International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
The Global Voice of Business

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Committee of Experts on the Application

of Conventions and Recommendations (CEACR)

International Labour Office (ILO)

4, Route de Morillons

1211 Geneva 22

ARTICLE 23.2 ILO CONSTITUTION

IOE AND SEV COMMENTS – GREECE CONVENTIONS 98

Dear Members of the ILO CEACR,

Under Article 23.2 of the ILO Constitution the International Organisation of Employers (IOE) and the Hellenic Federation of Enterprises and Industries (SEV) file the following comments on the application in law and practice of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). These comments constitute also a reply to the latest CEACR Observations and Direct Requests on this Convention.

BACKGROUND INFORMATION AND CURRENT CONTEXT

Austerity measures in Greece should be understood in the context of double digit public sector deficits and current account deficits which in 2010 were leading with a frantic pace towards bankruptcy. The urgent and extraordinary measures introduced in 2010 allowed IMF and the European Union to provide the largest package of financial assistance in economic history, in order to save Greece from exiting the Euro and having its economy and society destroyed. When trade unions refer to "an austerity regime introduced in 2010" (ITUC 2018 Global Labour Right Index, p. 37) it is a very simplistic view, considering that the public sector deficit was at 15,1% of GDP in 2009, 13,2% in 2013 and 5,7% in 2015, and the year concluded with a negative current account balance of -12,3 % of GDP in 2009, -2,0% in 2013 and in balance only in 2015.

A more realistic assessment of the pre-crisis macroeconomic imbalances in Greece can be found in the ILO Report "Productive Jobs for Greece" (2014), pp. 44-50.

In 2018, more than 40 industry-level or occupational-level agreements are in force. The reduction in the number of industry-level or occupational-level agreements covering the whole country between 2010 and 2013, has been caused by two main factors. First, the abolition in 2012-2014 of the compulsory arbitration regime, which had previously acted in practice as a distorting influence, as a leverage in the negotiation process in favour of the workers' side. Second, the fact that the extension of collective agreements and compulsory arbitration awards was abused and misused for years up to 2010, without reliable validation of the coverage of the contracting parties. An analysis for this can be found in Koukiadaki A. and Grimshaw D.

(2016) “Evaluating the effects of the structural labour market reforms on collective bargaining in Greece”, ILO, pp. 61-81.

The collapse in collective bargaining coverage is the result of the collapse in 2013-2015 of many sectoral and occupational collective agreements. The reasons for this are both legal and structural.

The legal reasons refer to the abolition of the right to unilateral recourse to arbitration imposed during 2012-2014 and to the suspension of extension mechanisms until 21/8/2018.

The structural reasons are due to the structural collapse of the economy, (because of the pre-crisis macroeconomic imbalances in Greece) which lost 26% of GDP, to the 1 million jobs (22%) that were lost almost entirely in the private sector, and to the 37% of the companies that closed down, and the lack of any level of social agreement regarding the required extraordinary policies.

Despite the reinstated right to unilateral recourse to arbitration in 2014, and lifting the temporary suspension of the collective agreements’ extension mechanism on 21/8/2018, it is the collective actors that have to pay attention to the need to strengthen their membership base and improve their representation in order to be able to have viable collective bargaining processes in Greece. The regime of compulsory arbitration is not supportive of this, apart from exacerbating short term “benefits” for weak and fragmented trade unions. Compulsory arbitration cannot operate as facilitator of collective bargaining and promote negotiated outcomes but offers bypasses or shortcuts to the outcome of the procedures of collective bargaining among the parties.

SEV Comments on C98

With regard to ILO's on-going investigation/report on the application of Convention 98 in Greece under the programs of economic stability, SEV, supported by the IOE, refutes the perception actively promoted by the Greek government and workers' representation that "collective bargaining rights remain paralyzed" in Greece.

The reality is that the present law allows the social partners to conclude a National Collective Agreement, with a minimum wage higher than national minimum wage, applicable to the members of the signatory employers’ associations. In practice, the economic conditions of the country have not allowed this to happen so far. Since 2013 and every year, there have been negotiations on a national collective agreement between GSEE and the employers’ associations. The invitations sent by GSEE to the employers’ associations to negotiate a new National Collective Agreement show that GSEE requested, among others, an increase of reference basic salary from 586 to 751 euro per month. The respective National Collective Agreements as actually signed, do not, however, include any provisions for salary changes. The outcome, i.e. that GSEE ended up signing an agreement that did not satisfy any of its requests on salaries, indicates that such requests were not feasible at the time, and that this was understood by GSEE. It certainly indicates that the law poses allows the parties to engage in, negotiate and eventually agree on salary increases, when the economic conditions allow.

We should emphasize that in Greece, even during the period of the financial assistance program that ended 21 August 2018, there has been the possibility to sign collective agreements at all levels such as national, sectoral occupational and firm-level. Statistics from the Ministry of Labour reports significant activity on this front (Table below). The fact that Greece has had negative inflation and extremely high unemployment rates (above 20% for many years) and that the workers understand the extremely difficult position of business and often avoid pressing for salary increases (in contrast to what was happening up to the pre-crisis period as part of the build-up of huge macroeconomic imbalances). Therefore, the

argument that there is no possibility to sign and conclude a collective agreement is not valid and shall not be taken into consideration.

NUMBER OF COLLECTIVE AGREEMENTS SIGNED			
YEAR	SECTORAL / OCCUPATIONAL	FIRM - LEVEL	LOCAL OCCUPATIONAL
2018	15	155	8
2017	15	244	6
2016	10	318	6
2015	12	263	7
2014	14	286	5
2013	14	409	10

Source: *Ministry of Labor werbsite*

3. Another argument presented in the past by GSEE in support of their position that "collective bargaining rights remain paralysed", is that the right of the Minister of Labour to extend the coverage of collective agreements has been suspended until the end of the financial assistance program. The extension of the coverage of collective agreements is not imposed either by international conventions and recommendations or by the European Social Charter. Before the years of the crisis, when the extension was still allowed, it was impossible for the Ministry of Labour to count the number of covered employees prior to extending the coverage of the collective agreement to all workers, in order to verify that the coverage exceeded 50% of the sector workforce. In practice, such verification was not undertaken, and the extension was granted as a matter of routine even in situations where representation of workers was obviously very low, creating in certain circumstances significant distortions in the market. The extension of collective agreements was applicable also to compulsory arbitration awards, which are per se not compatible with Convention 98 and the voluntary nature of collective bargaining, adding systematically to the distortion.

The recent revival, after the end of the completion of the 3rd economic Adjustment programme for Greece of the ministerial right to extend the coverage of sectoral collective agreements to non-members), and the recent Circular of the Ministry of Labour which actually repeats the conditions set in the collective bargaining law (1876/1990). The following basic conditions could be fulfilled:

a) there should be a reliable methodology to ensure that the collective agreement signed covers at least 51% of employees as provided by the collective bargaining law; there exist today an official database registering every working person in Greece (which did not exist in the past), so that there is no reason for arbitrary extensions, as in the past

b) the parties signing the sectoral collective agreement should agree to propose the extension of its coverage,

c) compulsory arbitration awards should be excluded from the extension mechanism.

SEV actively stands for social dialogue, collective bargaining and respect for the principles and rights supported by the ILO. In the course of many years, SEV has made dozens of proposals to the other social partners that would have substantial impact on the situation of the Greek labour market. We state that, contrary to the perception that is promoted by GSEE and the current Greek government, collective bargaining rights do exist and are used in practice. There is an adequate system of regulations that protect this right, in fact these protective regulations

in certain areas go the other way. They contain a very significant distortion of the collective bargaining system, which is well-known to the ILO

The ILO Committee of Experts on the Application of Conventions and Recommendations has been stating that , if the arbitration is requested in agreement of the parties, it is not contrary to ILO Convention 98. Indeed, compulsory arbitration is contrary to Article 4 of Convention 98, Article 6 of Convention 154.

In 2014, the Council of State in Greece took a decision on the Ministerial Decision/Cabinet decree 6/2012 (article 3) that suspended the possibility of unilateral recourse to arbitration. Its interpretation was that the Constitution requires the legislature to establish a right to unilateral recourse to compulsory arbitration. Following the implementation of this decision, the Committee of Experts on the Application of Conventions and Recommendations, in its report to the 104th session of the ILO of 2015, expressed the following:

"The Committee notes the observations of the SEV that the Council of State rendered a decision finding that the provision in Act No. 4046 of 14 February 2012, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional. The SEV criticizes this judgment as contrary to the Convention and moreover expresses its deep concern that renewed unilateral recourse to compulsory arbitration will suffocate collective bargaining, as it has always done in Greece. The Committee notes that the Government merely refers to the Council of State decision in its report but does not reply to the concerns raised by the SEV. The Committee recalls its earlier consideration of the arbitration regime prior to the suppression of unilateral recourse in which it found it not to be contrary to the Convention in so far as it addressed only the basic wage at national or sectoral/occupational level in a context where machinery for minimum wage fixing was yet to be developed. The Committee must nevertheless emphasize that, as a general rule, legislative provisions which permit either party unilaterally to request compulsory arbitration for the settlement of a dispute does not promote voluntary collective bargaining and is thus contrary to the Convention. The Committee therefore trusts that the measures taken by the decision regarding above considerations and requests it to provide detailed information in this regard and to reply fully to the concerns raised by the SEV".

SEV insists to this day that the revival of unilateral recourse to compulsory arbitration highly undermines collective labour relations and the provision of Convention N.98 according to which collective bargaining shall be a voluntary process.

SEV has proposed amendments that would significantly reduce the existing distortion and have a system more in line with international labour standards, including recommendation N91. However significant improvement could be made as an interim measure, until an opportunity arises to settle the matter at the level of the Constitution, or its interpretation.

Concerning the measures taken at the level of Government, it is with great disillusionment that we note the Government's total lack of willingness to make the slightest move in the direction indicated above. During the last period, the Minister of Labour received the opinions of all social partners on a few issues, among which the matter of compulsory arbitration. Her commitments on how to regulate these issues were included in the technical document drafted jointly with the country's creditors, the so called "staff level agreement". In that document there is no reference to any change along the lines mentioned above. Therefore, the explicit position of the Greek Government, which was reflected in the recent law 4549/2018, came at no surprise. This law, which did not introduced amendments concerning the issues of compulsory arbitration, was introduced in Parliament and voted after the 107th International Labour Conference, where the matter of compulsory arbitration was explicitly discussed with the participation of the Minister herself as representative for Greece, thus showing that support for

labour standards as professed by the Government is selective and disregards the bodies that have authority to monitor their implementation.

This happened despite the fact that the Committee on the Application of Standards and the Committee on the Application of Standards 2018 discussion (see below) expressed concern regarding the Government's submission related to the compulsory arbitration system and the decision of the Council of State concluding that the provision in Act. No. 4046, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional.

CAS 2018 Employers' Comments

In June 2018, the CAS discussed the application in law and practice of Convention No. 98 in Greece.

The Employers expressed the following:

The **Employer members** stated that they shared the concern of the Worker members and of the Committee of Experts that the Government had not submitted a report to the Committee of Experts in time for that Committee to fully consider the issue, that limited the Conference Committee's ability to consider recent information. The Convention required that measures appropriate to national conditions be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Referring to the decision of the Council of State on the unconstitutionality of the provision in Act No. 4046 of 14 February 2012 providing for the suppression of unilateral recourse to compulsory arbitration, the Employer members indicated that the Government appeared to be encouraging the use of compulsory arbitration as a replacement for voluntary negotiation. The Committee of Experts had noted the issues raised by the Hellenic Federation of Enterprises and Industries (SEV) and its concern regarding the Government's insistence in keeping regulations allowing unilateral recourse to compulsory arbitration to circumvent collective bargaining. The Employer members expressed their concern that no response had been provided to the concerns raised by the SEV. The Employer members expressed surprise that the Government had indicated that one of its top priorities was the restoration of a collective bargaining system, as the Government had also indicated that arbitration had always been a part of the Greek legal system, even if the Committee of Experts had made numerous observations that a system of compulsory arbitration did not meet the obligation under the Convention. The Government had stated that it considered the decision of the Council of State in light of the Greek Constitution. The Government's statement appeared to imply that it had discharged its obligations under the Convention, as a result of recent amendments, and that the onus then fell on workers' and employers' organizations. Compulsory arbitration had a distortionary impact on the labour market and could materially affect the outcome of negotiations. In 1978, the mission report of the International Programme for the Improvement of Working Conditions and the Environment (PIACT) concerning Greece had stated that systematic recourse to compulsory arbitration resulted not only in excluding the establishment of a tradition of dialogue between the social partners, but also in deterring the labour organizations from designing pol-icy. The prediction that systematic recourse to compulsory arbitration would stifle collective bargaining had been ac-curate.

The Employer members disagreed with the Worker members' assertion that the status quo favoured employers in the country. However, they agreed that the Government should reinstate effective collective bargaining mechanisms. Legislative provisions that allowed either party to unilaterally request compulsory arbitration for the settlement of a dispute or collective agreement did not promote voluntary collective bargaining, stifled collective bargaining and were contrary to the Convention. The Employer members urged the Government to ensure

that neither a decision of a national court nor any legislative amendments imposed compulsory arbitration for the settlement of disputes or collective agreements as the normal course. They further called on the Government to discuss the existing arbitration system with the social partners with a view to achieving compliance with international labour standards. Full and robust social dialogue with workers' and employers' organizations at the national level was necessary to re-solve the concerns identified on the use of compulsory arbitration, including its scope. Lastly, the Employer members called on the Government to take immediate measures in that respect and to provide a full report on the measures taken to the Committee of Experts in advance of its session in 2018.

The **Employer member of Greece** recalled the two main issues discussed: firstly, enterprise-level collective agreements and associations of persons and secondly, the issue of compulsory arbitration. With regard to the competence of associations of persons to represent workers at the level of an enterprise where a trade union did not exist, such measures were in full accordance with ILO standards, actively promoted collective bargaining and social dialogue and should therefore not be changed. Special regulations allowing trade union sections in small companies would, in the country's specific context, be seen as a Government intervention in the way workers organized of their own free will and there should thus be no legislative amendments, irrespective of whether a favourability principle existed in the laws or not. The existing system, to the extent that it included unilateral recourse to compulsory arbitration, had been found by ILO supervisory bodies to be against ILO standards. The arbitration system was dominant and central in Greek industrial relations but recourse to compulsory arbitration stifled the development of collective negotiations and in practice caused an absence of industrial action and the development of collective bargaining. Although from an employer's viewpoint, practically eliminating industrial action might appear as positive, near-zero strikes on salary issues was a symptom that the system had consistently provided easy solutions accommodating the workers' side and constituted a fundamental distortion of the collective bargaining environment. Such a distorted environment was one of the main reasons explaining why social dialogue between workers and employers had been almost non-existent in the past ten years. Act No. 4303/2014 adopted after the 2014 Council of State decision had reinstated compulsory arbitration, but it was essentially the same as the previous laws that had been found by ILO bodies to infringe the Convention and the Government intended to keep it that way. However, even in the framework of that decision, the situation could be improved drastically by adjusting the scope of compulsory arbitration to be as close as possible to ILO standards. The proposal was for compulsory arbitration to be accepted as the ultimate measure for resolving collective disputes strictly in the following cases: (1) where the employer was an entity belonging to the administration of the State where it provided essential services; (2) in sectors of the economy where the resolution of a collective dispute was necessary for reasons of public interest that was at risk at the moment of the dispute – apart from general government and essential services, a collective dispute at the enterprise or occupational level could not be conceived as putting at risk the public interest and compulsory arbitration should thus not be allowed for disputes at those levels; for sectoral, regional or national-level disputes, the risk of public interest should be proven, if it was to merit recourse to compulsory arbitration; (3) if one of the parties refused in bad faith to enter into negotiations; and (4) if negotiations had definitively failed and such failure had been proven by several cumulative conditions (at least one year had passed since the expiry of the previous collective agreement; the minutes of negotiations showed that one side refused to accept the realistic proposals of the other; and all means of union pressure had been used). Unilateral recourse to compulsory arbitration was thus not acceptable if strike action had not been undertaken to exert pressure on the employer. Although the proposal would not achieve full compliance with ILO standards, it could present significant improvement as an interim measure, until an opportunity arose to settle the matter

at the level of the Constitution or its interpretation. Furthermore, substantial improvements should be made in the existing framework of the OMED, including procedures to establish true representativeness for both sides of the dispute, strong safeguards for ensuring independence and professional qualification of arbitrators and mediators, standards for decisions to be adequately substantiated concerning their economic impact and full-scale self-government of the OMED by the social partners regarding its administrative or legal setup, funding and internal processes of arbitration and mediation. In December 2017, the SEV had extended to the General Confederation of Greek Workers (GSEE) a formal invitation to discuss a brand-new arbitration system but since the GSEE had expressed the wish to return to the initial system that had existed before the crisis and to abolish the reforms of Act No. 4303/2014, which had brought back compulsory arbitration but had some marginal improvements over the old system, the discussion had not continued. As for the Government, it lacked any willingness to make the slightest move in the indicated direction, as demonstrated by the absence of any reference to the proposed changes in a technical document drafted with the country's creditors, which thus represented an explicit demonstration by the Government to continue flouting the Convention, as well as Convention No. 154 for the foreseeable future. To conclude, the speaker suggested that if the Government was sincere about reviving collective bargaining, it should start by taking steps to comply with the Convention and if the workers believed in free collective bargaining as the main pillar for effective social dialogue, they should find the courage to denounce compulsory arbitration.

The **Employer member of Spain** indicated that non-compliance of a Member State of the European Union with ILO standards for so many decades was worrying, not only for the Greek employers. The crisis of recent years had shown the interconnection between the economies of European countries. In periods of crisis it was all the more important for social partners to have a shared understanding of the problems in each country, as it was not possible to achieve results without such collective understanding and sharing the responsibility for the solution. The lack of a culture of effective collective negotiations was probably one of the reasons for the delay in approving structural reforms. Social dialogue could not be built instantaneously but needed preconditions and was based on the gradual building of mutual trust and respect among social partners engaging in continuous exchanges through collective negotiations. True social dialogue would be beneficial both to the Greek economy and to other partners in the European Union. Moreover, compulsory arbitration was contrary to the acquis communautaire. The ETUC had reiterated that the requirement for compulsory arbitration to be abolished raised no misgivings and that its abolition would bring the situation in line with ILO Conventions and the European Social Charter. In conclusion, there was support for the proposals of the SEV to urge the Government to comply with ILO and European standards.

The **Employer members** recalled that several speakers had highlighted the lack of social dialogue at the national level. They had noted with concern that the Government's intervention suggested a resistance to adopting measures to come into full compliance with the Convention with respect to the issue of compulsory arbitration. The Employer members further reiterated their concern that the Government had not submitted a report on the application of the Convention to the Committee of Experts. While statistical information had been provided to the Conference Committee, it was necessary that the information be submitted to the Committee of Experts. Referring to the obligation un-der Article 4 of the Convention to encourage and promote the full development and utilization of machinery for voluntary negotiation, it was stated that the use of recourse to compulsory arbitration in the Greek system did not promote voluntary negotiation and that the Committee of Experts had repeatedly stated that regular and repeated recourse to compulsory arbitration was not consistent with the obligations in the Convention. It was the Employer members' position that compulsory arbitration was not

compatible with Article 4 of the Convention, and that existing law and practice in Greece did not seem to be justified by any acceptable exception. Therefore, the Government should introduce changes that banned unilateral recourse to compulsory arbitration, in line with the requirements of the Convention. The Government's reference to the ruling of the Council of State on constitutional obligations was not a complete answer to that issue. The Employer members urged the Government to re-establish without delay the ban on unilateral recourse to compulsory arbitration, requested it to report to the Committee of Experts on measures taken in that respect and to avail itself of ILO technical assistance in order to come into compliance with the Convention.

Conclusions of the 2018 CAS

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

The Committee expressed concern regarding the Government's submission related to the compulsory arbitration system and the decision of the Council of State concluding that the provision in Act No. 4046, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional.

The Committee also expressed concern regarding the Government's failure to provide a report to the Committee of Experts in time for its most recent session in November 2017.

Taking into account the Government's submissions and the discussion that followed, the Government was urged to:

- **ensure that unilateral recourse to compulsory arbitration as a way to avoid free and voluntary collective bargaining is employed only in very limited circumstances;**
- **ensure that public authorities refrain from acts of interference, which restrict the right to free and voluntary collective bargaining, or impede its lawful exercise;**
- **provide information on the number of collective agreements signed, the sectors concerned and the number of workers covered by these collective agreements;**
- **provide information and statistics related to complaints of anti-union discrimination and any remedial action taken;**
- **avail itself of ILO technical assistance to ensure the implementation of these measures; and**
- **report to the Committee of Experts on the implementation of these recommendations before its next session in November 2018.**

Taking into account the Government's failure to meet its reporting obligations in 2017, the Committee urged the Government to comply with its reporting obligations to the Committee of Experts in the future.

Concluding remarks

The IOE would appreciate that the CEACR takes duly into account all the information detailed in the present submission when examining the application in law and practice of Convention 98 in Greece.

Finally, and to increase transparency in the way in which the ILO supervisory mechanisms work, and further stimulate genuine tripartite dialogue at national level, the IOE kindly request

the Committee to publish the content of these comments in the ILO website – including in the NORMLEX Database - and in the printed version of the CEACR report.

Yours sincerely,

Kind regards,

Roberto Suarez Santos

Acting Secretary-General

The International Organisation of Employers (IOE) is the largest network of the private sector in the world, with more than 150 business and employer organisation members. In social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes, the IOE is the recognized voice of business. The IOE seeks to influence the environment for doing business, including by advocating for regulatory frameworks at the international level that favour entrepreneurship, private sector development, and sustainable job creation. The IOE supports national business organisations in guiding corporate members in matters of international labour standards, business and human rights, CSR, occupational health and safety, and international industrial relations. For more information visit www.ioe-emp.org