Social policy in the European Union: state of play 2016

Edited by Bart Vanhercke, David Natali and Denis Bouget
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Seventeenth annual report

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Preface

Looking back at the year 2015 – at the end of which the Juncker Commission marked one year in office – it seems that ‘crisis’ is the convenient keyword to characterise it. Manifold tensions in the EU have been taken to an unprecedented level: these obviously include the asylum crisis, the persistent weakness of economic recovery, the continued austerity policies in many Member States, the unrelenting risk of Grexit and, most recently, the vote on Brexit.

*Social policy in the European Union: state of play 2016* is focused on some of the most severe crises that have marked the integration process during the year 2015, discussing their potential social, political and institutional causes and consequences. Some of the recent developments are rendering the integration process fragile as a whole. The cooperation between Member States is characterised by increasing mistrust, or even outright conflict. As a result, the EU institutions – particularly the European Commission – face increasing difficulties to broker common solutions between national governments to solve the collective problems of the Union. While there has been some good news in 2015 – the decline in number of long-term unemployed is a case in point, even if it remains far above pre-crisis levels – persistent problems are contributing to a sense of insecurity and generalised doubt about the future of the EU. The risk of EU disintegration, in a rather detrimental socio-economic context, has never been so real.

In such a context, short-term remedies are inadequate to give a new dynamic to the EU and to renew the prospect of a more integrated Europe. More ambitious plans to ‘revitalise’ or even ‘save’ Europe are needed. The main questions addressed by the book are therefore quite existential: *What is the scale of the different crises? Is there a genuine risk of the EU disintegrating? What would be the best ways for the EU to address the many crises? What are the prospects of further differentiation within the EU, with groups of countries following distinctive integration paths?*
This edited volume first of all spells out the broad analytical and theoretical questions of importance to the present and future of the EU, addressing the existential questions voiced above. The starting point relates to the future prospects for a more integrated Europe: recent events have threatened solidarity between Member States and the capacity of policymakers to envisage a coordinated answer to sizable challenges. In chapter 1, Sergio Fabbrini therefore analyses the main institutional dynamics of the recent past of the EU: the author finds that the return to a more intergovernmental approach has contributed to increased tensions between Member States. Fabbrini then looks at the prospects for progress towards a (con-)federation of Member States, and the consequences this would have for the role of the European institutions. In chapter 2, Sotiria Theodoropoulou explains how the 2015 Greek crisis aggravated the divisions between Member States and the ECB, failing altogether the imposed solidarity test. Fabbrini argues in favour of curtailing the burden on national fiscal policies, completing the banking union and mitigating the European Central Bank’s strategic behaviour.

The edited volume then goes on to describe the most prominent socio-economic challenges faced by the EU in 2015 and provides ideas on how to address these crises and to reinforce the EU’s delivery on social ambitions. Anke Hassel and Bettina Wagner explain in chapter 3 how the migration crisis – encompassing both refugees and internal EU migration – has brought the EU to the brink of its decision-making capacity in 2015. They argue that the crisis in the management of the refugees in 2015 triggered paramount shifts in EU and domestic policymaking: from protection of victims to protection against the threat of terrorism; from equal treatment to social security restrictions; and from social security protection to a merit-based system.

Denis Bouget and Bart Vanhercke then provide an initial appraisal of the 2015 Council Recommendation on the integration of the long-term unemployed into the labour market in chapter 4. Their reading is that certain rigidities in the Recommendation (i.e. a one-sided approach concerning labour supply) coincide with a weakening of the social protection of workers and non-workers. In chapter 5, Aída Ponce Del Castillo discusses recent developments concerning occupational health and safety policies in a historical perspective. The author concludes that the best way workers can be protected is by going ‘back to basics’, i.e. by having a clear set of rules that can be implemented and enforced by
Member States. Dalila Ghailani, in chapter 6, describes the austerity measures taken by a number of Member States and their impact on certain economic and social rights, including education, health, pensions and work. She concludes that in recent years the importance attached to human rights has declined together with state budgets. But, unlike national budgets, these rights have not benefited from bail-out plans. In the concluding chapter 7, David Natali aims to spell out some future prospects for the EU. He argues that a more diversified EU must strengthen its normative foundations and make solidarity an explicit aim and principle. This will require domestic and EU policymakers to ‘take the bull by the horns’. The chronology by Cécile Barbier summarises the key events of the year 2015 in the area of social and economic affairs.

All the chapters of the volume provide a forward-looking reflection on the EU political context, describing both risks and opportunities for a new path for Europe. The key challenge for the EU relates to its internal arrangements: which countries wish to move towards a more in-depth integration, and which prefer the status quo or even retreat, as part of a less structured Union. A further question, however, concerns the key priorities for the EU as a whole. In our view, the EU programme for the future should be based on a more explicit commitment to equitable growth, with a socially-oriented approach to economic progress, and to the defence and reaffirmation of some of the linchpins of the EU: the free movement of people and the need for a more solidarity-based approach to migration.

The European Social Observatory has again worked together with the European Trade Union Institute and leading scholars to draw up the seventeenth annual report on *Social policy in the European Union: state of play 2016*. Through this collaborative publication, we hope to provide inspiration for the deliberation – and if needs be controversy – between policymakers, social stakeholders and the research community. At the same time the book provides accessible information and analysis for practitioners and students of European integration.

We look forward to engaging in a dialogue with you with regard to the crucial issues addressed in this volume.

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Chapter 1
Beyond disintegration: political and institutional prospects of the European Union

Sergio Fabbrini

Introduction

The European Union is facing one of the most dramatic crises of its long history. The present EU crisis has many dimensions, some of which are clearly and directly related to the social dimension of Europe: the issue of migrants (Hassel and Wagener, this volume), the enduring weakness of our labour markets as a consequence of the still slow economic recovery (Bouget and Vanhercke, this volume), and last but not least the increasing divergence of labour and social standards between the different parts of the EU. All these tensions are putting European integration at risk. While other chapters in this volume address the many social dimensions of the crisis, the present contribution outlines the main institutional and political problems in the EU, and envisages some possible solutions.

This chapter raises the following questions: first, Why have the Eurozone (or Economic and Monetary Union, EMU) and the European Union (EU) been weakened by the Euro crisis and the ensuing refugee and terrorist crises, opening a process of disintegration after 60 years of uninterrupted, although contrasted (Dinan 2006), integration? In particular, disintegration has become a reality (Lefkofridi and Schmitter 2014), first with the outcome of the British referendum of 23 June 2016, when a majority of United Kingdom citizens voted to take their country out of the EU (so-called Brexit). Second, Greece’s ongoing difficulty in fulfilling its financial obligations (i.e. respecting the conditions imposed on the country by its donors) has kept alive the

1. Brexit is an abbreviation of ‘British exit’.
option of forcing Greece out of the Eurozone (the so-called Grexit, see Theodoropoulou, this volume). The second question this chapter tackles is therefore: *How could the process of disintegration be dealt with by the EMU and the EU?*

To answer the first question, this chapter recalls the structure of interstate compromises struck within the EU and EMU, which shaped the decision-making process for dealing with the economic policy side of EMU but also applied to, say, security and asylum policies. Certainly, the financial crisis has been of an unprecedented magnitude, but its impact on the EU and EMU has been amplified by the weakness of the decision-making structure set up – from the 1992 Maastricht Treaty to the 2009 Lisbon Treaty – to deal with the economic governance of the single currency. That decision-making structure has clear intergovernmental features. The intergovernmental response to the Euro crisis (and to the other crises as well) has thus contributed to a deepening of the divisions, within the EU and EMU, between groups and sections of Member States (North vs. South, West vs. East) with regard to the policies to be pursued. Because these policies were of great significance to national domestic actors, they were assigned to the coordinated control of national governments. However, in crisis conditions, intergovernmental coordination has not worked as expected, triggering centrifugal forces within the EU and EMU. Regarding the second question, the chapter considers two strategies for dealing with these centrifugal pressures: strengthening *policy differentiation* within the same legal and institutional order, or pursuing an alternative strategy of *constitutional differentiation* between distinct institutional and legal orders.

The chapter will be organized as follows: section 1 describes the model of economic governance of the Eurozone. Section 2 analyses the impact of the Euro crisis on that model. Section 3 discusses the features of the two differentiation strategies. The final section sums up and draws the main conclusions from the analysis.

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2. Grexit is a portmanteau combining the English words ‘Greek’ and ‘exit’.
1. Intergovernmental economic governance

The centrifugal pressures which have developed within the EU and EMU (Fossum and Ménendez 2014) cannot be understood without considering the decision-making structure set up through and by the Lisbon Treaty for dealing with the economic side of EMU, migration and refugee policies, and home security policies. The logic of that decision-making structure is mainly intergovernmental. Indeed, since the 1992 Maastricht Treaty, policies which were politically salient for domestic actors have entered the EU agenda, on the proviso that national governments could control them. In Maastricht, a Pillar structure was introduced to distinguish between the regulatory policies of the single market to be managed by the traditional Community method (Dehousse 2011), and the Common Foreign and Security Policies (CFSP) and Justice and Home Affairs (JHA) issues, to be controlled by national governments through their intergovernmental institutions.

The Europeanisation of policies traditionally close to core state powers (Genschell and Jacthenfuchs 2014), and their management through the intergovernmental institutions of the European Council and the Council of Ministers (then only Council) (Puetter 2014), have dramatically increased the impact of domestic politics on EU decision-making and vice versa.

The intergovernmental union which emerged to manage the new policies, in our case the economic side of EMU, is the outcome of interstate compromises. The decision to introduce a single currency (taken during the Intergovernmental Conference (IGC) held in Maastricht in 1991), was a turning point in the process of European integration. That decision was contained within a structure of compromises that made it possible, firstly, for a few Member States to opt out of the new single

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4. The Community method (adopted for the regulatory policies of the single market) implies that the decision-making power has to be shared between supranational institutions (the European Commission – with its monopoly on legislative initiative – and the European Parliament as a true co-decisional legislature) and the intergovernmental institutions (mainly represented by the Council of Ministers or Council, the other co-decisional legislature). The Intergovernmental method (adopted for the new policies) implies that the decision-making power is held by the European Council (constituted by the Heads of State and Government) and the Council of Ministers, with the supranational institutions of the Commission and the European Parliament playing a subordinate role.
currency regime; and, second, to establish within the EMU an intergovernmental arrangement for the control of economic policy and a supranational system for the control of monetary policy. Regarding the first compromise, the EU has thus developed as an internally differentiated political system (Leuffen et al. 2013; Dyson and Sepos 2010), with the aim of accommodating Member States assumed to be pursuing the same finality of the integration process but at different speeds (Piris 2012).

By means of the second Maastricht compromise, a Eurozone was created, organized according to a decision-making model combining centralization of monetary policy and decentralization of economic, financial, fiscal and social policies (Issing 2008). The monetary policy of the common currency was put under the control of an independent federal institution, the European Central Bank (ECB), but the other connected policies remained in the hands of Member State governments. These decentralized policies, however, were to be coordinated within and by the intergovernmental institutions of the European Council and the Economic and Financial Affairs (ECOFIN) Council. These policies were ‘Europeanized’, but managed by national governments working in collegiate bodies – as represented by the Council and the European Council – with limited involvement of the supranational institutions of the European Commission and European Parliament. With regard to these decentralized policies, it was also established that integration would have to proceed through political, rather than legal, acts. Since integration could not take place through law in these policies, the role of the Court of Justice of the European Union (CJEU) – whose power has continued to be crucial in the supranational constitution – would be curtailed. Since Maastricht, more integration does therefore not necessarily imply more supra-nationalization (Fabbrini and Puetter 2016).

This Maastricht compromise was further institutionalized in and through the Stability and Growth Pact (SGP) (Heipertz and Verdun 2010), made up of a Resolution of June 1997, two Council Regulations of July 1997 and finally the Protocol on the Excessive Deficit Procedure (EDP), also approved in July 1997. The first Regulation ‘on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies’ – known as the preventive arm of the SGP – entered into force on 1 July 1998; the
second Regulation ‘on speeding up and clarifying the implementation of the excessive deficit procedure’ – known as the SGP’s corrective arm – entered into force on 1 January 1999. Although this compromise allowed Member States to pursue their own policies, they had to do so within macro-economic parameters (setting out the ratio of public deficit and debt to GDP), formalized as proper statutory rules. The principle of voluntary coordination between national governments was thus established, but that voluntary coordination had to be regulated by macro-economic rules, and only the national governments could determine (as a collective in the ECOFIN Council) whether or not those rules had been respected by one of their number. No legal requirements were imposed on the behaviour of national governments by any of the supranational institutions (the European Commission in particular).

The Lisbon Treaty abolished the pillar-structure that had been established in the Maastricht Treaty, but it kept the intergovernmental decision-making regime for the economic policy of the Eurozone (Dyson and Quaglia 2010) and the other new policies. In other words: when the financial crisis struck Europe, not only was there an intergovernmental regime in place to deal with it, but there was also a general consensus between national governments that they alone should find solutions for the financial turmoil.

With the Lisbon Treaty, it was thought that a single currency area might consolidate and develop without a single public authority managing the economic, financial and fiscal policies connected to the single currency. Moreover, the ECB was strictly constrained – by its statute – to adopt only anti-inflationary measures and not measures connected to growth and employment (as is the case with the US Federal Reserve). An informal Eurogroup of economic and financial ministers of the Eurozone was given the task of coordinating distinct national economic policies. If the ECB is understood as a technocratic institution, then the EMU consisted of one single currency managed by a plurality of governments, although coordinated through the intergovernmental institutions of the European Council and the Council of the EU. It was in fact the collective of the national governments belonging to the EMU that had been given, by the Lisbon Treaty, the role of governing the single currency. With the adoption of the Lisbon Treaty it was generally thought that the above inter-state compromises would finally be consolidated (Kral 2008).
2. The crisis of the EMU economic governance model

The 2008 financial crisis upset the fundamental compromises underpinning the Lisbon Treaty (Fabbrini 2014). First, it upset the compromise between the UK (and more in general the ex-EFTA area⁵) and the EMU Member States. Two new intergovernmental Treaties entered into force in January 2013: the 2012 European Stability Mechanism (ESM) and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, also referred to as the Fiscal Compact. Both Treaties were established outside the legal order of the Lisbon Treaty to deal with the financial crisis: the former as a firewall for managing it, the latter as an instrument to prevent another crisis. The Eurozone leaders chose to resort to international treaties to neutralize the veto threatened by the UK government. In order to prevent future veto threats, these treaties set up new organizations where unanimity is no longer needed for decision taking. The Fiscal Compact even established (Title VI, Art. 14.2) that, to enter into force, it requires the approval of only 12 out of the then 17 (now 19) Eurozone signatory Member States (out of the then 25 Member States of the EU).

Moreover, the European Commission’s intervention vis-à-vis any contracting party that disrespects the agreement is now quasi-automatic, an automaticity that can be prevented only by a reversed qualified majority of the finance ministers of the signatory Member States (Fiscal Compact, Art. 17). Furthermore, the Fiscal Compact requires the contracting parties to introduce the balanced-budget rule at constitutional level (or equivalent), thus also limiting from within the domestic system the possibilities for non-compliance and policy discretion. As a result of the Fiscal Compact, the vast majority of Member States are now coordinating their economic, fiscal and budgetary policies, leaving out only the UK; the Czech Republic, which refused to sign the Treaty in 2011, eventually signed it in March 2014.

⁵ The European Free Trade Association (EFTA) was constituted in 1960 as an alternative project to that inaugurated by the 1957 Rome Treaty (European Economic Community, later EU). Originally, its members were Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK. Iceland entered the organization in 1970, Finland in 1986 and Liechtenstein in 1991. Several of these countries left EFTA to then join the EU. Currently, only Iceland, Liechtenstein, Norway and Switzerland are members of EFTA.
Moreover, the UK did not sign the 2011 Euro Plus Pact, a political commitment (intergovernmental agreement) between the Eurozone Member States and several others (such as Denmark, Poland, Bulgaria, Romania, Latvia and Lithuania\textsuperscript{6}) aimed at fostering stronger economic policy coordination between them. The new organization set up by the Fiscal Compact has revealed the differing interests between the Eurozone and the opt-out Member States. The most crucial decisions have been taken in the meetings of the governmental leaders of the Member States adopting the Euro (‘Euro Summit’), with the pre-‘ins’ and the ‘out’ Member States frequently being informed later about their content (Ludlow 2011).

The compromise between a centralized monetary policy and nationalized economic policies has also suffered in the course of the Euro crisis. Constrained by the intergovernmental constitutional arrangements, the voluntary coordination of national policies has been unrelentingly challenged by its internal dilemmas. The response to these difficulties has been a further regulatory centralization of the governance of the Eurozone, through the establishment of stricter macro-economic and budgetary rules to be respected by the signatory states, in line with the ordo-liberal economic tradition developed in the 1930s by the Freiburg School (Young 2012). Financial aid to Member States unable to respect the requirements has been accompanied by conditionality rules that have led to the reduction of their decision-making autonomy. National discretion has been unevenly restructured, with the debtor Member States becoming less autonomous than the creditor Member States because of their inability to control the externalities of their policies.

The net outcome of this process, however, has been an across-the-board restructuring of national welfare systems, which has taken the form of a significant down-sizing of social protection programmes in the indebted Member States (Ferrera 2014). Within the European Council and the Euro Summit, a decision-making hierarchy has emerged in the form of a German-French (and then only German) \textit{directoire} of the Union’s financial policy. Within the European Council, the financial strategy for dealing with the crisis came to be decided more and more by Berlin and

\textsuperscript{6} Latvia subsequently entered the Eurozone on 1 January 2014, and Lithuania on 1 January 2015.
its Northern allies, and was then approved by the intergovernmental institution as such (Fabbrini 2013). The growing German unilateral leadership of the European Council has coincided with an unprecedented split between Northern and Southern Member States within the Eurozone. Instead of giving the Eurozone an autonomous budget and legitimate political authority to deal with the crisis, the outcome has been a convoluted imposition of rules on the policies to be pursued within EMU.

Thus, throughout the Euro crisis, the intergovernmental regime has gradually come to prevail over the supranational arrangements: the latter one still applicable, through the Community method, to the decision-making process in the regulatory policies of the single market. Not only has the European Council become the decision-making centre for the policies adopted in response to the financial crisis, but the Euro Summit of the heads of state and government of the Eurozone (formalized by the Fiscal Compact) has also become a driving institution for framing the responses to the crisis (Fabbrini 2015a; Puettner 2014). Given the structure of economic governance set up in the Treaty, the European Commission was asked to play a largely administrative role, transforming the policy guidance of the European Council into technical proposals. Indeed, when the European Commission claimed a more political role in interpreting the rules, the heads of government of the creditor Member States reacted by threatening to exclude it from any decision-making arena. The more the crisis has deepened, the more the European Council has established its executive role. This has not meant that the European Commission has become unimportant. Indeed, the legislative measures (the 2010 European Semester, the 2011 ‘Six-pack’, the 2013 ‘Two-pack’) and intergovernmental treaties introduced during the crisis have increased the technocratic role of the European Commission in monitoring Member States’ behaviour regarding their respect and enforcement of intergovernmental decisions (Zeitlin and Vanhercke 2015).

At the same time, the European Parliament has been left in a sort of institutional limbo. More precisely, it has been marginalized in the decision-making process. It is true that a few legislative measures were adopted through either ordinary or special legislative procedures (that recognize a decision-making or consultative role for the EP), but these legislative acts do not assign an active role to the EP in economic policy.
Moreover, the deepening of the Euro crisis has led to new treaties that do not recognize the EP as a policy-making actor. Certainly, it is difficult to identify a role for the EP (which represents the citizens of the EU) in new organizations set up by not all of the Member States of the EU (Hefftler and Wessels 2013). With the Euro crisis, the decision-making barycentre of economic policy has moved towards the relationship between the European Council (along with the Euro Summit) and the ECOFIN Council (along with the Eurogroup of the economic and financial ministers of the Eurozone Member States), rather than towards the relationship between the European Commission, the Council of Ministers and the EP (which has continued to be predominant in single market policies).

In sum, the Euro crisis has introduced significant changes to the institutional context of the Maastricht-Lisbon compromises: it has increased the policy and institutional distance between the Eurozone and the non-Eurozone Member States of the EU; it has shown the incongruence of managing a common currency through a plurality of decentralized economic policies, although coordinated through the Euro Summit and the Eurogroup; it has weakened the supranational logic of the EU through the central role acquired by intergovernmental policies in the EU agenda. Politics have been replaced by macro-economic and technical rules, decided by national governments because of their mutual distrust, and the question of whether or not these rules have been respected has been interpreted in purely technocratic terms. When the need for politics emerged, it took the form of German leadership of the EMU. Indeed, in a crisis situation, intergovernmentalism has led to the formation of hierarchical decision-making patterns within the EMU.

3. **What sort of differentiation to deal with centrifugal pressures?**

The Euro crisis has not been business as usual, nor can the refugee crisis and the terrorist threat be considered to be business as usual. In particular, the Euro crisis has altered the basic inter-state compromises underpinning the EMU and the EU. The Euro crisis has shown that the coexistence of different monetary regimes within the EU has become increasingly untenable. The purely economic perspective of the opt-out
Member States has ended up contrasting with the Eurozone’s need for ‘a more genuine economic and monetary union’ in order to manage current and prevent future financial crises (see the Four Presidents’ Report, van Rompuy et al. 2012, and the Five Presidents’ Report, Juncker et al. 2015). The Eurozone and non-Eurozone Member States are already separate, both institutionally and legally. Brexit magnified this separation. The EMU has created an institutional setting structured around the Euro Summit and the Eurogroup, and a discussion has started within the EP on how to distinguish, in deliberations concerning EMU policies, between members of the European Parliament or MEPs elected in Eurozone and non-Eurozone Member States. At the same time, the Fiscal Compact and the other intergovernmental treaties have created a new legal order for the Eurozone, although this is divided internally and overlaps with the legal order of the Lisbon Treaty. In this new context, Brexit has led the EU to a crossroads: a choice between deepening policy differentiation between clusters of Member States in the hope of keeping them within the same legal order, or building a constitutional differentiation between the Eurozone and the non-Eurozone Member States, thus connecting them within the single market framework.7

3.1 Policy differentiation

Policy differentiation is a political strategy aimed at reconstructing the unitary order of the Lisbon Treaty, albeit internally differentiated on the basis of the measures introduced to manage the Euro crisis. As stated by Leuffen (2013: 5), ‘differentiated integration (is) a political program’. As discussed above, from Maastricht to Lisbon the EU already developed as an internally differentiated organization. The action of the EP during the drafting of the Fiscal Compact, aimed at establishing a clear formal deadline for bringing it back into the Lisbon

7. The literature on European integration is now proposing different strategies to respond to what we call here the Euro crisis. While this chapter looks at differentiation within the EU, with a core group of countries involved in more intense integration, some analysts have proposed a process of differentiation based on weaker cooperation (see Zielonka 2014; Majone 2014), while others have focused on the need to change the economic and monetary policy of the EU (see De Grauwe 2016; McDonnell 2012) or on the need to change the logic of the EU political debate in a more ‘cosmopolitan’ sense (Borzel 2016). None of these strands presuppose any Treaty revisions.
Beyond disintegration: political and institutional prospects of the EU

Treaty (European Parliament 2012; Kreilinger 2012), is an expression of that programme. The nomination on 30 August 2014 of Donald Tusk, a former Prime Minister of a non-Eurozone Member State (Poland), as president of both the European Council and the Euro Summit, is another example of the attempt to reduce the divisive effects of the Euro crisis.

Brexit has been used by several Member States – the ‘Visegrad Group’, made up of the Czech Republic, Hungary, Poland and Slovakia – to call for a sort of nullification of those EU decisions that might affect the electoral fortunes of national governments, such as the reallocation of refugee quotas from such countries as Italy or Greece to the other Member States. Indeed, Brexit has also been used to demand the repatriation of competences in policy areas (such as international trade) assigned – by all the treaties, from the 1957 Rome Treaties to the 2009 Lisbon Treaty – to the exclusive competence of the EU institutions. The European Council’s declarations that the much maligned ‘ever closer union’ clause does not apply to this or that Member State, will loom large on the horizon. Especially if that Member State has resorted to a popular referendum to legitimize its claim, as happened in Hungary with regard to refugee policy. At the same time, to prevent the possibility of another Grexit and the complete wearing down of peripheral Eurozone Member States by austerity policies, more flexibility will be allowed in the interpretation of the rules on the functioning of Eurozone governance and the ECB. Under this strategy, one can imagine an EU made up of different clusters of Member States, participating permanently in different policy regimes with varying degrees of integration, and with many grey areas between these regimes (a theoretical discussion on the EU as ‘a club of clubs’ can be found in Majone 2014). Policy differentiation thus acknowledges the differences between Member States (and their domestic politics), although it continues to assume that these differences are compatible with a unitary process of integration and legal framework (Blockmans 2014; Schmidt 2010).

This political programme of policy differentiation has, however, its weaknesses. The conflict of interests between the non-Eurozone and the Eurozone Member States could not be easily kept within a unitary legal order. The need for deeper integration in EMU policies would put a tremendous strain on the common legal and institutional order; any
step towards more integration within the legal framework of the Lisbon Treaty would certainly trigger an exasperated reaction against the EU in the non-Eurozone Member States. It seems unlikely that disintegration could be prevented through diplomatic agreements regarding the interpretation of the Lisbon Treaty, once the centrifugal forces of repatriation of policy competences have left the Pandora’s box. At the same time, differentiated integration would not alter the intergovernmental logic of the EMU (for refugee or security policies), the decisions of which have lacked the necessary democratic legitimacy to be accepted by the citizens affected in the Southern Eurozone Member States. The dissatisfaction with the management of financial policy in the latter Member States cannot be silenced by confirmation of its intergovernmental origins. Bringing national parliaments into the differentiated regime of EMU economic governance (Glencross 2014) would not solve the structural legitimacy deficit of the intergovernmental method, but would certainly increase its structural inefficiency. More in general, the involvement of national parliaments in EU policies might indeed be a way to obstruct decisions taken by the EU institutions. One has only to think of the choice made in July 2016 by the Council and the European Commission, to let (38) national legislative chambers vote on the trade agreement between the EU and Canada (the Comprehensive Economic and Trade Agreement, CETA) concluded on December 2015. A choice that will certainly hold up approval of a policy that, however, pertains exclusively to EU competences 8.

Legitimacy for decisions taken at the supranational level should come from supranational institutions, in our case the EP. However, not only has the EP been excluded from the main EMU decisions, but its inclusion is constitutionally questionable. Because the EP ‘shall be composed of representatives of the Union’s citizens’ (TEU, Art. 14.2), not of representatives of Member State citizens, it would be controversial to distinguish – in its internal deliberative process – between representatives coming from Eurozone and non-Eurozone Member States, allowing only the latter to have a say on the decisions taken by Eurozone institutions (Euro Summit and Eurogroup).

8. Indeed, the contrary vote to the CETA by the parliament of Wallonia on mid-October 2016 has constrained the Belgian vote in favor of the Agreement, jeopardizing the conclusion of the agreement between the EU and Canada.
Efficiency, in its turn, requires a supranational authority with the power and the resources to take decisions. Finally, a differentiated EU would leave the technocratic (ordo-liberal) order of EMU intact, with its institutionalized bias in favour of the economic interests and cultural values of the Northern and creditor Eurozone Member States.

3.2 Constitutional differentiation

Constitutional differentiation is a strategy aimed at building a pluralistic institutional order in Europe primarily based on the constitutional differentiation between the Eurozone and the other EU Member States. This strategy would require a political decision by the Eurozone political leaders in order to prevent centrifugal pressures both in the EMU and EU. This requires a double and contextual constitutional act to set up a Euro-political union and to revise the single market union of the Lisbon Treaty. For the Eurozone, a model of economic governance would need to be found which was capable of dealing with the structural transformation caused by the Euro crisis. The Euro-political union would necessarily be based on a constitutional pact with the features of a basic ‘Political Compact’ (Lamond 2013), specifying (a) the political (not cultural) values and aims of the Euro-political union, (b) the policy competences and fiscal resources allocated to the supranational and national levels of the Euro-political union, (c) the separation of powers to manage the supranational policies of the Euro-political union, and (d) the power of the judiciary in protecting citizens’ rights and Member States’ prerogatives within the Euro-political union. The Lisbon Treaty might continue to provide the legal basis for the single market, although shorn of those parts concerned with the policies unrelated to the functioning of the market: EMU and the two Maastricht intergovernmental pillars, i.e. monetary, financial, economic, fiscal, budgetary, foreign, security, defense, home and justice affairs, inter alia. In doing so, it might be possible to revise also certain unnecessary regulatory constraints on specific issues, without however calling into question the role of the supranational institutions – such as the CJEU and the European Commission – that make a single market possible.

The economic governance model of the Euro-political union should include the creation of a specific fiscal capacity to be used by a legitimate executive power operating under the scrutiny of an independent legislative power.
That fiscal capacity should derive from sources independent of the Euro-political union, such as a tax on financial transactions. Inter-state transfers of financial resources should be minimized, or used only in exceptional circumstances, since they foster resentment in both those giving and those receiving these resources. The existence of an independent budget for the Euro-political union could make up for the no-bail out clause, already set out in Art. 125 of the Lisbon Treaty. The lack of an EMU budget made it impossible to respect the no-bail out clause in the Greek case. Indeed, Greece originally had to be saved, partly because the creditors of Greek debt were German and French banks and international financial institutions. At the same time, Greece has used the EMU’s fear of its financial collapse to pursue a reverse blackmail strategy, demanding solidarity with no strict conditional strings attached. In constitutional federal unions, debt is a national responsibility, whereas growth and employment is a matter for the union.

While the Euro-political union should have its own constitutional bases (in order to contain centrifugal processes between its members) and its own policy responsibilities, at the same time the institutional structure of the Euro-political union should be adequate to deal with its systemic properties, i.e. the demographic asymmetry of its Member States and the different national identities. The Euro-political union should be structured around a formal separation between legislative and executive institutions and functions. Indeed, the Euro crisis has shown that the executive power of the Euro Summit is largely unaccountable to the EP (Crum 2013). Separation of powers implies a multilateral institutional system for balancing asymmetrical inter-state and differentiated inter-citizens relations (Fabbrini 2015b). In a system with separation of powers, none of the institutions participating in the decision-making process requires the confidence of others before acting, but none can impose its decisions without the consent of the others. A new institutional architecture would therefore be required for the Euro-political union, whereby a public authority can take decisions on economic policy on the basis of democratic legitimacy. The Euro-political union should function according to a model of compound democracy (Fabbrini 2010), with a political logic based on checks and balances between horizontally and vertically separate institutions.

The distinct institutional and legal orders should thus find robust bridges to connect with each other in internal market policies. The
modalities for the functioning of a single market including the Member States of the Euro-political union together with other European states would need to be specified. The single market, not the Euro-political union, might be open to European states currently outside of the EU (such as Norway, some Balkan states, or at some point the UK) or semi-European states (such as Turkey or other countries at the fringe of Europe), provided that they met precise macro-economic and micro-institutional conditions and that a geopolitical equilibrium was respected. In sum, it would be necessary, firstly, to separate Member States interested only in economic cooperation (the non-Eurozone Member States) from the Member States pressurised or willing to move in the direction of a political union (the Eurozone Member States). Secondly, they would need to be connected through a flexible agreement aimed at preserving and regulating the policies of the internal market in which they all participate.

Conclusion

This chapter has argued that the centrifugal pressures which have developed within the EU (epitomized by the prospect of Brexit) and within the EMU (epitomized by the possibility of Grexit) are the outcome of a combination of dramatic external shocks (the multiple crises) and inadequate institutional structures for dealing with these. These institutional structures were the outcome of a long and contrasted process of compromises between the Member States of the EU and EMU. The crises have radically altered the functioning of these structures, magnifying the divisions between Member States and preventing effective and legitimate responses to the external shocks. The Euro crisis in particular has been a litmus test for the resilience of the Lisbon Treaty’s attempt to keep the divisions between Member States within a unitary legal process. The Lisbon Treaty has failed this test, showing the unbridgeable divisions between the EU Member States. A debate has thus been opened on how to neutralize the disintegrative pressures and to create a new political order in Europe.

The chapter has identified two alternative strategies for dealing with disintegration: policy differentiation and constitutional differentiation. Because of the radical differences between Member State perspectives on and interests in the EU, policy differentiation within a unitary legal
and institutional order would not seem to be an effective antidote to disintegration. A Europe à la carte would increase, not decrease, disintegration. This chapter has thus put forward the idea of an integrated Europe with a pluralism of institutional and legal arrangements, organisationally distinct and at the same time connected (see also Natali, this volume). The constitutional differentiation approach implies a process of managed integration and disintegration. A Euro-political union would emerge from a decision in favor of deeper integration, whereas the single market would require the relaxation of unnecessary regulations (disintegration). The ‘ever closer union’ clause would apply to the Euro-political union, not the organization of the single market. At the same time, the Euro-political union would be less centralized than the current Eurozone. Constitutional firewalls should be introduced between the Member State level and the union level, defining the policy competences to be dealt with at either level. A clear separation of competences and institutions between the national and the union levels (the constitutional firewall) would be necessary to prevent a cough in a national capital becoming bronchitis in Brussels. Vertical mergers between levels of government, as well as horizontal confusion between governmental institutions at union level, should be prevented. National democracy would be preserved with regard to domestic policies, the powers of the union (although limited) would be strengthened with regard to collective policies. The Europe emerging from the multiple crises will continue to be integrated if its political elites and citizens recognize the need to begin an original and creative process to redefine the institutional and political bases of their relationship.

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Chapter 2  
What solidarity in the Eurozone after the Greek crisis of 2015?  

Sotiria Theodoropoulou

Introduction

The first semester of 2015 marked the latest episode in the Greek Euro crisis which began in 2010. The beginning of the crisis itself – Greek chronic policy failures prior to it notwithstanding – was a consequence of the incompleteness of the monetary union in Europe. The fact that the Eurozone reached once again a critical point in 2015, faced as it was with the possibility of a Greek exit (‘Grexit’), was, however, the outcome of an ineffective approach in the way that the Greek debt crisis had been handled since 2010. It also resulted from the unwillingness of the policy actors who committed mistakes to admit these, and change course. The Euro crisis exposed divisions among and even within Member States, and not merely along simple lines such as creditors vs. debtors. Indeed, the crisis also brought to the fore very clearly the fact that the European Central Bank (ECB) has been crossing the limits of its political independence. The ECB turned into a decisive pressure lever for steering Member States that need it to function as a lender of last resort (either to their banks or to their sovereign) in certain policy directions that are preferred by some or most creditor Member States.

In 2015, five years after the onset of the Eurozone crisis, there was no shortage of analyses as to the causes of the crisis and what needed to be done – not just to end it but also to defend the Eurozone against future shocks. While there was no across-the-board agreement on the exact solutions, one common feature of the tabled proposals (even those that were not very ambitious) was the need for more inter-state solidarity in the form of pooling together collective resources to deal with certain shocks. If
the latest episode of the Greek Euro crisis demonstrated something, it was that the appetite for inter-state solidarity remains very low.

This chapter first spells out the context in which the 2015 Greek crisis can be viewed: as a division of interests between (creditor and debtor) Member States and the ECB. It shows how, in a context of intergovernmental decision-making, the Greek crisis aggravated these divisions. It then argues that given the lack of appetite for inter-state solidarity, it is important to increase the scope for solidarity at the national level. According to this view, the burden that has been put on national fiscal policies by the Eurozone’s fiscal rules, the incomplete banking union and the European Central Bank’s strategic behavior have to be seriously mitigated. Although fiscal policy coordination – and therefore rules on national fiscal policies – are necessary their focus has to shift in favour of allowing stabilization to take place at the national and aggregate level, and away from the focus on moral hazard. The banking union has to be completed with a deposit insurance and a more potent single resolution fund. This would require some pooling of fiscal resources, even if it would certainly fall short of a ‘fiscal union’. Last but not least, collective bargaining institutions have to be strengthened at the national level while initiatives need to be taken in view of their coordination across national borders and fiscal policies within the Eurozone.

1. Power asymmetries in decision making and the notion of inter-state solidarity in the Eurozone

To understand what we can learn from the latest episode of the Greek Euro crisis in 2015 regarding the possibility of a more solidaristic governance in the Eurozone, two points need to be addressed. First, there are still very different views on what ‘inter-state solidarity’ should mean in practice, and under what conditions it should be demonstrated in the Eurozone. Given that, it is then not surprising that the governance of EMU has been expanding in scope, but not by transferring competences to supranational institutions other than the ECB (cf. Bickerton 2015b; Bickerton et al. 2015). The fact that decisions on economic policies in the Eurozone are predominantly taken by intergovernmental institutions like the Euro summit and the Euro group has meant that in shaping policies and crisis responses, national
interests have been pitched against each other. Given that decisions on actions of inter-state solidarity have also been taken on an inter-governmental basis, the balance of power within the intergovernmental decision bodies, with the crucial help of the ECB, has tilted decisively in favour of the creditor Member States’ interests and ideas in general, and those of Germany in particular (De Grauwe 2013a; 2013b and 2015).

When it became apparent in early 2010 that the Greek government had all but lost its access to sovereign bond markets, there were two options: either to let the Greek government default in the face of mounting pressure from the financial markets, in the form of ever higher interest rates at which it could borrow; or to provide it with liquidity support so as to allow it to keep servicing its debt, to reduce its financing needs (i.e. bring down its budget deficit) more gradually and eventually regain access in the markets at an interest rate it could afford. The Eurozone leaders were caught unprepared, as the fiscal rules and the markets were supposed to have prevented such an event from occurring. But eventually they opted for a Greek bailing-out.

This wisdom of that choice has ever since been the subject of a heated debate. The crux of the disagreement between those who think the bail-out was a formidable mistake and those who think that it was, in retrospect, a fairly reasonable thing to do, is that Greece’s public debt was already unsustainable in 2010. The bail-out thus meant that more debt was added to a debt that the country’s taxpayers were already unable to pay. However, given that the European economies had barely started to recover from the turmoil caused by the financial crisis of 2008-2009 – a crisis that had been sparked by the bankruptcy of Lehmann Brothers – there was the risk that a Greek sovereign debt default would trigger a systemic crisis in the financial markets, more particularly in the Eurozone. These fears were underpinned by the fact that 72% of the Greek public debt was held by non-residents (Bruegel database of sovereign bond holdings developed in Merler and Pisani-Ferry 2012). Just as importantly, the ECB had not yet fully and unreservedly assumed its role as lender of last resort for sovereigns in the Eurozone. This meant that in the event of any signs of contagion to other vulnerable Member States, sufficient support of the ECB could not be counted on (Davies 2015b).
For the purposes of this chapter, the answer to whether the bailout was justified or not is not crucial. What is important, however, is that both options were on the table and that the bail-out option was presented as ‘solidarity’ with Greece. If Greece had been allowed to default, then many of its creditors would have experienced a loss of assets. The holders of Greek government bonds were indeed financial institutions (banks) in Greece and abroad but also institutional investors, for example pension funds, especially in Greece. Tracing the ownership of sovereign bonds once they have started trading on the secondary market is fraught with difficulties. However, there are reasons to assume that a default would have eroded the capital adequacy of certain banks, in particular in Germany and France. Although the size of the problem for foreign banks has been arguably overstated in popular analyses (cf. Whelan 2015a), it is fair to say that the problems that creditors might have faced from a Greek default would have been dealt with by their own national governments. In that respect, the consequences of an unsustainable public debt would have been shared between Greece and its creditors.

It should be noted that this default option would not in any way have constituted a ‘charitable’ approach, as for every irresponsible borrower (the Greek government in this case) there have been irresponsible lenders. In the case of Greece, even the forged (as it turned out in 2009) statistics on its public finances suggested that the country’s public finances were not healthy, or well managed, even before 2009.

Some observers have argued that allowing Greece to default in 2010 would have constituted a ‘humiliation’ of a European government by the financial markets: the latter would have essentially forced Greece into not honouring its obligations, with all the reputational damage this would have implied. Markets would have triumphed over politics. That was an option that France and other southern European members opposed, arguing instead that fellow Member States should show ‘solidarity’ to the Greek government, and collectively help shore it up.

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1. Davies (2015a) provides data on the amount of Greek government bonds but also of deposits held by German and French banks in 2010. According to his calculations, a Greek sovereign default would have been a ‘deep wound in the flesh’ for them but, unlike with Greek banks, it would have been nowhere near wiping them out.
against the pressure of the markets. This surge of ‘solidarity’ was not entirely altruistic. French but also German banks had some of the highest exposures to Greek public debt. Other southern European Member States, such as Portugal, Spain and Italy, feared the potentially grave knock-on effects from a Greek default, as they had already started feeling the rising pressure on the interest rates at which their governments could borrow in the sovereign debt markets (Sandbu 2015: 56).

From the perspective of Greece, it was not clear whether defaulting would necessarily imply leaving the Eurozone. Despite popular perceptions, there is no ‘default prohibition’ rule in any of the European Treaties. The only reason for which a default on part or all of its public debt could lead to an exit from the Euro would be that the ECB might not provide liquidity support to the Greek banking system in its aftermath. The prospect of a sovereign default was indeed likely to trigger a bank-run, with depositors massively withdrawing their deposits from Greek banks, which would then find themselves with insufficient liquidity for performing their functions. In Member States with their own central bank, such a bank-run can be quelled by the central bank which would announce that it will provide as much liquidity as necessary to the banking system. The ECB in 2010 was reluctant to play that role.

Even if the liquidity crisis was averted, the fact remains that Greek banks were relatively large holders of national public debt (bonds) and default would harm the assets side of their balance sheets. They would then need to be recapitalized, a function which in 2010 and in the absence of a banking union or the ESM would have to be performed by the Greek government: the latter would issue bonds to hand over to the banks as assets. The ECB could then refuse to accept such bonds as collateral for providing liquidity to the Greek banks. In this case, the Greek government would have a choice between declaring a prolonged bank holiday, which would cause the equivalent of a cardiac arrest to the Greek economy, or starting to print its own currency, thus effectively exiting the Eurozone. In that respect, and since Greek public opinion

2. Although there is always a margin of error in deciphering who owns government bonds, Dan Davies (2015a), based on data from the Bank of International Settlements (BIS), provided a rough estimation of 27 billion euros held by French and 25 billion euros by German banks in early 2010.
was firmly in favour of Greece’s continued membership of the Euro, the bail-out, insofar as it averted Greece from abandoning the Euro, was indeed a manifestation of ‘solidarity’ albeit not an optimal one.

For ‘solidarity’ to be shown through a bail-out, a collective financing solution would have to be found, since there were objections to the option of bringing in the IMF to deal with the Greek crisis on several grounds, mostly notional rather than factual. Given the principle of proportional participation, collective financing would make Germany the largest contributor. The problem was, however, that since the inception of the monetary union in Europe, Germany has been adamantly against the establishment of a ‘transfer union’. This is why the only way that Germany would agree to showing solidarity and providing financial support to Greece would be on the condition that far-reaching policy changes and adjustment would take place. This would ensure that no ‘blank cheque’ would be given to the Greek government, but also that support would never be needed again. Last but not least, Germany was an important factor in determining the amount of money committed to the bail-out package(s). That amount, in turn, determined how far austerity would have to go, after the various financing needs – (including debt servicing and bank recapitalization funding) – had been taken into account.

It has been well documented that the policies imposed as conditions for receiving the financial aid packages in Greece have ultimately been very harmful for its economy (see for example, Gechert and Rannenberg 2015). A central pillar of these policies was fiscal austerity in order to bring down the government budget deficit. It is plausible that if more

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3. Two notional (rather than factual) reasons have been put forward for the involvement of the IMF in addition to the Eurozone. First, Germany wanted to avoid making the Greek ‘rescue’ look like a bail-out, as there was the interpretation that the Treaty forbids bail-outs. This is, however, not self-evident. As Whelan (2015a) argues, art. 125 of the current Treaty mentions that the EU and its Member States will not be liable for or assume the commitments of other countries. Providing loans to other countries so that they can roll their own debts over is not assuming liability. Moreover, and similarly to the ‘financial markets humiliate Eurozone government’ argument, some in the Eurozone would perceive it as a sign of weakness, if not humiliating, to bring in the IMF alone: it would signal that the Eurozone could not take care of its own problem. Otherwise, the IMF involvement would have been welcome in order to provide their knowhow and experience in dealing with balance of payments/sovereign debt crises. In the end, however, the IMF had to make political compromises with the Eurozone in handling the situation in Greece, which led it to compromise the principles under which it normally organizes its interventions in troubled countries.
consideration had been given to pursuing a slower pace of fiscal austerity (that is, to ‘budget financing’), the amounts committed to other financing needs could have been smaller (cf. Davies 2015b). After all, the Greek banks’ balance sheets have suffered from the collapse of the real economy and the non-performing loans that it accumulated to their balance sheets. Moreover, Greece’s difficulties in returning to the sovereign debt markets have to a large extent been shaped by the ongoing crisis. However, this sort of ‘Keynesian’ thinking has, to put it mildly, not been predominant in German and EU economic policy cycles.

The unprecedented size of the first bail-out package to Greece (110 billion euros), and the ex-ante heroic assumptions on which the success of its attached Economic Adjustment Programme relied (Theodoropoulou and Watt 2015), meant that there were serious risks of a default anyway. These risks and the casting of the Greek crisis as a problem with entirely Greek origins meant that a very tight incentive structure would have to be created for Greece, for the package to gain approval by the national parliaments of the creditor Member States. Thus the Troika was born, as the ‘technocratic’ agent of the lenders (Pisani-Ferry et al. 2013) and agreement was reached that the earmarked funds would be disbursed in quarterly installments following tight ex-ante and ex-post controls of compliance with imposed policy plans (Theodoropoulou 2014).

The role of the Troika evaluations in putting pressure on the Greek government was enforced by the European Central Bank, the only institution that could effectively force a Member State to abandon the single currency and start reprinting its own currency. The ECB has been a catalyst for the dominance of creditor Member States’ preferences in policy choices, by making its support (as a lender of last resort to banks and sovereigns in the Eurozone) conditional on borrower countries reaching an agreement with effectively the Eurogroup. This is an important development insofar as it indicates what Whelan termed as ‘ politicised mission creep’ by the ECB (Whelan 2015c).

4. The success of the programme was defined as the return of Greece to the financial markets.
In short, the absence of a banking union and the conditional and initially reluctant role of the ECB as a lender of last resort to banks and sovereigns made Member States in trouble vulnerable and increased their reliance on financing from the rest of the Eurozone. As decisions on this support were reached on an intergovernmental basis, the Member States that contributed (the ‘creditors’) were in a more powerful position than the debtors. Through their decisions – for example on how much financing would be made available – the creditors could shape how fast fiscal adjustment would have to take place in bailed-out Member States, notably via the budget constraint of the support package.

2. **Greece and the Eurozone on the brink: the 2015 surrender**

2.1 **The road to the January 2015 elections**

By late 2014, having overseen the implementation of most of the Economic Adjustment Programme that was a condition for receiving the second bail-out, the grand coalition government between the weakened centre-right New Democracy (ND) and the almost evaporated centre-left PASOK failed to reach an agreement with the Troika\(^5\) on the fifth and final ex-ante assessment of the second bail-out programme. This assessment, the successful conclusion of which was necessary for Greece to receive the final tranche of funding (7.2 billion euros) from the second bail-out programme, had been pending since the autumn of 2014.

The friction point between the Troika and the government – in office since the general elections of June 2012 and with demonstrable signs of fiscal consolidation and reform fatigue – was the further fiscal tightening of around 1 billion euros that would have been necessary in order to close the projected gap in the budget. To make figures add up, the government would have had to legislate further pension cuts and tax increases, which then-prime minister Samaras estimated would not be voted through by the Parliament. Since April 2014, the Greek govern-

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\(^5\) European Commission, European Central Bank and International Monetary Fund.
ment had been expecting the Eurozone leaders to open discussions on further debt relief to Greece, as they had promised, in late 2012, to do once the Greek government achieved a balanced budget (which it did in early 2014). The government could have used this relief to make the further cuts more palatable to Greek public opinion.

However, this discussion on debt relief was postponed without any indication by the lenders as to when it might start. The almost certainty of a forthcoming electoral victory of SYRIZA, a radical left, anti-systemic party (cf. Pappas 2014) in the next general election created incentives for the lenders to neither conclude the agreement nor commit to any debt relief, for fear that a SYRIZA-led government would have no incentive to stick to agreed measures once funding had been released and debt relieved (Varvitsioti and Telloglou 2015). Moreover, the second bail-out programme was due to expire at the end of February 2015. Greece was facing large loan repayments for 2015. Without the official financing from the bail-out, it was certain that it would not be able to honour at least some of them, including to the ECB and the IMF.

The stalling of negotiations over the assessment of the second Economic Adjustment Programme illustrates the tension between the needs of Greece (requesting some flexibility in the policies it had to pursue) and the insistence of the creditors’ agents that conditions had to be fulfilled before support could be provided. All this while evidence (e.g. Gechert and Rannenberg 2015) suggested that the imposed conditions were actually undermining (a) the goal of getting the Greek economy to grow again and (b) the likelihood that Greece would no longer need financial support, and even be able to pay back its debts. In late 2014, this insistence did not even recede when faced with the possibility that the grand coalition government in Greece, which was led by a party from the EPP family and an ally of other creditor governments in the Eurozone, would collapse.

By the end of 2014, Greece had managed to balance its primary government budget, from a deficit of 10% of GDP in 2009, and this amidst the worst recession the country had experienced in the postwar era. In practice, that meant that government revenues were sufficient to cover government expenditure, excluding interest. This was a positive development insofar as it implied that Greece would no longer rely on
its creditors in order to finance its current expenditure needs. From that point onwards, budget surpluses would be used to service the existing debt, of which 80% was official – that is, held by other governments and supranational/intergovernmental institutions. In other words, the fiscal surpluses that Greece would have to produce by means of fiscal austerity in a context of a weak economy would be requested so as to transfer resources (that is, pay interest and capital) to its creditors, since the government’s own expenses were in principle covered by its revenues.

Moreover, Greece had managed to reduce its current account deficit from a staggering 16% of GDP in 2008 to just below 3% in 2014, which meant a large reduction in its financing needs for transactions with the rest of the world. This adjustment had come mostly through lower imports rather than through higher real exports, indicating a domestic demand repression effect (Theodoropoulou 2016). Last but not least, and contrary to popular accounts in Northern Europe, Greece had undertaken a large number of structural reforms in the labour market (see for example, OECD 2015), although more was left to be done in other critical areas.

These adjustments had, however, taken place at a very high price. Between 2008 and 2014, the Greek economy lost 25% of its real output. In 2014, tax revenue was below target to the tune of 1.3 billion euros, with indirect taxes undershooting the target figure by 500 million euros due to lower than forecasted transaction taxes. At the same time, the stock of unpaid taxes rose by 13.8 billion in 2014 to reach a total of 73.8 billion euros that year (Mouzakis 2016). The average unemployment rate peaked at over 27% of the labour force in 2013. Although youth unemployment rates – at nearly 60% – were the figures most often read about in the headlines, most job losses had actually affected men of 40 years and above, whose unemployment rates had increased 4-5-fold, depending on the age group and sector (Theodoropoulou 2016).

Nevertheless, by the end of 2014, there were some indications that the worst might have been over. Greece had taken a fiscal policy stance of slight expansion. In its Autumn 2014 forecasts, the European Commission had, for the first time since 2009, predicted that the Greek economy would register a slightly positive growth rate in real output of 0.6% for 2014, and a brisk 2.9% was projected for 2015. The un-
employment rate was expected to stabilize in 2014 and slowly start declining after that. The gross public debt/GDP ratio was also expected to stabilize at the high level of 175% and start declining from 2015 onwards, as the headline government budget balance was also expected to turn into a surplus. In other words, by late 2014, the Greek economy appeared to have dealt with the macroeconomic imbalances that triggered its crisis, but it also had serious wounds to heal from that process.

The dead end to which the negotiations with the Troika had led, the constitutional requirements for the election of a new President of the Republic and a gamble that Prime Minister Samaras decided to take, resulted in the calling of a general election for 25th January 2015. It would be the third election since 2010, when the first package of financial support to the Greek government was received.

2.2 ‘Hope is coming’: the ascent of SYRIZA to government

SYRIZA, which had gained a modest 5% of the vote in 2009, campaigned for the January 2015 elections on the promise that it would scrap austerity, eliminate the Troika and embark on a programme of financial support to those hardest-hit by the crisis: the so-called ‘Thessaloniki programme’ (SYRIZA 2014). The motto of the SYRIZA electoral campaign was that ‘Hope is coming’. At the same time, the party’s Eurosceptic rhetoric had been clearly toned down since 2012, when its strong potential for winning office became apparent. Early declarations that membership of the Euro would not be a ‘taboo’ for SYRIZA had been replaced with a ‘third way’ option, combining Euro membership with less harsh policies and less intrusiveness in policy making (Mudde 2015). In January 2015, SYRIZA won an even larger victory than forecasted by the polls, with 36% of the votes. It came just two seats short of an absolute majority in the Parliament. This result confirmed the collapse of power of the two parties (PASOK and ND) that had governed Greece since its return to democracy in 1974. The night of the 2015 elections, SYRIZA’s president Alexis Tsipras, announced that his party would form a government with the small ultra-right wing (populist and nationalist) party of Independent Greeks (ANEL). Between them, the two parties held 162 of the 300 Parliament seats, giving the government a relatively comfortable majority in the Parliament.
SYRIZA’s drive against fiscal austerity resonated with many on the progressive side of European politics, although national governments maintained a cautious attitude. Political leaders found support among many public economist-intellectuals on both sides of the Atlantic, such as Paul Krugman, Simon Wren-Lewis, Amartya Sen, Tomas Piketty, Paul De Grauwe and Dani Rodrik (to mention but a few), who since 2010 had been critical of the EU’s premature turn to austerity. Even the research department of the IMF had published criticism over the speed with which fiscal austerity had been implemented in Europe (cf. Blanchard and Leigh 2012). In essence, the view was reiterated that for the monetary union to function, more solidarity – in the sense of pooling more fiscal resources – was needed.

In spite of the fact that SYRIZA’s ascent to government office had been predicted since 2012, its appointed ministers appeared to be rather unprepared to rise to the requirements of a political negotiation with Greece’s creditors and their agents (the Troika). From the first few days following the elections, it became clear that no consistent line was being communicated by the government Greek officials, while there also appeared to be a lack of understanding of institutions and of who does what in the management of the Greek economic adjustment programme. Yanis Varoufakis – an economics professor who in his previous academic capacity had been very vocal as to what could get Europe out of the crisis, but who was an outsider to the party – was appointed minister of finance, and de facto chief negotiator.

Under his lead and given that he also thought that the bailouts were a major mistake for Greece, the new Greek government announced in early February 2015 that it intended to neither seek an extension of the bail-out nor accept the full final sub-tranche of the earmarked bail-out funds. The government also declared that the country would seek a debt swap (essentially a reduction in its net present value) rather than a write-down of its nominal value. Politically, this seemed a more palatable option for the leaders of the creditor Member States to pass through their parliaments, as the losses that they would bear in such a scenario are harder to track on the public finance accounts (Colasanti 2016). Varoufakis was confident that even if Greece defaulted on its loans (which it should not have taken out in the first place), the ECB would not allow the country to exit the Eurozone and would keep up the liquidity supply to its banks. That was in spite of two previous incidents
with Ireland and Cyprus where it had become pretty clear that the ECB had controversially and covertly threatened to cut off liquidity to their respective banking systems, unless their governments sought and implemented economic adjustment programmes from the EU-IMF.

Varoufakis devised a proposal for ‘a menu of debt swaps’ in return for a commitment to a (smaller) primary government budget surplus over the years and an agenda for reform (Barbier 2015). A crucial assumption for his plan to work was that the ECB would either pay to the Greek government profits from bonds that the ECB had not exchanged in 2012, or that it would raise the limit on the T-bills (i.e. short-term bonds) that the Greek government could issue and Greek banks buy to an additional 10 billion euros, so as to allow the government to carry on honouring its financial obligations (that is, to not default) until a new agreement was reached.

As soon as they took office, the new Greek prime minister and minister of finance embarked on a tour of European capitals and a series of meetings with high-ranking EU and Eurozone officials, in the hope of gaining support for their aforementioned alternative proposal on the Greek debt (the debt swaps) and less austerity. This series of meetings, however, did not yield the hoped-for broad coalition against austerity. This was not surprising for the creditor Member States, who did not want to set a ‘bad example’ of concessions, in order to avoid moral hazard. Remarkably, however, the governments of periphery economies, especially Spain, equally expressed their opposition to a different treatment of Greece. Although these economies could potentially benefit from the precedent of a Greek debt write-down and an easing of austerity, most of them were on their way to completing their own painful economic adjustment programmes. Implemented under governments on the centre-right, these programmes had not spared Spain or Portugal from the dismal economic, social and political consequences that Greece suffered from. The risk was, however, that should the EU and the IMF make concessions to the Greek government, there would be a political backlash against the governments in the other bailed-out countries for not having negotiated hard enough. Moreover, statements by Varoufakis...

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6. For a total amount of 1.9 billion euros, a provision agreed in the context of the previous government’s negotiation in the second bailout programme.
that Italy (with its very high debt/GDP ratio) was essentially insolvent threatened to spark a market reaction that could turn into a self-fulfilling prophecy.

On closer inspection, therefore, the cold shoulder that Athens received even from the Member States which had been ‘in the same boat’ was explained by the various national interests, to a large extent linked to the domestic politics in the other Member States. On the other hand, Eurozone members in Central and Eastern Europe with lower per capita income than Greece were also unhappy with the Greek government’s plea for debt forgiveness and less austerity.

2.3 Reality bites: the ECB’s move from a monetary to a political institution

On 4th February 2015, a few weeks before the expiry of the second bailout programme, the European Central Bank announced that, as of 11th February, Greek government bonds would no longer be accepted as guarantees (collateral) for providing liquidity to the Greek banks via the normal ECB channels. Instead, Greek banks would have to rely on Emergency Liquidity Assistance, to be provided by the Bank of Greece in exchange for collateral, until some agreement was reached between the Greek government and its lenders. The Bank of Greece would have to comply with general guidelines issued periodically by the ECB, with regard to what collateral it could accept and how much liquidity it could extend. The ECB justified this decision by referring to its doubts as to whether the final evaluation of the second programme would be concluded on time so as to release funds to the Greek government and avoid a default. The ECB move was in fact in the opposite direction from that Varoufakis had assumed, as it made the provision of liquidity to Greek banks somewhat harder and more expensive.

In practice, the restriction in liquidity that followed was rather limited7. More important pressure points were two decisions which had been

7. Data from the Bank of Greece suggested about 8 billion euros out of the 56 that the Greek banking system owed to the Euro system in December 2014.
What solidarity in the Eurozone after the Greek crisis of 2015?

taken by the ECB well before the change in government in Greece (Whelan 2015b). First, the ECB had also placed a cap on the amount of Greek government T-bills (i.e. short-term bonds) which Greek banks could buy at 3 billion euros, a cap that it refused to raise. This cap imposed important budget constraints on the Greek government, as Greek banks were the main buyers for such bonds. Secondly, in 2013, the ECB had announced that, as of the 28th February 2015 – that is, the date of the end of the second bail-out – it would no longer accept as collateral bonds issued by the banks and guaranteed by the Greek government. By the end of December 2015, these bonds amounted to 25 billion euros of liquidity injected into the Greek banking system. Should the Greek government not have an agreement for financial support with its lenders after that date, it would be up to the ECB to decide whether or not to provide liquidity to the Greek banks. Although the ECB justified these constraints by its rules, commentators (Whelan 2015a and 2015b) suggested that this was rather its own interpretation of the rules and thus a political choice (rather than an obligation) to put pressure on the Greek government to stay in agreement with its lenders. This seems to confirm the argument that the ECB turned from a monetary to a political institution.

As the prospect of Greece’s lenders adopting Varoufakis’ proposals appeared less and less likely in February 2015, and as the date of the expiry of the second programme drew near, a bank-run, the first of that year, started taking place in slow motion. Depositors of Greek banks, worried about the uncharted territory into which a lack of agreement might lead, started withdrawing their savings from Greek banks. The ECB did not make any explicit statement to reassure depositors about the safety of their money, as a central bank would do.

Under these pressures, and given the hard stance of its lenders, the Greek government sought a four-month extension of the second bail-

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8. According to statistics from the Bank of Greece, in January (amid the political uncertainty relating to the general elections and the impending victory of SYRIZA) and February 2015 (during the standoff between the Greek government and the lenders), households and firms withdrew a total of 20.4 billion euros from Greek banks, bringing total deposits down to a 10-year low of 140.5 billion euros. The amount of withdrawals was even higher than the respective run on the banks in May-June 2012, when, following twin general elections, it appeared that Greece had come the closest it ever had to exiting the Eurozone.
out agreement on 19th February 2015, essentially endorsing the validity of the bail-out agreement. The lenders granted the request in exchange for a list of measures and reforms that the Greek government should develop further in order to receive the money. Essentially the agreement did not provide any liquidity to the Greek government, but kept the negotiations on the conditions under which the remaining funds would be released open, allowing the ECB to keep up appearances in maintaining the liquidity provision to the Greek banks via the Emergency Liquidity Assistance. The agreement also bought the government some time to spell out what it wanted to get out of the negotiations. The plan was that a full list of measures should be agreed upon as soon as possible, so as to allow at least a tranche of the earmarked money to be paid to the Greek government9.

The relief that followed the February 2015 agreement on extension of the bailout programme did not, however, last for long. There appeared to be significant differences between the Greek government and its lenders in their understanding of the obligations. The lenders expected that the Greek administration would elaborate on the list of measures on the basis of which Greece was granted an extension. They also expected that it would collaborate with the technical teams of the Troika in order to operationalize and agree on which targets should be met and how, as a pre-requisite for any of the bail-out final tranche money being paid. The Greek government, on the other hand, was highly reluctant to cooperate with ‘the Institutions’ (as the Troika came to be known after January 2015). There were thus complaints that the government did not accept the technical discussions, the successful conclusion of which was a pre-requisite for the political decision to release funds. As the payments of Greek public debt started becoming due without any external funding and the Greek treasury felt the liquidity constraints, Tsipras started making appeals to Greece’s EU fellow members to reach a ‘political’ decision to release some of the bailout money to ease the liquidity difficulties.

9. The government faced quite a steep schedule of rolling over 4.3 billion euros of T-bills (i.e. short-term bonds) and 2.3 billion euros to the IMF by the end of March 2015; and 2.4 billion of T-bills by April 2015.
Soon, it became increasingly clear that the Greek government was struggling for liquidity to meet its domestic and external obligations. In order to avoid an external or internal default on its obligations, the Greek government mopped up all available reserves of public entities in Greece to continue paying its obligations, including wages, pensions and IMF loans. This had consequences for the real economy: state arrears towards suppliers of goods and services grew while the expenditure of sub-national public entities was frozen. The results of diminishing liquidity did not take long to manifest themselves. In its early May 2015 Spring European Economic Forecast, the European Commission downgraded the predicted growth rate for 2015 for Greece from 2.5 to 0.5%, while the forecast of public debt as a share of GDP was raised compared to the winter forecasts from 170% of GDP to 180%. The predicted government budget balance turned from a surplus of 1.1% to a deficit of 2.1% of GDP. In terms of the programme, this deterioration meant that for the final programme evaluation to be concluded, the Troika would require even more fiscal austerity measures than a few months previously.

In the meantime, Varoufakis had alienated most if not all of his colleagues in the Eurogroup. They complained that they were tired of him delivering lectures at their meetings and instead wanted to see specific technical proposals to be discussed. He retorted that he tried to speak economics to them but no one seemed interested. Moreover, and contrary to the established norms of the Eurogroup, he made statements that suggested that the privacy and confidentiality of its meetings were not safe with him (Bickerton 2015a). Bowing to pressure from other Eurogroup members and the Troika, the Greek prime minister, in April 2015, replaced Varoufakis as the head of the Greek negotiation team with Euclid Tsakalotos, who seemed more willing to negotiate on a shared basis.

Disagreements continued into June 2015, and not just between the Greek negotiation team and the Troika but also between the IMF and the European Commission. Given that, in addition to the IMF, a sizeable loan repayment was also due to the ECB on 20th July, the sense of urgency for concluding an agreement that would release funds so as to avoid a default on payments to either of the two institutions increased again. Defaulting on IMF debt payments was a relatively rare occurrence. If Greece failed to pay back the ECB, all bets would be off.
Varoufakis’ conjecture was that for self-preservation reasons, the ECB would eventually blink first and not cut off liquidity from the Greek banks as this would force Greece to exit and very likely trigger the disintegration of the Eurozone. In theory that was indeed a rational possibility. In practice, however, defaulting on its ECB payments was a huge gamble. If the ECB did not blink, the consequences for Greece would be momentous, both economically and politically.

Public weariness about the prospect of a Greek exit from the Eurozone increased, re-igniting the bank-run in slow motion. Cash in the coffers of Greek banks reached new lows in June 2015. Should Greece leave the Eurozone, all deposits in Greek banks would be redenominated from Euros to a new currency, which would most certainly suffer from a sharp depreciation at least in the short term, leading to a reduction in the asset value of households and firms. Greece relied heavily on imports of basic goods, which would become much more expensive, thus leading to further sharp deterioration of incomes.

Last but not least, Greece has never had a track record of fiscal and monetary policies compatible with price stability, which is why, prior to joining the EMU, governments and businesses faced relatively high interest rates for borrowing. Should it re-introduce its own currency, it would have to either return to high interest rates or pursue fiscal and monetary policies even more conservative than those of the Eurozone.

Faced with these risks, the prime minister realised that not reaching a compromise with the lenders would lead the country in a direction for which there was no plan, preparation or even clear public support from the majority of Greeks. His view, however, was not shared by several prominent members of his party and ministers of the government. Not reaching an agreement would be detrimental for both sides. However, it was becoming clear that, given its economic and financial situation, Greece would suffer even more. Capitulating to an agreement would mean an even bigger U-turn than the previous Greek governments had committed and would go against every SYRIZA promise, except perhaps for that of staying in the Euro. The party was very likely to split and become the third big Greek party to collapse under the pressures of the economic adjustment programmes.
2.4 The July 2015 referendum: a Greek tragedy, again

Rather than taking responsibility for a decision, in the early hours of Saturday 27\textsuperscript{th} June 2015, just four days before the expiry of the programme extension, Tsipras, without any prior warning to their opposite-numbers in the negotiations, called a referendum for Sunday 5\textsuperscript{th} July 2015. In this referendum, organised with just a week’s notice, contrary to the Council of Europe’s guidelines\textsuperscript{10}, the Greek people would have to decide whether they were willing to accept a version of the Troika proposal to conclude the pending evaluation and receive funds – which was still under negotiation – or not. The prime minister made it clear that he would campaign in favour of ‘No’, although the leader of his right-wing coalition partner, Kammenos, clarified that if a better offer came from the lenders in the course of the week, the government would tilt its support in favour of ‘Yes’. The prime minister’s calculation was that, given how close the Greek exit from the Euro appeared to be, the Greek people would grit their teeth and vote in favour of the programme. He could then either resign, admitting defeat but maintaining his record clean from adopting austerity policies, or reach an agreement, on the pretext that he bowed to the people’s mandate.

Following the referendum announcement, the ECB essentially blocked the provision of further liquidity to the Greek banks by deciding to place a cap on the Emergency Liquidity Assistance (ELA), at the level of 26\textsuperscript{th} June 2015. Since Greek citizens were expected to rush in panic to withdraw whatever deposits they had still in the banks, the cap on ELA meant that the banks would not be able to honour these requests. Consequently, a bank holiday was declared as of Monday 29\textsuperscript{th} June 2015 and capital controls were imposed, which at the time of writing this chapter (October 2016), are still in place.

On 30\textsuperscript{th} June 2015, one day before the Greek repayment of 1.6 billion euros to the IMF was due, the Tsipras government submitted a request to the Eurogroup for the provision of a bridging loan from the ESM. This loan was to cover the financing needs of Greece for the period 2015-2016, the restructuring of the Greek public debt and the extension

\textsuperscript{10} The Council of Europe issued a statement to that effect reported in media across the world.
of the second bail-out programme until the approval of the aforementioned request. In the absence of any response, by the end of the day Greece officially entered into arrears with the IMF with regard to its payment of the 1.6 billion Euros due, the first country ever to do so since Zimbambwe in 1983. Following this, the European Commission informed the Greek government on behalf of its European lenders that the EFSF had in principle the right to declare all loans provided to the Greek government immediately payable, as Greece had violated the condition of timely repayment to the IMF.

At the referendum, 62.5% of registered voters turned up and 62% of these voters voted ‘No’. The week that followed was dramatic. The night of the referendum, it appeared that Greece was on a direct collision course with the EU and the IMF. However, it soon became apparent that the Greek Prime Minister had made up his mind to strike a compromise with the lenders. The following day, finance minister Varoufakis resigned and was replaced by the more moderate and low-profile Euclid Tsakalotos. Having secured the support of the leaders of all Greek parliament parties, bar the Communists (KKE) and the neo-Nazis (Golden Dawn), Tsipras and Tsakalotos attended an extraordinary Euro-summit and Eurogroup on 7th July 2015, where they were presented with a tight timetable for resolving the crisis. It was clear that a new bail-out would be necessary.

The Greek government was asked to submit a detailed programme of measures and reforms by the morning of Friday 10 July 2015. The programme would then have to be evaluated by the Troika before it was discussed at yet another extraordinary Eurogroup meeting on Saturday 11th July 2015, followed by another Euro summit. An EU summit was then also planned for Sunday 12th July 2015. There were indications that EU leaders were preparing for the possibility of not reaching an agreement with Greece and having to discuss how to provide humanitarian support to the Greek people in the event of ‘Grexit’. For its part, the ECB kept the financing constraints tight, and would only provide as much liquidity as strictly necessary to maintain the situation of the previous weeks, i.e. with the banks closed and controls on capital movements and withdrawals from banks. In the evening of 9th July 2015, the Greek government submitted its proposal requesting a new bail-out, which was pretty much along the lines of the one that was rejected at the referendum.
On 11th July, rather than taking action that would de-escalate the crisis and help reach an agreement fast, the German ministry of finance circulated a non-paper that criticized the Greek proposal as an insufficient basis for a new bail-out. The paper stated that the measures were based on, and even fell short of, the latest proposal of the Troika with a view to the final review of the previous bail-out, which ‘Greece was not able to conclude’. Moreover, the non-paper stated that the Greek proposal lacked a number of reforms that would be vital to modernize the country, foster long-term economic growth and sustainable development. The proposed labour market reform, reform of the public sector, privatisations, banking sector and structural reforms were not deemed sufficient. The German non-paper suggested that Greece should improve its proposals to rebuild confidence, ensure debt sustainability upfront and the successful implementation of the programme. Among the suggested improvements was the transfer of valuable Greek assets – 50 billion euros – to an external fund, to be privatized and used to pay back the debt, and automatic spending cuts in case budget targets were missed. Should the Greek government fail to provide such improvements, the non-paper suggested a ‘temporary time-out’ from the Eurozone of five years to allow for debt restructuring. In such a case, humanitarian and technical assistance should be provided to Greece by the EU while steps should be taken to strengthen the governance of the Eurozone.

At the Eurogroup meeting that preceded the Euro summit, 15 out of 18 ministers of finance agreed with the evaluation of the non-paper that the measures proposed by Greece were not sufficient for agreement on a third bail-out, the only exceptions being the ministers of France, Italy and Cyprus. At the Euro summit that followed, François Hollande, who in the previous months had emerged as an active mediator between Greece and Germany, took the lead in ruling out the idea that Greece should take a ‘time-out’ from Eurozone membership in order to reform without constraints on its economic policies. The Italian prime minister, together with the Irish and Cypriot Presidents, backed Greece. German Chancellor Angela Merkel was reportedly torn between different considerations. On the one hand, she felt that ‘trust’ between Greece and the other Member States had again been compromised and needed to be restored, presumably through hard measures. She was more hesitant, however, than her minister of finance as to the merits of a ‘temporary’ Greek exit, mostly due to geopolitical considerations.
Other small Member States, such as Belgium, Finland, Slovakia, Malta and Estonia, lined up with Germany whereas the other southerners aligned themselves with France, even though they had been in favour of not letting Greece off the hook too easily.

Following difficult negotiations that lasted 17 hours, the Euro summit of the following day reached agreement on granting further support to Greece on the condition that it immediately legislated on a series of measures. A month later, on 14 August 2015, the new agreement was voted through the Greek parliament. Greece would receive a total of 86 billion euros for the following 3 years, in exchange for a third programme of economic adjustment, which provided for measures much harder and more extensive than the ones which had led to elections earlier that year.

Thus, in less than six months, any Greek hopes for policy change but also for recovery had been shattered. The new Greek government was a coalition of two parties that had been waging opposition against the former mainstream Greek parties for signing up to the bail-out programmes and accepting the terms imposed by the lenders, and which had been promising to do away with austerity, the Troika and the loans. Yet now it found itself signing up to a third bail-out, following, as described above, the imposition of capital controls and having come closer than ever to exiting the Eurozone. What was worse, any signs of forthcoming recovery had evaporated, after the economy had suffered financial asphyxiation due to the lack of liquidity and the bank-run in slow motion that eventually culminated with the capital controls and the extended bank holiday.

3. **Is there a future for solidarity in the Eurozone?**

3.1 Differing views as to the meaning of inter-state solidarity

The way the 2015 Greek crisis was handled shows that some common sense of purpose and sense of solidarity, even if selfishly-motivated, still exists in the EU. After all, several (non-negligible) Member States did successfully stand up to the German ministry of finance’s suggestion of ‘time out’. However, the way in which some of the creditors treated the legitimate Greek request for a relaxation of policies judged detrimental
by mainstream economists suggests not simply an absence of solidarity. It suggested a willingness to continue punishing a country, in spite of many reforms, a significant drop in living standards (cf. De Grauwe 2015) and even the collapse of the party-political system.

It is impossible to assess whether a negotiating team with more diplomatic skills, better understanding of the institutional construction of the Eurozone and pragmatism would have achieved a more solidaristic outcome. Playing by the established rules and procedures of negotiation is necessary to build trust (i.e. to show that one is a responsible counterparty), especially when a radical change in the course of action is sought. The fact that the lenders decided to not make any concessions to the previous Greek government (which was led by a party of the EPP family) in view of SYRIZA’s expected electoral victory, suggests that the lenders might have stuck to their approach anyway. These questions notwithstanding, to portray Germany’s harsh proposals of the weekend of 11th–12th July 2015 as necessary to ‘restore trust’ is remarkable. Indeed, the creditors’ side postponed indefinitely the discussion of any further relief, not keeping to the promise made by the European Council of November 2012 to open this discussion once Greece achieved a government budget surplus. This was clearly a stance that reflected the existence and exploitation of a large asymmetry in power between Member States that are supposed to be equal in an ‘ever closer union’.

The differences between Member States’ perceptions of what shape and size inter-state solidarity should take are thus alive and kicking. At the same time, the views that dominate policy responses are likely to be closer to those of the most powerful creditors, in particular Germany. The way the crisis was resolved demonstrated, however, that divisions exist even within the group of creditor Member States, most notably between a group led by Germany and consisting of small Member States like Finland, the Baltics and Slovakia, on the one hand, and another group led by France and Italy on the other. The current common sense of purpose is nowhere near sufficient to take a leap forward towards more supranational integration in a way that would put an end to the economic crises.

It is often argued that, under the pressure of the sovereign debt crisis, the EU and the Eurozone in particular have come a long way in addressing shortcomings in the institutional architecture, in a way
which would have been unthinkable several years ago (Colasanti 2016). The most prominent examples of progress are the mechanism for financial crisis resolution, the European Stability Mechanism, and the first steps towards the establishment of a banking union, but also the launch of Outright Monetary Transactions (OMTs) by the ECB. However, these steps have been organized in a way that reflects the kind of inter-state solidarity demonstrated in the Greek case: the amount of pooled resources has been lower than necessary to be effective, whereas the conditions for accessing these resources seem to be more dictated by the wish to avoid moral hazard and the establishment of a transfer union than by a desire to ensure stabilization in the face of a crisis.

3.2 A more solidaristic governance in the Eurozone: what can be done?

The dominant perceptions of the definition, degree and conditions of provision of inter-state solidarity are far from optimal. For a way to be found towards a more solidaristic governance in the Eurozone, it is important to highlight two problems. On the one hand, Member States are not willing to pool significant financial resources or political sovereignty at the supranational level. On the other hand, Member States and the ECB are concerned about moral hazard: for example, financial support with too few strings attached or less strict fiscal rules leading to less fiscal discipline. Both of these issues have resulted in suboptimal crisis responses and stability in the Eurozone. The lack of appetite for further integration can only be tackled by making clear what minimum level of economic policy integration is indispensable for a functioning monetary union. On the issue of moral hazard, however, there is probably more scope for improvement by changing the content of the fiscal policy rules or the philosophy of economic adjustment programmes attached to bail-outs. The two issues are closely connected.

National fiscal policies have been under extreme pressure to do more than they should for three main reasons: (a) the excessive focus of fiscal rules on meeting budget deficit targets, as opposed to contributing to the stabilization of the economy; (b) the current adverse macroeconomic circumstances, resulting in the limited potential of ECB monetary policy to stabilize the Eurozone economy; and (c) the fact that national fiscal policies are still, to an extent, responsible for stabilizing national
banking systems in case of problems (Mabbett and Schelkle 2015). Thus, making progress with the completion of the banking union would be a way of ensuring that fiscal policies effectively meet fiscal rules.

Furthermore, fiscal rules should be changed to allow for more flexibility at the national level and the adoption of an appropriate aggregate fiscal stance by the Eurozone as a whole. Rather than targeting arbitrary, if not outright harmful, deficit and debt/GDP ratios, rules should be set so that national fiscal policies aim at a real exchange rate that is compatible with full employment in an economy over the medium term. In the national fiscal policy context, this could be done by stimulating (contracting) demand to result in higher (lower) national inflation relative to the ECB target, which would lead to real exchange rate appreciation (depreciation).

The fiscal stance for each Member State would be determined according to the necessary aggregate fiscal stance and the appropriate alignment of real exchange rates: those with lower inflation rates over a period, which were not justified by relative productivity differentials vis-à-vis other Member States, would be required to expand their fiscal policies more than those with relatively relatively high inflation rates (cf. Allsopp and Watt 2003; Theodoropoulou 2015). This need would also give rise to different national inflation rate targets, which taken together should, however, aim at averaging at least the 2% inflation target of the ECB. The recently appointed European Fiscal Board in collaboration with the national Fiscal Boards would be in a position to provide analysis that would make it possible to suggest appropriate national inflation rate targets and fiscal policy stances, emphasising the need for Member States whose economies are going through booms and recessions to make equal and opposite efforts to meet these targets. Insofar as such fiscal rules would actively promote stabilization at the national and Eurozone level, they would make compliance easier and more credible, offering reassurances against moral hazard.

While cases of financial support programmes are different, a more Keynesian philosophy on how to support countries during adjustment could help to allocate the sums of the financial envelope somewhat differently across the functions they usually serve: bank recapitalization, debt rollover and budget financing. Allowing more budget financing could thus plausibly result in lower bank recapitalization and debt
rollover needs. Other things being equal, the milder the austerity pressed upon distressed Member States and their populations, the lighter the adverse effects to the real economy, paving the way for a faster return to the markets and a more limited deterioration of bank balance sheets. Such a shift would be more about winning the battle of ideas or transmitting the insights of economic theory to the relevant policy headquarters (for a discussion of this, see Wren-Lewis 2015 and 2016) than going against the public opinion of Member States.

Collective wage bargaining institutions with high coordination capacity can work with fiscal policies in their targeting of intra-Eurozone real exchange rates, and help avoid greater imbalances. To do so, however, collective bargaining institutions should be strengthened rather than weakened through the deregulation of bargaining. Collective bargaining should aim to deliver nominal wages in accordance with the so-called Golden Rule, which states that nominal wages should, on average, increase by the medium-term average national productivity growth rate plus the target inflation for the Member State, adjusted for a price competitiveness component, which will be positive (negative) for economies with current account surpluses (deficits).

These changes in the philosophy governing the coordination of national economic policies, vital for stability in the Eurozone, would also have salutary effects on the ECB. In the current circumstances of zero nominal interest rates, the more fiscal policies pull their weight by stimulating demand in the Eurozone, the less the ECB will have to use unconventional tools (i.e. buy government bonds) to that end. Moreover, the more credible the fiscal rules are, the less concerned the ECB would be about moral hazard and the less constrained its actions would be as a lender of last resort.

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Chapter 3
The EU’s ‘migration crisis’: challenge, threat or opportunity?
Anke Hassel and Bettina Wagner

Introduction

The summer of 2015 marked a turning point in the migration history of the European Union (EU). Pictures of hundreds of refugees arriving daily on Greek islands and subsequently travelling on the so-called “Balkan route” towards Central Europe dominated the headlines of newspapers in all Member States. Although possible policy reactions were immediately discussed at the European level, and already existed in a range of agreements and directives, it became clear from the very beginning that EU Member States’ reactions differed significantly. While some countries increased border controls and implemented restrictions, others temporarily suspended existing EU regulations by openly welcoming the refugees and offering them shelter. These differences led not only to chaotic responses by the EU as a whole but also to conflicts among the Member States.

In 2015, the registered number of first-time asylum applications on EU soil reached 1,255,640, more than double the 562,680 who applied in 2014 (Eurostat 2016). About half the applicants came from Syria, Afghanistan and Iraq; the other half came from countries like Pakistan, Northern and Central Africa and the Balkans (Eurostat 2016). About a third of all applications were registered in Germany

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1. The number presented here refers only to the persons who have initiated an asylum application, and may not represent the number of persons who actually arrived within the respective year. As asylum procedures vary in their bureaucratic structure, the authors of this chapter have decided to focus on the number of asylum applications first and will explain alternative applications within the course of the chapter.
Anke Hassel and Bettina Wagner

(with 441,800 first time applicants in 2015 [ibid]). Sweden, Germany and Austria are the primary destination countries and have received the highest numbers of asylum seekers, both in relative and absolute numbers (ibid). Both the unprecedented numbers of refugees arriving in the EU and the chaotic and ultimately failed response by the EU as well as at the national level have turned the situation into an acute political and institutional crisis.

As we will point out in this chapter, the refugee crisis is further exacerbated by ongoing opposition to the EU’s internal migration flows, which are based on the freedom of movement principle. The wide disparities of wealth and income between Member States have fueled migration flows from new Member States to Western Europe. Internal EU migration, and in particular the access of EU migrants to social services and benefits, became the prime topic of the recent UK referendum on EU membership, but it is also on the agenda in other EU Member States. Migration – from third countries as well as within the EU – has therefore become a key political factor that fuels new populist and anti-EU parties in many Member States and ultimately affects the workings of the EU itself. In Germany, the reported sexual assaults on women by groups of young male migrants on New Year’s Eve 2015 resulted in a debate questioning and criticising Angela Merkel’s welcoming culture of that year (Richards 2016). Since 2015, migration to, as well as within, the EU has become a major driving force for policy-making in the European Union and the primary political subject in national level elections. Therefore, we aim to address the subject by focusing both on the challenges and responses to the increasing numbers of asylum seekers as well as intra-EU migration. We claim that such a dual focus is necessary to give a complete picture of the current crisis as well as to provide an understanding of the links and current strategies proposed at a national and European level. The topic of migration will be highlighted and addressed from a statistical, political labour market and social perspective in order to map the existing challenges and institutional changes within the current debate.

In the course of 2015, the EU’s response to the challenge of increasing numbers of asylum seekers and intra-EU migration underwent an important shift, as the EU’s decision-making became increasingly controversial among Member States in four important respects. Firstly,
the issue of border controls and the halt of an uncontrolled influx into the EU moved to the top of the agenda and replaced the initial humanitarian response. Nationally-imposed border controls and the introduction of quotas – to the point of a complete closure of borders – are examples of these changes, as well as negotiations with Turkey over the illegal trafficking of refugees over the Mediterranean Sea. Secondly, the conflict surrounding the fair distribution of refugees arriving at the outer borders of the EU has intensified. Although the issue has existed for a long time (Hatton 2005), recent terrorist attacks have sharpened the debate. Thirdly, conditions applying to asylum seekers in Member States, regarding length of stay, housing, family reunification and financial possession, became more restrictive. Fourthly, the approach taken towards the long-term integration and social protection of refugees moved towards policies allowing for an accelerated access to domestic labour markets, which implies more rights for the individual but not necessarily equal treatment.

The long-term effects of large numbers of asylum seekers on domestic labour markets will also be shaped by the increasing role of intra-EU migrants. The precarious position of migrants on European labour markets contrasts with their access to the services and benefits of European welfare states.

The remainder of this chapter is organized as follows. Section 1 focuses on refugee migration and provides a short legal overview of the different mechanisms related to migration and asylum. Section 2 maps and critically discusses the important changes (from a ‘situation’ to a ‘crisis’) that occurred in 2015. Section 3 gives an overview of the inflow of refugees to the EU, while the uncoordinated national responses are summarized in section 4. Section 5 will focus on EU-internal migration, commencing with a legal overview of the different forms of migration (5.1). Section 5.2 will primarily focus on the currently-debated question of social security benefits for EU migrants, followed by statistics on intra-EU migration in section 5.3. Both migration flows will be compared and critically assessed in the conclusion, which also provides policy recommendations.
1. The refugee crisis and EU asylum policy: the legal framework between Schengen and Dublin

The core of the EU asylum policy is based on two legal pillars that have been constantly improved and amended in the last few decades: the Schengen Agreement (1985) and the Dublin Convention (1990). The Schengen Agreement assumes a common protection of the EU’s external border and practically no protection within its inner borders. It ensures control-free movement within the Schengen zone, but relies upon mutual trust among its members to control the borders with countries not belonging to it.

Since 1990, the Member States have agreed on the development of a common European entry and control mechanism through the Dublin Convention and later the Dublin III Regulation (604/2013/EU), but have been very hesitant to commit themselves in a similar way to common solutions on questions relating to the distribution, procedures or living conditions of asylum seekers. Most of the issues concerning the treatment and integration of asylum seekers have been addressed in directives adopted at the European level under the umbrella of the Common European Asylum System (CEAS), initiated in 1999. However, the implementation of these directives was either not complete in summer 2015 (when the first large groups of refugees arrived), or was not implemented in a way that would enable the processing of large numbers of asylum seekers.

The phenomenon of people crossing the Mediterranean in boats and arriving on the outer borders of the European Union started long before 2015. As shown in the figure below, the number of people arriving at the Mediterranean coast has increased significantly since 2012.

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2. The Schengen Agreement, regarding the abolition of (inner) border controls among European nations, was signed in 1985 and is laid down in Regulation 562/2006/EC in its latest, amended version. It currently applies to 22 out of the 28 Member States: Britain, Ireland and Cyprus have opted out. The newest Member States – Romania and Bulgaria – officially qualified to enter the Schengen zone in April 2016 but have to wait for the unanimous decision of the Member States. Croatia is planning to join the Schengen zone after 2018. Besides the European Union, the Schengen zone includes Iceland, Liechtenstein, Norway and Switzerland.
Figure 1  Development of illegal border crossings on the Central Mediterranean route

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of border crossings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>150,000</td>
</tr>
<tr>
<td>2014</td>
<td>100,000</td>
</tr>
<tr>
<td>2013</td>
<td>50,000</td>
</tr>
<tr>
<td>2012</td>
<td>25,000</td>
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<tr>
<td>2011</td>
<td>20,000</td>
</tr>
<tr>
<td>2010</td>
<td>10,000</td>
</tr>
<tr>
<td>2009</td>
<td>5,000</td>
</tr>
<tr>
<td>2008</td>
<td>2,000</td>
</tr>
<tr>
<td>2007</td>
<td>1,000</td>
</tr>
<tr>
<td>2006</td>
<td>500</td>
</tr>
<tr>
<td>2005</td>
<td>250</td>
</tr>
<tr>
<td>2004</td>
<td>100</td>
</tr>
<tr>
<td>2003</td>
<td>50</td>
</tr>
</tbody>
</table>

Note: 2003-2007 figures refer only to Italy. 

The most recent European responses to the 'refugee crisis of 2015' were therefore not entirely new, but took up ideas and proposals from individual Member States, which had previously failed to receive wider support from other countries. The idea of 'transit processing zones' or centres was initially proposed by the United Kingdom in 2003, as places where asylum seekers would be centrally addressed, and where asylum requests could be determined and verified (Noll 2003). In 2004, Germany and Italy proposed putting processing centres for refugees outside EU territory, i.e. in North Africa, but this proposal is still pending. In the meantime, the EU established bilateral partnerships with non-EU countries around the Mediterranean basin, under the Hague Programme of November 2004. One of the countries that was approached under this programme was Libya. The EU lifted economic sanctions as well as the arms embargo (imposed on Libya in 2004) and concluded an agreement with the country to jointly combat illegal migration (Council of the European Union 2005). The financial aspects included in this agreement were not explicitly mentioned but implemented in various forms, either directly by the EU or by single Member States, such as Italy (Andrijasevic 2006; Carr 2011).
Before agreeing on the establishment of the Common European Asylum System in 1999, asylum and refugee policy was entirely the responsibility of individual Member States. In the 1990 Dublin Convention, the Member States agreed that every asylum seeker’s claim would be assessed solely in the first country of entry. The agreements reached in this Convention became binding in 1997. Its aim was to prevent asylum-shopping and an overburdening of administrations, as applications would be received in multiple EU states. In 2002, asylum policy was transferred from the third pillar to the first pillar, which gave the European Commission the right to propose legislative measures at the EU level (Hatton 2009)\(^3\). In 2002, the ‘European Dactyloscopy’ (EURODAC) fingerprint database, for identifying asylum seekers and irregular border-crossers, was linked to the asylum claim procedure for the first time and effectively implemented in 2013 (with Regulation 603/2013/EU). In 2007, Regulation 2007/2004/EC led to the establishment of Frontex, the ‘European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union’. The Dublin Convention was amended several times and eventually turned into a regulation; at present the Dublin III Regulation (604/2013/EU) is in force.

The Common European Asylum System also aimed to coordinate social security systems and common standards for the admission and deportation of asylum seekers, as well as family reunification. It includes the Asylum Procedures Directive, 2013/32 EU (amending the previous Qualifications Directive, 2011/95/EU) which defines and establishes the necessary preconditions for receiving asylum within the EU, in line with the Geneva Convention of 28 July 1951 relating to the status of refugees. Regarding the attempts at a unitary and common regulation of long-term residence rights at the European level, the biggest step forward has been the Reception Conditions Directive (2013/33/EU), which aims to harmonize the conditions (housing) for asylum seekers and their family

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\(^3\) In the EU, Police and Judicial Cooperation in Criminal Matters are legally included under the third pillar, meaning that integration in these subjects will work according to the intergovernmental cooperation method. This implies that the EU has supporting competence with regards to legislation. It can carry out actions to support or coordinate Member States’ actions, but does not have the competence to initiate legislative acts on its own. The first pillar comprises policies that fall under the European Communities. This implies that the Union has exclusive competence to make directives and conclude agreements in a union legislative act. This pillar structure was introduced with the Treaty of Maastricht in 1993.
members in all Member States. However, the implementation deadline (21 July 2015) coincided with the ‘refugee crisis’, and little information on the factual implementation exists at present. The rights to family reunification as well as EU-wide minimum requirements have been laid down in Directive 2003/86/EC. According to this Directive, an immigrant or recognised refugee has to reside in an EU Member State for one year before he or she is allowed to apply for family reunification (article 3). The Directive also established the procedure for applying for family reunification and was implemented in all Member States except the United Kingdom, Ireland and Denmark, who exercised their right to opt out (preamble 17 of Directive 2003/86/EC).

The Dublin III Regulation (604/2013/EU) also defines the terms regarding a request for asylum within the EU. The country in which the asylum seeker first enters EU territory is responsible for registering the application and taking fingerprints. The Regulation also contains exceptions that might apply (for example, in the case of [re]uniting families). The Regulation already hints at the major problems encountered by migrants arriving in Europe in 2015. After registration in the country of arrival, the asylum seeker has the right to apply for asylum in another EU Member State. However, if the country of destination refuses the application, its authorities have the right to send the asylum seeker back to the country of first registration. With the help of EURODAC, all people entering the European Union have to be registered in the country they first arrive in, and their first registration will be retraceable, irrespective of where they apply. They are also registered in the EURODAC system (article 46, Reg. 603/2013/EU), which is used as a tool to trace the migration paths of asylum seekers within the EU and helps to verify whether a person has already applied for asylum in another Member State.

Since 2011, Greece has demanded a stop to transfers back to its territory, arguing that it was unable to manage the large number of asylum seekers (Mouzourakis 2014). This was backed by a ruling of the
European Court of Human Rights in the same year, which stated that deportation to the country of arrival can only take place if this country can provide the protection to which every asylum seeker is entitled. In other words, the asylum procedure can only be enforced if treatment of asylum seekers complies with international norms as stipulated by the United Nations (UN). Given the already existing burden in countries such as Greece, Italy or Hungary, these countries would not be able to enforce the Dublin Regulation. Due to the fact that the distribution of asylum seekers’ requests was unequal from the very beginning, discussion of the relocation and redistribution of asylum seekers within the EU was repeatedly put on the agenda but did not lead to an agreement. According to Hatton (2009), national policy structures in the first country of access as well as the toughness of the asylum procedure has had a negative effect on the level of applications.

However, the EU has also established soft tools to support the Member States with the integration of asylum seekers. A European Refugee Fund (ERF), based on Decision 573/2007/EC, accessible to all Member States, was created in 2000 to be used for relocation and resettlement operations. Nonetheless, given the relatively small financial budget, there was little incentive to relocate. The fund has paved the way and paid for Member States to harmonize their policies rather than to actually accept refugees (Thielemann 2005: 821). The actions eligible for funding are, for example, pilot projects on EU-level cooperation, the creation of cooperation networks between two or more countries as well as the dissemination of good practice (see Decision 573/2007/EC).

2. From a refugee ‘situation’ to a refugee ‘crisis’ in 2015

In 2015, the concept of ‘mutual trust’, as laid down in the Schengen Agreement, was considerably challenged, with increasing numbers of refugees arriving in some countries and overwhelming the existing system of border controls. Whereas the Schengen Agreement refers to, and focusses on, control systems at the EU’s external border, the
Mediterranean Sea became an unpoliceable border for European and Greek authorities. By September 2015, Frontex, the European agency for border control, reported 617,412 ‘illegal border crossings’ to Greece via Turkey (Frontex 2016).

In addition, Member States faced two major challenges related to the Dublin Regulation: the sharp increase of refugees arriving at the border of the European Union (Italy, Greece and Hungary), and asylum seekers who refused to be fingerprinted or registered in the first EU country of arrival, as they feared they would be forced to stay there or could be sent back to that country. In June 2015, Hungary stopped accepting asylum seekers at its borders and thereby challenged the functionality of the EU-framework on asylum.

The Dublin III Regulation has been the subject of various EU Summits since July 2015, focusing on improving the control and registration system in Greece and other countries first registering asylum seekers. Apart from the issue of access to the EU, the question of recognised ‘refugee status’ has been re-opened and addressed. The two Directives aiming to establish and define common standards in asylum procedures as well as the pre-conditions of reception (Directive 2013/32/EU and Directive 2013/33/EU) had already been adopted, and the Member States were supposed to implement them before 21 July 2015. The divergent levels of implementation of both Directives became visible in subsequent months, when questions on ‘refugee’ status recognition as well as asylum application procedures were dealt with differently among the Member States (Hunt 2014; European Commission 2015d).

However, the biggest challenge to the Dublin Regulation was Germany’s unilateral decision to suspend it for Syrian refugees and to offer them registration once they reached German soil. In practical terms, Germany’s decision meant that all Syrian citizens could be transferred directly from the country of arrival to Germany via all Member States,

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7. Greece was asked to create registration hotspots for arriving asylum seekers, and the Member States agreed to support their implementation financially and with additional public servants (European Commission 2015b).
8. There is no legal possibility to opt out of the Dublin Regulation (604/2013/EU). The Court of Justice of the European Union has underlined this in its ruling C-528/11 – Zuheyr Frayeh Halaf v Darzhavna agentsiia za bezhantsite pri Ministerskia savet.
because Germany would not send back any Syrian citizens as it had agreed to grant them humanitarian protection. In the first few weeks after Germany’s decision, this also meant that registration in EUROMDAC was temporarily suspended. In the aftermath of the German decision to accept all Syrian refugees unchecked, a large movement of refugees set off from Turkey via Greece and the Balkan countries to Austria, Germany and the Nordic countries.

In response, since August 2015, several countries have independently decided to re-impose national border controls and temporarily question the validity of the agreement (Eddy and Bilefsky 2015). Although the Schengen Regulation allows for a temporary reintroduction of border controls, it clearly states that a Member State should inform the other countries before doing so, and that controls for periods longer than 30 days are only justifiable under serious threat (Regulation 562/2006/EC, articles 23 and 24). Subsequently, in December 2015, a new Regulation amending the existing (Schengen) Regulation (562/2006/EC) was presented by the European Parliament and the Council, allowing for a re-enforcement of checks on people at external borders with the help of additional databases (European Commission 2015a). The primary purpose of this Regulation was to respond to the increasing terrorist threat within the European Union (ibid: articles 2 and 5) and to concomitantly ensure its internal security.

The question of security became particularly important in the direct aftermath of the November 2015 terrorist attacks in Paris. The fact that some of the attackers had entered the European Union posing as refugees was used by some Member States as a justification for not accepting refugees and for obstructing the agreed redistribution decided on in September 2015 (Higgins 2015; Newton 2015). The direct link between national security and refugee politics – at the national level as well as the EU level – already existed before 2015, but has now become inseparable.

On 18 March 2016, the EU heads of state signed an agreement with Turkey to implement a Joint Action Plan. The agreement, which came

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9. Registration in the first EU country of arrival was re-introduced after a few weeks, but in September 2015, Germany reported approximately 290,000 unregistered refugees arriving there (Monath 2015).
The EU’s ‘migration crisis’: challenge, threat or opportunity?

into force on 20 March 2016, is based on nine major points of how to control and manage migration to the EU from Turkey. The core, and simultaneously most disputed, points refer to the return of all irregular migrants crossing from Turkey to the Greek islands as of 20 March and the so-called ‘1:1 scheme’, establishing that every irregular migrant who has arrived on the Greek islands will be sent back to Turkey. In return, another Syrian citizen will be resettled on EU soil using the already existing resettlement scheme.

In addition, Turkey is meant to be responsible for increasing border controls and was promised up to €6 billion from the EU as well as the prospect of EU accession and travel visa liberalization. Apart from the agreement, the Member States also announced that the maximum number of Syrian refugees to be resettled in the Member States should be 72,000. Member States can individually choose to accept more asylum seekers based on humanitarian decisions, but are not obliged to do so. The recent agreement between the EU and Turkey therefore involves EU policy tools that have been around for a while, but have previously failed to garner general support.

3. Refugees in the EU: origins, numbers and profile

Recent Eurostat data on migration flows show that the Member States of the EU have experienced very different numbers of asylum seekers. In comparison to the 21.3 million refugees worldwide in 2015, the numbers for Europe are still comparatively low. However, these data account only for persons who have submitted an asylum request in an EU Member State within a specific period. These data are not synonymous with the total number of refugees factually present within the European territory. Media reports have claimed that, due to administrative overburdening, some people are having to wait for more than three months before being able to submit their documents (Zeit 2015). In addition, media reports following the incidents in Cologne

Due to the fact that, in the course of the year, the existing mechanisms on registration and control were temporarily invalidated, different calculations exist, which refer to either the number of people registered entering the EU, those applying for asylum or those registered as regular asylum seekers in one of the Member States.
have claimed that many people arriving in summer 2015 have not registered at all, but went into hiding or never reached their destination in Germany (Polke-Majewski 2016).

**Figure 2** Asylum requests in countries along the Balkan route (monthly date 03/2015 – 02/2016)

Source: own calculations based on Eurostat; asylum and first time asylum applicants by citizenship. Monthly data (rounded) [migr_asyappctzm].

Figure 2 clearly shows that the countries along the Balkan route\(^\text{11}\), with the exception of Hungary, have experienced little or no change in the average numbers of incoming asylum applications. As a consequence, Hungary closed its border with Serbia in September 2015, introduced military controls and built a fence to prevent entry (Dearden 2015). The other Member States remained largely untouched by the increasing

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\(^{11}\) All countries that could be potentially used to enter the EU via the Balkans have been included.
inflow of asylum seekers. If we compare the figures with the numbers of asylum seekers in all EU Member States in 2014 and 2015 (as seen in Figure 3), we see that, in absolute terms, the primary receiving countries are Germany, Hungary, Sweden and Austria.

With the exception of Italy, the Mediterranean countries did not experience drastic increases in asylum requests during 2015. In Spain and Greece, the average number of applications stayed at around 1,500 per month, whereas Portugal registered between 60 and 90 asylum applications per month. With the exception of Poland (and Hungary), which registered 1,690 applications in September 2015, none of the new Member States has counted more than 200 asylum requests per month.

Besides the increase in asylum applications, data on age distribution points to long-term social challenges in the integration process. The vast majority of asylum seekers are between 17 and 35 years old. They will enter the national labour markets, so that potentially initial social spending will be reduced, and will contribute to the national economy. The Nordic countries are facing additional challenges, with a large number of unaccompanied minors among the asylum seekers. In Sweden, approximately 44% of all new asylum seekers were younger than 18.

Figure 3  Number of (non-EU) first time asylum seekers in the EU 2014-2015

Source: own calculations based on Eurostat; asylum and first time asylum applicants by citizenship. Monthly data (rounded) [migr_asyappctzm].
Up to today, no reliable data exist on the level of education and qualification of the registered asylum seekers. The Nordic countries are confronted with an increasing need for schools for the incoming minors. Overall it remains to be seen to what extent receiving countries will be able to integrate the registered asylum seekers. Recent ‘Flash’ reports by the European Social Policy Network (ESPN) reveal the need for urgent changes in housing policies and quality standards (see, for example, Renooy and Blommesteijn 2015).

A formula for distributing the arriving asylum seekers to all Member States has been proposed but is strongly opposed by several countries, especially those in Eastern Europe. The uneven distribution of refugee seekers among the Member States has been a highly conflictual issue. Already in May 2015, the European Commission presented its first proposal on a European resettlement scheme in order to lower the administrative and humanitarian burden faced by the European Member States in the Mediterranean region (European Commission 2015b). The goal was to distribute some of the incoming asylum seekers based on a distribution key, calculated on criteria such as the size of the population, the GDP, the average number of existing asylum applications as well as the unemployment rate in the respective Member States. The resettlement scheme for 22,504 people based on this distribution key was adopted in July 2015.

Data recently published by the European Commission (2016a) reveal that, despite the agreement, only 7,272 of the 22,504 agreed in July 2015 have been resettled in the EU Member States in that year. The remaining places will be available for the Syrian refugees arriving from Turkey, according to the recent EU-Turkey Agreement. In addition, the Justice and Home Affairs Council’s plan to relocate 160,000 asylum seekers from Greece and Italy, as adopted in September 2015, has not yet been implemented; only 937 people had been relocated by March 2016 (European Commission 2016b). One of the reasons for the slow relocation of recognised asylum seekers is political: the scheme failed to be adopted unanimously and was subsequently implemented by qualified majority voting in September 2015, with Romania, the Czech Republic, Slovakia and Hungary opposing the distribution key (Robinson and Spiegel 2015). This opposition was largely explained by a fear of terrorist attacks and Islamism (Krökel 2015). In response, in December 2015, the European Commission proposed a regulation on
the European border and coastguard at the EU’s external borders in addition to tightening the Schengen controls.

4. **Uncoordinated national responses**

In spite of the European resettlement and relocation decision, Austria announced its intent to implement a quota to limit the flow of incoming migrants and set the yearly level of accepted asylum seekers at 1.5% of the population (Wagstyl and Rachman 2016). Some EU Member States refrained from setting a target number but expanded the list of so-called ‘safe countries’ of origin and restricted hereby the number of people entitled to apply for asylum in Europe. In January 2016, Germany announced the addition of Morocco, Tunisia and Algeria to its list of safe countries (Knipp 2016)12.

Policy responses to the refugee crisis show that Member States focussed on restricting social security rights and enabling access to the labour market. Apart from the national responses and controversial decisions on the distribution of asylum seekers, the Member States that received the largest numbers of asylum applications have shifted their policies during 201513. First of all, temporary residence permits were introduced in all countries, with a maximum duration of three years (Austria, Denmark and Sweden) to five years (Belgium) before unlimited residence based on asylum is provided.

Policies regarding family reunification for asylum seekers were also restricted. Germany postponed the right to family reunification until after a period of two years and Denmark extended the period to three years.

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12. The European Commission has launched a proposal to create a unilateral list, but this proposal is still awaiting approval (European Commission 2015d).

Sweden did not set a timeframe but restricted the rules for family reunification significantly. According to Directive 2003/86/EC, the maximum waiting period for the right to family reunification is three years. Denmark cut social security benefits for citizens residing in Denmark for less than seven years, and Austria is also planning to cut basic services for temporary residents. In addition, the eligibility of asylum seekers for the same rights and protection was put to the test when Denmark implemented a law allowing it to seize the assets and cash of asylum seekers exceeding 10,000 Danish Krone (Kuist 2016).

With regard to labour market inclusion, Directive 2013/33/EU implies access to the domestic labour market for asylum seekers after a maximum period of nine months. National policies implemented in the Member States, focussing on accelerated access to the national labour market, reveal that this strategy was followed by most countries in 2015. Several Member States have significantly decreased the waiting time before asylum seekers can enter the labour market (i.e. Belgium from six to four months and Germany from nine to three months). Other countries decided not to accelerate access to their labour market, based on the argument that asylum seekers would compete with domestic citizens and aggravate existing unemployment rates (Austria and Slovakia). Denmark is currently planning accelerated access to the labour market from ‘day one’ (Bilefsky 2016; Kvist 2016). Debates on eligibility for the national minimum wage have also started, while unpaid on-the-job training has been introduced in some Member States (Germany and Denmark).

5. **EU internal migration: legal frameworks and controversies**

EU internal migration has remained on the agenda in two main areas: firstly, in October 2015, the European Commission announced the Labour Mobility Package in the 2016 work programme. However, in a recent press release by the European Commission, the date of the package’s presentation has been postponed until September 2016. However, it might be postponed further due to the recent referendum in the UK to leave the EU.
status of EU internal migrants has been redefined, partly through rulings by the Court of Justice of the European Union (CJEU) on access to benefits for EU migrants and partly through the ongoing discussions and negotiations between the UK and the EU about its terms and conditions for EU membership, in which the issue of EU migrants has played an important part.

5.1 The Labour Mobility Package and mobile labour in the EU

The Labour Mobility Package combines reforms in three different areas: 1) promoting labour mobility and job creation, 2) social convergence and the coordination of social security systems in Europe and 3) combatting labour exploitation and fraudulent systems. The aim of the package is to reform and update existing EU legislation and present new legal forms of cooperation regarding labour mobility. At present, only a few concrete aspects of the mobility package have been published.

In October 2015, the European Commission announced that, within the context of the mobility package, the Posted Workers Directive would be re-opened and reassessed. It aims to modernise Directive 96/71/EC and improve it, based on existing experiences with posting in the EU. Core aspects are to be improved and readdressed in order to implement joint liability, introduce equal pay in the destination country as well as clarify a maximum time frame for posting. It should be noted that many Eastern European countries firmly dislike the idea of revising the contentious Posted Workers Directive, as they see it as a threat to their competitive advantage of being able to pay lower wages. In addition, the Council and the European Parliament decided (November 2015) to set up a new platform to facilitate cooperation in the form of exchange

15. A first proposal for the amended Posted Workers Directive was presented at the beginning of March 2016.
16. Many of these aspects are currently under reassessment, as social partners as well as national governments have agreed to present amendments by autumn 2016.
18. The platform brings together the European Commission, all EU Member States, employers and trade unions. Also involved in the platform’s work are observers, such as social partners from sectors with a high incidence of undeclared work, representatives of Eurofound, the European agency for safety and health at work (EU-OSHA) and the ILO and EEA countries. The platform will meet at least biannually.
of information to combat and prevent undeclared work within the EU (European Council 2015).

Another aspect to be decided within the context of the mobility package is the application of a national minimum wage law in transnational hypermobile sectors, such as transport (European Commission 2016d). The background for this initiative was the introduction of a national minimum wage in Germany and the concomitant declaration that the wage would be universally applicable to all economic activities carried out on German soil, including transit in the transport sector. In response, foreign companies have filed a complaint, arguing that Germany’s law would impede the free movement of goods (Broughton et al. 2015). In the Labour Mobility Package of 2016, the simultaneous goals of ensuring labour mobility and equal treatment while securing the free movement of goods in the EU will be addressed (European Commission 2016d).

Moreover, the Labour Mobility Package will also entail an improvement in the existing European Employment Services (EURES) network. The EURES network was initiated as a European labour agency and will be extended to cooperate with private networks in order to increase the visibility of job vacancies (European Council 2015b).

The European experience in the area of mobility and migration reveals two aspects that will also matter in the (labour market) integration of asylum seekers. Firstly, freedom of mobility and access to the domestic labour market does not protect against labour market exploitation. The countries receiving intra-EU labour migration have all experienced foreign labour exploitation (Schmid 2010; Hassel et al. 2016). The reasons for the existing problems are substantial wage differentials between the Member States as well as national labour regimes that have failed to adapt and enlarge their protective measures to include foreign labour (Wagner and Hassel 2016). The recently adopted Posting of Workers Enforcement Directive reveals that reports of abusive practices at the national level have reached the EU and prompted revisions, focusing on the protection of mobile labour19.

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19. Directive 2014/67/EU on the enforcement of Directive 96/71/EC, concerning the posting of workers in the framework of the provision of services, explicitly mentions in its preamble (7) the aim to: ‘prevent, avoid and combat abuse and circumvention of the applicable rules by
Research on the working conditions of migrant workers shows that, irrespective of the existing EU legislation, intra-EU migrant labour is more likely to work in unstable, low-paid and wearisome jobs than native citizens (Cremers et al. 2007; Jaehrling and Méhaut 2012; Wagner and Hassel 2016). Vandenbroucke with Vanhercke (2014) find that: ‘Poverty rates reported by welfare states are significantly higher for residents who are not national citizens of these welfare states than for their national citizens’ (p. 12 and figure 7 in their report). Posted workers, the self-employed and seasonal workers coming from other Member States seem to be especially vulnerable (Gertel and Sippel 2014; Hassel et al. 2016).

A high level of mobility characterises intra-EU labour migration. Due to the high differences in wage levels between the Member States, workers from countries with low average wage levels are willing to temporarily take up jobs that are better paid in other countries, even if the wage level might be below the average wage level there (Andrijasevic and Sacchetto 2016). The legal frameworks established at the EU level and their national implementation regarding seasonal work (as well as posting) have further enhanced this temporary migration, as they offer workers the opportunity to continue to pay social security contributions in their home country (Directive 96/71/EC).

Research on specific sectors, such as meat processing or construction, has shown how receiving countries have institutionalised a system of low pay for migrant workers in some sectors by using posted workers (Wagner and Lillie 2013; Wagner and Hassel 2016). Data on posted as well as seasonal workers reveal that Germany has been the primary destination country for posting in the last decade, with 373,666 posting (‘A1’) forms issued there in 2013 (Pacolet and de Wispelaere 2014: 9). In addition, data on seasonal work in Germany reveal that, on average, approximately 300,000 workers (predominantly from Poland, Romania and Bulgaria) have been active on the labour market between 2004 and 2011 (Federal

undertakings taking improper or fraudulent advantage of the freedom to provide services’. Similarly, Directive 2014/54/EU, on measures facilitating the exercise of rights conferred on workers in the context of their freedom of movement, aims to prevent ‘exploitation’ when moving to another Member State of the EU (preamble 5).
Office for Migration and Refugees 2012). Data on posting and seasonal work to Belgium reveal similar results (Vanheule et al. 2011: 40, Pacolet and de Wispelaere 2014: 9). These data imply that, within the European Union, national economies use a significant number of temporary workers employed in secondary markets with less access to social security rights, which is causing friction at the national level, e.g. among trade unions. The mobility package potentially addresses concerns about the social implications of atypical migrant labour in the EU.

5.2 Social security benefits for EU internal migrants

Already in 2013, the then British Prime Minister, David Cameron, promised to hold a referendum on the UK’s EU membership if he was re-elected in 2015. Therefore, soon after the British election in May 2015, the British government introduced the European Union Referendum Act 2015 in parliament. The referendum, to be held on the simple question of ‘remain’ in or ‘leave’ the EU, was based on the newly negotiated terms of the UK’s EU membership.

After passing the EU Referendum Act, the British government started negotiating a deal with the EU. The content of the UK’s demands was outlined in a letter from David Cameron to President of the European Council Donald Tusk on 15 November 2015 entitled: ‘A new settlement for the United Kingdom in a reformed European Union’. In the letter, he set out that restricting EU migrants’ access to in-work benefits, such as tax credits, was one of the four prime objectives of the renegotiations. The UK had frequently argued that the present regulation discriminates against its native citizens and burdens the taxpayer.

In February 2016, the UK struck an agreement with the EU, stating that EU migrants will not be entitled to unemployment or universal credit while looking for employment. In addition, if EU migrants are not able

20. In 2012, Germany adopted a law that no longer required central registration by seasonal workers; therefore no recent data is available.
to find employment within a period of six months they will be obliged to leave. This is in line with Directive 2004/38/EC\textsuperscript{22}.

As part of the same agreement, entitlement to social security benefits will only apply after four years of residence and employment in the UK. This change was implemented in the form of a temporary provision and will be applicable for a period of seven years, starting in 2016. This is a major change as, according to article 7.2 of the Regulation on the Freedom of Movement for Workers within the Union (492/2011/EU), any EU citizens regarded as workers in another Member State shall enjoy the same social security and tax advantages as national workers. The level of child allowance paid to EU migrants has also been changed to the amount paid in the country of residence of the children and is no longer based on the UK child allowance level (European Council 2016: 22)\textsuperscript{23}. Shortly after the agreement, the German Minister of Labour and Social Affairs announced a plan to introduce similar cuts to social security benefits for EU migrants (Sommer 2016).

The justification of the European Union, in granting these exceptions to the UK, was based on the argument that the UK should not be obliged to make further commitments towards EU-migrants. In addition, the protection and strengthening of receiving countries, such as the UK, is crucial to ensuring that the EU can function. Therefore, temporary concessions were deemed necessary (European Commission 2016c), in spite of the obvious risks involved. The concessions introduced changes in existing regulations on the coordination of social security systems and the equal treatment of labour (Regulation 883/2004/EC) and indicate a shift in social policy-making away from the equal treatment of all EU citizens to social security restrictions at the request of the Member States. Even after the citizens of the UK decided to leave the EU in a referendum on June 23\textsuperscript{rd} 2016, the concessions regarding child

\textsuperscript{22} After three months, the host country defines the grounds on which an EU citizen from another Member State can stay. All those who are in employment or self-employed in another EU country are entitled to the same social security rights and responsibilities as the country’s nationals. In all other cases, EU citizens have to prove that they have sufficient resources to provide for themselves as well as their family members, so as not to become an economic burden for the receiving country (Directive 2004/38 art. 7(1.b) and art. 8(4)).

\textsuperscript{23} The UK has previously complained about the fact that the government was paying child benefits for 47,009 children resident in other Member States to EU citizens active in its labour market (Migration Watch UK 2016).
allowances and social security are now also being used in other Member States.

So far, EU legislation has aimed to increase mobility and flexibility, but if social security rights are restricted or made subject to certain conditions it might change the characteristics of freedom of movement. In general, earlier decisions by the Court of Justice of the European Union (CJEU) in 2013 and 2014 have already made it clear that social security support will be granted only insofar as it does not become a burden for national social security systems. The decision on when that point is reached remains within the responsibility of the Member State. In the Dano case (C-333/13), the CJEU pointed out that the host country is not obliged to grant social security assistance to EU citizens within the first three months of residence in another Member State. Moreover, if economically inactive persons (i.e. persons who do not fall under the definition of a worker), as identified by CJEU case law, do not have sufficient resources of their own, Member States have the possibility of excluding them from receiving social security benefits. The CJEU confirmed that the extent of social security coverage and support lies within the competence of the Member States and is not universally regulated through Regulation 883/2004/EC. In the Alimanovic case, C-67/14, the CJEU strengthened this position by stating that Member States should keep the right to individually assess cases by defining how far the EU citizens’ social security assistance claims are an unreasonable burden. Moreover, the Member States have the right to deprive EU citizens of their right of residence if they depend solely on social security assistance but are no longer entitled to receive it in the host country. This also refers to people previously active in the host Member States’ labour market (Garcia Nieto case C-299/14).

5.3 EU internal migration: facts and figures

The freedom to work in another EU Member State as well as the right to provide services – either personally under the freedom of establishment
or for a company as posted workers – applies to all EU citizens. Data on labour mobility and migration show that EU citizens have increasingly used these rights during the last few decades. One indicator of the high level of EU mobility can be seen in Table 1, showing the numbers of country nationals returning to their countries. These numbers refer to citizens who were not previously registered in the respective Member State and own nationals who re-registered in 2013. These numbers are particularly high for Member States entering the EU after 2004 and indicate a high level of mobility.

The EU Member States can be divided into four groups: firstly, countries with a low degree of immigration of EU or third-country nationals but a large level of citizen mobility (immigration and emigration of reporting country). This group consists mostly of post 2004 Member States (especially Romania, Estonia and Lithuania). Secondly, countries with a high level of immigration from other EU Member States, such as Germany, Belgium and the Netherlands. The third group is made up of countries with a high level of immigration from third-countries, like Sweden, Spain and Italy. Fourthly, countries in which EU citizens as well as third-country nationals are equally present, such as Denmark.

Data in Table 1 confirm that intra-EU migration was already significant before 2015. It also reveals significant differences between the Member States, characterising some as typical ‘receiving’ countries and others as ‘sending’ countries (see also Table 2). In practice, the movement of people shows a clear distinction between temporary and permanent migration. Not only are there long-term and short-term perspectives on migration, but there also seem to be nationals who are more successful in managing to migrate and stay and others who leave within a year of arrival (Carrera 2005).

24. The EU has previously allowed temporary restrictions on access to national labour markets as a measure to prevent wage dumping. In the face of existing wage discrepancies between the Member States of the EU, some Member States decided to impose restrictions on their labour market during the accession rounds of 1986, 2004, 2007 and 2012 for citizens coming from the countries which had recently joined. However, at present no such restrictions exist within the EU.
Table 1  Number of immigrants to EU Member States in 2013

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>EU28*</th>
<th>Non-EU %</th>
<th>AF/SY/IQ**</th>
<th>Own nationals re-registering in country %</th>
</tr>
</thead>
<tbody>
<tr>
<td>RO</td>
<td>153,646</td>
<td>0.7</td>
<td>8.9</td>
<td>12.4</td>
<td>90.4</td>
</tr>
<tr>
<td>LT</td>
<td>22,011</td>
<td>3.0</td>
<td>10.7</td>
<td>1.4</td>
<td>86.2</td>
</tr>
<tr>
<td>EE</td>
<td>4,109</td>
<td>3.6</td>
<td>36.3</td>
<td>0.1</td>
<td>60.2</td>
</tr>
<tr>
<td>BG</td>
<td>18,570</td>
<td>8.8</td>
<td>64.5</td>
<td>11.7</td>
<td>25.2</td>
</tr>
<tr>
<td>PT</td>
<td>17,554</td>
<td>9.5</td>
<td>21.3</td>
<td>–</td>
<td>69.2</td>
</tr>
<tr>
<td>LV</td>
<td>8,299</td>
<td>11.0</td>
<td>31.4</td>
<td>–</td>
<td>57.5</td>
</tr>
<tr>
<td>PL</td>
<td>220,311</td>
<td>13.4</td>
<td>26.8</td>
<td>–</td>
<td>59.7</td>
</tr>
<tr>
<td>HR</td>
<td>10,378</td>
<td>17.8</td>
<td>33.1</td>
<td>1.7</td>
<td>49.0</td>
</tr>
<tr>
<td>SE</td>
<td>115,845</td>
<td>22.8</td>
<td>55.4</td>
<td>28.4</td>
<td>17.7</td>
</tr>
<tr>
<td>SI</td>
<td>13,871</td>
<td>23.6</td>
<td>60.1</td>
<td>0.3</td>
<td>16.2</td>
</tr>
<tr>
<td>IT</td>
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<td>25.2</td>
<td>65.5</td>
<td>1.1</td>
<td>9.2</td>
</tr>
<tr>
<td>GR</td>
<td>57,946</td>
<td>25.9</td>
<td>28.2</td>
<td>–</td>
<td>46.0</td>
</tr>
<tr>
<td>HU</td>
<td>38,968</td>
<td>26.8</td>
<td>27.7</td>
<td>1.8</td>
<td>45.5</td>
</tr>
<tr>
<td>FR</td>
<td>332,640</td>
<td>27.2</td>
<td>38.1</td>
<td>–</td>
<td>34.7</td>
</tr>
<tr>
<td>FI</td>
<td>31,941</td>
<td>31.8</td>
<td>41.3</td>
<td>13.0</td>
<td>25.3</td>
</tr>
<tr>
<td>ES</td>
<td>280,772</td>
<td>32.2</td>
<td>56.2</td>
<td>0.6</td>
<td>11.5</td>
</tr>
<tr>
<td>DK</td>
<td>60,312</td>
<td>35.3</td>
<td>32.5</td>
<td>12.2</td>
<td>31.5</td>
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<tr>
<td>MT</td>
<td>8,428</td>
<td>37.3</td>
<td>41.0</td>
<td>–</td>
<td>21.6</td>
</tr>
<tr>
<td>SK</td>
<td>5,149</td>
<td>38.2</td>
<td>9.8</td>
<td>2.0</td>
<td>51.9</td>
</tr>
<tr>
<td>UK</td>
<td>526,046</td>
<td>38.3</td>
<td>47.2</td>
<td>–</td>
<td>14.5</td>
</tr>
<tr>
<td>IE</td>
<td>59,294</td>
<td>39.4</td>
<td>39.1</td>
<td>1.1</td>
<td>21.4</td>
</tr>
<tr>
<td>NL</td>
<td>129,428</td>
<td>40.3</td>
<td>31.6</td>
<td>20.9</td>
<td>28.1</td>
</tr>
<tr>
<td>CZ</td>
<td>30,124</td>
<td>46.5</td>
<td>35.8</td>
<td>1.8</td>
<td>17.7</td>
</tr>
<tr>
<td>CY</td>
<td>13,149</td>
<td>50.7</td>
<td>36.8</td>
<td>–</td>
<td>11.7</td>
</tr>
<tr>
<td>DE</td>
<td>692,713</td>
<td>51.1</td>
<td>36.4</td>
<td>–</td>
<td>12.0</td>
</tr>
<tr>
<td>BE</td>
<td>118,256</td>
<td>52.4</td>
<td>32.5</td>
<td>6.8</td>
<td>14.8</td>
</tr>
<tr>
<td>NO</td>
<td>68,313</td>
<td>53.3</td>
<td>35.8</td>
<td>8.5</td>
<td>10.3</td>
</tr>
<tr>
<td>AT</td>
<td>101,866</td>
<td>59.1</td>
<td>31.7</td>
<td>–</td>
<td>9.1</td>
</tr>
<tr>
<td>LU</td>
<td>21,098</td>
<td>73.5</td>
<td>20.1</td>
<td>1.6</td>
<td>6.2</td>
</tr>
</tbody>
</table>

Note: Data on immigration does not solely focus on asylum seekers but on all forms of migration.
EU28* refers to the number of new cases of immigration registered in 2013 from citizens of other EU Member States, excluding country nationals.
AF/SY/IQ* refers to the number of citizens coming from Afghanistan, Syria and Iraq as a percentage of immigrants from the non-EU28 Member States in 2013.
Source: own calculations based on Eurostat: Immigration by citizenship [migr_imm1ctz].
Table 2  
**Net migration in 2013, selected countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Immigration</th>
<th>Emigration</th>
<th>Net migration</th>
</tr>
</thead>
<tbody>
<tr>
<td>BG</td>
<td>4,682</td>
<td>16,036</td>
<td>-11,354</td>
</tr>
<tr>
<td>CZ</td>
<td>5,326</td>
<td>9,267</td>
<td>-3,941</td>
</tr>
<tr>
<td>EE</td>
<td>2,472</td>
<td>6,414</td>
<td>-3,942</td>
</tr>
<tr>
<td>HU</td>
<td>17,718</td>
<td>21,580</td>
<td>-3,862</td>
</tr>
<tr>
<td>LT</td>
<td>18,975</td>
<td>35,492</td>
<td>-16,517</td>
</tr>
<tr>
<td>PL</td>
<td>131,431</td>
<td>226,969</td>
<td>-95,538</td>
</tr>
<tr>
<td>RO</td>
<td>138,923</td>
<td>154,374</td>
<td>-15,451</td>
</tr>
</tbody>
</table>

Source: own calculations based on Eurostat: Immigration by citizenship [migr_imm1ctz].

**Conclusion and policy recommendations**

The migration crisis – encompassing both refugees and internal EU migration – has brought the EU to the brink of its decision-making capacity. The UK referendum was fought and lost primarily over the issue of immigration from EU Member States. Hungary organised a referendum on the EU quotas for resettling migrants in October 2016. No other issue is as divisive and at the root of rising populism within the EU. For political reasons, therefore, the ‘migration crisis’ is more of a threat than an opportunity for the EU.

The lack of control over its external border, the link to security concerns and the deep divisions between Member States’ positions have caused fundamental problems in relation to how to deal with the influx of refugees. The refugee crisis in 2015 has triggered a shift in European as well as national policy-making, simultaneously pursuing several objectives: (a) from protection of victims to protection against the threat of terrorism, (b) from equal treatment to social security restrictions and (c) from social security protection to a merit-based system. The current situation is unstable, since no solution has been found as to how refugees should be distributed among the Member States. External border controls and a regulated system of processing asylum claims remain the top priorities of the EU; they are also the only possible responses to the crisis. Measures to reduce the inflow of eligible asylum seekers have concentrated on tighter border controls, declaring more countries to be ‘safe countries’ or setting an upper limit.
for asylum claims. In combination, and in addition to the Turkey agreement, these measures have at least temporarily led to lower refugee numbers. However, the Turkey agreement only applies to Syrians, who are just one group among the asylum seekers; it also only applies to those arriving in Greece.

Reducing the number of asylum seekers is even more important, as the distribution rules established in the Dublin Regulation have been proven to be unworkable. Based on optimistic estimates of the numbers of asylum seekers, and giving asylum seekers far-reaching choices on where to pursue their claims, migration flows have concentrated on those countries with the most welcoming policy approach vis-à-vis refugees. Germany’s decision to transfer refugees directly from the Hungarian border to Germany, and Angela Merkel’s slogan *Wir schaffen das* (‘we can do this’) first resulted in a big wave of solidarity and support from German citizens. However, as other European countries slowly changed their attitude towards refugees and restricted access, and following the 2015 New Year’s Eve sexual assaults, the public began to question Merkel’s slogan, claiming that it is not realistic (Sommer 2016). As these Member States have started to change their approach, more conflicts around the issue of relocation have ensued.

At the policy level, EU internal migration and asylum seekers are a challenge combined with an opportunity. The long-term integration of asylum seekers into EU Member States will be a challenge. Research on the labour market inclusion of third-country nationals shows the positive effects of migrant labour for the native workforce, as migrants take up unattractive jobs and boost productivity and employment (Peri 2014). These claims are confirmed by the empirical findings with regard to intra-EU mobility. However, if the labour market access of asylum seekers is fostered, they will increasingly compete with EU mobile labour for low-skilled jobs in agriculture, cleaning and construction. It remains to be seen how far accelerated labour market access without prior qualifications will reduce the economic burden on host states through employment, or whether asylum seekers will be confined to the secondary labour market and crowd out EU mobile labour. Both kinds of labour migration are key to demographic and skill challenges, as a recent, joint OECD-EU report on labour migration pointed out (2014). As the EU Member States are ageing and in need of human capital, labour migration is a central part of the renewal and enhanced growth within the EU.
Future policies on the labour market integration of asylum seekers into the domestic labour market should learn from the labour force exploitation experienced by intra-EU migrants. In both cases, the extent of factual equal treatment of EU citizens or asylum seekers with domestic and regularly employed labour depends on Member States’ policies. As primary and secondary labour markets coexist in all EU Member States, it is important to create protective measures for the secondary labour market into which asylum seekers will most likely be dispatched, given their lack of language and other skills. Low wages and bad working conditions will lead to higher public spending on supplementary benefits for asylum seekers, as can also be observed in the case of intra-EU migrants (Brücker et al. 2016). If asylum seekers compete with intra-EU migrants over jobs in the same market segment, this will have a negative impact on intra-EU mobility. Therefore, an inclusion-focussed and long-term oriented labour market integration policy is preferable, instead of quick labour market access. Moreover, the education and training of the predominantly young asylum seekers might help Europe to overcome its demographic deficit and benefit its labour markets.

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The EU's 'migration crisis': challenge, threat or opportunity?


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Chapter 4
Tackling long-term unemployment in Europe through a Council Recommendation?

Denis Bouget and Bart Vanhercke

Introduction

The present chapter provides an initial appraisal of the 2015 Council Recommendation on the integration of the long-term unemployed into the labour market. This initiative appeared in a year when long-term unemployment (LTU) decreased steadily in the European Union (European Commission 2016a, b, c). This decline in 2015 — which followed two years during which LTU peaked at a high but stable level — was a general trend in almost all Member States, except in Finland, Austria and Luxembourg (European Commission 2016c). The recent decline in LTU can however not offset some of the damaging consequences of the previous increase in unemployment between 2008 and 2014. In addition, the general increase in total unemployment across all the EU Member States (except Germany) during this earlier period was accompanied by divergent trends among European countries. Polarisation between the Southern countries and the others meant that, irrespective of the official European integration doctrine, the EU ‘has ceased to be the veritable “convergence machine” it used to be’ (Vandenbroucke with Vanhercke 2014: 25).

The Great Recession 2008-2012, accentuated by a deflationist economic policy, explains why the European Commission addressed the issue of LTU in its consecutive Annual Growth Surveys (AGS)1 as well as the

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1. The first AGS in 2011 and 2012 did not use the expression ‘long-term unemployment’. The AGS 2013, 2014 and 2015 used the term ‘long-term unemployment’, mainly when addressing youth unemployment.
Country Reports\(^2\) that are produced as part of the European Semester. The European Commission also beefed up its own analytical capacity regarding national policies aimed at tackling or preventing LTU. Thus, the new Commission launched studies and consultations in 2015 on a number of acute problems related to LTU, including the process of social exclusion that occurs through the increase in long-term — and especially very long-term — unemployment. The objective of this analytical capacity boosting was to draft a Council recommendation (European Commission 2015c), which was ultimately adopted by the Council in February 2016 (Council of the European Union 2016). Following this, the Recommendation was referred to in the 2016 Annual Growth Survey (European Commission 2015d).

This is not to say that the attention given by the EU to the issue of LTU is entirely new. The key involvement of the EU with employment policies indeed started with the European Employment Strategy (EES) — codified in the Amsterdam Treaty 1997 — which can be regarded as a ‘correction’ to the legitimacy deficit caused by Maastricht (Vandenbroucke with Vanhercke 2014: 74). More recently, the European Commission’s Social Investment Package (SIP) recognised that ‘prime-age and older workers are affected by the rapid rise in long-term unemployment’ and that ‘this puts them at risk of poverty and presents a danger to their employability, the stability of their families, and their mental and physical health.’ (European Commission 2013a). Consequently, long-term unemployed should be among the key beneficiaries of policies that promote greater social investment across the EU. The SIP indeed emphasises the importance of supporting those furthest from the labour market with a combination of income support, tailor-made activation, and access to enabling services; it also promotes the use of one-stop shops and individual contracts. Without referring to the SIP, the European Commission’s 2015 Work Programme (European Commission 2014) proposed an initiative for promoting integration and employability in the labour market, which led to the aforementioned proposal for a Council recommendation in September 2015.

\(^2\) The European Commission publishes its annual analysis of the economic and social challenges in the EU Member States as so-called Country Reports. The reports are a tool within the streamlined European Semester to monitor policy reforms and to point to challenges that Member States should address. The Country Reports can be downloaded from http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
This chapter presents an overview and evaluation of this EU initiative for combating LTU in 2015. Section 1 presents the main trends in long-term unemployment, which has generally increased faster than unemployment in Europe during the financial and economic crises. The Member States have tried to fight this phenomenon by using very diverse policies, which are discussed in section 2. The main characteristics of the Council Recommendation on LTU are detailed in section 3. The next section then raises some problematic points and deficiencies in the adopted Recommendation — especially its narrow focus on employment of the long-term unemployed — and discusses its implementation at the national level. Section 5 concludes that the best way forward remains the prevention of long-term unemployment.

1. Long-term unemployment in European countries

The European Commission’s excellent annual report on ‘Employment and Social Developments in Europe’ (ESDE) and the EU ‘Employment and Social Situation Quarterly Reviews’ (European Commission 2016a, b, c) provide abundant information on unemployment and LTU in the Member States. This section summarises recent trends, as well as the socio-economic characteristics of people who face this situation in their daily lives.

1.1 Unemployment and long-term unemployment cycles

Long-term unemployment is traditionally measured by two indicators: the long-term unemployment rate on the one hand, and the share of long-term unemployed in the total of unemployed people, on the other hand (see definitions in Annex 1). Between 2008 and 2013, the unemployment rate in the EU grew steadily, and reached a peak in 2013 (Figure 1). During this period, the long-term unemployment rate (LTU rate) grew proportionally faster than the unemployment rate (U rate): the former doubled while the unemployment rate only grew by 55%. Since then, the unemployment rate decreased, both in 2014 (10.2%) and 2015 (9.4%). By contrast, the LTU rate did not significantly decrease in 2014 (European Commission 2016a: 342), but it did in 2015: from 5% in the last quarter of 2014 to 4.4% in the last quarter of 2015 (European Commission 2016c: 27).
The trend in long-term unemployment follows approximately the same cyclical pattern as the unemployment rate (Figure 1). However, the LTU rate is a so-called ‘lagging indicator’ (European Commission 2016a: 78). This is so for several reasons. First, when unemployment began to increase in 2008, it took several months before the increase in long-term unemployment became visible. The second lag effect, which became apparent after the 2013 peak in the unemployment rate, is explained by (a) a mismatch between an insufficient labour demand by the employers, (b) a lack of demand for professional skills of many long-term unemployed people and (c) a signalling effect: many employers consider them as less employable than more skilled workers (see section 1.3).

The second indicator, the share of the long-term unemployed as a proportion of total unemployment (LTU/U share), also increased between 2009 (33.3%) and 2013 (47.3%). Consequently, the long-term unemployment rate grew faster than the unemployment rate. According to the definitions and the arithmetical relation between the three indicators, when the LTU/U share increases, automatically the LTU rate will increase faster than the unemployment rate.

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3. According to the definitions and the arithmetical relation between the three indicators, when the LTU/U share increases, automatically the LTU rate will increase faster than the unemployment rate.
share of LTU in unemployment continued to increase (from 45.3% in 2013Q1 to 50.1% in 2014Q2) while the unemployment rate decreased in 2014 and 2015. Finally, the LTU rate decreased in 2015, proportionally faster than for the very long-term unemployed.

1.2 Divergent trends

In 2013-2015, European countries were characterised by great differences in unemployment rates, resulting from the divergent trends since 2008. Indeed, as can be seen in Figures 2a, b, c and d, in 2008 unemployment rates in European countries were low and reflected a previous convergence process which took place between 2002 and 2008. This evolution was generally considered an indicator of the success of the integration of the twelve newcomers and the implementation of the European Employment Strategy (EES) (Pochet 2003; Peña-Casas 2013). The evolution was fully consistent with the European convergence doctrine. Indeed, after the collapse of the Soviet-type economies and the period of transition (1990-2000), the situation in Eastern European post-communist countries differed greatly from that in other European countries. Eight years later, in 2008, these countries had largely completed the catch-up process (Figure 2b): the spread in unemployment between the then 27 European Member States was fairly low, between 3.7% in the Netherlands and 11.3% in Spain.

However, a new differentiation process started between European countries in 2008, resulting from the financial and economic crises, and the unsuitable austeritarian policies of the EU and national governments (Hyman 2015). This differentiation has taken the form of polarisation between countries, creating a dichotomy within Europe: most Southern countries (CY, EL, ES, PT) are characterised by a very high unemployment rate, higher than in the other Member States. Figures 2c and d show that most EU countries (16/28), especially those characterised by unemployment rates lower than the EU average rate, have also followed rather low fluctuations.

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5. For the countries' official abbreviations used in this chapter, see the list of country codes at the end of this volume.
Figure 2a  Trends in unemployment rates in European countries: 2002-2015 (percent)

Source: Eurostat database.

Figure 2b  Trends in unemployment rates in European countries: 2002-2015 (percent)

Source: Eurostat database.
Figure 2c  Trends in unemployment rates in European countries: 2002-2015 (percent)

Source: Eurostat database.

Figure 2d  Trends in unemployment rates in European countries: 2002-2015 (percent)

Source: Eurostat database.
In 2013-2015, at the peak of the EU unemployment rate, we note a correlation between the unemployment rate and the LTU/U share (Figure 3): countries with a low unemployment rate were characterised by a low LTU/U share; on the other hand, countries with a high unemployment rate were characterised by a high LTU/U share.

**Figure 3**  
Relation between the unemployment rate and the share of LTU in total unemployment in 2013 (percent) in Europe

Some South(Eastern) European countries (Greece, Croatia, Portugal) are thus characterised by both a high unemployment rate and a high share of LTU in total unemployment, with some exceptions: for instance Cyprus, which has a rather low share of LTU in total unemployment in spite of a high unemployment rate. Figure 3 clearly shows the situation of the Nordic countries which are characterised by a low share of long-term unemployed in total unemployment. Figure 3 depicts the national unemployment rates (vertical axis), the share of the LTU in total unemployment (horizontal axis) and also the LTU rates on isoquants, i.e. lines where the LTU rates are constant. Three LTU isoquants are drawn on Figure 3 (see definitions provided in Annex 1). One isoquant represents the line where all the countries would have the same LTU rate as the EU (5.1%); a second one represents the line where all the countries would have the same LTU rate as Croatia; and the third, the
same LTU rate as Denmark. Therefore, Figure 3 immediately shows the relation between the three lead unemployment indicators. For instance, Finland and Germany have very close LTU rates but Germany is characterised by a lower unemployment rate and a higher share of LTU in total unemployment than Finland.

1.3 Characteristics of long-term unemployed

For those affected, being away from the labour market for a long time — at least one year in the statistical definitions — can have two main types of detrimental effect. A long spell of unemployment firstly entails obsolescence of skills. People who experience long-term unemployment often have to overcome considerable barriers to access decent and sustainable employment; they are far more likely to have low education levels or limited skills (or to have skills that have become redundant). Being unemployed for a long time also entails a loss in human capital, a higher risk of bad health, disability and psychological problems that erode the individual’s capabilities. LTU thus has a ‘scarring’ effect, which means that a worker who is unemployed will be more likely to suffer from negative labour market experiences in the future, compared to otherwise identical persons who have not been unemployed (Mroz and Savage 2006; Nilsen and Holm Reiso 2011; European Commission 2013b). Furthermore, ‘long-term unemployment not only reduces employability and the probability of being employed in the future, but also causes people to become lonely and sick’ (Spermann 2015: 6).

Prolonged removal from a decent and sustainable job is often painfully combined with a loss of income. In many European countries, the maximum spell of unemployment benefit is no more than one year (Figure 4). Consequently, the long-term unemployed in these countries have lost their unemployment benefit, making them dependent on unemployment assistance or social assistance. This loss creates a high risk of poverty and social deprivation, which is reinforced by loss of self-esteem and disinvestment in society. Everywhere, a combined long spell of unemployment and loss of income engenders a disaffiliation process: a loss of self-confidence and motivation; significant psychological and personal difficulties; and experiencing the problems associated with social exclusion such as living in poverty, having inadequate housing, losing relationships, over-indebtedness and ill physical or mental health.
Denis Bouget and Bart Vanhercke

(Bouget et al. 2015). All of these factors make accessing employment more difficult for the long-term unemployed and, as importantly, make employers more reluctant to hire them.

**Figure 4**  
**Maximum duration of the unemployment benefit (months)**  
in European countries

<table>
<thead>
<tr>
<th>AT</th>
<th>BG</th>
<th>DE</th>
<th>EE</th>
<th>EL</th>
<th>IT</th>
<th>LU</th>
<th>DK, FR (24m)</th>
<th>NL (38m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>5</td>
<td>6</td>
<td>9</td>
<td>10</td>
<td>12</td>
<td>14</td>
<td>15</td>
<td>16</td>
</tr>
</tbody>
</table>

Source: MISSOC 2015; UK data are missing.

## 2. Employment and social policies in European countries

For many decades, European countries and social partners have built up different types of social protection systems. However, since the 1980s, the sustainability of these systems has gradually been challenged by various reforms: ‘structural’ or ‘modernising’ reforms, according to EU terminology, ‘retrenchment’ or even ‘dismantlement’ according to others (Pierson 1994). Whatever the vocabulary, national policies in European countries are characterised by a wide variety of cash benefits (allowances) and benefits in kind (services), in addition to a process of individualisation of services within a strongly fragmented institutional system. This section describes the diversity of national policies and provision as well as new trends. It is largely based on a Synthesis Report which brings together the findings of national reports written by each of
the 35 European Social Policy Network (ESPN⁶) country teams, made up of independent experts⁷.

2.1 Diversity of national policies and provision

For several decades, social and employment services have been transformed, gradually moving away from universalistic objectives to schemes more targeted at socially disadvantaged people. This has been done in the name of ‘effectiveness’: to actively reach those in greatest need of help. This economic doctrine has gradually permeated the social arena; as a consequence, an efficient social policy has to define specific targets as a direct response to new types of social risk and to individual needs. In brief: the higher the unemployment rate, the more the focus is on targeting.

Benefits for the long-term unemployed should be analysed in a context of broader employment and social policymaking. Cash benefits and allowances are directly provided to fight poverty and social exclusion, together with a wide range of benefits in kind that focus on enabling support, social re-integration (social services) and professional re-integration (mainly activation services). Income benefits for the unemployed are made up of two main types of allowance: (a) unemployment benefits, which are often contributory-based benefits for people who were previously employed; and (b) social assistance cash benefits, when the household in which the unemployed worker lives is poor and may be eligible. Unemployment benefits are defined on the basis of individual criteria and rights derived from the worker’s status and social contributions, while social assistance income schemes are defined by the needs and social rights of the household.

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⁶ The ESPN was established in 2014 to provide the European Commission with independent information, analysis and expertise on social policies in 35 European countries. The ESPN is managed by LISER (Luxembourg Institute of Socio-Economic Research), APPLICA and the European Social Observatory. More information on the ESPN: http://ec.europa.eu/social/main.jsp?catId=1135&langId=en

⁷ The Synthesis Report (Bouget et al. 2015) was written by Denis Bouget, Hugh Frazer and Eric Marlier, Ramón Peña-Casas and Bart Vanhercke and was published before the Commission issued its proposal for a Council recommendation on long-term unemployment. For the countries’ official abbreviations, see footnote 5.
In 18 out of 28 Member States, the maximum period for receipt of unemployment benefit for working age adults is one year or less (Figure 4). In these countries, long-term unemployed workers as a rule become exclusively recipients of social assistance benefits. This is for example the case in BG, CY, CZ, EE, EL, HU, IE, LT, LU, LV, MT, PL, RO, SK and the UK (MISSOC 2015). In other countries, the duration of receipt of unemployment benefits is longer than twelve months. Furthermore, tapered schemes gradually reduce the amount of the allowance as the period of unemployment increases; after one or two years, eligibility is generally terminated. Belgium is an exception: in this country, there is no duration limit, in spite of considerable EU pressure to remedy this exclusive situation.

Usually, when unemployment continues, the loss or absence of unemployment benefit leads more or less quickly to social assistance benefits. Then the most frequent type of cash benefit for the long-term unemployed (and other people living at risk of poverty) is the guaranteed minimum income scheme (GMI), a non-contributory means-tested allowance that is the last social protection safety net in nearly all countries. This social policy to help the poorest has spread everywhere in Europe, but with huge differences, ranging from simple and comprehensive schemes (e.g. BE, CH, CY, CZ, DK, EE, IS, LI, LU, NL, NO, SE, SK) to very limited, partial or piecemeal schemes, restricted to narrow categories of people (BG) (Frazer and Marlier 2016: 14).

Minimum income schemes in almost all European countries have gradually become conditional upon job searching and readiness to work. Today, everywhere in Europe, ‘job first’ is a high priority in the delivery of social assistance benefits. This often includes education and training, even if there are still great variations (among others in terms of availability and eligibility) in the implementation and priority given to these. At the entrance point, job search is a strong eligibility rule for receiving an assistance allowance and comprises two conditions: to be registered with the public employment services (PES) and, often, to accept a job offer (often irrespective of its quality). At the point of exit from unemployment, some countries apply a so called Negative Income Tax (NIT) scheme, which means that the social assistance benefit
decreases more slowly than the earning income increases, and that the total net income consequently increases. Such a measure ensures a smoother transition from unemployment to employment and can reduce the risk of returning to the unemployment and poverty trap.

Ultimately, as regards the effectiveness of income benefits supporting the long-term unemployed, ESPN national experts rate the systems as ‘very good’ in only four out of the 35 countries under scrutiny (CY, LI, IS, NL), whereas in 17 countries – the Western Continental (BE, DE), Baltic (EE, LT, LV), Southern (PT, EL, ES), Balkan (BG, RO, HR, MK, TR) and Eastern countries (PL, HU, SK), as well as the UK – effectiveness is seen as very weak (Bouget et al. 2015: 13).

Besides unemployment benefits or minimum income support, the long-term unemployed (like the rest of the unemployed) may receive additional universal social benefits (allowances and services), which are largely based on a doctrine of social investment: healthcare, family allowances and education of children (e.g. AT, CY, CZ, DE, FI, IE, IS, IT, LV, MT, NL, RO, RS, UK). The long-term unemployed may be eligible for assistance – in some cases provided at the national level, and in others at regional or local levels – and for help with education costs. This is for example the case in IE (Back to School Clothing and Footwear Allowance), IT, LT and LV. Long-term unemployed may also receive allowances for children’s participation in early childhood care and education (ECEC): e.g. DE, IT, LU, MK (conditional cash transfer). Belgium is an interesting example of targeted support linked to the status of long-term unemployed. As well as maintaining their rights to healthcare, the long-term unemployed may benefit from cheaper healthcare depending on their household income, and they receive enhanced family allowances. Childcare costs are also reimbursed to the long-term unemployed who are engaged in training; however, housing allowances are very scarce in Belgium.

Ultimately, in spite of some universal social benefits that help the unemployed keep a minimum level of self-esteem and societal contacts,

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8. In this case, the NIT rate is less than 100%. For example, a marginal NIT rate of 40% means that, when the earning income of a poor person increases by one euro, the assistance allowance decreases by 40 cents and the total income increases by 1.6 euro.
growing periods of unemployment gradually produce a cumulative exclusion effect: exclusion from the labour market and social exclusion by impoverishment.

2.2 Individualising and promoting activation services

Cash benefits may be combined with two main categories of social benefits in kind: social services, since most long-term unemployed people are at a higher risk of poverty; and activation services, because they are distanced from employment opportunities. Recent reforms in many European countries follow similar objectives (Council of the European Union 1992), providing individually-targeted services in general, while giving priority to activation services. In line with the principle of effectiveness of social policies, the individualisation of benefits in kind links demand (needs) of people for services, and their supply. The long-term unemployed are likely to need more support, and several steps may be necessary before attending activation sessions (training, job search) or accessing a job become realistic options. Thus, services and other benefits in kind must reflect individual situations and create positive pathways towards employment. For this reason, it is vital that countries give particular attention to developing individualised, integrated and comprehensive support tailored to people’s needs.

One consistent result of this doctrine is the emerging trend of ‘profiling’ among unemployed workers in general. It amounts to recognising that long-term unemployed people belong to several socio-economic subgroups, characterised by different types of individual needs. Therefore, certain countries (FR, HU, IE, LT, LV, LT, PL) identify specific packages of benefits and services that match certain socio-economic conditions of long-term unemployed people.

Although the doctrine of public policy seems to be shared by all European countries, the current situation is very diverse. Very few countries make LTU a specific target of their employment or social policies. Social services to the long-term unemployed are managed in

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9. For a discussion, see Bonoli (2010).
the same way as for all poor ‘clients’. They do not receive social services because they are unemployed, but because they are poor. Social services include two types of benefits. Some benefits in kind are universal, especially healthcare and childcare; other social services are more targeted according to a traditional means-testing mechanism. The latter include exemption from costs or reduction in fees for health and rehabilitation services, education, housing, public transport, indebtedness counselling services and specialised support for refugees.

These supplementary social services are provided by regional and local actors, welfare offices in municipalities (section 2.3), third sector enterprises and, increasingly often, by for-profit companies. There are some drawbacks, however. Firstly, agencies are very often understaffed or lacking in skills. Secondly, there are difficulties linked to the discretionary power of office staff: these include a bias against ‘able-bodied’ and immigrants, and in favour of ‘deserving’ individuals. Thirdly, the wide diversity of services suffers from a lack of coordination, both horizontal and vertical (section 2.3); the same instruments are applied to combating short- and long-term unemployment, no matter the age of the people concerned: ‘one size fits all’. Fourthly, the huge variations in the supply of services between regions and between municipalities are not always related to the differences between local needs. Finally, one question remains unresolved. The individualisation of support somehow refers to basic economic thinking, the idea of striking a balance between the demand for and the supply of services. However, ESPN national experts regularly point out that services are managed on the basis of various criteria in a context of economic shortage (waiting lists etc.). Consequently, from a legal point of view, employment services or social services are rarely defined as social rights, laid down in binding legal instruments.

One apparent paradox regarding activation policies in Europe is the gap between the discourse and the empirical findings. On the one hand, there is a broad consensus in European countries that activation services should be promoted in line with the ‘job first’ principle. Most individuals must therefore register with the Public Employment Services (PES): this becomes an eligibility criterion not only for benefiting from activation services but also for receiving some social assistance benefits. Participation in activation measures is sometimes encouraged by providing an opportunity to top up social assistance
benefits with additional income, or through temporary possibilities to combine wages from a new job with income benefits – to increase the financial incentive to seek and accept a new job. However, the current situation is far from reflecting this objective in Europe: few of the long-term unemployed are involved in activation services (13.5% in 2012) (European Commission 2015c). Only a few countries have indirectly developed specific activation services for the long-term unemployed by organising services to target vulnerable groups, such as low-educated or low-skilled workers, women, lone parents, young and older workers, migrants and Roma.

Finally, individualisation sometimes results in a high degree of selectivity and an overly narrow and rigid approach to targeting. Furthermore, the loss of social rights increases because social and employment services are created within a framework of soft governance; and because very few countries have defined minimum activation and social services standards, with broad discretionary powers for local actors. On the supply side, there is a severe shortage of services, a lack of capacity and high case load, geographical inequalities, a lack of expertise in the assessment of needs and finally the discretionary power of the staff. Faced with insufficient labour demand from firms, current national governmental strategies to tackle long-term unemployment consist of targeted training for workers to prevent them becoming unemployed and wage subsidies, as well as reducing employees’ social security contributions. Many tax incentives exist, but it seems that these are often unknown to employers (Age Platform 2015).

2.3 Diversity of national institutions and new trends

One legacy of national social welfare systems in Europe is a large but complex set of institutions, organisations and offices that mirrors the myriad social benefits available: a high number of actors, dispersion of competencies, fragmentation between different institutions responsible for social policies and, as a result, different types of non-take-up (Eurofound 2015). This complexity and gaps in the systems mean that many of the long-term unemployed end up not receiving the social assistance to which they are entitled, once their unemployment benefit ends.
In general, four main national or local organisations manage policies geared to the long-term unemployed: (a) Public Employment Services (PES), which are responsible, at least, for active employment policies\(^\text{10}\); (b) unemployment benefit provision, which in some cases is managed by two main actors: the public organisations and the social partners (social insurance); (c) social services and social assistance organisations, often at the local level (municipalities); and (d) other social protection bodies, especially those dealing with disability when unemployed people are in poor health or unable to work. However, the main organisational fragmentation is between the PES and other social service bodies.

Since the 1980s, the increase in unemployment, as well as in poverty and social exclusion, has created new social risks and has highlighted the limits, the deficiency and inadequacy of this institutional specialisation within national social welfare systems (Room 1994). However, three main tendencies have gradually changed this institutional landscape: firstly, a process of decentralisation; secondly, a ‘merging’ process moving towards the ultimate objective of a one-stop shop model of organisation (Minas 2014); and thirdly, the outsourcing (privatisation) of provision delivery. Decentralisation means changing vertical coordination (OECD 2015), transferring competencies and instruments towards the regions (employment policies) and towards local governments and municipalities (social services). However, in a period of economic austerity, this process has also created a ‘cost-shifting game’, which means that each tier tries to shift costs to another level, thus reducing the supposed effectiveness of the principle of economic decentralisation. We discuss the two other tendencies in more detail below.

\subsection*{2.3.1 Institutional integration}
At the regional or local level, a horizontal coordination process is gradually underway in European countries. Several bodies are gradually being merged, in a process inspired by the organisational model of the ‘one-stop shop’. This means integration of the administration and delivery of multiple types of benefits in a new organisation. This model is justified by a holistic management of the individualisation of services and the management of packages of services tailored to the needs of

\footnote{\textsuperscript{10}. Including registration of job-seekers, advice, skills assessment and occupational training.}
long-term unemployed people. This management model (Askim et al. 2009; Clasen et al. 2001; Kubicek and Hagen 2000; Øverbye et al. 2010), is used in many fields, and is supposed to enhance government efficiency: by reducing transaction costs, eliminating duplication and overlaps, facilitating accessibility to a range of services, providing several welfare services jointly and in one place, fighting against the increasing specialisation within welfare state structures and crossing institutional boundaries.

However, once again, the real situation in Europe is far from this objective of institutional integration. Some countries (e.g. BE, EL, IT) have kept a high degree of fragmentation, far from an ‘ideal’ one-stop shop model. Some other countries are undergoing a gradual process towards intermediate models. For example, a ‘two-stop shop’ form of organisation brings together and unifies employment services; another system merges all the organisations which provide social assistance benefits. ‘First-stop shops’ or ‘nodal points’ help the claimant to find his way through the labyrinth of benefits and offices. These new forms of organisation try to increase and improve the co-operation between PES and social assistance organisations, at the local level. Some countries (CZ, DK, SE, RO) consider that they have implemented a ‘fuller’ one-stop shop model and have achieved institutional integration, which requires administrative proximity to recipients, the delivery of multiple types of benefits (including activation services), common knowledge and skills of staff as well as a common database of information. Examples include: the merging and shift of social assistance benefits to local employment offices (CZ); ‘job centres’ or ‘work and welfare offices’ in municipalities (DK, SE); ‘job shops’ working together with social assistance services (BE [Flanders]), and finally a National Social Inclusion and Anti-Poverty Strategy Draft with a one-stop shop approach towards activation (RO).

2.3.2 Outsourcing services
The outsourcing of certain employment and social services has also been on the increase for several decades (Room 1994). In accordance with the principles of a quasi-market and the principal agent models, more and more countries are shifting the delivery of services to private organisations, NGOs and, sometimes, commercial companies. The
organisational principle is based on a chain of contractors (public or private) chosen by a competition procedure.

— Firstly, vertical coordination is turned into a relationship between a regulator (the government) and providers (work programme providers). The UK appears to be the country that has moved furthest towards this privatisation process: 18 ‘prime contractors’ are in charge of managing all the services to the long-term unemployed, including their registration.

— Secondly, the chain of subcontractors is decided on by the prime contractor: a ‘large degree of organisational discretion [is] given to providers to design an individual pathway back to work for all clients, regardless of their circumstances, time out of work and barriers faced (Sainsbury and Bradshaw 2015: 11). Within this scheme, a provider acts as a one-stop shop for all the services.

— Thirdly, prime contractors only receive money from government on a ‘payment by results’ basis. Their performance is assessed by a set of indicators, mainly the off-flow rate. Consequently, they fall outside the public hierarchical organisation of the state or local governments.

However, some criticisms reflect the shortcomings of this privatisation process: the danger of a downward spiral, since lower performance means lower spending and subsidies from the government, and so on; the risk of discontinuity of tasks, especially during the period of the renewal of the contracts; conflicts about the performance indicators; undue competition between all the actors, between private firms and also between private and public bodies; and the loss of co-operation with the local authorities in cases of complete privatisation.

In sum, this section has shown that the EU was facing, in 2015, a socio-economic context of high levels of long-term unemployment in many countries, but at a more favourable moment of a downward and newly declining trend in unemployment rates. National responses are often inadequate to the scale of the problem (Bouget et al. 2015: 5, 23). Furthermore, European countries are characterised by a very broad diversity of benefit provision and of the institutions in charge of it.

However, we also described some common trends in a large majority of countries\textsuperscript{12}. Firstly, there is a general process of individualisation of services to ensure personalised support tailored to the needs of the individual in order to find decent and sustainable work; secondly, priority is given to employment (rather than unemployment) policies, and thirdly, similar institutional reforms such as long-term processes of decentralisation and privatisation. More recently, moreover, services have been integrated into new organisations that can be drawn on to design and implement better policies and programmes in all countries.

The next section describes how, in this particular context, the EU pushed forward its ambition of a Council Recommendation on LTU in 2015.

3. Towards a Council Recommendation

2015 was a year of intense activity in the EU institutions as regards the issue of long-term unemployment\textsuperscript{13}. This culminated in a Council Recommendation on the integration of the long-term unemployed into the labour market, which was formally adopted by the Council in February 2016. This section discusses the stages of development of the Recommendation, describes its content and highlights some differences between the European Commission’s initial proposal and the final text adopted by the Council of the EU.

3.1 Preparing the Recommendation: early stepping stones

The Recommendation on LTU is the result of a variety of analytical and socio-political contributions. In early 2015, a Roadmap (European Commission 2015a) detailed the Commission’s initiative and the

\textsuperscript{12} The conclusions of the ESPN synthesis report (Bouget et al. 2015) confirm the results of some other previous studies: see for example Di Domenico and Spattini (2008).

\textsuperscript{13} This concern is not new and was preceded by previous events and initiatives. Thus, in November 2012, within the European Employment Strategy, the Commission organised a conference on ‘Tackling long-term unemployment – effective strategies and tools to address long-term unemployment’. A chapter in the report ‘Employment and Social development in Europe in 2012’ (European Commission 2013b: 143-151) analysed the dynamics of long-term unemployment.
different steps in the consultations and analysis. Furthermore, the Roadmap, starting from the current situation in Europe as a baseline scenario, submitted two options: either a ‘Council Recommendation on general measures to address long-term unemployment’, or a more targeted ‘Council Recommendation on the integration of the long-term unemployed’.

Several consultations were organised on the topic during the first semester of 2015. Thus, a public consultation on ‘Tackling long-term unemployment’\textsuperscript{14} gathered views on how to improve services to support the long-term unemployed in finding their way back into employment. This consultation also capitalised on the exchanges of best practices which have been organised, over the past years, between national Public Employment Services (PES) on approaches for activation of the long-term unemployed\textsuperscript{15}. Consultations of the EU’s Social Protection Committee (SPC), the Employment Committee (EMCO), the European Social Fund (ESF) Committee and the European social partners equally took place in the spring of 2015. Finally, the European Commission-funded European Social Protection Network (ESPN) was asked to provide 35 national reports\textsuperscript{16} as well as a Synthesis Report on ‘Integrated support for the long-term unemployed’, which were delivered in September 2015 and contributed to framing – and academically underpinning – the policy debate.

This design phase ended with the publication of a European Commission proposal for a Council recommendation on the integration of the long-term unemployed in the labour market, which was published as a Staff Working Document on 17 September 2015. After its publication, the proposal was discussed in various meetings and reports\textsuperscript{17}. On 7 December

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\textsuperscript{14} The consultation ran from 24 February until 15 May 2015.
\textsuperscript{15} A Working Group of the European Network of Public Employment Services presented a report in May 2015 (PES Network 2015).
\textsuperscript{16} These country reports can be downloaded from the European Commission website: http://ec.europa.eu/social/main.jsp?catId=1135&intPageId=3589
\textsuperscript{17} For example, at a Thematic Review Seminar (TRS) on ‘Tackling long-term unemployment - Effective strategies and tools to address long-term unemployment’, on 8 November 2015, as an event within the EES, European Employment Policy Observatory (EEPO). See also: Committee of the Regions, 2016, Draft Opinion The integration of the Long-term unemployed into the labour market, SEDEC-VI/006, 116\textsuperscript{th} plenary session, 10–11 February 2016. The report on ‘Employment and Social Developments in Europe 2015’ was presented during a conference on 21 January 2016, including its chapter on ‘Preventing and fighting long-term unemployment’ (p.129-162).
2015, the Council of the EU reached a political agreement on the recommendation under the Luxembourg Presidency.

3.2 Content of the Council Recommendation

The overarching objective of the Council Recommendation is to promote the return of the long-term unemployed to the labour market. In order to achieve this, the text puts forward a sequential approach: increasing the rate of transition of the long-term unemployed from social assistance into employment on the labour market. Some 23 recitals first summarise the main trends in and explanations for long-term unemployment in Europe, along with listing previous European official texts. The Council then proposes three sets of recommendations: to the Member States, to the Member States and the European Commission jointly, and to the European Commission.

3.2.1 Recommendations to the Member States

The first recommendation to the Member States focuses on registration of all the long-term unemployed with the public employment services, as a precondition for building a consistent employment policy and for tackling long-term unemployment. On average, 73% of the long-term unemployed are registered, but the registration rate is below 50% in some countries (BG, EE, LV, RO, UK) (European Commission 2015e). Furthermore, only 13.5% of the long-term unemployed over 25 are participating in active labour market (ALM) measures. The second recommendation encourages the new national reforms involving individualisation and diversification of services offered to the long-term unemployed. More precisely, the employment services must offer them ‘in-depth individual assessments and guidance at the very latest when they reach 18 months of unemployment’ (Clause 2). This assessment has to be coupled with information about ‘job offers and available

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support in different sectors of the economy and, where appropriate, in different regions and other Member States’ (Clause 3)\textsuperscript{19}.

The third recommendation to the Member States is the most detailed: it defines the idea of a ‘job-integration agreement’ (Clauses 4 and 5). The agreement is an individual document that sets out the obligations of the unemployed person: registration, active steps to find a job, participation in education or training, re-qualification or employment measures (Clause 4a). It also describes the services provided to the long-term unemployed person: these include job-search assistance, validation of informal learning, education and training, social support, early childhood education and care, health and long-term care services, debt-counselling, housing and transport support (Clause 4b). Furthermore, the job-integration agreement should be regularly monitored and adapted according to any new circumstances and the transition into employment (Clause 4c). The Recommendation also suggests arrangements to implement the job-integration agreements: based on the idea of the one-stop shop model, the Recommendation proposes that a single point of contact be established, as part of the essential coordination of employment and social support services. For the arrangements to be effective, the target-group must be given relevant information on the support available, on job vacancies and training opportunities (Clause 5).

The fourth recommendation focuses on requests to employers (Clauses 6, 7, 8). It encourages partnerships to provide services that better ‘meet the needs of enterprises and registered long-term unemployed persons’ (Clause 6); asks them to develop services such as screening of job vacancies and placement support to facilitate professional reintegration (Clause 7); and encourages them to focus on financial incentives – such as recruitment subsidies and reduction of social insurance contributions – for supporting integration into the labour market (Clause 8).

\textsuperscript{19.} This clause is similar to a recommendation of Layard (1997: 335): ‘After 12 months, the state should stop paying people for doing nothing. But at the same time, it should accept a responsibility to find temporary work for at least six months. In return, the individual would recognise that he wishes to receive income, He must accept one of a few reasonable offers. These offers would be guaranteed through the state paying to any employer for six months the benefits to which the unemployed individual would have otherwise been entitled’ (Layard 1997).
3.2.2 Recommendations to the Member States and the European Commission

The second part of the Recommendation focusses on assessing and monitoring registered long-term unemployed persons. The objective is to gain a better idea – through the multilateral surveillance within the European Semester – of when and how unemployed persons have regained employment, in line with the job-integration agreement, and whether their integration in the labour market is sustainable (Clause 9). It also contains proposals to encourage assessing the performance of PES and the sharing of good practices as well as on the co-operation between public employment services (Clause 10). Furthermore, the Recommendation refers, in Clause 11, to the use of the European structural and investment funds: the European Social Fund, the European Regional Development Fund and the European Agricultural Fund for Rural Development.

3.2.3 Recommendations to the European Commission

The last set of (arguably light) recommendations focusses on the European Commission. This institution is called upon to support social innovation projects – through the programme for Employment and Social Innovation (EaSI) – support and coordinate voluntary initiatives (Clauses 12 and 13) and evaluate the actions taken in response to this Recommendation by February 2019 (Clause 14).

3.3 From the Commission’s initial proposal to a Council Recommendation

The Council largely endorsed the content of the European Commission’s initial proposal for a recommendation on LTU. However, besides some textual changes, some significant substantive changes should be flagged. Firstly, the Commission’s initial proposal contains a long introduction before the recitals, which explains and supports the content of the recommendation: a description of the European context, the legal base (subsidiarity and proportionality), a summary of the different consultations, an analysis of the national policies in some countries, and budgetary implications. Secondly, the adopted Recommendation adds a Recital 11 that more clearly and explicitly refers to the 2008 European Commission Recommendation on active inclusion.
(European Commission 2008) and takes a more social approach by referring to those excluded from the labour market. The new recital also refers to the ‘integration [of workers] into sustainable, quality employment’, and highlights the notion of ‘dignity’, referring to the Charter of Fundamental Rights of the European Union (Charter 2010).

While the proposed recommendation clearly invokes the subsidiarity principle (the need to respect the competence of the Member States; reference to ‘existing national legislation’), the adopted version merely recalls that Member States remain competent to choose the labour-market measures best suited to their individual situation. In Clause 5, the adopted Recommendation also gives a more precise definition of the ‘point of contact’ as part of a broader organisation of services, implicitly referring to the one-stop shop. In the same way, the adopted Recommendation puts more emphasis on providing better information on the results of implementation.

The adopted Council Recommendation also places more emphasis on job-integration within the framework of the individual agreement, and the text becomes more asymmetrical between the ‘obligations’ of the unemployed and the service providers’ ‘duties’ than in the original European Commission proposal. Thus, in Recital 21 of the adopted text, the ‘obligation’ applying to the long-term unemployed person is stronger than in the Commission’s proposal; and in Clause 4b of the Commission’s proposal, the service providers’ ‘obligations’ to the long-term unemployed is watered down to ‘offers’ to these persons in the adopted Recommendation20.


It is impossible to predict at this stage how successful the Recommendation will be in obtaining its key goals. However, we can already identify some of the key features of the initiative: there are strong consistencies with current national policies, while certain rigidities (i.e. a one-sided

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20. On the ambiguities in the approach of the EU institutions to social rights, see Benlolo-Carabot (2012).
approach concerning labour supply) coincide with a weakening of the social protection of workers and non-workers.

4.1 Consistency with national employment policies

As explained in the introduction, the Council Recommendation on LTU has been issued just at the downturn of the long-term unemployment rate, with a lag of approximately one year from peak unemployment in many countries. Therefore, if the declining trend continues in the next few years, the Recommendation could act as an accelerator for policy reform, speeding up the decline in long-term unemployment. Firstly, the focus on long-term unemployment in the Annual Growth Survey 2016 already provides incentives to avoid the risk of structural dualisation that could be created by a potential selective process and by giving priority to the most employable workers, i.e. mainly the short-term unemployed. Implementation of the Recommendation could therefore be an additional ‘soft governance’ instrument to reduce the risk of discrimination against the less employable. Secondly, the idea of better tailoring services to individual needs could also foster – and legitimate – innovation within services provision and its organisation, not only in favour of the long-term unemployed, but also to the benefit of the short-term unemployed. This could produce a spillover effect of benefit provision towards the short-term unemployed, and will indirectly prevent long-term unemployment among newly unemployed workers. Thirdly, the Recommendation will be particularly efficient and easy to implement in Europe because its content shows strong similarities with the current national policies (section 2). For example, the clauses on registration of the long-term unemployed with a Public employment services office (Clause 1) is already a common objective of all European countries and an increasingly frequent practice. Another example: individualisation of services is very often an objective referred to by national and local governments.

In short, the Council summarised the most frequent practices in the European countries. The similarity between the content of the Recommendation and pre-existing national policies seems to be a consequence of the subsidiarity principle. Social policies and employment policies indeed remain the responsibility of the Member States, and several recitals in the Recommendation directly or indirectly
refer to this EU principle. Consequently, this may considerably reduce the capacity of EU institutions to innovate in this field. Ultimately, political acceleration can only be triggered by the political pressure to comply with the Recommendation.

4.2 Inflexible rules for a policy of flexibility

The narrow perspective of the Recommendation on long-term unemployment provides, paradoxically, a static-rigid conception of time. Until 2015, in the Annual Growth Surveys, long-term unemployment was quoted as just one element of a ‘high level of unemployment’ that had to be brought down in general; it was tied or associated to youth unemployment as a key concern, with reduction of these being a policy priority. In fact, the definition of long-term unemployment is a statistical one: long-term unemployment is defined as unemployment lasting at least 12 months \(^{21}\), which in some ways is similar to the time threshold used as a criterion for eligibility for unemployment benefits (Figure 4 above)\(^{22}\). Of course, this similarity between statistical and policy definitions is due to a general attraction to ‘round numbers’: in this case one year. A collective belief has therefore gradually turned this similarity into a socio-political norm, which is clearly established as a policy criterion.

Defining long-term unemployment only in terms of time absent from working life contradicts many studies that show LTU as a dynamic process (European Commission 2013b), which also has some policy drawbacks. Firstly, Figure 4 shows that most of workers have lost their social rights to unemployment benefits before the end of one year of unemployment. Secondly, this definition ignores alternatives such as the prevention of long-term unemployment. Prevention of long-term unemployment is quasi-absent in the 2015 Recommendation and does not appear at the core of socio-employment policies. Thirdly, using only a time criterion to define the long-term unemployed ignores their high risk of poverty or social exclusion. Fourthly, strict implementation of

\(^{21}\) Sweden is the only European country which officially defines a time-threshold for long-term unemployment: at least six months.

\(^{22}\) On the influence of statistical categories on employment policies, see Salais et al. (1986).
this time threshold could lead to a punitive practice with regard to eligibility for some social benefits, or a variable used by the staff of employment offices\textsuperscript{23}.

The second threshold mentioned in the Recommendation, 18 months, is also questionable: Clause 2 indeed stipulates that action is needed at the very latest when people have reached one and a half years of unemployment. It gives undue emphasis to the time dimension in defining the integration of the long-term unemployed into the labour market. The probability of returning to the labour market decreases as the time of unemployment grows longer\textsuperscript{24}, but statistical studies on the duration of unemployment do not give a clear picture of this relationship. Several questions remain pending:

— Firstly, from a statistical point of view, a gap remains between the policy decision – 18 months as an upper limit – and the statistical definition of the ‘very long-term unemployed’ (at least two years).

— Secondly, it is clear that one key dimension of long-term unemployment is a high risk of poverty and social exclusion – a dimension quasi-absent from the Recommendation.

— Thirdly, the Recommendation does not propose any policy beyond the 18-month time threshold. It could therefore be used as an official limit to apply a punitive approach in the process of socio-economic integration\textsuperscript{25}.

Finally, it should be noted that the Council recommends splitting policies into three different periods of unemployment: employment policy for the short-term unemployed; social assistance for the very long-term unemployed, considered as a lost generation (here 18 months); and, between the two, a tougher employment policy, largely forgetting the social dimension of long-term unemployment.

\textsuperscript{23} Boeri et al. (2000: 3) advocate this one-year limit: ‘Once the state is channeling offers of work to everyone within the first year of unemployment that would become in effect the maximum period for which benefits are available’.

\textsuperscript{24} ‘Long unemployment spells result in lower job-finding rates, a trend which has worsened during the crisis. The long-term unemployed currently have about half the chance of finding employment compared to the short-term unemployed’ (European Commission 2015b: 13).

\textsuperscript{25} As the AGE Platform (2015) argues in its response to the public consultation: ‘it is crucial in such programmes that support services do not stop with the first employment’. 
4.3 One-dimensional guidance in the Recommendation: ‘jobs first’

Long-term unemployment is a waste of labour that engenders lower potential EU economic growth, increases income inequalities and produces different types of discrimination. It also increases the cost of social services and entails unsustainable public finances. All these negative consequences may justify a strong emphasis on labour and job-search in the structure of socio-employment policy in European countries. However, long-term unemployed people are not only jobless but also frequently poor and socially excluded, needing social benefits such as healthcare or income support if they are to regain their autonomy (Betzelt and Bothfeld 2011) and capabilities. While the Recommendation refers to the high poverty rate (Recital 3) in Europe, nowhere does it refer to one of the targets of the Europe 2020 Strategy: diminishing poverty in Europe by 25%26. The Recommendation only gives scarce attention to this social dimension and does not refer anywhere to the social investment package (European Commission 2013a), although this was promoted as the main doctrine of the EU institutions in reaching the Europe 2020 social objectives.

The Recommendation revisits a narrower concept of investment in human capital, a cornerstone of neoclassical economics. This shift reinforces the view of labour as a pure factor of production and as a commodity. Such a narrow conception of a ‘worker’ undermines another policy ambition of the Recommendation: merging employment and social policies into new holistic policy approaches, based on a comprehensive assessment of individual needs, which would be completely in line with the social investment approach, involving a recovery of capabilities (Sen 1993).

26. ‘The number of Europeans living below the national poverty lines should be reduced by 25%, lifting over 20 million people out of poverty’ (European Commission 2010: 12).
4.4 Weakening the protection of workers

The Council Recommendation insists on the sustainability and the quality of the integration of the long-term unemployed into the labour market (Recital 11, Clauses 9 and 12). In Recital 11, it refers to the 2008 European Commission Recommendation on Active Inclusion which aims ‘to facilitate the integration into sustainable, quality employment of those able to work and to provide them with resources which are sufficient to live with dignity’ (European Commission 2008). The 2015 Recommendation, however, puts little emphasis on job quality. For instance, there is no direct reference to ‘decent work’ (see ILO 2012).

More surprisingly, the word ‘wage’ is entirely absent from the Recommendation. In spite of very broad and detailed analyses in the annual reports of DG EMPL (European Commission 2013b and 2016b), nothing is said as to the role of the reservation wage as a key element of incentive: workers expect a minimum level of wage, living wage or income if they are to look for a job. The reservation wage, together with labour market policies, are two important tools used as an incentive to pull people out of unemployment.

The Recommendation proposes a clear goal: to help the long-term unemployed escape from poverty and bad social and living conditions through training and work. However, there are no references to worker employment protection. In fact, the word ‘protection’ is totally absent from the text, as is the expression ‘social rights’. Furthermore, we pointed to the weakness of the activation schemes, which are not legally defined and do not provide any entitlements for unemployed persons.

The Commission’s ESDE reports (European Commission 2015b) highlight the fact that the highest rates of people leaving unemployment, even among the long-term unemployed, are achieved when institutions work together: unemployment benefits, social security systems, activation, employment protection legislation and in-work benefits (European Commission 2013b: 65). In contrast with these results, the Recommendation does not really include

27. In labour economics, the reservation wage is the lowest wage rate at which a worker would be willing to accept a particular type of job.
redistributive income schemes and social rights within the package of benefits. Furthermore, the expression ‘sustainable quality employment’ is misleading in the context of the transition process from inactivity to employment because it runs counter to the general trend in all European countries: the dismantling of labour law and protection. Finally, promoting ‘sustainable’ jobs and, on the other hand, requiring more and more flexibility on the labour market seems inconsistent or an impossible compromise.

The abovementioned ESPN national expert reports (see the introduction to section 2) show that in many countries, support is still organised in a highly fragmented fashion, and a growing number of countries are now reforming their system to improve coordination and ultimately move towards one unique body, using as a reference the one-stop shop model. The Recommendation seems to take a backseat to the European Commission’s initial proposal. The Council wishes to see reforms that would create one ‘point of contact’, as an embryonic one-stop shop. Furthermore, the Recommendation gives priority to the Public Employment Services. The downside of this decision is again the absence of emphasis on the organisation of social assistance, social services or allowances to meet the needs of the long-term unemployed living in poverty. When social services are quoted in the Recommendation, they clearly appear as an instrument of the employment services, without any attempt to encourage greater cooperation or integration between both sets of bodies. Social assistance services are still the ‘poor relation’ of the new way of organising policies to tackle long-term unemployment. Finding a solution to long-term unemployment goes beyond labour market policies: this recognition would facilitate bringing together actors with different orientation and objectives.

A final point that needs to be made is that the Recommendation focusses on the supply side of the labour market, largely disregarding

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28. ‘If, after years of intense activation, individuals are not successfully integrated in the labour market then employability is not a realistic target anymore. In these cases, it would make sense to obtain further support from other legal systems such as the basic income system for disabled or handicapped. In such a case, employment rehabilitation service tools and social policy schemes are available rather than active labor market policy instruments’ (Spermann 2015: 21).
the economic demand side (Clauses 6-8) and deflationist macro-economic policy. Although the Recommendation recognises (Clause 3) the sectoral and geographical diversity within the European economic area, it sticks to a traditional understanding of the labour market as a unique economic set-up. However, given how difficult it is for the long-term unemployed to find a new job, the Job-integration Agreement could be more successful if it were itself set within a ‘protected environment’ (or a second labour market) as a step within the transitional period, with strong involvement of the third sector. In the same spirit, the public sector could play a role not only as a provider of employment or social benefits and services but also as an employer. Without thus increasing the job opportunities open to the long-term unemployed, the objective of ‘sustainable employment’ is bound to remain lip service.

Conclusion

The 2015 Recommendation on Long-term Unemployment was drafted at a relatively favourable moment of decreasing unemployment. Firstly, numerous European countries had already adopted the same principles in this policy area and have partly implemented these in national and local initiatives and actions. The Recommendation is in tune with the main trends in national reforms of the labour market over at least one or two decades. Secondly, it will be implemented just after the upturn in long-term unemployment and may be an accelerator of its expected decline. Thirdly, it has promptly been integrated into the European Semester in 2016, through the 2016 Annual Growth Survey published in November 2015.

However, a comparison with the 2008 European Commission Recommendation on Active Inclusion, based around three pillars (adequate income, employment and services), reveals imbalances in the priorities, partly because the European Commission has chosen a targeted rather than a general recommendation. This choice also shows the EU priority and a skew in favour of employment (jobs first), instead of a more balanced scheme including at least employment and social assistance policies. It has mainly operational and managerial employment objectives in a period of high long-term unemployment. The Recommendation is clearly biased towards managing the current
stock of people experiencing long-term unemployment, and its economic ambition is restricted by a bias towards employment policies focusing solely on the supply side of the labour market.

The Recommendation also contributes to the EU’s contradictory messages about the EU’s social dimension\(^{29}\), which are equally present in other EU mechanisms such as the European Semester: firstly, it promotes the idea of ‘sustainable employment’ within a more general discourse on mobility and flexibility of employment; secondly, it suggests developing employment and social assistance services while other messages of the European Semester recommend restrictions on social spending. We end this chapter with a final message of hope: long-term unemployment is perhaps not inevitable but the best way to reduce long-term unemployment is to reduce unemployment: ‘prevention is better than cure’.

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\(^{29}\) See the ‘double bind of social Europe’ in Hemerijck, 2004 and the image of the social dimension of Europe 2020 as an ‘oxymoron’ (Vanhercke 2011).
References


Tackling long-term unemployment in Europe through a Council Recommendation?


Tackling long-term unemployment in Europe through a Council Recommendation?


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Annex 1  Definitions of unemployment indicators

Three lead indicators. The analysis of long-term unemployment in this chapter is based on three indicators as defined in publications of the International Labour Organisation (ILO) and reports of the European Commission (2015b: 464).

- The unemployment rate (U rate) is the proportion of unemployed people in the total number of active persons in the labour market. Active persons are those who are either employed or unemployed.
- The long-term unemployment rate (LTU rate) is the proportion of people who have been unemployed for 12 months or more in the total number of active persons in the labour market.
- The long-term unemployment share (LTU/U share) is the proportion of people who have been unemployed for 12 months or more in the total number of unemployed people.

Relationship between the three indicators. By definition, the three indicators are linked by an arithmetical relation: LTU rate = (U rate) * (LTU/U share). An example from data on the EU28 indicators in 2015 (Figure 3) can illustrate this:

- The unemployment rate in EU28 in 2015 is: U rate = 10.9%
- The share of the LTU in unemployment is: LTU/U share = 47.3%
- The long-term unemployment rate is therefore: LTU rate = 5.1% = 0.051 = 0.109 * 0.473

Interpretation of Figure 3

- All countries with the same unemployment rate as the EU28 would be on a horizontal axis crossing the point EU28: (47.3; 10.9);
- All countries with the same LTU rate as the EU28 would be on a vertical axis crossing the point EU28;
- All the countries with the same LTU/U share as the EU28 would be on the curved line (isoquant), crossing the point EU28
- The three lines, horizontal, vertical and curved, cross on the same point (see Figure 3).

Divergent definitions. There is a difference between the ILO or DG EMPL definitions on the one hand, and Eurostat or OECD ones on the other. What is called ‘LTU/U share’ in the chapter corresponds to the definition of ‘LTU rate’ in the OECD definitions.
Chapter 5
Occupational safety and health in the EU: back to basics

Aída Ponce Del Castillo

Introduction

The history of the relationship between work and health is a long and complex one. No less than a decade ago, the edited volume Social developments in the European Union (EU) featured a chapter on health and safety policy in the EU (Vogel 2006). It looked at the Community strategy in this area, the development of social directives, and highlighted ongoing simplification of policies and legal requirements in certain key policy areas such as musculoskeletal disorders. Ten years have passed since, providing an ideal opportunity to look back at whether or not the European Occupational Safety and Health (OSH) strategy has evolved, and in what direction. This may help shed light on future prospects for health and safety in Europe, which has important implications for the work – and lives – of millions of workers in the EU.

This descriptive chapter aims to present current research concerning occupational health and safety policies in Europe, which at this moment have reached two high points: the peak of the regulatory revolution and the peak of another (fourth) industrial revolution – where technologies interact, merge with one another and lead to an erosion of the boundaries between the physical, biological and digital environments. The views in this chapter are presented through the eyes of someone who belongs to a new generation of OSH researchers, but who uses historical notes collected from some of the veterans of EU Occupational Safety and Health (OSH), some of whom negotiated the key European directives in this field. This chapter – written in an atmosphere of political and regulatory changes that do not seem well-disposed to OSH – is intended to shed light on future prospects for health and safety in Europe.
Section 1 covers the early developments of OSH, including some national initiatives. Section 2 provides a description of the political and legislative consolidation at EU level, as well as the Framework Directive (89/391/EEC), its daughter (or individual) directives and the possible impact of the Better Regulation Agenda. Section 3 focuses on the EU Strategic Framework and its importance. Section 4 presents the more recent events of 2015, including the EU institutions’ reactions to the Strategic Framework and the ex-post evaluation of the practical implementation of the OSH directives. The chapter finishes with some conclusions and a modest forward-looking perspective.

1. National initiatives: the early roots of occupational health and safety

The roots of OSH can be found at the time of the Industrial Revolution in the early 1800s. Factories and their new technologies, complex machines and production methods quickly spread throughout the continent. Combustion and steam power were the great driving forces; the textile, transport, mining, steel and other industries went through revolutionary changes; working places and factories underwent an innovative and technological transformation. New skills were needed to operate the new machines and factories, but working conditions did not progress at the same pace. Technology flourished but was accompanied by a deterioration of the working environment; occupational risks became more serious and difficult to prevent, leading to accidents, disabilities and fatalities at work. Simultaneously, issues of occupational health and safety emerged because people felt the need to be protected from new industrial hazards and risks.

One clear starting point of OSH is England, where the government adopted eight so-called Factory Acts between 1802 and 1891. These Acts were passed by Parliament and were intended to provide protection to people working in factories and mills1. As Eves (2014) describes it, this legislation ‘is generally believed to be the first attempt to regulate conditions of work in the United Kingdom’. The Acts indeed banned

child labour, required employers to keep premises clean and healthy, ensure there were sufficient windows, supply ‘apprentices’ with ‘sufficient and suitable’ clothing and accommodation for sleeping, limiting their work to twelve hours per day, and night work was forbidden. King William IV appointed the first factory inspectors and, shortly thereafter, the first ‘lady inspector’. They visited workplaces on horseback and wielded their executive powers to enter factory premises, question workers and report accidents (HSE 2016).

The rapid growth of the economy led to the development of a labour movement. In addition to work organisation and wage issues, one of the main incentives for this movement were the numerous physical stresses to which workers were exposed, such as smoke, noise, extreme temperature, fumes and radiation, and also mental challenges such as monotony, stress, mental overload, and night work. These threats multiplied and became more and more disturbing, consequently making workers increasingly dissatisfied with their working conditions. In the early XIX century, the Labour movement had gained enough power to demand and obtain changes. The first modern legislation on health and safety came into force in Britain and Norway almost at the same period. Later, social protest also pushed Bismarck to publish the first Occupational Safety Act, in 1890 in Germany. This Act was designed to ensure safe workplaces, limit working hours for women and young workers and prohibit work on Sundays.

National initiatives such as these were the first building blocks of modern OSH legal frameworks. However, legislation was not the only way of securing OSH – key public institutions contributing to its development, such as labour inspectorates, were also created. As Kilimnik (1998) suggests, the development of OSH in Germany was based on three main pillars: occupational factory inspectorates (‘Gewerbeaufsicht’), vocational insurance associations (‘Berufsgenossenschaften’) and work councils (‘Betriebsraete’). The first labour inspectorates were established by the local governments of Aachen, Arnsberg and Dusseldorf in 1854, twenty years after their creation in the UK. They were originally tasked with enforcing child labour law and bore responsibility for the prevention of disorder in sanitation, health and safety. Vocational insurance associations, although overlapping with inspectorates, had slightly different responsibilities. Created by Bismarck in 1884, they focused on preventing occupational accidents and illnesses and, later on, dealt with
the compensation of workers and victims or survivors of accidents. They were governed by employers but gradually incorporated worker representatives into their boards. Works councils were the third institution to handle occupational safety and health regulation. They were established by the German government after World War I and included all employees as well as, often, the employer. They focused on the needs and goals of the company and were designed to foster cooperation rather than conflict between the parties (Kilimnik 1998).

In a country like Sweden, OSH policies were also encouraged because occupational health was regarded as a productive asset necessary for economic growth while being, at the same time, a cost for social insurance and employers (Frick 2011). In Sweden, the first Occupational Safety Act came into force in 1890. It failed to deliver and protect workers due to weak supervision and enforcement. After 1900, the Act was broadened and worker compensation schemes were introduced. In 1912, the role of the worker safety representative was established. In several other European countries, workers – supported by trade unions – defended their right not to be injured. These turned occupational health and safety into a political issue and an area in which workers and employers struck cooperative agreements (Frick 2011).

Despite such positive developments, major difficulties still remained, particularly in relation to the implementation and enforcement of these new policies. Given the inability of states to enforce rules, the approach shifted towards promoting voluntary compliance by companies, incentivised as a way to reduce risks and fatalities. Voluntarist policies were promoted through participation and dialogue between workers and employers, as a forerunner of what is now called ‘good practices’. Sweden drew up its legislation on chemicals, accidents and stress at work following a broad parliamentary discussion with social partners, with a view to reforming the system. At this time, the figure of the safety representative emerged, and unions pushed for surveys on exposure to stress at work. This push was, de facto, the first step towards tackling psychosocial risks at work. In Sweden, health prevention and protection at work were not imposed strictly through law and regulation. During the 1970s, visual artists and graphic designers produced posters that
promoted health prevention and safety at work in all its dimensions. These posters became an integral part of the preventive culture currently deployed by public institutions and unions².

In Italy, at the beginning of the 1960s, a common front was established by unions, doctors, occupational physicians, technicians and scientists. It promoted cultural change, creating a real social awareness of the dramatic number of accidents, deaths and related illnesses at work. The main goal was to prevent risks and reject a purely financial approach to risk. At the time, investigations were initiated within the pharmaceutical company Farmitalia, where workers had made complaints about their working conditions. They demanded that harmful chemical substances be replaced and requested that changes to the work organisation be made with their involvement. Similar initiatives were taken in other companies, particularly at Fiat, and the movement spread throughout the country during the 1960s and 1970s (Diario Prevenzione 2016). Italy thus started a culture that involved workers in preventive strategies, enabling them to understand the reality of their working environment and participate. In 1974, the ‘Research and Documentation Centre for Occupational Risks and Damages’ was established. Training courses were put in place and unions focused more on health protection as a central objective in their strategy of ‘conscious productive labour’ (Stanzani 2016; Alhaique et al. 1999).

These various initiatives led to the development of a major reform of health and safety policy. Although sometimes participation was the result of industrial conflict, agreements were reached by collective bargaining in various companies, as well as by the identification and assessment of risks in the workplace and the development of epidemiology in preventive industrial medicine. Workers were involved in the investigation of non-harmful technological alternatives and the fight against carcinogenic substances such as asbestos, silica and vinyl chloride monomer. Workers carried out union surveys and brought union knowledge to scientific research; their experience propelled research in preventive medicine (Alhaique et al. 1999).

². International Institute of Social History https://socialhistory.org/
One milestone in the Europeanisation of the issue of OSH was the adoption of the reformed 1978 health law, through which the Italian approach became widely disseminated, and became one of the driving forces behind the development of European policies and directives in occupational health and safety (ETUI 2016). For example, in the Netherlands, it led to the establishment of Science Shops (‘wetenschapswinkels’), which disseminated information and educational materials. In Denmark, in 1975, it contributed to the creation of the Work Environment Action-Group of Workers and Academics (Diario Prevenzione 2016).

Despite major issues related to the use of hazardous chemicals at the workplace, such as asbestos, mechanical dangers in shop floors and unsanitary working conditions, the 1970s were prosperous years for occupational health and safety policies. In these years, policies were in tune with the political agenda, and social goals were pursued with the same energy as economic objectives. In the 1970s, worker participation was fully introduced and safety representatives appeared. With workers directly involved, the identification and recognition of diseases moved faster and focused on securing important goals: a healthy working environment, in-putting workers’ direct experiences into health control, preventive systems, tackling the problems raised by technological transformation and laying down guidelines for the future (Bagnara et al. 1985).

2. From national initiatives to a consolidated European approach: the Framework Directive and its daughter directives

2.1 The early EU regulatory framework (1989-1992)

In 1978, the Council of the European Union passed a resolution on the first Action Programme on Safety and Health at Work in the EU (Council of the European Communities 1978) – the predecessor of today’s Strategic Framework. The Action Programme was ambitious in its objectives, recognizing that the number of accidents and diseases resulting from work remained high and had incalculable consequences for society.
The aim of the programme was to increase the level of protection against occupational risks of all types; it aimed to do this by increasing preventive measures as well as by the monitoring and controlling of risks. As early as 1978, the Action Programme indicated the need to determine, fix and harmonise exposure limits for dangerous substances, especially carcinogens; to incorporate safety and ergonomic aspects in the various stages of the design, production and operation of machinery and work equipment; and stressed that the use of modern technology and advanced processes was increasing and would lead to new dangers – without however clearly identifying these.

With regard to more specific health issues, the 1978 Action Programme recognised the need to promote collaboration with Member States in the field of occupational medicine. The Council of the European Union indicated the need to plan the monitoring of workers’ health. The Action Programme also made reference to psychosocial considerations; it suggested the adaptation of work to workers as a way to achieve the highest level of physical and mental well-being. All in all, it set an ambitious agenda for the EU (Council of the European Communities 1978; Walters 1999), which would have a substantial impact on the negotiation of the ensuing EU health and safety directives.

The Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), hereafter ‘Framework Directive’, came into force in 1989. It was fully transposed in all Member States by 1992. It is based on Article 118a of the Treaty on the Functioning of the European Union (2012), which provides that ‘the Council shall adopt minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers’ (Council of the European Communities 1989). As argued by Vogel (2015), the Framework Directive is a centrepiece of Community occupational safety and health legislation. It brings together several achievements of the labour movement and has the advantage of being a self-standing piece of legislation, rather than a Europeanized version of a national piece of legislation, even though the rules it contains do exist in other countries and international labour Conventions. From a political point of view, adopting a framework directive which would complement other specific directives made sense because Member States could transpose and implement it relatively
quickly, which would lead to the same minimum level of protection across risks and across Europe.

The Framework Directive’s main objective was to improve the safety and health of workers, which is why it made the principle of prevention a cornerstone of the system. It also defined general principles for managing safety and health; identified the responsibilities and obligations of the employer, as well as the rights and duties of workers; and established the obligation to conduct risk assessments. Social dialogue, worker participation, training, safety representatives and safety committees were all part of the legislation, with a variety of rights. Kineke (1991) highlights the fact that several aspects of the directive’s text were particularly new and relevant:

— It sought to harmonize health and safety, as well as to guarantee working conditions and well-being;
— It set minimum requirements for Member States, in the sense that they were free to provide a level of protection that was more stringent or detailed than that resulting from EU law;
— References were made to the nature and size of companies, including the need to avoid imposing constraints that might affect the development of small and medium sized enterprises;
— It was expansive, valid for all enterprises and all industrial sectors;
— It allowed Member States discretion as to its implementation, although reporting on implementation to the European Commission was required.

Between 1989 and 2013, some 30 daughter directives with more detailed requirements were adopted; these covered a broad range of topics and risks such as physical, chemical and biological agents, general workplace requirements, work equipment, personal protective equipment, manual handling of loads and display screens equipment. A full list of OSH directives is available in Annex 1.

In January 1993, the Single Market – which was the main driver for European integration – became a reality for twelve EU Member States: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the UK. European Commission President Jacques Delors showed support to social stakeholders and encouraged them to model the social dimension of the
European Single Market in a relatively easy and non-formal way. This provided a platform for information, consultation, negotiation and training. Industry representatives wanted policies that considered directives on standards, and unions started to explore and observe that particular field. This led to the creation of expert groups to discuss technical standards in Germany and Belgium, with employers, consumers and union representatives participating as observers.

The Framework Directive and its daughter directives established a new and robust legal framework in Europe, supported by multiannual Community strategies. Through these, the European Commission planned to improve working conditions in Europe by addressing specific political objectives and ambitions. However, the legislative system put in place by the Framework Directive started misfiring in certain key aspects of occupational health: new legislation was and still is difficult to achieve, and enforcement is still problematic. This was the result (among other things) of the limited capacity of labour inspectorates at national level and the sometimes-difficult cooperation with safety representatives, despite legal obligations to involve the inspectorates and provide them with information. Also, trade unions were quite willing to engage in OSH but sometimes lacked the necessary scientific knowledge to negotiate with employers on very technical matters. On the other hand, industry gradually started moving away from a preventive approach and pushed for a simplification of policy and rules.

The EU legislative structure was supported by various building blocks such as the European Agency for Safety and Health at Work (EU-OSHA) and the Advisory Committee on Safety and Health at Work. The creation of the EU-OSHA in 1994 contributed to a modern occupational health sector in Europe, collecting information and raising awareness through the focal points established in various Member States. This Agency, established in Bilbao, is a tripartite body that takes a comprehensive approach to occupational health and safety and provides a platform wherein trade unions, employers and governments can defend their interests and try to reach consensus on various issues. In 2003, a Council Decision (2003/C 218/01) set up the Advisory Committee on Safety and Health at Work in order to streamline the consultation process in the field of occupational safety and health and to rationalise the bodies created by previous Council Decisions. The Advisory Committee has established a series of thematic Working Parties, such
as the Standing Working Party (SWP) on the mining industry, and the Working Parties on chemicals, standardisation and strategy. The Advisory Committee’s remit is to assist the European Commission in the preparation, implementation and evaluation of activities in the fields of safety and health at work, in particular by giving opinions in the area of OSH, identifying OSH policy priorities and establishing relevant strategies towards achieving goals. The Committee also facilitates the exchange of views and experiences between Member States and stakeholders, operating as an interface between the European and national level.

2.2 Better regulation: questioning the Framework Directive (mid-2000s)

As of 1992, at the time when the legal framework began to be implemented, the principles of Better Regulation started permeating the new directives and social policies of the European Union (Vogel et al. 2010). As Walters (1999 and 2002) point out, the intense legislative activity and proactive policy approach of the previous decades slowed down in the 1990s: this explains the limited success in achieving European harmonization in health and safety after that period. As of the mid-1990s, several international projects started to analyse the economic impact of regulation, its performance and its cost for industry (particularly at a micro level).

In the mid-2000s, the European Commission adopted ‘Better Regulation’ as a key strategy. Better Regulation – an approach born in the United States and then adopted by the Organisation for Economic Co-operation and Development (OECD 1995) – focuses on simplifying legislative actions and, in the case of OSH directives, advocates the modernization of ‘older’ provisions. Updating directives and their content is a reasonable endeavour but, in this case, the European Commission focuses mainly on competitiveness, innovation. It also, as explained by Van den Abeele (2015) uses impact assessments and ex-post evaluations to systematically reduce regulatory costs and burdens, without taking into account the benefits of regulation and the cost of non-Europe. In February 2007, during the Presidency of José Manuel Barroso, the European Commission published its strategy for 2007-2012, entitled ‘Improving quality and productivity at work: Community Strategy 2007-2012 on
health and safety at work’. However, at this time the issue of working conditions in the European Union was at a standstill. Primary prevention at the workplace – which accounted for at least 8% of avoidable cancers – was still not a core pillar of the OSH. Action on musculoskeletal disorders was also missing (Vogel 2010). Weak points became increasingly visible and obvious, such as the need to deal with risks related with asbestos pollution, dangerous chemicals, carcinogens, mutagens and substances having a toxic effect on reproduction. The wider legislative framework became gradually affected by the weight of political debates about competitiveness versus legislation, cost versus benefit, innovation versus prevention and safety versus profit.

3. The European Commission’s 2014 Strategic Framework: importance and limitations

3.1 Towards a new Strategic Framework

In the field of occupational safety and health, the EU has used multi-annual strategies to achieve its political objectives. These strategies, formally endorsed by the European Commission after consultation, are voluntarily implemented by Member States and stakeholders. Various strategies or Action Programmes have been adopted since 1978. Strategic Frameworks are key instruments: they identify priorities and common objectives, provide a framework for coordinating national policies and promoting a holistic culture of prevention, they establish a clear European direction. As a result of the 2007-2012 Strategy, all the then 27 Member States put in place national strategies (European Commission 2014a).

In 2011 a new Strategic Framework was announced for the period 2013-2020. Expectations were running high, given the importance of the framework as a common tool. However, in 2012, the European Commission announced a delay, arguing that managing the financial crisis took priority. Faced with such a cloudy horizon, various actors started to put pressure on the European Commission: BusinessEurope and the European Trade Union Confederation (ETUC) sent letters to European Commissioners insisting on the need to issue the Strategy as soon as possible, making their own antagonistic sets of demands that showed their very different expectations. The atmosphere was tense and
uncomfortable, as no one knew whether the European Commission was going to publish the Strategic Framework or reverse its course and keep delaying implementation. Indeed, the Commission needed two more years to negotiate, develop and (probably) internally renegotiate the Strategic Framework on Health and Safety at Work for the period 2014–2020. When the framework finally came out – in 2014 instead of 2012 – it was welcomed by the OSH community for two main reasons. First, stakeholders were finally given an indication of the priorities to tackle in the next period. Second, the number of deaths and accidents in companies in Europe was still high, and primary occupational safety and health prevention measures were still precarious. In other words: doing nothing was not an option.

The Strategic Framework that was proposed as a result of the consultation is rich in political ambition but lacks strategic guidance and content. It contains three major challenges: ‘improving the implementation record of Member States, in particular by enhancing the capacity of micro and small enterprises to put in place effective and efficient risk prevention measures; improving the prevention of work-related diseases by tackling existing, new and emerging risks; tackling demographic change’ (European Commission 2014a). The European Commission suggests addressing these challenges through several actions, which are linked to seven objectives: consolidating national strategies, facilitating compliance with OSH legislation, particularly by micro and SMEs, improving enforcement in Member States, simplifying existing legislation, addressing the ageing of the workforce and emerging risks, improving statistical data collection and reinforcing coordination with international organisations.

The European Commission explained that it ‘can meaningfully contribute to reducing work accidents and occupational diseases worldwide’. Cooperation with the International Labour Organisation (ILO), in particular, as well as the World Health Organisation (WHO) and the OECD is presented as key. Several actions are envisaged, such as; ‘supporting candidate countries during accession negotiations; strengthening OSH cooperation, in particular with the ILO, but also the WHO and the OECD; launching a review of the Memorandum of Understanding with the ILO to better reflect OSH policy; contributing to implementing the sustainable development chapter of EU free-trade and investment agreements regarding OSH and working conditions;
addressing OSH deficits in the global supply chain and contributing to G20 initiatives on safer workplaces in this regard; strengthening ongoing cooperation and dialogue on OSH with strategic partners’ (European Commission 2014a).

However, the 2014 Strategic Framework is not a real strategy – it is a document that lacks actual content and depth. Several weak points should indeed be pointed out. Firstly, the objectives are too general and should address some issues that have been overlooked. They should also be measurable. Secondly, several of the so-called ‘key’ challenges – improving implementation, occupational diseases and an ageing workforce – are not really new and already have been ‘key’ for a long time. Thirdly, most of the work that needs to be done to achieve the objectives is delegated to the Bilbao Agency, which is already overburdened by its own work programme and, additionally, has no executive power. This means that the European Commission can concentrate on what appears to be the most important and almost the sole strategic objective: simplifying existing legislation. The Strategic Framework states that this should be done in line with the REFIT programme in the following way: by assessing whether the OSH acquis is fit for purpose, by finding out how to improve its implementation and by ensuring better and effective compliance by Member States and enterprises (European Commission 2014a).

The Strategic Framework should be designed around real workplace issues, particularly in small and less developed companies where workers are more likely to suffer on the job. Important real issues are, for example, psychosocial risks, musculoskeletal disorders and exposure to dangerous substances, such as nanomaterials, endocrine disruptors and reprotoxins. It should also look at other empirical risks, such as those faced by migrant workers, crowd workers and cloud workers.

3.2 The European social partners’ reactions to the Strategic Framework

The ETUC, in its Executive Committee meeting of 2-3 December 2014, called on the European Commission to put forward a substantial strategy for occupational health and safety in Europe, and also to launch at once an ambitious initiative to establish binding European
exposure limits for an extended number of carcinogenic and mutagenic substances. Moreover, ETUC demanded the immediate launch of legislative actions in a number of unregulated areas: musculoskeletal disorders (vibration, manual handling and display screen equipment); psychosocial risks; risks to reproductive health arising from toxic substances; risks derived from new materials such as nanoparticles, chemical disruptors of the hormone system. ETUC also insisted on the need to deal with such risks from both male and female workers’ perspectives, as exposures to substances, biological agents and working processes are different (men and women being involved in different sectors and occupations), and the diagnosis of occupational diseases is different for men and women. This differentiated approach needed to be mainstreamed into all OSH policies, both at national and European level (ETUC 2014a).

Commenting on the Commission’s Strategic Framework, the ETUC expressed its disappointment and described the strategy as weak, insubstantial and containing no concrete proposal for action nor specific improvement to health and safety. It criticized the fact that the strategy threatens to deregulate health and safety, claiming a need to ‘simplify legislation where appropriate’ to make it easier for SMEs to implement health and safety. The ETUC concluded that ‘the strategy proposes to treat health and safety as part of the REFIT programme of cutting so-called red-tape. Workers’ safety is not a bureaucratic burden’ (ETUC 2014 b).

BusinessEurope reacted by issuing a Position Paper on the EU Strategic Framework on Health and Safety at Work. It welcomed the focus of the Strategic Framework on better implementation, compliance and simplification. It remarked that psychosocial risks, musculoskeletal disorders and mental health problems are complex and subjective issues, adding that a better understanding is needed of how individuals’ private lives and work interact. BusinessEurope also insisted on prioritizing non-legislative tools, including good practices, and on the need to take costs into account when taking action in this area. It supported the European Commission’s high priority given to reducing administrative and regulatory burdens on SMEs (BusinessEurope 2014).
4. Recent developments: the year 2015

The year 2015 has been marked by several key OSH discussions: the European Parliament and the Council of the European Union reacted strongly and in different ways to the European Commission’ Strategic Framework. Also, an important part of the evaluation of the EU OSH directives took place during the year and this evaluation process might be the biggest and most complex (24 directives are being evaluated) carried out by the European Commission under the rules of the Regulatory Fitness and Performance programme (REFIT programme). The final discussions around the amendment of the carcinogens directive equally took place in 2015. At international level, key meetings were organised to finalize draft ISO/DIS 45001 on occupational health and safety management systems – requirements with guidance for use, but they were unsuccessful.

4.1 EU institutions’ reactions to the Strategic Framework on health and safety at work

In addition to the criticisms described in the previous section, 2015 brought new reactions to the EU Strategic Framework on Health and Safety at Work 2014-2020. On 27 February 2015, the Council of the European Union adopted conclusions entitled ‘EU Strategic Framework on Health and Safety at Work 2014-2020: Adapting to new challenges’ that called upon the European Commission to ‘review the EU Strategic Framework in the light of the ex-post evaluation of OSH directives’ and, most importantly, it adds, ‘taking into account the opinions given by the Advisory Committee on Safety and Health and the Senior Labour Inspectors’ Committee (SLIC)’ (Council of the European Union 2015a).

Another set of Council Conclusions were issued on 28 September 2015, entitled ‘A new Agenda for Health and Safety at Work to Foster Better Working Conditions’. On the issue of REFIT, the (EPSCO) Council underlines that ‘Better Regulation principles and the Regulatory Fitness and Performance Programme can never replace political decisions and should not reduce the level of protection for workers, but should instead increase it through better effectiveness and efficiency and ensure that the measures are well-designed and deliver sustainable benefits for citizens, business and society as a whole’. The Council of the European
Union also insists on the importance of the overall structure of health and safety at work legislation (a structure that is based on the Framework Directive) and recognizes that some directives may need updating in order to keep pace with technological developments. It adds that such changes must be based on a comprehensive impact assessment, recalling the importance of the precautionary principle, if evidence is lacking (Council of the European Union 2015b).

The September 2015 Council conclusions tried to give a more concrete direction to the European Commission’s approach. For example, the Council of the European Union calls upon the Commission to consider improvements to the legislation on carcinogens and mutagens, so that new substances may be added rapidly; to update the directives related to musculoskeletal disorders; to prepare an operational plan of action for the Strategic Framework; to provide adequate training to labour inspectors, and so forth. It also invites social partners to continue negotiations on transnational and international agreements.

On 25 November 2015, the European Parliament issued a Resolution on the EU Strategic Framework on Health and Safety at Work 2014-2020. The Resolution stressed the need for clear and efficient rules, while regretting that the European Commission has not set out specific targets in the framework. It also suggested that more concrete legislative and or non-legislative measures should be made, and also that implementation and enforcement tools should be included in the framework following its review in 2016. The European Parliament asked the Commission to draw up indicative reduction targets for occupational diseases and accidents in order to ensure that national OSH strategies reflect the EU-OSH Strategic Framework and are fully transparent and open to input from social partners and civil society (European Parliament 2015). The Parliament also called on Member States and social partners to act, urging them to improve the skills and competences of safety representatives and company managers. Member States should also promote the involvement of workers in OSH prevention activities; they are free to adopt higher standards than the minimum OSH requirements.
4.2 The ex-post evaluation of OSH directives

In 2012 and 2013, DG Employment, Social Affairs and Inclusion (DG EMPL) of the European Commission issued an evidence-based ‘Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) directives in EU Member States’, which was to be conducted by a consortium consisting of consultancy firms COWI, IOM (Institute of Occupational Medicine) and Milieu Ltd. The main idea was to evaluate the practical implementation of OSH legislation, its relevance, effectiveness and coherence, and to provide recommendations for the development of future EU policy instruments in this area. As a part of the evaluation, during the summer of 2013 the European Commission launched a public consultation on the future EU policy framework. After a lengthy period of collecting information (mainly through phone calls), COWI organized a ‘Validation Seminar’ in Brussels on 9 December 2014 with key stakeholders, Member States, social partners and other organizations. The objective was to discuss the preliminary conclusions of the upcoming evaluation (COWI 2014).

The report produced by the consultants eventually concluded that all 24 OSH directives have been relevant for Member States and that most of their provisions remain relevant. On effectiveness, the report concluded that the directives indeed reach their objectives in ensuring health and safety of workers. On coherence, the report finds no contradictory provisions and very few overlaps between OSH directives. Furthermore, among the few overlaps identified, a large majority do not result in double regulation in practice and therefore do not lead to additional costs when applied by employers (COWI 2014).

The Advisory Committee on Safety and Health reacted to the consultant’s report by issuing an Opinion that (significantly) was

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3. The Validation Seminar focused on five key topics: 1) Do the directives work as intended? 2) How do we manage the major ongoing risks of musculoskeletal disorders and psychosocial risks? 3) How do we maintain the relevance of the directives? 4) How do we best manage chemical risks (including nanoparticles)? 5) How do we deal with challenges in the implementation of OSH legislation – enforcement and SMEs (DG Employment 2014)? The participants, however, were less interested in discussing possible recommendations than being informed of the timeline and plans of the European Commission with regards to the OSH acquis. Since the beginning of this process, the Commission has been reluctant to share its plans, information about future steps, deadlines and goals related to the OSH acquis.
adopted unanimously by worker representatives, employers’ representatives and governments. The Committee states that the need to update some directives or requirements does not call for a full recast of the occupational health and safety directives system. It considers that the current structure of the acquis – with a Framework Directive and individual directives – should be maintained. It also considers that any specific proposals with regard to the OSH acquis should take into account the opinion of the tripartite Advisory Committee on Safety and Health (ACSH) and the contributions of social partners, according to the provisions of the EU Treaty on social dialogue. It underlines the need to focus on better enforcement and compliance and to find new and innovative ways of reaching SMEs and micro-enterprises. The Committee considers that any specific proposals with regard to the OSH acquis should take account of the opinion of the tripartite ACSH (2015) as well as the contributions of social partners, according to the provisions of the EU Treaty on social dialogue.

4.3 Revising the carcinogens and mutagens Directive

The Carcinogens and Mutagens Directive (2004/37/EC), which sets out requirements on the employer to identify carcinogenic and mutagenic substances and assess the potential risks, substitute, provide health surveillance, set binding exposure limits, etc., was opened for revision in 2004. Negotiations between workers’ representatives, employers’ representatives and officials of the European Commission have now been taking place for 12 years. The process has taken this long because of the divergent opinions on the methodologies for deriving limit values, on the inclusion of reprotoxins as well as on whether the approach should be more or less risk-based.

Finally, in 2016, after scientific evaluation and impact assessment, the European Commission introduced a legislative proposal for a first wave of 13 new and revised occupational exposure limit values for a number of priority occupational chemical carcinogens. As the European Commission explains, this also ‘fits within the Commission’s priority for a deeper and fairer single market, in particular its social dimension’ (European Commission 2016). The proposal was adopted by the College of Commissioners on May 13, 2016 and sent to the Council of the European Union and the European Parliament for negotiation and
subsequent adoption, probably by the end of 2016 (Morris 2016). More substances with updated limit values can be expected, as this first wave of Occupational Exposure Limit Values is not enough to significantly update the Directive. Wriedt (2015) has identified at least 70 limit values that need to be included. A second and a third wave of substances will probably be presented by the European Commission by the end of 2016, as well as the proposal to include reprotoxin substances in the scope of the Carcinogens Directive.

This type of legislative initiative is very important for many European workers employed in various industrial sectors, such as the chemical, automotive, construction sectors, health care, etc. These workers are exposed to a variety of substances that have a toxic effect on reproduction: mutagenic substances as well as carcinogens such as asbestos, silica, diesel exhaust, mineral oils and solar radiation, as well as shift work, which need to be eliminated. Recent research by Jukka Takala (2015) estimates the number of deaths caused by occupational cancer in the EU every year at 102,500 (and 610,000 globally). This accounts for an unsettling 53% of all work-related deaths in the EU (Takala 2015).

Conclusions and forward-looking perspective

OSH has never been a particularly ‘politically salient’ policy area. Neither does it generate daily news stories that the media can pick up and disseminate; unfortunately, it becomes newsworthy only when workers die or are injured (Thébaud-Mony et al. 2015). The best way workers can be protected is by going ‘back to basics’, i.e. by having a clear set of rules that can be implemented and enforced by Member States, which must not fall into the trap of simplifying for simplifying’s sake or of trading safety for profit.

Similarly, the European Commission’s REFIT programme should not undermine the current level of protection. Aimed at simplifying EU law and reducing regulatory costs, it has been increasingly at the centre of the Commission’s work programme since the Juncker Commission came into office in November 2014. One of the Commission’s key focuses is that ‘the Treaty requires that directives in the social field avoid imposing administrative, financial and legal constraints in a way which would hold
back the creation and the development of small and medium-sized undertakings (Art. 153(2) (b) TFEU)’ (European Commission 2012 and 2015a).

Looking at the future of OSH, REFIT should not be implemented in a strict and inflexible manner, especially when primary prevention is still far from a reality in many EU Member States. Although the European Commission has published a guideline document on REFIT, the process is not yet clearly defined. Focusing our attention on particular new and emerging risks is useful but should not limit our ability to work on the basics of occupational health and safety. Psychosocial risks, for example, are not new and have been the subject of regulation in several European countries such as Austria, Belgium, Croatia, Denmark, Finland, Spain, Sweden and Norway. The EU should use existing initiatives and truly innovate, rather than consider these phenomena as ‘emerging’ risks that are difficult to deal with.

The EU should also address unfinished business and proceed with key legislative initiatives such as a Directive on Musculoskeletal Disorders (MSDs). These disorders affect the majority of workers and are the most common although unrecognized occupational disease in the EU, often causing back pain, neck and upper and lower limb pain, and leading to disabilities, cardiovascular diseases, stress and finally possibly an exit from the labour market. MSDs downgrade workers’ quality of life as well as companies’ productivity. Looking at the 2015 and 2016 European Commission Work Programmes entitled ‘A new start’ and ‘No time for business as usual’ – it appears that the objective is to ‘do different things’, ‘do things differently’ and ‘drive change’. Particular emphasis has been and will be put on jobs, growth and investment – through the Investment Plan – aimed at mobilising more than EUR 315bn over three years. The European Commission also presents the lightening of the regulatory load as a political priority, but claims it can reduce bureaucracy while maintaining high levels of social, health and environmental protection (European Commission 2014b and 2015b).

The European Commission assumes that rules are too complex, but the reality is that complexity lies in the way business takes place. The labour market is changing rapidly; relationships are becoming more complex and blurred, and supply chains now increasingly include digital and cyber platforms. In 2016, Degryse describes situations where
tasks previously performed by professional workers are now being performed by ‘citizen-workers’. Today, people themselves perform activities that used to be the responsibility of their banker, travel agent or energy supplier. Workers are becoming crowd workers, cloud workers, click workers or data workers, and are increasingly interacting in high-speed work contexts with non-human actors such as robots, automated decision-making systems, software, algorithms and online platforms.

These changes are profoundly transforming the labour market and labour law, and are having an impact on occupational health and safety, in particular with regard to a certain dilution of responsibilities, obligations and rights. Work is becoming less social, increasingly de-humanised, and the border between private and working life is sometimes almost invisible. The response to this development in our economies and labour market must be broadened to construct a genuine and innovative European occupational health and safety strategy. This could be considered part of the EU’s ‘innovation policy’, in the sense that it could provide new solutions to emerging issues, could impact positively – and healthily – the different sizes of European companies, could motivate them to achieve short, medium and long-term occupational safety and health objectives and foster investment in OSH. These profound and lasting strategic changes must be accompanied by similarly profound regulatory changes and a strong focus on enforcement, rather than resulting in simplification and less regulation.

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Vogel L. (2010) Barroso I: a 5-year standstill on health and safety at work, Autumn-winter 2010/HesaMag #02, Brussels, ETUI.


Wriedt H. (2015) Carcinogens that should be subject to binding limits on workers' exposure, Report 136, Brussels, ETUI.
Annex 1  **List of Occupational Health and Safety Directives**


*Workplaces, equipment, signs, personal protective equipment*
- Directive 2009/104/EC – use of work equipment
- Directive 99/92/EC – risks from explosive atmospheres
- Directive 92/58/EEC – safety and/or health signs
- Directive 89/656/EEC – use of personal protective equipment

*Exposure to chemical agents and chemical safety*
- Directive 2009/161/EU – indicative occupational exposure limit values
- Directive 2009/148/EC – exposure to asbestos at work
- Directive 2004/37/EC – carcinogens or mutagens at work
- Directive 98/24/EC – risks related to chemical agents at work
- Directive 91/322/EEC – indicative limit values

*Exposure to physical hazards*
- Directive 2013/59/Euratom – protection against ionising radiation
- Directive 2013/35/EU – electromagnetic fields
- Directive 2006/25/EC – artificial optical radiation
- Directive 2003/10/EC – noise
- Directive 2002/44/EC – vibration
- Directive 96/29/Euratom – ionizing radiation
- Directive 90/641/Euratom – outside workers in controlled areas (ionizing radiation)

*Exposure to biological agents*
- Directive 2000/54/EC – biological agents at work

*Provisions on workload and ergonomic*
- Directive 90/270/EEC – display screen equipment
- Directive 90/269/EEC – manual handling of loads

*Sector specific and worker related provisions*
- Directive 2010/32/EU – prevention from sharp injuries in the hospital and healthcare sector
- Directive 94/33/EC – young workers
- Directive 93/103/EC – work on board fishing vessels
- Directive 92/104/EEC – mineral-extracting industries
- Directive 92/57/EEC – temporary or mobile construction sites
- Directive 92/29/EEC – medical treatment on board vessels
- Directive 91/383/EEC – fixed-duration or temporary employment relationship
Chapter 6
Violations of fundamental rights: collateral damage of the Eurozone crisis?

Dalila Ghailani

In 2008, the most serious crisis to strike the global economy since the Great Depression of 1929 began in the United States, before quickly spreading through Europe, affecting most of the economies of the European Union (EU). This crisis revealed the structural weaknesses of some EU Member States and the weaknesses in the governance of the Eurozone (Schmidt 2015). Some go as far as to maintain that the crisis ‘threatens over six decades of social solidarity, economic integration and expanding human rights protection across Council of Europe Member States’ (CommHR 2013).

Under the iron rule of the EU, governments mainly responded to the crisis by decreeing anticyclical monetary and fiscal policies aiming to ensure social protection while reintroducing financial stability and stimulating economic demand. In 2010, however, many European governments made deficit-reduction their number one political priority. Reducing public expenditure therefore became the must-have new European dogma. Aid given to the indebted Eurozone countries was made conditional on implementation of economic adjustment programmes in the form of austerity policies. The purpose of the latter was to reduce the scope of social benefits, make labour protection more flexible or even to cut wages and pensions. In some countries, such policies had direct consequences on economic and social rights, which

1. For an analysis of the EU’s economic governance, see Bekker (2016), Zeitlin and Vanhercke (2015) and Degryse et al. (2013).
2. Civil and political rights were also affected. The use of excessive force against demonstrators in Spain, Portugal and Greece and violation of the freedoms of expression and assembly gave rise to concern. Access to justice is threatened by austerity measures: as a result of the crisis in many Member States, judicial budgets have been cut, legal fees raised and legal aid revised downwards (CommHR 2013).
led to strong reactions from international and European human rights bodies (Roman 2014). Governments and the international financial institutions had not taken any real measures to ensure the respect of fundamental rights, which were not referred to and were not taken into account in their analyses and the solutions they proposed. The restriction of rights, particularly economic and social rights, was thus seen as an inevitable, and therefore acceptable, outcome of the crisis (FIDH 2014).

This chapter describes the austerity measures taken by a number of Member States – some of which were, or still are, subject to the Troika3 – and their impact on certain economic and social rights, including education, health, pensions and work (section 1). The second section looks at how these human rights violations were denounced by international human rights organisations. Section 3 highlights the dynamic approach taken by national constitutional courts in examining austerity measures, compared with the reticence of the European courts. The issue of responsibility for fundamental rights violations is addressed in section 4. While it is up to each Member State to ensure that these rights are respected and promoted, the question arises of possible shared responsibility between the Member States, the Troika and the IMF, particularly in the case of measures imposed by the Troika. We conclude that in recent years, the importance attached to human rights has declined together with state budgets, but that, unlike national budgets, these rights have not benefited from bail-out plans.

1. Austerity measures and their impact on certain fundamental rights

The austerity plans adopted in the wake of the crisis to reduce public expenditure in several EU Member States have had serious consequences for human rights. To illustrate our point, we shall mostly refer to the results of a study commissioned by the European Parliament’s

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3. The economic and financial crisis had a severe impact in Greece, Ireland, Portugal and Cyprus, which had to ask for financial aid to replenish their funds. These four governments therefore turned to the European Central Bank, the European Commission and the International Monetary Fund, working together in the ‘Troika’.
Committee on Civil Liberties, Justice and Home Affairs (LIBE). This study\(^4\), published in March 2015, examines the austerity and crisis measures adopted between 2008 and June 2014 with an impact on a series of rights, including education, health, work, pensions and access to justice. It covers those Member States subject to the Troika during the period in question, i.e. Cyprus, Greece, Ireland, Portugal and Spain\(^5\), and also Belgium and Italy (Ivankovič Tamamovič 2015). The analysis contained in this chapter will not therefore be exhaustive, given the material and geographical limitations of the study.

1.1 The right to education

In the countries subject to the Troika, the conditions set out in the Memoranda of Understanding (MoU) directly addressed education systems, their effectiveness and financial sustainability. Other Member States also introduced many restrictive measures, sometimes in order to meet international and European commitments to stabilise public expenditure. The crisis measures adopted included the following: cuts in expenditure on and numbers of education staff; cuts in running costs; school closures and mergers; cuts in or abandonment of school subsidies (see Table 1).

These measures have had repercussions on the quality, accessibility and cost of education, and on school drop-out rates (CommHR 2013).

In Greece, these cuts have made it difficult to ensure that students’ basic needs are met. The teacher shortages have not been resolved (shortage of 12,000 primary and secondary teachers in 2014-2015). The reductions in running costs have meant that many schools do without heating (Kaltsouni and Kosma 2015). Insufficient school transport has resulted in discrimination against pupils in isolated areas and Roma pupils. Around 180,000 disabled pupils are currently not receiving education due to a lack of resources (Truth Commission 2015).

\(^4\) Dalila Ghailani (OSE) and Bart Vanhercke (OSE) contributed to this study as joint authors of the Belgian case study, and quality-controllers for the study as a whole.

\(^5\) The Troika’s role came to an end in December 2013 in Ireland, May 2014 in Portugal and March 2016 in Cyprus. The aid received by Spain in June 2012 from the European Stability Mechanism (ESM) stopped on 31 December 2013.
Table 1  Measures affecting the right to education (2008-2014)

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<th>Types of measure</th>
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| Cuts in expenditure on and numbers of education staff | – Pay cuts (of around 40%) in Greece between 2009 and 2014 (Kaltsouni and Kosma 2015); pay cuts of 5% (2010) and pay freeze (2011) in Spain.  
– 12% cut in teacher numbers in Italy between 2008 and 2014 (Natasi and Palmisano 2015).  
– Cuts in staff numbers and non-replacement of teachers in Ireland and Spain (2011) (Ivanković Tamamović 2015).  
– Increase in pupil-numbers per class in Portugal (2012) and Italy (2009), and cuts to lesson time in Italy, Portugal (down to 40 hours/week in 2013), in Spain (2012) and in Greece (ibid). |
| Cuts in running costs                    | – 17% cuts in auxiliary and technical staff in Italy since 2008 (Natasi and Palmisano 2015), and abolition of 1570 childcare posts in Greece in 2013 (Kaltsouni and Kosma 2015).  
– Transport for children living in rural areas was free in Cyprus, but now has to be paid for (since 2013) (10 eur/month per child) (Demetriou 2015).  
– Price increase of 100€ per year for post-primary school transport in Ireland (2014) (Kelly and Nolan 2015). |
| School closures and mergers              | – Closure of 1,053 schools and mergers of 1933 more in Greece between 2008 and 2012 (Truth Commission 2015).  
– Merger of two thirds of schools in Sicily and Sardinia (Ivanković Tamamović 2015).  
– Closure of 9 schools in Cyprus between 2008 and 2012 (Demetriou 2015). |

Source: author’s own elaboration.

In Italy, cuts to the operating budgets mean that some schools cannot maintain their buildings or ensure a minimum level of hygiene (Natasi and Palmisano 2015).

In Spain, declining school outcomes are being interpreted as an indirect consequence of austerity measures, since the abolition of book-buying funds has deprived some children of proper school materials. Teachers have to manage larger classes and have to work harder, while thousands of others are unemployed. The cuts in subsidised school meals have had
a negative impact on the nutrition of children from poor families. These children have also been disproportionately hit by the abolition of study bursaries (Lladós Vila and Freixes 2015).

Disabled children have suffered from the budgetary cuts both in mainstream education, where they require suitable support, and in special education. In Portugal, the closure of special schools and transfer of these children to mainstream education has been postponed because of drastic budgetary cuts (Rodrigues Canotilho 2015). In Ireland, a number of these children have had to re-join special schools because of a lack of resources to provide the support they need in mainstream education (Kelly and Nolan 2015).

1.2 The right to health

Ensuring equal access to healthcare was a concern for most European healthcare systems long before the crisis. There were many calls for cost rationalisation and greater efficiency of healthcare systems even before austerity. Health system reforms were also recommended under the European Semester as a way to achieve both budgetary consolidation and efficiency of systems (Baeten and Vanhercke 2016; Eurofound 2014).

The crisis made these reforms even more urgent and more drastic. In Greece, the first memorandum of understanding (2010) restricted public health expenditure to 6% of GDP, whilst the second programme (2012) required an 8% cut in hospital running costs in 2012, and a reduction in spending on pharmaceuticals equivalent to 1% of GDP6. Draconian measures were taken over a short period of time, and without taking account of patients’ needs (Truth Commission 2015). The other Member States followed suit, adopting measures affecting the right to access to healthcare.

These measures took different forms: restrictions on access to care; new or higher patient contributions; cuts in pay and staff; measures relating to the cost of medicines and other services (see Table 2).

The access to and quality of care have been particularly hard hit by the cuts in health expenditure, redundancies in the public health sector, increases in fees and the level of the patient contribution, the reduction in numbers of hospital beds and the gradual drop in state social coverage. The poor and homeless, the elderly, the disabled and their families, women and illegal migrants have been most affected by the measures taken (Ivanković Tamamović 2015).

Table 2  Measures affecting the right to health (2008–2014)

<table>
<thead>
<tr>
<th>Types of measure</th>
<th>Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restrictions on access to care</td>
<td>− In Spain, since 2012, an individual’s access to healthcare depends on his employment situation7 (Lladós Vila and Freixes 2015).</td>
</tr>
<tr>
<td></td>
<td>− Since 2013, access to healthcare in Cyprus is limited to Cypriots and to European citizens with a permanent residence in Cyprus and who have made at least 3 years’ contributions to the social insurance system (Demetriou 2015).</td>
</tr>
<tr>
<td></td>
<td>− Abolition (2009) of medical cards granting universal and free healthcare to the over-70s in Ireland8 (Kelly and Nolan 2015).</td>
</tr>
<tr>
<td>New or higher patient contributions</td>
<td>− Introduction of patient contributions for primary care, specialist outpatient care, laboratory tests and medical and emergency transport in Cyprus, Greece, Italy, Portugal and Spain (Ivanović Tamamović 2015).</td>
</tr>
<tr>
<td>Cuts in pay and staff</td>
<td>− Pay reductions and freezes for medical staff in Spain, Ireland (10% in 2009) and Greece (Ivanović Tamamović 2015).</td>
</tr>
<tr>
<td></td>
<td>− Increased mobility of medical staff in Portugal and Greece via the adoption of flexibility arrangements (ibid).</td>
</tr>
<tr>
<td></td>
<td>− Moratorium on new recruitment in Greece, Ireland, Italy and Spain (ibid).</td>
</tr>
<tr>
<td>Measures involving the cost of medicines and other services</td>
<td>− Requirement for Greek (since 2012) and Portuguese doctors to prescribe generic medicines and issue electronic prescriptions, making it possible to monitor the prescribing of medicines (since 2010 in Greece) (ibid).</td>
</tr>
<tr>
<td></td>
<td>− Structural measures reducing the amount of medical imaging carried out in Belgium (2013) (Ghailani with Vanhercke 2015).</td>
</tr>
<tr>
<td></td>
<td>− Contributions made by Greek patients (2010) to the purchase of prescribed medicines9 (Ivanović Tamamović 2015).</td>
</tr>
</tbody>
</table>

Source: author’s own elaboration.

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7. Access to healthcare used to be free of charge and universal in Spain.
8. These were replaced in 2014 by cards granting an entitlement to free consultations with a general practitioner.
9. Including for serious and chronic diseases such as Alzheimer’s disease, dementia, epilepsy and osteoporosis (Ivanović Tamamović 2015).
In Spain (since 2012) and in Greece, illegal migrants are now excluded from the health system, except for emergency care. Citizens of Northern Cyprus and EU citizens working illegally are also excluded from the health system in Cyprus. In Greece in 2015, 2.5 million people, i.e. a quarter of the total population, no longer had health coverage (Kalsouni et al. 2015). In Portugal, people in isolated regions find it difficult to access treatment; hospitals have closed and they have to travel distances of up to 150 km to receive care (Rodrigues Canotilho 2015).

One direct consequence of the drastic cuts in state hospital budgets (beds, staffing etc.) is that waiting times have increased. In Cyprus, the waiting time for an appointment in a state hospital is now seven months (Demetriou 2015). In 2012, 570,000 people were on the waiting list for surgery in Spain, and 480,000 in Ireland (Eurofound 2014).

In Spain, between 2012 and 2014 the number of medical staff in the public health system fell by 5.6% (Eurofound 2014). As noted by the independent expert on debt, in Greece ‘excessive austerity killed the nurses and doctors before turning to the patients’10. In Ireland, the moratorium on new jobs has led to the loss of 1,500 posts (Kelly and Nolan 2015). In Cyprus, the moratorium on pay encouraged doctors to move to the private sector, depriving state health institutions of medical staff (Demetriou 2015).

Diseases such as malaria and AIDS have been spreading in Greece since 200911 (Simou and Koutsogeorgou 2014), whilst in Portugal the number of properly vaccinated children is constantly falling (Lladós Vila and Freixes 2015). Mental health problems, including suicides, increased sharply in Greece between 2009 and 2011 (Eurofound 2014). The human cost of austerity is not yet entirely visible. The future, however, looks risky and expensive. As is emphasised by Petmesidou and Guillén (2015), there could be a boomerang effect on the sustainability of health systems, the very justification for the reforms, and more specific

11. Simou and Koutsogeorgou (2014) report that the number of cases of HIV contamination among drug-addicts increased from 10 to 15 cases between 2007 and 2010, then to 256 cases in 2011 and 314 in the first eight months of 2012. This increase is attributed to the ending of prevention programmes.
impacts in terms of reduced life expectancy and increased infant mortality in these countries.

Vulnerable groups have been seriously affected by the various measures adopted. Young Belgians below the age of thirty and single-parent families frequently postpone or cancel specialist medical care, dental treatment and the purchase of medicines (Ghailani with Vanhercke 2015). In Greece, the number of people who have postponed a medical examination for price reasons increased by 85% between 2010 and 2013 (Bohoslavsky 2016). People with autism and their families, low-income households, asylum-seekers, the homeless and illegal migrants have also been affected in Cyprus, Greece and Spain. The same is true for people living in rural areas in Ireland and Portugal (Ivanković Tamamović 2015).

1.3 The right to work

‘Respect for fundamental principles and right at work is non-negotiable: not even in times of crisis when questions of fairness abound. This is particularly important in countries having to adopt austerity measures. We cannot use the crisis as an excuse to disregard internationally agreed labour standards’12. Schömann (2015) rightly points out that this declaration (2011) by Juan Somavia (former Director-General of the International Labour Organization (ILO) has not prevented the EU institutions from developing anti-crisis measures which violate fundamental rights, nor hindered Member States from adopting them. As early as 2008, the public authorities and national legislators took a series of measures to encourage economic flexibility, including amendments to national labour law. In Greece, Portugal, Ireland and Cyprus, specific structural reforms were negotiated between the Troika and the respective governments (Schömann 2015).

In the context of the European Parliament study mentioned above, the term ‘right to work’ should be understood in the restrictive sense, as meaning the right to engage in work (Article 15, EU Charter of

12. Address given by the ILO Director-General to the European Parliament, Strasbourg, 14 September 2011.
fundamental rights (EUCFR), the right to protection against unjustified dismissal (Article 30, EUCFR) and to fair and just working conditions (Article 31, EUCFR).

The measures adopted in the various Member States have included: public sector job cuts; changes to working time and deregulation of atypical contracts with increasing precarity of contracts; simplifying of the conditions governing (collective) redundancy; pay cuts and freezes; and weakening of unemployment protection (see Table 3).

The right to work was the first casualty of the economic crisis and ensuing austerity measures. The impact of these was soon felt. The most visible consequence was a steep increase in unemployment in Europe, from 7% in 2008 to 10.8% in 2013. Economic adjustment programmes in Greece, for example, led directly to a rise in unemployment, following staffing cuts of 26% in the public sector (affecting 234,847 workers) between 2009 and late 2015 (Bohoslavsky 2016).

Since the beginning of the crisis, job insecurity has increased significantly in several European countries, particularly in Greece. In 2007, 8.2% of Greek workers thought they would lose their jobs in the next six months. In 2012, this percentage had increased to 30.6% (Eurofound 2013). Public sector workers were particularly hard hit by large-scale job cuts. Employment in this sector in Greece, for example, fell from 942,600 to 675,500 between 2009 and 2013 (Kaltsouni and Kosma 2015).

Pay cuts and freezes have had a direct impact on workers’ purchasing power. Public sector pay in Greece fell by 25% between 2009 and 2013, and private sector pay has fallen by 15% since 2013 (Truth Commission 2015). In the Spanish private sector, hourly pay has fallen by 1.8% per year since 2009 (Lladós Vila and Freixes 2015). In Ireland, the 2008 national pay agreement, which set out pay increases in the private and public sector of 6% over 21 months, has been abandoned by many employers as they could not afford the agreed pay rises (Kelly and Nolan 2015).

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13. For a detailed analysis of labour law reforms, including those affecting industrial relations systems and collective bargaining, see Clauwaert and Schömann (2012).
Table 3 Measures affecting the right to work (2008-2014)

<table>
<thead>
<tr>
<th>Types of measure</th>
<th>Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public sector job cuts</strong></td>
<td>− 28,000 job cuts in the public sector in Ireland between 2010 and 2012(^{14}) (Clauwaert and Schömann 2013b).</td>
</tr>
<tr>
<td></td>
<td>− Abolition of indefinite contracts in the public sector in Greece (Karakioulafis 2015).</td>
</tr>
<tr>
<td></td>
<td>− Huge staff mobility programmes set up since 2013, aimed at 12,500 Greek workers, largely in the education and health sectors (ibid).</td>
</tr>
<tr>
<td></td>
<td>− Since 2013, one in three public sector workers in Cyprus has been facing interchangeability (Demetriou 2015).</td>
</tr>
<tr>
<td><strong>Changes to working time and deregulation of atypical contracts</strong></td>
<td>− 50% cuts to overtime pay in Portugal in 2012 (Clauwaert and Schömann 2013d).</td>
</tr>
<tr>
<td></td>
<td>− 2012 end to the ban on overtime for part-time workers in Spain (Clauwaert and Schömann 2013e).</td>
</tr>
<tr>
<td></td>
<td>− Extension of the maximum duration of fixed-term contracts, from two to three years in Greece (2011), from six months to three years in Portugal, and to three years in Spain (2010) and Italy (2012) (Schömann 2015).</td>
</tr>
<tr>
<td><strong>Simplification of conditions governing redundancies</strong></td>
<td>− Reduction of the notice period from 30 to 20 days in Portugal in 2011 (Clauwaert and Schömann 2013d).</td>
</tr>
<tr>
<td></td>
<td>− Weakening of the obligation on employers to inform and consult workers’ representatives in Spain (Schömann 2015).</td>
</tr>
<tr>
<td></td>
<td>− In 2012, easing of sanctions linked to the requirement to take back victims of unfair dismissal in Italy (Clauwaert and Schömann 2013c).</td>
</tr>
<tr>
<td><strong>Greater precarity of contracts</strong></td>
<td>− Introduction, in 2011, of the ‘youth contract’ for workers under 25 in Greece: pay 20% lower than previous pay, two years’ trial period, no unemployment benefit at the end of the contract (Karakioulafis 2015).</td>
</tr>
<tr>
<td><strong>Pay cuts and freezes</strong></td>
<td>− Public sector pay cuts in Cyprus (3% in 2014), Ireland (10% in 2009)(^{15}) and Greece (Ivanković Tamamović 2015).</td>
</tr>
<tr>
<td></td>
<td>− Average 5% cut in pay in the private sector in Spain, and pay freeze in Belgium in 2013 and 2014 (ibid).</td>
</tr>
<tr>
<td></td>
<td>− Cuts to holiday pay and Christmas bonuses in Ireland, Greece, Spain and Portugal (ibid).</td>
</tr>
<tr>
<td></td>
<td>− Abolition of Christmas and Easter bonuses in Greece in 2012 (Schömann 2015).</td>
</tr>
<tr>
<td></td>
<td>− 14% drop in the minimum wage in Greece between 2008 and 2015(^{16}) (Eurostat 2016).</td>
</tr>
<tr>
<td><strong>Weakening of unemployment protection</strong></td>
<td>− Steeper regressivity of levels of unemployment benefits and stricter eligibility conditions(^{17}) in Belgium (2011) (Ghailani with Vanhercke 2015).</td>
</tr>
</tbody>
</table>

Source: author’s own elaboration.

\(^{14}\) A cut in civil service staffing, with the loss of 24,750 jobs, was one of the conditions set by the Troika in return for the bail-out (Kelly and Nolan 2015).

\(^{15}\) In Italy and Portugal, these cuts only affected higher wages (Ivanković Tamamović 2015).

\(^{16}\) The Greek minimum wage is 684 EUR, below the poverty line (Ivanković Tamamović 2015).

\(^{17}\) As well as stricter conditions, a more restrictive definition of ‘suitable employment’ was introduced, and intensified follow-up of jobseekers.
Austerity measures have also helped to increase precarity, in the form of hyper-flexible, underpaid jobs largely occupied by women and young people. The miracle of flexicurity has not always occurred. The percentages of part-time workers and of workers with fixed-term contracts are rising almost everywhere in Europe (Ivankovič Tamamovič 2015).

The crisis has had a disproportionate impact on women, young people, migrants and people with a disability. Part-time work is often carried out by women. For some of these, childcare costs, particularly in Ireland, prevent them fully entering the labour market (Kelly and Nolan 2015). In Greece, female unemployment rose steeply during the crisis because of their strong presence in the public sector (Kaltsouni 2015).

Youth unemployment in the under-25s is a particular problem in Spain (53%), Portugal (34%) and Greece (48.8%), destroying young people’s chances of finding a job (Bohoslavsky 2016). The Spanish employment strategy 2012-2014\(^\text{18}\) did away with a series of advantages for employers taking on people with a disability, thus reducing their access to the labour market (Lladós Vila and Freixes 2015).

Migrants and travellers are also facing difficulties finding work in Ireland. The unemployment rate for travellers was 84% in 2011, compared to 8.4% in 2006. Migrants, moreover, tend to be in more informal work, often in precarious conditions, which left them vulnerable during the crisis to pay cuts and redundancies (Kelly and Nolan 2015). In Greece, there are increased tensions in the informal sector, which employs around 470,000 ‘undocumented’ migrants, without social protection and in appalling working conditions (Truth Commission 2015).

1.4 The right to a pension

Reform of pension systems was already on the agenda, particularly with regard to adequacy or financial sustainability, well before the crisis. The crisis, however, was used as a window of opportunity to put pressure on

the social partners and to speed up the reform process, even, in certain cases, to adopt such reforms without consulting them (Natali 2011).

Table 4  
**Measures affecting the right to a pension (2008-2014)**

<table>
<thead>
<tr>
<th>Types of measure</th>
<th>Measures</th>
</tr>
</thead>
</table>
| **Systemic changes**                    | – Reform of the Greek social insurance system, creating a unified multi-level system distinguishing between non-contributory and contributory basic pensions (Kaltsouni and Kosma 2015).  
                                          | – Introduction of a single pension system for new employees entering the Irish civil service after 1 January 2013 (Kelly and Nolan 2015).   |
| **Increase in pensionable age and length-of-service conditions** | – Immediate rise in the pensionable age in Belgium, Greece, Spain, Italy, Ireland and Portugal (Ivanković Tamamović 2015).  
                                          | – Automatic adjustment, every five years, of the statutory retirement age in line with life expectancy in Cyprus (ibid).   |
| **Stricter early retirement conditions** | – Increase in the early retirement age in Spain, Belgium and Greece (ibid).  
                                          | – Reduction in pension levels for early retirement before the age of 62 in Italy19 (Nastasi and Palmisano 2015.) |
| **Pension calculation methods**         | – Calculation based on the last 25 (no longer 10) years of employment in Spain and the last 10 (no longer 5) years in the public sector in Belgium (Ivanković Tamamović 2015).  
                                          | – Calculation takes account of average pay throughout the individual's career, rather than most recent pay, in Ireland (Kelly and Nolan 2015). |
| **Cuts in pension levels and other benefits** | – Introduction of a 6% and 10% solidarity levy in Greece on statutory and supplementary public and private sector pensions (Kaltsouni and Kosma 2015).  
                                          | – Gradual introduction of a 3.5%-10% solidarity levy on public service retirement pensions in Portugal (Rodrigues Canotilho 2015).  
                                          | – In Ireland, introduction of a 7% tax on pensions in 2009; 4 to 12% cut in public sector pensions; 0.6% levy on private pension funds (2011), 0.75% in 2014, 0.15% in 2015 (Kelly and Nolan 2015).  
                                          | – Abolition of Easter, summer and Christmas bonuses in Greece (2013), and abolition of Christmas bonuses (2012) and 90% cut in holiday bonus (2013) in Portugal (Ivanković Tamamović 2015).  
                                          | – Abolition in Cyprus of free transport and the Easter bonus for pensioners (ibid). |

Source: author’s own elaboration.

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19. Any worker wishing to retire before the age of 62 has his/her pension reduced by 1% for each of the two years between 60 and 62, and by 2% for each her year before the age of 60.
The measures affecting pension systems are of various types: systemic changes, increases in pensionable age and length-of-service requirements, stricter conditions for early retirement, pension calculation methods, etc. (see Table 4).

Cuts in pension levels and in other bonuses have had a direct effect on pensioners’ purchasing power in several European countries. In Spain, for example, pensioners lost 0.35% of their purchasing power in 2014. This trend is set to continue, since pensions will rise by only 0.25% between now and 2019, and if inflation begins to rise once more (Ivanović Tamamović 2015).

With regard to Greece, the United Nations independent expert emphasises that the cumulative effect of austerity measures has resulted in a major decline in quality of life and living standards for most retired people, and that successive reductions in pension levels have plunged 45% of current pensioners into poverty. Public sector job cuts, moreover, are causing serious delays in managing pension applications, and payments are being held up by as much as two years (Lumina 2014).

2. **Clear denunciation by international human rights bodies**

While the austerity plans were supported and/or imposed by the international and European financial and monetary bodies, a very different view was taken by those institutions responsible for protecting human rights (Clauwaert and Schömann 2015, 2013f; Roman 2014).

2.1 **Calls to order from the United Nations committees**

The UN Human Rights Council (UNHRC) declared as early as 2009 that the economic crises did not diminish the responsibility of national authorities and the international community in the realization of human rights\(^{20}\). In 2012, the UNHRC welcomed the new guiding principles on

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foreign debt and human rights, noting that it was up to governments to give priority to human rights concerns when deciding to lend or borrow (Lumina 2012).

The UN committees emphasised that the austerity policies being implemented in Spain or Greece disregarded the state obligations enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)21.

Back from his mission to Greece in December 2015, the independent expert on debt, Juan Pablo Bohoslavsky, presented his report to the UNHRC. This report, although couched in diplomatic language, strongly censures the creditors. The expert stresses that the large-scale violation of the human rights of the Greek people (rights to health, work, housing, food, social protection, to conclude collective agreements etc.) ‘are not the product of an “invisible hand”’, but are a direct result of the first two Memoranda concluded in 2010 and 2012 between Greece and its creditors (Bohoslavsky 2016).

### 2.2 Denunciations by the European Committee of Social Rights

In 2013, the Council of Europe’s Commissioner for Human Rights painted an alarming picture of the situation in Europe, emphasising that ‘the increase in unemployment has a lasting effect on the right to work, while States are not respecting their obligation, under the European Social Charter, to implement full employment policies, and working conditions in Europe have thus declined considerably’ (CommHR 2013).

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The European Committee of Social Rights\(^{22}\) (ECSR) also condemned the regressions resulting from the Memoranda of Understanding, in terms of the European Social Charter, and declared in 2009 that ‘the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter’. Governments should therefore take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most\(^{23}\).

The Committee, having received collective complaints from Greek trade unions\(^{24}\) (GENOP-DEI and ADEDY), condemned measures taken to apply the strict conditions attached to European financial aid. It underlined that whilst governments may reasonably respond to the crisis by changing legislation and practice to limit public expenditure or relieve constraints on business activity, these measures should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter. Measures taken to encourage greater work flexibility with a view to combating unemployment should not deprive broad categories of employees of their fundamental rights in the field of labour law, which protect them against arbitrary decisions by their employers or the worst effects of economic fluctuations\(^{25}\) (Deliyanni-Dimitrakou 2013).

The ECSR also concluded that the setting of a minimum wage below the poverty level for employees under 25 constituted a violation of the Charter\(^{26}\). This conclusion was repeated a few months later with regard to a series of complaints\(^{27}\) concerning pension system reforms which had led to a quasi-general reduction in pensions (Nivard 2013)\(^{28}\).

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22. The mission of the European Committee of Social Rights within the Council of Europe is to judge whether State Parties are in conformity with the European Social Charter, both in the context of the collective complaints introduced by the social partners and other non-governmental organisations, and of the national reports drawn up by the State Parties.
28. For an in-depth analysis see Clauwaert and Schömann (2013g), Ewing (2013) and Bruun et al. (2014).
decision is also expected in the context of a complaint lodged in September 2014 by the General Confederation of Labour (GSEE) against some austerity measures. These relate mainly to wages, collective bargaining, and dismissal procedures\textsuperscript{29}.

2.3 Recommendations of the Committee on Freedom of Association

In its report No.365 of November 2012, the International Labour Organization (ILO) Committee on Freedom of Association\textsuperscript{30}, addressing its recommendations to the Greek government, noted many serious violations of the principle of inviolability of freely concluded collective agreements, and a serious lack of social dialogue. It emphasises that the suspension or derogation of collective agreements, systematic decentralisation of collective bargaining and the setting up of less favourable procedures, notably with regard to remuneration, run counter to the ILO’s fundamental principles. The Committee thus highlighted the need to promote and strengthen the institutional framework for these fundamental rights and urged that permanent and intensive social dialogue be held on all the issues raised in the complaint, in full conformity with the principles of freedom of association and the effective recognition of collective bargaining and the relative ILO conventions ratified by Greece\textsuperscript{31}.

As underlined by Roman (2014), a body of doctrine has emerged from the various resolutions, recommendations and analyses produced by the international human rights bodies. ‘This body of doctrine stresses the need to protect human rights against the economic crisis by adopting budgetary and fiscal policies which do not use social rights as an adjustment variable for national economies and international markets’ (Roman 2014).

\textsuperscript{29} ECSR, GSEE v. Greece, Complaint No. 111/2014 introduced on September 25\textsuperscript{th} 2014.

\textsuperscript{30} The mission of the ILO’s Committee on Freedom of Association is to examine complaints concerning the rights of employers and trade unions in the field of association, collective bargaining and social dialogue.

3. Towards a body of crisis case law

3.1 The dynamism of national constitutional courts

Some national courts, referring to constitution and sometimes to international treaties on human rights, have established arrangements for the monitoring of national austerity measures (Roman 2014).

The Latvian Constitutional Court started the ball rolling in a 2009 ruling. Cuts of 10% in paid-out pensions and 70% in future pensions had been decided in line with the commitments entered into by Latvia vis-à-vis the IMF and the EU. The Court declared that this law was contrary to the individual right to social security guaranteed in the Constitution and the International Covenant on Economic, Social and Cultural Rights (ICESCR), because the Parliament had neither considered less restrictive alternatives nor established gradual measures. The economic crisis and the conditions imposed by international creditors were not sufficient to justify such a violation of constitutionally guaranteed rights.

The Romanian Constitutional Court gave its own opinion in 2010, condemning a law establishing a cut in wages and pensions in order to return to a balanced budget. In the view of the court, the government could take restrictive measures since the economic crisis constituted a ‘threat to economic stability’. It therefore found the temporary 25% cut in wages to be in conformity with the Constitution, since it was proportionate to the desired purpose. It also, however, ruled that a reduction in retirement pensions, with no indication of the amount or duration of the measure, was disproportionate and therefore anti-constitutional (Roman 2014).

The Greek Council of State began by upholding the regressive measures reducing social benefit levels – measures which were seen as pursuing a legitimate aim in the public interest, proportionate and non-arbitrary (Yannakourou 2015). It nevertheless underlined that Parliament’s

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34. Greek Council of State, No.668/2012, 23 February 2012.
ability to reduce the level of retirement pensions and public service pay was limited by the need to respect the principles of human dignity and equality. The legislator should not place the whole burden of such measures on retirees and civil servants alone (Psychogiopoulou 2015).

Constitutional courts of other southern countries subject to aid plans developed daring case law. According to the Italian Constitutional Court, restrictions on social benefits could be justified by economic circumstances, as long, however, as they were exceptional, temporary, non-arbitrary and suited to the aims pursued (Tega 2014). It ruled against fiscal measures targeted at specific categories of tax-payers (such as judges), stating that even at times of crisis income tax should be as uniform as possible. On 30 April 2015, it invalidated a measure introduced by the Monti government concerning a temporary freeze on pensions higher than three times the minimum pension level for 2012 and 2013, judging this to be neither proportionate nor fair35.

The Spanish Constitutional Court concerned itself with the right to health protection, in relation to policies restricting the level of health-care costs borne by the State and reducing access to care for non-nationals with no legal right of residence (Roman 2014). It assessed the advantages and disadvantages of the measures taken, referring to the link between protecting the right to health and protecting the right to life36. In 2013, the Court of Justice of the European Union (CJEU) ruled against contractual clauses imposed upon a debtor who had been evicted from his house due to insolvency37. This decision led the Spanish Supreme Court to annul a number of measures relating to contractual interest rates, and to establish criteria applicable to future disputes (González Pascual 2014; Roman 2014).

The Portuguese Constitutional Court censured a number of austerity measures adopted at the request of the Troika and reducing the level of

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37. CJEU, 14 March 2013, Mohamed Aziz v. Catalunyacaixa, C-415/11.
pay, social health-insurance benefits and unemployment benefits. While emphasising the margin of discretion of the legislator, it reaffirmed the need to respect equality between workers in the public and private sectors, and, moreover, the requirement to respect the principle of proportionality (Cisotta and Gallo 2014; Roman 2014).

3.2 The reticence of the European courts

Unlike the national constitutional courts, the EU courts and the European Court of Human Rights (ECHR) have been hesitant to examine austerity measures from the perspective of fundamental rights (Koukiadaki 2015).

Early on in the crisis, two cases were brought to the General Court of the European Union (EGC) by the Greek public sector union (ADEDY), challenging two Council decisions directed specifically at Greece with a view to reinforcing and deepening budgetary surveillance, and giving it notice to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit. In the view of ADEDY, these decisions infringed the principle of conferral of competences, since they went beyond the limits of the competences conferred upon the Council of the EU to attain the objectives enshrined in the treaties (Article 5(2) TEU). The Court dismissed these actions, arguing that the applicants had not been able to prove that the contested acts were of direct concern to them, and that they were therefore not eligible to bring the action. The measures were judged to be general in nature and requiring implementing measures from the Greek authorities, who had broad margin of discretion to this effect.

Until now, the Court of Justice of the EU (CJEU) has been unwilling to refer to the EU Charter of Fundamental Rights in cases directly linked to austerity measures implementing requirements in the Memoranda of

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understanding (Koukiadaki 2015). In the case *Sindicato dos Bancários do Norte and others v. BPN*[^40], concerning compatibility of public sector pay cuts with the ban on discrimination, the Court rejected the reference for a preliminary ruling, explaining its decision by stating that the relevant provisions in Portuguese law were not intended to implement EU law in the sense of Article 51(1). Kilpatrick (2014) points out that by acting in this way, the Court was contradicting its own constant case law, in which it has tended to reformulate questions to give greater benefit of the doubt as to their EU law relevance, and has only refused to look at questions which have absolutely no link with EU law.

Despite this *BPN* order, a question was again referred by a Portuguese court to the CJEU for a preliminary ruling, concerning an infringement of Article 31(1) of the Charter of Fundamental Rights – the right to working conditions which respect the dignity of the worker. However, the Court again ruled, on 26 June 2014, that it had a clear lack of jurisdiction[^41].

The ECHR also acts with caution when assessing the lawfulness of austerity measures in terms of the European Convention on Human Rights. The competence of the Court is limited by the content of the rights protected by the Convention, which largely disregards social rights but does include property rights[^42] (Fines 2014). When asked, however, the Court declared applications from persons whose retirement pensions[^43] had been reduced to be inadmissible. In its decision *Koufaki and ADEDY v. Greece* concerning a ban on public sector pay increases, the Court noted that the adoption of these measures was ‘justified by the exceptional crisis, unprecedented in the recent history of Greece’[^44].

On 1 September 2015, the ECHR continued with this approach and unanimously declared another application to be inadmissible. This was an application against a Portuguese finance law requiring retirees to pay an ‘extraordinary social contribution’ designed to speed up reductions in

[^41]: CJEU, Order of 26 June 2014, *Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial-Companhia, de Seguros*, SA, C-264/12, OJ C.
[^42]: By application of Protocol 1 Article 1 of the Convention.
[^43]: ECHR, 8 October 2013, *da Conceição Mateus v Portugal* and *Santos and Januario v. Portugal*.
public expenditure in a context of budgetary crisis. Noting the overall public interests at stake in Portugal and the limited and temporary nature of the measures applied to the applicant’s pension, the Court ruled that the reduction in her pension was a proportionate restriction of the applicant’s right to protection of property in order to achieve medium-term economic recovery in the country45.

4. Member States and the Troika: the tricky question of shared responsibility

The Member States bear the main responsibility for violations of fundamental rights resulting from the various measures adopted in response to the crisis. Nevertheless, when these measures have been imposed upon them by the Memoranda of Understanding and loan agreements, creditors also bear some responsibility for these violations. This is the case for the lending Member States of the Eurozone, signatories to several human rights instruments, such as the ICESCR and the Council of Europe’s Social Charter. Moreover, when taking part in these programmes, the European Commission and the European Central Bank should also have taken account of the provisions of the EU Charter of Fundamental Rights (EUCFR), the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Finally, by virtue of international law, the IMF and its members are obliged to respect human rights and fundamental freedoms when they impose adjustment programmes (Truth Commission 2015).

4.1 The Member States

The measures adopted and implemented under the Memoranda and the bail out plans have resulted in a series of fundamental rights violations. If each Member State is responsible for protecting and promoting the human rights of all persons within its jurisdiction, it can be considered as bearing the main responsibility for these violations. Arguing that these measures were imposed by creditors through loan agreements is

45. ECHR, 1 September 2015, Da Silva Carvalho Rico v. Portugal.
not sufficient to dismiss all responsibility for the violations resulting from these measures. Pursuant to Article 103 of the United Nations Charter, ‘in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail’ (Truth Commission 2015; FIDH 2014). As we emphasised in section 3, the European Committee for Social Rights has pointed out that Greece could not invoke obligations such as those resulting from international agreements such as loan agreements and Memoranda to justify measures which have as a consequence violation of human rights.

As parties to loan agreements and Memoranda of understanding, the Eurozone Member States are still, moreover, bound by legislation on State responsibility and by the legal consequences of any violations of their international obligations. The EU Member States are party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which imposes obligations on every State party, even outside its national territory. Several UN bodies have declared that States must not do together, in an intergovernmental context, what they are not permitted to do when acting alone (Salomon 2015). The conditions imposed on Member States receiving assistance, and the resulting non-respect of socio-economic rights, therefore constitute a violation of human rights obligations by all the (lending) Eurozone Member States who are signatories to the ICESCR, and run counter to their obligations under the United Nations Charter (Truth Commission 2015).

4.2 The EU Institutions

In order to properly address the issue of the possible responsibility of the EU institutions, we need to remember that within the Eurozone, assistance programmes are based either partially on EU law, or entirely on three types of international agreements adopted by the States (Koukiadaki 2015).
For Ireland and Portugal, the programmes were based on the European Financial Stabilisation Mechanism (EFSM)\textsuperscript{46}, itself based on Article 122(2) TFEU, and on the intergovernmental European Financial Stability Facility (EFSF)\textsuperscript{47}. The European Stability Mechanism (ESM)\textsuperscript{48}, an intergovernmental treaty, was used to provide financial assistance to Cyprus and Spain.

Finally, the Eurozone Member States arranged bilateral loans, in addition to a confirmation agreement from the IMF, for the first Greek programme in 2010. The second Greek programme in 2012 was based on the EFSF, and the third, in 2015, on the ESM. A number of Council decisions were also adopted on the basis of Articles 126 (6) and (9) and 136 TFEU. The European Commission and the European Central Bank were also heavily involved in the setting up, implementation and monitoring of the programmes (Koukiadaki 2015).

The issue of direct applicability of the EU Charter of Fundamental Rights to programmes implemented on the basis of the intergovernmental EFSF and bilateral loan agreements was raised before the CJEU. In the \textit{Pringle}\textsuperscript{49} judgment, the Court found that conclusion of the European Stability Mechanism (ESM) did not violate the principle of judicial protection enshrined in Article 47 of the EUCFR because ‘the Member States are not implementing Union law, within the meaning of Article 51(1) of the Charter\textsuperscript{50}, when they establish a stability mechanism such as the ESM where the EU and FEU Treaties do not confer any specific competence on the Union to establish such a mechanism’.

\textsuperscript{46} The EFSM is an emergency financing programme supervised by the European Commission. The Commission can raise up to 60 billion euros.

\textsuperscript{47} The EFSF is an intergovernmental arrangement which makes it possible to provide financing to Eurozone Member States, up to an amount of 440 billion euros.

\textsuperscript{48} The ESM is a European scheme for managing Eurozone financial crises. Since 2012 it has replaced the EFSF and the EFSM. The treaty setting up the ESM has created an international financial institution which can raise up to 700 billion euros on the financial markets. It can only be used for the Eurozone.

\textsuperscript{49} The Court ruled in response to a request from the Irish Constitutional Court, on a case where the applicant challenged Ireland’s ratification of the ESM Treaty, arguing that this was incompatible with Irish constitutional law and Community law. CJEU, judgment of 27 November 2012, \textit{Pringle v. Ireland}, C-370/12, Rec. 2012-756.

\textsuperscript{50} Article 51 (1) of the Charter stipulates that: ‘The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law’.
Another issue deserving of close attention is the immunity of Community institutions acting on behalf of the Member States under the ESM Treaty. As highlighted by Koukiadaki (2015), the issue of the non-opposability of the Charter has only been raised with regard to the Member States. The Court has said nothing as to the possible opposability of the EUCFR on the EU institutions in the context of the ESM Treaty. According to Advocate-General Kokott, ‘the Commission remains, even when it acts within the framework of the ESM, an institution of the Union, and is such is bound by the full extent of European law, including the Charter of Fundamental Rights’\(^\text{51}\). This seems to imply that the EU institutions are bound by the EUCFR, even if they are acting outside the context of EU law.

The Charter also applies to instruments which are either European as such, or have been repatriated in European law following Council decisions adopted on the basis of Articles 126 (6) and (9) or 136 of the TFEU\(^\text{52}\). One example is Regulation (EU) No.472/2013 which sets out conditions to be applied to Eurozone countries subject to strengthened surveillance\(^\text{53}\) (Romainville 2014). Its adoption had two immediate consequences. Firstly, after 30 May 2013, even the financial mechanisms established beforehand, outside the context of EU law, were given a legal framework in EU law by virtue of Article 136 TFEU and of the Regulation itself. As the measures adopted in the context of the Regulation become part of EU law, they must respect the requirements of the Charter of Fundamental Rights. The Regulation confirms this, by emphasising the requirement that any measure taken must be in compliance with Article 28 of the Charter guaranteeing the right to negotiate collective agreements and take collective action. Finally, the Regulation sets out its own requirements. Firstly, the European Commission must evaluate the sustainability of government debt (Article 6). Also, the Member States subject to strengthened surveillance must ensure that trade unions and civil society organisations are involved in the adoption of macroeconomic adjustment measures (Article 8) (Truth Commission 2015).

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\(^\text{51}\) View of AG Kokott delivered on 26 October 2012, para.176.
\(^\text{52}\) In accordance with Article 51§1 of the Charter.
\(^\text{53}\) Regulation of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ L 140/1 of 27 May 2013.
European creditors, moreover (both Member States and institutions) must respect the TEU, and in particular Articles 2, 3 and 9 on the values and objectives of the Union.\footnote{Art.2: ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights (...); Art.3: ‘It shall promote economic, social and territorial cohesion, and solidarity among Member States’. Article 9 TFEU states that ‘In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health’.

55. ECHR, judgment of 18 February 1999, Matthews v. United Kingdom, application no. 24833/94; judgment of 30 June 2005, Bosphorus v. Ireland, application No.45036/98.

56. International Court of Justice, Interpretation of the agreement of 25 March 1951 between the WHO and Egypt, advisory opinion of 20 December 1980, ICJ Reports 1980, 37, 89-90.}

4.3 The International Monetary Fund

The European Court of Human Rights has recalled on several occasions that whilst their obligations under the European Convention on Human Rights do not preclude States cooperating in certain areas of activity, the obligations of the contracting parties continue even after a State has transferred certain competences to international organisations. Member States may not be exonerated from all responsibility since the guarantees set out in the Convention could be limited or excluded on a discretionary basis, and thus lose their binding, specific and effective character. The State remains responsible vis-à-vis the Convention for commitments entered into under the treaties after the date of the entry into force of the Convention.\footnote{IMF Member States are therefore bound to meet their human rights obligations, including when acting under the auspices of the IMF (Salomon 2015).}

The IMF is bound by any obligation placed upon it by the general rules of international law, its own constitution or the international conventions to which it is a signatory.\footnote{It must therefore refrain from taking measures which could jeopardise the ability of a borrowing State to meet its own national and international human rights obligations. As a UN specialised agency, the Fund is also bound by the general objectives and principles of the United Nations Charter (Articles 57 and 63), which include universal respect for and observance of human rights and fundamental freedoms (Fischer-Lescano 2014; Truth Commission 2015).} It must therefore refrain from taking measures which could jeopardise the ability of a borrowing State to meet its own national and international human rights obligations. As a UN specialised agency, the Fund is also bound by the general objectives and principles of the United Nations Charter (Articles 57 and 63), which include universal respect for and observance of human rights and fundamental freedoms (Fischer-Lescano 2014; Truth Commission 2015).
The IMF has sought to minimise its responsibility for the loans granted, claiming that it could neither preclude nor contribute significantly to violations of international obligations by loan beneficiaries. States could always choose to ignore loan conditions. This line of argument has nevertheless been seriously challenged, as shown by the reports from the Hellenic League for Human Rights (FIDH) (2014) and the Greek Debt Truth Commission (2015). These reports emphasise that ‘Greece could not ignore the loan conditions set out in its Exchange of Letters with the IMF if it expected continued disbursement of funds’. Moreover, ‘the policy prescriptions conditioning access to IMF funds are in no way “general” but are in fact focused, clearly measurable and strictly monitored. In these circumstances, it is difficult for the IMF to claim that it has no responsibility for the effects that such policies have had on the people of Greece’ (ibid).

Summary and conclusion

Fundamental rights must be guaranteed by the Member States, particularly at a time when citizens need them the most. They are not a luxury reserved for times of prosperity. The eight years which have gone by give us a striking perspective on the outcome of the strict austerity policies introduced in Europe. These have often been presented as the only possible response to the crisis, although in 2012 the IMF admitted that the economic damage caused by austerity measures in the countries which applied them has been far greater than foreseen by the experts (IMF 2012).

The most dramatic and lasting consequences of austerity have been on economic and social rights. The right to work was the first major casualty of the economic crisis and the austerity measures stemming from it: unemployment, particularly long-term unemployment, increased massively in Europe between 2008 and 2014, restrictive budgetary policies dampened growth prospects and the foundations of collective bargaining were shaken (ILO 2013). The right to social security and social protection was eroded: many Member States were faced with an exponential increase in demand for social protection, without being able to meet that demand because of a drop in the income of the social security funds, combined with austerity and fiscal consolidation. The cuts in education budgets had a direct impact on the quality, accessibility
and cost of education. Although it is, at this time, impossible to measure the full scale of this impact, the long-term consequences are bound to be disastrous. Finally, cuts in healthcare expenditure affect the right to health. There are clearly-established links between austerity measures, on the one hand, and declining mental health, increases in drug addiction and suicides, reduced life expectancy and increased infant mortality in some of these countries (WHO 2011 and 2013).

There have been differing, sometimes contradictory, evaluations of these violations of fundamental rights. The European Committee of Social Rights has, on several occasions, condemned the regressions resulting from the Memoranda negotiated between the loan recipients and the Troika. Such backwards steps can only be justified if they are adequate, strictly necessary and proportionate to the objective pursued.

The UN committees have been just as firm. The letter, for example, sent by the Chairperson of the Committee on Economic, Social and Cultural Rights to all the States parties to the ICESCR insists that although not every regression in the enjoyment of economic and social rights is necessarily a direct violation of these, a series of criteria must nevertheless be respected: the policy must be a temporary measure covering only the period of crisis; it must be necessary and proportionate to the situation; it must not be discriminatory; and it must identify and protect a minimum core content of rights or a social protection floor. The firmness of the calls to order from the UN bodies is probably related to the fact that their decisions are non-binding.

This firm international stance is in sharp contrast with the hesitancy of the European Court of Human Rights, which has opted for a more ambiguous position, wishing to spare those Member States which could be hard hit by firmer judgments. The same is true for the EU Court of Justice, which has proved somewhat unwilling to engage in an examination of austerity measures in the light of the Charter of Fundamental Rights. If it had acknowledged competence for ensuring respect of the Charter, the consequences could have been disastrous for

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the European institutions. It would have implicitly raised the question of responsibility for the violations, even for the damage caused (Romainville 2014).

Finally, as recalled by the European Parliament in its 2015 Resolution, Union institutions as well as Member States which implement structural reforms in their social and economic systems are always under an obligation to observe the Charter and their international obligations, and are therefore accountable for the decisions taken. It also calls on them, when adopting and implementing corrective measures and budget cuts, to conduct an impact assessment on fundamental rights (European Parliament 2015). The Commissioner for Human Rights (2013) had already underlined that whilst the European Commission and the IMF carry out an annual assessment of the economic situation in many European countries to check that these are applying the budgetary rules, no mechanism has been established to monitor, systematically, the social consequences of economic policies. Taking note of this, the European Commission, in August 2015, published a social impact assessment in the context of preparations for the third adjustment programme for Greece (European Commission 2015). It must be said, though, that this programme does not meet expectations. It does not make any reference to human rights, recommendations by the Greek National Commission for Human Rights, or to the Greek national report produced as part of the European Parliament study, to which we referred in section 1 of this chapter. As underlined by the United Nations independent expert on the effects of debt, the European Commission has disregarded the Council of Europe opinions and the recommendations from the UN committees, and fails to draw any lessons from the first two adjustment programmes (Bohoslavsly 2016).

The importance attached to human rights has declined in recent years at the same time as state budgets throughout Europe. Unlike national budgets, however, there are no international human rights bail-out plans (FIDH 2014).
References


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Chapter 7
Taking the bull by the horns: differentiation within the EU to save it?

David Natali

Introduction

Since the beginning of the economic and financial shock of 2008-2009, the European Union (EU) has suffered a number of unprecedented crises: the euro crisis – related to the sovereign debt crisis (since the end of 2009), the Ukraine crisis (since 2013), refugee crisis (since 2015), terrorist attacks in France and in Denmark (2015) repeated in 2016 in Belgium, and again in France, not to mention persistent (long-term) unemployment problems (Bouget and Vanhercke, this volume), increased social inequalities and economic stagnation. The list is unsettling.

While these problems have accumulated over the years, the promise, in May 2015, by British Prime Minister David Cameron to hold a European Union referendum marked a turning point in European politics, and we can expect it to have huge effects on both the political and economic prospects of Europe. Brexit may indeed mark the beginning of a new phase. It is the first case of the dis-integration of the EU after sixty years of gradual integration. The harsh reality is that the EU is not unsettling.

From now on it will be difficult to take a ‘business as usual’ approach to the many – both endogenous and exogenous – crises at the core of the present edition of Social policy in the European Union. The huge problems affecting different policy areas and the increased dissatisfaction of public opinion with the integration process may lead to further destabilisation of the European Union. This is a new existential challenge to the EU. In the EU capitals there finally seems to be a perception that ‘muddling through’ the crisis is not enough. What the
EU needs is a completely new approach. ‘Take the bull by the horns’ is a brutal expression that recalls the need for clarity and determination in addressing this challenge.

This concluding chapter aims to spell out the future prospects for the EU in this destabilised context. Section 1 looks briefly at three major crises – the Eurozone crisis and its social consequences, the refugee crisis, and Brexit – and their consequences for EU political dynamics. While the first two crises have been at the core of the previous chapters, the latter goes beyond the focus of the present volume. But in these concluding remarks on the future prospects of the EU it is important to refer to it as a further source of future conflicts. The previous chapters have shown that these critical dossiers are a problem themselves in that they represent a threat to the political and economic sustainability of the EU project. But, as shown in the following sections, these crises are also a source of growing tensions between Member States. Different groups of Member States are promoting alternative strategies to deal with them. As a consequence, the European Union is divided as to how to deal with such problems. The main questions for European policymakers should thus be: *How can we deal with this divergence between EU members’ viewpoints? How should we tackle the risk of a divided Europe?*

Section 2 looks at the ‘institutional strategy’, proposed by many analysts and policymakers, for increased EU diversification, referred to using various labels: ‘multi-speed’ EU, ‘concentric circles’, the ‘EU as a club of clubs’, or reinforced cooperation. Experts tell us that the most effective strategy for dealing with the increased tensions between Member States is to accept divisions and manage them in a more fragmented Union. Sub-groups of countries that share the same approach and goals for specific problems should move ahead together, while others should go slowly. Such a trend, already put in place in the EU (e.g. through the Eurozone and the Schengen Area) would have the advantage of clarifying the state of play of the EU and stating explicitly which countries share the same aims and which do not. Sections 3 to 4 refer to a number of hypotheses proposed in the last few dramatic months for further EU diversification in two of the critical areas mentioned above (refugee crisis and Brexit). Yet the risk is that this sort of institutional diversification could lead to a patchwork of narrow and diverse integration processes, each one with a different legal base and degree of
coordination/harmonisation of national strategies. Section 5 focuses more on a possible ‘policy-based’ strategy to save the EU, whatever its institutional form. The decision of each single Member State to stay in or out of the integration process(es) largely depends on the policy measures to be adopted and the ultimate goals shared by the countries cooperating in each area. The key existential questions EU leaders will address in the future are: What do the countries that decide to ‘stay in’ really want? What are the values and policy goals they wish to pursue?

Recent years have shown that an economic austerity policy is not a sufficient driving force to make all Member States work together. The EU needs a policy package which is more oriented towards redistributive policies and the prevention of asymmetrical shocks. Such a policy approach should be based on a new compromise between two normative principles underlying any political community: reciprocity (a balance between what each member of the community gives and what it takes) and solidarity (giving something while asking for nothing in return, at least in the short term). While the former has been the main principle for exiting the crisis (each has to respect the rules, in line with the principle of ‘governing by rules and ruling by numbers’), the EU – whatever its form and degree of integration – needs more trust and solidarity among its components. Common values, and not only rules, should be emphasised. This has very much to do with the need for a true ‘European Social Union’ (Vandenbroucke with Vanhercke 2014).

1. The many crises of the EU

During a journey to the EU capitals in 2015, American economist Nouriel Roubini, described the sense of crisis he felt across Europe: ‘Paris is somber, if not depressed, after the appalling terrorist attacks (...)’ while ‘France’s economic growth remains anaemic’; ‘in Brussels, which was semi-deserted and in lockdown, owing to the risk of terrorist attacks, the European Union institutions have yet to devise a unified strategy to manage the influx of migrants and refugees’, ‘in London, there is concern about negative financial and economic spillover effects from the monetary union’, ‘(...) In Berlin, meanwhile, German Chancellor Angela Merkel’s leadership is coming under growing pressure’.
This disheartening picture mirrors the many crises the EU has dealt with in the last few years: the Eurozone crisis, the refugee crisis, the Russia-Ukraine crisis, and the security crisis linked to terrorism. Analysts are increasingly highlighting these tensions, and the EU’s poor management of them is a major source of insecurity (Schmidt 2016). The problem resides not just in the many crises, but equally in the fact that EU Member States are divided on how to address them.

1.1 Eurozone crisis, its social consequences and the North/South divide

As stressed by economists (see for example Baldwin and Gross 2015), many of the problems that caused the Eurozone crisis are still there: the banking sector faces problems of non-performing loans, borrowers are vulnerable to a probable future increase in interest rates, and EU fiscal capacity is still far from being improved.

During the first years of the euro, capital did flow from the core nations (e.g. Germany, France and the Netherlands) to the periphery (e.g. Ireland, Portugal, Spain and Greece). This meant that the periphery was relying on foreign lenders to cover the savings-investment gap. But, when the Global Crisis broke out in 2008, these foreign investors stopped lending across borders (ibid.). Jones et al. (2016) have blamed this shortcoming, together with the lack of a banking and fiscal union, on the absence of a real sovereign authority able to protect the European economy as a whole. The missing bits of sovereignty include a fiscal transfer system to respond to asymmetric shocks; a risk-free asset in which to save money; a single system for supervising banks and capital markets; a central bank able to act as lender of last resort; and the ability to organise an EU-wide recovery programme (Skidelsky 2016). The last episode of the Greek Tragedy, described by Theodoropoulou (this volume), was the final proof of the existence of these problems.

Recent editions of Social policy in the European Union have explored both the traits and the causes of the Eurozone crisis (De Grauwe 2013). What must be stressed here is that the crisis has resulted in economic divergence and mounting social problems (see Bouget and Vanhercke, Ghailani, Poncé, this volume). Moreover, EU leaders have not shared the same analysis of the eurocrisis and its main drivers.
This disagreement takes the form of a North/South divide. As Emerson (2013) puts it, Germany is joined by the Netherlands, Finland and Austria as hard-line creditors of the Eurozone, whereas almost all of the Southern countries have become debtor countries (Greece, Portugal, Cyprus, together with Ireland, Spain and Italy). Alonso (2013) has mooted that the divide is not just economic and fiscal. It is also ideological in many respects. Northern policymakers support austerity and a rigid interpretation of fiscal consolidation, while they consider that the euro has solid institutional foundations. Southern European policymakers, however, demand more solidarity and public investment, in line with a looser application of neo-liberal orthodoxy and a revision of the policy and institutional mix at the core of the EMU. What is more, according to the polls, European public opinion is increasingly divided along the same geographical lines. Democracies in the North have recovered and even surpassed the levels of political trust and satisfaction with the political system that they enjoyed ten years ago; while democracies in the South are suffering from low levels of political trust and satisfaction (ibid).

1.2 The refugee crisis and the East/West divide

The refugee crisis is a further source of intense conflict between Member States. More than a million migrants and refugees crossed into Europe in 2015. The vast majority arrived by sea (via the Mediterranean Sea between Libya and Italy and the Aegean Sea between Turkey and Greece) but some migrants have made their way over land, principally via Turkey and Albania. International tensions, conflict in Syria, tensions in the Middle East and Africa, as well as violence in Afghanistan and Iraq, have triggered this exodus.

The IOM estimates that more than one million migrants arrived by sea in 2015 and almost 34,900 by land; the data quoted by Hassel and Wagner in this volume are even more alarming, which shows a huge acceleration when we compare these figures with the 280,000 arrivals for the whole of 2014. And the figures do not include those who were

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1. We refer here to the data provided by the International Organization for Migration (IOM) and quoted by the BBC (2016).
able to enter undetected. EU institutions speak of more than 1,800,000 in 2015. Germany received the highest number of new asylum applications in 2015: more than 476,000. German officials said that more than a million had been counted. Hungary moved into second place for asylum applications, with 177,130 applications by the end of December 2015. This scale of migration reflects a true humanitarian crisis: according to the IOM, more than 3,770 migrants died trying to cross the Mediterranean in 2015. Most died on the crossing from north Africa to Italy, and more than 800 died in the Aegean, crossing from Turkey to Greece.

The issue has proved extremely delicate and, as stressed by Hassel and Wagner (this volume), the right strategy to address it in the European legal and institutional context is still to be defined. Tensions within the Eurozone, and in the EU as a whole, have arisen because of the disproportionate burden faced by those countries where the majority of migrants have been arriving: Italy, Greece and Hungary. It appears that the Dublin Regulation of 2013, which stipulates that the responsible Member State is the state through which the asylum seeker first entered the EU, is totally inadequate to manage new large flows of third country migrants.

The clash became evident in the second half of 2015 when the European Commission (supported by Germany and France) came up with a new ‘permanent’ and binding regime to spread the refugee load around all the 28 countries in the Union. The UK, Ireland and Denmark did not participate. The Visegrad countries – Hungary, Poland, Slovakia and the Czech Republic – immediately expressed their opposition to the proposal, arguing that ‘West European-style multiculturalism is nothing but trouble and that they have no intention of repeating the same mistakes’ (EurActiv 2015).

EU institutions proved unable to impose a solution. The European Commission can propose measures aimed at coordinating national efforts and creating more joined-up policies. But then it comes up against the opposition of national policymakers, keen to defend their own competences. Consequently, the same clash was repeated early in 2016, when Germany reiterated its demand to all EU members to take in an ‘equal’ number of migrants. Hungary wishes to see a fence built on the Bulgarian and Macedonian border with Greece, effectively cutting
off Greece from the 26-nation Schengen Area, of which it is a part. Athens has failed to prevent hundreds of thousands of migrants, largely from Syria and Iraq, from crossing its territory. The country has therefore – Hungarian Prime Minister Viktor Orbán and others argue – not met its obligations to protect Europe's borders (Ramirez 2016).

1.3 Brexit as a trigger for deconstructing or strengthening the EU?

After divisive debates over austerity and refugees in recent years, Brexit is the latest intractable issue the EU will have to deal with. Much of 2015 has seen an increased debate on the fate of the UK, in or out of the EU. While analysts had put forward many interpretations as to why the British might vote to leave the EU, what was extremely worrying was the evidence of growing dissatisfaction leading to centrifugal dynamics. As stressed by the UK mass media (Barber 2016), the British perceived themselves as doing rather well, whereas the EU is seen as doing badly. Since the emergence of the financial and economic crisis, the EU has indeed been identified with failure. Outside Britain and Germany, there has been almost no economic growth. The EU cannot defend its frontiers against terrorists. Its institutions lack legitimacy (Skidelsky 2016).

As stressed above, since Britain's decision to leave the EU, decisions are needed from the remaining 27 members. But, here again, the EU has proved to be divided on how to move on. At the end of June 2016, German Chancellor Angela Merkel hosted French President François Hollande and Italian Premier Matteo Renzi in Berlin to discuss the way forward. Yet, instead of a blueprint, the three leaders offered formal reassurance that Europe is not falling to pieces and an encouragement for the remaining 27 to work together and strengthen the Union. So far, however, Europe's leaders cannot even agree on when the UK should start the procedures to leave. While the European Commission, the European Parliament and many Member State leaders demanded that the UK trigger the EU's exit clause immediately, the German Chancellor urged patience (Palmeri 2016). And while many are pushing for more intense cooperation, others advocate working within the present framework to find pragmatic solutions to issues such as the security threat, migration and youth unemployment. In other words, there are
too many conflicts for it to be possible to agree on the British exit and a radical EU reform in the short term (see section 3).

2. Differentiated integration: who wants to be in and who out?

2.1 Explaining differentiated integration in Europe

As expressed above, the key question is thus how to address this growing division between the EU members. Many have proposed an institutional strategy to address the situation: further steps towards a differentiated type of integration. As recalled by Fabbrini (this volume), differentiation can be pursued through a Treaty revision (constitutional differentiation), or with no Treaty revision, through an internal differentiation with different groups of countries speeding up their integration in some policy areas (policy differentiation).

Differentiation is a principle that has been applied to the European integration process since its launch. It was reinforced after the recent enlargements and the broadening of the EU policy agenda (Martinico 2015). The general principle was mainly based on a differentiated speed of national reforms toward an ultimate objective of full integration. However, this principle has led to fragmentation, with some EU Member States moving further in the integration process, while allowing others not to do so (Chopin and Lequesne 2016).

As stressed by Koenig (2015), the method of ‘enhanced cooperation’ has been written into the Treaties, allowing for new initiatives to be taken by a selection of Member States. This path has been seen as an option to let the EU advance towards a federal structure. A core group would advance at a faster speed, to be later joined by other Member States, ‘respecting the wish of those who do not want to deepen any further’ (European Council 2014 quoted in Zuleeg 2014), to finally re-establish the unity of the EU in due course (Koenig 2015: 5). This is theorised through the ‘theory of clubs’ where the EU is defined in terms of a club of clubs, and the clubs’ memberships simply differ from one policy area to another (Dyson and Sepos 2010; Majone 2014). According to Zuleeg (2014), this is very similar to the idea of ‘concentric circles’: with some countries choosing never to integrate with respect to certain aspects.
This could be a way forward, as Karl Lamers and Wolfgang Schäuble (2014) put it: ‘In order to make progress (...), we should keep using the approach that proved its mettle back in 1994: to establish cores of co-operation within the EU that enable smaller, willing groups of Member States to forge ahead.’

The EMU is a classic example of a two-speed Europe. The membership of the Eurozone has gradually increased from 11 to 19 Member States. All EU Member States are legally committed to joining, except the UK and Denmark, which have a permanent opt-out. Sweden has a de facto opt-out. It is legally bound to join, but intentionally avoids fulfilling the convergence criteria. Differentiation has taken place within and outside the EU framework. Chapter 4 of the TFEU outlines ‘provisions specific to the Member States whose currency is the Euro’. Article 136 therein explicitly states that they shall adopt measures that ‘strengthen coordination and surveillance of their budgetary discipline’, to set out economic policy guidelines, and to establish a stability mechanism.

That said, Figure 1 clearly shows the increased differentiation process in the EU, like a patchwork of – partly overlapping – processes that involve different sets of countries. During the economic and financial crises, for instance, the Eurozone members have increasingly used informal cooperation platforms and intergovernmental agreements. Many of these measures also include non-Eurozone EU members. A prominent example is the Treaty on Stability, Cooperation and Governance (TSCG) or ‘Fiscal Compact’, which was eventually signed by all EU Member States except for the UK (Koenig 2015, Fabbrini, this volume).

What is more, while EMU is often portrayed as a parallel process that does not affect countries outside the Eurozone, it is not easy to separate out the different circles of integration. This is especially true for those measures that affect the Single Market. More intense integration in some policy areas, for example in terms of taxation, will have an impact on the Single Market, potentially leading to conflict and legal challenges (Zuleeg 2014).
All this shows that the multi-speed EU has led to a series of ‘clubs’ in need of careful ‘recalibration’ in an attempt to increase the overall coherence of the process. The remainder of this section provides a summary of some proposals launched by experts and policymakers to make progress on diversification/integration processes and, by doing so, to move beyond the current EU crises.

2.2 Different proposals for a reinforced 19-Member EMU

As part of the project to design the next steps of EMU reform, a report was published at the end of June 2015 by five Presidents: European Commission President Jean-Claude Juncker, Donald Tusk (President of the European Council), Jeroen Dijsselbloem (President of the Eurogroup), Mario Draghi (President of the European Central Bank)
and Martin Schulz (President of the European Parliament). The report outlines a plan to deepen EMU and argues that its foundations need to be strengthened. As outlined by Begg (2015), the report focuses on the same heated topics already addressed by the Four Presidents’ report of 2012. In some respects, the 2015 report is less ambitious and concentrates on the Banking Union, while the areas of progress envisaged for Fiscal Union are very limited. Furthermore, the reforms proposed by the five Presidents will hardly be acceptable to all the Member States: ‘For many national governments, the appetite for yet more change is limited, (...) a number of them (are) reluctant to countenance further extensive reforms’ (ibid.: 2). This will lead to a new political game between the Member States and a potential reconfiguration of the Eurozone members.

In the same line, a Franco-German proposal for reinforcing the EMU came from central bankers. In February 2016, Jens Weidmann and François Villeroy de Galhau, Presidents of the Bundesbank and of the Banque de France respectively, wrote in the German newspaper Süddeutsche Zeitung that the new challenges facing Europe require innovative responses. They called for deeper integration of the Eurozone via a ‘financing and investing union,’ whose goal would be to encourage Europeans to invest savings in the real economy. The German and French central bankers said these projects would require more pooling of sovereignty by EU countries, a more unified European administration and the creation of a finance ministry for the Eurozone. Both central bankers also call for a ‘stronger political structure...under the control of the European Parliament’ (Goulard 2016).

A more recent proposal for a reinforced EMU has come from the Italian Minister of the Economy Pier Carlo Padoan. In February 2016, the Italian minister called for a wide-ranging set of measures — including the swift completion of banking union, the establishment of a common Eurozone budget and the launch of a common unemployment insurance scheme — to reinforce the common currency. A central point in the proposal was that EU fiscal policy should answer to the Eurozone Parliament.

However, Weidmann toned down his comments about a Eurozone finance minister, stressing in further interviews that the idea was unenforceable.
2.3 Proposal for a more restricted German Eurozone

For other analysts, the tensions within the Eurozone cannot be settled through institutional reforms that aim to keep all the 19 members together while preserving the paradigm behind the Eurozone. It is the logic of the EMU that must change. Consequently, a split of the Eurozone is explicitly proposed. In a recent paper, Lucio Baccaro (2016) has provided a number of reasons for the Eurozone to split. In the view of this Italian sociologist, southern Europe cannot achieve the goal of balanced and enduring economic growth within the current Eurozone. To deal with the structural divergence within the Eurozone, Baccaro envisages two options:

— The first way would be to maintain the Eurozone of 19 countries, with the Southern countries remaining in. This would lead to three possible scenarios: a) a symmetric adjustment, with Germany agreeing to spend more on its welfare state and internal demand and/or contributing to some form of systematic EU automatic stabiliser; b) an a-symmetric adjustment with Southern Europe taking the long path to internal devaluation and structural reforms; c) a muddling-through strategy with marginal adjustments and amendments to the austerity paradigm pending an overall economic recovery.

— The second option would be for the Southern periphery to leave the Eurozone. A coordinated ‘Southern exit’ from the single currency would be based on an extended ERM (European Exchange Rate Mechanism) to ensure that exchange rate fluctuations between the euro and other EU currencies do not disrupt economic stability within the single market. The official exchange rate between the euro and the country’s currency would be agreed, but the other currencies would then be allowed to fluctuate above or below this central rate. In other words, the ‘exit’ scenario would imply the reintroduction of currency devaluation as an alternative to internal devaluation.

3. For Baccaro, Southern countries should thus follow the Danish example (and that of other countries), i.e. be involved in the Fiscal Compact but outside the Eurozone.
3. Different strategies to address the refugee crisis

As stressed by Hassel and Wagner (this volume), the refugee crisis of 2015 gave rise to very different reactions from the Member States. On the one hand, Germany, in August 2015, took an independent and unilateral decision to suspend the Dublin rules for Syrian refugees and to offer them registration once they reached German soil (but reinstated them in November 2015, except for Greece). On the other hand, some countries, especially in the Central-Eastern part of Europe, decided to re-impose national border controls and temporarily suspend the validity of the previous EU agreements.

The European Commission and the Member States pushed for an effective solution to the emergency situation. In 2015 the European Commission called on EU Member States to accept the mandatory distribution of 160,000 refugees, mainly because the Dublin Regulation is often accused of destroying solidarity between EU countries, and would have to be suspended. Yet a number of EU countries are against mandatory quotas, some of them saying that they cannot host large numbers of refugees. As a gesture to these countries, the Juncker plan foresees a ‘temporary solidarity clause’ which allows the respective country to pay a sum to the EU budget, instead of receiving its share of refugees.

In December 2015 EU interior ministers discussed the possibility of new border controls between European states for up to two years, as an unprecedented migration crisis is putting strain on the Schengen free-travel zone. In parallel, the Council, under the Luxembourg Presidency, prepared a discussion paper from the Luxembourg government. Its Foreign Affairs minister Jean Asselborn spoke out against expelling Greece or paring back the Schengen area to a hard core of richer states, and proposed four topics for debate: improving communication among Member States, securing the external EU borders, reinforced internal border controls and tighter checks on unregistered migrants (Gotev 2016a).

Germany and seven other countries proposed to re-establish controls in their own territories, thus reducing the Schengen area to a much smaller region. Meanwhile, the Czech Republic, Slovakia, Hungary and Poland rejected the idea of limiting the European Union’s visa-free area
to a smaller number of countries, but Hungary asked for Greece to be excluded from the Schengen Area because of its inability to control the external border of the EU. Prime ministers of the ‘Visegrad 4’ group of countries said they agreed to keep the borders open, a key achievement of their post-communist integration into Western Europe. Slovakia, Hungary and the Czech Republic, through which many refugees have travelled to Germany but where very few want to settle, have stood out in their opposition to the EU decision to impose compulsory quotas for redistributing asylum-seekers across the EU, straining relations with their Western partners. This has in turn led some Western politicians to call for cuts in the aid given to these countries under the EU’s development programmes4.

At the culmination of the clash between East and West, Hungary decided to hold a referendum on 2 October 2016 on EU plans to relocate migrants in Member States, a scheme fiercely opposed by right-wing Prime Minister Orbán (Ramirez 2016).

4. **Is there life after Brexit?**

As highlighted by the international press, in the weeks before the UK referendum in June 2016 and especially after the UK voted to leave the EU, there was great confusion and marked differences between the 27 Member States. We briefly summarise some of the proposals put forward in EU circles. Many of these were not really related to Brexit, but used the situation to re-launch the debate on the future form of the EU. These proposals – that recall the hypothesis of differentiated integration mentioned above – have caused clashes between Member States and, within each national government, between ministers of different political orientations (Bershidsky 2015).

A first attempt was a Franco-German social-democratic paper, in favour of preparing a new push for EU political reforms. The idea is to give

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4. Some steps to revise and reinforce checks on the flows of refugees and migrants in general have been the creation of the European Border and Coast Guard Agency, the progressive integration of databases such as the Schengen Information System, the Interpol Stolen and Lost Travel Documents Database and relevant national systems, to improve public order and internal security (Gotev 2016a).
some powers back to national capitals in an effort to contain possible contagion of the UK’s Brexit vote across Europe (Palmeri 2016). The idea behind the Franco-German initiative is to focus cooperation on areas such as security, foreign policy, border controls, the digital agenda, energy, transportation and Eurozone governance, but shift other decision-making to national capitals.

According to the joint Franco-German position paper quoted in part by the German newspaper Frankfurter Allgemeine Sonntagszeitung, the countries are considering involving the European Public Prosecutor’s Office at the European Commission in counter-terrorism and in fighting organized crime. The paper also states that France and Germany are working on a European immigration law to facilitate legal immigration into the EU, as a way to better distribute refugees across the EU. They are likely to follow the lead of German Interior Minister Thomas de Maizière, who has pushed for the introduction of an Electronic System for Travel Authorization at external borders.

In line with this first Franco-German attempt, the German foreign minister, Frank-Walter Steinmeier, hosted a meeting (25/06/2016) of his counterparts from the other five founding EU member countries the days after Brexit. The six ministers discussed an initiative to push for a closer political union post-Brexit. In a statement, the six ministers said that they were ‘aware that discontent with the functioning of the EU as it is today is manifest in parts of our societies’. They said they took this ‘very seriously’ and were ‘determined to make the EU work better for all our citizens.’ In their statement, the founding six ministers mentioned some priorities where the EU should advance faster: ‘security of our citizens [...] establishing a stable and cooperative framework to deal with migration and refugee flows [...] boost the European economy [...] convergence of our economies [...] sustainable and job-creating growth [...] completion of the European Monetary Union’ (Karnitschnig et al. 2016).

The summit of June 2016 between France, Germany and Italy called as well for deeper EU integration in areas of clear common interest. Angela Merkel, François Hollande and Matteo Renzi said the EU should work more intensively in areas such as security, economic union, and social cohesion, but take a back seat on issues that capitals can better handle at home.
Looking beyond the official unity of the EU Member States, we see divisions. The first of these is between Western and Eastern countries. Eastern leaders think that further integration is not the solution (Gotev 2016b). The Polish Prime Minister, while calling for the resignation of the Presidents of the Commission and the Council because of their failure in the UK affair, said the EU should sign a new treaty that returns powers from the European Commission to the Council of the EU (Zalan 2016). The second of such divisions is between countries within the Western camp. Germany wants stronger economic union, while social solidarity and job creation are a priority for southern EU states. And the third is between policymakers with different political affiliations. For instance, the Steinmeier attempt to revive the Franco-German axis is based on common aims of socialists and social-democratic leaders but is viewed with scepticism by Christian Democrats.

5. What do EU members really still have in common?

Increased differentiation is not a panacea. While it could result in some potential progress it also may entail risks. In line with Chopin and Dequesne (2016) we discuss both the benefits and the possible dangers.

With regard to the potential advantages, differentiation enables those states ready to develop a common policy to move ahead, while allowing the other states to look at the results of this experiment and decide to join the other Member States only if the policy produces positive effects, in an upward convergence process. This was the case for monetary policy during the Eurozone crisis. As to the risks, the first of these is an excessive fragmentation of the EU polity and a process of divergence. The multiplication of differentiation mechanisms makes the EU very hard to comprehend, both to its citizens and to its foreign partners. Some Member States might believe that differentiation will damage their interests because they are not taking part. Some countries may feel excluded from an integration process in which they do wish to take part.

Which policy goals to share is a further issue to address. This is the ‘policy-based’ strategy we refer to in the introduction of this concluding chapter. De Grauwe (2016) outlined the need for a turning point in the EU economic and social paradigm. He claims that in the last few
decades the EU has been a ‘major promoter’ of globalization. The single market and the trade agreements entered into by the European Commission have widely opened up the European gates to global markets. In principle, this has created rosier potential for economic growth. But there has been a complete failure to address the consequences of globalisation by compensating the losers. The European institutions have no power over social policy, but national authorities who are responsible for this policy have been constrained by the EU and its fiscal rules. For De Graauwe, two steps must be agreed upon in order to create a more stable and fair Eurozone and EU in general. The first step is to abandon structural reforms and austerity altogether, at least as a general paradigm applicable to all the Member States. The second step would be to help public investment. This is particularly important in a context marked by low interest rates, making these investments even more profitable for both the present and future generations.

Vivien Schmidt (2016) proposed something similar with regard to the refugee and migrant crisis. The EU should not abandon the ‘free movement’ principle, but should set up new solidarity mechanisms. An ‘EU mobility adjustment fund’ would help to support the costs of social services and the retraining needs of workers in countries with greater migrant inflows. More integration through solidarity would have great advantages, especially if a EU mobility adjustment fund were accompanied by an EU unemployment fund, or even a European fund for refugee support. Different countries would benefit at different times from the funds, which could be triggered when any one country finds itself overburdened by the extra costs it incurs because of the asymmetric functioning of the Single Market and the Single Currency, or because of its openness to refugees. Different funding mechanisms are possible, including from Member State contributions, but the best would be from the monetary gains of the Single Market and Single Currency (ibid.).

But such a policy turn demands a more in-depth analysis of the values and principles underlying the EU. We refer here to the philosophical ideas that provide normative, more general, underpinnings concerning the state of the world. Analysts (see Guerot 2012; Ferrera 2016) emphasise the need to build up a combination of two principles that are necessary in a union of states: reciprocity and solidarity. These two
principles are part of the normative foundations of the EU. For Ferrera (2016), the EU response to the crisis has been too focused on a narrow interpretation of reciprocity: each Member State has to follow the rules and respect the balance between what it gets and what it gives. The problem is that in large communities, such as the EU, the calculation of benefits and costs is particularly complex, if not impossible. This means that mutual recognition of obligations may in fact lead to a spiral of mistrust and confrontation between Member States. Reciprocity must be accompanied and supported by a sense of mutual trust and solidarity.

As stressed by Guerot (2012), trust is crucial: ‘the most automatic sanction cannot replace trust’. Without trust you cannot engage in truly common policies. This means the EU needs ‘confidence-building measures’ between the Member States for the sake of its survival. Along the same lines, Vandenbroucke with Vanhercke (2014) clearly stressed the need for solidarity: European integration must be based on a shared understanding of the need for solidarity at both a pan-European level and within national welfare states. The authors’ definition of the European Social Union – based on the combination of an advanced social policy at the EU and the more intense coordination of national welfare states – is a promising strategy to reinforce a shared sense of protection. The setting up of social policies at the EU level (e.g. pan-European unemployment insurance scheme) and integration of the social dimension into the economic governance (through more effective monitoring of social conditions in the Member States) are just some of the innovative ideas proposed by the two authors.

To sum up, Europe needs to rediscover the common values at the core of its integration and effective strategies to implement them; otherwise its compulsive focus on rules and numbers will feed distrust and conflicts. A more diversified EU must in any case strengthen its normative foundations and make solidarity an explicit aim and principle. In such a context, a true European Social Union is a necessity to stabilise the EMU and reinforce its future sustainability. This will require Member States and EU institutions alike to tackle difficult issues in a brave and determined way: policymakers, take the bull by the horns!
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The European Union in 2015: key events

Cécile Barbier

January

1 January: Latvia takes over the rotating Presidency of the Council of the European Union (EU) from Italy. The priorities of the Latvian Presidency include the Transatlantic Trade and Investment Partnership (TTIP), and working relations with the countries of the Eastern Partnership and Central Asia.


7/8/9 January: terrorist attacks in France. A series of attacks target the office of the satirical magazine Charlie Hebdo, as well as police officers and customers of a kosher supermarket.

7 January: the European Commission publishes several documents setting out the EU proposals for the Transatlantic Trade and Investment Partnership (TTIP) being negotiated with the United States (http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230).


13 January: Juncker Investment Plan. The European Commission adopts a legal proposal setting up the European Fund for Strategic Investments, to be established in close partnership with the European Investment Bank (EIB).

14 January: ECB monetary policy. The Advocate General of the Court of Justice of the European Union (CJEU) issues his opinion on the Outright Monetary Transactions (OMT) programme. Contrary to the arguments put forward by the German Constitutional Court, the Advocate General is of the view that the OMT programme and the OMTs are ‘unconventional’ monetary policy measures, and compatible with the European treaties. The opinion of the Advocate General paved the way for the announcement of new ECB measures, described by the press as ‘quantitative easing’. A quantitative easing measure is a technique used by central banks when other monetary policy instruments, mainly changes to the key interest rates, can no longer be used since the rates are so low, as has been the case in the Eurozone since the reductions of June and September 2014. Opinion Case C-62/14, Gauweiler and Others

22 January: the ECB announces an ‘Expanded Asset Purchase Programme – EAPP). The programme, presented as a European-style ‘quantitative easing’ measure, will run from March 2015 until the end of September 2016, and will involve monthly purchases of € 60 billion’s worth of public and private sector securities, i.e. a total amount of € 1,140 billion (http://www.ecb.europa.eu/press/pressconf/2015/html/is150122.en.html).

25 January: elections in Greece brought forward by 18 months. The anti-austerity party SYRIZA gains 36.34% of the votes and 149 out of 300 parliamentary seats, missing out on an absolute majority by 2 seats. A national government, formed by SYRIZA together with the Independent Greeks party (ANEL), opposes, for the first time, the austerity measures and the monitoring of these by the Troika. The Greek government wishes to propose new ‘reforms’ breaking free from the austerity policies of the second programme, which has remained fully unimplemented (see Theodoropoulou, this volume).
February

3 February: pension funds. The European Commission publishes a report which recommends exempting pension funds for two further years from the requirement for central clearing of their over-the-counter derivative transactions (http://ec.europa.eu/finance/financial-markets/derivatives/index_fr.htm).

5 February: ECB/Greece. The European Central Bank decides to suspend the use of Greek bonds as collateral. In order to receive funding, therefore, Greek banks have to resort to ‘emergency liquidity assistance’ (ELA), which requires agreement from the ECB’s Governing Council, but also means higher borrowing costs.

12 February: analytical note on the next steps towards better economic governance in the euro area, prepared by Jean-Claude Juncker, together with Donald Tusk, Jeroen Dijsselbloem and Mario Draghi. For the first time, the note recognises explicitly that the crisis is a ‘competitiveness crisis’, and acknowledges that certain weaknesses pre-date the crisis. According to this analysis, several Eurozone countries did not use this boom time of expansion to tackle ‘existing rigidities in product and labour markets’. Preparing for Next Steps on Better Economic Governance in the Euro Area. Analytical Note, 12 February 2015 (http://ec.europa.eu/priorities/docs/economic-governance-note_en.pdf).

13 February: informal meeting of the European Council. The EU leaders discuss the ‘three challenges facing Europe: restoring peace in Ukraine, fighting terrorism and improving the economic and monetary union’.

14-15 February: terrorist attacks in Denmark during a discussion organised in a cultural centre on ‘art, blasphemy and freedom of expression’ as a tribute to Charlie Hebdo, and in a synagogue. Following these attacks, Prime Minister Helle Thorning-Schmidt announced that a referendum would be held by April 2016 on the Danish derogation in the area of police and judicial cooperation.

18 February: capital markets union. The European Commission launches a brief three-month consultation on its ‘flagship project’: to create a true single market for capital in order to ‘facilitate the financing

18 February: financial assistance programme to Greece. The Greek government requests a six-month extension to the second programme, which expires on 28 February, Le Monde (http://www.lemonde.fr/crise-de-l-euro/article/2015/02/18/entre-bruxelles-et-athenes-le-bras-de-fer-devient-epistolaire_4579091_1656955.html).

20 February: Eurogroup/Greece. The Eurozone finance ministers agree ‘to consider extending financial assistance to Greece’ (http://www.consilium.europa.eu/fr/meetings/eurogroup/2015/02/20/).

24 February: deflation in the EU and the Eurozone. In January 2015, the annual inflation rate in the Eurozone is -0.6%, as compared to -0.2% in December. This is the lowest rate recorded since July 2009.

24 February: ECB/Greece. The ECB informs the President of the Eurogroup that, in its view, the terms of the Memorandum of Understanding (MoU) and of the Memorandum of Economic and Financial Policies (MEFP) still apply. On this point, it disagrees with the newly-elected Greek government, which wishes to propose new reforms breaking free from the previous programme’s austerity policies (http://www.ecb.europa.eu/pub/pdf/other/20150224_letter-to-dijsselbloemen.pdf).

24 February: Eurogroup/second Greek programme. The Eurogroup is briefed by ‘the institutions’ (a new way of referring to the Troika: the European Commission, the European Central Bank and the International Monetary Fund) on the state of play of their discussions with the Greek authorities: ‘The aim of the talks is to reach agreement on a comprehensive list of reforms, which Greece is expected to complete according to the current agreement’ (http://www.consilium.europa.eu/fr/meetings/eurogroup/2015/04/24/).

March

5 March: a new start for social dialogue. At the opening of a high-level conference, ‘A new start for social dialogue’, the European Commission confirms that ‘social dialogue at all levels is a pre-requisite for the
functioning of Europe’s social market economy and crucial to promote both competitiveness and fairness’. A new start for Social Europe, 5 March 2015 (http://ec.europa.eu/social/main.jsp?catId=88&langId=fr&furtherEvents=yes&eventsId=1028).

9 March: employment and social aspects of the 2015 European Semester. The Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) adopts key messages on the financing of social protection systems, as well as conclusions on inclusive labour markets.

10 March: Trade in Services Agreement (TISA). The Economic and Financial Affairs (ECOFIN) Council makes public the negotiating mandate for the Trade in Services Agreement (TISA). This decision ‘reflects a growing public interest for this multilateral agreement, which is currently being negotiated by 24 members of the World Trade Organisation (WTO) accounting for 70% of world trade in services’ (http://www.consilium.europa.eu/fr/press/press-releases/2015/03/150310-trade-services-agreement-negotiating-mandate-made-public/).

10 March: the ECOFIN Council sets out a negotiating position for a proposal for a regulation on the European Fund for Strategic Investments (EFSI).

13 March: rail liberalisation. The ‘Transport, Telecommunications and Energy’ Council holds a public debate on two proposals relating to rail services in the EU (fourth railway package). The ministers also discussed ways in which transport policies can stimulate competitiveness, growth and employment.

18 March: corporate tax avoidance. The European Commission presents a package of measures on fiscal transparency, as part of its programme to tackle corporate tax avoidance and harmful tax competition in the EU, COM (2015) 136.

19/20 March: European Semester. The European Council reaches agreement on the three pillars proposed by the European Commission in the Annual Growth Survey (investment, structural reforms and growth-friendly fiscal consolidation). The section containing the European Council Conclusions, entitled ‘European Semester/Growth and Jobs’, reports on a discussion on the state of play of negotiations with the
United States on the Transatlantic Trade and Investment Partnership (TTIP). The negotiators are asked to make efforts to conclude negotiations on an ‘ambitious, comprehensive and mutually beneficial agreement by the end of the year’ (http://www.consilium.europa.eu/fr/meetings/european-council/2015/03/european-council-conclusions-march-2015-en_pdf/).

31 March: the end of milk quotas. The EU milk quota regime is definitively scrapped. The quota regime, first introduced in 1984 when EU production far outstripped demand, was one of the systems set up to resolve the problem of structural surpluses.


31 March: EU/Ukraine. The Council decided to lend up to 1.8 billion euros to Ukraine over a period of two and a half years. These loans will be disbursed in three instalments, with a maximum maturity of 15 years (http://www.consilium.europa.eu/fr/press/press-releases/2015/03/31-macro-financial-assistance-ukraine/).

April

1 April: ECB/Greece. The ECB raised by 700 million euros the ceiling applicable to Greek banks giving them access to ‘emergency liquidity assistance’ (ELA) via the national Central Bank. This brings the ceiling to 71.8 billion euros. The ECB has been helping Greek banks in this way since early February 2015.

5 April: Greece/IMF. The Greek finance minister, Yanis Varoufakis, confirms the repayment of a €460 million loan from the IMF, falling due on 9 April, Press Release, IMF 15/162.

18 April: Stop TTIP. 700 events take place on the day of action organised to protest against negotiations between the United States and the EU.
23 April: extraordinary meeting of the European Council on the refugee crisis.

27 April: EU/Ukraine summit. The 17th EU/Ukraine summit is organised in Kiev. It is the first summit of its kind to take place in the context of the EU/Ukraine association agreement. The general provisions of this agreement, as well as the political and cooperation chapters, have been applied provisionally since November 2014, while those relating to the ‘deep and comprehensive free trade area’ will apply from 1 January 2016.

28 April: European Agenda on Security. The Commission sets out the Union strategy to tackle threats to security in the EU over the period 2015-2020, MEMO/15/4867.


May

5 May: spring Economic Forecast. According to the European Commission, economic growth in the EU is benefiting from favourable economic conditions. According to this forecast, ‘these short-term factors are boosting an otherwise mild cyclical upswing’: ‘oil prices remain relatively low, global growth is steady, the euro has continued to depreciate, and economic policies in the EU are supportive’ (http://ec.europa.eu/economy_finance/eu/forecasts/2015_spring_forecast_en.htm).

7 May: general election in the United Kingdom. Victory for the Conservatives under Prime Minister David Cameron, with an absolute majority of 331 seats. This result means that a referendum will be held by 2017 on whether the United Kingdom will remain in a ‘reformed’ Union. The Conservative government also wishes to change its relationship with another European institution: the European Court of Human Rights (ECHR). The new government wishes to free itself from the constraints
imposed by this Court and reaffirm the supremacy of British law over the European Convention (https://www.conservatives.com/~/media/files/downloadable%20Files/human_rights.pdf).

7 May: complaint filed in Germany against the ECB’s ‘quantitative easing’ (http://www.lesechos.fr/07/06/2015/lesechos.fr/021118259864_le-juge-allemand-saisi-d-une-plainte-contre-le-qe-de-la-bce.htm#5BPFUWozKJTLuwmi.99).

7 May: Transatlantic Trade and Investment Partnership (TTIP). The Foreign Affairs Council discusses progress made in the TTIP negotiations with the United States, looking in particular at the investor-state dispute settlement (ISDS) system.

11 May: Greece/Eurogroup. The Eurogroup was briefed on ‘the ongoing discussions between the Greek authorities and the European Commission, the European Central Bank and the International Monetary Fund on Greece’s comprehensive list of reforms’. The disbursement of the remaining financial assistance to Greece ‘can only take place once these reforms have been agreed and a review by the three institutions has concluded that they have been implemented’ (http://www.consilium.europa.eu/fr/meetings/eurogroup/2015/05/11/).

12 May: the ECOFIN Council adopts Conclusions on the in-depth reviews of the economic imbalances in Member States, stressing the need for strong commitment to structural reforms, Press release 262/15.

13 May: European agenda on migration. The European Commission describes the immediate measures to be taken to address the crisis situation in the Mediterranean, as well as the actions to be taken in the next few years to better manage migration in all its aspects, MEMO/15/4957.

13 May: European Semester. The European Commission adopts Country-specific Recommendations for 2015 and 2016, in which it calls upon ‘Member States to take measures to create jobs and stimulate growth’, MEMO/15/4968.

18 May: refugee crisis. The Foreign Affairs Council decides to carry out an EU naval operation, christened EUNAVFOR Med, to disrupt the business model of people-smugglers in the Mediterranean. This decision
is one element of the EU’s comprehensive response to the challenge of migration, Doc 8966/15.

**19 May:** Regulatory fitness and performance programme (REFIT). The European Commission adopts a programme on Better Regulation. This set of reforms will ‘boost openness and transparency in the EU decision-making process’, MEMO/15/4989.

**27 May:** agenda on migration. Two weeks after the presentation of the European agenda on migration, the Commission adopts the first proposals of its overall approach to improve management of migratory flows.

**28 May:** David Cameron’s Conservative party propose that the European Convention on Human Rights be abandoned in favour of adoption of a ‘British Bill of Rights’. The party’s manifesto referred to the Conservatives’ wish to ‘break the formal link between British courts and the European Court of Human Rights’, a measure listed in the section on ‘Fighting crime and standing up for victims’. This commitment was also included in the Queen’s speech on 27 May 2015 (http://www.courrierinternational.com/article/royaume-uni-abandonner-la-convention-europeenne-des-droits-de-lhomme-un-projet-critique).

**29 May:** EU/Japan summit. The leaders decide to speed up negotiations on a strategic partnership agreement and a free trade agreement between the EU and Japan.

June

**4 June:** no referendum on the EU in the Netherlands. Two and a half years after it was registered, a citizens’ initiative asking for a referendum to be held on the EU is rejected following a discussion in Parliament, on the basis of a 2014 Council of State opinion. Advies W01.14.0025/I/Vo/B, 17 July 2014 (https://www.raadvanstate.nl/adviezen/zoeken-in-adviezen/tekst-advies.html?id=11313).

**17 June:** structural reform. The European Commission decides to set up a new ‘Structural Reform Support Service’. This service, set up within the European Commission’s Secretariat-General, is tasked with
steering and coordinating support to individual Member States, in cooperation with other Commission services, other Member States and/or international organisations. Statement 15/5218.

17 June: The Greek central bank sends out an alarming warning to the country’s government on the risk of the country leaving the euro, even the EU itself, if negotiations with debtors fail: no conclusion to these negotiations is currently in sight. In its annual report, the Bank of Greece had warned that failure to reach an agreement would lead to ‘a Greek default, and ultimately to the country’s exit from the euro area, and, most likely, from the European Union’, and highlighted that ‘little ground remains to be covered’ to reach a compromise.


18 June: the ECB’s Governing Council takes note of the ruling of the Court of Justice of the European Union confirming that the OMT programme announced in 2012 is compatible with European Union (EU) law. It recalls that the programme was created in order to preserve the singleness of monetary policy in the euro area and ensure the transmission of the ECB’s policy stance to the real economy (https://www.ecb.europa.eu/press/pr/date/2015/html/pr150618.en.html).

18 June: early general elections in Denmark. Lars Lokke Rasmussen forms a minority liberal government.

22 June: report on completing Europe’s economic and monetary union. The ‘Five Presidents’ Report’ (European Commission, in close cooperation with the Presidents of the Euro Summit, the Eurogroup, the European Central Bank and the European Parliament) contains proposals on strengthening the EMU from 1 July 2015, with a view to its completion/stabilisation in 2025 (http://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_fr.pdf).

22 June: reaction of the European Trade Union Confederation (ETUC) to the Five Presidents’ Report. Commenting on the proposal to create national competitiveness authorities, Bernadette Ségol, ETUC General Secretary, said: ‘There is no way trade unions would accept a body
separate from the social partners giving advice on wage negotiations’. ‘What the European Commission’s press release about the Competitiveness Authority fails to mention is that the authority in Belgium, as in other countries, is run by employers and trade unions – it is not a separate body handing down advice to social partners to follow’ (https://www.etuc.org/fr/presse/ce-sont-les-syndicats-et-les-employeurs-qui-fixent-les-salaires-pas-les-%C2%AB-autorit%C3%A9s-de-la#
VuKlZOaXQdV).

22 June: refugee crisis. A military naval operation (EUNAVFOR MED) is launched, to tackle people-smuggling in the southern part of the central Mediterranean.

22 June: a draft agreement, proposed by the Greek government, and containing austerity measures involving an increase in value-added tax (VAT) and pension reforms, is examined by the Eurogroup. Following the euro area Euro Summit, President Donald Tusk states that the ‘new Greek proposals to the three institutions’ (European Commission, International Monetary Fund and ECB) are ‘a positive step forward according to the initial assessment of the institutions’. (http://www.consilium.europa.eu/en/press/press-releases/2015/06/22-tusk-final-remarks-euro-summit/).

25/26 June: European Council on the refugee crisis. No consensus is reached between Member States on arrangements to establish quotas to share out the 40,000 asylum seekers who have arrived in Italy and Greece.

26 June: Greece/Troika. Negotiations between the Greek government and the Troika ‘institutions’ break down.

27 June: Greece/Troika. The Greek Prime Minister announces the government’s decision to hold a referendum on 5 July, on whether the terms of the 22 June agreement should be accepted or rejected.

28 June: the Emergency liquidity assistance (ELA) granted to the Greek banks is maintained at the same level. The ECB takes note of the decision taken to hold a referendum in Greece, and of the non-prolongation of the adjustment programme.
29 June: referendum in Greece. The President of the European Commission, Jean-Claude Juncker, who is calling for a ‘yes’ vote, together with other European leaders, claims that the referendum is really about whether or not Greece wishes to belong to the Eurozone (http://www.lesechos.fr/29/06/2015/lesechos.fr/021174055325_referendum---les-europeens-exhortent-les-grecs-au-oui--.htm).

July

1 July: Luxembourg takes over the Presidency of the Council of the European Union from Latvia. The Luxembourg Presidency is the last of the Trio Presidency made up of Italy (1 July 2014-31 December 2014), Latvia (1 January 2015-30 June 2015) and Luxembourg (1 July 2015-31 December 2015). This presidency intends to resume work on giving a social dimension to EU governance.

1 July: the structural reform support service is up and running. It draws upon the expertise, experience and practical know-how acquired over time by the Task Force for Greece (TFGR) and the Support Group for Cyprus. The new service must focus on supporting the preparation and implementation of ‘growth-enhancing administrative and structural reforms (...) including through assistance for the efficient and effective use of the European structural funds’, European Commission, PV (2015) 2131 final, Brussels, 14-18.

2 July: the President of the European Parliament, Martin Schulz, says that he expects a ‘technocrat government’ to be appointed in Greece in the event of a ‘yes’ vote in the referendum and the resignation of the government (http://www.lalibre.be/actu/international/schulz-estime-que-la-fin-de-l-ere-syriza-serait-une-chance-pour-la-grece-5595a9003570c685851d7ed0).

5 July: referendum in Greece on the draft programme. The ‘no’ votes win with 61.3% of the votes cast, against 38.7% in favour of the programme. Turnout is 62.5%.

5 July: ECB response to the Greek ‘no’. Greek banks retain access to the same level (89 billion euros) of emergency liquidity assistance (ELA), but the Governing Council turns down the request from the
Greek central bank for a further 3 billion euros. In its press release, the ECB indicates ‘haircuts on collateral for ELA adjusted’. The ECB is taking a highly political approach. If the Greek banks are not solvent, ELA should be cut. The ECB is in an extremely powerful position. It could cut off support to the Greek banking system, which would result, in turn, in Greece leaving the euro: ‘Grexit’. By maintaining ELA, it is putting strong pressure on the Greek government, so that the latter has no choice but to respect the conditions set by the Troika.

8 July: Greek stability programme. The Greek government submits a request for a three-year loan to the European Stability Mechanism (EMS). Jeroen Dijsselbloem, Chairperson of the ESM Board of Governors and President of the Eurogroup, asks the European Commission to assess the risk to the financial stability of the Eurozone, the sustainability of Greek debt and any financial needs of the country.

12 July: Grexident avoided. The Euro summit statement addresses a series of unusually detailed demands for reform to the Greek Parliament, linked to a very strict timetable.

14 July: end of the 2015 cycle of the European Semester. After approval by the European Council of 26 June 2015, the EU finance ministers officially conclude the procedures for the 2015 European Semester at the ECOFIN Council. OJ C 272, 18 August 2015.

16 July: an initiative to leave the euro is launched in Finland. The citizens’ initiative, launched by the former Finnish foreign affairs minister and MEP (ALDE) Paavo Väyrynen, needs to collect 50,000 signatures in six months if it is to be discussed by the Finnish parliament.

17 July: short-term financial assistance programme for Greece. The ECOFIN Council adopts the Council implementing decision approving the financial assistance programme for Greece, for an amount of 7.16 billion euros (the amount of the second instalment of the second programme). This ‘bridging’ loan is financed by the European Financial Stabilisation Mechanism (EFSM), which draws on funds raised by the European Commission on the financial markets. OJ L 192, 18 July 2015.

22 July: popular initiative demanding a referendum on Austria leaving the EU. The Minister of the Interior announced that 261,056 people had
signed the petition, i.e. just over 4% of the electorate and more than double the minimum threshold required (100,000). A debate must be organised in the plenary session of the National Council, Austrian Parliament, by 17 February 2016.

August

14 August: the Greek parliament adopts the third assistance programme, before its adoption by the Eurogroup. 43 of the 149 SYRIZA Members of Parliament vote against or abstain. Prime Minister Tsipras loses his majority in Parliament.

14 August: Eurogroup/Greece. The Eurogroup welcomes ‘the agreement that has been reached between Greece and the European institutions, with input from the IMF, on the policy conditionality underlying the new ESM (European Stability Mechanism) macroeconomic adjustment programme (http://www.consilium.europa.eu/fr/meetings/eurogroup/2015/08/14/).

19 August: start of the third Economic Adjustment Programme for Greece. The financial assistance provided under the programme – a maximum amount of 86 billion euros – comes from the European Stability Mechanism (ESM). The programme should run until 20 August 2018. According to the Eurogroup, there will be a ‘buffer’ of up to EUR 25 billion for the banking sector in order to address potential bank recapitalisation and resolution costs’ (http://www.consilium.europa.eu/fr/meetings/eurogroup/2015/08/14/).

20 August: Greek government resigns. Following several defections from his political party, SYRIZA, and believing that the programme cannot be implemented, the Greek Prime Minister announced the resignation of his government.

27 August: refugee crisis. The German Vice-Chancellor Sigmar Gabriel and his colleague, Foreign affairs minister Frank-Walter Steinmeier, believe that the Dublin system, which determines which Member State should process asylum requests to the EU, is obsolete. In their view, ‘a situation such as the present one, in which only some Member States are shouldering all the responsibility, is just as unacceptable as a system
which spreads the burden mainly between countries at the external border of the EU’. Tribune in French daily morning newspaper *Figaro*.

**September**

**3 September**: refugee crisis/right of asylum. In a joint letter, François Hollande and Angela Merkel ask the Commission to use ‘all the means at its disposal’ to oblige States to respect the right to asylum rules, both on assessing asylum claims and on accommodation. They propose, ‘in the long term’, ‘a unified system for the right to asylum’ (Le Monde 4 September 2015).

**10 September**: United Nations (UN)/restructuring of sovereign debt. The UN General Assembly adopts, by a very large majority (136 votes in favour, 6 against – Germany, United Kingdom, United States, Japan, Canada and Israel – and 41 abstentions), a non-binding resolution listing nine principles to be followed when restructuring sovereign debt. Apart from Germany and the United Kingdom, which voted against, the EU countries abstained. Speaking on behalf of the EU, the Luxembourg delegate recalled that: ‘the International Monetary Fund (IMF) is the appropriate institution to host global discussions on this subject and that the work on sovereign debt restructuring should remain in the IMF’.

**14 September**: refugee crisis/people-smugglers. Member States agree to move to the operational phase of EUNAVFOR MED – following an initial information-gathering phase launched on 22 June 2015. This transition will ‘enable the EU naval operation to conduct boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling or trafficking, within international law’, COM (2015) 490.

**15 September**: the CJEU confirms its case law of November 2014 (Dano judgment) by finding national legislation (German, once again) to be compatible with EU law. The German legislation excluded European citizens who have moved to and are staying in a host Member State without being able to support themselves from access to social assistance. Alimanovic, C-67/14 and Dano, C-333/13, 11 November 2014.


20 September: general elections in Greece. Alexis Tsipras’ party is victorious in these elections, which are marked by a steep fall in turnout (56.5% compared to 63.87% in January 2015).


October

29 September-2 October: Congress of the European Trade Union Confederation (ETUC). The Italian Luca Visentini is elected ETUC General Secretary and the Belgian Rudy De Leeuw ETUC President.

6 October: end of the self-organised European citizens’ initiative against the Transatlantic Trade and Investment Partnership (TTIP). In one year, nearly 3.3 million people have signed the citizens’ initiative against the TTIP and CETA.

8 October: Justice and Home Affairs (JHA) Council. The home affairs ministers of the Member States insist on the need to strengthen checks at the external borders and to send back quickly those foreigners with no justified claim for asylum.

10 October: ‘Stop TTIP’. Demonstrations are organised in Europe and North America with a view to stopping the negotiations between the United States and the EU.
14 October: one step closer to a referendum on the EU/Ukraine association agreement in the Netherlands. The Dutch Electoral Council endorses a list of 427,939 signatures of citizens asking for a referendum on the EU/Ukraine association agreement. A referendum will be organised on 6 April 2016.

15 October: refugee crisis. The European Council confirms the orientations of the JHA Council: cooperate with third countries to stem the flows of refugees, strengthen protection of the EU’s external borders, respond to the influx of refugees in Europe and ensure returns to the countries of origin.

21 October: implementation of the Five Presidents’ Report. The European Commission issues proposals intended to implement in concrete steps Stage 1 of the Five Presidents’ Report. These measures contain a proposal for common external representation of the euro area, proposals paving the way for a financial union, including the capital markets union, ideas for a ‘revamped European Semester’, as well as ‘an improved toolbox of economic governance’ and proposals to create ‘national Competitiveness Boards’ and an advisory ‘European Fiscal Board’, MEMO/15/5876.

27 October: World Bank report ‘Doing Business 2016’. Singapore takes the first place. Five European countries are in the top 10: Denmark (3rd), the United Kingdom (6th), Sweden, Norway and Finland (8th, 9th and 10th).

27 October: the Juncker Commission’s 2016 Work Programme, ‘No time for business as usual’ continues to emphasise the 10 political priorities presented in 2014, and proposes 23 initiatives, including one on the ‘labour mobility package’. COM (2015) 610. In the view of the ETUC General Secretary, Luca Visentini, ‘2016 is the year President Juncker has to deliver on his promise for a Triple A social Europe’.

28 October: upgrading the single market. The European Commission publishes a roadmap ‘to deliver on the political commitment of Jean-Claude Juncker, President of the EC, to unleash the full potential of the Single Market and make it the launchpad for Europe to thrive in the global economy’, COM (2015) 550.
30 October: according to Eurostat, the unemployment rate for September 2015 is 9.3% in the EU28 and 10.8% in the Eurozone. This is the lowest recorded rate since September 2009. Among the Member States, the lowest unemployment rates in September 2015 were recorded in Germany (4.5%), the Czech Republic (4.8%), Malta (5.1%), and the United Kingdom (5.3% in July 2015), and the highest were in Greece (25.0% in July 2015) and Spain (21.6%), 192/2015.

30 October: unity agreement in Spain. The Spanish Prime Minister, Mariano Rajoy, announces a national agreement between the main political parties (PP, PSOE, Ciudadanos, Podemos) in favour of national unity, in the light of the intention of Catalan separatists to vote through a text triggering the secession process.

30 October: according to Eurostat, the annual inflation rate for the Eurozone in October is zero, up from September 2015, when it stood at -0.1%, 193/2015.

November


9 November: meeting of the Justice and Home Affairs Council to assess the progress made in managing the refugee crisis. Maintaining the Schengen area and reducing migratory pressure are the priorities. The Council emphasises the importance of cooperating with third countries, maintaining reception capacities and establishing ‘hot spots’. Speeding up the still hesitant relocation process is also a priority, Press release 789/15.

10 November: 540,000 refugees have arrived in Greece over the first ten months of the year. According to the European Border and Coast Guard Agency (Frontex), the European agency responsible for the EU external borders, more than 150,000 people left Turkey for Greece in October 2015, and more than 540,000 since the beginning of the year, i.e. 13 times more than during the same period in 2014 (http://frontex.

**11/12 November:** Valetta summit on migration. European and African Heads of State or government meet in order to strengthen cooperation and respond to the challenges and potential of migration. The Europeans launch a 1.8 billion euro emergency trust fund for Africa, to try and convince African countries to help them stem the flow of migrants. Their aim is to support the return of illegal immigrants to their countries of origin, as well as participating in local reintegration projects (http://www.consilium.europa.eu/fr/meetings/international-summit/2015/11/11-12/).

**13 November:** terrorist attacks in Paris; a series of shootings and suicide attacks. The terrorist organisation Islamic State, or ‘Daesh’, claims responsibility. The French President, François Hollande, declares a state of emergency.

**16 November:** state of emergency in France. The President of the French Republic, François Hollande, speaks to the Congress of the French Parliament meeting in Versailles to announce a number of measures following the Paris attacks, and declares that: ‘the security pact takes precedence over the stability pact’.

**17 November:** Finland and the euro. The initiative launched on 16 July 2015, asking for Finland to abandon the euro, gathers the 50 000 signatures needed for a debate to be held in the Finnish parliament.

**20 November:** state of emergency extended in France. The French Parliament extends the state of emergency by three months.

**24 November:** state of emergency in France/human rights derogation. Having declared a state of emergency on 13 November 2015, France writes to the Council of Europe to express its wish to derogate from the European Convention on Human Rights during the state of emergency.

**25 November:** according to the Secretary General of the Council of Europe, ‘the European Convention on Human Rights will continue to apply (in France). Where the Government seeks to invoke Article 15 in
order to derogate from the Convention in individual cases, the Court will decide whether the application meets the criteria set out in the Convention’.

**26 November:** the European Commission launches the 2016 European Semester, publishing the usual set of documents, i.e. the Annual Growth Survey (AGS), the draft Joint Employment Report (JER) and the Alert Mechanism Report (AMR). New for 2016 is the draft recommendation on the economic policy of the euro area, presented at the beginning of the exercise. COM (2015) 690.

**30 November:** Single Resolution Mechanism (SRM). The intergovernmental agreement on the SRM, signed in May 2014 by all EU Member States except for the United Kingdom and Sweden, is ratified by a sufficient number of Member States (90% of the total weighted votes of all participants). The SRM, which should make it possible to provide support to Eurozone banks in difficulty, will enter into force on 1 January 2016 (http://www.consilium.europa.eu/press-releases-pdf/2015/11/40802205655_fr_63584566500000000000.pdf).

December

**2 December:** circular economy package. The European Commission adopts several legislative drafts on the circular economy, including in particular water reuse, the promotion of organic fertilisers and reducing food waste, IP/15/6203.

**2 December:** allocation of refugee quotas. Slovenia files an action with the EU Court of Justice.

**2 December:** the Spanish Constitutional Court annuls the Catalan independence process. The Court annuls the Catalan parliament resolution formally launching Catalonia’s independence process (http://www.tribunalconstitucional.es/es/salaPrensa/Documents/NP_2015_093/2015-06330STC.pdf).

**3 December:** prolongation of the ECB’s programme to buy in public and private debt (quantitative easing), from September 2016 to March
3 December: victory for the ‘no’ vote in the Danish referendum on whether Denmark should be part of EU cooperation in the field of justice and home affairs. The outcome of the referendum is a majority for the ‘no’ votes (53.1%), as against 46.9% of ‘yes’ votes. Turnout is 72%.


8 December: United Nations/Greece. The United Nations Human Rights Council expert, Juan Pablo Bohoslavsky, a specialist in the effects of foreign debt on the enjoyment of human rights, publishes a report on his visit to Greece. His assessment of the social impact of the European Commission’s third stability support programme to Greece is highly critical: the European Commission, he says, has not carried out an evaluation of the social impact of the two previous adjustment programmes, nor has it referred to rulings of the Greek Council of State on pensions or recommendations from other European and UN experts. Human rights pose limits to adjustment – Debt relief for inclusive growth in Greece, Juan Pablo Bohoslavsky, Athens, End of mission statement, 8 December 2015 (http://www.ohchr.org/Documents/Issues/IEDebt/EOM_Statement_Greece_IEForeignDebt_EN.pdf).

12 December: adoption of the Paris Agreement on climate at the ‘COP 21’, by 195 States. The agreement, deposited with the United Nations in New York, can be signed between 22 April 2016 and 21 April 2017. To enter into force, it must be signed and ratified by at least 55 countries accounting for at least 55% of world emissions. The Paris Agreement is to take over from the Kyoto Protocol from 2020. In 2023, a global stocktake will begin, to evaluate the collective progress made towards meeting the objectives of the agreement.

14 December: privatisation of 14 regional Greek airports. The privatisation contract was concluded for 40 years with Fraport, a German airport-management company. This privatisation, included in the third assistance plan, will bring in 1.2 billion euros for Greece (http://www.
15 December: external borders/Schengen area. The Commission adopts measures to strengthen protection at the Schengen external borders, by creating a European Border and Coast Guard, IP/15/6327.

15 December: EU-Canada free trade agreement. The Council decides to make public the guidelines given to the European Commission for negotiations on the EU-Canada free trade agreement.

16 December: action plan to address the root causes of irregular migration and forced displacement. The plan contains 16 actions with a budget of almost 300 million euros, to address the root causes of irregular migration and forced displacement and to increase the positive effects of migration on development, IP 15/6337.

17/18 December: Brexit/refugee crisis. During the meeting of the European Council, the Heads of State and Government emphasise the need for further integration of capital markets, the energy union and the digital market, and for a stepping up of EU action against terrorism. They undertake to reach agreements to keep the United Kingdom in the Union at the Council meeting of 17 and 18 February 2016.

21 December: economic sanctions against Russia extended by six months. The decision is taken by written procedure in the Committee of Permanent Representatives (COREPER). Italy had asked for a policy debate to take place on this issue. OJ L 334 of 22 December 2015.
# List of abbreviations

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<tr>
<td>ACSH</td>
<td>Advisory Committee on Safety and Health</td>
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<td>ADEDY</td>
<td>Anótati Diíkisi Enóseon Dimósion Ypallílon (Civil Servants' Confederation)</td>
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<td>AGS</td>
<td>Annual Growth Survey</td>
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<td>ALDE</td>
<td>Alliance of Liberals and Democrats for Europe</td>
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<td>AMR</td>
<td>Alert Mechanism Report</td>
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<td>ANEL</td>
<td>Anexartitoi Ellines (Independent Greeks)</td>
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<tr>
<td>CETA</td>
<td>Comprehensive Economic and Trade Agreement</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>COREPER</td>
<td>Committee of Permanent Representatives</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>DG EMPL</td>
<td>Directorate General for Employment, Social Affairs and Inclusion</td>
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<td>EASI</td>
<td>Employment and Social Innovation</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>ECHR</td>
<td>European Court of Human Rights</td>
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<td>ECOFIN</td>
<td>Economic and Financial Affairs Council</td>
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<td>ECSR</td>
<td>European Committee of Social Rights</td>
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<td>EES</td>
<td>European Employment Strategy</td>
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<td>EFSD</td>
<td>European Financial Stability Facility</td>
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<td>EFSI</td>
<td>European Fund for Strategic Investments</td>
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<td>EFSM</td>
<td>European Financial Stabilisation Mechanism</td>
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<td>EFTA</td>
<td>European Free Trade Association</td>
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<td>EGC</td>
<td>General Court of the European Union</td>
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<td>EIB</td>
<td>European Investment Bank</td>
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<td>ELA</td>
<td>Emergency Liquidity Assistance</td>
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<td>EMCO</td>
<td>Employment Committee</td>
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<td>EMS</td>
<td>European Stability Mechanism</td>
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<td>EMU</td>
<td>Economic and Monetary Union</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EPC</td>
<td>Economic Policy Committee</td>
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<td>EPP</td>
<td>European People's Party</td>
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<tr>
<td>EPSCO</td>
<td>Employment, Social Policy, Health and Consumer Affairs Council (of the EU)</td>
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<td>ESDE</td>
<td>Employment and Social Developments in Europe</td>
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<td>ESF</td>
<td>European Social Fund</td>
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<td>ESM</td>
<td>European Stability Mechanism</td>
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<td>ESPN</td>
<td>European Social Policy Network</td>
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<td>ETUC</td>
<td>European Trade Union Confederation</td>
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<td>ETUI</td>
<td>European Trade Union Institute</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUCFR</td>
<td>EU Charter of Fundamental Rights</td>
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<td>EU-OSHA</td>
<td>European Agency for Safety and Health at Work</td>
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<td>EURES</td>
<td>European Employment Services</td>
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<td>EURODAC</td>
<td>European Dactyloscopy</td>
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<td>FIDH</td>
<td>International Federation for Human Rights</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GMI</td>
<td>Guaranteed minimum income</td>
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<td>GSEE</td>
<td>Greek General Confederation of Labour</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>IGC</td>
<td>Intergovernmental Conference</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>IOM</td>
<td>Institute of Occupational Medicine</td>
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<td>JHA</td>
<td>Justice and Home Affairs</td>
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<td>LISER</td>
<td>Luxembourg Institute of Socio-Economic Research</td>
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<tr>
<td>LTU</td>
<td>Long-term unemployment</td>
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<tr>
<td>MEP</td>
<td>Member of the European Parliament</td>
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<td>MISSOC</td>
<td>Mutual Information System on Social Protection</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>ND</td>
<td>New Democracy</td>
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<td>OECD</td>
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<td>OJ</td>
<td>Official Journal of the European Union</td>
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<td>OSH</td>
<td>Occupational Safety and Health</td>
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<td>PASOK</td>
<td>Panellínio Sosialistikó Kínima (Panhellenic Socialist Movement)</td>
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<td>PES</td>
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<td>SGP</td>
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<td>SIP</td>
<td>Social Investment Package</td>
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<td>SRM</td>
<td>Single Resolution Mechanism</td>
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<td>SWD</td>
<td>Staff Working Document</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<td>SYRIZA</td>
<td>Synaspismós Rizospastikís Aristerás (Coalition of the Radical Left)</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<tr>
<td>TISA</td>
<td>Trade in Services Agreement</td>
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<tr>
<td>TSCG</td>
<td>Treaty on Stability, Cooperation and Governance</td>
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<tr>
<td>TTIP</td>
<td>Transatlantic Trade and Investment Partnership</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>VAT</td>
<td>Value added tax</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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List of country codes

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</tbody>
</table>
List of contributors

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