argued that reductions in the budget deficit signal that taxes may be lower in the future, with positive effects on consumers’ permanent income and thus on consumption” (Alesina et al. 2019).

[37] In 1929, Keynes and Hubert Handerson presented the argument that saving might just as well lead to hoarding (Blyth 2013: 124).

[38] The practical consequences of interventionist liberalism in the early 20th century Britain were unemployment insurance, increased industrial regulation and universal pensions (Blyth 2013: 118).

[39] According to the “Austrian strain in American thinking about the inevitability of cycles, the centrality of the entrepreneur, and the importance of failure” (Blyth 2013: 121), i.e. liquidationism, bailing out banks or consumers, flooding the market with liquidity, keeping the interest rate low when credit is scarce, or attempting to stimulate the economy will only prolong the recession and generate a further pathology – what van Mises calls a capital strike among investors (Blyth 2013: 146). In practice though, apart from a few short-term expansions in the early 1920s when countries were not on gold, the application of austerity “made the depression deeper, longer, and, arguably, laid the foundations for the war that would engulf the world in the 1940s” (Blyth 2013: 199).

[40] Business confidence theory, embraced by the banking community and strengthening the Austrian stream is another stream of American economic thought stressing the necessity for a policy of ‘sound finance’ (Blyth 2013: 121). In 1930, Hubert Henderson claimed government spending has a negative impact on the general state of confidence (Blyth 2013: 125). Thus, in a recession, the state should limit itself to bringing the budget in balance and even increasing taxes if the need be, to renew the investor

the government's commitment to austerity (Blyth 2013: 122). However, in the 1930s US, even after two decades of liquidation and waiting, the Austrian-inspired austerity policies failed to bring about recovery from the Great Depression (Blyth 2013: 125). In fact, the free-market-and-balanced-budgets doctrine made the situation worse (Blyth 2013: 123). In 1933, Irving Fisher found that depressions do not fix on their own, the reason being debt deflation, i.e., lower consumption due to reduced incomes and increased debts (Blyth 2013: 149). In the 1940s, Keynes further demonstrated that after a shock, there is "no reason for an economy to 'naturally' return to a full-employment equilibrium" (Blyth 2013: 148).[41] In fact, it is irrational for investors to invest in the times of uncertainty about the future (Blyth 2013: 126, 146).[42] He argued that in such circumstances, the government should engage in spending the money that business is apprehensive to invest (Blyth 2013: 124). [43] Notably, Keynes's argument was that rather than being a cause, confidence is the outcome of growth (Blyth 2013: 126). [44]

Business confidence theory was given a boost in the 1970s by the monetarist view that government's interventionist attempts to stimulate the economy to compensate for economic downturns and to bring it to full employment by expanding money supply only lead to inflation, promoted by authors such as Milton Friedman (Blyth 2013: 152).[45] Additionally, in

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confidence, rather than mitigating the symptoms of unemployment (Blyth 2013: 122). In 1931, this is exactly what the then US President Hoover did, resulting in "the worst depression in American history" (Ibid.).

[41] Keynes demonstrated that while it is possible for a worker to price themselves into employment by accepting a lower wage, if all workers do this at the same time, the aggregate affect will be lower consumption and a shrunken economy (Blyth 2013: 126). Thus, cutting wages leads to recession (Blyth 2013: 171).

[42] Consequently, they end up sitting on cash, prolonging the depression (Blyth 2013: 126, 146).

[43] Keynes believed it is the responsibility of the state to raise prices in order to influence the investment expectations, which simultaneously pulls the economy out of the slump (Blyth 2013: 126).

[44] After 1930s, with Keynesianism, for the next 30 years, states were made to grow and their economies to expand (Blyth 2013: 101).

[45] Friedman consistently ardently promoted a free market economy, and opposed government intervention (Beattie 2021). The origin of the efficient markets' theory, according to which all relevant and available information is reflected in market prices and market anomalies should not exist, as they

the 1980s, public choice theory[46] emerged, which similarly portrays the state as "the inflationary pump rather than the economic shock absorber" (Blyth 2013: 151) and claims that such behaviour ruins expectations (Blyth 2013: 154.). [47] A central bank independent from politicians and public oversight, and with a mandate that focuses exclusively on price stability, much as the ECB,[48] is seen as a solution (Blyth 2013: 156-157).[49] Building on the public choice theory, the economists of the Bocconi School have recommended cutting the government[50] to create growth (Blyth 2013: 164-166).[51]

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are immediately arbitraged away, can be found in the work of Eugene Fama in 1970 (Investopedia 2020). In the 1970s, Friedman's monetarism, largely a restatement of the quantity theory of money that can be traced back to Hume, promoted the classical ideas about how labour markets clear at the equilibrium wage (Blyth 2013: 152). In contrast to Keynes, who "favored a stabilized wage unit combined with a flexible central bank that steers interest rates and aggregate demand, Friedman favored a stabilized central bank combined with free interest rate and employment determination in financial and labor markets respectively" (Bibow 2002: 1). He viewed full employment as automatic, and the rate of unemployment as voluntary, determined by structural supply-side factors and the degree of militancy of trade unions (unionization rates) (Blyth 2013: 152-153). Friedman's position was that government spending directed at fighting the natural rate of unemployment (in a slump) generates an ever-increasing inflation and does not change unemployment in the long run (Blyth 2013: 153).

[46] Economists like James Buchanan and Richard Wagner (Blyth 2013: 154).

[47] The argument is that the income-maximising behaviour of state agents produces inflation as a result of politically induced business cycles that generate budget deficit and debt (Blyth 2013: 154, 164). Whether debt ratios were in fact driven by these mechanisms remained a pending matter (Blyth 2013: 166).

[48] By the 1990s, central bank independence had spread around the globe, most prominently throughout all of Europe, reaching its peak in the drive to the euro and the establishment of the ECB (Blyth 2013: 157). When ECB was created "in 1999, it was arguably the most independent central bank around, charged with only one goal: fight inflation, even in the middle of a deflation" (Ibid.).

[49] Advocated by economists like Finn Kydland and Edward Prescott (Blyth 2013: 156).

[50] "Starve the Beast" theory of public spending (Blyth 2013: 164).

[51] This is the origin and core of modern austerity thinking that has served as "the contemporary instruction sheet" (Blyth 2013: 174) for the EU economic reform (Ibid.).

In 1981, the idea that fiscal retrenchment should be understood as "the premise for an expansion, rather than a recession" (Giavazzi and Pagano 1990: 11) was proposed by the German Council of Economic Experts (Ibid.). The events surrounding the 1982 fiscal consolidation in Germany[52] have been interpreted as having led to a higher output (Hellwig et al. 1987: 138). Nevertheless, the economic growth in Germany in that period was relatively low and there was virtually no progress in reducing unemployment (Hellwig et al. 1987: 140). Moreover, the authors admitted their conclusion was tentative, as they did not have an "explicit empirical model of the economy, rich enough in detail and sufficiently tested" (Hellwig et al. 1987: 137).

In 1990, Giavazzi and Pagano released a study of Denmark and Ireland, declaring it the first study offering empirical evidence for the expectations view of fiscal policy (Giavazzi and Pagano 1990: 2, 6): introducing the hypothesis of expansionary austerity (Dellepiane-Avellaneda 2015).[53] They found that in Denmark, the 1982 fiscal turnaround was "accompanied by an unusually strong expansion in the subsequent four years" (Giavazzi and Pagano 1990: 6), while in Ireland, there was a similar outcome during the 1987-1989 stabilisation[54] (Ibid.). However, they admitted that in both cases, complementary monetary and exchange rate policies played "an important role in determining the final outcome of the stabilization" (Giavazzi and Pagano 1990: 7) and were crucial for understanding the outcome of the fiscal turnaround (Ibid.).[55]

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[52] With fiscal consolidation, from 1982 to 1987, German economic policy virtually eliminated inflation and considerably reduced public sector deficits and the government's share of GNP (Hellwig et al. 1987: 140).

[53] The hypothesis of expansionary fiscal contraction (Dellepiane-Avellaneda 2015*),* i.e., fiscal contraction leading to economic expansion by triggering an expansion of public consumption, investment and employment (Barry and Devereux 1995: 249).

[54] Nevertheless, "a previous attempt in the early 1980s had plunged the economy in a severe recession" (Giavazzi and Pagano 1990: 6).

[55] Thus, "part of the expansionary effects associated with the fiscal stabilization" (Giavazzi and Pagano 1990: 26) in the two test countries might actually derive from "the fall in real interest rates associated with the concomitant monetary and exchange rate policies" (Ibid.).

In their 1995 paper, Alesina and Perotti considered 52 budget expansions and adjustments in OECD states (Alesina and Perotti 1995: 17) in the 3 decades leading up to 1995,[56] but focused on fiscal policy changes that resulted from intentional actions of the policymakers (Alesina and Perotti 1995: 6). They found 14 successful (very tight) adjustments[57] (Alesina and Perotti 1995: 17), noting such adjustments "do not seem to have recessionary consequences, on average" (Alesina and Perotti, 1995: Preface) [58] and were accompanied by a drop in unemployment (Alesina and Perotti 1995: 22). But the authors also found out that "on average very tight fiscal policies tend to be initiated when the country is doing well relatively to the other" (Ibid.).

In 1998, Alesina and Ardagna examined 51 episodes of fiscal adjustments (Alesina and Ardagna 1998: 9) in 20 OECD countries between 1960 and 1994 (Alesina and Ardagna 1998: 7), of which they labelled 23 expansionary (Alesina and Ardagna 1998: 9) in the short run. [59]

[56] Their sample included 20 OECD countries in the period between 1960 and 1992 (Alesina and Perotti 1995: 9), and 547 observations of the Blanchard Fiscal Impulse (Alesina and Perotti 1995: 10). Blanchard has proposed two different indicators of fiscal impact, one of which assumes that the behaviour of consumers is determined by current taxes and income (Bléjer and Cheasty 1993: 94). Because the measure of this behaviour "involves government expenditure, revenue and interest on the public debt, he proposes the inflation-adjusted deficit (…) as a simple indicator of fiscal impact" (Ibid.). The other proposed indicator, for consumers with foresight, is "an actual deficit measure involving the subtraction from government expenditure of an average of the tax revenue expected for the current and future period" (Ibid.).

[57] The authors defined a successful adjustment "as 'very tight' fiscal stance in year t such that the gross debt/GDP ratio in year t+3 is at least 5 percentage points of GDP lower than in year t" (Alesina and Perotti 1995: 17). They found evidence that successful consolidations "rely mostly on cuts in transfer programs and in government wages and employment" (Alesina and Perotti 1995: 4). They cited Ireland between 1986 and 1990 as 'an excellent' example of a successful adjustment (Alesina and Perotti 1995: 23).

[58] They noted that following the adjustment, successful adjustments "grow 1% faster than the G-7 countries" (Blyth 2013: 168), while unsuccessful ones grow 0.36% more slowly (Ibid.).

[59] They concluded that fiscal consolidations are not always contractionary and that in several cases, they have been "associated with expansions" (Alesina and Ardagna 1998: 3). They also found that virtually all contractionary expansions are the outcome of cuts in expenditure, and that during and after cuts, successful adjustments experience an impressive boom of investment (Blyth 2013: 170).

They used econometrics to support their claims that cuts are more effective in a slump (Blyth 2013: 169). Notably, a devaluation right before the fiscal tightening was among the elements necessary for a successful, long-lasting and expansionary fiscal adjustment (Ibid.). [60] Upon closely examining 10 expansionary episodes, only 2 proved to be unambiguously expansionary – Ireland from 1987 to 1989, and Australia (Alesina and Ardagna 1998: 32). Yet John Quiggin, a leading Australian economist noted the Australian case was "marred by elementary factual errors" (Islam, Chowdhury 2012).

In 2003, Giudice et al. performed an ex-post and ex-ante cross-country analysis that shows that out of the fiscal consolidation periods in the EU between 1970 and 2002 (Giudice et al. 2003: 2), only "roughly half of the episodes" (Giudice et al. 2003: Abstract) were followed by faster growth.[61]

In 2009, Alesina and Ardagna examined 107 large fiscal adjustments between 1970 and 2007 in 21 OECD states (Islam and Chowdhury 2012) that were policy-induced (Alesina and Ardagna 2009: 3), and found expansionary fiscal adjustment in 26 cases (Islam and Chowdhury 2012).[62] Notably, the large majority of these did not attempt to cut their deficits in a slump, [63] and where they did, it oftentimes resulted in a decreased subsequent growth rate or a higher debt-to-GDP ratio (Jayadev and Konczal 2010: 1). The only exception to this can be accounted for by a combination of currency depreciation and a reduction in the interest rate (Ibid.). The authors admitted they knew "relatively little about the effect of fiscal policy on growth"

[60] Other elements they found necessary were "spending cuts on transfers, welfare programs and government wage bill" (Alesina and Ardagna 1998: 4), as well as "some form of wage agreement with the unions which ensures wage moderation" (Ibid.).

[61] The expansionary consolidations were "in general based on expenditure cuts rather than on revenue increases" (Giudice et al. 2003: Abstract).

[62] Which no longer included Australia (Islam and Chowdhury 2012).

[63] Indeed, in 20 of the 26 cases of identified expansionary fiscal adjustment, "restrictive policy actions were preceded by above-average growth" (Islam and Chowdhury 2012). Furthermore, there was no episode in which a country in the circumstances of recent recession, low interest rates, and high unemployment "has cut its deficit and succeeded in reducing its debt through growth" (Jayadev and Konczal 2010: 1).

(Alesina and Ardagna 2009: 2), which made their discussion "even less constrained by solid economic arguments" (Ibid.).[64]

In 2010, Alesina presented a summary of his 1998 and 2009 studies in the Madrid paper (Ocampo et al. 2018: 228). Despite his advocating for expansionary austerity, there was no unambiguous evidence for the theory's validity (Islam and Chowdhury 2012).[65] Furthermore, Alesina admitted that public sector employees and pensioners "may have to pay a higher share of the costs" (Alesina 2010: 8). The same year, the IMF stated there was "no consensus regarding the short-term effects of fiscal austerity" (IMF 2010: 93). Looking at intentional deficit reduction (Gravelle, Hungerford 2013: 15) however, they found "all fiscal consolidations are contractionary in the short run" (Perotti 2011: 2) and that the evidence used by Alesina, Perotti and Ardagna was flawed (IMF 2010: 94).[66] Notably, "fiscal consolidation raised both short-term and long-term unemployment" (Islam and Chowdhury 2012).[67]

[64] They acknowledged that in terms of positions in political economy, "the differences are often rooted in different views about the role of government and inequality, not so much about the size of fiscal multipliers" (Alesina and Ardagna 2009: 2).

[65] Alesina merely demonstrated that, in some cases, one cannot detect a contractionary impact of fiscal austerity (Islam and Chowdhury 2012). Moreover, his work had been criticised based on the methodology used as well as "the ambivalent nature of the economics underpinning the thesis of 'expansionary fiscal austerity'" (Ibid.). In 2010, Jayadev and Konczal expanded on Alesina and Ardagna's examination of 107 cases of austerity, and found there was "very little evidence for success when cutting in a slump" (Jayadev and Konczal 2010: 1).

[66] The expansionary effect of spending reductions was overestimated, while their contractionary effects were downplayed (Islam and Chowdhury 2012).

[67] "Its impact on long-term unemployment was much greater, hurting wage-earners disproportionately more than profit- and rent-earners" (Islam and Chowdhury 2012). Additionally, "if interest rates are near their effective floor, the effects of fiscal consolidation are more costly in terms of lost output" (Batini et al. 2012: 5).

In 2011, Perotti presented four detailed case studies of large fiscal consolidations, "associated with an expansion" (Perotti 2011: 1).[68] However, he admitted that of the four cases, Denmark was the only one where growth was driven by internal demand (Ibid.). Even there, after three years, the economy lost competitiveness and a long downturn set in (Ibid.). Perotti emphasised the theory of expansionary fiscal consolidation might not be applicable to many countries in the circumstances of the 2011 EMU with no depreciation available except potentially vis à vis non-Eurozone states (Perotti 2011: 42). Furthermore, a further decline in interest rates was unlikely in the 2011 situation (Ibid.) of low inflation and interest rates near zero (Perotti 2011: 3), while he saw income policies as, in all probability, "ineffective for more than a few years" (Perotti 2011: 42). [69]

The same year, Jamie Guajardo, Daniel Leigh and Andrea Pescatori investigated the short-term effects of fiscal consolidation on economic activity in OECD states (Guajardo et al. 2011: 1), by examining cases where the changes in fiscal policy were led by a desire to lower the budget deficit (Ibid.).[70] Based on that new dataset of 173 fiscal policy adjustment cases, they found that "fiscal consolidation has contractionary effects on private demand and GDP" (Guajardo et al. 2011: 4-5).

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[68] "Denmark 1983 - 86 and Ireland 1987 - 89, are typically regarded as the classical examples" (Perotti 2011: 17).

[69] In 2012, Islam and Chowdhury noted that the enabling complementary factors "might be more important than fiscal actions" (Islam and Chowdhury 2012), e.g., expansionary monetary policy to offset the effects of recession; devaluation that increases net exports to offset the drop in aggregate demand; the global and regional business cycle (Ibid.). They stressed that this was especially important in the circumstances of the quite weak post-crisis economic recovery of the 2012 Eurozone on the verge of a 'double dip recession' and in the regional/global business cycle not favourable enough for fiscal consolidation to succeed (Ibid.).

[70] Their paper "suggests that the standard method used to identify fiscal consolidation in the literature may bias the analysis toward finding support for the expansionary austerity hypothesis" (Guajardo et al. 2011: 3).

In July 2012, Batini et al. from the IMF examined the most prominent cases of expansionary austerity in the US, Europe and Japan (Batini et al. 2012: 1).[71] Their empirical findings only uphold the expansionary implications of confidence effects in the long term, and only when consolidations are introduced in the expansionary phase of the economic cycle (Batini et al. 2012: 19). The main finding was that smooth and gradual (Batini et al. 2012: 1), primarily tax-based consolidations (Batini et al. 2012: 27) should be preferred to frontloaded or aggressive ones, particularly for economies in recession that face high-risk premia on public debt, as protecting growth is vital (Batini et al. 2012: 1).[72]

In 2012, the IMF's chief economist[73] issued 'a mea culpa,' admitting the IMF "massively understated the damage that spending cuts inflict on a weak economy" (Krugman 2015). In 2013, the IMF found that austerity typically raises income inequality and long-term unemployment, and lowers the share of wage income (Ball et al. 2013: 1).[74] The same year,

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[71] Batini et al. used the Balke approach, where a threshold auto-regressive model changes structure if growth crosses a critical threshold, and growth changes are endogenous – shocks like government expenditure or tax revenue "can result in a switch between different regimes of the business cycle" (Batini et al. 16). They estimated "fiscal multipliers conditional on monetary policy by expanding the regime-dependent VAR with a short-term interest rate" (Batini et al. 2012: 5), in contrast to traditional VARs rooted in the Blanchart-Perotti framework that only contained 3 endogenous variables: real GDP, public expenditure and tax revenues (Ibid.). They determined regime-dependent multipliers for the US, the Eurozone as a whole, Italy, France, and Japan (Batini et al. 2012: 4).

[72] Moreover, they "may deliver a similar, if not better, debt reduction" (Batini et al. 2012: 27), while having a less damaging effect on output, which is "even more true when the initial conditions of a consolidation are adverse (the stock of debt is elevated and public debt yields contain a high and/or rising risk premium component)" (Ibid.). Meanwhile, fiscal consolidations performed through reductions in expenditure lower output in the short term (Batini et al. 2012: 21) and make a recession more probable in the next quarter, especially if they're big (Batini et al. 2012: 25). Tax-based consolidations, on the other hand, typically do not have an important effect on the likelihood of recessions (Batini et al. 2012: 26).

[73] Olivier Blanchard (Krugman 2015).

[74] In 2016, the IMF reported that neoliberalism, in particular fiscal consolidation, which has played an important role in the broader neoliberal agenda that the IMF has actively promoted in Europe through

Paul Krugman highlighted the fact that "some of the key research papers that underpinned austerity ideology are marked by significant methodological flaws" (Jaros 2015: 303).[75]

In 2013, the US Congressional Service noted the standard view endorsed by most economists and based on conventional models was that spending reduction typically contracts the economy, especially "in the short run in an underemployed economy" (Gravelle and Hungerford 2013: Summary).[76] The authors noted Alesina and Ardagna's claims that spending cuts led to successful debt reductions with higher growth were based on 9 observations out of 107 cases of deficit reduction, whereby the majority of economies in which debt reductions were successful were at or near full employment (Ibid.).

The same year, Baldacci et al. examined 107 OECD economies and 79 episodes of public debt decreases driven by discretionary fiscal adjustments in the period of 1980–2012 (Baldacci et al. 2013: 1). They observed that under the conditions of an increased ratio of public debt to GDP and a hampered access to credit by the private sector, as well as a shrinking or modestly growing output, fiscal consolidations did not succeed in reducing public debt in relation to GDP (Baldacci et al. 2013: 4). [77] To the contrary, they led to deteriorated budget positions

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its role in the Troika, cannot be claimed universally beneficial for growth (based on an assessment of a broad group of countries), while it is certain that it has drastically increased inequality and consequently negatively affected growth (both in terms of level and sustainability) (Ostry et al. 2016).

[75] These flaws "undercut claims that deficit spending inhibits economic growth" (Jaros 2015: 303).

[76] Furthermore, "most multipliers (measures of the effect of deficits on the economy) indicate that spending cuts contract the economy more than (…) similarly sized tax increases" (Gravelle and Hungerford 2013: Summary).

[77] "This calls for removing tax exemptions, lowering incentives for tax avoidance and evasion, and shifting tax pressure away from labor to property and low-elasticity consumer goods and services" (Baldacci et al. 2013: 27). According to Baldacci et al., expenditure-based, front-loaded fiscal adjustments can stifle growth when credit supply restrictions exist (Baldacci et al. 2013: 1), while revenue increases have a less damaging impact on medium-term consumption (Baldacci et al. 2013: 27).

without being compensated by a notable increase in private sector's activity (Ibid.).[78] Thus, in the mentioned circumstances, the fiscal policy mix should rely on reducing non-priority spending and shielding pro-growth public investment, particularly when structural unemployment is high (Baldacci et al. 2013: 27). Revenue raising measures should focus on minimising inefficiencies, incentivising labour market participation, and boosting consumption (Ibid.).[79] Nevertheless, the Troika opted for the approach of fiscal consolidation in all three of its programmes in Greece.

[78] This resulted in a decline in "domestic demand, economic activity, and government revenues" (Baldacci et al. 2013: 4).

[79] The authors argued that protecting public investment and implementing supply-side, productivity-enhancing reform is "critical for medium-term growth" (Baldacci et al. 2013: 1).

Austerity as an Institutional Policy: Empirical Overview

An international organisation, in line with the International Law Commission, can be defined as "an 'organisation established by a treaty or other instrument governed by international law and possessing its own international legal personality" (PPL 2021), usually but not exclusively with states as members (Ibid.). Alternatively, an institution is defined in political science, as "a set of formal rules (…), informal norms, or shared understandings that constrain and prescribe political actors' interactions with one another" (Gilad 2015).[80] All in all, although often used interchangeably, institutions as sets of norms apply across a variety of specific organisations, providing normative environments that shape the organisation's activities (Bouma 1998: 232).

The IMF's[81] operations of providing loans and evaluating credit worthiness of states make it "one of the most powerful transnational financial institutions" (Bradshaw and Huang 1991: 321). Since 1981, it has, together with the World Bank (WB), provided financing for structural adjustment agreements (SAAs) in developing and transition countries (Abouharb and Cingranelli 2007: 63).[82] With the primary purpose of structural adjustment programmes (SAPs)

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[80] It can be "generated and enforced by both state and nonstate actors, such as professional and accreditation bodies" (Gilad 2015).

[81] The IMF is an organisation of 190 countries (IMF IV 2021) with a job "to promote a stable international monetary system, in which member countries can achieve high rates of employment, low inflation, and sustainable economic growth" (IMF October 2020), and does so by reviewing, on a regular basis, "economic and financial developments; providing economic monitoring and policy advice to its (…) member countries (…); and analyzing the impact of countries' policies on others" (Ibid.). "The Fund's mandate was updated in 2012 to include all macroeconomic and financial sector issues that bear on global stability" (GIH 2021). Notably, the IMF provides loans to its member states with actual or potential balance of payments problems (IMF 2021). It also claims to work to reduce global poverty (IMF IV: 2021), and that its role is pro-poor (Hacche 2003). It is governed by and accountable to its member states (IMF IV: 2021). "Decision making at the IMF was designed to reflect the relative positions of its member countries in the global economy" (IMF III: 2021).

[82] Governments have often been forced into the arms of the two institutions due to becoming bankrupt and "unable to pay for their current imports (…), or to pay the interests on their foreign debts or raise new loans, or to secure commercial trade credits" (Williams 1994: 220).

to spur economic growth (Abouharb and Cingranelli 2006: 236) and free up resources for debt service (Abouharb and Cingranelli 2008: 48), the two institutions have been reshaping states in the direction of market liberalisation, i.e. downsizing, decentralising, privatising or outsourcing (Ibid.),[83] while also requiring their budget be as balanced as possible (Abouharb and Cingranelli 2006: 236).[84]

From an economic point of view, SAPs and economic reform policies are perceived as "short-term austerities that lead to long-term growth and development" (Peabody 1996: 823).[85] In this sense and considering their aim of debt reduction, they can be compared to the financial assistance programmes designed for Greece by the Troika between 2010 and 2015. However, bare facts do not support the claim that adjustment lending raises growth in the long run (Easterly 2003: 378). In fact, it has been shown that fiscal and monetary policies that deflate the economy as part of a stabilization programme lead to lower growth rates or even to a drop in the national income (Van der Hoeven 2000: 2).

[83] In line with the neoliberal economic theory (Abouharb and Cingranelli 2006: 236), SAPs have demanded that borrowing countries simultaneously introduce broadly free-market systems and austerity (Halton 2020): reducing government spending (and consequently wages and employment), increasing prices and cutting subsidies (Williams 1994: 227). Yet a strong involvement of government in the economy is vital for the protection of all human rights, and it can be seen in the historical record that a weaker role of the state in capitalist economies has led to a lower protection of certain human rights, e.g., worker rights (Abouharb and Cingranelli 2006: 237).

[84] A common provision in SAAs (Abouharb and Cingranelli 2010: 140, Abouharb and Cingranelli 2006: 236) is that structural adjustment loan recipient countries must either adopt or move toward "maintaining as close to a balanced budget as possible, if not a surplus" (Abouharb and Cingranelli 2007: 110).

[85] The IMF and the WB justified their loan conditions as essential stimuli for economic development (Abouharb and Cingranelli 2006: 233), while neoliberal proponents of SAAs's beneficial effect on human rights have even claimed that "higher levels of economic development caused by the implementation of a SAA will lead to improvements in government respect for economic rights through (…) the 'trickle down' effect" (Abouharb and Cingranelli 2006: 238).

Research on SAPs of 1981-2000 has shown that implementing the conditions of structural adjustment had an adverse impact on economic growth (Abouharb and Cingranelli 2006: 233).[86] The 1980s, a decade marked by increasing austerity in South America and sub-Saharan Africa (Reimers 1994: 119), became the 'lost decade' for development in those regions (Stiglitz 2016, UN/DESA 2017, Singer 1989: X, Ridley 1989).[87] There is even a correlation between the intensity with which a country embraces neoliberalism[88] (Abouharb and Cingranelli 2007: 10), i.e. public finances consolidation via a reduction in public expenditure, with the aim of enhancing the sovereign bond markets' confidence (Schmidt 2015: 34), and its deteriorating economic performance (Abouharb and Cingranelli 2007: 10). At the same time, economic downturns coincide with an increase in suicides, especially where there is a lack of welfare safety nets (Antonakakis and Collins September 2014: 2).

[86] According to numerous scholars that have studied the connection between structural adjustment policies and economic growth, "the weight of the evidence so far is that structural adjustment is not effective" (Abouharb and Cingranelli 2006: 236). Overwhelming research results show that growth rates were negative or low in the majority of countries that implemented SAPs (Abouharb and Cingranelli 2007: 9). Notably, the ten biggest recipients of the IMF and WB's structural adjustment loans have made little progress in increasing their GDP per capita since their first loans (Abouharb and Cingranelli 2007: 136).

[87] "'Lost' decade may be an understatement; for Sub-Saharan Africa, in particular, the 1980s became a disastrous decade (…) attention shifted to debt settlement, stabilisation, adjustment, structural change, liberalisation, etc. — often at the expense of everything (…) previously (…) understood as development, whether growth, employment, redistribution, basic needs or reduction of poverty. This shift was associated with the ascent of neo-liberal ideologies, a shift in decision-making on development strategy to creditors, donors and international financial institutions" (Singer 1989: X) and within the WB and the IMF (Ibid.).

[88] Albeit often confused with small government, the neoliberal doctrine does not advocate for a weaker state, but rather promotes a type of state intervention that creates and preserve market rule (e.g., through policies of deregulation and free market) (Feldman 2019: 341).

For most of the 1980s and 1990s, the IMF and WB adjustment lending was not designed to directly reduce poverty (Easterly 2003: 380).[89] Based on the "data for 1980-1998 on all types of IMF lending and on WB adjustment lending" (Easterly 2001: 363), the lending by these two institutions "lowers the growth elasticity of poverty" [90] (Ibid.). Moreover, according to United Nations (UN) agencies, various economists, social scientists and NGOs, harsh economic measures imposed by SAPs exacerbate poverty (Abouharb and Cingranelli 2007: 11). The 1982-2004 data for 94 countries [91] demonstrate a connection between the participation in IMF programs and higher poverty gaps[92] and headcount ratios (Oberdabernig March 2010: 1), even after other economic variables have been controlled for (Oberdabernig 2010: I).[93]

[89] Nevertheless, in 1999, a former IMF Managing Director Michel Camdessus talked about "the importance of poverty alleviation" (Oberdabernig March 2010: 2). Since that year, the IMF has emphasised "the central role of poverty reduction in its strategy for low-income countries" (Leite 2001). When advising their member states, the IMF and the WB even underline the importance of establishing budgets that highly prioritise the needs of the poor (Ibid.). Yet strikingly, out of over a hundred countries under SAAs in 2001 or 2001 (Abouharb and Cingranelli 2007: 49), only 9 countries included human rights provisions in their poverty reduction and development strategy papers (Leite 2001). After a wave of criticism of 1980s SAPS, the 'second' generation of SAAs required some level of protection of the poor who carried the burden of adjustment (Abouharb and Cingranelli 2007: 63).

[90] The growth elasticity of poverty is "the amount of change in poverty rates for a given amount of growth" (Easterly 2003: 362). Under structural adjustment, "economic expansions benefit the poor less" (Ibid.).

[91] The method of Heckman regressions was used (Oberdabernig 2010: I), which estimates regression models suffering from selection bias (EViews 2020): "the dependent variable is only observable for a portion of the data. A classic example (…) is the wage equation for women, whereby a woman's wage is only observed if she makes the decision to enter the work place" (Ibid.).

[92] I.e., ratios by which the mean income of the poor drops below the line of poverty (OECD 2021).

[93] "Poverty rates are higher for countries during and especially between participation in IMF programs" (Oberdabernig March 2010: 6). It is generally agreed that the deflationary component of stabilisation policies results in higher poverty (Van der Hoeven 2000: 3). E.g., in another study, using data on 86 low- and middle-income countries for the period of 1982-2009, and controlling for endogenous selection into IMF programmes, negative short-run impacts of IMF agreements on poverty and inequality were found (Oberdabernig 2012: 1).

Furthermore, SAAs' implementation increased income inequality (Abouharb and Cingranelli 2006: 239; Abouharb and Cingranelli 2007: 72) within states, by bringing about redistribution of wealth from the poor to the elite and impeding subsequent improvement in economic development (Abouharb and Cingranelli 2007: 76). The negative effects of SAPs on income equality remain for the long run (Oberdabernig March 2010: 1),[94] thus increasing the percentage of population living in poverty (Van der Hoeven 2000: 15).[95] To the extent that the policies of structural adjustment are the cause of worsening of the position of the poor, those policies also, indirectly, result in higher repression of human rights (Abouharb and Cingranelli 2007: 52).

Common SAA conditionalities have included cutting social spending in the fields of "education, health services, income subsidies, housing, and reductions in public employment" (Abouharb and Cingranelli 2007: 111). Between 1980 and 1989, SAPs devastated social expenditures and by the end of that period, social spending was at its lowest (Abouharb and Cingranelli 2007:

[94] Based on the study analysing data from 94 countries in the period of 1982 to 2004 (Oberdabernig March 2010: 1). A difference in-difference technique was used to estimate the effect of SAPs on GINI indices, a model best suited in this case in view of endogenous program participation due to self-selection in IMF agreements (Ibid.). Results showing that participation in IMF programs is related to "a more unequal income distribution (…) stay robust after controlling for other economic variables'" (Oberdabernig 2010: 1).

[95] In a country where inequality is high (i.e., a Gini ration of 0.6), a poverty line of 15% per capita translates into 23% of the population living in poverty, whereas in a country where inequality is low (i.e., a Gini ration of 0.28), it would translate into less than 1% (Van der Hoeven 2000: 15). "If there are no adjustment loans and inequality is very low, (…) poverty is extremely elastic with respect to growth" (Easterly 2003). Since "countries with lower inequality have a higher poverty reduction elasticity of growth" (Van der Hoeven 2000: 14), to reduce poverty, efforts to stimulate growth need to be complemented by actions to decrease inequality (Van der Hoeven 2000: 1).

64).[96] Based on the SAPRIN study[97] encompassing 8 countries, SAPs have generally resulted in sharply reduced public expenditure on social services, in many cases during periods of economic decline while the payment of debt obligations continued (Abouharb and Cingranelli 2007: 232).[98] In SAPs of 1981-2000, loan recipient governments were expected to loosen their protection of their citizens' social and economic rights,[99] with the expectation of being able to make much more significant efforts towards these ends later (Abouharb and Cingranelli 2006: 238), yet decades of SALs have burdened developing countries with even deeper debt (Abouharb and Cingranelli 2007: 10).

According to most studies by 2006, "the imposition of structural adjustment conditions on less developed countries worsens government human rights practices" (Abouharb and Cingranelli 2006: 233). Even taking into account "selection bias towards governments with good overall levels of respect for human rights" (Abouharb and Cingranelli 2007: 234), SAPs have not only resulted in reduced government respect for economic and social rights, but also in domestic

[96] "The repayment of SALs has funnelled scarce resources from developing country governments to their creditors (…) soaring levels of interest payments have crowded out public investment in basic services and infrastructure" (Abouharb and Cingranelli 2007: 10).

[97] SAPRIN stands for Structural Adjustment Participatory Review International Network (Abouharb and Cingranelli 2007: 232). The study was conducted in 2004 (Ibid.).

[98] Considerable evidence shows that these programs require governments to decrease their expenditure more than other governments also in economic hardship but not under structural adjustment conditions (Abouharb and Cingranelli 2007: 74). According to a SAPRIN 2002 report, 6 out of 7 studies carried out in 7 countries show that stabilisation and SAPs resulted, in the best-case scenario, in no improvement and, in the worst, in a sharp drop in social services – due to both general controls in spending and other non-budgetary policies (SAPRIN 2002: 150). The IMF stabilisation packages usually emphasised expenditure control by demanding specific measures (SAPRIN 2002: 148-149), which commonly implied reductions in social spending, public sector salaries, as well as in public sector employment (Oberdabernig 2012: 5). Notably, the structural adjustment reforms "involved a radical shift away from the role of the state as one of provider and guarantor of universally accessible social services to one of providing essential services to those on the margins" (SAPRIN 2002: 149).

[99] E.g., in areas such as housing, employment, health care, and education (Abouharb and Cingranelli 2006: 238).

instability (Ibid.). Notably, when expenditure in public sector employment is cut, this leads to an at least temporary rise in unemployment, and lower public sector wages and salaries, which tends to exacerbate poverty and income inequality, especially when the reductions are directed at low-level government employees (Oberdabernig March 2010: 4). [100] The IMF pressures for more business-friendly conditions have also prompted the leaders of developing countries to decrease workers' protections from exploitation by employers, including those protecting core worker rights that are recognised internationally[101] (Abouharb and Cingranelli 2007: 5).

[100] For instance, in Ecuador, El Salvador, Mexico, and Zimbabwe, SAPs strongly undermined the position of workers through a combination of labour-market reforms, redundancies due to "privatisations and civil service reform, and the shrinking of labor-intensive productive sectors" (Abouharb and Cingranelli 2007: 183). Employment rates had declined, employment had become more precarious, real wages had dropped, income inequality had increased, "worker rights and unions had been weakened (…), and public enterprises (…) privatized without adequate regulation" (Ibid.).

[101] Right to "freedom of association at the workplace, collective bargaining, and protection of children from exploitation" (Abouharb and Cingranelli 2007: 5).

Human Rights Theory: Poverty, Responsibility of Institutions, and the Shift of Paradigms

The demand for strict conditionality was at the core of the loans of the financial assistance programmes to Greece,[102] which depended on the country meeting several economic targets in terms of public spending (Ginsborg 2017: 100), privatisation, deregulation, and taxation, in line with the theory of expansionary austerity (Schmidt 2015: 34).[103] Notably, "from a human rights perspective, austerity measures can be considered retrogressive" (Crespi et al. 2014: 55). Based on the numerous studies on austerity available at the time of the Greek adjustment programmes, the most probable effects of imposing and frontloading austerity in Greece in the country's then circumstance of recession (Macrotrends 2021), near-default, no currency depreciation available, hampered access to credit,[104] high debt to GDP ratio (126.7 in 2009) (Trading Economics 2021), and unemployment at 11.3% already in January 2010 (HSA 2010), were predictable: increased rates of poverty, higher economic inequality, more

[102] In the second programme, for example, the Greek Government had to, as a prior action, "adopt the medium-term fiscal strategy (…) through 2016" (MOU2 R1 2012: 61), "on the permanent fiscal consolidation measures, which ensure that the deficit ceilings for 2013-16 as established by the Council Decision are not exceeded, and that the debt-to-GDP ratio is put on a sustainable downward path" (Ibid.). It was to "set automatic cuts in expenditures to be applied as a rule when targets are missed, while ensuring that arrears are not increasing" (MOU2 R1 2012: 64), and introduce corrective mechanisms (MOU2 R1 2012: 201). MoU2 also required Greece's early implementation of Fiscal Compact (Ibid.), which introduced national budgetary rules and strengthened enforcement mechanisms at European level (MoU2 R1 2012: 32).

[103] Greece has "adopted austerity measures (…) as a direct result of loan conditionalities imposed by international financial institutions" (Ginsborg 2017: 98). The conditionality was centred around "contractionary fiscal policies, cuts in public spending, pension reforms and a stripping back of labour protections" (Crespi et al. 2014: 4-5).

[104] "After the Lehman shock in September 2008, spreads on Greek government bonds over 10-year bunds jumped to 300 bps compared to about 50 bps before the crisis. Standard and Poor's downgraded Greece from A+ to A in January 2009 citing a loss of competitiveness worsened by the global financial crisis. Against this backdrop, Greece had become extremely vulnerable to a stop in private capital flows" (IMF 2013: 6).

unemployment, reduced respect of economic and social rights, higher debt, and a shrinking economy (ESM 2018). [105]

In line with Thomas Pogge, poverty must be understood as "not just a matter of material deprivation, but essentially a matter of human dignity and socio-economic justice" (Pogge 2007: vii).[106] Thus, any institutional order that foreseeably generates poverty that could have been avoided or prevented through reasonable means and efforts, can be understood as a violation of human rights on the part of those who take part in imposing this order (Pogge 2007: 30). This is especially the case considering one of the purposes of human rights is to develop "economic justice, social wellbeing, participation, and equality" (ESCR-Net: 2020). [107] Granting someone human rights generates minimal moral claims against actors that participate in and uphold social institutions that affect others (Pogge 2007: 15) and places limitations on them regarding legislation, policy-making and implementation, and other acts that can affect individuals or groups (Skogly 1993: 757). Providing social guarantees, i.e., suitable arrangements and infrastructure for the enjoyment of human rights, is an essential part of a system that recognises and upholds human rights (Skogly 1993: 768).[108]

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[105] Meanwhile, according to the 25/26 2010 European Council Conclusions, following the EC's communication 'Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth,' and the discussions in the Council (European Council 2010: 1), "a more sustainable economy, high employment and social inclusion" (European Council 2010: 2) were going to be among the key areas of the new EU strategy, with poverty reduction also among the targes (Ibid.). The European Council is not a legislating body of the EU (European Council 2020). Its main role as an institution is to decide on the EU's general political direction and priorities, traditionally, by adopting conclusions during European Council meetings (Ibid.). These outline particular actions or goals, and "can also set a deadline for reaching agreement on a particular item or for the presentation of legislative proposal" (Ibid.).

[106] Even the WB has acknowledged that poverty "is 'more than inadequate income or human development—it is also vulnerability and lack of voice, power, and representation'" (Leite 2001).

[107] Skogly similarly argues that as "universal, inalienable, interdependent and indivisible" (ESCR-Net: 2020), human rights should be understood in terms of power distribution (Skogly 1993: 757).

[108] In a system of human rights, social institutions have a duty to, through the actors that impose them on the society, uphold these rights to a maximum reasonable extent (Pogge 2007: 24-25).

“Historically, (…) rights have expressed the relationship between the sovereign state and its citizens” (Mégret and Hoffmann 2003: 320) and under human rights law, individual states are “the primary duty-bearers” (UN 2011: 8).[109] However, when considering the rising power of non-state actors (international organisations, companies and institutions) in the international order (Danailov 1998: 5-6)[110] and the changing roles of states’ capacity to regulate on national and international levels,[111] the traditional vision of the state as the central actor of

[109] Traditionally, human rights respect and protection has been a domain of states. Unlike an intergovernmental organisation, a state has a constituency whose rights it might violate (Mégret and Hoffmann 2003: 320). The UN Charter makes a clear distinction between the promotion and encouragement of respect for human rights, and their actual protection (Ibid.). The latter “remains the prerogative of each Member state’” (Ibid.): international human rights “typically stipulate that state parties (or, to the extent that a particular norm has achieved customary status, other states as well) should ‘respect and ensure’ human rights” (Mégret and Hoffmann 2003: 319), meaning they should abstain from interference with their enjoyment and take measures towards their full realisation (Ibid.). Thus, in ordinary language human rights violations are typically understood as “breaches of the obligation to ‘respect,’ and to a lesser extent of the obligation to ‘ensure,’ human rights” (Mégret and Hoffmann 2003: 320). Notably, a responsibility to guarantee human rights is characterised by the propensity to violate them (Mégret and Hoffmann 2003: 324). The Committee on economic, social, and cultural rights (CESCR) “still sees international organizations (…) as having merely ‘a strong and continuous responsibility to take whatever measures they can to assist governments to act (…) compatible with their human rights obligations’” (Mégret and Hoffmann 2003: 321).

[110] The EC’s January 2015 communication was a reflection of J.C. Juncker’s redefinition of the new EC “as a ‘highly political’ actor and not a mere ‘technical committee made up of civil servants who implement the instructions of another institution’” (Braun and Hübner 2019: 50). “For the first time in the history of European integration, externally-dictated policies are having a massive impact on the lives of European citizens and their human rights” (Ginsborg 2017: 107).

[111] The question of the level of autonomy that the state has when requesting financial assistance and “the responsibility of the international organisations in setting the conditionalities around this assistance cannot be ignored” (Ginsborg 2017: 110). A state in this position might have its power of political self-determination strongly limited due to it “having its ‘back against the wall’” (Schwarz 2014: 392). Another example is EU governance, where the EU’s Fiscal Compact requires that Member States “reiterate their commitment to a budgetary position ‘in balance or in surplus’ with a clear

international law can be challenged (Danailov 1998: 9). [112] Notably, international organisations such as financial institutions (Mégret and Hoffmann 2003: 324) can have notable negative effects on the enjoyment of human rights (Mégret and Hoffmann 2003: 321).[113] In fact, "in the modern world, the rules governing economic transactions – both nationally and internationally – are the most important causal determinants of the incidence and depth of poverty" (Pogge 2007: 26). As such, it can be argued that their distinctive capacity to affect human rights, deriving from a type of "exclusive control over individuals (…) creates a potential for, and a duty to avoid, human rights abuse" (Mégret and Hoffmann 2003: 323).[114] Since

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medium-term budgetary objective" (MoU2 R1 2012: 32), enshrining the latter in national law, and immediately triggering a national correction mechanism in the case of a deviation" (Ibid.).

[112] In line with 'impact-based reasoning,' the most typical argument in favour of assigning direct human rights responsibilities to non-state actors starts by acknowledging "the relative loss of importance of the state in a globalized world, and the resulting rise in the importance of non-state actors" (Mégret and Hoffmann 2003: 321).

[113] "Some of the pioneering efforts to attach human rights obligations to the Bretton Woods institutions" (Mégret and Hoffmann 2003: 322), e.g., the IMF, highlight "the extent to which these are 'powerful development actors deciding the fate of millions'" (Ibid.).

[114] The responsibility is based on the degree to which actors can influence human rights of individuals or groups (Mégret and Hoffmann 2003: 321). In this way, when institutions assume something strongly akin to sovereign powers (Mégret and Hoffmann 2003: 337), the conceptual gap between actors constitutionally bound to 'promote and encourage respect' for human rights, and those "bound to respect human rights tout court can be bridged" (Mégret and Hoffmann 2003: 341). When attributing specific human rights responsibility, rather than looking for actors that assumed a recognisable set of human rights duties due to their particular position (Mégret and Hoffmann 2003: 322), an argument can be made in favour of reverting to "an old idea of rights (…) as 'titles, rooted in the dignity (intrinsic value) of every human being' existing before and independently of the state" (Mégret and Hoffmann 2003: 324). This is "a paradigm shift away from traditional concepts of government— (…) inextricably linked to states— (…) toward a concept of (global) governance hinging on the effective, as opposed to theoretical, exercise of control over people and territory" (Mégret and Hoffmann 2003: 342). Notably, J.P. Bohoslavsky, the UN HR Council's Independent Expert on Foreign Debt and Human Rights from 2014-2020 (UN 2021), emphasised that "human rights should not stop at the doors of international organizations and international financial institutions. They have to be respected when responsibilities are delegated by States to international bodies" (UN 2015).

institutional factors are the most important in the incidence of severe poverty (Pogge 2007: 25),[115] their rules of operation are important to examine.

Loan conditionalities have “given the EU bodies (and other organisations) an unprecedented opportunity to interfere in the financial and macro-economic policies of member states” (Ginsborg 2017: 100).[116] Extensive powers to determine the Eurozone states’ macro-economic policy (Ginsborg 2017: 108) were delegated to the Troika, where the EC, an independent EU body, became the primary negotiator of the Memoranda, in unison with the ECB and the IMF (Ginsborg 2017: 107).[117] Notably, in the Troika programmes, “terms and conditions[118] come after ‘prior action’ policy” (Salomon 2015: 9), i.e., measures a country agrees to before

[115] Not only are they greatly influential, but also offer good visibility, as the relative effects of their actions on the incidence of poverty are at least roughly predictable (Pogge 2007: 25).

[116] As well as the power to unelected ‘experts’ to make key decisions about state budgets (Strath 2015). Notably, “unprecedented key decisions are being taken about state macro-economic policy through the ‘backdoor of economic governance’” (Poulou 2014: 1150): all drafting phases of the adjustment programme are “negotiated behind closed doors, with many relevant actors (…) completely marginalised, including parliaments, unions and the European Parliament” (Poulou 2014: 1153). Arguably, this points to frictions between democratic self-determination and technocracy in the EMU (Ginsborg 2017: 108). For example, in MoU3, Greece committed to “together with the EC, “de-politicizing the Greek administration” (MoU3 2015: 29) – de-politicising what is essentially a political process (MoU3 YV 2015: 50).

[117] According to the UN Independent Expert on Foreign Debt, as the EU, ECB, and IMF play an important part in designing and monitoring the measures under Greece’s adjustment programme, “these institutions have a duty to respect the human rights of that country’s population by ensuring that the programme does not undermine the capacity of the government to establish and maintain the conditions for the human rights, including by assuring equitable access to basic public services” (Ginsborg 2017: 110).

[118] Notably, when the bailout measures and mechanisms were tested according to Fuller’s criteria for the ‘rule of law’ (Ginsborg 2017: 109) – the eight principles of legality generally agreed to “capture the essence of the rule of law” (Murphy 2005: 240), they were found importantly deficient because of their complex, inaccessible and incomprehensible nature (Ginsborg 2017: 109).

the IMF approves financing or completes a review (Ibid.).[119] The Memoranda imply that the Troika holds the power of defining and implementing economic, financial and social policies, which puts the Greek government and parliament under direct political control (Katrougalos 2013) of their creditors.[120] Indeed, the conditionality tied to financial assistance programmes challenges the Greek government's sovereignty, as the only alternative to fulfilling the reforms demanded by the creditor institutions is "a disorderly exit from the Eurozone and subsequent default" (Ban and Seabrooke 2017: 7).[121]

The approach chosen by the Troika to resolve the debt issues of the peripheral Eurozone states like Greece was to raise their debt levels,[122] which by the end of 2012, were expected to be higher, as a percentage of GDP, than at the start of the crisis (Blejer 2011).[123] Also predicted to increase was the share of debt owed to the public sector, in addition to the ECB bond

[119] For example, passage of the 2013 budget and updated MTFS was a prior action for the review, same as adoption of package of fiscal measures (MoU2 R1 2012: 157)

[120] Arguably, this makes the government non-representative, effectively ruled by the Troika (TCGPD III 2015).

[121] The transfer of sovereignty in which the implication of the Memoranda is that the Troika can define and implement economic, financial and social policies that are opposed to the fundamental principle of a social state is a serious violation of the constitutional order (Katrougalos 2013).

[122] This approach was chosen despite the fact that the strategy of piling up debt can only function as long as there is enough money available to continue the guise (Blejer 2011). The narrative that the recipient countries can and will outgrow their debt was "based on the fiction that this is just a temporary liquidity problem and that the official financing helps the countries (…) make the reforms (…) to return to the voluntary market in normal conditions" (Ibid.). An alternative, however, could have been "reforming the financial sector to prevent further collapse and ensuring a minimum social protection floor for all to help societies cope with the crisis' devastating consequences" (Crespi et al. 2014: 4-5), or debt relief later on (Parker 2015).

[123] It was the Troika who was is in charge of conducting an analysis of the sustainability of Greece's public debt and evaluating its financing needs (Alcidi et al. 2017: 15). These were the foundations for the programme's negotiation and its inclusion in the MoU (Ibid.).

purchases (Ibid.).[124] A confidential document by the Troika analysts from 15 February 2012 shows the Troika knew the austerity-based rescue programme for Greece was unsustainable (Spiegel 2012).[125] Arguably, this is not in line with TEU Article 3,[126] according to which the EU "shall promote (…) solidarity among Member States" (TEU 2012: 17).[127] Furthermore, the

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[124] The institutions knew since 2010 that the loans would serve private interest (TCGPD III 2015). The principal reason of the ECB's Securities Market Programme (SMP) announced in 2010 (Jourdan 2018) was "to serve the interests of the private financial sector, allowing the major European private banks to dispose their Greek bonds" (TCGPD III 2015). Greece's bilateral loans too, have merely enabled the bailing out of Greece's private creditors, rather than being used for the benefit of its population (Ibid.). The EFSF agreement's explicit objective is the recapitalisation of financial institutions (Ibid.). Even the EFSF's "financial regulatory status benefits banks" (Ibid.): "international regulatory frameworks Basel II and III and the European regulation frameworks categorize the EFSF assets as 0% risk weighting assets" (Ibid.), which did not correspond to its credit ratings (Ibid.). "Banks benefit from public *guarantees* and favourable regulations to increase profits, while maintaining capital ratios untouched" (Ibid.). The IMF's 2010 intervention too, was exclusively "aimed at protecting the interests of private creditors" (TCGPD III 2015). Its first programme for Greece was primarily intended for saving European banks and the Eurozone, rather than Greece (Pénet 2018: 1049).

[125] According to the confidential document, the Troika was aware of "notable risks. Given the high prospective level and share of senior debt, the prospects for Greece to be able to return to the market in the years following the end of the new program are uncertain (…). Prolonged financial support on appropriate terms by the official sector may be necessary. (…) the internal devaluation needed to restore Greece competitiveness will inevitably lead to a higher debt to GDP ratio in the near term. (…) a scenario of particular concern involves internal devaluation through deeper recession (…). This would result in a much higher debt trajectory, leaving debt as high as 160 percent of GDP in 2020. (…) the Greek program may thus remain accident-prone, with questions about sustainability hanging over it'" (Spiegel 2012). Notably, in 2010, Greece's debt accounted 144.9% of the country's nominal GDP (Stanislav Eminescu 2011: 1).

[126] TEU Article 3(3): "The Union (…) shall promote economic, social and territorial cohesion, and solidarity among Member States" (TEU 2012: 17).

[127] "The real purpose of the 'bailout' programs was to transfer banking losses to Europe's taxpayers" (ES YV 2015: 6), while the Troika's financial assistance programmes pushed the Eurozone states into the roles of creditors and debtors.

Troika coerced the Greek Government into agreeing on more austerity in the third programme despite that being decisively rejected by Greek voters and the Government (Sullivan 2018).[128]

The ECB was reluctant to take into consideration any kind of debt restructuring in 2010 and 2011, and refused to take part in the restructuring agreed in February 2012 (EP 2014).[129] Its importance in the financial assistance programmes is reflected in the fact that its views are generally taken as the final word on financial and monetary affairs, in the Eurogroup meetings (Braun and Hübner 2019: 26).[130] Furthermore, the advisory role in EU financial assistance programmes[131] that the Eurozone States entrusted the ECB with since 2010 goes beyond the

[128] Despite the results of the 2015 referendum, the creditors piled the pressure on the Greek Government, which subsequently legislated new austerity measures demanded by creditors (DW 2015). Notably, Prime Minister Tsipras clearly stated: "We don't believe in it, (…) but we are forced to adopt it" (Ibid.). The Independent Human Rights Expert confirmed there was "a widely felt lack of ownership in the economic reforms implemented in Greece since 2010 as they are widely regarded as imposed from outside" (UN HRC 2016: 9).

[129] Due to the ECB's resistance, "the first agreement of May 2010 could not contain provisions for a restructuring of the Greek debt" (EP 2014). The argument was that the latter would have caused the crisis to have a contagious impact on other Member States (Ibid.). The 2012 "Greek debt restructuring was the largest one in the history of sovereign defaults" (Xafa 2014), but "delaying the restructuring implied that externally held debt remained higher than it would have been otherwise" (Ibid.). Furthermore, while Greek government bonds (GGBs) were haircut in 2012, the ECB refused having its GGBs haircut (MoU3 YV 2015: 20).

[130] Due to its mandate of independence and narrow price-stability, the ECB's participation in the Eurogroup is a sensitive task, reflected in the fact that the Bank is "reluctant to put things in writing and prefers to deliver oral briefings" (Braun and Hübner 2019: 26).

[131] In the ESM stability programmes, the ECB is put on equal footing with EC, assessing a risk to the Eurozone's financial stability – "as a whole or of its Member States" (Sester 2012: 170). This is in line with Art. 13 (1) ESM-Treaty, according to which stability support is granted to an ESM state by the ESM Chairperson of the Board of Governors, who entrusts the EC, in liaison with the ECB, with assessing the existence of the mentioned risk, unless the ECB has already submitted an analysis under ESM Article 18(2) of the ESM (Ibid.).

Bank's traditional role (Fraccaroli et al. 2018: 54).[132] By imposing conditionality tied with austerity and structural reform on programme countries like Greece (Schmidt 2015: 19),[133] [134]

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[132] According to Article 130 TFEU, the ECB should "function under an enhanced principle of independence, which arguably imposes (…) restrictions on Member States' assigning new tasks to it" (Koukiadaki 2014: 16). Notably, its participation in financial assistance packages is "hardly based on any task assigned to it by the Treaties" (Ibid.).

[133] In 2010, the ECB tied its buyback of Greece's bonds with the SMP, which required Greece to implement the MoU (TCGPD III 2015). The measures in the Memoranda are de facto conditions tied to the SMP, demanding strict application of fiscal measures (Ibid.). According to J.C. Trichet, the ECB President from 2003 to 2011, "'the first – and absolutely necessary – condition for success [of the SMP] is that governments accelerate fiscal consolidation and are unwavering in their implementation of the tough measures that are indispensable'" (Lombardi and Moschella 2016: 860). Similarly, on 2 August 2012, the ECB Governing Council announced its intention to perform Outright Monetary Transactions (OMTs) in secondary sovereign bond markets, with a condition of stringent conditionality tied to an appropriate EFSF/ESM programme (Pattipeilohy et al. 2013: 18), "in which (…) the ECB has a role in agreeing and monitoring these conditions" (Cremona and Kilpatrick 2018). Notably, non-compliance with the ESM programme's conditionalities would terminate the OMTs (Lombardi and Moschella 2016: 860).

[134] The controversial SMP (Sester 2012: 168) purchased government bonds in secondary markets (Jourdan 2018), but demanded "the full reimbursement of both capital (nominal value) and accrued *interest*" (TCGPD III 2015) within the programme. Arguably, this means "the ECB acted in bad faith" (TCGPD II 2015). The former ECB president justified the SMP in front of the EP by arguing "'[t]he Treaty prohibits the direct purchase by the ECB of debt instruments from governments'" (Lombardi and Moschella 2016: 860). However, according to the Former Greek Finance Minister Yanis Varoufakis, if the ECB had not purchased "the SMP bonds, 'that part of Greek Debt would have been written down by around 90 percent in 2012' as part of the private sector debt restructuring" (Jourdan 2018), which would not have cost much to the ECB (Ibid.). "Any cent repaid to the ECB meant more unnecessary austerity for Greece" (Ibid.). Moreover, when between May and June 2010 the ECB bought approximately 40 billion Eur of Greek debt through the SMP, those bonds were sold in the market at "30% to 40% of their nominal value. (…) From there on, every time Greece repaid its public debt, the ECB accumulated (…) substantial profits" (Ibid.). Some national central banks also achieved extra "profits through their investments on Agreements on Net Financial Assets (ANFAs)" (Ibid.). On 22 June

for which the ECB has no mandate (Lombardi and Moschella 2016: 860),[135] the Bank has affected the countries' sovereignty and living standards (Schmidt 2015: 15, 49).[136] Furthermore, on 4 February 2015, when Greece was negotiating with its creditors for the third programme, the ECB announced that from 11 February on, it would no longer accept Greek Government bonds as collateral, arguing it was "not possible to assume a successful conclusion of the programme review" (TCGPD III 2015), thus putting pressure on the Greek Government (Ibid.). Similarly, in summer 2015, the ECB briefly ended emergency funding to Greece and capital controls were imposed (Sullivan 2018).[137] Additionally, the ECB's decision

2018, the Eurogroup clarified its intention "to refund all future SMP and ANFAs profits from 2017 until 2022" (Ibid.), but profits made in 2015 and 2016 were not included (Ibid.).

[135] "Transparency International found the ECB had stretched its narrow legal mandate 'to breaking point' during the crisis" (Khan 2017). Arguably, by participating in the Troika and imposing the implementation of macroeconomic adjustment programmes, the ECB crossed its mandate (TCGPD III 2015): If the purpose of the bond-buying programmes is simply to restore the transmission of broken monetary policy (Cremona and Kilpatrick 2018), conditionality promoting fiscal discipline (Lombardi and Moschella 2016: 860) is neither needed nor justified (Cremona and Kilpatrick 2018).

[136] Despite this, in terms of input accountability, the ECB's biggest formal obligation is for its president to explain its actions and answer questions in the mandated five annual meetings with the EP's Committee on Economic and Monetary Affairs (Schmidt 2015: 19). As a non-majoritarian institution, the ECB's legitimacy has typically been seen as coming from its output policy performance, with good rules-based output seen as balancing out any political input deficiencies (Schmidt 2015: 32). However, the ECB's pressure on its member states in the form of conditionalities pushing for austerity policies and 'structural reform' was conducive to the economic decline threatening the EU with deflation (Schmidt 2015: 36). By worsening the crisis and undermining the financial stability of the euro and the Eurozone, the ECB acted in extreme contradiction to its mandate (TCGPD III 2015).

[137] According to Varoufakis, bank closure was used "to force the Syriza government to capitulate" (ES YV 2015: 6) and negatively affected the capitalisation of the banks (MoU3 YV 2015: 28). Varoufakis noted "the asphyxiation tactics of the creditors" (MoU3 YV 2015: 5), i.e., the liquidity squeeze (MoU3 YV 2015: 28), led to Greece's deteriorated economic situation in 2015 (MoU3 YV 2015: 5). Notably, where the ECB crosses its charter-based mandate, e.g., operating as part of the Troika and imposing conditionality on program countries, or trying to influence the Council to implement austerity and structural reform, its input legitimacy becomes problematic (Schmidt 2015: 19). Arguably, putting

to return the profits made on capital and interest to Greece had a condition that Greece implement the reforms demanded in the programme period (TCGPD III 2015).[138]

The IMF was created to assist in the regulation of the international monetary system and to provide financial support to its Member States facing balance of payments problems (Bradlow 1996: 67), but in the last decades, during its Article IV[139] consultations, it tends to discuss issues such as unemployment, labour markets, health care, housing, welfare, and public sector management, which implies it is capable of impacting human rights in its Member States (Bradlow 1996: 50, 70).[140] The policy prescriptions that condition access[141] to its funds are "focused, clearly measurable and strictly monitored every trimester" (Crespi et al. 2014: 67).[142]

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pressure on the Greek government could be seen as the ECB contravening Article 130 TFEU (principle of independence) (TCGPD III 2015).

[138] The decision to retain the interest which accrued to Greek bonds, and refusing to return it to Greece, its legal recipient, is a clear case of coercion, forcing the government to accept the creditor-imposed conditions (TCGPD III 2015).

[139] Obligations Regarding Exchange Arrangements (IMF March 2020)

[140] Its impact on human rights is evident from decades of the IMF- and WB-driven structural adjustment in the developing countries (TCGPD III 2015).

[141] When a state is in need of the IMF's financing facilities, the Fund's "prescriptions tend to translate into loan conditionalities" (Bradlow 1996: 68, 72). The Fund has argued the states always have a choice to ignore loan conditions, yet that is only true when a state is not in need of the IMF's resources (Bradlow 1996: 70).

[142] While the IMF's Guidelines necessitate national ownership of the programme (TCGPD III 2015), this is not easily accommodated with the precise terms and requirements in the Memoranda concluded with Greece, conditioned with the extent of Troika's monitoring and explicit in their substantive prescriptions, such as the Greek authorities' commitment to consulting with the Troika on adoption of policies not in line with the memorandum; 'actions for review' including the Parliament's adoption of the pension system reform (to ensure its medium- and long-term sustainability); designing the reform in close consultation with the Troika staff, and its estimated impact on long-term sustainability validated by the EU Economic Policy Committee' (Salomon 2015: 8). The 2012 MoU "provides that 'Greece commits to consult with the European Commission, the ECB and the IMF staff on the adoption of policies falling within the scope of this Memorandum allowing sufficient time for review' and further: 'Disbursement are subject to quarterly reviews of conditionality for the duration of the

The fact that the IMF's SAPs require surrendering of (at least economic) sovereignty, like the Troika's programmes, aggravates its human rights responsibility (Mégret and Hoffmann 2003: 323).

In May 2010, the IMF Staff Appraisal recognised that the adjustment ahead of Greece was going to be "'socially painful', a point repeated in 2012" (TCGPD III 2015). In the 9 May 2010 IMF meeting, Brazil's executive director warned the risks of the program were 'immense' and making Greece "undergo a wrenching adjustment" (WSJ 2013),[143] whereby the programme could be seen "as a bailout of Greece's private debt holders, mainly European financial institutions'" (Ibid.). Similarly, the Indian Director noted that "'the scale of the fiscal reduction without any monetary policy offset is unprecedented (…) a mammoth burden that the economy could hardly bear. Even if (…) successfully implemented, it could trigger a deflationary spiral of falling prices, falling employment, and falling fiscal revenues that could eventually undermine the programme (…) There is concern that default/restructuring is inevitable'" (Ibid.). The Swiss executive director also pointed to the "'considerable doubts about the feasibility of the program'" (Ibid.).[144] Argentina's representative said debt restructuring "'should have been on the table'" (Ibid.), and warned it was "'very likely that Greece might end up worse off after implementing this programme'" (Ibid.). Nevertheless, the IMF decided to ignore[145] "the objections of one third of its board members"

arrangement.' Substantive prescriptions include requirements to: 'Eliminate pension bonuses'; 'Adopt a comprehensive pension reform that reduces the projected increase in public spending on pensions'; 'Prepare a privatization plan for the divestment of state assets and enterprises', and; 'Public investment reduction'" (Salomon 2015: 8-9).

[143] The IMF clearly knew that the Troika-imposed measures were ineffective and about to significantly impact human rights (TCGPD III 2015).

[144] He expressed "doubts on the growth assumptions, which seem to be overly benign. Even a small negative deviation from the baseline growth projections would make the debt level unsustainable over the longer term… Why has debt restructuring and the involvement of the private sector in the rescue package not been considered so far?'" (WSJ 2013).

[145] In 2010, the IMF firmly opposed debt restructuring (Darvas and Hüttl 2016).

(EP 2014).[146] In 2013, it acknowledged deep recession and a great "decline in Greek GDP after the first package of measures (2010-2012)" (Housos 2015: 432), as well as "exceptionally high unemployment and high public debt" (Ibid.). Predictably, the first Greek programme was insufficient, and two more followed, driven by the same austerity strategy. The IMF contributed financially to the second programme, and remained in stand-by in the third one (ESM 2019: 327).[147]

The Eurogroup coordinates economic policies among the Eurozone states, in the form of gathering of their finance ministers (Koukiadaki 2014: 3).[148] The Council adopts decisions pre-

[146] The Executive Press release presented the programme "as a: 'commitment to doing what it can to help Greece and its people'" (TCGPD III 2015). According to a former IMF senior official, by lending to Greece without restructuring privately-held debt in 2010 and 2011 (Schadler 2016: 1), the Fund basically violated its own rules (Robertson 2015). Normally, the fact that the IMF's staff felt obliged to report that the debt's sustainability baseline was implausible should have prevented the Fund from proceeding (Mody 2015: 13). Therefore, it can be argued the IMF acted in bad faith, which is illegal (TCGPD III 2015).

[147] The IMF's contribution for the first economic assistance programme to Greece was ca. 25% of the funds, and 12% for the second programme (Crespi et al. 2014: 66). Expressing concerns about the prospect of Greece's long-term debt, it refused to financially contribute to the third programme, even though it later (in 2017), agreed to participate in a stand-by arrangement through the end of the ESM package (ESM 2019: 327). Notably, even though the IMF in its Economic Outlook Spring 2015, disputed that privatisations foster growth and investment (MoU3 YV 2015: 3), that same year in MoU3, Greece committed "to preserve the on-going privatisation process and maintain investor interest in key tenders" (MoU3 2015: 27).

[148] In Eurogroup, decisions on high-stakes political matters are made by the finance ministers, but the EC, ESM, ECB provide the technical briefings for its work and the work of its preparatory bodies (Braun and Hübner 2019: 26). The Secretariat and the EWG President play a substantial role in agenda setting (Ibid.). The EC is the primary source of technical input for the EWG's and Eurogroup's meetings, providing ca. 80% of internal briefing papers on economic policy issues, while the ESM provides the rest (Ibid.). "The ECB provides input on matters of monetary and financial stability, but rarely in written form" (Ibid.). In Eurogroup meetings, Ministers are typically accompanied by the secretaries of state (or equivalents) (Braun and Hübner 2019: 24) in the EWG. Also present are the EWG President, the Director of the EFC/EPC/EWG Secretariat, the head of Ecofin matters unit of the General Secretariat of

agreed by the Eurogroup "without further debate, and even if a vote is needed, only euro-area ministers vote" (Ibid.).[149] Thus, the Eurogroup plays a central role in the EMU economic governance (Puetter 2004: 854).[150] It is "a political body" (Morfis 2019),[151] whose decisions have affected millions of Europeans (Braun and Hübner 2019: 4). Although a strictly intergovernmental institution on paper, in practice its supranational element has grown stronger over time (Braun and Hübner 2019: 24).[152] Its decision-making power has been

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the Council, the Council Legal Service representatives, the ECB (typically represented by its President, or by Executive Board member); the ESM (represented by its Managing Director); and, for items concerning the economic programmes in which it participates, the IMF (represented by its Managing Director or by the head of the European Department (Ibid.). "Most files are dealt with in Eurogroup's preparatory bodies, (…) (EWG) and its subgroups" (Ibid.).

[149] The Eurogroup is "deeply integrated in a set of European institutions" (Braun and Hübner 2019: 23).

[150] It pre-agrees all critical Council decisions relevant for the Eurozone states, and functions as a forum where ministers determine the general orientation of economic governance in the Eurozone "and establish common interpretations of EMU's core policy instruments" (Puetter 2004: 854). In the European Semester, the Eurogroup discusses, at the beginning of the yearly process, the EC's opinions on Member States' draft budgetary plans, and recommendation on the Eurozone's economic policy (Braun and Hübner 2019: 18). Furthermore, both the Chair of the Supervisory Board, and the Chair of the Single Resolution Board in the Banking Union report to the Eurogroup on a yearly basis (Ibid.).

[151] In some aspects, it is "a very solid, enduring part of the EU institutional landscape" (Braun and Hübner 2019: 4). Despite its mysterious nature, it holds press conferences, releases press statements, and publishes its agendas, like other bodies of the EU (Ibid.).

[152] "While leaving virtually no paper trail, the ad hoc introduction of macroeconomic adjustment programmes gave the Eurogroup enormous power over individual Member State" (Braun and Huebner 2019: 14). Since 2010, the gap between the Eurogroup's original purpose "as a forum for communication and coordination and its de-facto scrutiny and decision-making power has grown dramatically" (Braun and Hübner 2019: 18). Its postcrisis institutionalisation and empowerment "unfolded through a series of small amendments, legal acts and political decisions" (Braun and Hübner 2019: 13), such as (2009) Protocol No. 14 to the TFEU, in conjunction with Article 137, which "recognised the legal status of the Eurogroup as the informal meeting format for euro area finance ministers" (Ibid.), and the October 2011 Euro Summit statement, which proclaimed the Eurogroup's central role (Ibid.) as the Euro Summit preparatory body (Braun and Hübner 2019: 14). Moreover, the statement established the position of EWG's 'full-time Brussels-based President' (Ibid.). These changes

prominent during the negotiations for financial assistance (Ibid.),[153] approving the Memoranda of all three programmes to Greece, [154] making decisions that unleashed austerity on hundreds of thousands of people in Greece, and slowed the release from the crisis, with the weight of the debt falling primarily on the lower-middle and working class (Morfis 2019). It was the Eurogroup that set the conditions to European financial assistance to Greece (Braun and Hübner 2019: 4). Notably, the EFSF Board of Directors members equal Euro Working Group (EWG) representatives (ESM I 2021), and the Eurogroup is also incarnated as the Board of Governors of the ESM (Braun and Hübner 2019: 18). [155]

strengthened the Eurogroup's thus far insignificant administrative resources, institutional status, and political power (Ibid.).

[153] According to Varoufakis, during the Greek crisis the Eurogroup "played a more important role than (…) the Euro Summit" (Morfis 2019). Its leaders even deliberated upon Grexit, although the Eurogroup never had a mandate to do so (ESM 2020: 36).

[154] In the first two programmes to Greece, the Troika did the preparatory work, while formal decisions were adopted separately, by the Eurogroup and the IMF (De Schutter and Salomon 2015: 4). According to the Euro Area Loan Facility Act of 2010, the Parties excluding Greece "shall take their decisions at meetings within the framework of the Eurogroup" (EALFA 2010: 4). The Euro EWG Chairman communicates their decisions in writing to the EC (Ibid.). With EFSF, the MoU was approved by the EWG (within the Council's Ecofin) prior to signing and the key terms of the loan facility agreement following EC's proposal (Gocaj and Meunier 2013: 246). For the ESM programme, the Eurogroup arrived at a political agreement on 14 August 2015 (EC 2021). "In its incarnation as the Board of Governors of the ESM, the Eurogroup is no longer merely an informal body but takes, under a different legal framework, formal decisions with far-reaching consequences for entire countries" (Braun and Hübner 2019: 18).

[155] The political (and non-rule based) nature of the Eurogroup can be illustrated further: in a November 2012 Eurogroup meeting, Eurozone finance ministers discussed the profits made by member states in the SMP to Greece, agreeing all member states would return to Greece the profits made since 2013 (Jourdan 2018). However, "the arrangement specifically excluded profits made before 2013" (Ibid.), i.e., SMP/ANFAs profits generated in 2011, 2012, and Greece had to use its money specifically for debt payment (Ibid.). Moreover, when tensions between the Eurogroup and Varoufakis heightened, reimbursements were suspended, and "the SMP refund arrangement disappeared from the Eurogroup's negotiations – hence the profits made in 2015 and 2016 were (…) lost for Greece" (Ibid).

The GLF[156] was an ad hoc macro-financial stability instrument (Alcidi et al 2017: 13).[157] In line with the Euro Area Loan Facility Act, the support to Greece was made dependent on the country's compliance with, amongst other things, measures consistent with a Council Decision[158] and laid down in three separate Memoranda (EALFA 2010).[159] The EFSF, an autonomous international organisation (Ginsborg 2017: 105), i.e. a joint-stock company (De Schutter and Salomon 2015: 3), similarly provided financial assistance loans to Greece, attached to conditions in MoU (Koukiadaki 2014: 8) of 'budgetary discipline and economic policy guidelines' (CEP 2011: 2), and Council Decisions (Koukiadaki 2014: 8). The Loan Facility Agreement, EFSF Framework Agreement 2010 and the Master Financial Assistance Agreement of 2012 all contain abusive clauses (TCGPD III 2015).[160]

The ESM has become "a crucial actor in the EU's economic governance" (Ban and Seabrooke 2017: 6), selling bonds on behalf of the Eurozone and financing EU financial assistance programmes, whereby its highest governing body is fully identical with the informal Eurogroup (Ibid.). In line with ESM Article 13(3), a MoU including detailed policy conditionality is negotiated between the ESM member concerned and the Troika (Salomon 2015: 16). By dictating macro-economic policy, as well as monitoring compliance, the ESM has important implications for international human rights standards (Ginsborg 2017: 105). Its Secretary-General Kalin Anev notably stated: "'There are very few places in the world where, with a very

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[156] "The first financial support programme for Greece, agreed in May 2010" (ESM II 2021).

[157] It was needed because "Greece was not eligible for Balance-of payments (BoP) assistance and up to 2010, no other assistance programme was in place at European level" (Alcidi et al. 2017: 13).

[158] According to TFEU Article 288, "a decision is binding in its entirety" (EUR-Lex 2015).

[159] Additionally, in bilateral loans to Greece, "the procedure provided for by the Greek constitution has not been respected" (TCGPD III 2015). Furthermore, these loans can be considered illegitimate because their interest rates were too high in comparison to the ones creditor countries were paying the market, to the extent they were later reduced (Ibid.).

[160] The Loan Facility Agreement and the EFSF Framework Agreement stipulate that the agreement's provisions have to be implemented even if found illegal and that Greece irrevocably and unconditionally renounces all immunity (TCGPD III 2015). It could be maintained this points to "clear misconduct on the part of the lender" (Ibid.), and should make the bilateral loans and the EFSF activities illegal (Ibid.).

small amount of people, you can have such a large financial, societal and personal impact" (Ginsborg 2017: 108).[161]

The Council is the institution that represents the EU member states' governments (EU I 2021), where EU national ministers adopt legislation and coordinate policies (EU 2021), e.g., economic, fiscal, employment, and is "an essential EU decision-maker" (COE 2019). Typically, it negotiates and adopts legislative acts with the European Parliament (EP)[162] in realms of policy where the EU has exclusive or shared competence with its member states (Ibid.).[163]

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[161] Yet the citizens directly impacted by the ESM's decisions in the field of economic policy cannot participate in any significant manner (Ginsborg 2017: 107-108). Moreover, the "140 ESM staff members, and the hundreds involved in the Troika institutions" (Ginsborg 2017: 109) are "devoid of all democratic accountability" (Ibid.). "Confidentiality clauses and far-reaching immunity provisions in the ESM treaty (…) 'make for an additional obstacle to national parliamentary control and hamper public control'" (Schwarz 2014: 402). Additionally, the ESM outsources most of its operations to other institutions (Ban and Seabrooke 2017: 6).

[162] The EP is an EU institution, the only directly-elected body of the EU (EUR-Lex 2021). Its members represent EU citizens and are elected every 5 years by voters from EU states (Ibid.). It has legislative power, shared with the Council for most legal acts (Ibid.). They also share budgetary powers in voting on the annual budget (Ibid.). Since the Lisbon Treaty, the EP and the Council's positions have become equal, and the ordinary legislative procedure has been extended (Ibid.). The EP's control over the EU's institutions such as the EC is in the form of posing questions about EU's activities, to the EC and the Council, not limited only "to the activities of EU institutions but can extend to action taken by EU countries in implementing EU policies" (Ibid.). However, while the role of the European Semester in the area of national budget policies has been strengthened, the EP has not been equally empowered by a concomitant increase in its participation rights (Braun and Hübner 2019: 35).

[163] In these cases, the Council legislates on the basis of the EC's proposals (COE 2019). To the latter, it provides the mandate "to negotiate on behalf of the EU agreements between the EU (…) and international organisations. At the end of negotiations, the Council decides on the signature and conclusion of the agreement" (Ibid.), based on a proposal from the EC, once the EP "has given its consent (required in areas subject to co-decision) and it has been ratified by all EU member states" (Ibid.). In another instance, on 17 July 2015, the Council approved EC's "proposal for a Council implementing Decision on granting short term financial assistance to Greece and an amendment to the Council Regulation establishing a European financial stabilisation mechanism" (EC 2021).

Notably, the Council guides and monitors member states' fiscal policies (Ibid.).[164] In line with Article 126 TFEU, it decides, on a proposal from the EC, whether there is an excessive deficit (TFEU 2012: 100).[165] If so, the Council adopts, upon a recommendation from the EC, recommendations addressed to the relevant Member State (Ibid.). If the latter does not put them into practice, the Council may decide to give it notice to adopt, within a specified time limit, measures to reduce deficit (Ibid.).[166] Regulation 1174/2011 grants the Council the authority to, on recommendation from the EC, impose sanctions such as 'interest-bearing

[164] According to Article 136 TFEU, "the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific" (TFEU 2012: 106) to Eurozone states, namely: "to strengthen the coordination and surveillance of their budgetary discipline; (…) to set out economic policy guidelines for them" (Ibid.).

[165] An excessive deficit procedure can be opened, as defined in the old SGP, if countries with a debt-to-GDP ratio of over 60% do not reduce that ratio fast enough (Dullien 2012). After their correction of current deficit under the target of 3%, countries have a three-year grace period, before the 1/20 rule comes is activated – i.e., a yearly "reduction of the debt ratio by 1/20 of the difference between the actual debt-to-GDP ratio and the 60% threshold" (Ibid.). "This rule is applied over a three-year-average" (Ibid.). However, "methodological challenges in the calculation of various fiscal indicators" (Braun and Hübner 2019: 44), and inconsistencies between the SGP and the Fiscal Compact lower transparency and accountability in rules' application (Ibid.).

[166] When the excessive deficit procedure was opened for Greece "in April 2009, the Council called on Greece to correct its deficit by 2010. In February 2010 the Council stepped up the procedure (…) It set out a timetable of measures to be taken and extended the deadline for correction to 2012. (…) In December 2012, the Council granted Greece a further two years to correct its deficit. It set a new deadline of 2016 and relaxed the annual adjustment path" (COE 2017). It issued a recommendation with a new timetable of measures and extended the deadline for the deficit correction by 2017 (Ibid.). "The deficit declined to 5.9% of GDP in 2015 (3.2% of GDP if the net impact of financial sector support is excluded) and turned into a 0.7% of GDP surplus in 2016. The (…) reduction was driven broadly equally by expenditure restraint and fiscal consolidation" (Ibid.). On 25 September 2017, the Council confirmed the country's deficit was under 3% of GDP, the EU reference value for government deficits (Ibid.).

deposit' or 'an annual fine' on member states, when recommendations based on Regulation 1176/2011 have been ignored (Patterson and Södersten 2016: 250).[167]

The Euro Summit brings together the Eurozone heads of state or government, the Summit's President and the President of the EC (European Council 2021).[168] Its meetings provide strategic guidelines on Eurozone economic policy (Ibid.),[169] e.g., major and institutional reforms (Braun and Hübner 2019: 13). Accountable to it are the members of the ESM's highest governing body, i.e. the Board of Governors (Ban and Seabrooke 2017: 32).[170] At the March 2010 Euro Summit, the heads of state and government decided to provide financial aid to Greece, in a package involving both bilateral loans and IMF financing, and subject to assessment and strong conditionality by the EC and the ECB, thus creating the Troika (Braun and Hübner 2019: 14). The Summit statement also specified that "any disbursements of funds 'would be decided by the euro area Member States by unanimity'" (Ibid.), thus giving rise to the Eurogroup (Ibid.). [171] The Summit's October 2011 Statement announced "strict conditionality (…) in case of new (precautionary) programmes in line with IMF practices" (ES 2011: 5) and that the EC would conduct "enhanced surveillance of the Member States concerned and report regularly to the Eurogroup" (Ibid.).[172] It is due to the Summit that the

[167] Yet notably, "Article 121(4) TFEU on which Regulation 1174/2011 is based limits potential sanctions to a warning and to recommendations that may be made public by the Council" (Koukiadaki 2014: 16).

[168] The Eurozone leaders met for the first time in the Euro Summit format, the Eurozone composition of the European Council, on 12 October 2008, when they agreed on joint response to the economic crisis (Ban and Seabrooke 2017: 32).

[169] In the October 2011 Summit Statement, the Summit noted that "Euro Summits will define strategic orientations for the conduct of economic policies (…) in the euro area" (ES 2011: 11). According to the TSCG, the Euro Summit meetings should take place at least twice per year (European Council 2021).

[170] They are accountable to the Euro Summit, and de-centrally to national parliaments (Ban and Seabrooke 2017: 32).

[171] The political nature of the Summit can also be seen in the fact that during the 9-10 May 2010 Summit, the special purpose vehicle (SPV) structure was introduced as the solution to Germany's opposition to the EC's more ambitious bail-out endeavours (Gocaj and Meunier 2013: 245).

[172] The Summit's stated: "We agree that the capacity of the extended EFSF shall be used (…) within the rules of the Treaty and the terms and conditions of the current framework agreement, operating in

Eurogroup has started playing a more central role in the Eurozone economic governance (Braun and Hübner 2019: 13).[173] Additionally, at the 2015 Euro Summit, the Eurozone states' leaders "agreed in principle" (EC 2021), to start negotiating on an ESM programme for Greece, on condition that "a number of strict conditions would be met before negotiations formally began" (Ibid.).[174] Moreover, the Summit confirmed a rapid decision on the third programme was a condition to allow banks in Greece to reopen (ES 2015: 6).

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the context of the agreed instruments, and entailing appropriate conditionality and surveillance. (…) We call on the Eurogroup to finalise the terms and conditions for the implementation of these modalities (…), in the form of guidelines and in line with the draft terms and conditions prepared by the EFSF" (ES 2011: 6).

[173] The October 2011 Euro Summit Statement announced that the Eurogroup was going to "ensure ever closer coordination of the economic policies" (ES 2011: 12), promoting strengthened surveillance of Eurozone States' economic and fiscal policies, as well as preparing the Euro Summit meetings (Ibid.). The EWG was going to continue to carry out preparatory-level work, drawing on EC's expertise, and chaired by a full-time President based in Brussels (Ibid.).

[174] After Greece made separate official requests for stability support to the ESM and the IMF, a Euro Summit examined the situation and released a detailed statement (EC 2021). The Summit demanded a rebuilding of trust with the Greek authorities (ES 2015: 1), which effectively meant "new stringent austerity directed at the weakest Greeks that have already suffered grossly" (ES YV 2015: 1), as a condition for a potential agreement on a new ESM programme (ES 2015: 1). To rebuild trust (Ibid.), and in prior agreement with the Institutions, Greece was to, by July 15 introduce "quasi-automatic spending cuts in case of deviations from ambitious primary surplus targets after seeking advice from the Fiscal Council and subject to prior approval of the Institutions" (ES 2015: 2). Notably, the Summit demanded "the government (…) consult and agree with the Institutions on all draft legislation in relevant areas with adequate time before submitting it for public consultation or to Parliament" (ES 2015: 5), meaning the Greek Parliament had to, "again, after five months of short-lived independence, become an appendage of the Troika – passing translated legislation mechanistically" (ES YV 2015: 4). In line with the Summit 12 July 2015 statement, a new independent fund was to be established, with valuable Greek assets in its possession, putting the country's "public assets out of the hands of Greece's elected officials" (MoU3 2015: 28), similar to how "the troika (…) maintains full control of the HFSF, the Bank of Greece, the General Secretariat of Public Revenues and ELSTAT" (Ibid.). According to the Summit statement, the monetisation of the assets was to be one source to for the scheduled repayment of the new ESM loan (MoU3 2015: 29).

Human Rights and the Responsibility of International Organisations: Legal Approaches

Other than by their impact, there are three basic approaches to examining legal aspects of human rights responsibility of international institutions (Ginsborg 2017: 110-112). According to one approach, they may be bound by human rights law due to the "provisions in their constituent instruments or further adopted documents" (Ginsborg 2017: 112). The Troika is "an ad hoc informal hybrid" (Koukiadaki 2014: 3) whose internal operations have not been formalised (Ibid.),[175] and is "'not an accountable subject in international law'" (Fischer-Lescano 2014: 7), so it is not possible to rule on the validity of its acts, but only on those of its constituent institutions (Koukiadaki 2014: 3). The Eurogroup too, although arguably a "top eurozone institution" (Morfis 2019), does not exist in legislation (Lambert 2015),[176] has no decision-making authority and is not governed by the EU treaties (Braun and Hübner 2019: 4).[177] The Euro Summit was only formalised in 2012, with the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) (European Council 2021).[178]

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[175] The Troika functions as a consortium without a distinct legal personality, consisting of high-level staff appointed by the IMF, EC and ECB respectively, its basis resting "upon the strategic political decision of the coordination of the three institutions for conditionality purposes" (Koukiadaki 2014: 3).

[176] There is no treaty that has convened it (Taylor 2016).

[177] It remains an EU instrument lacking institutional substance (Morfis 2019), an informal forum for discussions among finance ministers of the Eurozone (Puetter 2004: 854). Under EU law, it is only "a consensus building organ" (Braun and Hübner 2019: 4) and "not competent to adopt legally binding acts" (Koukiadaki 2014: 3). The EU treaties only mention it in an annex (Braun and Hübner 2019: 4). Furthermore, Protocol Nr. 14 on the Eurogroup states the Ministers of the Eurozone states shall meet informally (OJEU 2012: 283). Nevertheless, the Eurogroup has Treaty status (Article 137 TFEU, and Protocol Nr. 14 on the Eurogroup (OJEU 2012: 283) and a permanent chairman (Koukiadaki 2014: 3).

[178] The TSCG (Fiscal Compact) was signed by 25 European leaders, "in the margins of the European Council meeting on 1-2 March 2012" (European Council 2021), and entered into force on 1 January 2013 (Ibid.). The first Euro Summit since the TSCG was legislated, was held on 14 March 2013 (Ibid.). The TSCG was built "directly on other European legislation already in place" (Dullien 2012). It brought the commitment of member states to maintain a budgetary position either in 'balance or in surplus,' and to passing "a national law or an amendment of the national constitution that limits the structural

Until then, it was an ad hoc gathering without Treaty status (Smits 2012: 1).[179] Notably, the TSCG shall be applied and interpreted in conformity with the EU founding Treaties and insofar as it is compatible with these Treaties and with EU law (TSCG 2012: 10) –the contracting parties agree to support the EU's “objectives for sustainable growth, employment, (…) and social cohesion” (TSCG 2012: 9).

The EC, ECB, and the Council, as EU institutions are subject to the obligations of fundamental rights under EU law, most notably the CFR (Fischer-Lescano 2014: 7).[180] In line with the view widely supported among legal commentators, the EP Committee on Constitutional Affairs has concluded that even within the Troika, the EU institutions “are obliged to act in accordance with fundamental rights, which, under Article 51” (Salomon 2015: 14) CFR, apply in all circumstances (Ibid.).[181] “The seemingly unanimous views of legal commentators on the Pringle case”[182] (Salomon 2015: 18) are that the EC and the ECB are still bound by the CFR

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budget deficit to 0.5% of GDP, from which a deviation is only allowed in 'exceptional circumstances' or deep recessions” (Ibid.).

[179] Before its formalisation, the Summit was not an EU institution (Koukiadaki 2014: 3). On the official website of the EU, the Summit is still not included in the list of EU institutions and bodies (EU I 2021).

[180] Even though “EU accession to the European Convention on Human Rights (ECHR) became a legal obligation under Article 6(2) of the Treaty of Lisbon” (EP 2021: 1), it has so far not materialised. Meanwhile, the process for the EU accession to the ESC has not even been launched yet (De Schutter 2016: 44). With the exception of the UN Disability Convention, the EU is not party to any UN international human rights treaties (UN HRC 2016: 7).

[181] The EC has even pledged since 2001 to bring its legislative proposals in compliance with the CFR requirements (De Schutter and Salomon 2015: 12).

[182] In the Pringle case, the ECJ ruled on whether the ESM was legally constituted (Salomon 2015: 12), concluding that the latter’s establishment was legal on both procedural and substantive grounds (Salomon 2015: 13).

even when acting within the ESM (Ibid.).[183] The same can be argued for when they were acting within the GLS and EFSF.[184]

The IMF's Articles of Agreement make no particular mention of human rights (Crespi et al. 2014: 66), but do oblige the Fund to "'respect the domestic social and political policies of its Member States (TCGPD III 2015).[185] It could, however, be argued that as a specialized UN agency, by virtue of the UN Charter's Article 57, it should respect the UN's core mission, i.e. protecting

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[183] According to Advocate General J. Kokott, the EC "'remains, even when it acts within the framework of the ESM, an institution of the Union and as such is bound by the full extent" (Salomon 2015: 14) of EU law, including the CFR (Ibid.). Since according to the Court (ECJ), the extra tasks assigned to the EU institutions "should 'not alter the essential character of the powers conferred on those institutions by the EU and FEU Treaties', (…) EU institutions should not be able to carry out duties consistent with their usual duties when acting within the EU (…) without the usual checks and balances when it comes to obligations under the Charter" (Salomon 2015: 14).

[184] "In discharging the roles assigned to them under the Intercreditor Agreement and Loan Facility Agreement of 8 May 2010 and in the establishment and functioning of the EFSF, and the Council (…), acting under Articles 126(9) and 136" (De Schutter and Salomon 2015: 19) TFEU, to impose on Greece deficit reduction measures (Ibid.).

[185] The IMF's Articles do not contain any positive human rights obligations (Darrow 2003: 134). In 2001, Grant B. Taplin, Assistant Director at the IMF's Geneva office, claimed "the Fund, in a strict sense, does not have a mandate to promote human rights" (Capdevila 2001) and that it "is not 'bound by (…) human rights declarations and conventions'" (Ibid.). "Traditionally, the IMF has interpreted its Articles of Agreement as imposing a political prohibition which requires the Fund to reject the human rights implications of its work" (De Schutter and Salomon 2015: 14), however, this argumentation is week, if "deeply interventionist policy prescriptions can be considered consistent with the political prohibition, whereas taking the impact on the exercise of human rights into account is considered (…) political interference" (Ibid.). Notably, the IMF's policy prescriptions are specific, measurable and monitored on a regulat basis (Ghailani 2016: 26). "In a (…) review of its general guidelines on conditionality as well as the design and effects of IMF-supported programmes during (…) 2002-2011, the IMF's own findings highlight that (…) challenges remained in 'considering macro-social issues'" (Salomon 2015: 9).

human rights, as set forth in the UN Charter's Article 55 (Ibid.).[186] Similarly, there are no human rights provisions at all in any of the ESM legal documents (Ginsborg 2017: 112),[187] in the EFSF's Consolidated Articles of Association[188] or its Framework Agreement, or in the GLF's Loan Facility Agreement[189] or the Intercreditor Agreement of 2010. Nevertheless, the EFSF Framework Agreement[190] clearly states that the conditions and rules applying to monitoring compliance must be fully consistent with the TFEU and the acts of the EU law (Koukiadaki 2014: 9). Notably, all three financial assistance mechanisms were created outside the framework of the EU law (Ginsborg 2017: 100) [191] – the GLF governed by English law (EALFA

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[186] Notably, according to Articles 57 and 59 of the UN Charter, "the objective of creating specialized agencies or bringing them into a relationship with the United Nations is to achieve the purposes (…) in Article 55 of the UN Charter" (Crespi et al. 2014: 59).

[187] The legal basis for ESM is the Treaty establishing the ESM (Alicidi at al. 2017 6).

[188] The EFSF, an autonomous international organisation (Ginsborg 2017: 105), was established with the Consolidated Articles of Association (De Schutter and Salomon 2015: 12), outside the EU legislation (Ginsborg 2017: 100). The latter document states the EFSF, a "joint-stock company incorporated in Luxembourg" (De Schutter and Salomon 2015: 3), is "governed by the laws of the Grand Duchy of Luxembourg" (EFSF 2014: 3). From 1 July 2013, "the EFSF may no longer engage in new financing programmes or enter into new loan facility agreements" (EFSF 2016: 1).

[189] GLF is the loan facility agreement of 8 May 2010 providing stability support to Greece "in an inter-governmental framework via pooled bilateral loans" (ESM 2015: 4). It was the "initial agreement on the Greek Loan Facility" (Colasanti 2016: 18). It states: "this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and (…) construed in accordance with English law" (EALFA 2010: 44). According to the Intercreditor Agreement, "the Pooled Bilateral Loans will be governed by the provisions of a loan facility agreement (…) and by the terms of this Agreement" (EALFA 2010: 6).

[190] It should be inquired whether, when the EFSF was established by a Eurozone States' agreement, "safeguards were included to ensure that it would only discharge its functions in full compliance with international human rights law" (De Schutter and Salomon 2015: 9).

[191] Financial assistance arrangements were deliberately structured outside the EU, so the EU, its Member States, and the ECB did not breach TFEU provisions that prohibit financial assistance (Crespi et al. 2014: 64).

2010),[192] the EFSF by the law of Luxembourg[193] (Salomon 2015: 4), and the ESM by public international law (Aerts and Bizarro 2020: 160).[194] Nevertheless, the Court[195] conditioned the transfer of functions with the requirement that the functions performed under the ESM do not go against EU law (Koukiadaki 2014: 17).

Based on another approach, there seems to be some consensus that international organisations vested with an international legal personality[196] are bound to respect the human rights that have acquired "the status of customary international law and/or general principles of law, and may be held responsible for breaches of those standards" (Ginsborg 2017: 111).[197] Nevertheless, the scope of customary human rights norms, particularly in the field of economic, social and cultural rights, remains rather small and controversial (Ibid.).

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[192] English law contains no written English constitution (i.e., a single document named the constitution) and "no official codification of English statutes" (Duke Law 2019: 1). Common law system operated by England and Wales combines the passing of legislation with the creation of precedents through case law (Oxford Lib Guides 2021).

[193] Luxembourg is part of the EU as well as of the Eurozone, and party to the "major instruments of international human rights law adopted at the international and regional levels" (De Schutter and Salomon 2015: 19). However, in its Constitution, "the chapter on fundamental rights is relatively brief and fragmentary, with some widely recognised principles missing; the standards do not go beyond the standards of the ECHR" (Gerkrath 2019: 221). While Luxembourg has successfully participated in the European integration for sixty years, it has not amended its Constitution with explicit references to the EU or EU law (Gerkrath 2019: 235).

[194] Thus, the ESM as a legal entity "escapes EU regulations on transparency and EU accountability mechanisms such as the EU's courts, Parliament, or Ombudsman" (Braun and Hübner 2019: 4). This despite the fact that it is paradoxically still the same 19 Eurozone finance ministers "around the same table" (Ibid.). The Eurozone states have not embraced the EC's suggestion "to include an explicit reference in the amended ESM Treaty to the integration of the ESM into the EU legal framework" (Aerts and Bizarro 2020: 160).

[195] The CJEU (Koukiadaki 2014: 2).

[196] "International legal personality refers to entities endowed with rights and obligations under public international law" (US Legal 2021).

[197] According to the International Law Association's conclusion, "international organisations should comply with basic human rights obligations" (International Law Association 2004: 22).

Arguably, the Universal Declaration of Human Rights (UDHR) has become integrated in customary international law and, as such, binding to international organisations (Klein and Sands 2009: 463), including EU institutions (UN HRC 2016: 7).[198] They should do everything within their capacity to protect at least the core economic, social and cultural rights (Ginsborg 2017: 111).[199] The UN Guiding Principles on Foreign Debt and Human Rights explicitly state that international financial organisations as well as private corporations have to respect international human rights based on the 'Ruggie principles' (Ibid.).[200] According to the UN HR Council, "non-State lenders have (…) to ensure that debt contracts to which they are party or any policies related thereto fully respect human rights" (UN HRC 2011: 13). Moreover, lending institutions should conduct human rights impact assessments (HRIA),[201] to make sure their activities have the least possible (negative) effect on international human rights' standards (Ginsborg 2017: 114).[202] As already mentioned, the Troika and the Eurogroup operate without a legal personality, nevertheless, in line with this approach, the EU institutions (including the Summit), the IMF, GLF, EFSF, and ESM should all respect human rights.

[198] EU institutions do "have fundamental rights obligations under international human rights codifications and customary international law" (Fischer-Lescano 2014: 60). In line with the Independent HR expert, EU institutions are "bound to comply with human rights enumerated in the Universal Declaration of Human Rights or which are part of customary international law or reflect general principles of international law" (UN HRC 2016: 7)

[199] This was confirmed in the UN Economic and Social Rights Committee's (CESCR) General Comment 8 (Ginsborg 2017: 111).

[200] "In particular, (…) 'a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights'" (Ginsborg 2017: 111). "UN Special Representative John Ruggie proposed a framework on business & human rights to the UN Human Council in June 2008, resting on three pillars: (…) state duty to protect against human rights abuses by third parties (…) corporate responsibility to respect human rights (…) greater access by victims to effective remedy, both judicial and non-judicial.' The Human Rights Council unanimously approved the Framework in 2008" (BHRRC 2021). The UN Independent Expert on foreign debt and human rights, Juan P. Bohoslavsky emphasised the ESM should respect human rights when responsibilities are delegated to it by states (UN 2015).

[201] This is warranted under the HR Council's endorsed Guiding Principles on Debt (Ginsborg 2017: 114).

[202] Guiding Principle 40 (Ginsborg 2017: 114).

Following the third approach, “international organisations or their decision-making bodies are bound by human rights norms ‘because of the legal obligations of their member states’” (Ginsborg 2017: 112). All Eurozone states are “parties to the major instruments of international human rights law adopted at the international and regional levels” (De Schutter and Salomon 2015: 19), including the International Covenant on Economic, Social and Cultural Rights (ICESCR),[203] International Labour Organisation (ILO) treaties, and the European Social Charter (ESC) (Ibid.). According to the UN CESCR,[204] states parties to the Covenant, as well as the relevant UN agencies, should “’make a particular effort to ensure that [the protection of the most basic economic, social and cultural rights] is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment’” (De Schutter and Salomon 2015: 14).[205] It is strongly presumed that retrogressive measures are not admissible (CESCR 2000).[206] “States parties to international and regional human rights instruments must (…) prevent violations by non-State actors” (UN General Assembly 2010: 9) and “should analyse policies and programmes, including those relating to external debt, macroeconomic stability, structural reform and investment, with respect to their impact on poverty and inequality, social development and the enjoyment of human rights (…) and adjust them as appropriate”

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[203] States Parties of the ICESCR “have the primary obligation to respect, protect and fulfil the Covenant rights of all persons under their jurisdiction” (UNESC 2011).

[204] CESCR in its 1990 General Comment on Article 22 of the ICECSR (De Schutter and Salomon 2015: 14).

[205] “A State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing (…) is, prima facie, failing to discharge its obligations under the Covenant” (CESCR 1990).

[206] “If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and (…) duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources” (CESCR 2000) – Article 2 (1) (CESCR 1990). According to CESCR in 2012, “in the case of retrogressive measures, economic policy choices should always veer towards those that least restrict rights” (Ginsborg 2017: 114).

(UN HRC 2011: 12).[207] The UN HR Council drew special attention to vulnerable groups (Ibid.). Furthermore, excessive or disproportionate debt servicing taking away financial resources intended "for the realization of human rights should be adjusted or modified (…) to reflect the primacy of human rights" (UN HRC 2011: 16).

"It has become generally recognized in the international, as well as academic community and within the UN" (Skogly 1993: 761) that respecting and observing human rights is also a matter of "state's international obligations 'in the legal sense of the term'" (Ibid.).[208] The International Court of Justice (ICJ) has "confirmed the existence of extraterritorial obligations under human rights treaties" (Joseph 2011: 248). According to the European Court[209] (ECtHR), the responsibility of Contracting Parties can be involved because of acts of their authorities – performed within or outside national borders, which cause effects outside their own territory (Skogly 2010: 13). The jurisprudential work of the CESCR too, clearly recognises the important influence of external actors on the exercise of socio-economic rights, which includes the decisions with extraterritorial effect taken under the guidance or with the approval of the influential states and the institutions they direct (Salomon 2015: 19). Notably, the Maastricht

[207] The CESCR has confirmed its conviction in the existence of these duties on several occasions (Joseph 2011: 250). All states should take "into account the potentially negative impact on the enjoyment of human rights of external debt servicing and the adoption of related economic reform policies" (UN HRC 2011: 12).

[208] Respect and observance of human rights "involves avoiding conduct that would create a foreseeable risk of impairing the enjoyment of human rights by persons living in poverty beyond their borders, and conducting assessments of the extraterritorial impacts of laws, policies and practices" (UN HRC 2012: 22) when cooperating internationally, e.g., providing assistance (Ibid.). "States are required to *respect* ICESCR rights outside their borders, that is, to refrain from harming such rights" (Joseph 2011: 250). "Numerous human rights bodies (…) have confirmed the existence of extraterritorial obligations under human rights treaties" (Joseph 2011: 248).

[209] The European Court of Human Rights (ECtHR) (Skogly 2010: 13).

Principles[210] clearly state that extra-territorial obligations and responsibilities apply to the Member States of international organisations (Crespi et al. 2014: 61).[211]

[210] The Maastricht Principles on Extra-Territorial Obligations (ETOs) of States in the area of Economic, Social and Cultural Rights "constitute an international expert opinion, restating human rights law on ETOs" (ETOs 2013: 3), clarifying state obligations on the basis of standing international law (Ibid.). They "were issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council" (Ibid.).

[211] E.g., in Principle 15 (Maastricht Principles) (Crespi et al. 2014: 61): "As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra-territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State" (ETOs 2013: 7-8). The international responsibility of Eurozone States "could be engaged for violations of the socio-economic rights of people in Greece as a result of the failure to regulate non-State actors over which the Euro Area states exercise effective control" (De Schutter and Salomon 2015: 19). Their responsibility for the human rights violations arising as a result of the lending schemes' conditionalities "may be engaged either as a result of breaches of their extraterritorial human rights obligations (…) or as a result of conduct as lenders" (De Schutter and Salomon 2015: 6).

Legal Responsibility Before European and International Courts

Claims of breaches of human rights can be brought to national courts,[212] European Courts and committees, as well as international proceedings (Fischer-Lescano 2014: 61). At European level, they can be referred to the Ombudsman,[213] or an action for annulment can be brought before the ECJ[214] (Ibid.).[215] Based on the Treaties, the CJEU has the competence to rule on the validity of legal acts with binding effect adopted by the EU States' governments and the EU institutions[216] (Koukiadaki 2014: 4). However, when it comes to the latter, only the acts adopted by the ECB, EC, the Council, and the European Council can be challenged (Ibid.).

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[212] Greece has no constitutional court, but by 2013, its ordinary courts generally accepted the austerity measures as "justified by the state of necessity faced by the Greek economy" (Katrougalos 2013). This stance, however, was in sharp contrast "with the decisions by constitutional courts in other countries issued after judicial scrutiny of austerity measures imposed by the International Monetary Fund" (Ibid.).

[213] "Under Article 228 TFEU" (Fischer-Lescano 2014: 61).

[214] The CJEU is comprised of three courts: the European Court of Justice (ECJ), the General Court, and the European Civil Service Tribunal (Chalmers 2016).

[215] Sufficient links exist "between the legal values at EU and ECHR levels and the austerity measures at national level" (Koukiadaki 2014: 2) that allow for judicial dialogue between domestic and supranational courts, as well as for employing domestically the supranational legal framework "as an additional legal basis for assessing the lawfulness of the austerity reforms" (Ibid.). "A range of legal grounds for litigation (…) involve the compatibility of the austerity measures with EU competences in the social field, with the EU Treaties' social objectives and with the (…) (EUCFR)" (Ibid.). Apart from the EU institutions, the acts of EU Member States can also be challenged, "as they are required to implement EU legislation" (Koukiadaki 2014: 3).

[216] Article 263 TFEU provides scope for the Court's judicial review of the legality of acts by the EU institutions (Koukiadaki 2014: 5). Arguably, conditionality tied to the financial assistance programmes for Greece relates to numerous key aspects of national welfare regime (Costamagna 2012: 15), in a manner that appears to notably surpass the limits imposed by the Treaties to the EU's scope of intervention (Crespi et al. 2014: 15).

Council Decisions[217] and MoU[218] were the main acts used for the reform implementation in Greece (Koukiadaki 2014: 2). [219] Jurisdiction is also conferred on the Court to rule on disputes between the Member States about the interpretation and the application of the GLF, EFSF, and the ESM (Koukiadaki 2014: 4).

Considering that by adopting decisions such as 2010/320/EU of 10 May 2010, the Council was acting under the EU law (De Schutter 2015: 6), Greece was obliged to adopt the measures in the Council Decisions (and the MoU) (Koukiadaki 2014: 15).[220] Furthermore, as Council Decisions set out economic policy guidelines underpinning the financial support to be granted and the loan release (De Schutter and Salomon 2015: 19), those guidelines should have complied with the EU law (e.g., the CFR) (Ibid.). In line with Articles 136 and 126(9) TFEU, the Council Decisions contain the essential elements of the policy conditionality (Koukiadaki 2014: 14) with legally binding, EU law effects (Koukiadaki 2014: 19), yet as per Article 126 et seq. of the Treaties, the measures that the Council may decide upon under the excessive deficit procedure and include in its decisions "cannot be prescribed specifically, explicitly and without

[217] Decisions are legislative acts when adopted jointly by the EP and the Council under the ordinary legislative procedure, or the EP with the participation of the Council, or the Council with the participation of the EP "under the special legislative procedure. In other cases, decisions are non-legislative acts. They may be adopted, for example, by the European Council, the Council or the Commission" (EUR-Lex 2015). The measures concerning the coordination and surveillance of Greece's budgetary discipline and defining the country's economic policy guidelines were specified in a Council decision, in line with TFEU Articles 126(9) and 136 (De Schutter and Salomon 2015: 5).

[218] "The 'Memoranda' are programmatic guidelines of a political rather than legal character. (…) to be implemented, they require at the international level a treaty between Greece and its lenders (IMF and the States of the Eurozone) and at the domestic level executive legislation" (Katrougalos 2013).

[219] Neither the 2010 nor the 2012 treaty between Greece and its lenders were "ratified by the parliament, contrary to the explicit provision of article 36, paragraph 2 of the Greek Constitution. Both treaties contained (…) exorbitant clauses regarding national sovereignty" (Katrougalos 2013), and "an explicit and irrevocable waiver of immunity of the Greek State, which, according to the Legal Opinion attached therein, expands also to issues of 'national sovereignty'" (Ibid.). This is far more extreme than the "generally accepted waivers of immunity from execution known in international law" (Ibid.).

[220] Due to its status as an EU Member State (Koukiadaki 2014: 15).

room for deviation, since that competence is not conferred upon the Council by the Treaties" (Ibid.).[221] Thus, the powers of the Council conferred by the Treaties were arguably exceeded (Ibid.).[222]

Notably, the measures in the Council Decisions are identical and share the same aims with the MoU, in a copy-paste manner (Ibid.).[223] To that extent, the content of the MoU becomes "binding on Greece under the excessive deficit procedure and Article 136 TFEU and the

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[221] E.g.: Council Decision 2010/320/ EU, adopted by the Council on 10 May 2010 and followed by other similar decisions defining the macroeconomic adjustment measures Greece was required to adopt (De Schutter and Salomon 2015: 19), is not general "nor does it simply establish quantitative criteria that Greece has to meet (…) to obtain the loans" (Koukiadaki 2014: 19), but rather "produces legal binding effects on the measures introduced through the MoU (giving them also EU law effect)" (Ibid.). Yet based on the EU Treaties, the Council does not have the competence to impose a detailed economic policy programme, but only the right to decide on the general economic conditions (Koukiadaki 2014: 13).

[222] In Case T-541/10 (CJEU), the applicants sought annulment of the decision of the Council of 7 September 2010 amending Decision 2010/320/EU, and of the decision of the Council of 8 June 2010 – both addressed to Greece to reinforce and deepen fiscal surveillance and giving it notice to adopt the deficit reduction measures judged necessary to remedy its excessive deficit (CJEU 2010). They submitted that the powers of the EC "and the Council conferred by the Treaties were exceeded in the adoption of the contested decisions and that those decisions are, (…) contrary to the Treaties" (Ibid.): exceeding the EC and Council's powers "as a measure implementing a bilateral agreement between the 15 Member States of the Euro zone, which decided to grant the bilateral loans, and Greece" (Ibid.); and breaching Article 1 of the First Protocol to the European Convention for the Protection of Human Rights by introducing pay and pension reductions (Ibid.). Nevertheless, the Court held that the applicants did not demonstrate they were directly concerned by the challenged acts (Koukiadaki 2014: 6).

[223] Practically every update of the MoU is accompanied by a "respective amendment of the Council Decisions, so that the two documents are in line" (Koukiadaki 2014: 14). The core components of the policy conditionality in the Council Decisions were based on the joint programmes prepared by the Troika and Greece "and laid down in the MoU" (Ibid.).

general principles of EU law apply" (Koukiadaki 2014: 14).[224] The legal character of the conditionality[225] makes the Memoranda constitute an 'act' within the meaning of Article 263 TFEU, which means they can be challenged in the Court in proceedings under Articles 263 and 267 TFEU (Koukiadaki 2014: 13).[226]

On 21 May 2013, Regulation (EU) No. 472/2013[227] of the EP and of the Council was adopted (De Schutter and Salomon 2015: 11).[228] Since then, the MoU concluded with the Member

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[224] The detailed MoUs included specific timetables to which states had to adhere to receive the agreed credit tranches (Fischer- Lescano 2014: V). E.g., the loan releases following the conclusion of MoU1 were to be conditional upon verification that the Borrower's implementation of the economic policy agrees with the adjustment programme or any conditions in the Council decision on the basis of TFEU articles 126(9) and 136, and the MoU (De Schutter and Salomon 2015: 19). The fact that measures included in the Memoranda were incorporated in the Council Decisions addressed to Greece means that the Memoranda have become the Council Decision's legal foundation and their content part of the EU legal order (Koukiadaki 2014: 14-15).

[225] Emphasised by the ESM Treaty and the Court (Koukiadaki 2014: 13).

[226] The 2013-2014 country specific recommendations (CSRs) (Clauwaert 2013: 6) did not stipulate "additional recommendations but (…) generally recommended implementing their respective MoU, including the revised supplements. In doing this, the CSRs (…) provide an additional linkage between the MoU and EU legal sources" (Koukiadaki 2014: 15), as the CSRs concerning economic policy and employment under the European Semester are adopted on the basis of TFEU Articles 121 and 148 respectively (Ibid.).

[227] The Independent HR Expert welcomed "that EU regulation 472/2013 now provides that 'budgetary consolidation efforts set out in the macroeconomic adjustment programme shall take into account the need to ensure sufficient means for fundamental policies, such as education and health care' (Article 7 (7) 2)" (UN HRC 2016: 8), but noted that "no explicit references to economic, social and cultural rights are made in the regulation except for the need to respect the right of collective action and bargaining in the design of an adjustment programme (Article 7 (1))" (Ibid.).

[228] The Regulation on the Strengthening of Economic and Budgetary Surveillance of Eurozone States experiencing or threatened with serious difficulties in terms of their financial stability (De Schutter and Salomon 2015: 11) defines the conditions applying to Eurozone countries put under 'enhanced surveillance' (De Schutter and Salomon 2015: 20). It entered into force on 30 May 2013 (EU Monitor 2021).

States have been brought into the scope of the EU legislation[229] (Ibid.) – i.e. MoU3, and even the financial mechanisms established outside EU legislation were given a framework based in EU law (Ibid.)[230] – e.g. the EFSF and ESM.[231] The Regulation also draws into the EU law Council decisions approving macroeconomic adjustment programmes (Ibid.) – e.g. Council Implementing Decision (EU) 2015/1411 of 19 August 2015 approving the macroeconomic adjustment programme of Greece (COE 2015: 12). Thus, the latter can be challenged directly before the EU Courts or indirectly before the national courts on the grounds of its incompatibility with the CFR (De Schutter and Salomon 2015: 11).

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[229] While the Regulation "does not operate retroactively to the negotiation of the 2010 and 2012" (De Schutter and Salomon 2015: 12) Memoranda, it shows that the CFR should have applied to them (Ibid.) – by highlighting in particular that measures are required to comply with CFR Article 28 (De Schutter and Salomon 2015: 11). For the 2010 agreement, this is implied in the roles fulfilled by the EC and "the ECB (De Schutter and Salomon 2015: 12), "tasked under the Intercreditor Agreement of 8 May 2010, inter alia, to negotiate and supervise the agreement, and by the Council (…), acting under Articles 126(9) and 136" (Ibid.) TFEU, to impose on Greece certain deficit reduction measures judged necessary to correct the excessive deficit (Ibid.). "For the 2012 agreement with the EFSF, this follows from the role assigned" (Ibid.) to the EC and "the ECB, in the Framework Agreement and the Consolidated Articles of Association establishing the Facility" (Ibid.).

[230] Under Article 136 TFEU (the Regulation's legal basis) and the Regulation itself (De Schutter and Salomon 2015: 11).

[231] "With the exception of the repayments of the debt by Greece, the activities of the GLF ended in 2011" (Alcidi et al 2017: 14). Similarly, the EFSF "does not provide any further financial assistance" (ESM 2021), but it does still operate by receiving loan repayments, making interest and principal payments to its bond holders and rolling over its outstanding bonds (Ibid.). Established and operating "outside the EU Treaties, the ESM is not subject to the provisions relating to EU institutions, bodies or agencies" (Dias and Zoppè 2019: 11-12) and is not accountable to the EP (Ibid.). "However, the signatory Member States agreed to submit disputes relating to the interpretation and application of the TESM to the European Court of Justice" (Ibid.). Additionally, the EP may invite the Eurogroup's President "to attend an Economic Dialogue (…), in accordance to Regulation 472/2013, which confers responsibilities to the EP and ECON in overseeing financial assistance granted" (Ibid.).

Additionally, the Regulation includes a requirement that the EC assesses the sustainability of sovereign debt,[232] which could include examining the effects on human rights (De Schutter and Salomon 2015: 13).[233] In 2015, the Summit recognised "serious concerns regarding the sustainability of Greek debt" (ES 2015: 6),[234] but the analysis by the EC and ECB concluded the sustainability "could be achieved through a far-reaching and credible reform programme and additional debt-related measures without nominal haircuts" (COE/European Council 2021).[235] Some relief measures subsequently announced were dependent on the successful programme completion (COE/European Council 2021) that followed the same austerity-driven strategy.[236]

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[232] In Article 6 (De Schutter and Salomon 2015: 11).

[233] "Not least the right to work, the right to health, (…) and the right to an adequate standard of living (…), the levels of enjoyment of which are typically affected by fiscal consolidation measures" (De Schutter and Salomon 2015: 13).

[234] "Greece's debt-to-GDP reached 176.9% in 2015" (MoU3 R1 2016: 14), compared to 144.9% of its nominal GDP in 2010 (Stanislav Eminescu 2011: 1), while the country's GDP dropped by 26.4 % between 2008 and 2015 (ETUI 2017). Nevertheless, the Summit attributed this to the easing of Troika-imposed policies during the year before (ES 2015: 6). It claimed the Eurozone "States have, throughout the last few years, adopted a remarkable set of measures supporting Greece's debt sustainability, which have smoothed Greece's servicing path" (Ibid.). Nevertheless, the Independent HR Expert pointed to the fact that without further debt relief, Greece would remain "over several decades in an economically and politically unhealthy dependence on creditor institutions" (UN 2015).

[235] The debt sustainability analysis for Greece was issued on 10 July 2015 (COE/European Council 2021).

[236] At its 24 May 2016 meeting, the Eurogroup agreed on short-, medium, and long-term measures to achieve Greece's public debt sustainability – some of them to be implemented before the programme's conclusion, and others upon its successful conclusion (COE/European Council 2021). On 5 December 2016, the Eurogroup approved the full round of short-term debt relief measures, including "smoothing Greece's repayment profile within the current weighted average maturity of loans up to 32,5 years (…) reducing interest rate-related risk using EFSF and ESM funding strategy, without incurring additional costs for the former programme countries (…) waiving the step-up interest rate margin for 2017, related to the debt buy-back tranche of the 2nd Greek programme. The boards of directors of the ESM and the EFSF (…) formally adopted the measures on 23 January 2017" (Ibid.).

Notably, neither in 2010 nor in 2012 was there any attempt to evaluate the human rights effects of the macroeconomic adjustment and fiscal consolidation that functioned as the conditions for the loans, despite it being a requirement of international law (TCGPD I 2015).[237] In 2015, the EC provided a social impact evaluation for the third adjustment programme, but it failed to assess the social impacts generated by the first two adjustment programmes and therefore, to learn from what went wrong (UN HRC 2016: 12). Furthermore, the assessment makes no mention of human rights (Ibid.).[238]

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[237] In the Council Decisions addressed to Greece with respect to financial assistance programmes, there was no provision in the first two programmes that, in performing its monitoring duties, the EC, "together with the ECB and the IMF, is to 'review the social impact of the agreed measures' and to recommend necessary corrections in order to 'minimise harmful social impacts, particularly on the most vulnerable parts of the society'" (Koukiadaki 2014: 10). By the time of the 2012 MoU, the damages were widely known (TCGPD I 2015). Moreover, there were no "guarantees of consultation by persons likely to be affected by the policies and access to information and transparency regarding public access to the results of assessment" (Ibid.), and no "effort to find a more appropriate balance between economic and social objectives" (Koukiadaki 2014: 21). "Greece explained to a 2011 High Level ILO mission that (…), 'it did not have the opportunity in meeting with the Troika, to discuss the impact of social security reforms on the spread of poverty, particularly for persons of small means and the social security benefits to withstand any such trends'" (Salomon 2015: 10), or to discuss the effect that taxation-, wages- and employment policies would have on the sustainability of its system of social security (Ibid.). The ILO mission report described this as "an alarming sign of the governments' impotence vis-à-vis the Troika" (Ibid.). Arguably, in their pursued policies, "the Council, EC, ECB and IMF have failed to meet the most basic of requirements to prevent human rights harms" (TCGPD I 2015) (Ibid.).

[238] "Nor to the rulings by the Greek Council of State, recommendations by the Greek National Commission for Human Rights, or to the comprehensive country study" (UN HRC 2016: 12) on behalf of the EP on the crisis' impact "on fundamental rights in Greece. It does not consider the views of the Council, the European Social Committee monitoring the implementation of the ESC, or UN findings and recommendations (Ibid.). Since 2011, the EC has established guidelines for systematic human rights- or social impact assessment of its own legislative proposals, and developed methodologies for assessing human rights' impact of its external policies, "but failed to undertake so far any meaningful human rights' impact assessments when designing the adjustment programmes" (UN HRC 2016: 8).

The TFEU distinguishes between complaints by 'privileged' (Member States and the EU institutions),[239] semi-privileged,[240] and 'non-privileged' applicants (individuals, organisations, trade unions etc.)[241] (Koukiadaki 2014: 5). Non-privileged applicants can only initiate proceedings in the Court[242] against acts of the EU institutions, when those acts are addressed to them or are of direct and individual concern to them, and against regulatory acts that concern them directly and do not entail implementing measures (Ibid.). [243]

Cases can only be brought to the ECtHR "after domestic remedies have been exhausted" (ECtHR 2014: 7).[244] Furthermore, an applicant's allegations must concern one or more of the rights in the ECHR (Ibid.). The ECHR[245] distinguishes between an individual application, "lodged by any person, group of individuals, company or NGO having a complaint about a violation of

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[239] "It is widely accepted that the Treaty makes it much easier for 'privileged' applicants (…) to challenge the acts of the EU" (Koukiadaki 2014: 5). The EP, "as a privileged plaintiff (…), might bring an action both for disregard of collective and institutional powers in the signature of the MoUs and also for the breaches of human rights" (Fischer-Lescano 2014: 61). Notably, the time-limit for the ECJ proceedings is two months (Fischer-Lescano 2014: 54). "As 'acts' of the EU institutions, the MoUs are suitable subject-matter for proceedings within the meaning of article 263 TFEU" (Fischer-Lescano 2014: 61).

[240] Court of Auditors, the ECB, and the Committee of the Regions (Koukiadaki 2014: 6)

[241] "Any natural or legal person" (Koukiadaki 2014: 5). So far, the Court has been very strict in its interpretation of the possibility for non-privileged applicants to bring a complaint (Ibid.).

[242] The Court of Justice of the EU (Koukiadaki 2014: 2) i.e., CJEU

[243] Legally binding acts of EU institutions are "not susceptible to judicial challenges from parties that (…) cannot persuasively demonstrate that they are directly and individually concerned" (Koukiadaki 2014: 5). The conditions under which non-privileged applicants can complain to the Court directly are specified in Article 263(4) TFEU (Ibid.).

[244] "Individuals complaining of violations of their rights must first have taken their case through the courts of the country concerned" (ECtHR 2014: 7). "Applications must also be lodged with the Court within six months following the last judicial decision in the case" (Ibid.).

[245] I.e., the Convention. "The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the 'European Convention on Human Rights', was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953" (ECtHR 2014: 3).

their rights,[246] and inter-State applications brought by one State against another" (ECtHR 2014: 6). Notably, "applications can only be lodged against one or more State Parties to the Convention" (Ibid.).[247] Similarly, in the European Committee of Social Rights (ECSR), complaints can only be brought against State Parties to the ESC about their alleged failures to give adequate effect to it (COE III 2021).[248] On the other hand, the European Ombudsman conducts inquiries into cases of maladministration by the EU institutions, agencies, bodies and offices (Marzocchi 2020). Complaints can be brough to it by EU citizens or any natural or legal person residing or having their office registered in an EU Member State (Ibid.).

In the ICJ, only States[249] may apply to and appear in contentious cases (ICJ 2021), and according to Article 34 of the ICJ Statute, "states cannot bring international organizations before the IcJ" (Uriarte 2014: 323).[250] However, issues concerning the international organisations' human rights obligations, and the compatibility of austerity measures with

[246] Notably, "the applicants must be, personally and directly, a victim of a violation of the Convention, and must have suffered a significant disadvantage" (ECtHR 2014: 7). "Proceedings cannot (yet) be brought directly against the EU in the ECtHR and the European Economic and Social Committee" (Fischer-Lescano 2014: 61), but can be instituted against the States implementing the Memoranda and "against the States that, for instance, are failing to fulfil their human rights obligations in the ESM" (Ibid.).

[247] "States remain responsible for all acts and omissions of their organs regardless of whether the act or omission was a consequence of domestic law or of the necessity to comply with EC obligations" (Uriarte 2014: 347). The ECtHR has made clear the transfer of powers to an international organisation is compatible with the ECHR, on condition "that fundamental rights receive an 'equivalent level of protection' within the organization" (Ibid.). Through its jurisprudence, the ECtHR found that the EU law provided equivalent protection (Uriarte 2014: 349).

[248] [248] The ECSR (15 independent experts elected by the Council of Europe's Committee of Ministers) supervises the implementation of the ESC by States Parties through the collective complaints procedure and the reporting procedure. (I)NGOs can contribute to both of these procedures (COE III 2021).

[249] In particular, "States Members of the UN and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions" (ICJ 2021).

[250] Meaning the latter "has no direct competence to hear such disputes" (Uriarte 2014: 323).

human rights can be referred to the ICJ through a legal opinion procedure (Fischer-Lescano 2014: 61). On the international level, the breaches of the law can also be brought to the ILO and before the UN committees, but the primary obstacle to effective legal enforcement[251] when it comes to the measures by the EU institutions is the fact that in terms of the relevant codifications (e.g., ILO Conventions, UN Covenants), the EU has only signed the UN Disability Convention (Ibid.).[252]

[251] Also in the Council (Fischer-Lescano 2014: 61).

[252] "Apart from the Committee on the Rights of Persons with Disabilities – direct action cannot be taken against the EU" (Fischer-Lescano 2014: 61). It is however "possible to take action against the States implementing the MoUs (before the UN Social Committee (…)) and also against the States (…) failing to fulfil their protection obligations in the IOs" (Ibid.). The IMF is officially accountable only to its 190 member governments (IMF I 2021). Similarly, in the ESM, the Ministers of Finance, composing its Board of Governors, are accountable to their national parliaments (Dias and Zoppè 2019: 12).

Human Rights Impact of Austerity in Greece: Analysis

Between 2010 and 2017, the economic crisis and the austerity policies have resulted in 26.4 % decline in GDP (ETUI 2017) in Greece. The country's debt escalated from 144.9% of its nominal GDP in 2010 (Stanislav Eminescu 2011: 1) to 187.4% in June 2020 (CEIC 2021),[253] even though the primary purpose of austerity was to reduce it. Between 2014 and 2016, growth rates remained close to 0% (UN HRC 2016: 9). Notably, excessive austerity measures strongly exacerbated the economic crisis (UN HRC 2016: 19).

The Right to Work

In the Council Decisions and the memoranda, it was made clear that the Troika's financial assistance to Greece was conditional upon key reforms of the country's labour law (Koukiadaki 2014: 12).[254] The right to work is "a fundamental part of the UDHR"[255] (EU Reporter 2015). UNCESCR[256] General Comment 18 defines it as a "fundamental right, essential for the

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[253] Moreover, both austerity policies directed at public expenditure cuts and hasty debt reduction, "and structural reforms have been problematic in terms of Eurozone's macroeconomic performance" (Schmidt 2015: 15), resulting in a long period of near economic stagnation, with some states submerged in a depression for years (Stiglitz 2016), and low growth in even its most successful countries, with deflation becoming a serious risk (Schmidt 2015: 15). Based on the youth unemployment statistics in 2016, if Europe was to continue on the same track, it might be doomed to low growth and a decrease in living standards for decades to come (Stiglitz 2016).

[254] Thus, the legal status of the Memoranda and of Council Decisions becomes the main question (Koukiadaki 2014: 13).

[255] Article 23 UDHR: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (…) Everyone, without any discrimination, has the right to equal pay for equal work. (…) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (…) Everyone has the right to form and to join trade unions for the protection of his interests" (UDHR 1948).

[256] Ratified by all Eurozone states (Crespi et al. 2014: 63).

realization of other human rights" (CESCR 2006: 2). [257] It is included in the ESC[258] and recognised in the CFR (Crespi et al. 16),[259] the provisions of which are "primarily addressed to the EU institutions and (…) to the national authorities only when they are implementing EU law" (EC 2018: 2). [260] There are also eight ILO conventions "'fundamental' to the protection of the right to work" (Ibid.).[261] Notably, before the crisis, the Greek legal framework was mostly in line with international human rights provisions on the right to work (Housos 2015: 443).

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[257] "The general overriding obligation of States Parties to the ICESCR is to progressively achieve the full realization of the right to work" (Housos 2015: 437) – prioritising for this purpose all available resources "even during periods of financial crisis (…) and not take retrogressive steps" (Ibid). The right to work and specific work-related rights in the UDHR and the CESCR apply to all people working in the state, even those without the permission for work (Housos 2015: 436).

[258] Ratified by all Eurozone states (COE 2021).

[259] The CFR is binding in all Eurozone states (EP 2019). It became legally binding in the EU on 1 December 2009, when the Lisbon Treaty came into force (EC 2018: 2). It also protects the rights and principles enshrined in many ILO conventions (ILO 2012: 8). "Some are protected by non-discrimination legislation covering employment, equal opportunities for men and women, health and safety at work and the working conditions of seafarers" (Ibid.).

[260] Although the ECHR, ratified by all Eurozone states (COE I 2021), does not explicitly protect the right to work, some of its aspects are protected in the ECtHR case law (O'Connell 2012: 176). For instance, Article 8 can be used to protect the right to search for employment, Articles 6 and 8 can be the basis to dispute unfair dismissal, while article 8 should also "be recognized as protecting the negative aspects of the right to work" (Ibid.). "Other ECHR articles prohibit discrimination" (Ibid.), and there is also scope for developing positive obligations regarding the right to work (Ibid.).

[261] During the drafting process of the ICESR, "it was understood that the details of the right to work should be left to the specialized agencies such as the ILO" (Crespi et al. 2014: 16). Notably, ILO conventions are crucial to understanding the right to work (Ibid.). Among "the eight core labour standards conventions are: conventions no. 87 and no. 98 on freedom of association and collective bargaining, (…) and no. 111 on non-discrimination in employment" (ILO 2012: 8). Since 2007, all EU states have ratified these eight core labour standards (Ibid.). Most EU states "have ratified the main social governance conventions" (Ibid.), e.g., on employment policy and tripartite consultation (Ibid.). Since 2009, all EU states have also ratified the priority convention on labour inspection (Ibid.).

In its bailout programmes for Greece, the Troika chose an approach resembling SAPs, of budgetary austerity, and labour market deregulation and liberalisation (Schmidt 2015: 16), despite the known negative effects of SAPs on poverty and the right to work.[262] The major Troika-designed and demanded labour market reforms were directed towards wage reduction,[263] more flexibility in hiring and firing, and looser workers' protection (Ibid.),[264] even though the Greek labour market was not strictly regulated (Dedoussopoulos et al. 2013: 29) in the first place (evidence from 1964 to 2001, and 1983 to 2007) and despite the average share of total labour cost in total manufacturing costs (in 2007) being only 15.2% (Dedoussopoulos et al. 2013: 25). Furthermore, regarding the measures from the first loan agreement, no consultation with the social partners took place (Kokkinou and Koukiadaki 2016: 143),[265] despite Article 152 TFEU demanding the EU recognise and promote the role of social partners and facilitate dialogue between them (Koukiadaki 2014: 19).

In MoU1, measures were required by the Troika and adopted by the Greek government, to cut the state wage bill (seasonal bonuses and allowances)[266] (MoU1 R3 2011: 45). Notably, the

[262] Between 2011 and 2013 in Greece, over 100 legal provisions encompassing a series of laws, were legislated for the purpose of far-reaching structural adjustment reforms in the labour market (Lanara-Tzotze 2013: 5).

[263] This despite the fact that it was predictable that while wage reduction would increase profits temporarily, it would also lead to a strong decline in domestic demand, i.e., accelerating deflation (Dedoussopoulos et al. 2013: 25).

[264] The political philosophy behind this is that all shocks in the economy have to be absorbed by the labour market, while "the prices of intermediate products (mostly imported), interest rates, rents, costs of public utilities and taxes" (Dedoussopoulos et al. 2013: 41) are inflexible (Ibid.).

[265] There was no social dialogue when the first financial assistance programme to Greece was being negotiated and concluded (Koukiadaki 2014: 19). Arguably, this can be contributed to "the increasing pressure of the Troika, especially the IMF, for immediate reforms without consultation with the social partners" (Kokkinou and Koukiadaki 143).

[266] In 2010, this measure was legislated and implemented (MoU1 R3 2011: 45): the Government legislated "10% cut in allowances, the complete freeze in remuneration (…), additional 2% cut in allowances and the cuts in the Easter, summer and Christmas bonuses" (MoU1 2010: 16) of civil servants (MoU1 2010: 9). The Troika welcomed it (Ibid.). In May 2010, further cuts were announced

Troika also demanded that the Government propose and Parliament adopt "legislation to reform the wage bargaining system in the private sector" (Dedoussopoulos et al. 2013: 43), which should reduce pay rates for overtime work and boost flexibility in the management of working time,[267] allow "local territorial pacts to set wage growth below sectoral agreements[268] and introduce variable pay to link wages to productivity performance at the firm level"

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through full abolition of seasonal bonuses (MoU1 2010: 16), i.e., the 13th and 14th salaries paid to civil servants and public enterpise workers (Leventi and Matsaganis 2013: 5). The same year, the fall in nominal remunerations in the public wage bill amounted to 14¼%, in comparison to 2009 – considering the allowances were previously taxed at a lower tax rate, which was changed with their inclusion in the normal income bracket (Ibid.).

[267] Law 3986/2011 granted 'associations of persons' the right to negotiate working time arrangements (Article 42(69) and enacted "the provision of compensatory time-off instead of pecuniary payment for overtime" (Kokkinou and Koukiadaki 2016: 150). The period for calculating working time was extended from 4 to 6 months (Ibid.). Part of the increase in unpaid overtime hours since 2008 can be attributed to the flexible time arrangements consolidated in Law 3986/11 (Dedoussopulos et al. 2013: 60). Law 4024/2011 granted non-trade union representatives the right to conclude collective agreements at company level, as long as they have the support of at minimum 60% of the workforce (Schulten 2015: 2). In this way, firm-level agreements prevailed over occupational and sector agreements (Ibid.). With Law 3896/11, overtime premiums were reduced from 30% to 20% for excess working time (Dedoussopoulos et al. 2013: 55). The same law also reduced overtime premiums from 75% to 40% "for the first 120 annual hours of overtime work" (Ibid.), and from 100% to 60% for any additional hours (Ibid). The minimum daily rest period was reduced with Article IA 14 of 4093/2012, and the employer's obligation to justify recourse to overtime was abolished (Kokkinou and Koukiadaki 2016: 150).

[268] "Article 2(7) of Law 3845/2010 stipulated that the terms of occupational and enterprise agreements could derogate in pejus from the terms of sectoral agreements and even the national general collective agreement; (…) sectoral agreements could derogate from the national collective agreement" (Kokkinou and Koukiadaki 2016: 151). Law 3899/2010 introduced an institutional reform that allowed companies and workers to agree on wages below the rates set by sectoral or occupational agreements (Dedoussopoulos et al. 2013: 57). Law 4024/2011 suspended the so-called favourability clause (MoU2 2012: 37), which under Greek Law 1876/1990 determined that "in the case of a conflict of the terms between multiple collective labor agreements that may apply for a specific employment contract, the terms that shall prevail are the ones most favorable to the employee" (Housos 2015: 441).

(Ibid.),[269] amend Law 1876/1990 so that both parties can resort to arbitration in case of a disagreement with the mediator's proposal,[270] and after discussion with social partners, adopt legislation introducing sub-minima wages for vulnerable groups such as the young and long-term unemployed,[271] and implementing measures to guarantee that minimum wages stay fixed in nominal terms for three years (Ibid.).[272] Furthermore, the Government was obliged to

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[269] Public sector remuneration system was to be reformed in a way to reflect productivity and tasks, whereby the Government was to ensure there would be no increase in the wage bill (MoU1 R2 2010: 91).

[270] Based on "the problem of 'asymmetry' (…) identified by the Troika" (Kokkinou and Koukiadaki 2016: 153), the previously existing "unilateral right of trade unions to have recourse to arbitration where they had accepted a proposal from the mediator, (…) rejected by the employer" (Ibid.), was abolished (Kokkinou and Koukiadaki 2016: 157). With Law 3899/2010 amending Law 1876/1990 and redefining the role of Greece's Mediation and Arbitration Service (OMED), "recourse to arbitration could now take place either through agreement of the parties or unilaterally" (Kokkinou and Koukiadaki 2016: 154). Furthermore, "the exercise of the right to strike was to be suspended for a 10-day period, starting from the day (…) either party resorted to arbitration" (Ibid.), and arbitration became "limited to determining the basic wage and/or the basic salary" (Ibid.) while previously, the arbitrator was authorised to regulate any aspect of the collective agreement (Ibid.).

[271] With Law 3845/2010, the Greek government legislated a sub-minimum minimum wage: the new provisions were targeting entry-level workers and apprentices, younger than 25 (Kakoulidou et al. 2018: 11-12). For the unemployed persons aged under 24, "a minimum rate was introduced at 80% of the full rate (…), while the social security contributions were paid by the public Manpower Employment Organization (OAED), and the maximum duration of such contracts was set at 12 months (Law 3845/2010)" (Ibid.). For entry-level workers aged below 25, a minimum rate was introduced at 84% of the full rate and provision for an automatic admission of the participating companies "to the OAED's Programme regarding the subsidy of the employer's social security contributions (Law 3863/2010)" (Ibid.); and with Law 3863/2010, a minimum rate on apprenticeships (up to one year), for 15–18-year-olds, was introduced at 70% of the full rate (Ibid.). The programme lasted from October 2010 to October 2014 (Ibid.).

[272] Law 3845/2010 contained a provision keeping the full minimum rate (€751, paid in 14 monthly instalments over the course of 12 months) fixed in nominal terms for three years (Kakoulidou et al. 2018: 12). The effects of this 3-year wage freeze "spilled over into the laws governing negotiations on the 2010–2012 national collective agreement" (Kokkinou and Koukiadaki 2016: 151). While the

prolong the probationary period for new jobs to one year,[273] cut the overall level of severance payments,[274] increase the minimum threshold for the activation of collective redundance rules,[275] and support wider use of temporary contracts and part-time work (Ibid.).[276]

Notably, Article 153(5) TFEU prohibits any EU intervention intended to harmonise issues on wages and collective bargaining (Koukiadaki 2014: 18).[277] The Troika provisions affecting the

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Organisation for Mediation and Arbitration (OMED) provided for wage increases for 2010 and the first semester of 2011, Article 51 of Law 3871/2010 provided those arbitration awards would have no legal effect (Ibid.).

[273] As a measure for a review, the probationary period of employment contracts without a time limit was increased from two months to one year and in this way, "a new form of fixed-term employment contract of one year's duration" (Kokkinou and Koukiadaki 2016: 149) was introduced to the Greek labour market, with Article 17(5) of Law 3899/2010 (Ibid.).

[274] In MoU2, the Government committed to, as one of the actions prior to disbursement, legislate the reduction of the notification period to 4 months (MoU2 R1 2012: 177). "Under Article 75(2) of Law 3863/2010, the notification period for individual dismissals was reduced" (Kokkinou and Koukiadaki 2016: 148) and consequently, the compensation for dismissal cut up to 50% (Ibid). Article 75(3) Law 4093/2012 set a maximum amount of compensation at 12 months' wages (for dismissals without notice), and set the maximum period for dismissal notice at four months (Ibid.).

[275] With the new amendments introduced to collective redundancies, the thresholds for the application of the legislation were reduced: "Collective dismissals now take place when they affect, within (…) one month" (Kokkinou and Koukiadaki 2016: 148), at minimum six employees in businesses or undertakings with between 20 and 150 employees, or 5% "of the workforce and up to 30 employees in businesses or undertakings with over 150 employees" (Ibid.).

[276] The regulation of fixed-term work was amended to include "extending the duration of successive fixed-term employment contracts, allowing for successive renewals and expanding the scope of objective reasons for using successive fixed-term contracts" (Kokkinou and Koukiadaki 2016: 150). Laws 3896/10 and 3899/10 extended the legal duration of fixed-term contracts from two to three years (Dedoussopoulos et al. 2013: 54). "Law 3899/2010 extended the period of short-time work on the basis of a unilateral decision by the employer from six months, as stipulated in Law 3846/2010, to nine months per year" (Kokkinou and Koukiadaki 2016: 149).

[277] Article 153 TFEU: "The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs" (TFEU 2012: 114). "The EU can harmonize national law

Greek bargaining system were also intrusive to the Greek national system of labour law (Koukiadaki 2014: 12): the new body of permanent legislation based on the conditionality unilaterally loosened the previous standards and protections (Lanara-Tzotze 2013: 6).[278] The measures were also deliberately retrogressive.[279] Furthermore, they were arguably in opposition to TFEU's Article 151, according to which the EU and its states should "have as their objectives (…) improved living and working conditions, (…) dialogue between management and labour, (…) lasting high employment and the combating of exclusion" (TFEU 2012: 114), and should pay attention to the ESC and the 1989 Community Charter of the Fundamental Social Rights of Workers[280] (Ibid.). It can be claimed that the measures negatively affected the

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in relation to working environment and working conditions, social security and social protection of workers, and representation and defence of workers' and employers' collective interests" (Koukiadaki 2014: 18), but only if the aims pursued cannot be achieved through the coordination of national policies (Ibid.). The Troika has argued that frontloaded action on wage floor adjustment and a revision of collective bargaining was justified due to the downward rigidities in the systems of wage setting (MoU2 2012: 38).

[278] Until 2011-2013, the national institutional framework's function was to configure universal protective minimum conditions of work via free collective negotiations and binding collective agreements (Lanara-Tzotze 2013: 6). "Supplementing the Greek Constitution, Greek Law 1876/1990 (…) outlines four separate collective employment agreement types" (Housos 2015: 441): national, sectoral, occupational, and firm agreements (Ibid.). The Greek Constitution also contained a favourability clause (MoU2 2012: 37, Koukiadaki 2014: 29). Moreover, the Constitution's Article 22 establishes the worker's right to supplement labor laws with collective labor agreements, and grants the Greek government the authority to legally determine the general working conditions, while Article 23 "establishes trade union freedom to negotiate the terms and conditions of their employment agreements" (Housos 2015: 441). The National General Collective Agreement determined the minimum set of work standards that apply to all workers in the private sector (Ibid.).

[279] This is generally prohibited according to CESCR, unless it can be proved other alternatives had been considered, and that the measures are justified in the context of ICESCR and the country's maximum available resources (CESCR 2000).

[280] The Community Charter, "adopted on 9 December 1989 by a declaration of all Member States, with the exception of the United Kingdom, established the major principles on which the European labour law model is based" (Eurofound 2011). The fundamental social rights declared in it are further developed in the CFR (Ibid.).

right to collective bargaining in CFR Article 28,[281] ESC Article 6,[282] and ILO Convention 98 Article 4.[283]

Moreover, measures concerning the employment of new entrants to the labour market aged under 25 are arguably not compatible with Article 9 TFEU, according to which the EU shall, in its policies and activities, take into account requirements related to the fight against social exclusion (Craig 2013: xvi). They can also be seen as contravening TFEU's Article 151 (improved

[281] Article 28 CFR: "Workers and employers, of their respective organisations, have (…) the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action" (CFR 2012: 401). This article, when read together with Article 52(3) EUCFR, provides a foundation "for interpreting the right in line with the (…) jurisprudence of the ECtHR that recognises that the right to freedom of association under Article 11 of the ECHR implies the right to collective bargaining" (Koukiadaki 2014: 29).

[282] ESC Article 6 states that the contracting parties are obliged to: "promote joint consultation between workers and employers; (…) where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements; (…) the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise (…) the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into" (ESC 1961: 4). According to ESC: "All workers and employers have the right to bargain collectively" (ESC 1961: 1).

[283] ILO convention 98 Article 4 requires measures "to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements" (ILO 1949). The High Level Mission stressed "that associations of persons are not trade unions, nor are they regulated by any of the guarantees necessary for their independence" (Kokkinou and Koukiadaki 2016: 153), and expressed deep concern that concluding 'collective agreements' in such conditions would negatively affect "collective bargaining and the capacity of the trade union movement to respond to the concerns of its members (…), existing employers' organisations, and (…) any firm basis on which social dialogue may take place in the country in the future" (Ibid.).

living and working conditions, combating exclusion), TEU Article 3, based on which the EU shall contribute to the "eradication of poverty and the protection of human rights" (TEU 2012: 17), Article 4(1) ESC[284] (Koukiadaki 2014: 27), which recognises "the right of workers to a remuneration such as will give them and their families a decent standard of living" (ESC 1961: 3), ILO Convention 111 (discrimination in employment) and 138 (minimum age for admission to employment) (Koukiadaki 2014: 28), ICESCR Article 2 (discrimination against the disadvantaged) and 7 (fair wages, equal remuneration for equal work), [285] and ECHR Protocol Article 1 (the right to property).[286] They arguably go against the principles of necessity and proportionality (Koukiadaki 2014: 27).[287] Furthermore, there has been no proof the measures have been appropriate for decreasing youth unemployment (Pervou 2016: 131, 135).

By the end of Q3 2011, Greece was obliged to present measures to reduce public employment on top of the rule of 1 recruitment for every 5 retirements in the public sector (MoU1 R2 2010:

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[284] According to the ECSR, measures concerning the employment of new entrants to the labour market under the age of 25 violate Art. 4(1) of the 1961 ESC (Koukiadaki 2014: 27). (As well as the Revised ESC of 1996, Art. 4(1) (RESC 1996).) The ESC Committee also maintains that the minimum standard of wages should in no case be lower than 60% "of the national average wage, or a wage agreed upon by collective bargaining" (Housos 2015: 438).

[285] ICESCR Article 7 assures the right of everyone to "fair wages and equal remuneration for work of equal value without distinction" (ICESCR 1966: 2). Similarly, ICESCR Article 2 obliges State Parties, as minimum core obligation, to abstain from any measures discriminating against disadvantaged groups (Housos 2015: 438): "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (ICESCR 1966: 2).

[286] The wage reductions for young workers can be seen as contravening ECHR Protocol Article 1 – the right to property as providing personal autonomy and guaranteeing basic subsistence (Pervou 2016: 131, 135): "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law" (ECHR 2020: 6).

[287] They apply to workers aged under 25, irrespective of their level of education or family circumstances (Koukiadaki 2014: 27).

108),[288] yet according to TFEU Article 9, EU policies "'shall take into account requirements linked to the promotion of a high level of employment" (TFEU 2012: 53). Similarly, TFEU Article 151 requires "promotion of employment, (…), the development of human resources with a view to lasting high employment" (TFEU 2012: 114), while according to ESC Art 1(1), the Contracting Parties undertake, "as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment" (ESC 1961: 2). Strikingly, during the negotiation and implementation of MoU1, in several discussions with the Greek government, employment was never raised as a principal objective of the policies implemented in response to the economic crisis (Crespi et al. 2014: 20).[289]

In February 2012, to secure its second bailout (Crespi et al. 2014: 11) and to reach the fiscal targets and deficit reduction (MoU1 R4 2011: 80),[290] the Greek state committed to cut 150, 000 state jobs by 2015 and to freeze public sector hiring (Crespi et al. 2014: 11), which goes directly

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[288] In 2010, the Government legislated reductions in temporary public employment (MoU1 2010: 16). MoU1 announced further reduction in public sector's short-term contracts in 2011 (MoU1 R2 2010: 13). While the steady trend of increasing level of employment from year 1983 was reversed in 2008 (Dedoussopoulos et al. 2013: 16), this was accelerated even further with the implementation of MoU1 (Dedoussopoulos et al. 2013: 32).

[289] In September 2011, "Greek Government officials interviewed by the ILO mission indicated that '(…) employment objectives constituted at best an indirect outcome of the policies under implementation and were not taken into account when discussing the general framing of macroeconomic policies with the Troika'" (Crespi et al. 2014: 20). Employment was not considered a necessary target of the recovery (Ibid.). "The rapid and massive cuts in public employment" (Crespi et al. 2014: 19) were not implemented based on adequate assessment, but rather under pressure for speedy compliance with the Memoranda's demands and introduced exclusively for budgetary reasons. (Ibid.). They did not consider negative consequences on the labour market (Ibid.). The ILO mission noted that "'international economic and financial policies seem to be largely unaware' of the various authorities' (…) commitment to promote full, productive and freely chosen employment" (Crespi et al. 2014: 21).

[290] And in disregard of the agreement reached "between and with private sector employers' and employees' representatives" (MoU2 2012: 3).

against the just mentioned ESC Article 1, and TFEU Articles 9 and 151.[291] As part of the Mid-term Fiscal Strategy Framework (MTFS) 2012-2015 (Koukiadaki 2014: 29), a central conditionality under the first Troika programme (Monokroussos 2011: 1), Greece legally adopted the labour reserve measure (Koukiadaki 2014: 29).[292] Arguably, the latter contravenes Council Directive 2000/78/EC, which prohibits discriminatory treatment of older employees, as well as Council Directive 98/59/EC,[293] to the extent it applies to employees of organisations that are abolished, have merge or ceased to operate (Ibid.). Furthermore, according to CFR Article 30, "every worker has the right to protection against unjustified dismissal" (CFR 2012: 401). Arguably, the labour reserve measure is also in opposition to the goals of achieving a high level of employment in TFEU Article 9 and in ESC Art. 1(1), and encroaches on the right to property (Article 1 P1 ECHR) (Pervou 2016: 136-137).

After the implemented austerity-focused reforms from the first programme,[294] the Troika admitted that by the time of MoU2, economic activity in Greece was continuing to deteriorate,

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[291] Cuts were introduced to doctors as well as nursing staff, despite the fact that the massive shortage of nurses was already having negative consequences on the country (Crespi et al. 2014: 23).

[292] Law 3986/2011 (Koukiadaki 2014: 29). While it first only applied to employees in state-owned enterprises, later Law 4024/2011 expanded its scope to public sector employees (Ibid.). "Successive MoU stipulated (…): 'Before end-2011, about 15 000 staff currently employed by various government entities are transferred to the labour reserve, while about 15 000 will be placed in pre-retirement" (Ibid.). They would both be paid 60% "of their basic wage (excluding overtime and other extra payments) for not more than 12 months, after which they will be dismissed. This period (…) may be extended up to 24 months for staff close to retirement. Payments to staff while in the labour reserve are considered part of their severance payments" (Ibid.). Staff in the labour reserve that was transferred to other government entities, and "staff transferred to the Government from (…) stateowned enterprises or other entities under restructuring are considered as new recruitments" (Ibid.).

[293] Council Directive 98/59/EC of 20 July 1998 on the Approximation of the laws of the Member States Relating to Collective Redundancies (Council 1998: 16)

[294] Notably, in 2012, in its First Review of the second programme to Greece, the EC implicitly admitted that austerity measures were unconstitutional, "stating that 'important budgetary measures are likely

unemployment was increasing sharply, especially among the low-skilled and youth,[295] and major external imbalances persisted (MoU2 2012: 37-38). For the Troika, however, this was "a clear indication that further labour market reforms are necessary—to allow wages and hours to adjust faster" (MoU2 2012: 38).[296] The authorities and the mission staff agreed on a package of short-term actions, which should contribute to labour costs' reduction in the business sector by 15% over the course of the programme (Ibid.), and to sustain this reduction (MoU2 R4 2014: 228).

MoU2 did contain a provision about the requirement of consultation with social partners,[297] but the Troika disregarded their agreement (Ibid.), arguably in contravention to Article 152 TFEU (Koukiadaki 2014: 19).[298] In the second programme of economic adjustment, the reforms

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to be challenged in courts, which could lead to the need to fill a fiscal gap emerging as a consequence'" (Katrougalos 2013).

[295] For which the Troika blamed the rigidities in wage-setting (MoU2 2012: 38).

[296] This despite the February 2012 agreement of the social partners sent in a letter to both Greek political and EU institutional actors about preserving the 13th and 14th "salary and the minimum wage levels, as stipulated by the national general collective labour agreement, and the maintenance of the after-effect of collective agreements" (Koukiadaki 2014: 11). This agreement was not accepted by the Troika, which led to further amendments to labour law stipulated in the 2012 MoU and legislated subsequently (Ibid.).

[297] Months after having already rejected the agreement of the social partners, i.e., in December 2012, the Troika stated in MoU2 that reforms in labour legislation were to be "implemented in consultation of social partners as a rule, and in respect of EU Directives and Core Labour Standards" (MoU2 R1 2012: 222).

[298] The EC claimed that the agreement reached between the representatives of social partners in late 2011 and early 2012 "was not commensurate with the needs of the Greek economy" (MoU2 2012: 38). Furthermore, the first two financial assistance agreements and their accompanying MoU did not allow scope for the involvement of parliaments at EU and national levels (Koukiadaki 2014: 34). Until 2013, the EP was completely marginalised "from the preparatory phase of negotiation, to the development of the mandates and the formulation of specific measures" (TCGPD I 2015). Moreover, during the negotiation and signing of lending agreements, there was a complete absence of transparency, thus breaching the procedure foreseen by the Greek Constitution (Ibid.). The scientific Commission of the

again focused on deregulating and liberalising the labour market (Schmidt 2015: 16). The Troika praised the following reforms legislated in 2012, arguing they would "give a big push to the re-negotiation of collective agreements (…): Collective agreements can only be concluded for a maximum duration of 3 years" (MoU2 2012: 40), their after-effect reduced from 6 to 3 months (Schulten 2015: 2), while "until a new collective agreement or new individual contracts are agreed – total remuneration is curtailed, as a number of allowances paid by firms are no longer applicable" [299] (MoU2 2012: 40). Furthermore, recourse to arbitration to settle negotiation disputes is allowed only if both, employee and employer representatives agree[300] (Ibid.).

As a measure prior to the disbursement, clauses in the law and in collective agreements providing for automatic wage increases dependent on time were suspended,[301] and the minimum wages established by the national general collective agreement reduced by 22% compared to January 2012 for youth below 25, and by 32% for others (MoU2 2012: 147). The minimum wage was to stay frozen at those levels until the end of the programme, with "no

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Hellenic Parliament stated that "all phases of the adjustment programme-drafting were (…) lacking in transparency and democratic oversight" (Ibid.).

[299] Based on Act 6 of 28 February 2012 of the Ministerial Council, the expired collective agreements will remain in force for a maximum three months (Kokkinou and Koukiadaki 2016: 55). "If a new agreement is not reached, after this period remuneration will revert back to the basic wage, as stipulated in the expired collective agreement, plus specific allowances until replaced by those in a new collective agreement or in new or amended individual contracts" (Ibid.). Furthermore, the Government issued a ministerial decision allowing individual labour agreements "in the maritime sector when the collective agreement has expired" (MoU2 R3 2013: 121).

[300] Special trade union rights concerning arbitration procedures were abolished in 2012 (Schulten 2015: 2). That year, arbitration became restricted exclusively to determination of the basic wage/salary (Kokkinou and Koukiadaki 2016: 154). However, in 2014 (Decision 2307/2014), the Council of State declared the prerequisite for an agreement between the two sides unconstitutional (Kokkinou and Koukiadaki 2016: 158).

[301] By prohibiting salary increases by collective agreements in the Greek public sector (Koukiadaki 2014: 29), Law No. 4024 of 2011 began a radical legal restructuring (Schulten 2015: 2).

other allowances" (MoU2 2012: 120).[302] By end-March 2013, the Government had to ensure that collective agreements on remuneration would be binding only to signatories of the agreements (MoU2 R1 2012: 147).[303] By July 2013, it was to adopt "a law defining the decision-making mechanism for the statutory minimum wage" (MoU2 R3 2013: 170) for collective as

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[302] The statutory minimum wage and maturity allowances were to be "set equal to the levels agreed at program approval in March 2012" (MoU2 R1 2012: 147). In a new provision that abolished the previous one from the 2010 MoU (Koukiadaki 2014: 27), "Act 4046/2012 in conjunction with Board of Ministers' Act 6/2012 stipulated that from February 2, 2012 onward, the minimum monthly and daily wage set by the EGSSE in force would be decreased by 22%" (Koukiadaki 2014: 29) for all workers older than 25 (Koukiadaki 2014: 27) and by 32% for those under 25 (Koukiadaki 2014: 29). The EC praised this reduction of the wage floors in the National General Collective Agreement, arguing "the reduction in the minimum wage creates additional room for downward wage adjustment to be decided by employers and employees in each firm or sector" (EC 2012: 38). However, the reduction of the minimum wage by 22%, as introduced by Law 4046/2012, would only affect the total manufacturing cost by 3.5-5%, while market prices would most likely not be affected (Dedoussopoulos et al. 2013: 25). "Law 4093/2012 (…) provides that a process for fixing statutory minimum wages and salaries for workers employed under private law would be introduced by an Act of the Cabinet by 1 April 2013" (Kokkinou and Koukiadaki 2016: 156), and establishes "minimum salaries and wages, substantially at the same level as Article 1 of Act of Cabinet 6/28.2.2012" (Ibid.). With the reform of the minimum wage framework, the base wage and the maturity allowances connected to the National General Collective Labour Agreement start by being set in a statutory way without surpassing their level over the course of the programme, with no other statutory minimum allowances expected by 2013 (MoU2 R1 2012: 222). Law 4093/2012 wiped out "any traces of labour law in Greece" (Dedoussopoulos et al. 2013: 66).

[303] With Law No.4024, companies were given the possibility to deviate "downwards from industry-wide collective agreements within the framework of company agreements" (Schulten 2015: 2), albeit not lower than the national minimum wage (Ibid.). This law also brought a change to the extension of collective agreements, meaning the general national collective agreement became reduced exclusively to companies with membership in the employers' organisation (Ibid.). Collective agreements can still set higher wages, and allowances of different types (MoU2 R1 2012: 147), however, these would only bind the signatories of the agreements (Ibid). The government also committed to "take additional corrective measures to facilitate collective bargaining and ensure wage flexibility" (MoU2 2012: 3).

well as individual contracts (MoU2 R1 2012: 45)[304] that was to rule after the conclusion of the Second Programme, once the freezes in place end (MoU2 R3 2013: 170).

The latter was a major setback in terms of the right to collective bargaining – CFR Article 28, ESC Article 6, and ILO convention 98 Article 4 (encouraging and promoting voluntary negotiation between employers and workers through collective agreements). Moreover, the measure is retrogressive and arguably undermines TFEU Article 153(5) (the EU not in the position to harmonise on wages and collective bargaining). Arguably, the other just mentioned measures demanded in the field of collective agreements, arbitration and minimum wage are retrogressive too. They can be seen as encroaching on TFEU's Article 153(5) and Article 151 (improved working conditions). Additionally, the new minimum wage decrease can be seen as contravening TFEU's Article 9 (duty to fight against social exclusion), TEU Article 3 (combating social exclusion and discrimination, contributing to the eradication of poverty), ICESCR's Articles 2 (discrimination against disadvantaged) and 7 (equal remuneration for work of equal value, right to a living wage), ILO's Convention 111 (discrimination in employment), and Article 4(1) of ESC 1961 and 1966 (the right to a fair remuneration allowing for a decent standard of living). [305] Moreover, it is arguably neither necessary nor proportional, as factors such as the people's family situation or education level are not considered.

Additional fiscal measures for 2012 and MTFS 2013-16 included "rationalisations in wage bill" (MoU2 R1 2012: 250) in 2013 and 2014 (Ibid.).[306] As a prior action, the public sector wage bill

[304] As a prior action, Greece had to "put in place a minimum wage mechanism adopted by parliament following a proposal by the government ((…) made after consultation with social partners and other stakeholders and independent experts)" (MoU2 R1 2012: 147).

[305] Moreover, it can be seen as encroaching on the right to property (Article 1 P1 ECHR) in the sense of providing personal autonomy and basic subsistence (Pervou 2016: 135, 131). The ECtHR "has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society" (ECtHR 1998: 19). Arguably, the realisation of democracy is only attainable through the effective protection of property (Pervou 2016: 114), while property functions as "a prerequisite for the enjoyment of other human rights" (Pervou 2016: 131).

[306] Through, among other things, "elimination of seasonal bonuses of employees at the state and local governments, and at legal entities of public and private law, (…) suspension throughout 2016 of fiscal

needed to be reduced by 2014 (e.g., through adjusted wage grids for special wage regimes, eliminated seasonal bonuses, suspended payment of performance bonuses, and reduced workforce)[307] – this was said to be essential to the credibility of the adjustment package (MoU2 R1 2012: 157). The imposed "reductions of salaries not only of civil servants or of staff employed in public sector under private law but also of private employees" (Katrougalos 2013) were arguably retrogressive, have encroached on the collective agreements in force,[308] and violated ESC Article 6 (Ibid.) and CFR Article 28. [309] Additionally, these drastic cuts were introduced without no adequate and reasonable assessments (Housos 2015: 443). [310]

As a prior condition for disbursement, the Government adopted "legislation that adjusts the statutory minimum wage for long-term unemployed" (MoU2 R4 2014: 77),[311] effectively reducing it (MoU2 R4 2014: 6).[312] This measure can be seen as both retrogressive and

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and performance bonuses for public sector employees" (MoU2 R1 2012: 250). From 1 January 2013, Greece was to cut new lump-sum benefits covering the period from 2010 on, by 23% on average for different categories of the eligible public employees (MoU2 R1 2012: 181). In January 2013, flat-rate vacation allowances were eliminated (Leventi and Matsaganis 2016: 21).

[307] In December 2012, the Troika stated the target of downsizing the public sector by 150 000 employees by 2015 would be achived by applying "the attrition rule (1 new hire against 5-10 retirees, depending on the different levels of government) and the (…) more extensive use of the mobility and exit scheme" (MoU2 R1 2012: 24).

[308] Thus violating collective autonomy (Article 22, paragraph 2 of the Greek Constitution) (Katrougalos 2013).

[309] It could also be claimed they violated ILO Convention 151 Article 8, according to which "the settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, (…) established in such a manner as to ensure the confidence of the parties involved" (ILO 1978).

[310] Several rulings of the Council of State "declared that wage cuts imposed in 2012 on uniformed officials and certain other professions were unconstitutional and entitled the concerned professions to claim a wage refund for the years preceding the 2017 reform of these professions" (MoU3 R4 2018: 7).

[311] I.e., unemployed for more than 1 year (MoU2 R4 2014: 77).

[312] This measure entered into effect in April 2014 (MoU2 R4 2014: 6).

discriminatory,[313] as well as contravening the workers' right to property as a guarantee of welfare (Pervou 2016: 120), to a living wage (Article 4(1) of ESC 1961 and 1966), TFEU's Articles 151 (improved living and working conditions) and 9 (fight against social exclusion), and TEU's Article 3 (combating social exclusion and discrimination, eradication of poverty). It is arguably neither necessary nor proportional.

Also as a prior action for a review, the Greek government passed legislation to cut other non-wage labour costs (MoU2 R1 2012: 148): reducing the maximum dismissal notification period to 4 months; capping the statutory severance payment at 12 months (MoU2 R1 2012: 223);[314] eliminating the obligations of ex-ante work schedules' submissions to Labour Inspectorate (MoU2 R1 2012: 224) and the requirement of the latter's approval of: "overtime work, itinerary books of trucks and buses, the work book of daily employment of construction workers, and split of annual leave" (Ibid.);[315] making it possible to, within the overall 40-hour weekly working time limit (MoU2 R1 2012: 148), on a contractual basis, apply the general rules on the number of maximum workdays to sectors not at the time covered by the general rules, establish the minimum daily rest at 11 hours, and permit the consecutive minimum two-week leave requirement in seasonal sectors to be taken at any point during the year (MoU2 R1 2012:

[313] ICESCR's Article 7 and Article 2, ILO's Convention 111

[314] Thus, the dismissal costs were lowered, "with grandfathering for existing workers, subject to a cap" (MoU2 R1 2012: 148). "If the cap has already been surpassed on the date of the reform, the amount accrued will be grandfathered in case of future dismissal any time thereafter, subject to a cap of EURO 2000 per month for the number of months exceeding 12. Occupations for which statutory severance costs are in excess of the rule just described, the compensation for severance will be aligned with the latter" (MoU2 R1 2012: 223).

[315] Administration was reduced (MoU2 R1 2012: 148). While before, employers were obliged to justify recourse to overtime (Kokkinou and Koukiadaki 2016: 150), with the adoption of Law 4093/2012 in November 2014, the prior notification of overtime work became optional (Dedoussopoulos et al. 2013: 44), but this type of overtime work may not exceed 2 hours daily and 120 hours annually (Kokkinou and Koukiadaki 2016: 150). The Government committed to streamline the reporting by employers and employees by September 2013, to lower compliance costs (MoU2 R2 2013: 134). The Ministry of Labour was to "issue a ministerial decree to reduce administrative burdens" (MoU2 R1 2012: 177).

223).[316] Moreover, the Government committed to, by end-July 2015, better linking punishments to the severity of labour law violations, and focusing "detection on more severe cases" (MoU2 R2 2013: 84). Arguably, these measures can be seen as retrogressive and contravening TFEU's Article 151 (improved working conditions).

By 2013, labour law was the area with the most destructive effects of the Memoranda, practically doing away with all collective agreements in the foreseeable future (Katrougalos 2013). The imposed structural reforms seriously undermined the position of trade unions and social policy institutions, leading to an almost total commodification of labour (Salomon 2015: 5). Bargaining structures and processes suffered serious damage,[317] while labour relations were simply substituted with managerial control (Dedoussopoulos et al. 2013: 3).[318] Between

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[316] This effectively abolished the five-day week (Dedossopoulos et al. 2013: 44).

[317] The ILO Committee on Freedom of Association found Greek austerity measures directed at labour "'important and significant interventions in the voluntary nature of collective bargaining and in the principle of inviolability of freely concluded collective agreements" (ILO 2018), eroding workers' most fundamental labour rights, seriously undermining the position of trade unions, endangering social cohesion and peace (Crespi et al. 2014: 35). The ILO High Level mission to Greece expressed deep concern regarding "the legislative interventions on freedom of association and collective bargaining" (Fischer-Lescano 2014: 25). The ILO argued these interventions raise questions regarding "the need to ensure the independence of the social partners, the autonomy of the bargaining parties, the proportionality of the measure imposed in relation to their objective, the protection of the most vulnerable groups and (…) the possibility of review of the measures after a specific period of time" (Ibid.).

[318] In 2012, trade unions complained that following the laws enacting structural changes in the labour market to increase its flexibility, "'employers and their organisations (…) intensified pressure during collective negotiations with a view to arrive at wages below the hitherto binding minimum standards of wages set by the national general collective agreements, which were already low'" (Crespi et al. 2014: 35). Nevertheless, the Troika argued that "the perceptible downward pressure on wages reflects a long-overdue reaction to high unemployment, which in turn resulted from rigid wages" (MoU2 R1 2012: 4). Arguably, the explanatory linkages between the interventions on wage policies and collective bargaining and the EU project have not been presented and justified in the Council and EC documents in an adequate way (Koukiadaki 2014: 19), neither were they "accompanied by any procedural guarantees for the effective establishment and operation of bargaining" (Koukiadaki 2014: 30).

2008 and 2013, the indicator of the level of strictness of employment protection in Greece was reduced by 15%, 5 times the average reduction in OECD countries (Crespi et al. 2014: 35).[319]

In MoU2, one of the focal points of labour market reforms promoted by the Troika was "facilitating temporary work" (MoU2 R4 2014: 47). To sustain a nominal unit labour cost reduction in the economy by 15% (MoU2 R4 2014: 228) within 3 years (MoU2 2012: 3), as demanded by the Troika, the government announced in 2014 it would substantially broaden "the types of work, positions and contracts for which hiring through temporary work agencies is possible; reducing restrictions on hiring via temporary work agencies following redundancies for economic reasons" (MoU2 R4 2014: 229).[320] Notably, the important reforms of Greek labour market institutions and systems of wage bargaining taking place in 2010-2014 had already considerably increased labour flexibility (MoU3 2015: 21).[321] Based on reports, the substitution of fixed-term job contracts paid at full rate by part-time, rotation and other flexible forms of employment paid at lower rate, substantially reduced wages (ILO 2011: 60). Between 2010 and 2015, the reduction in average real earnings per employee in Greece was

[319] Notably, this indicator in the 2013 Greece (2.41) was already much lower than in several EU countries supporting austerity measures for Greece, e.g., "France (2.82), the Netherlands (2.94) and Germany (2.98)" (Crespi et al. 2014: 35), whereby it should be noted that a minimum of security is essential for social coherence (Dedoussopoulos et al. 2013: 29-30).

[320] The Government eliminated "the restrictions that temporary work agencies can provide their services only for 'transitory, extraordinary, or seasonal' positions; reduced restrictions on hiring via temporary work agencies following redundancies for economic reasons (from 6 to 3 months for individual redundancies, and from 12 to 6 months for collective dismissals) (…) removed the restriction for the use of temporary work agencies in large public work contracts; reduced the list of hazardous positions where provision of employees" (MoU2 R4 2014: 164) by temporary work agencies is not allowed (Ibid.). "Law 4093/2012 partly amended the rules regulating temporary agency" (Kokkinou and Koukiadaki 2016: 150).

[321] The proportion of part-time employees involuntarily working on a part-time basis grew "from 26% in 2008 to 44% in 2012" (Crespi et al. 2014: 34), compared to the OECD 2012 average of 17.8% (Ibid.). The sharp increase in the transformation of full-time contracts of employment into rotation contracts was unilateral, i.e., by the employer (ILO 2011: 60).

20.1% (Sakellaropoluos 2019: 108).[322] By 2015, a growing number of employees in Greece were living below 60% of the median disposable income as a consequence of the wage cuts and the taxation policies (Housos 2015: 434). Furthermore, in part due to "the flexibility of the time arrangements consolidated in Law 3986/2011" (Dedoussopoulos et al. 2013: 60), in 2008-2013, unpaid overtime hours increased (Ibid.).[323] The measure promoting hiring through temporary agencies can be seen as retrogressive and contravening TFEU's Article 151 (improved working conditions), as well as ESC Art 1(1) (as high and stable a level of employment as possible).

Notably, the labour market cuts fuelled a sharp rise in unemployment (Crespi et al. 2014: 19). Between 2007 and 2013, the number of job seekers increased over threefold (Crespi et al. 2014: 34). For the first time in the post-war Greece, the number of economically inactive people surpassed the economically active population (Ibid.). [324] After the 2012 MoU, unemployment increased far beyond the simple rule-of-thumb predictions, resulting in an average rate of 24.3% for the year, whereby long-term unemployment rose rapidly, reaching 65.3% in Q4 2012 (MoU2 R2 2013: 10).[325] Unemployment touched unprecedented level of 28% in September 2013 (Crespi et al. 2014: 19)[326] and was still at 26% in December 2014, Eurozone's highest (Eurostat March 2015: 1). The same year, the Troika made further calls to eliminate the right of the public authorities to prohibit collective dismissals (Kokkinou and

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[322] Meanwhile, the EU average was a 2% increase (Sakellaropoluos 2019: 108). Between 2009 and 2013, the average wage in Greece also dropped by over 20% (Eur 22,230 compared to Eur 17,310) (Clark 2020). By 2013, private sector wages dropped at least 15% (TCGPD II 2015).

[323] It was already clear in 2013 "that some manufacturing sectors are reducing personnel while increasing overtime work" (Dedoussopoulos et al. 2013: 60). In 7 out of 23 industrial sectors, 100% of the overtimes hours were unpaid (Ibid.).

[324] The absolute numbers of both part-time and fixed-term jobs declined between 2008 and 2012 (Dedoussopoulos et al. 2013: 32).

[325] "A fundamental break in the Greek historical relationship between changes in unemployment and output" (MoU2 R2 2013: 11).

[326] Even in an optimistic scenario that the economy would regain its pre-crisis rate of job creation of 60 000 jobs per year, it would have taken 14.5 years to reach again the employment level of 2009 (Dedoussopoulos et al. 2013: 31).

Koukiadaki 2016: 148).[327] Between 2009 and 2015, the percentage of employees in the core public sector fell by 25.9% (MoU3 R1 2016: 12). In 2014, the Troika argued that the comprehensive range of labour market reforms implemented over recent years was "delivering clear results" (MoU2 R4 2014: 47) – labour costs "falling steeply on the back of augmented wage flexibility" (Ibid.).[328]

As a precondition for financial assistance from the ESM, the Euro Summit demanded the government "consult and agree with the Institutions on all draft legislation in relevant areas" (ES 2015: 5).[329] As a minimum requirement to start the negotiations, the Summit stipulated

[327] Consequently, the Government removed the previously held discretion of the Minister of Labour or the Prefect in cases when the parties to a collective dismissal did not agree on the dismissal plans (MoU2 R4 2014: 48), thus simplifying the decisions on collective dismissals (Ibid.). However, taking into consideration the 2016 ECJ Judgment in Case C-201/15, where the ECJ accepted that Greek legislation can restrict a company's power to impose collective dismissals, albeit only under strictly defined conditions (Economist 2016), "the Greek authorities agreed to replace the existing framework of administrative approval of collective dismissals by the public authorities with a notification procedure of maximum three-months (…) which does not involve ex-ante approval. (…) It was also agreed that a change in the thresholds that define dismissals as collective would not be required" (MoU3 R2 2017: 17).

[328] In 2013, hiring became more dynamic, despite contracting economic activity (MoU2 R4 2014: 47). After 2010, there was a steep decline in wage levels, resulting in a notable lowering of the unit labour cost index, which in 2016 was visibly below the EU28 average (Ioannou et al. 2019: 5). Unit labour costs declined in the economy as a whole, as well as in manufacturing (Ibid.). In 2016, the latter became the second lowest among the EE28 states (Ibid.). In 2014, the EP noted that the approach strongly focused on liberalisation as a solution to structural employment problems "underestimates 'the importance of maintaining domestic demand, investment and credit support to the real economy'" (Crespi et al. 2014: 21). Nevertheless, that same year, the Government announced it would continue to build upon the type of reforms already introduced to sustain the demanded reduction in nominal unit labour costs by 15% (MoU2 R4 2014: 228). In 2015, Varoufakis described the 2015 Greek economy as "a broken labour market in the midst of a debt-deflationary cycle" (MoU3 YV 2015: 37).

[329] This clearly indicates the notably subordinate position of Greece vis-à-vis the institutions in the negotiations. In MoU3, Greece even committed to "monitor fiscal risks, including court rulings, and (…) take offsetting measures as needed to meet the fiscal targets" (MoU3 2015: 7). According to

that Greece undertake[330] further modernisation of collective bargaining, industrial action and collective redundancies "along the timetable and the approach agreed with the Institutions" (ES 2015: 3).[331] The negotiations with social partners were not yet concluded when the authorities, based on the recommendations of independent experts, passed legislation that streamlined and consolidated the existing norms on trade union leave rights (MoU3 R2 2017: 18). The minimum number of votes required for the first-level trade unions to declare a strike was increased from one third to a half of trade union members [332] (MoU3 R3 2018: 19). It was also decided the collective bargaining framework in place at the time, including the suspension of the 'favourability principle' and of the Minister of Labour's discretion to extend sectoral collective agreements to the entire sector, would remain in effect until the programme's conclusion (MoU3 R2 2017: 17). [333]

These measures can be seen as retrogressive and encroaching on the national system of collective bargaining. Furthermore, in response to the Euro Summit 12 July 2015 statement, which "demanded a return to the austerity legislation of 4046/2012[334] by 15 September 2015" (Kennedy 2018: 22), the government committed, as a prior action, to reverse the legislation

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Varoufakis, Greek sovereignty was being "forfeited wholesale" (MoU3 YV 2015: 1): its Parliament's sovereignty rescinded while Greece remains insolvent (MoU3 YV 2015: 4).

[330] By 22 July 2015 (ES 2015: 3).

[331] Whereby the labour market policies were not allowed to "return to past policy settings which are not compatible with the goals of promoting sustainable and inclusive growth" (ES 2015: 5). Moreover, it was required that the Greek government "formally commit to strengthening their proposals in a number of areas identified by the Institutions, with a satisfactory clear timetable for legislation and implementation" (ES 2015: 3).

[332] Those "current on their trade union membership fees" (MoU3 R3 2018: 19).

[333] The existing laws were also going to be codified into a Labour Law Code (MoU3 R2 2017: 18).

[334] "Law 4046/2012, implemented by the quasi-technocratic caretaker government" (Kennedy 2018: 26), froze collective agreements (Ibid.).

of the after-effect of agreements adopted in Article 72 of 4331/2015 of 2 July 2015 (MoU3 2015: 21).[335]

In MoU3, the government committed "to consult and agree" (MoU3 2015: 1) with the Troika on all actions relevant for the achievement of the MoU objectives (Ibid.).[336] By October 2015, as a key deliverable, the authorities were to set[337] "ceilings for the wage bill and the level of public employment consistent with (…) the fiscal targets and ensuring a declining path of the wage bill relative to GDP during (…) 2016-2019" (MoU3 2015: 30)[338] – prioritising the arguably unsustainable fiscal targets[339] pushed for by the Troika, over employment and wages. In 2016,

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[335] On 2 July 2015, the Syriza government legislated Law 4331/2015, "which repealed the amendments of 4046/2012, effectively restoring the provisions of 1876/1990" (Kennedy 2018: 22) and extending "the validity of expired collective agreements or arbitration awards by six months" (ECSR 2017: 34).

[336] MoU3 announces that its "success will require the sustained implementation of agreed policies over many years" (MoU3 2015: 5). "Greece shall discuss each year with the Institutions the preparation of the draft budget during the month of September, including the macroeconomic assumptions on which it is based as well as the main fiscal measures envisaged" (MoU3 SUP 2016:12).

[337] Within the new MTFS (MoU3 YV 2015: 51).

[338] As a key deliverable, the authorities committed to, by October 2015, "reform the unified wage grid, (…) setting the key parameters in a fiscally neutral manner and consistent with the agreed wage bill targets and with comprehensive application across the public sector, including decompressing the wage distribution across the wage spectrum" (MoU3 2015: 30), "in connection with the skill, performance, responsibility and position" (Ibid.). This can be seen as cutting the state's lowest wages further (Ibid.), "the only logical conclusion of the combination of wage 'decompression' and fiscal neutrality" (MoU3 YV 2015: 51). "The reform of the unified wage grid (…) was approved in 2015 and implemented" (MoU3 R2 2017: 22). "The wage grid reform simplifies and rationalises the pay system for more than 400,000 civil servants, with a 20% decompression in the wage scale, a streamlining of allowances" (MoU3 R1 2016: 12).

[339] The Greek authorities committed to reach a primary surplus of 3.5 % of GDP over the medium-term (Angerer et al. 2018: 7), purely to service foreign debt (Varoufakis 2016). This was a concession made in May 2015 by the former Prime Minister Tsipras, but deemed "economically (…) disastrous" (Parker 2015) by Varoufakis, who maintained that no economy in Greece's situation can sustainably produce such surplus (Ibid.). Notably, while the creditors (Varoufakis 2016) had been pushing for an eventual primary-surplus target of 4.5% of GDP" (Parker 2015), the Greek authorities committed to follow the

the same was announced for MTFS 2017-20 (MoU3 SUP 2016: 37),[340] and as a prior action to meet the fiscal targets, the Government was to "freeze promotion and wage drift for 2017-2018 wage for the special wage grids" (MoU3 SUP 2016: 4), as was already the case for the unified wage grid, while keeping the attrition rule, albeit gradually eased[341] (Ibid.).

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fiscal path targeting primary surplus of "0.5, 1.75 and 3.5 percent of GDP in 2016, 2017 and 2018 respectively" (Angerer et al. 2018: 8). "Under the ESM programme, primary surplus target is defined as the primary balance, excluding one-off costs of bank recapitalisations, the revenues under the Securities Markets Programme and the Agreement on Net Financial Assets, as well as part of the privatisation proceeds" (Angerer et al. 2018: 4). Varoufakis consistently argued the Greek debt was unsustainable, whereby the commitment to a 3.5% primary surplus was going to have a negative impact on potential investment, signalling higher taxation (Parker 2015). Noting that growth rates are not exogenous and independent of the medium-term primary surplus targets, Varoufakis stressed the targets were crushing the remnants of the Greek economy (MOU3 YV 2015: 6). Notably, in the 2010 financial assistance programme, the primary surplus target was 6% of GDP, and 4.5% in the 2012 programme, resulting in the vicious cycle of fiscal adjustment/GDP contraction, and leading to higher uncertainty regarding Greek membership in the Eurozone, thus further undermining economic and social developments in the country (Darvas and Hüttl 2016). Greece's income strongly exceeded its expenditure on everything except its repayments (Parker 2015). By 2015, these bailout arrangements predominantly shaped by Germany, turning unmanageable private debt into an unpayable institutional debt" (Ibid.), were criticised widely, uniting Paul Krugman and IMF analysts (Ibid.). It was not possible for Greece to service its debt without seriously jeopardising its ability to fulfill its basic human rights duties (TCGPD III 2015). "The June 2017 Eurogroup welcomed Greece's commitment to maintain a primary surplus of 3.5% of GDP until 2022 and a fiscal path consistent with the European fiscal framework thereafter" (Angerer et al. 2018: 14). After 2022, the primary fiscal surplus was to start decreasing 0.5% annually, flattening out at 2.2% of GDP in 2025 (MoU3 R4 2018: 41).

[340] The MTFS 2017-20 was going to "establish ceilings for the wage bill and the level of public employment consistent with achieving the fiscal targets and ensuring a declining path of the wage bill relative to GDP during the period" (MoU3 SUP 2016: 37). The authorities adopted the 2018 MTFS "as a prior action for the fourth review of the ESM programme" (MoU3 R4 2018: 8).

[341] From "1:5 in 2016 to 1:4 in 2017 and 1:3 in 2018" (MoU3 SUP 2016: 4). The European institutions further projected "an attrition rule of 1:1 in 2019 and beyond and contained growth in the average public wage, limiting the overall growth of the public sector wage bill" (MoU3 R4 2018: 7).

Additionally, as a key deliverable,[342] the authorities were to finalise the first phase of the specialised wage grids' rationalisation (MoU3 R1 2016: 25), including reducing their number, and reforming them in line with the methodology applied to the unified wage grid, with effect in 2017 (MoU3 SUP 2016: 37).[343] Arguably, these measures are retrogressive, negatively affect the right to collective bargaining in ILO convention 98 Article 4, the goal of as high as possible level of employment (TFEU Article 151, Art. 1(1) ESC 1961), and encroach on TFEU Article 153(5) (EU's powers of harmonising on national issues).

The austerity measures have caused a disproportionately negative impact on the most vulnerable and marginalised social groups in the labour market (Housos 2015: 428), i.e., the young, disabled, long-term unemployed, women, and immigrants (Crespi et al. 2014: 57).[344] Partly, the reason for this are specific policies such as the deconstruction of worker's collective rights and rights in work (Ibid., Crespi et al. 2014: 19). Unemployment "exacerbated pre-existing inequalities, with vulnerable categories paying the highest toll for a reduced access to work and worsening working conditions" (FIDH 2014).[345] The imposed measures have been unequal and have favoured discrimination against workers (Koukiadaki 2014: 21). Between 2009 and 2013, youth unemployment in Greece "increased by 126.8% (from 25.7% to 58.3%), (…) well above the Eurozone average increase of (…) 18.8% (from 20.2% to 24%)" (Antonakakis and Collins September 2014: 3), and in May 2013 was at 62.9% (Eurostat 2013: 3), still at "50.1 % in January 2015" (Kraatz 2015: 2) and 33.1% in Q2 2019 (Eurostat 2019: 2), all this time the

[342] For June 2016 (MoU3 R1 2016: 25).

[343] The reform reducing the number of specialised grids from 20 to 8, and simplifying and consolidating of a wide range of allowances covered almost a third of the total number of public employees (MoU3 R2 2017: 22).

[344] "Austerity (…) increased inequality" (FIDH 2014). These groups were also disproportionally affected in a negative way by the huge number of closures of small and medium-sized businesses (Housos 2015: 444), and have faced bigger obstacles to accessing employment (Crespi et al. 2014: 25).

[345] In its 2014 report, FIDH/HLHR found that the Greek government "failed to ensure the availability dimension of the right to work" (Housos 2015: 444).

highest in the Eurozone (Ibid.).[346] By 2014, unemployment was "the leading cause of youth suicides in the Eurozone periphery" (Antonakakis and Collins September 2014: 9).

Notably, ICESCR Article 2[347] prohibits "discrimination in access to and maintenance of employment" (Housos 2015: 440), expanding to "cases of indirect discrimination through the implementation of seemingly neutral policies or measures, which, however, have a de facto higher negative impact on women" (Ibid.) or other underprivileged groups.[348] While up until 2008 the unemployment gap between women and men was improving (Crespi et al. 2014: 26),[349] after that, austerity measures have had a disproportionally negative effect on female workers, who have faced a notable decline in their access to work (Housos 2015: 428), due to their prevalence in the public sector and informal jobs (Housos 2015: 435). Gender-based exclusions increased (Housos 2015: 444).[350] Successive wage reductions and tax increases have resulted in overly-flexible, low-paid jobs, in which women and the young are the predominant work force (TCGPD II 2015). Notably, CEDAW[351] Article 11 demands States

[346] It was at 49.8% in September 2014 (Eurostat 2015: 2) and at 44.2% in December 2016 (Eurostat 2016: 2). In terms of employment, unemployment, long-term unemployment, risk of poverty, and NEET youth (not in education, employment, or training), by 2015, young people in Greece were also affected more adversely than in other "programme countries, namely Ireland, Portugal, Cyprus and Spain (Kraatz 2015: 1).

[347] ICESCR Article 2 prohibits every discrimmination in the exercise of rights (ICESCR 1966 2).

[348] Based on ICESCR General Comment No.16, the existence of the intention to discriminate behind the measures effectively causing discrimination is "irrelevant in determining indirect discrimination" (Peng 2019: 324-325).

[349] Between 1983 and 2008, the share of female employment in Greece was increasing (Dedoussopoulos et al. 2013: 17).

[350] In 2013, 31.4% of women were unemployed compared to 24.5% unemployed men (Crespi et al. 2014: 26). The EP recognised gender impacts occasioned by measures taken as a response to the crisis (Ibid.).

[351] The Convention on the Elimination of All Forms of Discrimination Against Women

Parties “take all appropriate measures to eliminate discrimination against women in the field of employment” (CEDAW 1979).[352]

The right to work has been among the most adversely affected fundamental rights since the crisis started (Housos 2015: 433). Via the Memoranda,[353] the international institutions and organisations reinforced the attack of capital against labour (Toussaint 2017) and stripped back labour protections (Crespi et al. 2014: 4).[354] Between 2010 and 2017, employment rate dropped from 61.5 % to 50.8 %, unemployment jumped from 7.8 % to 25 %, average wage fell by 20%, while precarious and poorly paid employment increased (ETUI 2017). In March 2018, unemployment in Greece was still at 20.1 %, significantly above the euro average of 8.6% (MoU3 R4 2018: 4) and much higher than right before MoU1 (Moutos 2015: 17).[355] While consecutive wage cuts and tax increases have led to an exceptionally high number of redundancies, deterioration of labour standards, higher employment insecurity and pervasive

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[352] In its review of Greece, the UN Committee on the Elimination of Discrimination Against Women (UN CEDAW) pointed to “the seriousness of the situation and lack of any gender-sensitive approach to the current crisis policy within the State party” (CEDAW 2013: 11). It also recommended “**all important policymakers in Greece”** (Ibid.), including them the EU institutions (Ibid.), “and the IMF (…) fully evaluate the impact on women of the many measures taken during the economic and financial crisis” (Ibid.).

[353] The extent and nature of all reforms in the labour market “have closely followed the provisions in the original and revised MoU” (Koukiadaki 2014: 10).

[354] Even though the Greek government failed to take the necessary steps to adequately evaluate the human rights implications of austerity, as well as “the appropriate legislative, administrative, judicial, budgetary, and promotional measures towards the full realization of the right to work” (Housos 2015: 443), the Institutions were the ones setting strict conditions for loans in terms of policies, very specific targets and deadlines, and were strictly monitoring the process. For instance, employment policy reform laws were adopted rapidly to comply with the Troika’s specific demands (Ibid.).

[355] 11.9% in Q1 2010 (Moutos 2015: 17).

precariousness (TCGPD II 2015), the Memoranda's imposition of a drastic cut of personnel also worsened the structural problems in the Greek administration (Katrougalos 2013).[356]

The Right to Social Security

[356] Apart from severely undermining the right to work, the Memoranda-imposed labour market reforms have caused a severe breakdown of institutions in Greece (TCGPD II 2015). The new legislation abolished the most indispensable public agencies (Katrougalos 2013).

The right to social security is guaranteed in the Greek Constitution,[357] ESC,[358] ICESCR,[359] UDHR,[360] CEDAW,[361] and CRC[362] (TCGPD II 2015). Based on TEU Article 3, the EU shall aim at "full employment and social progress (…) combat social exclusion and discrimination, and (…) promote social justice and protection, equality between women and men, solidarity between

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[357] Article 22§5. "The State shall care for the social security of the working people, as specified by law" (CG 2001: 39).

[358] ESC Article 8(1): "The Contracting Parties undertake (…) to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks" (ESC 1961). ESC Article 12: To ensure "the effective exercise of the right to social security, the Contracting Parties undertake: (…) to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security; (...) to raise progressively the system of social security to a higher level; (…) to take steps (…) to ensure: (…) equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights" (Ibid.). ESC Article 13: To ensure "the effective exercise of the right to social and medical assistance, the Contracting Parties undertake: (…) to ensure that any person who is without adequate resources and (…) unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition" (Ibid.). ESC Article 14: To ensure "the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake: (…) to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community" (Ibid.). ESC Article 16: "The Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other" (Ibid.). ESC Article 17: To ensure "the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures" (Ibid.).

[359] ICESCR Article 9: "The States Parties (…) recognize the right of everyone to social security, including social insurance" (ICESCR 1966). ICESCR Article 10: "The widest possible protection and assistance should be accorded to the family (…) Special protection should be accorded to mothers during a reasonable period before and after childbirth. (…) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination (…) young persons should be protected from economic and social exploitation" (Ibid.).

generations and protection of the rights of the child" (TEU 2012: 17). Furthermore, it can be argued that when the CFR is read from the perspective of Article 3 TEU and Article 151 TFEU together, along with notions of EU citizenship, it mandates a raising of the standard of living (Koukiadaki 2014: 28).

Since the beginning of the Eurozone sovereign debt crisis, the Troika-designed structural reforms focused on reducing welfare expenditure while boosting labour market flexibility, which **lowered demand** and intensified pressure on the welfare state (Schmidt 2015: 16).[363]

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[360] UDHR Article 22: "Everyone (…) has the right to social security and is entitled to realization, through national effort and international co-operation (…), of the economic, social and cultural rights indispensable for his dignity" (UDHR 1948). UDHR Article 25: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including (…) housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (…) Motherhood and childhood are entitled to special care and assistance. All children (…) shall enjoy the same social protection" (Ibid.).

[361] CEDAW Article 11: "The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work" (CEDAW 1979). CEDAW Article 13: "States Parties shall take all appropriate measures to eliminate discrimination against women" (Ibid.)

[362] Convention on the Rights of the Child (CRC) Article 18: "States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children" (CRC 1989). CRC Article 23: To disabled children, assistance "shall be provided free of charge, whenever possible (…) and (…) designed to ensure (…) effective access to and (…) education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development" (Ibid.). CRC Article 26: "Recognize for every child the right to benefit from social security (…) and shall take the necessary measures to achieve the full realization of this right (…) The benefits should, where appropriate, be granted" (Ibid.).

[363] Labour market deregulation and liberalisation took place when the economy was deteriorating and unemployment was high (Schmidt 2015: 16). Nobel laureate Amartya Sen argued that Greece's sudden, savage and indiscriminate cuts in public services slashing demand were a counterproductive strategy, considering extremely high unemployment and inactive "productive enterprises (…)

Notably, the decrease in wages and employment negatively affected the sustainability of the pension system, [364] whereby pensioners were the safety net for numerous families (ETUI 2017). In this context, structural conditionality in 2010 demanded "a comprehensive pension reform that reduces the projected increase in public spending on pensions over the period 2010-60 to 2½ percent of GDP" (MoU1 2010: 57).[365] Any required modifications of the main pensions' parameters and the reform of the auxiliary and welfare funds were to be finalised by the end of June 2011, in consultation with the Troika (MoU1 R2 2010: 125).

As a prior action for a review, Greece had to reduce the coverage of heavy and arduous professions to maximum 10% of the labour force [366] (Ibid.); by 2012, the supplementary pension schemes benefits were to be calculated in line with the new notional defined-contribution system, nominal supplementary pensions frozen and the replacement rates for accrued rights reduced (MoU1 R2 2010: 104-105).[367] The reform replaced minimum pension

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decimated by the lack of market demand" (Sen 2012). Furthermore, reforms liberalising the labour market helped lock Greece's deficit economy in the low and medium-technology activities, putting it in direct competition with China, rather than building an export-led, highly competitive market with a high-skilled, high-paid, well-protected work force, akin to that in Northern Europe (Schmidt 2015: 16).

[364] Added to that is increased emigration and brain drain (ETUI 2017). According to the estimates of the Bank of Greece, in the period of 2008-2013, about 223 000 people aged 25-39 left Greece (427 000 aged 15-64) (Ibid.). Additionally, the fertility rate dropped since the crisis (Ibid.).

[365] If the National Actuarial Authority's projections were to show that the projected increase in public pension expenditure would surpass 2.5% of GDP over the 2009-2060 period, the Government was to revise the main pension system parameters (Law 3863/2010), with the Troika (MoU1 R2 2010: 104). Pension reform law was adopted in the Greek parliament on 8 July 2010 (MoU1 R1 2010: 82), anticipated to be completed in 2011 (MoU1 R2 2010: 75). As a prior action for a review, Greece had to design the secondary (supplementary) pension scheme reform with the Troika (MoU1 R2 2010: 104). It was to be implemented by 2012, and its sustainability impact validated by EU Economic Policy Committee (Ibid.).

[366] The new list of Difficult and Hazardous Occupations (Law 3863/2010) was to "apply with effect from 1 July 2011 to all current and future workers" (MoU1 R3 2011: 110).

[367] The rates were supposed to be reduced based on the actuarial study by National Actuarial Authority (MoU1 R2 2010: 105). If the latter would not be ready, they were to be reduced from 1 January 2012

(MoU3 SUP 2016: 14) with a basic pension,[368] raised the statutory retirement age to 65 years,[369] and established a link between retirement and longevity gains (MoU2 R1 2012: 8). The Government also abolished the 13th and 14th pensions (with few exemptions), replacing them with flat-rate vacation allowances[370] (Leventi and Matsaganis 2016: 21). Moreover, it eliminated the 13th and 14th payment of EKAS (an income-tested supplement intended for recipients of old-age and survivor pension) (Ibid.). Because of pension reductions (COE IV 2021), the ECSR found Greece violated the right to social security (Salomon 2015: 25), Article 12(3) ESC (Crespi et al. 2014: 56).[371]

In 2011, as part of the pension reform, the Government announced the elimination of imbalances in the welfare funds with deficits and the introduction of a strict link between

(Ibid.). The new accrual rates are much lower, especially for medium- and high-wage earners (MoU1 R1 2010: 28). As a measure for a review, the Government was to cut the highest pensions (MoU1 R1 2010: 54), arguably a discriminatory measure.

[368] Basic pension stands for a "national pension of 346 euros with 15 years of contribution that increases gradually to 384 euros with 20 years of contributions (to be adjusted in line with the indexation rule for contributory pension, as defined in Law 3863/2010)" (MoU3 SUP 2016: 14). Minimum pension was to be abolished (Ibid.).

[369] "The age limit was raised to 65 (from 60) in 2014" (Leventi and Matsaganis 2016: 21).

[370] "Totalling EUR 800 a year" (Leventi and Matsaganis 2016: 21), and payable only to pensioners older than 60 receiving a pension lower than EUR 2 500 monthly (Ibid.).

[371] In complaint No. 76/2012 Federation of Employed Pensioners of Greece (IKA –ETAM) v. Greece, the complainant trade union alleged that "legislation passed in Greece (Law No. 3845 of 6 May 2010, Law No. 3847 of 11 May 2010, Law No. 3863 of 15 July 2010, Law No. 3865 of 21 July 2010, Law No.3896 of 1 July 2011 and Law No. 4024 of 27 October 2011) impose a reduction in pension schemes, both in the private and public sectors, and are in violation of Articles 12§3 (Right to social security) and 31§1 (Restrictions) of the 1961 Charter" (COE 2021). In 2012 (Jimena Quesada 2014: 5), the ECSR noted that "'the cumulative effect of restrictions made as austerity measures, together with the procedures applied to put them into place, amounted to a violation of the right to social security'" (Crespi et al. 2014: 56) guaranteed by ESC Article 12 (Ibid.). It stressed "that 'restrictive measures' must not deprive 'one segment of the population of a very substantial portion of their means of subsistence'" (Salomon 2015: 21), and that this should have formed "part of the package required of international financial institutions" (Ibid.). It also recognised that "severe legal restrictions were imposed on Greece by the Troika" (Crespi et al. 2014: 56).

benefits and contributions (MoU1 R3 2011: 85).[372] That year, "the National Human Rights Commission observed a 'rapid deterioration of living standards coupled with the dismantling of the Welfare State and the adoption of measures incompatible with social justice (…) undermining social cohesion and democracy'" (Vettorel 2015: 149). Notably, between 2009 and 2012, relative poverty rate in Greece almost doubled (TCGPD II 2015) and by 2012, 58% of the unemployed lived on incomes lower that the 2009 poverty line (Salomon 2015: 6). The number of severely materially deprived[373] people increased sharply from ca. 11% of the population in the 2007-2010 period, to almost 20% in 2012 (Crespi et al. 2014: 27).[374]

In MoU2, to secure the programme's course of fiscal adjustment, Greece was to cut expenditure to permanently reduce the size of the state, with many of the cuts falling on social transfers (MoU2 2012: 97). In line with the technical assistance advice, the Government announced an income-tested system that would reduce spending by 0.2% of GDP, with measures such as replacing different (untargeted) family benefits and allowances with one means-tested family benefit program,[375] cutting special and seasonal unemployment benefits for specific professions and geographic areas,[376] and raising the age eligibility and income-testing of social solidarity supplements (MoU2 R1 2012: 159).[377] These measures can all be considered retrogressive. In 2012, the unemployment benefit was reduced by approximately

[372] Under pressure to meet the fiscal deficit target for 2011, the Government announced cuts in untargeted spending, and "better targeting of universal household subsidies (fuel subsidy and family allowances)" (MoU1 R2 2010: 13) to the needy (MoU1 R2 2010: 73).

[373] In terms of "economic strain, durables, housing and environment of the dwelling" (Crespi et al. 2014: 27).

[374] Far higher that the EU average of 10%, and also higher than the rates in other countries directly affected by the financial crisis (Crespi et al. 2014: 27).

[375] Reducing spending in these areas "by €86 million in 2013" (MoU2 R1 2012: 181).

[376] In 2013, legislation designed to "reduce unemployment benefits targeted to specific geographical areas to achieve savings of €20 million in 2013" (MoU2 R1 2012: 181) was to be adopted (Ibid.).

[377] The age limit for EKAS was raised in 2014, from 60 to 65 (Leventi and Matsaganis 2016: 21). The age limit for a social pension, "a non-contributory, income-tested pension, reserved for people over 65 years of age who lack independent means of support" (Ibid.), was raised in 2014, from 65 to 67 (Ibid.).

20%[378] (Crespi et al. 2014: 11), while the disposable income of the population was contracting further (MoU2 R1 2012: 27).

As a prior action, the Government announced in 2012, to shift the taxation of farmers and the self-employed to the corporate tax regime, and to increase the fixed charge on the self-employed (MoU2 R1 2012: 159-160). The elimination of tax allowance for the self-employed was announced too (MoU2 R1 2012: 36).[379] The Troika admitted the economic activity in Greece was continuing to shrink in 2013 (MoU2 R4 2014: 47).[380] Strikingly, between 2009 and 2013, unemployment rates soared by 186.5% (from 9.6% to 27.5%) (Antonakakis and Collins September 2014: 3).[381] Meanwhile, only 20% of the unemployed received unemployment benefits (Salomon 2015: 6),[382] whereby the youth and long-term unemployed were excluded from the scheme (MoU2 R2 2013: 41). The Troika admitted that unemployment would "remain too high for some time" (MoU2 R2 2013: 71), which together with the lingering recession and extensive economic and social adjustment[383] was already

[378] To 360 euro monthly, now to be paid over 3 to 9 months, depending on the contributory record (Crespi et al. 2014: 11).

[379] This was part of the tax reform, the revenue implications of which were taken into account in the MTFS (MoU2 R1 2012: 36). Well over half of the self-employed declared incomes less than the standard allowance of the personal income tax of EUR 5000 per year (Ibid.).

[380] "With its youth dropping out of the labor market and its most dynamic citizens losing hope in the future or leaving the country, Greek society as a whole (…) entered into depression" (Crespi et al. 2014: 25).

[381] Compared to "the Eurozone average increase of 26.3% (from 9.5% to 12%)" (Antonakakis and Collins September 2014: 3).

[382] In Spring 2013, the latter could still only be claimed by dismissed workers "that had paid unemployment insurance contributions and, depending on contributory record, up to 12 months" (MoU2 R2 2013: 41).

[383] Notably, in the 2008-2012 period, while poverty and social exclusion increased, government spending on education was reduced by 17%, despite it being an area expected to boost medium- and long-term growth, as noted in the Europe 2020 targets (Schmidt 2015: 15).

causing "exceptionally large social costs" (MoU2 R2 2013: 5).[384] Over 34% of children were at the threat of poverty or social exclusion (TCGPD II 2015).[385] Nevertheless, the Troika declared the social safety net was to be strengthened only within the existing (at the time) budgetary envelope (MoU2 R2 2013: 40, MoU2 R4 2014: 231).

As a structural benchmark, the Government was to adjust pensions, to allow for a fully funded reduction in rates (MoU2 R1 2012: 170).[386] Other prior actions for a review (MoU2 R1 2012: 157) were: the introduction of actuarially-fair rules for lump-sum pensions,[387] a progressive decrease in monthly pension incomes that surpass €1000, elimination of seasonal bonuses for supplementary and main pensions;[388] and reduction of "pension increases due to automatic wage promotion for those indexed to wages of special regimes" [389] (MoU2 R1 2012: 158). To complete the pension reform, by 2013 disability pensions were to correspond to up to 10% of the overall number of pensions (MoU2 R1 2012: 209). Notably, "pension funds were haircut savagely in 2012, when Greek government bonds (…) were haircut" (MoU3 YV 2015: 20)[390]

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[384] Unemployment in such context was causing social distress (MoU2 R2 2013: 5). Notably, rise in unemployment leads to notable increases in overall suicides rates of those aged 10 – 24 (Antonakakis and Collins September 2014: 9).

[385] The Government had previously announced it would "implement the new child benefit law, and make the first payments no later than end-June 2013" (Mou2 R2 2013: 79), however, in July 2013, it still did not start making those payments, but announced it would do so that same month (MoU2 R3 2013: 110).

[386] "With protections for low income pensioners, and the social security contribution base" (MoU2 R1 2012: 170). In November 2012, the legal age increased from 65 to 67, or from 60 to 62, if the person had been making contributions for 40 years (ETUI 2017).

[387] "From 1 January 2015, all supplementary pension funds and all lump-sum funds were to be financed only by own contributions" (MoU2 R4 2014: 147).

[388] Exceptions were allowed for people with disabilities (MoU2 R1 2012: 251).

[389] Pension reductions for special wage regimes equivalent to the wage cuts in special wage regimes formed part of the savings in pensions in 2013 and 2014 (MoU2 R1 2012: 250).

[390] Under the 2012 PSI, pension funds suffered a 12-billion-euro haircut (MoU3 YV 2015: 20). They were shattered by the PSI, losing ca. €14.5 billion (TCGPD II 2015).

and were negatively affected by the increase in undeclared labour and unemployment, as well as by the recession (Ibid.).

By 2013, pensions were cut by 40% on average, leaving 45% of pensioners below the poverty line (TCGPD II 2015). The 13th and 14th payments of social pensions were abolished (Leventi and Matsaganis 2016: 21).[391] The same year, the Council found that "austerity programs in response to the crisis had undermined human rights in key areas" (Schmidt 2015: 15), mostly due to reductions in public social spending, such as the Troika's demand that public expenditure in programme countries stays under 6% of GDP (Ibid.). The report condemned the rise of homelessness in Southern Europe (Ibid.). [392] Nevertheless, the Troika maintained its economic reforms were "stabilizing the economy" (MoU2 R2 2013: 71)[393] and that the reduction of social transfers (including pensions) in the adjustment package through 2014 was essential to its credibility (MoU2 R1 2012: 157), including bringing forward to June 2014 the implementation of the binding mechanism for auxiliary pensions (MoU2 R2 2013: 116).[394]

Personal tax allowances for children were converted into means-tested benefits, and special tax regimes for seamen and farmers were eliminated (MoU2 R2 2013: 29).[395] MTFS 2013-2016 included the reduction of VAT refunds[396] and of diesel excise duty subsidy to farmers,[397] raising

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[391] In 2013 (Leventi and Matsaganis 2016: 21).

[392] By 2013, the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social and Cultural, Cephas Lumina found that the austerity policies directly affected living conditions (TCGPD II 2015, 2013: 21).

[393] For the Troika, its imposed reforms were laying the foundation for recovery (Schmidt 2015: 15).

[394] The mechanism was "already legislated to enter in force as of 2015" (MoU2 R2 2013: 116).

[395] In 2013 (MoU2 R2 2013: 29).

[396] Varoufakis predicted that was going to "do untold damage to the primary sector which had a chance of becoming an engine of growth through proper marketing of the Mediterranean diet, niche organics etc." (MoU3 YV 2015: 7).

[397] The Government committed to "adopt legislation that: Reduces the diesel excise duty subsidy provided to farmers by €130 million from a baseline subsidy of €163 million" (MoU2 R1 2012: 184): reduction of rate from 95% to 80% of the tax amount (Ibid.).

the LPG tax (MoU2 R1 2012: 27), and equalising the excise on heating oil with that of diesel fuel (MoU2 R1 2012: 160). [398] Pension requirements for uninsured individuals were tightened and audits of pension entitlements introduced (MoU2 R2 2013: 22).[399] To ensure compatibility with the short- and medium-term fiscal programme targets, the Government announced an actuarially based consolidated system over the following decades, to contain pension spending (MoU2 R4 2014: 146).[400] Between 2010-2015, the existing private sector pensions were cumulatively reduced by approximately 15% in the case of the lowest, and more than 44 % in the case of the highest (over EUR 2 000) pensions (Ibid.).

Severe material deprivation almost doubled (from 11% to 21.5% of the population) between 2009 and 2014 (TCGPD II 2015). By 2014, while the measures Greece adopted seriously exacerbated unemployment, only ca. 8% of the unemployed[401] received unemployment benefit, while the others did not receive any type of relief (Crespi et al. 2014: 21).[402] A third of population was threatened by or living in poverty (Crespi et al. 2014: 44), close to a quarter even after social transfers[403] (Crespi et al. 2014: 27). While poverty and social exclusion reached levels previously unseen,[404] the already inadequate funding of policy efforts directed at tackling

[398] The measures further included "increases in the fee for law suits, an increase of tax on ship owners' activities, (…), equalization of social security contributions by raising the ceiling for employees first employed before 1993 to that of employees first employed after 1993" (MoU2 R1 2012: 252).

[399] As a replacement for "the non-implementation of the solidarity contribution for selfemployed scheduled for 2013" (MoU2 R2 2013: 22).

[400] "The projected increase in pension expenditure over the next 50 years is limited now to 1.1% of GDP by 2060" (MoU2 R4 2014: 10).

[401] 110, 000 people out of the ca. 1.4 million unemployed (Crespi et al. 2014: 21). Nevertheless, in February 2014, real unemployment was likely "5 to 6% higher than the official statistics at 27.2%" (Crespi et al. 2014: 19), since numerous unemployed people were reportedly not registered as unemployed (Ibid.).

[402] Data by GSEE (General Confederation of Greek Workers).

[403] This was 6 points higher than the EU average (Crespi et al. 2014: 27).

[404] The situation was a humanitarian crisis (Schmidt 2015: 15).

unemployment[405] worsened (Schmidt 2015: 15). The Troika emphasised “a clear need for further rationalization of the social security system” (MOU2 R4 2014: 4).

By 2015, austerity resulted in deepening levels of poverty and social exclusion, as well as higher rates of homelessness and a decline in living standards, “often (…) lower than the international standard of adequate living conditions” (Housos 2015: 444). 23.1% of population

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[405] Greece failed to offer the social support required to deal with the steep rise of unemployment, mostly shifting that burden on families, informal social structures, and municipalities (Crespi et al. 2014: 21). Unlike MoU1, MoU2 announced concrete “measures (…) to protect the core of (…) social safety net and the most vulnerable segments of the population” (MoU2 2012: 97), but the modest policies implemented to tackle unemployment were not substantial enough to halt its growing levels, nor to offer the much necessary social support (Housos 2015: 443). “A minimum income guarantee scheme targeting families in areas with difficult socioeconomic profiles” (MoU2 R1 2012: 160) was implemented in two pilot areas of Greece (Ibid.). In the second half of 2013, two employment programmes were introduced, financed through EU structural funds – “the youth internship and employment voucher programme and the social community work programme” (MoU2 R4 2014: 148). In the first phase of the public works scheme, 50 000 places were available (MoU2 R4 2014: 6), to be extended by “at least a further 50 000 places in 2014” (MoU2 R4 2014: 148). The youth internship and employment voucher programme offered “vocational training and internships for 45,000 individuals up to 29 years of age over a six-month period” (MoU2 R2 2013: 79). In 2013 and 2014, the Government was to, as part of MTFS 2013-2016, introduce a benefit of €200 monthly “payable for up to 12 months to long-term unemployed who exhaust the full length of unemployment benefit (12 months), provided they do not qualify for other training schemes and have family taxable income up to €10,000” (MoU2 R1 2012: 252). The Government used the fiscal space projected with the Troika for “2014 to provide (…) one-off income support to around 730,000 households and 75,000 security personnel with low earnings and assets” (MoU2 R4 2014: 145-146), but had to subsequently commit to review and agree with the Troika “the scope for any further oneoff increase in social or pro-growth spending in the context of the next review of the program, conditional on the fiscal targets being met” (MoU2 R4 2014: 146). The Government announced it would, by December 2014, launch the youth guarantee scheme (MoU2 R4 2014: 148), starting to gradually implement the Council Recommendation on Establishing a Youth Guarantee (MoU2 R4 2014: 230).

was living below the poverty line,[406] while 63.3%[407] were impoverished as a result of austerity policies alone (TCGPD II 2015). The number of people at risk of poverty and social exclusion rose to 35.7% (UN 2015).[408] Notably, the unequal impact of the measures drastically exacerbated inequality, reflected in the poorest 10% of the population losing 56.5% of their income (TCGPD II 2015). For female workers, the access to social welfare programs was notably reduced (Housos 2015: 428).

Among the pre-conditions for the negotiations for the third programme were "upfront measures (…) as part of a comprehensive pension reform" (ES 2015: 2).[409] MoU3 demanded "much more ambitious steps" (MoU3 2015: 13), noting the "contributions have fallen due to high levels of unemployment" (Ibid.).[410] Specific prior action and passing of reform legislation[411] was demanded to achieve "savings[412] (…) through increasing early retirement penalties[413] and by the gradual elimination of the grandfathering of rights to retire before the statutory retirement age" (MoU3 2015: 13-14),[414] ensuring financing of all supplementary

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[406] By 2015, conditionalities caused pervasive "impoverishment, destitution, and social exclusion" (TCGPD II 2015).

[407] Ca. a third of the population was living below 60% of the median disposable income (Housos 2015: 434). Out of the country's population of app. 11 million, that was ca. 3.5 million people (Ibid.).

[408] The Eurozone's highest (UN 2015). Many human rights issues from two years ago persisted "if not worsened'" (Ibid.).

[409] According to Varoufakis, that translated into cutting "the lowest of the low of pensions" (ES YV 2015: 1).

[410] Additionally, in 2015, 8.14% of workers in Greece "were found to work undeclared and uninsured" (TCGPD II 2015).

[411] By October 2015 and December 2015 (MoU3 2015: 14).

[412] "Around ¼% of GDP in 2015 and around 1% of GDP by 2016" (MoU3 2015: 13).

[413] From 1 January 2016, "early retirements (…) incur a penalty, for those affected by the extension of the retirement age period, equivalent to 10 percent on top of the current annual penalty of 6 percent" (MoU3 2015: 14).

[414] The latter was to be limited to "67 years at the latest by 2022, or to the age of 62 and 40 years of contributions, applicable for all those retiring (except arduous professions and mothers with children

pension funds by own contributions from 1 January 2015, access to the basic, guaranteed contributory, and means- tested pensions only at reaching the statutory normal retirement age of (at the time) 67 years,[415] and freezing "monthly guaranteed contributory pension limits in nominal terms until 2021" [416] (Ibid.). The gradual extension of the minimum contribution period for full pension benefits eligibility was raised from 35 to 40 years by 2015 (ETUI 2017). The Government increased pensioners' health contributions to 6% on their main pensions, while also introducing health contributions of 6% to supplementary pensions (MoU3 2015: 13).

Furthermore, as a prior action, the authorities were to adopt legislation to, on garnishments, eliminate the 25% wage and pension ceiling, and reduce all thresholds of €1,500, "while ensuring (…) reasonable living conditions" (MoU3 2015: 9).[417] Greece also had to "launch the 2015 ENFIA exercise" (MoU3 YV 2015: 6),[418] "amend the 2014–15 tax and SSC debt instalment

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with disability) with immediate application" (MoU3 2015: 14). "The age condition was raised to 67 (from 65) in 2014" (Leventi and Matsaganis 2016: 21).

[415] For those retiring after 30 June 2015 (MoU3 2015: 13). In MoU3, the Government "ensured that people retiring after 30 June 2015 (…) have access to the basic, guaranteed contributory, and means-tested pensions only at the attainment of the statutory normal retirement age of currently 67 years" (Ibid.): "To qualify for a national pension it is necessary to be 67 years old and have lived in Greece for at least 15 years (…). To qualify for a full pension of EUR 384 it is necessary to have contributed for 20 years. That amount will be reduced by 2% for each year below that number" (ETUI 2017).

[416] As a prior action, the authorities committed to "correct law 4334/2015 to among others correctly apply the freeze on monthly guaranteed benefits (instead of contributions state subsidy) and to extend to the public sector" (MoU3 2015: 14).

[417] This means "the tax office is no longer prevented from confiscating wages and pensions of those in tax arrears (…). Similarly, the tax office will no longer have to leave at least 1500 euros in the account of a taxpayer in arrears whose savings have been confiscated. (…) The 'reasonable living conditions' will be decided by the tax official according to whims that this MoU does not specify" (MoU3 YV 2015: 12).

[418] Thus perpetuating, according to Varoufakis, "an indefensible property tax that falls on everyone independently of their income in a country were 2 million unemployed or inactive people still own some small property" (MoU3 YV 2015: 6).

schemes to exclude those who fail to pay current obligations" (MoU3 YV 2015: 9),[419] and amend the household insolvency law by tightening the eligibility criteria for the primary residence protection (MoU3 YV 2015: 18).

The Government committed to found with the Institutions a new targeted welfare system in the form of a fiscally-neutral[420] General Minimum Income Scheme (GMI) (MoU3 YV 2015: 26-27),[421] from the permanently reduced[422] social welfare spending (MoU3 SUP 2016: 19).[423] Benefits overlapping with the SSI or family benefits were to be eliminated, and the heating allowance benefit reduced (MoU3 SUP 2017: 25).[424] By October 2015, as a key deliverable, Greece was to legislate the remaining harmonisation of contribution and benefit payment

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[419] This was a requirement to amend Syriza's "100-instalments legislation (…) so that those who started making payments will be asked to pay the whole due sum if they cannot meet their fresh tax bill" (MoU3 YV 2015: 9), annulling "the taxpayers' opportunity to pay back previous arrears gradually" (Ibid.).

[420] The fiscally neutral manner of reform implementation can be seen as a risk "that either the GMI scheme will not reach all in need, or that individual levels of benefits could lose the intended function to secure social and economic rights by moving recipients out of poverty and destitution" (UN HRC 2016: 11). The expenditure cap of Minimum Income Guarantee was "€20 million starting in 2014" (MoU2 R1 2012: 182).

[421] The cost of its national implementation was "estimated at 0.5% of GDP annually" (MoU3 SUP 2016: 19), while its design was going to be "closely based upon the parameters of the pilot schemes after the evaluation of the World Bank" (Ibid.). The national roll-out happened in February 2017 (MoU3 SUP 2017: 23), achieving "a take-up of some 450,000 people" (MoU3 R2 2017: 14).

[422] In cooperation with the WB (MoU3 SUP 2016: 19).

[423] Reduction of "½ percent of GDP annually" (MoU3 YV 2015: 26-27). The international HR Expert seriously questioned "further cuts in social welfare spending of about 887 Million EUR per annum in the context of significant increased poverty and social exclusion in Greece" (UN HRC 2016: 11), deeming "such reductions on top of earlier cuts (…) incompatible with the obligation to ensure that all persons in Greece can enjoy at least core minim essential levels of social and economic rights and incompatible with obligations contained in article 2(1) of the ICSECR" (Ibid.).

[424] As part of the Social Welfare Review (MoU3 SUP 2017: 25). To show its "commitment to credible fiscal policies" (MoU3 2015: 7), the Government announced better targeting "eligibility to halve heating oil subsidies expenditure in the budget 2016" (MoU3 2015: 14).

procedures across all social security funds (MoU3 2015: 14). The unemployment rate reached 23.4% in December 2016 (Stanapedis 2018). By 2017, 73% of the unemployed were long-term unemployed, while only 10% of the unemployed were entitled to unemployment benefit (of EUR 360) (ETUI 2017).

As a key deliverable,[425] Greece was to legislate "the gradual phasing out of (…) (EKAS) for all pensioners"[426] (MoU3 2015: 14), "restore the sustainability factor of the 2012 reform or find mutually agreeable alternative measures in the pension system;[427] (…) legislate (…) equivalent measures to fully compensate the impact of the implementation of the Court ruling on the pension measures of 2012,[428] and repeal the amendments to the pension system introduced in Laws 4325/2015[429] and 4331/2015[430] in agreement with the institutions" (Ibid.). In 2016, in close cooperation with the Troika, the authorities finalised the comprehensive pension system

[425] By October 2015 (MoU3 2015: 14).

[426] This was to be achieved by end-December 2019 (MoU3 2015: 14). Varoufakis described this measure as "an attack on decency" (MoU3 YV 2015: 22) if no "serious provision for its replacement" (Ibid.) is found. Notably, "EKAS is a small contribution to pensioners on extremely low pensions, well below the poverty level" (Ibid).

[427] Varoufakis argued that the demanded zero deficit clause meant cutting "by 85% the secondary pensions that the Syriza government fought (…) to preserve" (ES YV 2015: 3), or finding "'equivalent' victims (…) by October 2015" (Ibid.). He noted that in the then circumstance of pension funds that had already undergone a haircut, and of the rise in flexible and undeclared labour, "if the troika insists that the pension funds become self-sufficient, the pension cuts necessary will be so large that aggregate demand in Greece will fall again so much that employment will suffer further thus hitting again the pension funds. (…) the troika's pension fund sustainability can only be achieved in the context of this MoU if pensions tend to zero" (MOU3 YV 2015: 20).

[428] "Court rulings 2287/2015 and 2288/2015 declared the 2012 pension cuts unconstitutional" (Mathis et al. 2020: 10) due to their hasty implementation, without adequate "justification for their extent or distribution across the pensioner population" (Ibid.).

[429] "Correction to the amendment repealing AKAGE for supplementary funds (4325/2015) legislated in the minibus law, article 57 par. 2 and 3, 5.11.2015" (EC 2015: 12). AKAGE here stands for the Generational Solidarity Insurance Fund.

[430] "Law 4331/2015 (articles 21, 24, 28, 31, 37, 38, 39, 75, 76) were addressed in the October Law 4337/2015 (article 52 par. 1 h and par. 3)" (EC 2015: 12).

reform (MoU3 R1 2016: 6),[431] including the implementation of a "sustainability mechanism that freezes pension benefits in presence of a negative gap between overall contributions and expenditures" (MoU3 SUP 2016: 15),[432] and "a unified system where the new rules (…) immediately apply to all pensions without pro-rating" (MoU3 R1 2016: 6).[433]

The new method for calculating pensions, based on the whole contribution period,[434] sets lower calculation coefficients for the final benefit,[435] thus reducing pensions for the recently retired between 15 and 30 % (ETUI 2017). All the systems of basic, guaranteed contributory and means tested pension components had to be rationalised, social security funds

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[431] It was adopted as a prior action (MOU3 SUP 2016: 14). The primary aim was to help achieve the primary surplus target of 3.5 % of GDP demanded by Greece's creditors in 2018 (ETUI 2017). It targeted savings of up to 0.5% of GDP in 2016 and ca. 1% of GDP by 2018, mostly from the spending side, "on top of the full absorption of the impact of the Council of State ruling on the pension measures of 2012, around 2 percent of GDP" (MoU3 SUP 2016: 14). Notably, enforcing these reforms and successive cuts in pensions does not make the system sustainable, and is equal to a designed impoverishment of pensioners (ETUI 2017).

[432] With the reform, "current retirees with positive differences continue to be paid the same main pensions in nominal terms, but these are frozen until any gap between the current and recalibrated pension (…) is eliminated through the effects of inflation" (Giudice 2017: 217).

[433] The new 2016 reform (Law 4387) abolished all special arrangements, unified all pension funds and rules on contributions and benefits, in a new body (EFKA), established in 2017 (ETUI 2017), while also establishing a general system of defined benefit pension plans, and introducing a basic pension "financed from general tax revenue. (…) the main pension is made up of (…) the national pension (set at EUR 384 at the full rate and financed from the State budget) and the 'redistributive' pension calculated on the basis of the average reference wage over the whole working life, the length of contributions and the replacement rate" (Ibid.).

[434] Pensions will no longer be calculated based "on the five best years of the past ten" (ETUI 2017).

[435] "Reducing existing pensions in line with the new rules adopted in 2016 (by an average 14%)" (MoU3 R2 2017: 10). Existing pensions had to be "recalculated by the new calculation method and the resulting 'difference' (…) ironed out gradually after the end of the adjustment programme (the IMF requires removal of the 'difference' from 2018)" (ETUI 2017). The biggest losers were "workers with many years of contributions and large benefits" (Ibid.).

comprehensively consolidated, state-financed exemptions phased out within 3 years,[436] and contributions rules for all pension funds harmonised with the structure of contributions of the main social security fund for employees;[437] pension benefit rules of the agricultural fund gradually harmonised with the rest of the pension system, in a pro-rata fashion (MoU3 2015: 14),[438] and social security contributions for employees, farmers and freelancers increased (ETUI 2017).[439] Replacement rates were reduced further (Ibid.). [440] Additionally, the government was to address the deficit in auxiliary and dividend funds, and the current deficit in ETEA[441] through cuts in "gross benefits expenditure[442] (…) a temporary increase of supplementary contributions" (MoU3 SUP 2016: 15), by limiting the use of the fund's reserves, and adjusting "spending in all dividend funds in a way that automatically eliminates any annual deficit" (Ibid.).

The authorities were to "agree with the institutions, the implementation of (…) further welfare reforms (key deliverables)" (MoU3 SUP 2017: 24), including a more targeted family benefit

[436] State exemptions were to be phased out by the end of 2019 (MoU3 SUP 2016: 14), and "any existing rules providing favourable treatments to any special group" (MoU3 SUP 2016: 15) eliminated (Ibid.).

[437] Special provisions were to be taken into account "for farmers (complete harmonisation to 20% by January 1st 2022) and newly insured independent professionals" (MoU3 SUP 2016: 14).

[438] This was to be done by 2031 (MoU3 SUP 2016: 15). Arguably, it meant "the poorest of farmers will be hit also with a reduction in their already tiny old age pension" (MoU3 YV 2015: 22).

[439] Social security contributions were to be increased "for employees (1 % for employers and 0.5 % for employees) and for professional occupations, freelance workers and farmers (contribution of 20 % of monthly income)" (ETUI 2017).

[440] In MoU3, the Troika stated it was "prepared to take into account other parametric structural measures within the pension system of equivalent effect to replace some of the measures mentioned (…) provided that such measures are presented to the institutions during the design phase and are sufficiently concrete and quantifiable" (MoU3 2015: 15).

[441] "A new single fund" (MoU2 R1 2012: 40).

[442] "While protecting pensions with a cumulative amount of main and supplementary equal to or below EUR1300 (before taxes, including AKAYE and health contributions) per month" (MoU3 SUP 2016: 15).

system,[443] disability benefits based on a functional assessment to determine eligibility,[444] rationalised educational benefits, and means-tested housing benefits developed with the WB (MoU3 SUP 2017: 25). [445] As a prior action, "the provision of in-kind benefits of food and accommodation by municipalities of remote areas and islands to temporary teachers and other critical professions and emergency staff" (MoU3 R3 2018: 62) was to be limited (Ibid.),[446] and the VAT island discounts completely eliminated by end-2016 (MoU3 2015: 8).[447] In 2018, Greece was among the Member States with the lowest levels of spending on social protection (as a share of GDP) targeted at families and children (MoU3 R3 2018: 15).[448]

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[443] With "improved targeting and increased equity among supported children starting by January 2018" (MoU3 SUP 2017: 24).

[444] It was a key deliverable for Greece to agree with the Troika on adopting "new legislation for a pilot scheme (…) to move from the current impairment assessment to a functional assessment to determine eligibility" (MoU3 SUP 2017: 24). The pilot programme was to be "rolled out by January 2018. The national rollout legislation (…) adopted in May 2018, which will also harmonize all contributory disability and welfare benefit rules including under Law 4387/2016. A national implementation will commence by end-June 2018" (Ibid.).

[445] In MoU3, the Troika allowed Greece to "consider the use of the available fiscal space to strengthen social protection (in particular the GMI programme) and/or to reduce the tax burden provided that the achievement of fiscal targets is assured" (MoU3 SUP 2017: 8), "if annual budgetary outturns confirm that the above measures are leading to permanent fiscal over-performance vis-à-vis the programme targets" (Ibid.), and if the Institutions agree (Ibid.).

[446] For that purpose, article 32 of law 4483/2017 was to be amended (MoU3 R3 2018: 62).

[447] This meant "denying Aegean islanders a discount on VAT which was previously enshrined in the constitution in recognition of the great difficulties, especially in winter, of living and working on islands with intermittent transport" (MoU3 YV 2015: 9). Notably, "this type of discount applies fully in every remote island grouping in the European Union" (MoU3 YV 2015: 10). In "the December 2016 package (…) the authorities extended the VAT discount (due to be eliminated by January 2017) by an additional year for a group of islands affected by the migration crisis, while simultaneously increasing the excise duty on coffee products" (MoU3 R2 2017: 8).

[448] The same year recorded underspending against 2017 monthly targets in social expenditure "caused by lower-than-expected spending on pensions, (…) active labour market policies, the belated start of the Social Solidarity Income scheme and (…) social protection of over-indebted households" (MoU3 R3 2018: 6). Based on that, Greece was, in agreement with the Troika, allowed to "implement a well-

In 2016, still only about 10% of all the registered unemployed were receiving unemployment benefits (UN HRC 2016: 15). The then official poverty threshold of 384 EUR monthly for a single person was "at the margins of what can be considered as a minimal threshold ensuring a life in dignity" (UN HRC 2016: 17).[449] In 2017, 43% of pensioners in Greece were receiving under EUR 660 monthly (ETUI 2017).[450] Despite the legal opinion presented in MoU3, which concluded that the pension reform was in line with the EU CFR (MoU3 R2 2017: 10-11), the Memoranda-based austerity and domestic devaluation measures since 2010 have been the main factors jeopardising the sustainability of the Greek pension system (ETUI 2017). The creditors have addressed pensions as a strictly fiscal issue, without also looking for additional resources to strengthen the system (Ibid.).[451] However, the system is bound to remain in deficit as long as insufficient contributions are collected (due to the towering unemployment

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targeted one-off social benefit corresponding to the amount of underspending in social policy areas identified" (MoU3 R3 2018: 7), and "consistent with the MoU" (MoU3 SUPDR R3 2018: 4), namely "a temporary package of humanitarian measures on food, housing and access to electricity (…) phased out to coincide with the implementation of the nationwide rollout of the (…) (GMI)" (MoU3 SUP 2016: 19). In 2016, the Independent Expert welcomed that the adjustment programme predicted expanding the guaranteed employment support schemes covering, at the time, "50.000 persons to 150.000 persons by March 2016 targeting long term unemployed, young people and disadvantaged groups" (UN HRC 2016: 11), supporting job creation and including training in combination with employment (Ibid.), but was concerned that was not enough to importantly decrease the existing unemployment (more than 1.1 million people at the time) (Ibid.).

[449] As assessed by the UN Independent HR Expert (UN HRC 2016: 17).

[450] The per capita income of people aged over 65 in Greece was less than half of the Eurozone average: ca. Eur 9000 compared to Eur 20 000 (ETUI 2017).

[451] Despite more than 12 pension cuts since 2010 "and the major changes to the parameters (deferment of retirement age, extension of the contribution period, pension reduction mechanisms, calculation of pensions according to average wage for the whole working life, cut in replacement rates), which progressively reduce pressure on expenditure, expenditure linked to old age as a percentage of GDP still seems high" (ETUI 2017).

rate, the low level of employment, low wages and the rise in precarious and low-paid jobs) (Ibid.). [452]

Extreme poverty has become rampant in Greece: by 2016, more than one million persons had fallen under the levels of extreme poverty, to a large extent due to the austerity measures implemented since 2010 exacerbating the economic crisis, prescribing cuts in social protection, and neglecting well-known gaps in the social security system, but most importantly by limiting the fiscal space that would allow to meet international human rights obligations (UN HRC 2016: 18-19). The Troika imposed measures reducing social protections have arguably contravened TEU Article 3 (social progress, social protection, combating exclusion and discrimination), ESC Article 12 (maintaining the social security system at a satisfactory level and raising it progressively to a higher level), ESC Article 13 (ensuring that any person without adequate resources and unable to secure such resources by their own efforts or from other sources be granted adequate assistance), ICESCR Article 9 (the right to social security) and Article 2 (prohibition of discrimination in the exercise of rights), UDHR Article 22 (the right to social security and to realization of the economic, social rights indispensable for dignity) and Article 25 (the right to a standard of living adequate for well-being, including necessary social services, and the right to security in the event of unemployment), CEDAW Article 11 (right to social security) and Article 13 (eliminating discrimination against women), and CRC Article 26 (right of children to benefit from social security). The dramatic deterioration in the protection of fundamental rights (TCGPD III 2015)[453] is among the direct impacts of the conditionalities, which the institutions have imposed and monitored (Ibid.).

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[452] Nevertheless, “the authorities provided a detailed quantitative assessment of the distributional impact of the pension reform” (MoU3 R2 2017: 10), which was an obligation to assess the reform's legality (Ibid.). The legal opinion also reached a favourable conclusion regarding the pension reform’s compliance with the Greek Constitution, and the European Convention for the Protection of Human Rights (ECPHR), which is included in the Greek legal order (MoU3 R2 2017: 11). It concluded “that the Bill rescues the core of the pension right by making the minimum possible necessary cuts” (Ibid.). “Regarding the question of compliance of the newly legislated contingency mechanism (…) with the Constitution, the legal opinion (…) also reached a favourable conclusion” (Ibid.).

[453] “The consolidation has (…) relied on a dramatic scaling back of public investment and services” (MoU3 2015: 6). It “forced the country to choose between repayment (…) and key social expenditures

Conclusion

Loan conditionalities in the Troika programmes have given international institutions and organisations unprecedented power and opportunity to interfere in the financial and macro-economic policies of the Eurozone states, to a large extent usurping the latter's sovereignty. In the case of Greece, the only alternative to fulfilling the legally binding demands by the creditor institutions was a disorderly exit from the Eurozone, and defaulting.

The institutions and organisations involved in the economic adjustment programmes to Greece have shaped their conditionality measures in line with the theory of expansionary austerity, chosen over other viable alternatives. They have completely restructured the spheres of Greece's economy, politics, and social policy. Foreseeably, based on numerous extensive studies spanning over decades available at the time, and as shown in this paper, the imposed strategy of austerity has resulted in increased poverty, inequality, unemployment, lower growth, and higher public debt, negatively affecting in particular the right to work and to social security. Between 2010 and 2017, the GDP in Greece declined by 26.4%, while its debt escalated from app. 145% of its nominal GDP in 2010 to over 187% in 2020.

The major Troika-designed and demanded labour market reforms deregulated and liberalised the labour market, reduced wages (on average, the wages dropped by app. 20% between 2010 and 2017 in real earnings per employee), labour costs and labour force, increased flexibility in hiring and firing, and loosened workers' protection (it decreased by 15% in 2008-2013, 5 times the OECD average), even though the Greek labour market was not strictly regulated in the first place. By 2013, the imposed measures reformed collective bargaining, practically eliminating

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for maintaining adequate standard of living and safeguarding its people's fundamental rights" (TCGPD III 2015): "the massive budgetary primary surpluses that the Hellenic state has to achieve in the next two decades *have to* be used for the reimbursement of the debt" (Renaud and Bantekas 2017). Thus, Greece has not been able to service its debt "without seriously impairing its capacity to fulfil its basic fundamental rights obligation" (Ibid.). E.g.: Numerous official statements have stressed that in 2015, "without the final disbursement of the 2012 loan, Greece would be (…) unable to reimburse its creditors and satisfy some social needs which are yet underfinanced" (Ibid.).

all collective agreements. The results are deteriorated labour standards and an almost total commodification of labour.

Between 2010 and 2017, employment rate dropped from 61.5% to app. 51%, while unemployment jumped from app. 8% to 25%. Between 2009 and 2015, the percentage of employees in the core public sector fell by app. 26%. In 2018, unemployment in Greece was still at app. 20%, much higher than before MoU1. The austerity measures have disproportionately hurt the most vulnerable and marginalised social groups in the labour market. Between 2009 and 2013, youth unemployment in Greece increased by ca. 127%, to app. 63%. By 2014, unemployment was the primary cause of youth suicides. In 2019, youth unemployment was still at ca. 33%.

The decrease in wages and employment negatively affected the sustainability of the Greek pension system and intensified pressure on the welfare state, yet the Troika-designed reforms also reduced welfare expenditure. The Troika limited public expenditure in programme countries to 6% of GDP. Notably, it imposed the pension system reform, reducing the projected increase in public spending on pensions over 2010-60 to 2.5% percent of GDP. By 2013, pensions were on average cut by 40%, leaving below the poverty line 45% of pensioners. Between 2010 and 2015, the lowest private sector pensions were cumulatively reduced by approximately 15%. In 2017, 43% of pensioners in Greece were receiving under EUR 660 monthly.

By 2012, the incomes of 58% of the unemployed were below the 2009 poverty line. In 2013, only 20% of the unemployed received unemployment benefits, whereby the youth and long-term unemployed were excluded from the scheme. By 2017, 73% of the unemployed were long-term unemployed, whereby only 10% of the unemployed were entitled to unemployment benefit (of EUR 360). The new targeted welfare system imposed by the institutions and introduced that year in the form of a fiscally-neutral General Minimum Income Scheme, permanently reduced (by 0.5% annually) social welfare spending. In 2018, Greece was among the EU States with the lowest levels of spending on social protection (as a share of GDP) targeted at families and children.

Between 2009 and 2012, relative poverty rate in Greece almost doubled. Between 2009 and 2014, the same was true for severe material deprivation (increase from 11% to 21.5% of the population). By 2015, 23.1% of population was living below the poverty line, 63.3% were impoverished as a consequence of austerity policies alone. The poorest 10% of the population lost 56.5% of their income. By 2016, almost 10% of the population was living in extreme poverty, largely due to the post-2010 austerity measures.

Notably, as these negative effects could have been avoided through reasonable and more productive means and efforts, mostly by choosing a different strategy to address the financial and economic crisis in Eurozone and Greece, the imposition of conditionalities leading to these results can, in line with Thomas Pogge's position, be considered a human rights' violations on the part of the institutions involved. The right to work is fundamental, essential for realising other human rights, and before the crisis, the Greek legal framework was mostly in line with the right's international provisions.

From a legal perspective, the Troika and the Eurogroup are informal bodies without an institutional substance. In contrast, the other institutions and organisations involved in the Troika programmes to Greece are bound to comply with customary international law, which includes the UDHR. Notably, the issues dealing with the compatibility of austerity measures with human rights, and the human rights obligations of international organisations can only be referred to the ICJ through a legal opinion procedure. In the case of the EU institutions, the main obstacle to pursuing the breaches of human rights law internationally, in the ILO and before the UN committees, is that in terms of relevant codifications, the EU has only signed the UN Disability Convention.

The EU institutions are bound by EU law, which includes the CFR. In line with TFEU's Article 151, improved living and working conditions, dialogue between management and labour, lasting high employment and the fight against exclusion should be among the goals of the EU and its states. Based on TEU Article 3, the EU shall aim at social progress and full employment, promote social justice and protection, fight discrimination, protect the rights of the child, and work towards eradicating poverty and protecting human rights.

In contrast, the three financial assistance mechanisms were created outside the EU legal framework. The CJEU has the competence to rule on the validity of legal acts with binding effect adopted by the ECB, EC, Council, and the European Council, most notably Council Decisions and the Memoranda. Unlike the ECtHR and the ECSR, the European Ombudsman can conduct inquiries into cases of maladministration by EU institutions, bodies, offices and agencies.

According to the UN Guiding Principles on Foreign Debt and Human Rights, international financial organisations and private corporations must respect international human rights. Similarly, according to the UN HR Council, non-State lenders must ensure the debt contracts they are party to or any related policies, fully respect human rights. Moreover, lending institutions should conduct assessment of human rights impacts.

Considering especially the effective surrender of sovereignty over key areas of state's ambit of control in the Troika programmes to Greece, a strong case can be made for the position that to effectively protect human rights in practice, a paradigm shift is needed from the traditional one, where states are considered primary guardians of human rights – to one where the duty and responsibility to respect human rights is primarily attributed to those agents that hold effective power to (negatively) affect these rights. For this purpose, it is vital that the Eurogroup, the Troika (now the Quadriga), and the ESM are brought into the ambit of EU law, and that the EU accede to European and international human rights instruments. Additionally, international organisation like the IMF should formally commit to respecting human rights, so they can be held accountable.

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