



## **LIVEWHAT**

### **Living with Hard Times**

### **How Citizens React to Economic Crises and Their Social and Political Consequences**

### **Report on legal analysis of rights depletion**

### **(Deliverable 2.3)**

### **WP 2: Policy responses to crises**

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**Table of Contents**

Executive summary ..... 3

Introduction.....5

1. Labor rights ..... 6

    1.1. Termination of employment contracts and dismissals ..... 7

    1.2. Unemployment ..... 10

    1.3. Right to unionize and strike..... 11

2. Social rights..... 16

    2.1. Sickness leave..... 16

    2.2. Parental leave ..... 17

    2.3. Poverty related rights..... 20

3. Fundamental rights of political activism ..... 21

Conclusion..... 25

References ..... 27

## **Executive summary**

This report describes the legal consequences of the economic crisis which has affected Europe since 2008. Particularly, it examines changes in citizens' labor, social and political rights in nine countries of the LIVEWHAT project: France, Greece, Germany, Italy, Poland, Spain, Sweden, Switzerland and the UK during the period of last ten years (2005-2014). The study is based on materials collected and summarized by all the nine partners of the consortium, though the final report and analysis is conducted by Katrin Uba, Uppsala University (UU, Swedish team).

Labor rights in this analysis refer to employment protection rights, rights related to unemployment benefits and rights to unionize and strike. Employment protection is measured in terms of dismissal process and these rights are relatively better protected in France, Germany and Sweden. The situation is worse in Greece, Spain and the UK, where the short period of prior notice given when an employment contract is terminated significantly increases the insecure position of employees. Some countries, such as Italy, provide good legal protection for only some groups of employees, and have left the rights of temporary and precarious workers unprotected. The number of people in these two categories is, however, growing as a result of the economic crisis since 2008. Conditions for the eligibility of unemployment benefits have also become stricter; fewer workers are entitled to benefits. Particularly significant changes have taken place in France, Greece, Sweden and Switzerland.

Strike law and the legal framework for collective bargaining were under pressure even before the crisis, mainly due to EU enlargement and related changes in labor mobility. During recent years the legal protection of collective action has changed less than other forms of employment protection, although we have noted some negative trends in Greece and the UK.

Protection of social rights, especially eligibility for benefits in the case of sickness leave or measures for poverty alleviation, has been relatively stable since the economic crisis of 2008. Some of the detected changes, for example the retrenchment of the previously generous Swedish sickness leave system, were not the result of crisis but the change in government. We have also identified one positive change: the increase of citizens' rights to social security through more flexible and inclusive parental leave systems in several examined countries

(Italy, Poland). These are expected to balance the otherwise negative trends of the labor rights.

Finally, we hear little about the limitations of citizens' fundamental rights in contemporary Europe. However, there is increasing willingness among the governing authorities to limit and regulate citizens' use of the freedom of assembly in many countries, and in some cases this is a direct result of the numerous street demonstrations opposing austerity policies. So far, many of the most restrictive proposals have been defined as unconditional (France, Spain, Greece). From the perspective of protection of citizens' fundamental rights, these trends call for further attention by civil society groups, scholars and politicians.

## Introduction

While the aim of the LIVEWHAT project is to provide evidence-based knowledge about citizens' resilience in times of economic crises, this cannot be achieved without information about the context in which citizens find themselves and examination of how the authorities and institutions first responded to the crisis. This report (together with the deliverable 2.4) provides the broader context of particular political and legal opportunities that affect citizens' behaviour and resilience in hard times. The nine countries examined – France, Germany, Greece, Italy, Poland, Spain, Sweden, Switzerland and the UK – have been affected differently by the economic crisis, but also have different legal and political systems which impact on how the authorities and citizens react to crisis.

The aim of the Workpackage 2 (WP2) has been to study the legislation and policies enacted by policy-makers as a response to crises and as a method of avoiding or limiting the negative consequences of this particular crisis. We have gathered systematic information on policy process using secondary sources such as policy documents and jurisprudence, as well as conducting interviews with key informants at the national and EU level. This particular report on legal analysis focuses on legal-institutional changes which affect *citizens' social and political rights*. The report combines two sets of analysis. First, we describe how labor rights, social rights and citizens' fundamental rights to political activism have changed in our nine examined countries since 2005. Second, we examine these rights and the consequent changes in comparative perspective across the examined nine countries. The year 2005 is an important starting point because it allows us to disentangle the reactions to 2008 crisis and the earlier processes of legislative change.

In addition to the event of crisis, the differences in legal systems and legal traditions of the countries examined also affect the changes or stability of the system of labor, social and political rights. For instance, all countries but Switzerland are related to the EU's legal framework, particularly to the Treaty of Lisbon, and the more recent crisis-related changes of the EU-regulations more broadly. The examined countries also represent different legal systems: French, German and Scandinavian (Swedish) systems are part of a civil law tradition. The systems in Greece, Poland and Switzerland have a German origin, while the systems in Italy and Spain have a French origin. UK has a common law system without a

written constitution. This report does not aim to explain the possible causal relationship between the different legal systems and the legislative changes adopted, but rather provides a comparative description of the current situation and of the changes since 2005.

We do acknowledge prior research which notes that similar legal systems often implement the rules similarly (Czinkota and Skuba, 2012). This suggests that we should see some differences in law implementation across French, German, Swedish and the UK systems. However, the process is also affected by the changes in the EU-level legislation, the decisions of the European Court of Justice, as well as the rulings of the national Constitutional Courts. For example, one should recall the stronger emphasis of social rights in the Treaty of Lisbon (in force since 1<sup>st</sup> December 2009), the cases of Laval and Viking which lead European Court of Justice's rulings that strengthened the labor rights in respect of collective action, or the decisions of the Spanish Constitutional Court regarding the unconstitutionality of the bill for changing the fundamental rights of public assembly.

## **1. Labor rights**

This report examines labor rights, which are described in the legislation on employment protection, regulations of unemployment benefits and the laws regulating the unionization and strikes. Labor rights are based on many international and European primary and secondary laws (e.g., *ILO Convention No. 158 on the termination of Employment of 1982* or *EU Charter of Fundamental Rights*, Article 30 or *Directive on collective dismissal*, 98/59/EC). We have examined how different national legislations regulate **employment protection (dismissals, contracts), entitlement to unemployment benefits, and the rights of unionization and strike in our nine countries**. We have left aside the discussion of EU legislation on the free movement of labor and citizens, because these issues have been covered in detail by other projects (BEUcitizens, deliverable 10.1) or in prior studies (review in Schömann, 2014). Our focus is on a comparison of national laws and the changes in these laws since 2005.

## 1.1. Termination of employment contracts and dismissals

The main scholarly works in the field of labor studies refer to issues of flexicurity i.e. workers are expected to accept the loss of jobs due to labor market flexibility (loosened rules of dismissal) if there is some security in respect of the unemployment benefits and further training. The system did not function well everywhere even before the crisis of 2008, but was threatened further by several austerity policies aimed at tackling the problems of the crisis (Crouch, 2012).

We have examined various procedures for terminating contracts in both public and private sectors in our nine countries. What are the rules for prior notice and entitlement to compensation (e.g. severance pay)? The results are presented in Table 1.1 (below). The note of dismissal has to be in a written form in all examined countries; in Germany even e-mails are not accepted. Still, the rules vary across countries depending whether there is a tradition of collective bargaining (France, Italy and Sweden) or not. In the first case, the rules of dismissal are based on collective agreements rather than some general national legislation. In some countries, e.g. Greece, the rules for public and private sector employees are different (the first are better protected), and in almost all of the countries the system also depends on the length of employee's service. These differences complicate the cross-country comparison of dismissal procedures, but the following example should be helpful. Let's assume that we aim to dismiss *a middle aged man who has been employed in private sector for 20 years*. In Germany, he should be informed about the dismissal seven months in advance, while in Greece the period is four months (used to be six until 2010), in Poland, Switzerland, and UK the period is only three months long. The shortest notice period is in Spain - 15 days (was twice as long i.e. one month until 2010). The length of the notice period would depend on the collective agreements in France and Italy, and in Sweden the three months period could be prolonged if the collective agreement requires so.

**Table 1.1 Procedural requirements for dismissals and compensation<sup>1</sup>**

Country	Notice period	Entitlement to and size of the severance pay	Comments
France	No minimal period, depends on collective agreements, sectorial agreements, or employment contract	1/12 of gross salary of the last 12 months or 1/3 of the salary for the last 3 months, whichever is the most beneficial for the employee	Rules differ somewhat for public employees with different rules applying for different functions and age
Germany	4 weeks to 7 months depending on years of service	½ to 18 months salary	Time before age 25 is not counted for service; collective agreements apply
Greece	4 weeks up to 4 months depending on years of service; (until 2012 it was 6 months)	2 to 12 months' salary when no notice has been given (changed rules since 2012)	No compensation if worked less than 12 months since 2010; manual workers have <u>no</u> notice period
Italy	No minimum; collective agreements determine, seniority applies	2.5 to 14 months' salary for unfair dismissal	Difference for companies with more than 15 workers (since 2012 the rule to re-hire the person does not apply for dismissals for economic reasons)
Poland	2 weeks up to 3 months depending on years of service	No state regulation, companies use 1 to 3 months' salary	No dismissal if one has 4 years to retirement
Spain	2 weeks (15 days), it was 1 month until 2010	½ to 12 months' salary, for unfair dismissal 1 -24 months (was 1 ½ -42 months until 2010)	Major changes since 2010
Sweden	4 weeks up to 6 months depending on years of service	Salary paid during notice period, no other	Notice applies from the 2 <sup>nd</sup> service month; collective agreements apply
Switzerland	4 weeks up to 3 months depending on years of service	Salary paid during notice period, no other	7 days for service under 1 month; collective agreements apply
UK	1 week to 3 months depending on years of service	Salary paid during notice period if the dismissal is for poor performance	Dismissal is procedurally unfair if no consultation with the individual has taken place (changed in 2013)

If we had chosen the example of a *young person with a short working history (six months)*, then the notice period would have been significantly shorter - from one week in UK to four weeks in Germany, Greece, Sweden or Switzerland. In France and Italy, the notice period would still depend on the collective agreement.<sup>2</sup> The rights of Spanish workers have depleted

<sup>1</sup> The detailed references to legislations, as well as more specific information about the dismissal process are given in the second deliverable of this working-package, the Deliverable 2.4.

<sup>2</sup> See even more details in thematic report "Dismissal - particularly for business reasons - and Employment Protection" published by the European Labor Law Network (2011, VC/2010/1636).

the most, while in Greece the changes have mainly affected the more elderly workers. It is even argued that the recent changes in Greek labor policies, which follow the suggestions of the European Commission, actually violate fundamental social rights as defined in many international agreements (Schömann, 2014:23).

It is important to note that the described rights of dismissal often do not apply to everyone, particularly for workers *with short-term contracts* or for *precarious workers*.<sup>3</sup> The last fact is alarming, as there has been a significant growth of such forms of employment relationships since the economic crisis of 2008. Hence, many younger workers in Greece, Italy, Poland and Spain are excluded from employment protection (see detailed analysis of this in McKay et al., 2012).<sup>4</sup> As many social rights (e.g., sickness leave, parental leave or pensions) also are related to a person's employment situation, individuals in precarious work are lacking both adequate employment and social protection.

Entitlement to severance pay also varies greatly across the examined countries. Both rights of payment and amounts of payment depend on collective agreements, contract types, the time at service and whether the dismissal was fair or not (see also Boeri et al., 2013). While notice periods were relatively similar in Germany and Sweden, the severance pay varies significantly. The severance pay amounts up to 18 months' salary in Germany; in Sweden there is no regulation of such payment. One could divide the examined countries into two groups: countries that do not provide any clear severance payment for fair dismissals (Italy, Poland, Sweden and Switzerland) and countries that do provide it (France, Germany, Greece, Spain and the UK). In the case of unfair dismissals, employees are entitled to some compensation in all countries. However, in Greece the size is decided in court rather than by any specific regulation. Similarly to the rules governing dismissals, Greece and Spain have tightened the conditions for severance payments more than any other country.

In conclusion, employment protection rights are the most inclusive in France, Germany and Sweden and the most exclusive in Spain. Poland and the UK do slightly better than Spain

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<sup>3</sup> Pregnant employees and those on parental leave are protected from dismissal in all nine countries. Parents of young children cannot be dismissed in Greece and Italy, and employees with disabilities in Germany, Greece, and Sweden.

<sup>4</sup> See further details about the protection and rights of precarious workers in a report "Study on precarious work and social rights" by WORKINGLIVES research institute (VT/2010/084), published in 2012, [http://www.adapttech.it/old/files/document/21184londonmet\\_042012.pdf](http://www.adapttech.it/old/files/document/21184londonmet_042012.pdf)

thanks to the longer upper limit of the notice period. Italy does provide good protection to employees on paper, but the growing numbers of precarious workers who enjoy very limited labor rights place the country in the mid-position of our comparison. The changes in Greece have depleted the rights of workers since 2010, but their general protection is still better than in the Spanish case. Further details about dismissals, vacations, or minimum salary can be found in the country chapters of the Deliverable 2.4.

## **1.2. Unemployment**

As noted above, the *flexicurity* system combines employment protection and entitlement to unemployment benefits. Usually, everyone who has had any contract-based employment is eligible for some support from the state. The duration and payment of benefits obviously differ. As the detailed picture of the development and situation of the European support system for unemployed is well described in Stovicek and Turrini (2012), Esser et al., (2013) and Venn (2012), we only focus on the comparison of the examined nine countries (see Table 1.2 below).

The changes since 2005 refer to the depletion of workers' rights: the conditions for eligibility have become stricter; fewer workers are entitled to benefits. Particularly significant changes have taken place in France, Greece, Sweden and Switzerland. While in general changes are related to austerity policies, in Sweden (as well as in Germany in the early 2000s) the economic crisis was not the direct cause of change. Rather, changes were due to the new centre-right government which came to power in Sweden in 2006. The changes tightened the conditions for being eligible to unemployment benefits, as well as increasing the obligations to report to the unemployment office. Despite the changes, the Swedish system is still more generous and less restrictive than that of many other countries (Greece, Italy or Poland). The eligibility system in the UK is by scholars seen as the least strict, but since the introduction of Work Programme in 2011 the obligations of a job-seeker have significantly increased. The Spanish example with its easy dismissals and relatively strict rules of eligibility to unemployment benefits demonstrates the clear failure of flexicurity system (see more in Dubin and Hopkin, 2013).

**Table 1.2 Eligibility criteria for unemployment benefits**

Country	Coverage*	The employment period needed for eligibility	Comments, changes
France	3	4 months of insurance (during last 28 months, 36 if over 50)	Before 2009, 6 months during the last 22 months
Germany	3	12 months employment during the last 2 years	Changes in early 2000s worsened the conditions
Greece	3.5	4 months (125 days) during the last 14 months excluding 2 months prior dismissal; for the 1 <sup>st</sup> time, it is required to have 200 days for the past 2 years (or 80 days/year)	Since 2014, one cannot claim the benefit for more than 400 days during the last 4 years; public sector has different rules
Italy	4.5	24 months of insurance and 52 weekly contributions during the last 2 years	The reform of 2012 cut the size and duration of the benefits
Poland	3.5	12 months employment over the 1.5 years (employees & self-employed)	Difficult for those with short-term contracts
Spain	4	12 months payments to social security contributions during 6 years	Except for domestic workers, interns and trainees
Sweden	3	12 months payment of insurance or 6 months employment during the last year	2-tier system: basic & earnings related benefit, stricter rules since 2007
Switzerland	-	12 months insurance (employed in specific scheme) over the 2 years	More restrictive since 2011
UK	2.5	Less than €7530 savings (income) or has paid enough for the insurance during the last 2 tax-years	Two types: income-based and contribution based

**Note:**\*refers to the conditions for eligibility to unemployment benefits. The indicator is an index and provides a score between 1 (least strict) and 5 (most strict). Source: Stovicek and Turrini (2012).

### 1.3. Right to unionize and strike

The right to unionize and strike is an important part of the fundamental political and labor rights of Western Europe. This has not always been so, because the Court of Justice of the European Union (CJEU) explicitly recognized ‘the right to take collective action’ as late as 2007. The recognition was made in relation to the famous court-cases of *Viking*<sup>5</sup> and *Laval*<sup>6</sup>, which both focused on labor rights in the context of the EU legislation on mobility (see more in Kilpatrick, 2014; Bucker, 2011). Nevertheless, rights to unionize and strike were recognized in most of the examined countries long before 2007, as all of these countries have

<sup>5</sup> Case C-438/05 International Transport Workers’ Federation and Finnish Seamen’s Union v Viking Line ABP and OÜ Viking Line Eesti.

<sup>6</sup> C-341/05 Laval [2007] ECR I-11767.

ratified the Convention No. 87 “Freedom of Association and Protection of the Right to Organise” of the International Labor Organisation (ILO) since 1948. While the detailed analysis of the development, importance and role of international and EU-level regulations for national labor laws is provided in Novitz (2014), our focus is limited to the comparison of selected countries.

The right to become a member of a trade union is guaranteed by the constitution of almost all nine countries (the exception is the UK, which has no written constitution); it is one of the fundamental rights of freedom of association. The major limitations of this right are related to specific occupations and the legal tradition at play, which between them differentiate the status of workers and civil servants (see Table 3.1). Military and security workers have no right to unionize in France, Poland and Spain. The same also applies to judges in Poland and Spain. All employees with civil law contracts (i.e. relationship to employer, viz. the state, is regulated by civil law) are excluded from the right to unionize in Poland (see also Czarzasty et al., 2014). Such legislation is restrictive since elsewhere such employees have a right to unionize, though often have no right to strike. Greek laws, which guarantee the right to unionize to those with a legal contract of permanent employment, are also restrictive. This is particularly problematic for younger people who are increasingly employed via temporary contracts (Kretsos, 2011).

**Table 3.1 Unionization and the right to strike**

Country	% in TUs	Unions – right to be involved	Strikes – restrictions apply
France	8	All employees, with some exceptions applying to those working in prisoners and the military, as specified in the constitution	For police, military, prison officers, and some functions in the justice system; No political strikes, solidarity strikes allowed sometimes
Germany	18	Anyone	For civil servants and people employed by the churches (often providing child/ hospital related public services); No political strikes; restricted solidarity strikes
Greece	25	Anyone who has worked for at least 2 months for the same employer and have a legal contract of permanent employment	Judicial officials, security corps, employees in public enterprises and local authorities are not allowed to join political strikes; solidarity strikes allowed
Italy	35	Anyone, changes in respect of bargaining rules	The event is illegal if it threatens the “essential public services”, Political strikes allowed; solidarity strikes allowed sometimes
Poland	15	Anyone, but those with civil law contracts and judges, members of the National Broadcasting Council, the Ombudsman, the president of the Supreme Audit Institution and the president of the Polish National Bank, military and security forces, workers of the Central Anticorruption Bureau	For those with civil law contracts and military, security and prison services, officials of state/ local authorities or of courts and public prosecutors’ offices; Restricted political strikes, solidarity strikes allowed
Spain	19	Anyone but military and security forces, active judges, magistrates and public prosecutors; since 2007 illegal migrant workers have a right to unionize and strike if they have a work permit	For military and security forces, active judges, magistrates and public prosecutors; civil servants <i>only</i> if guarantee the provision of essential services; No political strikes, solidarity strikes sometimes allowed
Sweden	70	Anyone	For unions which have agreed with the labor peace; Restricted political strikes, solidarity strikes allowed
Switzerland	21	Anyone	For civil servants or senior management staff; for unions which have agreed with the labor peace; No political strikes;
UK	26	Anyone	Case basis, rules more restrictive since 2014; No political or solidarity strikes allowed

Legal restrictions or lack of legal opportunities for membership and the real trade union membership – 8% in France to 70% in Sweden – are not clearly correlated. Membership of unions has decreased over time (Visser, 2002; Schnabel, 2013; Schmitt and Mitulkewicz, 2012), but is not related to changes in legislation. Rather, it refers to structural changes in the labor market, atypical contracts (precarious workers), generational value change or unions' recruitment strategies (Schmitt and Mitukiewicz, 2012; Ebbinghaus and Visser, 1999). It is well-known that temporary and precarious workers are rarely members of a union (Ebbinghaus, 2011). Still, membership is not the best indicator of the mobilisation of trade unions, as French workers (8%) are much more active than workers in the UK (26%) (see more in Hamann et al., 2012). The relative inactivity of UK workers is related to the lack of legal opportunities in the UK (Kilpatrick, 2014).

Strikes are usually the last course of action for trade unions involved in the collective bargaining situations. Despite the decline in membership, trade unions have been active in the mobilisation of strikes and demonstrations since the start of economic crisis in Greece (Rüdig and Karyotis, 2014; Diani and Kousis, forthcoming; Kousis and Karakioulafi, 2013) and elsewhere (Hamann et al., 2012; Kousis, 2013). Our study leaves the amount of actions aside and focuses only on legal opportunities i.e. rights to strike as described in Table 3.1.

The legal status of strike<sup>7</sup> in contemporary Europe is not only defined by national legislations, but also by international and European jurisprudence. Some scholars even call strike law *polycentric* because it is affected by many different legal processes (see Kilpatrick, 2014). The first process refers to the inclusion of the right to strike in Article 28 of the *EU Charter of Fundamental Rights* (in force with Lisbon Treaty since December 2009). The second change took place when the *Court of Justice of the European Union (CJEU)* ruled that some particular actions are *unlawful* collective actions (in relation to the cases of *Laval* and *Viking*).<sup>8</sup> The decision made clear that solidarity strikes, which aim to provide posted workers (i.e. those from other country) higher wages than the minimum, are unlawful. In addition to these processes, the recent austerity measures have also pressed for changes in national labor laws, particularly in Greece (Kouzis, 2014). For example, new laws introduced in 2011 and

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<sup>7</sup> There is no clear legal definition of collective action for trade unions, but they are allowed to choose the appropriate legal strategies (strikes, lockouts, boycotts).

<sup>8</sup> The Court of Justice ruled that the collective action is justified insofar as it aimed to prevent a worsening of terms and conditions of employment, provided that it was a last resort action (see more about the case of *Laval*: C-341/05 *Laval* [2007] ECR I-11767 and *Viking*: C-483/05 *Viking* [2007] ECR I-10779).

2012 abolished the principle of the scalability of collective agreements and limited their after effect, which aims at the downgrading of collective agreements and at further lowering of wages, which are now set at the individual or enterprise level instead of the sectorial level (Zambarloukou, 2014).

The right to strike can be described in two ways. First, there is a clear cross-country difference in terms of agency. In France, Italy and Spain the right to strike is individual, while in Germany, Greece, Poland, Sweden, Switzerland and the UK such right is guaranteed for trade unions (Laulom and Lo Faro, 2014). Therefore, during times of labor peace i.e. functioning collective agreements, unions cannot mobilise legal strikes. Such situations might lead to the mobilisation of wildcat strikes i.e. actions not authorised by unions. In Germany and Sweden, the legal status of a strike is more related to the agent who takes the action and to the principle of proportionality defined by the legal practice (Bruun and Johansson, 2014). The proportionality rules require a balance between the final goal and the extent of the strike. This is particularly important in the case of solidarity strikes, which are legal almost everywhere except Spain (some restrictions apply in France and Germany). There is also a category of political strikes i.e. for pressuring elected authorities, but such actions are declared unlawful in all examined countries apart from Italy and Sweden (see also Warneck, 2007). In Sweden, however, government employees have no such right. Regardless of these rules, general strikes with political motives still take place in many of the examined countries such as Spain, France, Greece and Italy (Hamann et al., 2012, Diani and Kousis, forthcoming).

Second, we can examine which kinds of employees have a right to strike. Some specific sectors or so-called workers in *essential services* often have a limited right to strike (e.g., in Germany, Italy, Poland and Spain, restricted rights for military personnel in France and Spain). This distinction is related to the idea that civil servants are not allowed to go on strike because of their special relationship to the state – their contracts are regulated by public rather than labor law. These workers also are often protected against dismissals and their salaries are set by rules other than collective agreements. For example, in Poland, civil servants are often "nominated" (have to pass a qualifying exam), which is connected to some benefits: increased wages, additional holidays, guaranteed employment stability etc., but they also have to be politically neutral and do not have a right to strike. The restricted right to strike for civil

servants has been contested in Germany because the rulings of the European Court of Human Rights stand contrary to the German Constitution (Schubert, 2012).

In sum, strike law and the legal framework for collective bargaining have both been under pressure during the years of crisis and this has resulted in real changes in Spain and the UK. The legal protection of collective action - unionization and strikes – has still not changed as much as has been the case for other forms of employment protection. In countries like Spain, rights have even been broadened such as when the authorities gave migrant workers with work-permit the right to strike in 2007. On the other hand, there is also an ongoing discussion on the need to regulate obligatory essential services that would redefine the right to strike for particular sectors in Spain.

## **2. Social rights**

Citizens' rights to social security are clearly related to their opportunities to receive state-provided social assistance, often in terms of minimum income protection, at the times of need (unemployment, sickness, poverty due to increased expenditures etc.). Our analysis of social rights focuses on two issues: whether the eligibility to welfare benefits is mainly work-related or whether there are any non-contribution based social benefits; and how these issues have changed since 2005. The following discussion does not focus on the size of the benefits, but solely on their eligibility and conditionality (i.e. social rights).

### **2.1. Sickness leave**

Eligibility for sick-leave is related to employment status almost everywhere. In relation to the economic crisis of 2008, this has also changed due to the increase of nonstandard work arrangements (temporary contracts, precarious work). While healthcare is generally guaranteed to all legal residents (employed or not), entitlement to benefits such as daily allowances in the case of sickness are related to employment status. The rules vary significantly across the examined countries and have also changed since 2005. While in Germany, the employee receives her full salary from the employer during the first six weeks of the sickness period (70% of the salary during the following 66 weeks), there are very strict rules concerning how many days of insurance are required for any sickness benefit in Greece.

The generous system of full-payment is Germany does not, however, apply to those (usually young or immigrant) workers who have not worked for more than four weeks in a new job.

The depletion of sickness-leave related rights has taken place everywhere. German temporary workers have lost their generous six-week benefit since 2009, while the conditionality for sickness benefits has become even stricter in Greece. Since 2007, Greek employees must have paid contributions to an insurance system for three months before they are eligible for any sickness benefit. A similar trend is visible in Spain, where the control of eligibility has become stricter.

It is noteworthy that changes have also taken place in countries which were not hit by the economic crisis. Namely, Sweden had the most drastic change in sickness benefit payment system in its history in 2007. For the first time, time-restricted assessments of the individual's working capacity were introduced (91 and 181 days). This was challenged by politicians as well as scholars, as it is argued that employees are less motivated to report themselves as sick (Hägglund, 2013). If we consider conformity with the European Social Charter, then Spain and the UK are criticized due to inadequate statutory sick payments. Other countries receive no direct criticism, but it is important to recall that Switzerland, which is also not a member of the EU, has not signed the Charter.<sup>9</sup>

## **2.2. Parental leave**

Work-life balance is of crucial importance to European citizens and there is a growing expectation that working parents should be able to participate in employment and care, but also have time for leisure and family life. Hence, the right to parental leave has become increasingly important. Systems of parental leave differ significantly across our examined nine countries (Table 2.2, below).

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<sup>9</sup> Source: Council of Europe, country factsheets, <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/>

**Table 2.2 Paid parental leave, eligibility and length<sup>10</sup>**

Country	Eligibility	Fathers	Paid leave* (months: income)	Comments, changes
France	Any parent	Can share	3: 100% of wage, ceiling 6: 560 Euro/m	Increase by number of children (36 months if more than 2 children)
Germany	Any working parent	Can share, 2 bonus months	14: 67% of wage or 28: 33% of wage, Ceiling	
Greece	Any working parent (differences for public and private sector)	Can share, 2 days paid by employer	Public: 12: 100% Private: 2:100% of wage 3: employer 6: minimum wage	There is a breastfeeding and child-care leave for 30 months (i.e. flexible/ reduced hours of work) or extra 9 months paid leave if do not use the right for reduced schedule
Italy	Any woman	1 day compulsory, 1 month bonus	4: 80% of wage 10: 30% of wage	Compulsory for 5 months
Poland	All insured parents (employees or social security)	2 weeks (100%) + 26 weeks (60%) only after mother has used her leave	Mothers 24: 80% of wage Fathers: 6 :60% of wage	Paid leave started in 2013, fathers can not use their leave if mothers are not eligible for the leave
Spain	All in social security registry & have worked some days	10 weeks shared with mother	5: 100% of wage, ceiling	Many in temporary contracts do not get their contract renewed
Sweden	Any parent	60 days compulsory, equality bonus	13: 80% of wage, ceiling 3: 600 Euro	More flexible rules since 2010, 2012
Switzerland	Any employed woman with a social insurance	none	3.5: 80% of wage, ceiling	Insurance should be obtained 9 months before the birth and women must have worked at least 5 months during pregnancy
UK	Employed women with salary more than £111 per week or those who worked 26 of 66 weeks before child-birth	Will have the right from 2015	1.5: 90% 8: 580 Euro/m	More flexibility from 2015

Note:\* adopted from Wall and Escobedo (2013) “Parental Leave Policies, Gender Equity and Family Well-Being in Europe: A Comparative Perspective”, in Moreno Mínguez, A. (Ed.) *Family Well-Being. Social Indicators Research Series*, Springer, pp. 103-129.

<sup>10</sup> Additional information on country comparisons could be found in Moss, P. (2014) *International Review of Leave Policies and Research 2014*, [http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)

Although the EU Directive which gives direct guidelines for parental leave policies in the EU (96/34/EC) is gender-neutral and the Directive 2010/18/EU requires that member states provide at least four months parental leave per parent, there are still several countries that do not provide any significant paid leave for fathers. The situation is particularly problematic in Switzerland, but this country is also not a member of the EU and therefore experiences less pressure for compliance. The recent change that gives *one* compulsory day and one bonus month to fathers in Italy is definitely an improvement, but still very far from the three months obligation in Sweden. The bonus systems in Germany, Italy and Sweden should encourage fathers to stay at home, but only in Sweden the system is motivating enough and increasing number of fathers exercise their right to stay at home with their children.

Policies covering parental leave and related gender equality issues are well discussed in prior research (e.g. Ray et al., 2010; Richardson, 2010). Here we describe some significant changes in the length and flexibility of leave-taking in the examined countries. The most significant change is in Poland, whose system for paid parental leave started in 2013. This system also provides, for the first time in Poland, fathers the right to stay at home. Similarly, changes in the UK suggest the system is becoming more flexible. It allows the combination of working and staying at home, and has increased the rights of fathers. There are also increasing opportunities for migrant families. For instance, in Sweden, even if the child is five years old when a family immigrates to Sweden, one of the parents has a right to stay at home and collect the parental benefit for over a year (though with the lowest rate meant for those without prior income).<sup>11</sup>

Employment protection during parental leave is strong, since in all the examined countries employers are not allowed to dismiss pregnant women or the employee on parental leave. Still, there some problematic practices. In Spain, there are numerous cases where temporary contracts are not renewed, while women who fall pregnant or stay at home with children are often dismissed with the help of previously signed ‘blank papers’ in Italy. Such examples support the argument of prior research, which demonstrates that the increased generosity of parental leave does not automatically mean increased gender equality (Thévenon, 2011).

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<sup>11</sup> See more in <http://www.ifau.se/Upload/pdf/se/2013/wp2013-04-Paid-parental-leave-to-immigrants.pdf>

Finally, it is important to note that only working or insured (i.e. those in social registry) parents are eligible for paid parental leave in the majority of the countries. The rules in Switzerland are particularly strict, requiring that women must have worked during five months of the pregnancy. Only in France and Sweden there are no specific employment-related requirements for eligibility. This is particularly beneficial for immigrant families, who often do not have any working history in their new homeland.

### **2.3. Poverty-related rights**

Inadequate income, whether in the form of a very low wage or non-functioning social assistance, is usually a hurdle for escaping poverty. The long-term development of European social assistance programs has decreased the importance of distribution instruments and created a system where benefits are strongly related to activation programs. This means that there are increasing numbers of obligations and conditions the poor have to fulfil to be eligible for poverty-assistance programs (Nelson, 2013). The situation of poverty alleviation programs before the crisis was also considered inadequate (Ibid.). Still, in our examined countries the responsibility of poverty-related social programs is often delegated to local authorities (Spain, Sweden, Italy) and this complicates the cross-national comparison. One general characteristic of all countries is the means-tested minimum income scheme, which slightly increased in many of the crisis-affected countries, but remained the same in others e.g. in Poland (see more in Marchal et al., 2014; and Deliverable 2.4). There have been relatively few changes in access to benefits, since rules of eligibility have not changed much in the examined countries (prior studies have noted changes elsewhere, Marchal et al., 2014). Still, France and Italy have been reported as violating the European principles of the right to protection against poverty and social exclusion (Article 30 of European Social Charter), particularly in respect of their treatment of immigrants (or the Roma population). However, the European Court of Justice has not ruled anything in relation to social rights violations according to the European Social Charter. This is so because the rights described in the Charter of the Fundamental Rights of the E, are not seen there as *rights* (which have to be guaranteed), but as *principles*. The legal significance of the Charter is actually small because rights must be respected, while principles must be observed (Tuori and Tuori, 2013).

In sum, considering that in the context of economic crisis there is a growing need to use poverty alleviation measures, one could have expected some policy changes that directly address this issue. However, our data suggests that social rights in general have changed less than labor rights. Rights for paid parental leave have increased, some sickness-related rights have decreased, but there are also examples of how countries have tried to alleviate problems by introducing assistance and activation programs for those of low or no income (e.g., Sweden, UK; see Deliverable 2.4 country reports for more details).

### **3. Fundamental rights of political activism**

Freedom of assembly and association is one of the fundamental political rights, protected both by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as the European Convention of Human Rights and The Charter of Fundamental Rights of the EU (since 2009, Treaty of Lisbon). Thus, it is not surprising that all examined countries mention this right in their constitutions or in some major Human Rights related legislation (UK, Human Rights Act 1998).

However, there are some minor differences in terms of mandatory prior notice or permission for public assemblies. In some of the examined countries these rules have been changed due to protests against austerity measures since the crisis of 2008 (Table 3.1.). Particularly important are some proposed and accepted legislative changes in Greece (2009-2013), Poland (2012), Spain (2010-2013) and the UK (2011). Legal opportunities for protest in Greece used to be very open, as this is the only country in our sample that has no rule of prior notice. This might change if the proposal to allow the police to ban events that burden the administrative, economic, and cultural life of the Athens becomes a law. This proposal was made by the mayor of Athens in 2012, while a year earlier the conservative party made a similar proposal to limit rights to demonstrate. Until now these bills have not been adopted by parliament, but in 2009 parliament did ban the covering of activists' faces during demonstrations. Moreover, one recent decree bans the occupation of entire roads and the interruption of traffic by small gatherings in cities with a population over 100, 000.

In Poland, there was a discussion about whether the existing fines for organizing a spontaneous i.e. unregistered public assembly are consistent with the constitution, and the

Constitutional Tribunal (10.07.2008) decided that they are. The ruling did not lead to a more precise definition of spontaneous manifestation as was expected by civil society. Instead, the authorities proposed to prolong the period of prior notice from three to six days before the demonstration in 2012. The proposal was heavily criticised by the OSCE and local civil society, and the accepted legislation actually shortened the notice period by removing the word ‘working day’ from the text.<sup>12</sup> Even in Poland, there is a probable trend towards depletion of citizens’ rights because authorities have discussed options for banning covered faces during public assemblies since 2014. A similar ban already exists in Greece, Germany, Sweden and Switzerland.

In Spain, the government presented a bill which introduced punishments for public offence (the revision of the Law on the Protection of Public Safety, November 2013). Offence was defined as shouting slogans or carrying signs which could be considered as “harmful or abusive to Spain or to any of its regions”.<sup>13</sup> The proposed fine was high – up to €30,000. The proposal also regulated conditions for breaking up street demonstrations and granted private security guards the power to help the police in this task. This restrictive bill was hardly criticized by the opposition, which argued that the Popular Party government intended to suppress public discontent with austerity policies. The Spanish General Council of the Judiciary and the Council of Attorneys warned that the proposal might be unconstitutional. The proposed change has not been accepted by the parliament.

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<sup>12</sup> OSCE/ODHIR (2012), Note on the Draft Law Amending the Law on Assemblies in Poland, Opinion-Nr.: FOA-POL/207/2012 (YA) from 21 May, 2012

<sup>13</sup> See more in Amnesty International (2014) Spain: The right to protest under threat. Index Number: EUR 41/001/2014 and Duva, Jesús (2014, May 28th). Spanish government tones down its controversial Citizen Safety Law. El País. Retrieved from [http://elpais.com/elpais/2014/05/28/inenglish/1401272039\\_980140.html](http://elpais.com/elpais/2014/05/28/inenglish/1401272039_980140.html)

**Table 3.1 Legal framework for the freedom of public assembly**

Country	Prior registration of demonstrations	Limitations, reasons for prohibiting the event	Comments, changes
France	Notice to local authorities at least 3 days before the event;	Serious threats to public safety	Courts are discussing the interpretation of an administrative decision which allows to prohibit racist, anti-Semitic or xenophobic meetings
Germany	Notice to local authorities required at least 48h before the announcement (there are some opportunities for spontaneous demonstrations)	Serious danger to public safety or order	Not allowed to cover faces; neo-nazi demonstrations have “symbolic” limitations in Saxony and Bavaria
Greece	Proposed law about prior notice at least 24h before (2012)	Serious disturbance of social and economic life or public safety; in large cities (>100000) small groups are not allowed to interrupt traffic (2013)	It is not allowed to cover faces since 2009; prohibition of protests via simple process is under discussion in Athens since 2012
Italy	Notice to local authorities at least 3 days before the event;	Anticipated threat to public order, morality or health; not allowed in places of strategic interest (military, construction site of the new railway [2011])	Proposals to use “anti-hooligan legislation” against demonstrators since anti-austerity protests in 2010; police got right to use pepper spray in 2014
Poland	Notice to local authorities at least 3 days prior the event of more than 15 people, <u>no</u> permission needed for occupying public roads (2006); events in certain places (embassies) need permission from police	State security; public order, health or morality; rights & freedoms of other people, prohibited at former Nazi Extermination Camps	Since 2012 leaders are held responsible for stopping the public order violations; police presence became easier; a pride parade in Warsaw was banned in 2005
Spain	A detailed notice at least 10 days before the event with more than 20 people; (exceptions for 24h events apply)	Significant disturbance of public order, involving danger to persons or property, no paramilitary uniforms	Proposals to redefine “public order” (more restrictive) since 2010
Sweden	Permissions required (otherwise a fine), detailed application to local police “in good time” (usually a week before), costs 28 EUR	Serious threats to public order and safety (very rare events); racial hatred law applies	Police has to protect the activists (an issue with increasing radical right/left conflicts); ban to cover face since 2005 (not often applied)
Switzerland	Permissions required, some cantons issue licences; procedure varies significantly across cantons and municipalities	Serious or immediate danger and cantonal restrictions	Geneva have made their rules more strict (2008; 2011); it is not allowed to cover faces in Basel, Zürich, Bern, Luzern, Thurgau & St. Gallen (2009)
UK	Notice to authorities at least 6 (England, Wales) or 28 days (Scotland, N-Ireland) before any “moving” event (otherwise a fine). Static demonstrations need no prior notice, but organisers are strongly advised to do that	Serious public disorder, damage to property, disruption of the life of community or intention to intimidate others; restricted areas, where some actions (setting up tents) are prohibited	Changes in regulations in 2011 as a reaction to Occupy movement; rarely used option to ban demonstrations in a district for three months in the case of likely serious public disorder

In the UK, the parliament adopted the “Police Reform and Social Responsibility Act, 2011” which was a direct response to the economic crisis related occupy movement. The law prohibited “*erecting or keeping erected in the controlled area of Parliament Square (i) any tent, or (ii) any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period*” (2011:Section 143.2). Prior regulations from 2005 had already regulated public assemblies which take place around Parliament, Whitehall and Downing Street, but the change of 2011 spelled out clearly all detailed restrictions. Hence, even here one can note the trend towards more limited opportunities for public assemblies.

All changes in the legislation regarding freedom of assembly are not directly related to the austerity protests or policies. In Germany, for instance, the stricter regulations of public assemblies at the regional level are mainly related to the increased activism of right-wing radicals (neo-Nazi demonstrations). These rules also are of symbolic character and have often not been applied. The same symbolic character applies to the Swedish ban of covered faces during public assemblies. Similarly, the restrictions adopted in Switzerland, in the canton of Geneva, were not the result of economic crisis but a long-lasting inquiry. The “*Loi sur les manifestations sur le domaine public*” introduced fines for those responsible for demonstrations that had not been in compliance with public order. The law also gave authorities an opportunity to refuse any new permit for one to five years to those who have formerly organised overcrowded demonstrations (art. 10A). This last instance was approved in a referendum of 2011, but does not apply today because the Federal Tribunal considered it unconstitutional in 2011.

Although freedom of assembly and association are well protected by the constitutions of the examined countries, the described changes describe a clear pressure to limit these rights. While the issue of security has been the reason for prior limitations, the new contemporary proposals seem to be inspired by numerous anti-austerity protests.

## Conclusion

There are several studies on the legal challenges of tackling the Eurozone crisis (Hofmann, 2013; Tuori and Tuori, 2013), but little attention has been paid to citizens' labor and social rights (but see Kilpatrick, 2014). Even less is known about changes to or the general picture of citizens' fundamental rights of freedom of assembly. Rights of freedom of assembly define the legal opportunities for citizens to react in public to governments' austerity programs or other policy measures. This report has discussed these issues with the help of unique data from nine countries, as well as drawing from secondary sources.

Legislative changes have strongly influenced the daily lives of citizens, but one could also examine these as challenges to European treaties (Maastricht, Lisbon) and charters. For instance, the Lisbon Treaty directly refers to democracy and invokes citizens' equality (Art. 2) or transparency and the involvement of civil society in policy process (Art 15). These principles were clearly challenged when Troika (European Commission, European Central Bank, and IMF) proposed austerity measures via Memorandums of Understanding for crisis-affected countries such as Greece or Spain. Crisis-related changes to public policies have arguably reduced the sovereignty of the Member States, but have decreased the democratic input legitimacy at national and the EU-level (Tuori and Tuori, 2013). The report presented supports these findings, as it demonstrates the clear depletion of citizens' labor rights. Today, there is less protection against dismissals and there are tightened conditions for receiving unemployment benefits in almost all the countries compared to ten years ago. Particularly significant changes have taken place in crisis-affected countries such as Greece and Spain. The right to unionize and strike have not changed as significantly as other labor rights. This could be the result of opposition from organized labor or the fact that some more fundamental rights are more difficult to change due to the legal traditions of the examined countries. This is also demonstrated by the incremental changes in the regulations of public assemblies (Spain, Greece, the UK), which limit citizens' freedom of assembly, especially using some forms of action or restricting the areas accessible to protestors.

We have found relatively small changes in social rights and this confirms the results of prior studies. The only significant change lies with the improvement of the rights of parents. Although more could be done to decrease gender inequality in the regulation of parental

leave, many countries have introduced bonuses that encourage and allow fathers to enjoy the right of being home with their children. This is also in compliance with the EU Directive 2010/18/EU.

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