

Some thoughts on austerity measures – EU Law, human rights law & social dialogue

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The austerity measures

Austerity measures (across EU Member States) aim to:

- **Increase so-called ‘flexible’ employment**
- **Devise new forms of ‘collective bargaining’**
- **Reduce national level/ sectoral bargaining**
- **Inhibit the political voice of trade unions**

Inconsistent with:

Previous judicial, legislative and constitutional acknowledgement of the role of freedom of association, trade unions and collective bargaining in the ‘European Social Model’.

Do we revert to human rights complaints? How do we return to social dialogue?

(1) The worker who is not a worker and (2) collective bargaining that is not collective bargaining

- **The worker who is not a worker**

Dismissal and rehiring (especially public to private sector) –
e.g. Greece, Portugal and the UK

- **Collective bargaining that is not collective bargaining**

Enterprise level non-union ‘bargaining’

e.g. Greece and Hungary

Cf. EU caselaw? **Judicial exception for collective bargaining for competition law –
can it still apply?**

Case C-67/96 *Albany International* [1999] ECR I-5751: reliance on Treaty...

Case C-413/13 *FNV KunstenInformatie en Media* judgment of 4 December 2014

(3) Ending national or sectoral wide bargaining (and its legislative extension)

Two methods:

- Promotion of enterprise level derogation from national level collective agreements
 - Removal of legislative extension of terms
- e.g. Greece, Portugal, Romania

Cf. EU legislation? **Only national level bargaining extended by legislation can set terms for posted workers:** Posted Workers Directive, Art. 3 and

Issue of award of public contracts requires a universally applicable collective agreement (or so it would seem): Case C-346/06 *Rüffert v Land Niedersachsen* [2008] ECR I-1989. Cf. AG Mengozzi in C-115/14 *RegioPost GmbH*, Opinion of 9 September 2015; Article 18(2) of Directive 2014/24/EU – compliance with applicable obligations in labour law.....

(4) Silencing social dialogue

Trade unions have been and remain active BUT we have experienced externally imposed changes, enactment of legislation without social dialogue and removal of consultative institutions. Discussed in *Report on the High Level Mission to Greece* (2011) para. 304; *Case 2820*, complaint by Greek General Confederation of Labour (GSEE) – and see 2013 comment of Committee of Experts...

Cf. **Art. 154 of the TFEU and the EU Charter of Fundamental Rights** (Art. 6 TEU).

Article 12(3) of the ESC? Note the recommendations on Greece (ECSR and CM)

Article 10/11 of the ECHR? Cf. Margin of appreciation problems in Appn No. 31045/10 *RMT v UK* 8 April 2014 and Appn No. 13341/14 *da Silva Carvalho Ric v Portugal* judgment of 24 September 2015.

Social 'dialogue' (European Commission, *A New Start for Social Dialogue* (2015))
or further protest?
