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# Bachelor Thesis

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UNIVERSITY OF TWENTE.

Normative Power Europe:  
A case study of the EU's external promotion of core labour standards  
in third countries

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## ABSTRACT

The Bachelor Thesis will focus on the assumption that the European Union constitutes a normative power globally, using the EU's external promotion of the International Labour Organization's Core Labour Standards (CLS) in third countries as a case study. As the concept of a normative power encompasses almost every dimension of a state's or organization's external action and is far too broad to deal with in a single thesis, only one but significant dimension shall be used and analyzed. Thus the overarching research question will be:

*RQ: To what extent is the European Union a normative power with regard to the external promotion of the International Labour Organization's core labour standards in third countries?*

The thesis will comprise three analytical steps that together shall make it possible to answer the Research Question properly: (1) a conceptual analysis of the ILO's core labour standards and their meaning in the European context, (2) an analysis of the EU's role in the ILO, and (3) assessing and evaluating the EU's normative power in third countries, using three of the most current and advanced international agreements, namely the Cotonou agreement, the CARIFORUM Agreement, and the EU-South Korean Free Trade Agreements, and the EU's GSP+ arrangement. Based on the results of the three-step analysis, it shall be discussed if the EU constitutes a global normative power.

## ABBREVIATIONS

<b>A</b>	ACP	African-Caribbean-Pacific
<b>C</b>	CARIFORUM	Caribbean Forum of African, Caribbean and Pacific States
	CLS	Core Labour Standards
	CCFRW	Community Charter of the Fundamental Social Rights of Workers
<b>D</b>	DFPRW	Declaration on Fundamental Principles and Rights at Work
	DG	Directorate-General
<b>E</b>	EC	European Community
	ECJ	European Court of Justice
	EPA	Economic Partnership Agreement
	EU	European Union
	EUCFR	European Union Charter of Fundamental Rights
	ECHR	European Convention on Human Rights
<b>F</b>	FTA	Free Trade Agreement
<b>G</b>	GSP	Generalised Scheme of Preferences
	GSP+	Special Incentive Arrangement for Sustainable Development and Good Governance
<b>I</b>	ILO	International Labour Organisation
<b>N</b>	NPE	Normative Power Europe
<b>T</b>	TEU	Treaty on European Union
	TEEC	Treaty establishing the European Economic Community
	TFEU	Treaty on the Functioning of the European Union
<b>W</b>	WTO	World Trade Organisation

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## 1. INTRODUCTION

The European Union has become an aspiring actor developing itself beyond its internal conduct with the member states. It has established an increasing network of external relations with other states and international organisations. Some may argue that the EU is on its way to become a global actor, others will say it already is. The EU with its unusual or *sui generis* structure constitutes an actor who combines intergovernmental with supranational elements for the first time on the international stage. Thus, other actors have to adapt to and accept a non-state actor that behaves like a state. All the more significant and exciting is the question what role the EU occupies and what power the EU actually has to shape world politics, a question that is important to ask frequently. Besides the question if the EU has power to shape global politics, it is necessary to look at the type of power the Union is using in its relations. At the beginning of the 21<sup>st</sup> century, Ian Manners started a debate with his hypothesis that the EU is neither a military power, nor a civilian power, but a normative power or to put it differently, ‘a changer of norms in the international system’.<sup>1</sup>

The Normative Power Europe (NPE) approach is not new. E. H. Carr described in his book *The Twenty Years' Crisis, 1919-1939* published in 1962 as one of the first modern writers the concept of a European normative power in world politics as ‘power over opinion’.<sup>2</sup> Almost ten years later, J. Galtung redefined the concept in his book *The European Community: A Superpower in the Making* published in 1973 as ‘ideological power’.<sup>3</sup> At the same time, F. Duchêne introduced the concept of an *idée force*.<sup>4</sup> Ian Manners, as one of the most influential writers regarding the NPE approach at the moment, picked up on Carr’s, Galtung’s and Duchêne’s theories and developed his very own view on the NPE. Compared to Carr, Galtung and Duchêne who generally concluded that a normative power derives from moral pressures by promoting principles and norms, Manners described the normative power as ‘the ability to shape conceptions of normal’ and disassociated it from the concepts of *civilian power* and *military power*. Despite the EU’s Common Security and Defence Policy, Europe cannot be seen as a military power since military means are not prioritised over non-military means.<sup>5</sup> The

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<sup>1</sup> I. Manners, ‘Normative Power Europe: A Contradiction in Terms?’, 40 *Journal of Common Market Studies* 2002, 235-258.

<sup>2</sup> E. H. Carr, *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations* (Michigan: Macmillan 2<sup>nd</sup> ed. 1962), 132-145.

<sup>3</sup> J. Galtung, *The European Community: A Superpower in the Making* (Oslo: Universitetsforlaget 1973), 37.

<sup>4</sup> F. Duchêne, ‘Europe’s Role in World Peace’, in R. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead* (London: Fontana 1972), 32-47.

<sup>5</sup> Already at the beginning of the 1950s the French Prime Minister René Pleven expressed thoughts of a European army. Although it is an ongoing debate, a European army in the near future is considered unlikely due to strong objections of the EU Member States. Security and defence policy is considered as high politics.

concept of Europe as a civilian power bears some resemblance to Europe as a normative power. Both, civilian and normative power, focus on non-military means, non-coercive mechanisms (carrots rather than sticks) and a commitment to multilateralism.<sup>6</sup> The difference between these two concepts rather lies in the nature and interests of a state. In the core of a civilian power's interest lay economic and material assets and capabilities as well as focus on rational interest, whereas a normative power's interests lay in attraction as well as the setting and spreading of universal norms. The normative power thus gains an ideational nature, rooted in the EU's strange character beyond the Westphalian perception of nationality. It is indeed the EU's normative basis which predetermines its actions in international politics.<sup>7</sup> I. Manners identified five core norms which comprises the normative basis and *acquis communautaire*: centrality of peace, idea of liberty, democracy, rule of law and respect for Human Rights and fundamental freedoms.<sup>8</sup> Additionally, Manners defines four minor norms, viz. social solidarity, anti-discrimination, sustainable development and good governance.<sup>9</sup>

The general NPE approach is guided by the overarching questions of the categories the EU aligns its external actions with, which goals the EU ultimately pursues and which instruments the EU uses to achieve these goals. According to I. Manners, normative power is 'the ability to define what passes for "normal" in world politics'.<sup>10</sup> Thus, he terms normative power as 'the greatest power of all'.<sup>11</sup> Normative power enables actors to achieve external policy goals without using civilian or military means. According to Manners, the EU obtains its normative power from its 'different' basis or sui generis structure: '[...] the EU's normative difference comes from its historical context, hybrid polity and political legal constitution.'<sup>12</sup>

The unique preconditions of the EU's foundation that states approximated and gave up sovereignty voluntarily after the second world war effected the EU's consistency, values norms and diffusion in a constitutive manner.<sup>13</sup> The EU is the first actor on the international stage that goes beyond the classic typology of states according to the Westphalian System and adds supranational elements. Its external actions are linked inevitably to its internal constitution of

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<sup>6</sup> H. Sjusren, 'What Kind of Power?', 13 *Journal of European Public Policy* No.2 2006b, 172

<sup>7</sup> I. Manners, 'Normative Power Europe: A Contradiction in Terms?', 40 *Journal of Common Market Studies* 2002, 236-239.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> I. Manners, 'Normative Power Europe: A Contradiction in Terms?', 40 *Journal of Common Market Studies* 2002, 253.

<sup>11</sup> Ibid.

<sup>12</sup> I. Manners, 'Normative Power Europe: A Contradiction in Terms?', 40 *Journal of Common Market Studies* 2002, 240.

<sup>13</sup> J. Orbie and L. Tortell, 'From the social clause to the social dimension of globalization' in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009).

states. Hence, the EU integrates itself into international legal orders and, ultimately, derives its normative power from it.

The values and norms that the EU asserts in its external relations are public goods, meaning that no actor can be excluded in consuming goods (such as the engagement in human rights). By setting certain norms and values as standards internationally, these norms and values have universal value. Beyond their universality, the EU could proactively influence the domestic and international normalisation through the discursive and dialectical processes. As an international actor, the EU would be able to define norms (what is considered as normal) and influence the norm setting of others so that these are universally accepted. This process would be based completely on dialogue and conception without using coercive (economic) mechanisms to enforce these norms and values.

Jan Orbie, also a writer examining the EU's normative power in its trade contexts drawing on Manners, summarised a European Normative Power as follows:

*From a NPE perspective, social trade arrangements would be based on dialogue, persuasion and positive conditionality, and provide substantial incentives in terms of market access and development assistance. Given the legitimate fears of protectionist misuse, sanctions against developing countries would only be invoked after extensive dialogue and deliberation, and when there is an international consensus about the persistent violation of fundamental ILO conventions. When applying negative or positive social conditionality, it seems necessary to involve civil society organisations and third country governments into the decision-making process and to take the ILO's follow up procedures on the core labour conventions into account. Overall, such an approach seems to follow the ethics of "being reasonable" and "doing least harm", as Manners (2008b: 58-9) calls them.<sup>14</sup>*

Manners as well as many other writers tested the NPE approach from a political and economic perspective. However, the literature that is looking at the NPE from a legal perspective is very limited but inevitable when dealing with the EU as a treaty-based legal order.

The normative power of an actor is shaped by many different factors and dimensions, far too many to discuss them at once. Thus, the article will be limited to one of those dimensions:

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<sup>14</sup> J. Orbie, 'Promoting Labour Standards Through Trade: Normative Power or Regulatory State Europe?', in R. G. Whitman (ed.), *Normative Power Europe: Empirical and Theoretical Perspectives* (London: Palgrave Macmillan 2011), 161-184.

the EU's social policy. However, even the field of social policy offers several aspects to discuss on and needs to be narrowed down even further. In 2004, the EU concluded a strategic partnership with the International Labour Organisation (ILO) and aligned its social scheme to the ILO's Decent Work Agenda. In its regional and bilateral agreements, the EU includes social provisions, often linked directly to the Declaration on Fundamental Principles and Rights at Work (DFPRW) and the Decent Work Agenda. At their very core, these clauses are the fundamental principles and rights of the current international labour rights regime: Core Labour Standards (CLS). Core Labour Standards have their origin in the Declaration on Fundamental Principles and Rights at Work conducted in 1998 as a result of the Copenhagen Summit on social development in 1995. CLS are part of overall labour standards and are closely related to basic human rights, protecting fundamental values of equality and freedom, personal dignity and the basic material well-being. CLS define social standards in the context of the world trade order, which are to ensure decent working conditions and adequate protection. The CLS consist of four standards, laid out in eight ILO conventions:

- *Freedom of association and the effective recognition of the right to collective bargaining (Convention No. 87 & No. 98)*
- *The elimination of all forms of forced and compulsory labour (Convention No. 29 & No.105)*
- *The effective abolition of child labour (Convention No. 138 & No. 182)*
- *The elimination of discrimination in respect of employment and occupation (Convention No. 100 & No. 111)*

After the Cold War and with the acceleration of globalisation, the ILO had to rethink their goals and methods which, ultimately, resulted in the 1998 Declaration. This new focus on core rights had a controversial character that was interpreted by many as representative of the political weakness of the ILO, undermining the existing labour rights regime by narrowing its focus and creating a hierarchical structure of labour standards.<sup>15</sup> Others see core labour rights as a tactically wise step for achieving the fundamental goals of the ILO and to increase the willingness of states to adopt at least fundamental rights.<sup>16</sup>

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<sup>15</sup> P. Alston, 'Core Labour Standards' and the Transformation of the International Labour Rights Regime', 15 *The European Journal of International Law* 2004, 457-521.

<sup>16</sup> B. A. Langille, 'Core Labour Rights – The True Story (Reply to Alston)', 16 *The European Journal of International Law* 2005, 409-437.



Although, ILO Member States are only bound by the ILO's conventions after giving them a legal status domestically by ratifying, the eight core conventions containing the CLS apply to all Members, having ratified them or not. However, one major but common weakness in international regulations is the enforcement. The ILO itself has no enforcement mechanisms and depends on other organisations and its members to implement effective mechanisms.

CLS are closely associated with the EU's normative power and are often described as being much higher on the agenda than for example in the United States.<sup>17</sup> As I. Manners already described, the normative basis of the EU, which constitutes its internal construction, shapes also its external actions. Generally, CLS correspond with Manners' core norm of Human Rights and his defined minor norms of sustainable development and anti-discrimination. Consequently, it can be said, that the EU's internal and external policies are invisibly linked. But like every other policy field, labour standards are also affected by internal and external constraints shaped by the principle of subsidiarity, proportionality and conferral. Beyond, it is questioned if the EU represents a coherent and consistent system when it comes to CLS internally and externally.

The Bachelor Thesis will focus on the assumption that the European Union constitutes a normative power globally, using the EU's external promotion of the International Labour Organisation's Core Labour Standards (CLS) in third countries as a case study. Since the concept of a normative power encompasses almost every dimension of a state's or organisation's external action and is far too broad for a single thesis, only one but significant dimension shall be used and analysed. Thus the overarching research question will be:

*RQ: To what extent is the European Union a normative power with regard to the external promotion of the International Labour Organisation's core labour standards in third countries?*

The overarching research question is built on an empirical and hermeneutic research approach. The analysis will mainly be the identification of existing valid law or policies with regards to the EU's social policy model in accordance with Core Labour Standards.<sup>18</sup> Existing legal texts such as the EU Treaties and bilateral and multilateral third country agreements will be interpreted and used to argument for and against the NPE theoretical approach. To be able to answer this question adequately, it is necessary to break it down to several sub-questions that need to be answered.

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<sup>17</sup> Z. Laïdi, 'European preferences and their reception', in Z. Laïdi (ed.), *EU Foreign Policy in a Globalized World: Normative Power and Social Preferences* (Oxon: Routledge 2008), 1-20.

<sup>18</sup> M. Van Hoecke, *Methodologies of legal research: which kind of method for what kind of discipline?* (Oxford and Portland: Bloomsbury Publishing 2011).

Before looking at the actual export of CLS, it is necessary to look at the import of CLS into the EU's policy framework. Thereby, the basic social policy orientation and the status of these standards inside the EU shall be analysed. Also, the EU's interests and potential conflicts or imbalances regarding the social policy and other policies shall be addressed. Thus, a first sub-question emerges:

*SQ1: How do the International Labour Organisation's Core Labour Standards translate into the EU's social policy framework?*

The first sub-question is empirical, identifying the overall concept of Core Labour Standards, as well as the individual standards in the existing legal texts, respectively, the EU Treaties and third country agreements.<sup>19</sup>

In a policy document from 2004, the Commission stated that the EU's internal social project is aligned to the ILO's Decent Work Agenda and that the EU will increasingly do so in its external policies as well. With its own social policy agenda, the EU contributes and cooperates with the ILO's work of norm setting. In that respect and in the context of this thesis, understanding the relationship between these two organisations and understanding how the EU is involved in promoting ILO standards will clarify the EU's global normalising role further. Implicitly included is also the answer why the EU is cooperating with another setter of norms at all and what self-empowerment the empowerment of other actors might bring to the Union. Hence, the second sub-question will be:

*SQ2: What is the role of the European Union in the International Labour Organisation?*

The type of the second sub-question is tripartite: empirical, hermeneutic and logical.<sup>20</sup> It asks for the current law concerning the EU's role in international organisations like the ILO, the interpretation of these existing norms and for possible benefits and conflicts between these two actors.

Finally, a central part of this thesis will be the analysis of three international EU agreements and the GSP+ arrangement, to assess the practical translation and implication of the EU's promotion of CLS in third countries. With the Cotonou Agreement, first signed in 2000 (revised in 2005 and 2010), the EU replaced the Lomé Convention with African, Caribbean and Pacific (ACP) states, introducing a new generation of reciprocal trade agreements, the Economic

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

Partnership Agreements (EPAs). Together with the CARIFORUM-EU Economic Partnership Agreement, signed in 2008, and the Free Trade Agreement (FTA) between the EU and South-Korea, signed in 2010, the thesis will provide an analysis of the social labour provisions in these new generation of agreements to see which direction and approach the EU will choose in the future. Hence, the last sub-question will be:

*SQ<sub>3</sub>: How does the EU promote and ensure compliance with the International Labour Organisation's Core Labour Standards in its international agreements and the GSP+ arrangement?*

The last sub-question is empirical. It asks for the actual implementation of certain labour provisions into its agreements with third countries.<sup>21</sup>

To conclude, the thesis will comprise three analytical steps that together shall make it possible to answer the Research Question properly: (1) a conceptual analysis of the ILO's core labour standards and their meaning in the European context, (2) an analysis of the EU's role in the ILO, and (3) assessing and evaluating the EU's normative power in third countries, using three of the most current and advanced international agreements, namely the Cotonou agreement, the CARIFORUM Agreement, and the EU-South Korean Free Trade Agreements, and the EU's GSP+ arrangement. Based on the results of the three-step analysis, it shall be discussed if the EU constitutes a global normative power.

## 2. CORE LABOUR STANDARDS IN THE EU'S SOCIAL POLICY

Before the analysis is extended to the external dimension of European normative power, it is significant to look at the foundation of the European social policy, its orientation and status internally. In addition, it is essential for the case study to look at how the Core Labour Standards are imported into the EU's system. The analysis of internal structures provides information on basic interests and possibilities of the European Union to promote CLS externally.

### 2.1. SOCIAL DIMENSION OF GLOBALISATION

With the development of core principles after the Copenhagen Summit, respectively, their exact formulation in the DFPRW and the Decent Work Agenda from 1999, the ILO took the centre stage institutionally in defining the social dimension of globalisation. In 2002, the ILO established the World Commission on the Social Dimension of globalisation as an independent

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<sup>21</sup> Ibid.

body to ‘respond to the needs of people as they cope with the unprecedented changes that globalisation has brought to their lives, their families, and the societies in which they live’.<sup>22</sup> Their research should examine the process of globalisation, its public perception, its social and economic implications, and ultimately provide interdisciplinary solutions.<sup>23</sup> In the Commission’s final report from 2004, the social dimension of globalisation was very broadly defined as the ‘impact of globalisation on the life and work of people, on their families, and their societies encompassing security, culture and identity, inclusion or exclusion and the cohesiveness of families and communities’.<sup>24</sup> The Commission expected that the solution for inequality issues of globalisation would be solved by attaining the CLS and decent work objectives.<sup>25</sup> Although the World Commission saw labour and labour standards as the core of the social dimension of globalisation, seeing for instance working conditions or earning as the main social influencing factor, they held the definition quite vague and broad.<sup>26</sup> J. Orbie took over this approach in his work and narrowed the broad definition of the World Commission down and put it in an EU context to ‘the role of labour standards in the Union’s external relations and on Europe’s relationship with the ILO’.<sup>27</sup>

In 2004, the EU explicitly formulated that the Commission’s conclusions are supported and that the Union will pro-actively work towards its realisation, highlighting the European social model.<sup>28</sup> This European social model, linking the social and economic dimension and promoting competitiveness, employment, social progress and environmental sustainability, hence is also the Union’s reaction on globalisation. Already in 2001, the EU clearly stated in a Communication Paper that the ILO is and must be the key institution addressing social cohesion and that there is an imbalance between global market governance and global social governance,

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<sup>22</sup>World Commission on the Social Dimension of Globalization, ‘The Social Dimension of Globalization’, International Labour Organisation (ILO) (Geneva, 9 June 2004), available at <<http://ilo.org/public/english/wcsdg/globali/globali.htm>>; World Commission on the Social Dimension of Globalization, ‘A Fair Globalization: Creating Opportunities For All’, International Labour Organisation (ILO) (24 February 2004), available at <<http://www.ilo.org/public/english/wcsdg/index1.htm>>.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> J. Orbie and L. Tortell, ‘From the social clause to the social dimension of globalization’ in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009), 1-26.

<sup>26</sup> World Commission on the Social Dimension of Globalization, ‘A Fair Globalization: Creating Opportunities For All’, International Labour Organisation (ILO) (24 February 2004), available at <<http://www.ilo.org/public/english/wcsdg/index1.htm>>.

<sup>27</sup> J. Orbie and L. Tortell, ‘From the social clause to the social dimension of globalization’ in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009), 4.

<sup>28</sup> European Commission, ‘The Social Dimension of Globalisation – the EU’s policy contribution on extending the benefits to all’, Communication from the Commission to the Parliament, Council, EESC and Committee of the Regions (2004), COM(2004) 383 final.

since the latter is developing much slower.<sup>29</sup> Despite the EU identifies the WTO, the key institution of global market governance, as being strong and effective due to its construction, but still emphasises the importance of the ILO in the field of social governance. In response to this imbalance, the Union already included labour standards and in particular CLS in its structures and instruments, also in its economic areas.

By emphasising the importance of the ILO as a key institution, the EU marked the beginning of a central change of its social policy and thus responded to a discussion that began in the early 1990s on using a social clause. The social clause can be seen as social requirements in (trade) agreements to sanction countries that do not comply with CLS. A system that is still used under the Generalised System of Preferences (GSP) arrangements. The main criticism of developing countries against trade sanctions and the social clause was and still is that it supports a hidden protectionism. Also European states argued that the WTO should not be used as a social institution but as a trade institution.<sup>30</sup> However, the European Member States were split on whether trade conditionality should be implemented into the EU tools. However, the EU was generally in favour of a softer dialogue and incentive approach, rejecting social standards to be integrated into the WTO framework in the late 1990s, it gave in the global pressure and introduced a unilateral labour standards conditionality. Surprisingly after 2001, the EU shifted away from this limited focus on CLS in trade and with it from the WTO as a social key institution, towards a softer and broad social agenda replacing the social clause with the social dimension of globalisation and including the ILO as an institution. This shift from a hard towards a softer approach can be illustrated by the shift from the responsible Directorate General Trade to the Directorate General Employment and Social Affairs and the Directorate General Development.<sup>31</sup>

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<sup>29</sup> European Commission, 'Promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation', Communication from the Commission to the Parliament, Council, EESC (2001), COM(2001) 416 final.

<sup>30</sup> V. A. Leary, 'The WTO and the Social Clause: Post-Singapore', 8(1) *European Journal of International Law* 1997, 118-122.

<sup>31</sup> J. Orbie and L. Tortell, 'From the social clause to the social dimension of globalization' in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009), 1-26.

	1995-2000	Since 2001
	Social clause	Social dimension of globalisation
Instruments	Trade Policies (hard approach)	Development co-operation International Labour Organisation (Soft approach)
Objectives	Core Labour Standards	Social Dimension of globalisation Decent Work Agenda Corporate social responsibility

*Table 1 Evolving instruments and objectives in EU global social policies<sup>32</sup>*

## 2.2. BALANCE OF SOCIAL AND ECONOMIC PROTECTION

The European Union has its origin in the 1950s when first six states founded the European Economic Community (EEC), using the economic integration to prevent military conflicts in the future and to accelerate economic growth and thus increase prosperity of EU citizens through a larger market. The EU was founded as and still is primarily an economic community. In its beginnings, social legislation was regarded as being not necessary and mainly in the hands of each individual Member State. It was assumed that the general objectives of the internal market, that is to say the free movement of goods, services, labour and capital, would automatically improve the social dimension as well. However, the development of the EU until today has broadened its perspective tremendously and detached the field of social policies from the purely economic perspective, by legislating the social dimension, by setting minimum standards and by focussing on social governance and coordination. Nevertheless, the Union still has huge economic and social imbalances in its Treaty objectives and in its overall institutional structure. This becomes obvious by comparing the economic protection regulations and mechanisms with the Union's social protection regulations and mechanisms.

The Union's main policy framework in the field of social protection and inclusion is twofold and consists of the Europe 2020 Strategy as well as the Open Method of Coordination for Social Protection and Social Inclusion (Social OMC), pre-eminently focussing on the issues of social cohesion and social equality.<sup>33</sup>

The Europe 2020 Strategy was introduced in 2010 as a ten-year economic program with the goal to achieve a 'smart, sustainable and inclusive growth'<sup>34</sup> and a better cooperation between the EU's and the Member States' economic and social policy. The priorities of this

<sup>32</sup> Ibid.

<sup>33</sup> European Commission, 'Social Protection and Inclusion', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=750>>.

<sup>34</sup> Ibid.

program are on the promotion of research and development and higher education and lifelong learning in order to increase economic growth to a better social integration as well as a promotion of environmentally friendly technologies.<sup>35</sup> Social policy, thus, forms a fundamental part of the strategy and represents one of the five main goals, namely, 20 million fewer people in or at risk of poverty and social exclusion.<sup>36</sup> The framework to address the Europe 2020 targets is given by the European Semester which is a yearly analysis of EU Member States' plans of 'budgetary, macroeconomic and structural reforms to provide country-specific recommendations.'<sup>37</sup> Supported is this process by the Platform against Poverty and Social Exclusion, the Social Investment Package and specific EU funds such as the European Social Fund.<sup>38</sup> The Platform against Poverty and Social Exclusion takes on the task of monitoring and scoring the EU Member States' reforms in the European Semester analysis<sup>39</sup> whereas the Social Investment Package as well as the EU funds shall invest in specific social reforms in the EU Member States and offer guidelines for a more efficient and effective use of national social budgets.<sup>40</sup>

The second pillar of the EU's social protection and inclusion framework is the Open Method of Coordination for Social Protection and Social Inclusion, also called Social OMC. The existence of the general OMC is rooted in the issue of the principle of conferral (Article 5 TEU) which states that the EU can only enact a binding legislative act if the Treaties authorise the EU institutions to do so. In cases where the EU has no express or implied competences to intervene in specific policy fields, but the Council or the Commission see a need for action, they can make use of the Open Method of Coordination (OMC). The OMC gives the EU the possibility to be politically active outside their conferred competences in primary law based on Articles 5, 6 and 153 TFEU. Major instruments of the OMC are non-binding recommendations and guidelines from the Commission to the Member States.<sup>41</sup> The OMC was established in 1993

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<sup>35</sup> Ibid.

<sup>36</sup> European Commission, 'Europe 2020 targets', 22 June 2015, available at <[http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index_en.htm)>.

<sup>37</sup> European Commission, 'Making it happen: the European Semester', 18 May 2015, available at <[http://ec.europa.eu/europe2020/making-it-happen/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/index_en.htm)>.

<sup>38</sup> European Commission, 'Social Protection and Inclusion', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=750>>.

<sup>39</sup> European Commission, 'European platform against poverty and social exclusion', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=961&langId=en>>.

<sup>40</sup> European Commission, 'Social investment', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=1044&langId=en>>; European Commission, 'ESF European Social Fund', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=325>>.

<sup>41</sup> European Commission, 'Reinforcing the Open Method of Coordination for social protection and social inclusion', 12 February 2009, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:em0011&from=EN>>; European Commission, 'Promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation', Communication from the Commission to the Parliament, Council, EESC (2001), COM(2001) 416 final.

after the EU saw the urgent necessity to take actions against the rising unemployment rates in some Member States. But after all, the EU lacked the legal basis to issue binding legal acts. As a result, the European Communities were forced to use soft power instead of issuing binding legal acts (hard power).<sup>42</sup> Typical OMC instruments are statistic comparisons, benchmarks, guidelines, mutual learning and recommendations.<sup>43</sup> In other words, the EU uses pressure and warnings as an alternative instrument. The original OMC, though, was mainly created for the field of employment policy. In the context of the long lasting debate about the European strategy on social policy, respectively, social inclusion and protection, the EU created incrementally the Social OMC.<sup>44</sup> The Social OMC ‘is used by Member States to support the definition, implementation and evaluation of their social policies and to develop their mutual cooperation’.<sup>45</sup> In contrast to the Employment OMC Method, which can generally be described as top-down, the Social OMC follows rather a bottom-up approach, involving other regional and local actors such as NGOs instead of conducting recommendations and guidelines, which is unprovided for in the Social OMC. Europe 2020 further developed the Social OMC ‘into a platform for cooperation, peer-review and exchange of good practice, and into an instrument to foster commitment by public and private players to reduce social exclusion, and take concrete action, including through targeted support from the structural funds, notably the European Social Fund.’<sup>46</sup>

The coordination of economic policy is essentially performed by the so-called multilateral surveillance (Article 121 TFEU) resting on stability and convergence programs that shall prevent excessive government deficits. The Council of Ministers develops, thereby, recommendations, at the suggestion of the European Commission and after consultation of the European Council, in which the broad EU economic policy as a whole and the individual economic policy of the Member States (Article 136 TFEU) are defined. The Commission shall

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<sup>42</sup> R. O’Donnell and B. Moss, ‘The Very Idea of an Open Method of Co-ordination’ in J. Zeitlin et al. (eds.), *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies* (Brussels: Peter Lang 2005), 353-391.

<sup>43</sup> European Commission, ‘Evaluation of the Open Method of Coordination and the Structured Dialogue, as the Agenda for Culture’s implementing tools at European Union level’, July 2013, available at <[http://ec.europa.eu/dgs/education\\_culture/more\\_info/evaluations/docs/culture/agenda2013\\_en.pdf](http://ec.europa.eu/dgs/education_culture/more_info/evaluations/docs/culture/agenda2013_en.pdf)>.

<sup>44</sup> R. O’Donnell and B. Moss, ‘The Very Idea of an Open Method of Co-ordination’ in J. Zeitlin et al. (eds.), *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies* (Brussels: Peter Lang 2005), 353-391.

<sup>45</sup> European Commission, ‘A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion’, Communication from the Commission to the Parliament, Council, EESC and Committee of the Regions (2008), COM(2008) 418 final.

<sup>46</sup> European Commission, ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’, Communication from the Commission to the Parliament, Council, EESC and Committee of the Regions (2010), COM(2010) 2020 final; S. Bekker and S. Klosse, ‘EU Governance of Economic and Social Policies: Chances and Challenges for Social Europe’, 2-2013 European Journal of Social Law 2013, 103-120.



prepare regular reports on the implementation of these recommendations resulting from information that is provided by individual Member States.<sup>47</sup> Multilateral surveillance, however, is rather a political pressure, not an actual coercive mechanism of the EU institutions by cause of non-existent sanctions, but recommendations.<sup>48</sup> A somewhat more rigorous method, than for the general economic policy, applies to the monitoring of the national debt. Here, as part of the so-called Stability and Growth Pact, the convergence criterion, according to which the debt may amount to no more than 3% of gross domestic product does not exceed 60% and the annual net borrowing, is made permanent (Art. 126 TFEU).<sup>49</sup> The European Commission annually reviews all EU Member States, even those who are not member of the Monetary Union. If a Member State does not fulfil the criteria or the Commission sees the risk of not fulfilling the criteria, the Commission creates a report. On basis of this report, the EU Council acting by qualified majority, decides how to proceed. This can take a number of measures, from the issuance of economic policy recommendations to various coercive measures, in particular fines. Under Article 139 TFEU, though, these coercive measures can only be applied to Member States that have adopted the Euro as their currency. The other states are also obliged to comply with the Stability Pact, but the Council can only issue recommendations.

If the budget deficit actually exceeds three percent, the Economic and Financial Affairs Council launches an excessive deficit procedure. The concerned countries have to present a plan on how they intend to reduce the deficit. If they stick not to their presented plan, sanctions may be imposed. Firstly, fines from 0.2 to 0.5 percent of GDP of the country concerned can be imposed. Secondly, the EU Council of Ministers may demand from deficit states to post bail in an appropriate level and interest-free in Brussels, until the excessive deficit is corrected. Thirdly, a State may be asked to publish additional information before issuing bonds and other securities. Finally, the European Investment Bank can be asked to reconsider its lending policy towards the respective country.<sup>50</sup> The so-called Sixpack legislation measure, adopted in 2011, made the sanction mechanism even stricter and ensures that sanctions are imposed earlier and more directly.<sup>51</sup> Part of the Sixpack is the Macroeconomic Imbalance Procedure (MIP), which shall offer prevention and corrective mechanisms for economic developments such as high current account deficits and surpluses, excessive private debts or real estate bubbles. The MIP is carried

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<sup>47</sup> European Commission, 'Stability and Growth Pact', 26 May 2016, available at <[http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm)>.

<sup>48</sup> European Commission, 'Employment Committee', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=115>>.

<sup>49</sup> European Commission, 'Stability and Growth Pact', 26 May 2016, available at <[http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm)>.

<sup>50</sup> Ibid

<sup>51</sup> Regulation No 1173/2011, *OJ* [2011] L 306/41, 8.11.2011.

out once a year, starting with the Alert Mechanism Report of the European Commission and with the goal of identifying the countries and topics that require in-depth reviews. Depending on these reviews, the Commission determines the existence and nature of imbalances as well as their trend. Building on the imbalance level, the Commission adopts policy recommendations, either under the 'preventive arm' or the 'corrective arm' of the MIP. In particular, the corrective arm implies strict scrutiny and possible sanctions.<sup>52</sup>

To conclude, the general economic mechanisms follow a hard approach, using sanctions and strict surveillance as tools to hold EU Member States accountable for not complying with criteria which is a huge difference to the social protection framework. The economic framework is strictly regulated in the Treaties and, thus, has a legal basis. The Europe 2020 Strategy, on the other hand, only defines specific targets and leaves leeway to the Member States how to implement and reach these targets in their country-specific setting. The basic argumentation of the EU for this rather vague country-specific approach is the different nature of social problems in the EU Member States. To tackle the social country-specific problems easier, the Member States have own decisional power in this regard. Notwithstanding, this leeway can lead to Members that address these issues desultorily and without a sustainable and long-term goal. Country-specific policies and programmes complicate the benchmarking, scoring and recommendation mechanisms of the EU. Additionally, desultory implementations or even refused implementations cannot be sanctioned in any way as the social protection framework only allows for warnings and recommendations, in contrast to the macroeconomic framework.<sup>53</sup>

Of course, social and economic policies and frameworks cannot be seen as completely separate mechanisms as the EU tries to ensure the coherence between the different policies. Beyond, economic policies are needed to achieve the social objectives. The European Semester can be seen as the umbrella connecting both in their mechanisms and shall ensure that economic policies are consistent with social policies. But social policies can also be tested to be consistent with economic policies, which might be to their detriment. There is also a potential risk of giving preference to the economic sphere, in cases where different objectives and cooperation procedures overlap, such as the Europe 2020 strategy and Macroeconomic Imbalance Procedure.<sup>54</sup>

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<sup>52</sup> European Commission, 'Macroeconomic Imbalance Procedure', 7 April 2016, available at <[http://ec.europa.eu/economy\\_finance/economic\\_governance/macroeconomic\\_imbalance\\_procedure/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/macroeconomic_imbalance_procedure/index_en.htm)>.

<sup>53</sup> S. Bekker and S. Klosse, 'EU Governance of Economic and Social Policies: Chances and Challenges for Social Europe', 2-2013 *European Journal of Social Law* 2013, 103-120.

<sup>54</sup> *Ibid.*

An example that shows that this is not just a risk but has already happened is Case C-438/05 *International Transport Workers Federation v Viking Line ABP* followed by Case C-341/05 and the European Court of Human Rights decision ECHR 1345. The European Court of Justice (ECJ) ruled in C-438/05 that the right to strike is a fundamental right but has to be balanced against the business' freedom of establishment under Article 49 TFEU and the freedom of services under Article 56 TFEU. And in fact, the ECJ held that hereof the right to strike infringed the right of free establishment and the right of free movement of services and, thus, limited the fundamental right to strike, or in other words the ECJ placed the business freedom over the interests of working people.

### 2.3. IMPORT OF ILO CORE LABOUR STANDARDS

Albeit the CLS' close relation to Human Rights, they are not always as obviously protected under EU law as one might assume, and thus, not one-to-one translated from the wording in the ILO Conventions. The Freedom of Association for instance is explicitly excluded in the TFEU. The import of CLS gives rise to several problems under EU law, which shall be discussed in the following. The EU's promotion of CLS externally without having integrated them in the own system, would be seen as hypocritical from the perspective of third countries. In fact, until 2007, not all EU Member States had ratified all eight ILO core conventions.

#### 2.3.1. FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING

The competence conferring articles for social and labour policy and thus the legal basis for any EU action regarding labour standards are Articles 151-161 TFEU. However, the freedom of association, and with it the right to join trade unions, the right for collective bargaining and the right to take industrial action, is expressly excluded in Article 153(5) TFEU which means that the EU has no legal competence in these fields and that there is a very limited protection in EU community law. One reason might be sovereignty concerns of the Member States. Moreover, the ECJ ruled that international obligations of the EU Member States, respectively, international instruments in general can limit the adoption of EU law.<sup>55</sup> Consequently, there is no possibility for the EU to issue Directives in these fields. Although the EU cannot protect it with Directives under Community law, there are still two instances that provide a basic protection.

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<sup>55</sup> For Example: ECJ, Case C-149/77 *Defrenne v Sabena* [1978] ECLI:EU:C:1978:130

The first instance is the ECJ, which can make use of general principles in its rulings but is also capable of 'be[ing] sensitive to [the Member States'] constitutional traditions and their Human Rights obligations under international instruments'.<sup>56</sup> There are several cases where the ECJ made use of the general principle and referred to a right of association and the effective recognition of the right to collective bargaining. One example is the Bosman ruling, in which the ECJ judged that the scope of free movement of workers can also be determined by using the principle of freedom of association.<sup>57</sup> In Case C-415/93 the ECJ held that there are forms of collective agreements that do not fall under the Union's competition law provisions. Finally, Case C-499/04 concerned the question if or to what extent an employer should be considered to be bound by a collective agreement after a transfer of an undertaking. In the judgement, the ECJ defined and used the principle of negative freedom of association, meaning in this context the right not to have to associate or enter into an agreement with a union. With this judgement the Court established a hierarchical conception, putting the individual freedom of contract over collective bargaining within the internal labour market. It further narrowed the EU Member States' obligation down to promote collective bargaining under the ILO Convention 98.

The second instance that offers legal protection for the freedom of association and the effective recognition of the right to collective bargaining are the Community Charter of the Fundamental Social Rights of Workers (CCFSRW) and EU Charter of Fundamental Rights (EUCFR). The CCFSRW, introduced in 1989, was established as a Human Rights charter focusing on the EU's labour force. It offers principles and guidelines that for instance the ECJ is using as an interpretative tool in its judgements. As it is not a binding set of rules but principles or guidelines, the actual effect is rather limited. The EUCFR codifies fundamental and human rights within the European Union. With the Charter, the EU fundamental rights are set out for the first time comprehensively in a written form. It is based on the European Convention on Human Rights and the European Social Charter, the Member States' constitutions and international human rights documents, but also case-law of the European Courts. After the failure of the European Constitution, which should have included the Charter, the Charter entered into legal force with the compensatory Constitution, the Treaty of Lisbon. The Charter of Fundamental Rights is not part of the Treaty. With the reference in Article 6 of the amended EU Treaty, the Charter is binding for all Members, except the United Kingdom

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<sup>56</sup> T. Novitz, 'In search of a coherent social policy: EU import and export of ILO labour standards?' in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009).

<sup>57</sup> ECJ, Case C-415/93 *Union Royale Belge des Societes de Football Association and Others v Bosman and Others* [1995] ECLI:EU:C:1995:463

and Poland. According to Article 51 EUCFR, the Charter is binding for all institutions, bodies and agencies of the European Union, their action, administration and in particular their legislation (by Regulations and Directives). The Charter also binds the Member States that have to carry out Union law by implementing European Directives into national law or execute European Regulations through their national administrations. Also the ECJ is referring to the Charter as a source for general principles.<sup>58</sup>

In contrast to the ILO's definition of freedom of association, which sees collective bargaining and industrial actions as part of freedom of association, the CCFRSW and the EUCFR distinguish between freedom to associate and other aspects of trade union association such as collective bargaining and the right to strike. The worker right to join, respectively, to refuse to join an association is treated as an unqualified entitlement (Article 11, CCFRSW; Article 12 EUCFR) whereas rights to negotiate, conclude collective agreements and engage in collective action are a matter of the EU Member States' laws (Articles 12-14 CCFRSW; Article 28 EUCFR).

### 2.3.2. THE ELIMINATION OF ALL FORMS OF FORCED AND COMPULSORY LABOUR

The EU has neither regulated, nor expressly stated to exclude forced and compulsory labour in its Treaties. However, the EU has issued certain Directives that regulate parts of it. Directive 2011/36/EU for instance regulates the criminal law issues of trafficking victims, which is covered by the definition in the two ILO conventions. Directive 2004/81/EC further covers the issue of trafficking and concerns the immigration status of victims. Directive 2012/29/EU generally establishes minimum standards on the rights, support and protection of victims of crime and also covers aspects of forced and compulsory labour, including issues like trafficking.

Although the Union has no expressly mentioned the issue of forced labour in the Treaties, the field is not unprotected. Article 4(2) of the European Convention on Human Rights (ECHR) prohibits slavery, servitude and forced labour with the exemptions of normal prison work, compulsory military service, work in a state of emergency and work as part of normal civic obligations. The EU has not yet acceded to the Convention, but the Union Member States have ratified it. The preconditions for the EU's accession to the ECHR already exist since 2004, but negotiations are still running to ensure the compatibility with EU law. With Article 6(2) TEU the Union obliged to conclude such an agreement to include to ECHR and according to Article

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<sup>58</sup> ECJ, Case C-303/05, *Parliament v Council* [2006] ECLI:EU:C:2007:261

6(3) the ECHR is already part of Community Law. Since 2005, the European Court of Human Rights controls every legislative act of the EU for the compatibility and consistency with the ECHR. In contrast to the UN's Universal Declaration of Human Rights, the Convention applies to individuals, which means that individuals can bring violations of the rights ensured in the Convention before the Court. The Convention also applies to states, so that a Member States can bring another Member that is violating rights of the Convention before the Court.

### 2.3.3. THE EFFECTIVE ABOLITION OF CHILD LABOUR

Child labour and children's rights in general are expressly protected under the Treaties. Article 3(3) TEU and Article 3(5) TEU even transforms children's rights in one of the main objectives of the EU internally and externally by stating that the EU '[...] shall promote [...] protection of rights of the child' and that 'in its relations with the wider world, [...] it shall contribute to [...] the protection of human rights, in particular the rights of the child [...].' As the rights of the child as well as specific provisions are mentioned in the most important Human Rights instruments of the UN, and also in the ECHR, references in the Treaties offer a certain legal protection as well (cf. Articles 6, 21 TEU). In particular, the recognition of the ECHR in the Treaties shall contribute to the protection. Article 79(2)(d) TFEU further provides that 'the European Parliament and the Council [...] shall adopt measures in [...] combating trafficking in persons, in particular women and children.' Article 83 TFEU also authorises the Union to adopt 'minimum rules concerning the definition of criminal offences and sanctions [...] in the field of trafficking in human beings and sexual exploitation of women and children [...].' Additionally, according to Article 7 TEU the Charter of Fundamental Rights of the European Union is part of the EU's legal framework and explicitly mentions rights of the child in Article 24. Article 32 EUCFR also provides an explicit prohibition of child labour and guarantees for the protection of young people at work.

### 2.3.4. THE ELIMINATION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION

The CLS of elimination of discrimination in respect of employment and occupation is quite broad and encompasses almost all forms of discrimination and exclusion based on race or colour, sex, religion, political opinion, national or social origin in employment and repeal legislation that is not based on equal opportunities. Similar to children's rights, Article 3(3) establishes basic provisions on discrimination and equality by stating 'it [the Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between

women and men [...]’ Article 19 TEU additionally provides for a general non-discrimination clause in which ‘the Council [...] may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability age or sexual orientation. It, therefore, gets clear legislative competence for legislative measures such as Council Directive 2000/78/EC which establishes a framework for equal treatment in employment and occupation, and Council Directive 2000/43/EC which prohibits discrimination based on racial and ethnic origin in the workplace and other areas. Gender equality is also protected by the ‘principle of equal pay for male and female workers for equal work or work of equal value’ in Article 157(2) TFEU. The ECJ held in Case C-43/75 *Defrenne v Sabena* (No2) that Article 119 of the Treaty of the European Community has horizontal direct effect and thus underlined the significance of Article 157 TFEU (ex Article 119 TEEC, ex Article 141 TEC). The ECHR also provides a non-discrimination clause in Article 21 and a specific clause on gender equality in employment and occupation in Article 23.

#### 2.4. CONCLUSION

The purpose of this chapter was to look at the internal dimension of the EU as a presumed normative power by looking at how the CLS translate into the EU’s social policy framework and thus to see if the EU fulfils the necessary pre-conditions of what would be assumed of a normative power. Thereby, the basic social policy orientation and the status of these standards inside the EU were analysed. Also, the EU’s interests and potential conflicts or imbalances regarding the social policy and other policies were addressed.

The EU has since its beginnings as a purely economic community undergone a process of broadening its perspective by expanding its trade and economic focus to fields such as the social dimension of globalisation with core labour rights in its centre. Aligning, therewith, its social model to the ILO, as the primary social organisation, now determines a significant part of the EU’s normative basis as described in Manners five core norms. The adaption of the EU’s own basis according to international standards provide the Union with the necessary pre-conditions of what would be assumed of a normative power.

Nonetheless, the analysis has also shown potential internal limitations of a NPE. By virtue of the obvious difficulties to include these standards properly into EU law and the late ratification of the ILO Core Conventions by the EU Member States, the external promotion or setting of such standards could be seen as hypocritical by other parties. Additionally, the EU’s hybrid interests (economic v. social policies) and potential prioritisation of economic liberalisation may significantly hinder the EU’s normative power identity.

### 3. THE RELATION BETWEEN THE EU AND THE ILO

The EU has aligned not only its social policy model to the ILO but proactively promotes them abroad. Thus, the EU empowers another setter of norms, namely the ILO, by offering for example tools of enforcement. According to I. Manners and J. Orbie, the inclusion of external actors is an important part of a NPE, which would be the case of a mutual cooperation between the EU and the ILO. The EU, however, does not empower other actors without wanting to derive some benefits from it.

The following chapter will look at the basic EU competence in the ILO by virtue of the EU's clear declaration that the ILO is the primary setter of social standards on the global stage. Having influence on the decision-making in the ILO would be a significant empowerment of the EU's own normative power and would beyond legitimise its actions internationally. In a second step, the chapter will look at possible conflicts between the ILO as norm setters. In that respect, it is essential to see if this relation is beneficial or obstructive for both actors.<sup>59</sup>

#### 3.1. EU COMPETENCES IN THE ILO

The legal base for the relation between the EU and the ILO arises from Article 220(1) which states that the Union 'shall establish all appropriate forms of cooperation with the organs of [...] the United Nations specialised agencies', which includes the ILO. But with this article the EU does not gain an express external competence. According to the principle of conferral in Article 5 TFEU, the Union 'shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.' Articles 3 TFEU to 6 TFEU define the EU's competences offering only three policy fields related to external policy. Articles 3 TFEU to 6 TFEU also do not confer any power on the Union. Withal, a competence-conferring Article that confers express competences in the field of social policy does not exist in the Treaties.

Like most external competences of the EU, competences in the social policy field arise from the implied powers doctrine, expressed by Article 216 TFEU which was the result of a chain of ECJ cases and ECJ Opinions. The ERTA doctrine which marked the beginning of the implied powers doctrine states that the existence of external power is linked to the adoption of internal measures which can be described as a parallelism of competences. To put it different, *in foro interno-in foro externo*, the existence of internal powers includes the necessary powers

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<sup>59</sup> J. Orbie, 'Promoting Labour Standards Through Trade: Normative Power or Regulatory State Europe?', in R. G. Whitman (ed.), *Normative Power Europe: Empirical and Theoretical Perspectives* (London: Palgrave Macmillan 2011), 161-184.



to act externally with a view to attain the objectives of the treaties (*effet utile*).<sup>60</sup> Opinion 1/76 further widened this doctrine by saying that implied external powers may exist also when a given competence has not been exercised internally but Opinion 2/94 clearly stated that the doctrine of implied powers cannot be used to widen the competences named in the treaties.<sup>61</sup>

An existing implied competence does not mean that the Union has an exclusive competence (Article 3 TFEU) but is usually a result of ECJ rulings and, thus, case law.

The question of exclusivity is of particular significance with regard to the EU-ILO relation as ILO Conventions can overlap with EU Law. Consequently, it must be clear if the EU can exclusively decide on these conventions and not the EU Member States. Comparable to the Open Skies principle,<sup>62</sup> the ECJ ruled in Opinion 2/91 that the EU has exclusive external competence if the respective convention touches upon ‘Community rules’, namely, an area which is to a large extent regulated by the EU. ‘To a large extent’ excludes minimum standards, as these cannot be a legal basis for exclusivity according to ECJ ruling in Opinion 2/91.<sup>63</sup> EU Law also pre-empts ILO conventions, when the convention concerns a field in which the EU has exclusive competence anyway as regulated under Article 3(1) TFEU. The same holds true for conventions that ‘affect common rules’ stated in Article 3(2), which can be seen as a codification of case law. Finally, conventions may not infringe or be incompatible with the *acquis communautaire*, which is based on Article 2(2) TFEU and Article 3(2) TFEU as it concerns a field that has already been regulated.

Except for the four cases in which the Union has exclusive competence, external competence in the field of social policy is actually shared with the EU Member States (Article 4(2)(b) TFEU). Article 153(1) TFEU lists the field in which the EU shall support and work with the Member State’s activities. Here, social policy is listed which implies that the EU has no exclusive but shared competence.

The EU has an observer status in the ILO, represented by the European Commission, as the ILO Constitution reads that only states can be members of the ILO.<sup>64</sup> The observer status only

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<sup>60</sup> ECJ, Case C-22/70, *Commission v Council* [1971] ECLI:EU:C:1971:32.

<sup>61</sup> ECJ, Opinion 1/76, Draft Agreement establishing a European laying-up fund for inland waterway vessels [1977] ECLI:EU:C:1977:63; ECJ, Opinion 2/94, ECHR [1996] ECLI:EU:C:1996:140.

<sup>62</sup> ECJ, Case C-467/98 *Commission v Denmark* [2002] ECLI:EU:C:2002:625; According to the Open Skies principle, where the EU adopts common rules, the EU Member States have no longer the competence to conclude an agreement with a non-EU-Member that would concern the common rules, respectively, alter their scope.

<sup>63</sup> ECJ, Opinion 2/91, Convention No 170 of the International Labour Organisation concerning safety in the use of chemicals at work [1993] ECR I-01061; further ruling referring to importance of ‘scope, nature, content and future development of the rule’: *OJ* [1988] L 187, p. 14-30. 16.7.1988; CJEU, Opinion 1/03 Lugano Convention [2006] ECLI:EU:C:1993:106.

<sup>64</sup> Art 1(2) ILO, Constitution of the International Labour Organisation, 1.4.1919.

allows the EU to attend the meetings, speak, participate in the discussions and be represented in the Committees and the ILO Governing Body. Hence, the EU's Member States are separate ILO members which does not mean that each state is completely free in doing what they want. Articles 4(3) and 13(2) TEU obliges the Member States to coordinate their activities sincerely and represent a European unity externally. This, however, makes it far more difficult for the EU to influence the standard setting in the ILO directly as the EU is not able to vote for and to ratify conventions.<sup>65</sup> Despite the existence of the duty of cooperation, Member States are not always willing to act unanimously, or, to confer certain competences and decisional power to the Union. If the Union has an exclusive competence in a field that is encompassed or affected by an ILO Convention after all, the EU Member States have to get an approval of the Union to ratify the respective ILO convention and satisfactorily show that it is in the interest of the EU.

### 3.2. BENEFITS AND CONFLICTS BETWEEN THE ILO AND THE EU

#### 3.2.1. BENEFIT AND CONFLICT OF NORMS

Both, the EU and the ILO seek with their cooperation reciprocal support and benefits for their individual goals, and to work towards a cohesive society. Most conventions concluded by the ILO assort well with the EU *acquis* as they add specific values such as addressing issues the EU is not focussing on, or they serve the EU as a means to an end, meaning that the EU needs a convention for its own purposes and even refers to a convention directly. ILO conventions have also been an important source for EU law such as in the case of equal pay for men and women.<sup>66</sup>

However, the EU as well as the ILO are setters of norms and standards and often regulated fields overlap with each other. Thus, in the case of the EU, the EU has to look for possible incompatibilities between the EU *acquis* and an ILO standard or convention. Incompatibilities are standards or norms that go directly against the EU *acquis*.<sup>67</sup> If the ILO norm sets stricter standards than the EU but does not contradicts the EU norm, the EU Member States are free to ratify it as stated in Article 153 TFEU. In a conflict between an ILO norm and an EU norm, the

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<sup>65</sup> Article 15(5)(d) ILO, Constitution of the International Labour Organisation, 1.4.1919; Article 19(5)(d) ILO, Constitution of the International Labour Organisation, 1.4.1919.

<sup>66</sup> Directorate-General for Employment, Social Affairs and Inclusion Unit A.4, 'Analysis – in the light of the European Union *acquis* – of ILO up to date Conventions', *Publications Office of the European Union* (2014), p. 12/42, available at <<http://ec.europa.eu/social/BlobServlet?docId=12598&langId=en>>.

<sup>67</sup> For a detailed analysis of the compatibility of all ILO up-to-date Conventions with the EU *acquis*, see: European Commission, 'Analysis – in the light of the European Union *acquis* – of ILO up to date Convention', June 2013, available at <[ec.europa.eu/social/BlobServlet?docId=12598&langId=en](http://ec.europa.eu/social/BlobServlet?docId=12598&langId=en)>.

EU has to decide which norm has the priority based on the Treaties. In cases where the EU Member States have concluded agreements (here: ILO Conventions) before the conclusion of the Treaty establishing the European Economic Community (TEEC) on 1 January 1958 or before their accession to the EC or its successor the EU, Article 351 TFEU regulates that these agreements shall not be affected by the Treaties. Nevertheless, the EU Member States have to eliminate existing incompatibilities between the respective agreement and the Treaties. If the States fail to fulfil this obligations, a denunciation of the respective agreement should follow.<sup>68</sup> Incompatibilities exist only in cases where the ECJ officially ruled so.<sup>69</sup>

If the agreement and thus the ILO Convention was concluded after 1 January 1958 or after the accession to the EC or EU, the EU has to scrutinise the prioritisation of the convention with regard to the Treaties. Sensitive are conventions that concern a field where the EU has exclusive competence, or to put it different, a field where EU Member States have to get Council authorisation before ratification. In those cases, the EU norms pre-empt the ILO norm (Article 3(2) and Article 2(2) TFEU). A study of the Directorate-General for Employment, Social Affairs and Inclusion revealed four ‘potentially incompatible’ ILO Conventions that fall under EU exclusive competence and thus are most likely rejected by the Commission.<sup>70</sup>

- Protocol to the Night Work (Women) Convention (Revised) – P89
- Labour Clause (Public Contracts) Convention – C94
- Migration for Employment Convention (Revised) – C97
- Plantations Convention – C110

In fields where the EU has shared competence with the Member States and in fields where the EU has no competence at all, the Members can decide individually if they ratify the respective convention.

At this point it is also important to mention another author, R. Kissack, writing on the performance and influence if the EU in the ILO. R. Kissack published a study in 2009 with a surprising result. The more the EU is involved in drafting ILO Conventions, the less ratification

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<sup>68</sup> ECJ, Case C-62/68, *Commission v Portugal* [2000] ECLI:EU:C:2000:358. Example for denunciation: UK C94 [1982], UK C95 [1983], Netherlands C95 [1983], Cyprus and Czech Republic P89 [2001].

<sup>69</sup> ECJ, Case C-203/03, *Commission v Austria* [2005] ECLI:EU:C:2005:76

<sup>70</sup> Directorate-General for Employment, Social Affairs and Inclusion Unit A.4, ‘Analysis – in the light of the European Union acquis – of ILO up to date Conventions’, Publications Office of the European Union (2014), p. 14, available at <<http://ec.europa.eu/social/BlobServlet?docId=12598&langId=en>>.

the conventions receives.<sup>71</sup> This would indeed be a fact that would erode the EU's normative power. Another study of R. Kissack from 2011, however, drew a better image of the EU's performance in the ILO, at least from the ILO's perspective. His result showed that the EU adapted its own norms and its behaviour to better fit in the ILO. This, however, increases the power identity of the ILO and decreases the power of the EU in that respect.<sup>72</sup> This field needs further research and the results are too vague to put too much pressure on them.

### 3.2.2. CONFLICT OF INTERESTS

The EU was originally intended to be an economic community and the founding fathers probably never thought of including social policies in its framework. Albeit the EU's setup has changed tremendously in the last decades, the EU still has imbalances in its economic and social protection (see Chapter 2.2.). It is obvious that the EU has economic interests which can, however, be a potential problem in a cooperative relationship with the ILO. The ILO, other than the EU, is a purely social organisation that aims at setting social, respectively, employment standards.

As mentioned above, the ILO needs actors like the EU, which can provide effective enforcement, sanctioning and protection mechanisms, such as in trade agreements, for its standards setting. The EU, on the other hand, needs the ILO's standards setting and its adding of substantive values to the EU *acquis* as well as gaining a certain degree of legitimacy on the international stage. One could, however, argue that the EU is by tendency the more powerful party in this relation. As the EU includes in its international agreements not only social but mainly economic provisions, there is a potential risk that social standards might recede or get limited to a certain extent. That this risk is real proves Case C-438/05 in which the EU limited fundamental standards for economic rights. Another risk that might arise in this relation that the influence on the ILO might lead to a change of the ILO's social justice arguments in a more market oriented direction.

### 3.3. CONCLUSION

This chapter shed light on the relation between the EU and ILO, the EU's capabilities or competences in that relation and potential benefits or conflicts such a cooperation might imply.

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<sup>71</sup> R. Kissack, 'Writing a new normative standard? EU member states and the drafting and ratification of ILO labour standards, in J. Orbie and L. Tortell (eds.) *The European Union's Role in the World and the Social Dimension of Globalisation* (London: Routledge 2009), 98-112.

<sup>72</sup> R. Kissack, 'The Performance of the European Union in the International Labour Organization', 33(6) *Journal of European Integration* 2011, 651-665.

To answer the overarching Research Question properly, it is necessary to understand the EU's power to influence norm setting, and thus executing normative power, in the ILO as well as the background why the EU is willing to promote the CLS and the reason for such a cooperation, respectively, the EU's reason to empower another norm setter.

The analysis of the EU's competences in the ILO and its respective power to influence the norm setting internally has a significant limitation, namely a lack of competences in the field of social policies and the EU's observer status. Besides the Union's incapability to enforce standards in its Member States, the EU can also neither vote on, nor ratify conventions and depends pre-eminently on the sincere cooperation of the EU Member States. Together, this increases the impression of hypocrisy as third countries might pose the question of why the EU is legitimised to promote standards externally in their countries, when the Union is not capable of promoting them internally.

The relation between both organisations can generally be described as being reciprocal and complementary, meaning that both actors benefit from it. Conventions or explicit standards can add values, fill not regulated gaps or serve as a means to an end. But more importantly in the normative power debate, the cooperation with the ILO as an internationally accepted norm setter and the promotion of standards with their root in international law increases legitimacy of the EU's actions. The ILO, on the other side, profits from the EU as an influential trade power to promote and enforce its standards.

By virtue of the norm setting activity of both actors, there are potential problems when standards or regulated fields overlap. The prioritisation in these cases is mainly a question of competence. More worrying is the EU's potential market interests which might influence standard setting and also the ILO itself negatively. Market interests adversely effects the notion of a normative power identity and rather highlights a civilian or economic power. Also, R. Kissack's study that more EU influence in the ILO leads to less total ratifications is a possible threat to the EU's normative power which needs more research and scientific attention.

#### 4. ASSESSMENT AND EVALUATION OF THE NORMATIVE POWER IN THIRD COUNTRIES

The following chapter will offer an analysis of three international EU agreements and the Generalised System of Preferences Plus (GSP+), to assess the practical translation and implication of the EU's promotion of CLS in third countries. With the Cotonou Agreement first signed in 2000 (revised in 2005 and 2010), the EU replaced the Lomé Convention with African,

Caribbean and Pacific (ACP) states, introducing a new generation of reciprocal trade agreements, the Economic Partnership Agreements (EPAs). Reciprocal trade means that not only the EU offers duty-free access to its market but that the other Party opens its market as well. Though, arrangements met under Lomé Convention, the predecessor of the Cotonou Agreement, and the Everything-But-Arms GSP arrangement can be upheld by least developed countries. Together with the CARIFORUM-EU Economic Partnership Agreement, signed in 2008 and building on the Cotonou Agreement as the first of a series of agreements, and the Free Trade Agreement (FTA) between the EU and South-Korea, signed in 2010 and being the most advanced FTA of the EU at the moment, the article will provide an analysis of the social labour provisions in these new generation of agreements to see which direction and approach the EU will choose in the future.

An alternative for non-least developed countries that do not want to or cannot conclude an Economic Partnership Agreement can also apply for the EU's GSP+ arrangement. The GSP+ arrangement, also called Special Incentive Arrangement for Sustainable Development and Good Governance, is a special type of the GSP and offers tariff preferences if the respective state implements and complies with a list of international conventions such as the eight ILO Conventions. Being one of the most important tools in promoting standards in developing or emerging countries, it is thus important to analyse this arrangement in a final step.

#### 4.1. ASSESSMENT: THIRD COUNTRY AGREEMENTS

##### 4.1.1. COTONOU AGREEMENT

The Cotonou Agreement, signed in 2000 is an Economic Partnership Agreement between the European Community and 79 African-Caribbean-Pacific (ACP) countries<sup>73</sup> which are for the most part former colonies of EU Member States. It is the basis for a legal framework, establishing a 20 years' partnership from 2000 to 2020 and succeeding the Lomé Convention which expired in 2000. The agreement is built up interdisciplinary, linking development cooperation, political cooperation and economic and trade cooperation. In contrast to its

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<sup>73</sup> Angola, Antigua and Barbuda, Belize, Cape Verde, Comoros, Bahamas, Barbados, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Kinshasa), Cook Islands, Côte d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Republic of Guinea, Guinea-Bissau, Equatorial Guinea, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, St. Kitts, Nevis, St. Lucia, St. Vincent and the Grenadines, Solomon Islands, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Suriname, Swaziland, Tanzania, Timor Leste, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia, Zimbabwe

predecessor, the Lomé Convention, the Cotonou Agreement also includes issues of Human Rights, rule of law and democracy. The financing stems pre-eminently from the European Development Fund (EDF) (Cotonou Agreement Annex I) and from loans of the European Investment Bank (Cotonou Agreement Annex II). The parties focus particularly on five pillars: A political dimension, enhanced poverty reduction, reform of the financial cooperation and establishing a new framework for economic and trade cooperation and the promotion of concepts for participation.<sup>74</sup> Participatory approaches shall ensure the multilateral flow of information, inclusion of civil societies in cases of reforms and other political means and the inclusion of non-governmental actors.

The agreement shall be revised every five years, but the overall cooperation strategy promotes a flexible way to amend specific political guidelines for different fields of cooperation frequently, without replacing the actual agreement, by using external texts of reference that develop the different strategies in the agreement in more detail.<sup>75</sup> The agreement follows a reciprocal approach, providing for preferential access to the EU market, which marks an essential change as the former agreements were characterised by non-reciprocal trade preferences. In the area of trade issues, the EC and the ACP countries agreed to conclude WTO-compatible regulations, replacing the previous one-sided market preferences with regional economic partnerships in 2008 (e.g. EU-CARIFORUM Agreement).

In the context of CLS, the Cotonou Agreement provides two general Articles, Articles 9 and 50, that touch upon the issue of labour rights, respectively, refer to CLS and the ILO Conventions specifically. The agreement adds with Article 50 a section for ‘trade and labour standards’ where CLS are mentioned expressly:

*1. The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant International Labour Organisation (ILO) Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of worst forms of child labour and nondiscrimination in respect to employment.*

*2. They agree to enhance cooperation in this area, in particular in the following fields:  
-exchange of information on the respective legislation and work regulation;*

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<sup>74</sup> European Commission, ‘ACP – The Cotonou Agreement’, 19 June 2016, available at <[https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index\\_en.htm\\_en](https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm_en)>.

<sup>75</sup> Ibid.

- the formulation of national labour legislation and strengthening of existing legislation;
- educational and awareness raising programmes;
- enforcement of adherence to national legislation and work regulation;

3. The Parties agree that labour standards should not be used for protectionist purposes.

The Trade and Labour Standards clause under Article 50 implements general provisions in trade-related areas referring to compliance with the ILO Conventions and, in particular, to the Core Labour Standards. In the second paragraph, four general fields of cooperation in the context of trade and labour standards are defined. Trade related areas shall be in the focus of cooperation, ‘establishing full and coordinated participation in the relevant international fora and agreements’ (Article 44(1) Cotonou).

Article 9 also provides an explicit Human Rights Clause, establishing a positive obligation for the parties under Human Rights law and the obligation to protect economic, political, cultural and social rights. Main instrument in this respect is political dialogue (Articles 8, 9(4) Cotonou). According to Article 9(2) of the Cotonou Agreement, ‘the Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural’ (cf. Articles 13 and 26 Cotonou). It can be assumed that Human Rights in this context includes the closely related CLS, as the agreement refers to most international legal sources for Human Rights, and thus, can be understood as *jus cogens*. Moreover, in the Communication paper COM(2001)416, the Commission inevitably linked the promotion of CLS with the promotion of Human Rights. Additionally, the Human Rights Clause also refers to social and economic rights which also indicate, *inter alia*, the link to CLS.

The identification of the scope of this Human Rights clause is of importance as it includes a consultation procedure in cases of non-compliance in Human Rights, democratic principles and the rule of law in Article 96. In cases where an intensified political dialogue does not lead to the solution, tackling the non-compliance, the Consultation Procedure shall define a roadmap and may take ‘appropriate measures’, which encompass ‘precautionary measures for ongoing cooperation projects and programmes or the suspension of projects, programmes and other forms of aid.’ This Consultation Procedure can be interpreted as a hard, sanction based, mechanism. In cases of non-compliance, sanctions in the form of intensified political dialogue and, ultimately, ‘appropriate measures’ are possible. Nonetheless, appropriate measures have to be in ‘accordance with international law, and proportional to the violation.’ Suspension [of the agreement] is a ‘measure of last resort’ (Article 96(1)(c)).



Although Article 50 provides a general reference to the ILO's CLS, respectively, labour standards in general, the agreement provides also for specific issues touching upon CLS. Article 11(1) and Declaration II Article 13 in the Annex of the agreement, mention the issue of trafficking explicitly, which is encompassed in the CLS of forced labour Article 26 (here esp. Article 26(1)) emphasises cooperation efforts regarding the rights of children, and particularly, reintegration of children into society and primary education. This provision is also highly significant in regard to the CLS of child labour. Financial and technical assistance for achieving the agreement objectives are ensured under Article 55. Article 44(2) shall further strengthen and increase the 'capacity to handle all areas related to trade, including, where necessary, improving and supporting the institutional framework.'

The agreement also includes a dispute settlement mechanism in Article 98 for 'any dispute arising from the interpretation or application of this Agreement between one or more Member States or the Community, on the one hand, and one or more ACP States on the other'. The dispute settlement mechanisms consist of two instances. The first is a dispute settlement by the Council of Ministers. If this instance fails to settle the dispute, arbitrators shall be appealed. Although the parties involved in the dispute settlement are bound to take the measures necessary, Article 96 does not mention any explicit sanctions such as trade measures. Only Article 98 mentions explicit measures in cases of non-compliance. The CLS under Article 50 are not explicitly linked to the Consultation Procedure in Article 96 but are encompassed by the dispute settlement in Article 98. Due to the implicit link of CLS to Human Rights, violations of CLS could possibly also fall under Article 96, and thus, would be protected by a sanction based mechanism. As Article 50(3) states that 'labour standards should not be used for protectionist purposes,' it has to be assumed, though that only severe violations of the fundamental CLS would imply the Consultation Procedure with possible trade measures. Article 96 has been applied about 15 times since 2000. However, none of the consultations were due to a violation of labour standards but mostly due to issues of the rule of law, democratic principles and Human Rights concerns.

Guinea-Bissau, which was frequently shattered by political instability in the past, for instance was mostly seen as a success story for the consultation procedure. End of 2003, the EU launched the consultation procedure due concerns of a 'weakening of the rule of law' after several postponements of elections and finally a *coup d'état*.<sup>76</sup> The result of the consultation

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<sup>76</sup> L. Mbang, 'Recent Cases of Article 96 Consultations', European Centre for Development Policy Management, August 2005, available at <<http://ecdpm.org/wp-content/uploads/2013/10/DP-64C-Recent-Cases-Article96-Consultations-2005.pdf>>.

procedure was a roadmap under which Guinea-Bissau undertook four commitments to tackle the named issues. The case of Guinea-Bissau became a success because the government was cooperative towards the EU and other supporting ACP states. Additionally, the EU decided not to suspend the partnership but to increase the financial support. Other ACP states individually and together were very proactive towards improving the situation and organising free and fair elections.<sup>77</sup> In 2011, though, another consultation procedure was launched since the government was not able to uphold the democratic constitutional order as a result of military mutiny. The outcome of the consultation was the suspension of development cooperation. The Parties agreed upon reviewing the situation every six months. Until March 2015 the development cooperation stayed suspended as during the time of suspension the situation significantly worsened including another *coup d'état*. The reinstatement in 2015 took place as the situation improved with newly elected authorities and commitments on the side of the Guinea-Bissauan government.<sup>78</sup>

#### 4.1.2. CARIFORUM AGREEMENT

The negotiations on an Economic Partnership Agreement with the CARIFORUM States<sup>79</sup> had already started in April 2004 and were concluded on 16 December 2007 with its initialling. The European Parliament gave its consent on 25 March 2009. Since 29 December 2008, the Agreement is being applied provisionally for all signatory parties with the exception of the Republic of Haiti, which signed the agreement in December 2009, but is not yet applying it pending ratification.

The aim is to gradually and in accordance with the requirements of the World Trade Organisation (WTO) remove barriers to trade and to strengthen the trade and development cooperation. With this agreement the EU tries to solve issues under WTO law. According to the Most Favoured Nation Principle under WTO rules, developed countries are required to grant

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<sup>77</sup> Ibid.

<sup>78</sup> Council of the European Union, 'Article 96 of the Cotonou Agreement - consultation procedure', 14.3.2016, available at <<http://www.consilium.europa.eu/en/policies/eu-africa/article-96-cotonou-agreement/>>; Council of the European Union, 'Council Decision of concerning the conclusion of consultations with the Republic of Guinea- Bissau under Article 96 of the partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part', Council Decision (2011); Council of the European Union, 'EU to resume cooperation with Guinea-Bissau', Press Release (2014), available at <<http://www.consilium.europa.eu/en/press/press-releases/2014/07/pdf/EU-to-resume-cooperation-with-Guinea-Bissau/>>.

<sup>79</sup> Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Surinam, Trinidad, Tobago, and the Dominican Republic

benefits for all members of the WTO if the country has granted benefits to one country.<sup>80</sup> This regulation prevents discriminating state behaviour to grant only a single or few countries trade concessions, such as to former colonies of EU Member States.

The CARIFORUM Agreement refers to a broad spectrum of trade issues ‘consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement’ (Article 1(a)). Therefore, the central objective of the Agreement is the eradication of poverty by establishing a trade partnership and framework in line with sustainable development (Article 1(a)). The asymmetrical trade approach provides for immediate, unlimited and duty-free access to the European market but gives the CARIFORUM countries a transition period of 25 years to open their market to the European Union (e.g. Article 1(f); Article 146(E)). Trade and investment measures shall serve the realisation of other policy goals such as the regional integration of the CARIFORUM states, good governance and sustainable development. Thus, the agreement broadens the scope of a regular free trade agreement also focussing on the development of the CARIFORUM countries. The respect for Human Rights, democratic principles and the rule of law are seen as a fundamental pre-condition building on the Cotonou Agreement. The broad scope of the agreement also includes social aspects such as core labour rights. Already the preamble emphasises the importance of social aspects in the agreement as they contribute to peace and security and promote a stable democratic political environment. In Article 2(1) the Parties refer to Article 9 of the Cotonou Agreement directly. Article 9 of the Cotonou Agreement is a general Human Rights clause, establishing a positive obligation for the parties under Human Rights law and the obligation to protect economic, political, cultural and social rights, which encompasses CLS as well. Also the respect of basic labour rights and the compliance with commitments within the ILO, respectively, ratified Conventions are explicitly mentioned in the preamble.

*CONSIDERING the need to promote economic and social progress for their people in a manner consistent with sustainable development by respecting basic labour rights in line with the commitments they have undertaken within the International Labour Organisation and by protecting the environment in line with the 2002 Johannesburg Declaration;*

Generally, it can be said, that the CARIFORUM Agreement has a better defined framework when it comes to labour standards and that the issue of sustainable development and particularly

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<sup>80</sup> World Trade Organization, ‘Principles of the trading system’, accessed on 19 June 2016, available at <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)>.

labour standards touch upon several if not most dimensions of the agreement. Article 72 for example states that investors have to act in accordance with the CLS. In the actual provisions of the agreement, basic labour rights or CLS fall under ‘Social Aspects’ covered by Chapter 5. Article 191(1) provides for the commitment with the CLS and their ILO Conventions directly as well as for the compliance with the obligations as a member of the ILO.

*1. The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant ILO Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour and non-discrimination in respect to employment. The Parties also reaffirm their obligations as members of the ILO and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).*

Article 191(2) further broadens the labour rights and emphasises decent work referring to the Ministerial declaration by the UN Economic and Social Council on Full Employment and Decent Work. Article 191(3) represents a quite unique provision in the EU’s international agreements in which coherence between trade policies, on the one hand, and employment and social policies on the other hand. Therefore, the Parties shall show recognition that CLS and decent work can have a beneficial role on economic efficiency, innovation and productivity. Like already in the Cotonou Agreement, Article 191(4) asserts that labour standards shall not be used for protectionist purposes. Also under Article 192, the EU includes, for the first time, a provision giving countries expressly leeway in establishing own social regulations and labour standards as long as they are consistent with the internationally recognised right in Article 191, i.e. the ILO CLS and the Ministerial declaration by the UN Economic and Social Council on Full Employment and Decent Work. This gives countries the possibilities to adapt social regulations and labour standards to their very own society and social issues. This is an approach that can also be found in the EU’s internal social policy as the EU only defines specific targets and leaves leeway for the Member States how to implement and reach these targets in their country-specific setting (see Chapter 2.2.). On the other hand, one could argue that this is due to the EU’s missing competence in the social and employment policy field. Two other conditions to this approach is that the CARIFORUM countries shall not lower their level of protection provided by social and labour legislation, as well as derogating from, or failing to apply such legislation and standards in order to allure foreign direct investment or to gain a

competitive advantage (Articles 73 and 193(a)). Article 194 further includes the requirement of a regional approach in promoting decent work with social cohesion policies and other measures.

The ‘Social Aspects’ part of the agreement also provides for a consultation and monitoring process under Article 195 which can be described as being more extensive than the one provided in the Cotonou Agreement. This process shall be exercised by the Parties own respective institutions and processes and by those set up in the Agreement (Article 195(1)). The Parties have also the possibility to consult each other and the CARIFORUM-EC Consultative Committee which is on the other part also allowed to give recommendations to the Parties (Article 195(2)). These consultations may take no more than 3 months (Article 195(4)). Finally, the Parties can also consult the ILO directly on social issues (Article 195(3)). In that case, consultations may not exceed six months (Article 195(4)). If the social issue cannot be solved by this consultation and monitoring process, the Parties can also request a Committee of Experts which consists of three members with specific expertise. The last Article of this Chapter, Article 196, refers back to Article 7 of the Agreement, setting the mutual cooperation of the Parties in the context of social and labour issues. The Parties, therefore, shall cooperate to achieve the respective objectives of the agreement and, beyond that, shall cooperate through exchange of information, formulation of national social and labour legislation, educational and awareness-raising programmes, and enforcement of adherence to national legislation and work regulation.

If the consultation and monitoring process on social issues does not lead to a result after nine months, the Agreement’s Dispute Avoidance and Settlement takes action. However, Article 204(6) explicitly states for Chapter 5 (Social Aspects) of Part II that the consultation and monitoring process on social issues in Article 195(3), (4) and (5) have to be exhausted first. The general Dispute Avoidance and Settlement set out in Part III consists in a first step of consultation and if these do not solve the matter, a recourse to the mediation (Articles 204 and 205). Where Parties fail to resolve the matter, an arbitration panel can be established (Article 207). In social matters, the panel must comprise at least two members with specific expertise on the matters (Article 207(4)). This arbitration panel has to notify to the Parties an interim report and in the case of social matters also a recommendation (Articles 208 and 209(3)). If the panel holds that the Party complained against did not comply, this Party has to offer a compensation (Article 213(1)). If there is no agreement on a compensation within 30 days after the ruling, the other Party may adopt ‘appropriate measures.’

In contrast to the Cotonou Agreement provision and the GSP arrangement, appropriate measures ‘shall not include the suspension of trade concessions’ (Article 213(2)). The ‘General exception clause’ in Article 224 and the respective footnote 1, however, explicitly exclude

measures necessary to combat child labour from this prohibition of suspension of trade concession. Also, the prohibition of lowering standards to attract foreign direct investment can be subject to trade measures by virtue of non-compliance as it is also covered by Article 73. The Human Rights clause in Article 2(1), referring to the Human Rights clause in Article 9 of the Cotonou Agreement, can be used to sanction worst forms of non-compliance with trade measures as already discussed in context of the Cotonou Agreement.

#### 4.1.3. EU-SOUTH KOREA FREE TRADE AGREEMENT

The EU-South Korean Free Trade Agreement (Korean FTA) was signed in October 2009 and has been provisionally applied since July 2011 and entered into force in on 13 December 2015. The Korean FTA is the only FTA with an Asian country and marks a new generation of Free Trade Agreements as it is the most comprehensive one eliminating import duties on almost all products except some agricultural products, removing duties on almost all trade in goods and including other areas like competition policy, government procurement, intellectual property rights, transparency in regulation and sustainable development. Thus, also Core Labour Standards are addressed in the Agreement.

The preamble emphasises the Universal Declaration of Human Rights and the Parties' commitment to 'sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all.'<sup>81</sup> Additionally, the development and enforcement of labour laws and policies as well as the promotion of basic workers' rights and sustainable development shall be strengthened.<sup>82</sup> Equally to the provision in the CARIFORUM Agreement, Article 1.1(h) states that environmental, labour or occupational health and safety standards should not be lowered to attract foreign direct investment.

In the actual provision, labour standards, respectively, CLS are included in Chapter 13 on 'Trade and Sustainable Development.' In Article 13.2(1) and footnote 84, the Agreement offers a definition of the scope of labour, stating that it includes the issues relevant to the Decent Work Agenda, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work and that labour standards should not be used for protectionist purposes. Like the CARIFORUM Agreement, the FTA underlines the coherence between economic development, social development and environmental development (Article 13.1(2)). The Parties also state that labour standards of the EU and South-Korea shall not be harmonised

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<sup>81</sup> EU-South-Korea Free Trade Agreement, *OJ* [2011] L 127/7, 15.5.2011.

<sup>82</sup> *Ibid.*

(Article 13.1(3)) and that Korea has leeway in implementing its own country specific standards as long as these are in accordance with international recognised standards and agreements (Article 13.3). In the context of the globalisation process, the Parties additionally emphasise the significance of international cooperation on issues of economic employment, social challenges and opportunities resulting from globalisation (Article 13.4(1)). Article 13.4(2) then mentions the commitment with decent work under the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work and Article 13.4(3) refers to the obligations deriving from the membership of the ILO, the Declaration on Fundamental Rights and Principles and Rights at Work and the commitment to respecting, promoting and realising the CLS in the Parties' laws and practices, which includes the commitment and implementation of the all ILO Conventions, that are classified as 'up-to-date' by the ILO. That the Agreement goes beyond the basic ILO Conventions is new in the EU's agreements and shows an increasing alignment of the EU to the ILO as the primary social institution and main setter of international social standards. However, one should consider that South-Korea is a more socially stable and economically higher developed country than for instance most states under the CARIFORUM Agreement and thus can be expected to implement higher standards effectively.

Also, the Agreements dispute settlement on social and labour issues is comparable to the one in the CARIFORUM Agreement as there is no sanctioning mechanism but two different consultation procedures: government consultation and consultations of a panel of experts. By virtue of Article 13.16, 'for any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Articles 13.14 and 13.15.' Article 13.14 provides for the possibility of requesting consultations with the other Party, including the communications of the Domestic Advisory Group(s) referred to in Article 13.12. Interestingly, these Domestic Advisory Group(s) consist of independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders, which illustrates a more inclusive approach, in terms of external influential actors, than other agreements before. Resolutions resulting from this consultation should be in line with the ILO (Article 13.14(2)). In cases where issues cannot be resolved with this first consultation process, respectively, when a Party considers that the matter needs further discussion, the Committee on Trade and Sustainable Development, which comprises senior officials from within the administration of the Parties, can be consulted (Article 13.14(3)). The Committee may also consult the Domestic Advisory Group for advice (Article 13.14(4)). If the matter is not resolved within 90 days, the Parties may request the convention of a Panel of Experts as provided under Article 13.15. This panel can seek information from the Parties, the

Domestic Advisory Group(s) or international organisations such as the ILO. The panel has to elaborate a report and recommendation how to solve the matter satisfactorily and in accordance with international standards and agreements.

Although, the agreement provides no sanctions for non-compliance with social standards, as set out in Chapter 13, the provisions included in the FTA represent a level of coherence and inclusion that was not used in other agreements, yet. The Parties not only express their recognition of interdependence between social, economic and environmental developments (see EU-CARIFORUM Agreement) but actively include independent actors from each field in a balanced manner in its consultation procedure which gives them a certain extent of influence.

#### 4.2. ASSESSMENT: GENERALISED SYSTEM OF PREFERENCES (GSP)

The Generalised System of Preferences provides tariff reductions to developing countries, so that these pay less to no duties on their exports to the European Union. Generally, it shall support their domestic economies by giving them unlimited access to the whole European market. The Scheme is currently based on the reformed Regulation 978/2012 which applies in since 2014 and is subject to the General Agreement on Tariffs and Trade (GATT) and the Enabling Clause under WTO law.<sup>83</sup> The reformed GSP creates three kinds of arrangement: (a) general GSP (b) GSP+ or Special Incentive Arrangement for Sustainable Development and Good Governance (c) Everything-But-Arms. The general GSP is a one-dimensional instrument focussing on the trade in goods with the goal of supporting domestic economies of developing countries and making them more competitive.<sup>84</sup> A better working economy can also improve the domestic situation regarding Human Rights and labour rights. However, the GSP is not aimed directly at Human Rights and labour rights issues. For the purpose of promoting core principles of sustainable development, labour rights and good governance, the EU introduced the GSP+ arrangement, or Special Incentive Arrangement for Sustainable Development and Good Governance. The Everything-But-Arms arrangement is aimed at Least Developed Countries and grants no duties for all products. But equal to the general GSP, Everything-But-Arms does not demand the countries to ratify and implement core conventions. For this reason, the general GSP arrangement and the Everything-But-Arms arrangement shall not be discussed in this thesis. Instead, the more relevant GSP+ arrangement shall be discussed in detail.

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<sup>83</sup> The enabling clause was introduced to permit trading preferences targeted at developing and least developed countries which would otherwise violate Article 1 of the GATT.

<sup>84</sup> European Commission, 'Generalised Scheme of Preferences (GSP)', 24 May 2016, available at <[http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index\\_en.htm](http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm)>.



#### 4.2.1. GSP+

The GSP+ shall encourage particular vulnerable countries to ratify and implement key conventions on sustainable development, labour rights and good governance, by giving those countries enhanced preferences to a large variety of products. The special incentive arrangement for the protection of labour rights covers both, non-sensitive (already exempted in general GSP) and sensitive products, meaning products stemming from the EU production base that is under particular protection, such as certain agricultural products, textile, clothing, apparel, carpets and footwear items.<sup>85</sup> The GSP+ arrangement covers almost the same products and tariff lines as the general GSP arrangement. In the general arrangement, around 6200 tariff lines of around 7200 lines in total are covered. Non-sensitive products are usually completely duty-free and cover around 2400 tariff lines. Sensitive products, covering around 3800 tariff lines, usually get 3.5 percentage points on *ad valorem* duties. Textile products receive reduction of 20 percent. The Common Customs Tariff specific duties on sensitive products are reduced by 30 percent. The GSP+ arrangement covers around 70 tariff lines more than the general GSP arrangement and offers also to a large extent duty-free preferences for sensitive products.<sup>86</sup> Thus, the EU is using mainly a carrot approach, or in other words, using incentives for change rather than a stick or punishment approach.

Before countries can benefit from the GSP+, they must fulfil the preconditions of the general GSP. Thus, the requesting country may not have been classified for three consecutive years as upper-middle or high-income economies by the World Bank and is not allowed to get benefits from another EU preferential market access agreement offering equal or better tariff preferences.<sup>87</sup>

Another precondition for the GSP+ is the vulnerability criterion, stating that the requesting country must be vulnerable based on a lack of diversification and insufficient integration within the international trading system.<sup>88</sup> A GSP+ requesting country has to have ratified the 27 core conventions on human rights, labour rights, environmental protection, and good governance and may not formulate any reservations or measures that are contrary to them.<sup>89</sup> These core

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<sup>85</sup> Regulation No 1209/2012, *OJ* [2012] L 348/11, 17.12.2012; Regulation No 2016/326, *OJ* [2016] L 62/9, 8.3.2016.

<sup>86</sup> Article 7, Regulation No 978/2012, *OJ* [2012] L 303/6, 25.10.2012.

<sup>87</sup> Article 4(1)(a) & (b), Regulation No 978/2012, *OJ* [2012] L 303/5 and L 303/6, 25.10.2012.

<sup>88</sup> Article 9(1)(a), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012; for definition of 'vulnerable' see Annex VII, Regulation No 978/2012, *OJ* [2012] L 303/59, 25.10.2012.

<sup>89</sup> Article 9(1)(b), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012; List of 27 core conventions see Annex VIII, Regulation No 978/2012, *OJ* [2012] L 303/60, 25.10.2012.

conventions also encompass the eight ILO Conventions of the CLS.<sup>90</sup> A final precondition is that the requesting countries may not have any serious failures to effectively implement the conventions, based on the judgement and assessment of the conventions' monitoring bodies.<sup>91</sup> Requesting countries must also sign the Commission delegated Regulation (EU) 155/2013 to maintain the ratification of the 27 conventions and to ensure their effective implementation.

A significant part of the GSP+ arrangement is the continuous and enhanced monitoring procedure from the monitoring bodies named in the conventions and from the European Commission on the GSP+ beneficiaries compliance with the conditions of the GSP+ arrangement.<sup>92</sup> The European Commission checks that the respective GSP+ state maintains the ratification of the conventions and ensures their effective implementation, complies with the reporting requirements, accepts regular monitoring and review of its implementation record and cooperates, in particular by providing necessary information.<sup>93</sup> Starting with the first assessment when a country requests to get the preferential arrangement granted, the European Commission prepares 'scorecards' on which the Commission lists and identifies a country's deficits and fields of improvement where the country has to put particular focus on.<sup>94</sup> The scorecards are updated annually based on the its own information and information from the conventions' bodies and other actors such as NGOs, private stakeholders and civil society organisations. The inclusion of many different actors shall complement the Commission's own information and shall close as many information gaps as possible. Based on these scorecards, the Commission starts an ongoing dialogue with the country to reflect on every significant aspect of the GSP arrangement and to discuss on shortcomings.<sup>95</sup> In that respect, the Commission may also visit the country to gather first-hand information and to communicate with other regional and local stakeholders. Particularly economic stakeholders are an important actor as the GSP+ arrangement is in its core a trade arrangement.

There are two cases in which a complete or temporary withdrawal of the GSP+ preferences can be considered. Article 8 of the GSP arrangements states that the tariff preferences of Article 7 shall be suspended [...] when the average value of Union imports [...] over three consecutive years from that GSP beneficiary country exceeds' 17.5 percent and for textiles 14.5 percent.<sup>96</sup>

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<sup>90</sup> Article 9(1)(c), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012.

<sup>91</sup> Article 9(1)(b), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012

<sup>92</sup> Article 9(1)(e), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012

<sup>93</sup> Article 9(1)(f), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012

<sup>94</sup> European Commission, 'The EU's Generalised System of Preferences (GSP)', August 2015, available at <[http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc\\_153732.pdf](http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf)>.

<sup>95</sup> *Ibid.*

<sup>96</sup> Article 8, Regulation No 978/2012, *OJ* [2012] L 303/2, 25.10.2012; Annex VI, Regulation No 978/2012, *OJ* [2012] L 303/1, 25.10.2012

After a suspension it follows a transition period of two years.<sup>97</sup> Although the GSP and in particular GSP+ arrangement is mainly a carrot approach, the arrangement makes also use of a stick or sanction-based mechanism which is described in Chapter V of the GSP arrangement. Thus, the preferences can be withdrawn temporarily if the beneficiary state violates conventions' principles seriously and systematically, exports goods made by prison labour, has shortcomings in customs controls on the export or transit of drugs, is not complying with the conventions on anti-terrorism and money laundering, has serious and systematic unfair trading practices or has serious and systematic infringements of the objectives adopted by Regional Fishery Organisations or any national arrangement to which the EU is a party concerning the conservation and management of fishery resources.<sup>98</sup> The preferences can be reinstated only if the beneficiary countries show enhanced efforts to tackle these issues and cooperate with the Commission and other named actors of this arrangement.<sup>99</sup> It is, however, essential that such a withdrawal can or will be only applies in serious and systematic violations. Smaller or individual violations cannot be a reason for this sanctioning mechanism. The decision of temporary withdrawal, as well as every other decision, has to be made by the European Commission in accordance with the advisory procedure under Article 39(2).<sup>100</sup> This advisory procedure provides for a cooperation with the Generalised Preferences Committee in which the EU Member States are represented. This implies a potential problem as every EU Member State gets power to influence every decision in the GSP arrangement. Particularly with regard to the decision if a state gets the preferences granted in the beginning might be influenced by individual EU Member States' political relation to the requesting country. Beyond, withdrawal decision is also based on information provided by all included actors and, especially, the UN monitoring bodies named in the conventions.<sup>101</sup> This provides a certain protection that decisions are consistent and coherent with international law, respectively, the conventions. It is also possible for the Commission to withdraw preferences for specific products to better tackle branches where violations occur more often without harming the complete nation and its population on a broader scale.<sup>102</sup> After the decision of withdrawal by the Commission, the withdrawal shall take place only six months after the decision, which increases the flexibility of this sanction mechanism to tackle severe violations.<sup>103</sup>

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<sup>97</sup> Article 8(4), Regulation No 978/2012, *OJ* [2012] L 303/7, 25.10.2012

<sup>98</sup> Article 19(1), Regulation No 978/2012, *OJ* [2012] L 303/10, 25.10.2012

<sup>99</sup> Articles 16 and 20, Regulation No 978/2012, *OJ* [2012] L 303/10, 25.10.2012

<sup>100</sup> Article 19(3), Regulation No 978/2012, *OJ* [2012] L 303/11, 25.10.2012

<sup>101</sup> Article 19(6), Regulation No 978/2012, *OJ* [2012] L 303/11, 25.10.2012

<sup>102</sup> European Commission, 'The EU's Generalised System of Preferences (GSP)', August 2015, available at <[http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc\\_153732.pdf](http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf)>.

<sup>103</sup> Article 15(10), Regulation No 978/2012, *OJ* [2012] L 303/9, 25.10.2012

#### 4.2.2. GSP WITHDRAWAL

As of 2016, 15 countries benefit or have benefitted from the GSP+ arrangements. Generally, most countries put enhanced efforts in implementing the conventions effectively and are working on their shortcomings. On 28 January 2016 the European Commission published a Joint Staff Working Document on the GSP+ covering the period 2014 to 2015 and offering a detailed assessment of all current GSP+ countries and their compliance with the conventions including ILO core conventions. The report also mentions the issues and shortcomings as well as the future strategy tackling those problems.<sup>104</sup>

The EU has applied the GSP sanctioning mechanism, viz. the withdrawal of trade preferences only in three cases (Myanmar, Belarus, Sri Lanka) and threatened to withdraw them in a two other cases (Pakistan, China).<sup>105</sup> In the cases of Myanmar and Belarus, the GSP has been withdrawn due to violations of Core Labour Standards and their respective ILO Conventions. However, at the time of withdrawal the GSP+ arrangement was not in place yet. Both countries fell under normal GSP with focus on CLS. Sri Lanka is until today the only country that lost its GSP+ privileges.

#### *Myanmar/Burma*

After the Japanese occupation in the Second World War and the following colonialization of Great Britain from 1945 to 1948, Myanmar regained independence in 1948. Since then, Myanmar was and still is frequently scene of violent conflicts where ethnic minorities fight for more autonomy. In 1962, the country collapsed into a military dictatorship which was replaced by a democratic elected president in 2011. During the military dictatorship (especially between 1988 and 2011) the Myanmarese dictatorship was seen as one of the most repressive in the world, violating civil and political and economic, social and cultural, in particular, labour rights frequently and systematically.<sup>106</sup> Nonetheless, the EU (and also the US) granted Myanmar trade preferences under the GSP. In 1995, though, the European Trade Union Confederation and the International Confederation of Free Trade Unions complained jointly about severe violations. Consequently, the European Commission started an investigation consisting of hearings with

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<sup>104</sup> European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015', Joint Staff Working Document (2016), SWD(2016) 8 final.

<sup>105</sup> There were also considerations and complaints to withdraw preferences from India because of nuclear test and Russia because of Human Rights violation of Russian security forces. Both cases, however, are not explicitly relevant for the analysis in this thesis.

<sup>106</sup> The Freedom House Index for every year since 1998 is available on <https://freedomhouse.org/report/freedom-world/1998/burma>.

NGOs as the Myanmar government prohibited field investigations.<sup>107</sup> The accusation was forced labour, consisting of normal civilians that were forced to work on public and infrastructural projects, to be human minesweepers and to support counter-insurgency operations. The government justified its actions with the exception of ILO Convention 29 on Forced Labour that allows the population to work in community service (Article 2(2) ILO Convention No. 29) which was, however, refused by the ILO.<sup>108</sup> In December 1996, the Commission submitted COM/96/0711 to the Council and proposed to withdraw access to the tariff preferences due to the ‘routine and widespread’ use of forced labour.<sup>109</sup> This proposal was approved by the Council in 1997 and immediately withdrew Myanmar’s preferences. From 2005 to 2012 the EU also include a provision in its GSP regulation that the withdrawal of all tariff preferences should be maintained for Myanmar due to its political situation.<sup>110</sup> As a result of the beginning democratisation in 2011 and the International Labour Conference in 2012, Myanmar was reinstated into the GSP tariff preferences under the Everything-But-Arms Agreement in 2013.

### *Belarus*

Belarus gained sovereignty in 1991 and until today, it is governed authoritarian by Alexander Lukashenko. Lukashenko’s policy is often described as undemocratic, authoritarian and hostile market by Western observers and, thus, the country is economically and politically highly isolated in Europe. Since 1989, Belarus has bilateral trade and economic relations to the European Community and was granted tariff preferences under the GSP.

As a consequence of a joint complaint by the International Confederation of Free Trade Unions, the European Trade Union Confederation and the World Confederation of Labour, the European Commission launched an investigation together with a Commission of Inquiry of the ILO in 2004.<sup>111</sup> The complaint concerned violations of ILO Convention 87 and ILO Convention 98 on freedom of association and the right to collective bargaining.<sup>112</sup> After the monitoring

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<sup>107</sup> EU Bulletin. 1/2-1996 [1996] 1.4.58

<sup>108</sup> ILO, ‘Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)’, Complaint (article 26), 1996, available at <[http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2508280,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508280,en:NO)>.

<sup>109</sup> European Commission, ‘Proposal for a COUNCIL REGULATION (EC) temporarily withdrawing access to generalized tariff preferences for industrial goods from the Union of Myanmar’ (1996), COM/96/0711 final.

<sup>110</sup> Preamble (25), Regulation No 978/2012, *OJ* [2012] L 303/1, 25.10.2012.

<sup>111</sup> *OJ* [2004] C 40/4, 14.2.2004.

<sup>112</sup> ILO, ‘Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the Observance by the Government of the Republic of Belarus of

bodies found no efforts of effectively implementing the Conventions and tackling the systematic labour rights violations, the Commission, after consultation of the Generalised Preferences Committee, recommended the Council to withdraw trade preferences in 2006 if the Belarussian government does not tackle the issues within six months.<sup>113</sup> However, in mid-2007, an ILO assessment showed that Belarus had not acted yet. As a consequence, the Council decided in July 2007 to withdraw the trade preferences. Until today, Belarus is excluded from the GSP arrangements which is also stated in the GSP regulation.<sup>114</sup>

### *Sri Lanka*

Sri Lanka is the first and only country that ever lost its GSP+ preferences. Sri Lanka never had shortcomings with regard to the core labour conventions but was accused of violating the Convention against Torture, the Convention on the Rights of the Child and the Covenant on Civil and Political Rights in its counter-measures against the paramilitary organisation of Liberation Tigers of Tamil Eelam, who fought from 1983 to 2009 during the civil war in Sri Lanka for the independence of the Tamil dominated north and east of Sri Lanka. Although Sri Lanka was not violating CLS, it shows that the sanctioning mechanism of the reformed GSP is still working and will be used. In October 2008 the European Commission began an investigation of the suspicion. In October 2009, the investigation process was over and the Commission officially proposed to withdraw the GSP+ privileges as Sri Lanka was not implementing the conventions effectively and lacked of cooperation with the EU institutions.<sup>115</sup> This decision was based on reports and statements by UN Special Rapporteurs and Representatives, other UN bodies and reputable human rights NGOs.<sup>116</sup> The Regulation should enter into force six months after the proposal on 15 February 2010. Within these six months the Sri Lankan government got the chance to fulfill conditions to stop the withdrawal procedure.<sup>117</sup>

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the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)', 2003, available at <[http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2508289,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508289,en:NO)>.

<sup>113</sup> European Commission, 'Proposal for a COUNCIL REGULATION temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus', Proposal (2006), COM(2006) 438 final; European Commission, 'EU Member States back Commission recommendation to withdraw trade privileges from Belarus over labour standards', 20.12.2006, available at <[http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_131985.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_131985.pdf)>.

<sup>114</sup> Preamble (25), Regulation No 978/2012, *OJ* [2012] L 303/1, 25.10.2012

<sup>115</sup> Regulation No 143/2010, *OJ* [2010] L 45, 20.2.2010

<sup>116</sup> European Commission, 'EU temporarily withdraws GSP+ trade benefits from Sri Lanka', 15.2.2010, available at <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=515>>.

<sup>117</sup> *Ibid.*

However, the government refused to fulfill these and thus the EU decided to withdraw the GSP+ privileges and to revert to the general GSP arrangement on 15 August 2010.

### *Pakistan*

In 1995, the International Textile, Garment and Leather Workers' Federation, the European Trade Union Confederation's Committee on textiles, clothing and leather and the International Confederation of Free Trade Unions submitted a complaint under Article 9 of Regulation (EC) No 3281/94 to the Commission accusing Pakistan of forced child labour. The Commission, however, stated that Pakistan has taken steps in the right direction and thus does not see it as necessary to carry out an investigation.<sup>118</sup> The Commission further stated that the GSP is 'about progress [...] by encouraging the countries concerned to pursue a qualitative social development, a process the Community backs up with complementary schemes' and that withdrawal is a measure of last resort. Critics, after all, see the outcome as being potentially influenced by EU Member States which uphold trade relations with Pakistan.<sup>119</sup> In 1998, three years after the first complaint, the complaint was resubmitted, still accusing Pakistan of child labour in the textile industry. As the EU's Economic and Social Committee supported the complaint this time, the Commission launched an investigation which, though, was welcomed by the Pakistani government. It cooperated and provided necessary information and requested help from the EU to tackle the issue of forced child labour. A parallel investigation of the ILO showed, however, that the Pakistani government was not tackling the issue at all. Still, the Commission decided not to submit a proposal for withdrawal to the Council due to 'technical-legal' reason as Article 9 of the GSP Regulation (EC) No 3281/94 referred to forced labour and not child labour. Beyond, the general GSP arrangement of that time, did not ask the beneficiary states to ratify and implement certain conventions. At that time Pakistan had not ratified the respective ILO Conventions and was, thus, not bound by them. The result was that the complaint had to be worded as forced labour. As a result, the EU had no possibility to refer to the ILO Conventions on child labour.<sup>120</sup> In recent months, some voices were being raised

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<sup>118</sup> U. Holm, 'Written Question No. 2368/97 by Ulf HOLM to the Commission. Generalized system of preferences', C 021, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.1998.021.01.0148.01.ENG&toc=OJ:C:1998:021:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.1998.021.01.0148.01.ENG&toc=OJ:C:1998:021:TOC)

<sup>119</sup> G. Tsogas, 'Labour Standards in the Generalized Systems of Preferences of the European Union and the United States', 6(3) *European Journal of Industrial Relations* 2000, 349-370.

<sup>120</sup> C. Portela and J. Orbie, 'Sanctions under the EU's Generalised System of Preferences (GSP)', 20(1) *Contemporary Politics* 2014, 63-76.

accusing Pakistan to make more efforts implementing the UN Human Rights Conventions. Also the EU warned Pakistan in that respect.<sup>121</sup>

### *China*

In 1997, the People's Republic of China was in the focus of an accusation of forced prison labour (ILO Convention 29 on Forced Labour) by the European Parliament. The Commission refused this complaint due to several reasons. First, the European Parliament cannot submit complaints for the GSP arrangement. Only Member States and natural or legal persons can submit a complaint. Secondly, the ILO Convention 29 on Forced Labour only covers products that were produced by forced prison labour that is exported for which there was no evidence. Finally, evidences in general would be very difficult to assess. China was, together with Thailand, Ecuador and the Maldives, removed from the GSP on 1 January 2015 as adopted in Regulation 1421/2013.<sup>122</sup> However, even before the complete removal, most products from China were already graduated.<sup>123</sup> Reason for the complete withdrawal are the World Bank classification of the last three years before withdrawal.

## 4.3. EVALUATION

This chapter provided an analysis of three current agreements marking a new generation of upcoming agreements and a newly determined direction of the EU's external relations with third, and in particular developing or advanced developing countries. Also, the modified and reformed GSP arrangement, viz. the Special Incentive Arrangement for Sustainable Development and Good Governance fits in the new alignment. The analysis sketched out four coherent trends that can be found in different forms and shapes in all four tools. And indeed, these four trends depict the characteristics that would be expected of a normative power that is not using military or civilian (economic force) to influence norms and standards setting.

The first trend is the incentive or positive conditionality approach, hence, the basic orientation. Granting trade preferences under different schemes and the prospect on development assistance on the condition of ratifying and implementing effective structures and standards, such as CLS, shall create an incentive structure in contrast to a forcing approach.

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<sup>121</sup> European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015', Joint Staff Working Document (2016), SWD(2016) 8 final.

<sup>122</sup> Regulation No 1421/2013, OJ [2013] L355, 31.12.2013.

<sup>123</sup> Graduation = specific product groups loose GSP preferences.



The second trend, directly linked, is dialogue and consultation on different levels settle issues and disputes but also to provide feedback and support. As opposed to strict sanctions, i.e. trade measures, dialogue is the main tool.

This is also due to the third trend, anti-protectionism. Every analysed agreement or arrangement included provisions underlying that for instance labour standards shall not be used for protectionist purposes. However, also the rare use of trade sanctions expresses an overall anti-protectionist orientation as it was the social clause (see Chapter 2.1) that developing countries were afraid of, respectively, criticised due to protectionist fears. That trade sanctions are only imposed in cases of severe and systematic violations and after exhausting all other dialogue and consultation based possibilities, might increase the trust of benefiting countries and with it increase the willingness to implement norms and standards.

The last trend is the inclusion of other actors. The EU not only builds on information of different organisations and actors to react appropriately and to give suitable advice on potential shortcomings, but includes other actors like the third-country government, civil society organisations, international organisation or other nongovernmental organisations into the actual decision-making process. The most advanced form of inclusion can be found in the EU-South-Korea FTA which encompasses the Domestic Advisory Group(s).

One should, however, not suppress the fact that the rare use of sanctions and the overall soft approach might also be a sign of a lack of competences and weak compromise to increase the legitimacy of primary trade agreements by including certain social provisions.

## 5. CONCLUSION: NORMATIVE POWER EUROPE

Having now analysed the EU's import (Chapter 2) and export (Chapter 4) of Core Labour Standards as well as the EU's relation to the ILO (Chapter 3), the following will take the Normative Power Europe approach to see if the EU fulfils the criteria of a normative power and where potential shortcomings and problems with regard to the promotion of social standards exist.

The first part (Chapter 2) examined the internal dimension of the EU as a presumed normative power by looking at how the CLS translate into the EU's social policy framework and thus to see if the EU fulfils the necessary pre-conditions of what would be assumed of a normative power. Thereby, the basic social policy orientation and the status of these standards inside the EU were analysed. Also, the EU's interests and potential conflicts or imbalances regarding the social policy and other policies were addressed.

It is unquestioned that in the last decade, the EU has undergone a process of broadening its perspective and breaking up its limited trade and economic focus integrating the social dimension of globalisation, and in particular fundamental labour rights, in its very core of objectives. The integration of CLS as fundamental rights that are closely related to Human Rights and the alignment of the EU's social model to the ILO as the primary international social organisation now defines a significant part of the EU's normative basis as described by Manners in its five core norms. The amendment of the EU's own basis according to standards with their root in international law would indeed provide the Union with the necessary pre-conditions of what would be assumed of a normative power. Despite the facts speaking for a NPE, the EU has several potential limitations internally. On the grounds of the restraints and difficulties to include the CLS properly into EU law, as well the Member States tardy ratification of the Core Conventions notwithstanding the EU's external promotion since the early 1990s, can be seen as hypocritical by other parties that were and are pushed to implement them. Controversial are also the EU's conflict of interests, i.e. social versus market interests. Not only is the social protection by far less strict than the economic and trade protection, but market objectives are undoubtedly in the EU's core interest. A market oriented focus pre-empting social solidarity would adversely affect the normative power quality of the EU and the EU has already shown that in some cases economic freedom is prioritised over individual's social rights. This prioritisation of economic liberalisation could lead to the assumption of a hidden hierarchy of interests, where social norms are a part of an overarching market model and not a balanced counterpart.

To conclude and answer the first sub-question, CLS are integrated into a broadened social policy framework and constitute central rights. With the reframing of the social policy, the EU fulfils necessary pre-conditions of a normative power. The status of social policy and thus CLS inside the EU is however questionable as an economic interest might be prioritised. Also, the direct translation of the CLS into EU law is difficult.

The purpose of Chapter 3 was to analyse the relation between the EU and ILO, the EU's capabilities or competences in that relation and potential benefits or conflicts such a cooperation might imply. Thus the EU's normative power would be incremented by the possibility to influence norm setting in the ILO. After all it is likewise significant to understand the background why the EU is willing to promote the CLS and the reason for such a cooperation, respectively, the EU's reason to empower another norm setter.

Although all core conventions are now ratified by the EU Member States, the EU is still not able to ratify them due to the observer status in the ILO. The EU has nevertheless included

them, sometimes only partly, into the current treaties and the European Charter of Fundamental Rights, which however does not confer any explicit competences on the EU. The EU is very limited in competences with regard to the social and employment policies. The Union can neither ratify nor effectively enforce the standards in its Member States which again might seem duplicitously to developing countries that are pushed to implement CLS. As the EU Member States are rather reserved in conferring power in this field on the EU, this will not change in the near future.

Overshadowing economic interest of the EU, as explained in Chapter 2.2, could also lead to a distortion of the ILO's social project by virtue of a cooperation. Both Parties draw on equal-seeming benefits, giving the ILO significant invigoration in standard setting and enforcement, whereas the EU feeds on complementary norm acquisition, and even more important, legitimisation of its actions. But as executing actor which confers significant influence on the ILO, the EU might be the more equal partner. In the long-run, the ILO with purely social objectives could be negatively influenced by the EU's hybrid interests. A research by Kissack even shows another distorting factor of the EU-ILO relation. He found that the more the EU is involved in drafting ILO conventions, the less ratifications these conventions receive. That would be a corrosive fact, eroding both, the EU's and the ILO's standard setting ability.

To summarize, the EU's role in the ILO is limited but important. The observer status offers not much possibility to influence norm setting inside the ILO directly. But the EU benefits from aligning its social project to the ILO. Most importantly is the legitimisation of its actions which increases its normative power significantly. The ILO on the other hand benefits from an empowerment but might be negatively affected by the EU's economic interest.

Besides the bad taste that economic interests leave, the EU has made enormous progress in implementing a normative approach in its external policy as analysed in Chapter 4, that aligns the EU's action quite close to the depiction of a NPE as described by J. Orbie and I. Manners.<sup>124</sup> Chapter 4 concluded four trends that can be seen in the current agreements and arrangements of the Union.

The first trend is the enhanced incentive based approach, although by now this an inherent part of the EU's political culture. It is indeed more the positive conditionality that finds its way into the EU's tools, in giving incentives to change, rather than forcing it. For example, the Special Incentive Arrangement for Sustainable Development and Good Governance already describes in its name the main notion behind it: Granting tariff preferences when the respective country implements core conventions such as the ILO core conventions. Granting trade

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<sup>124</sup> See J. Orbie, *supra* note 14, at 3.

preferences under different schemes and the prospect on development assistance on the condition of ratifying and implementing effective structures and standards, such as CLS, shall create an incentive structure in contrast to a forcing approach.

The second trend, as part of the positive conditionality approach, is the refusal of trade sanctions. In all three analysed agreements and in the GSP+ arrangement, the political dialogue and consultation procedures are the primary mechanisms to tackle issues, disputes and non-compliances with labour standards. Hard sanctions, i.e. trade measures, barely even exist with regard to labour standards, or more specifically, can only be used in cases of severe and systematic violations. And until today, there were only a hand full of actual cases where the EU had to resort to trade measures.

Also, the fear of protectionism in developing countries was one of the main objection to a hard social clause in trade agreements. Every analysed agreement or arrangement included provisions underlying that for instance labour standards shall not be used for protectionist purposes. However, also the rare use of trade sanctions expresses an overall anti-protectionist orientation as it was the social clause (see Chapter 2.1) that developing countries were afraid of, respectively, criticised due to protectionist fears. That trade sanctions are only imposed in cases of severe and systematic violations and after exhausting all other dialogue and consultation based possibilities, might increase the trust of benefiting countries and with it increase the willingness to implement norms and standards. Nevertheless, the rare use of trade measures cannot only be seen in a positive light as it can also be a hint of the EU's market interest and/or a pseudo promotion of standards to make the agreements internationally more accepted which in both cases would adversely affect the whole approach. Another weakness and potential threat is the lack of transparency in the current agreements and arrangements. Information are very scarce and decisions, on for example trade sanctions, are only vaguely justified.

The last trend described is the inclusive approach, including the contracting parties, i.e. the governments of the countries, recognised international organisation, such as the ILO, NGOs, civil society organisations and other organisations and actors from various fields. The most progressive form of inclusion at the moment can be found in the EU-South Korean Free Trade Agreement which includes the Domestic Advisory Group(s) comprising independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders. But also the other agreements and the GSP+ make use of other external actors and in most cases the European Commission and the Council use their information to conclude appropriate measures. This makes the effect

of these agreements not only more effective but legitimises the Union's actions in a broader sense.

To conclude and answer the last sub-question how the EU promotes compliance with CLS in its agreements and the GSP+, the EU uses incentives and does not force states to comply with CLS. Therefore, the EU uses rarely trade sanctions and supports dialogue and consultation procedures to solve conflicts and settle disputes. Finally, the EU draws on the inclusion of other international and regional actors. All four characteristics are in accordance with what would be expected from a normative power.

In light of the results received from the three chapters, to what extent can the EU be called a normative power? The European Union cannot be called a pure normative power but it has the necessary preconditions and capabilities to become one in the future. The EU's relatively new approach in its overall social policy, i.e. the social dimension of globalisation, and in external relations expressed in its tools, i.e. the new generation of agreements and GSP+, indicates that the EU is steering towards a normative power identity, relying upon soft power or the persuasiveness of its universally legitimated actions and principles to shape world politics.

On the grounds of the cooperation with international organisation, i.e. the ILO and the inclusion of other international and regional actors such as in its international agreements, it stands out that the EU is using an empowering approach. It gives other actors like international organisations and civil society organisations significant power and influence. In particular, with the strengthening of the ILO, and with it the implicit legitimisation of its own standards and actions, the EU seems to construct its own identity partly through the empowerment of other actors. One could say that the EU increases its own power to push norms, by empowering other actors. To go even one step further, the empowerment of others could lay the groundwork for a stronger universality of its own norms and values which could mean a normative superiority to other global powers. In that sense it is also important for the EU to increase its influence on the norm setting within organisations like the ILO as it is very confined at the moment, also due to a lack of competence. On the other hand, this could have negative effects for the ILO due to divergent interests. Beyond, more research is needed on the issue that R. Kissack revealed as it would hinder more influence significantly.

The several limitations, arising from competences and mixed interests, jeopardize the normative power identity. In particular, the conflict of interests, that is social v economic interests, imperils the normative identity and points also towards a Civilian Power Europe as an economic force. Undeniably though, it could be for the Union's own good to preserve an economic motivation to resist other global economic powers from East and West, and ultimately

to guarantee its own survival. Presuming that the EU is not aiming at becoming a full normative power but keeping a hybrid power identity would then pose the question if the ideas of Normative Power or Civilian Power are appropriate concepts in the European case.

Notwithstanding is the fact that the Union is, at least partly, representing itself as a normative power, particularly in its external relations, despite internal constraints, a lack of competence and a hidden economic interest. One could however presume that this is more an idealised or aspired image as normative power that the EU wants to outline and that the EU is actually a hybrid of a civilian and a normative power. Be that as it may, the export and promotion of an idealised normative identity could be wise step to attract others and thus gain influence and power as a result of successful self-marketing.<sup>125</sup>

Finally, it is important to notice that this thesis could only cover one out of many dimensions, that is the EU's social policy and the promotion of CLS. There are still many gaps in literature and as long as the EU is developing, its role and power in the world will change constantly.

## 6. BIBLIOGRAPHY

### 6.1. BOOKS

E. H. Carr, *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations* (Michigan: Macmillan 2<sup>nd</sup> ed. 1962), 132-145.

F. Duchêne, 'Europe's Role in World Peace', in R. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead* (London: Fontana 1972), 32-47.

J. Galtung, *The European Community: A Superpower in the Making* (Oslo: Universitetsforlaget 1973), 37.

J. Orbie and L. Tortell, 'From the social clause to the social dimension of globalization' in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009).

J. Orbie, 'Promoting Labour Standards Through Trade: Normative Power or Regulatory State Europe?', in R. G. Whitman (ed.), *Normative Power Europe: Empirical and Theoretical Perspectives* (London: Palgrave Macmillan 2011), 161-184.

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<sup>125</sup> This topic of identity building touches upon the sociological debate of reflexive modernization as launched by A. Giddens, U. Beck and S. Lash. The EU's inconsistency might call for more reflexivity. Authors that touch upon that issue is for example: S. Scheipers and D. Sicurelli, 'Normative Power Europe: A Credible Utopia?', 45(2) *Journal of Common Market Studies* 2007, 435-457.

M. Van Hoecke, *Methodologies of legal research: which kind of method for what kind of discipline?* (Oxford and Portland: Bloomsbury Publishing 2011).

R. Kissack, 'Writing a new normative standard? EU member states and the drafting and ratification of ILO labour standards, in J. Orbie and L. Tortell (eds.) *The European Union's Role in the World and the Social Dimension of Globalisation* (London: Routledge 2009), 98-112.

R. O'Donnell and B. Moss, 'The Very Idea of an Open Method of Co-ordination' in J. Zeitlin et al. (eds.), *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies* (Brussels: Peter Lang 2005), 353-391.

T. Novitz, 'In search of a coherent social policy: EU import and export of ILO labour standards?' in J. Orbie and L. Tortell (eds.), *The European Union and the Social Dimension of Globalization: How the EU influences the World* (New-York: Routledge 2009).

V. A. Leary, 'The WTO and the Social Clause: Post-Singapore', 8(1) *European Journal of International Law* 1997, 118-122.

Z. Laïdi, 'European preferences and their reception', in Z. Laïdi (ed.), *EU Foreign Policy in a Globalized World: Normative Power and Social Preferences* (Oxon: Routledge 2008), 1-20.

## 6.2. JOURNALS

B. A. Langille, 'Core Labour Rights – The True Story (Reply to Alston)', 16 *The European Journal of International Law* 2005, 409-437.

C. Portela and J. Orbie, 'Sanctions under the EU's Generalised System of Preferences (GSP)', 20(1) *Contemporary Politics* 2014, 63-76.

G. Tsogas, 'Labour Standards in the Generalized Systems of Preferences of the European Union and the United States', 6(3) *European Journal of Industrial Relations* 2000, 349-370.

H. Sjurgen, 'What Kind of Power?', 13 *Journal of European Public Policy No.2* 2006b, 172

I. Manners, 'Normative Power Europe: A Contradiction in Terms?', 40 *Journal of Common Market Studies* 2002, 236-239.

P. Alston, "'Core Labour Standards' and the Transformation of the International Labour Rights Regime", 15 *The European Journal of International Law* 2004, 457-521.

R. Kissack, 'The Performance of the European Union in the International Labour Organization', 33(6) *Journal of European Integration* 2011, 651-665.

S. Bekker and S. Klosse, 'EU Governance of Economic and Social Policies: Chances and Challenges for Social Europe', 2-2013 *European Journal of Social Law* 2013, 103-120.

S. Scheipers and D. Sicurelli, 'Normative Power Europe: A Credible Utopia?', 45(2) *Journal of Common Market Studies* 2007, 435-457.

### 6.3. INTERNET SOURCES

Council of the European Union, 'EU to resume cooperation with Guinea-Bissau', Press Release (2014), available at <<http://www.consilium.europa.eu/en/press/press-releases/2014/07/pdf/EU-to-resume-cooperation-with-Guinea-Bissau/>>.

Council of the European Union, 'Article 96 of the Cotonou Agreement - consultation procedure', 14.3.2016, available at <<http://www.consilium.europa.eu/en/policies/eu-africa/article-96-cotonou-agreement/>>.

Directorate-General for Employment, Social Affairs and Inclusion Unit A.4, 'Analysis – in the light of the European Union *acquis* – of ILO up to date Conventions', *Publications Office of the European Union* (2014), p. 12/42, available at <<http://ec.europa.eu/social/BlobServlet?docId=12598&langId=en>>.

European Commission, 'ACP – The Cotonou Agreement', 19 June 2016, available at <[https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index\\_en.htm\\_en](https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm_en)>.

European Commission, 'EU Member States back Commission recommendation to withdraw trade privileges from Belarus over labour standards', 20.12.2006, available at <[http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_131985.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_131985.pdf)>.

European Commission, 'Europe 2020 targets', 22 June 2015, available at <[http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index_en.htm)>.

European Commission, 'European platform against poverty and social exclusion', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=961&langId=en>>.

European Commission, 'ESF European Social Fund', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?langId=en&catId=325>>.

European Commission, 'Employment Committee', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=115>>.

European Commission, 'EU temporarily withdraws GSP+ trade benefits from Sri Lanka', 15.2.2010, available at <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=515>>.

European Commission, 'Evaluation of the Open Method of Coordination and the Structured Dialogue, as the Agenda for Culture's implementing tools at European Union level', July 2013, available at <[http://ec.europa.eu/dgs/education\\_culture/more\\_info/evaluations/docs/culture/agenda2013\\_en.pdf](http://ec.europa.eu/dgs/education_culture/more_info/evaluations/docs/culture/agenda2013_en.pdf)>.

European Commission, 'Generalised Scheme of Preferences (GSP)', 24 May 2016, available at <[http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index\\_en.htm](http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm)>.

European Commission, 'Macroeconomic Imbalance Procedure', 7 April 2016, available at <[http://ec.europa.eu/economy\\_finance/economic\\_governance/macroeconomic\\_imbalance\\_procedure/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/macroeconomic_imbalance_procedure/index_en.htm)>.



European Commission, 'Making it happen: the European Semester', 18 May 2015, available at <[http://ec.europa.eu/europe2020/making-it-happen/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/index_en.htm)>.

European Commission, 'Reinforcing the Open Method of Coordination for social protection and social inclusion', 12 February 2009, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:em0011&from=EN>>.

European Commission, 'Social investment', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=1044&langId=en>>.

European Commission, 'Social Protection and Inclusion', accessed on 10 June 2016, available at <<http://ec.europa.eu/social/main.jsp?catId=750>>.

European Commission, 'Stability and Growth Pact', 26 May 2016, available at <[http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm)>.

European Commission, 'The EU's Generalised System of Preferences (GSP)', August 2015, available at <[http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc\\_153732.pdf](http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf)>.

U. Holm, 'Written Question No. 2368/97 by Ulf HOLM to the Commission. Generalized system of preferences', C 021, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.1998.021.01.0148.01.ENG&toc=OJ:C:1998:021:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.1998.021.01.0148.01.ENG&toc=OJ:C:1998:021:TOC)

ILO, 'Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the Observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)', 2003, available at <[http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2508289,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508289,en:NO)>.

ILO, 'Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)', Complaint (article 26), 1996, available at <[http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2508280,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508280,en:NO)>.

L. Mbangi, 'Recent Cases of Article 96 Consultations', European Centre for Development Policy Management, August 2005, available at <<http://ecdpm.org/wp-content/uploads/2013/10/DP-64C-Recent-Cases-Article96-Consultations-2005.pdf>>.

World Commission on the Social Dimension of Globalization, 'The Social Dimension of Globalization', International Labour Organisation (ILO) (Geneva, 9 June 2004), available at <<http://ilo.org/public/english/wcsdg/globali/globali.htm>>.

World Trade Organization, 'Principles of the trading system', accessed on 19 June 2016, available at <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)>.

#### 6.4. POLICY DOCUMENTS

Council of the European Union, ‘Council Decision of concerning the conclusion of consultations with the Republic of Guinea- Bissau under Article 96 of the partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part’, Council Decision (2011)

EU Bulletin. 1/2-1996 [1996] 1.4.58.

European Commission, ‘The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) covering the period 2014 – 2015’, Joint Staff Working Document (2016), SWD(2016) 8 final.

European Commission, ‘A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion’, Communication from the Commission to the Parliament, Council, EESC and Committee of the Regions (2008), COM(2008) 418 final.

European Commission, ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’, Communication from the Commission to the Parliament, Council, EESC and Committee of the Regions (2010), COM(2010) 2020 final.

European Commission, ‘Proposal for a COUNCIL REGULATION (EC) temporarily withdrawing access to generalized tariff preferences for industrial goods from the Union of Myanmar’ (1996), COM/96/0711 final.

European Commission, ‘Proposal for a Council Regulation temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus’ (2006), Proposal (2006), COM(2006) 438 final.

European Commission, ‘Promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation’, Communication from the Commission to the Parliament, Council, EESC (2001), COM(2001) 416 final.

European Commission, ‘The Social Dimension of Globalisation – the EU’s policy contribution on extending the benefits to all’, Communication from the Commission to the Parliament, Council, EESC and Committee of the Regions (2004), COM(2004) 383 final.

World Commission on the Social Dimension of Globalization, ‘A Fair Globalization: Creating Opportunities For All’, International Labour Organisation (ILO) (24 February 2004).

#### 6.5. CASE LAW

ECJ, Case C-22/70, *Commission v Council* [1971] ECLI:EU:C:1971:32.

ECJ, Case C-43/75 *Defrenne v SABENA* [1976] ECLI:EU:C:1976:56.

ECJ, Opinion 1/76, Draft Agreement establishing a European laying-up fund for inland waterway vessels [1977] ECLI:EU:C:1977:63.

ECJ, Case C-149/77 *Defrenne v Sabena* [1978] ECLI:EU:C:1978:130.

ECJ, Case C-415/93 *Union Royale Belge des Societes de Football Association and Others v Bosman and Others* [1995] ECLI:EU:C:1995:463.

ECJ, Opinion 2/94, ECHR [1996] ECLI:EU:C:1996:140.

ECJ, Case C-62/68, *Commission v Portugal* [2000] ECLI:EU:C:2000:358.

ECJ, Case C-467/98 *Commission v Denmark* [2002] ECLI:EU:C:2002:625.

ECJ, Case C-203/03, *Commission v Austria* [2005] ECLI:EU:C:2005:76.

ECJ, Case C-303/05, *Parliament v Council* [2006] ECLI:EU:C:2007:261.

ECJ, Case C-499/04 *Hans Werhof v Freeway Traffic Systems GmbH & Co. KG* [2006] ECLI:EU:C:2006:168.

ECJ, Case C-438/05 *International Transport Workers Federation v Viking Line ABP* [2007] ECLI:EU:C:2007:772.

ECJ, Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet* [2007] ECLI:EU:C:2007:809.

ECJ, Opinion 2/91, Convention No 170 of the International Labour Organization concerning safety in the use of chemicals at work [1993] ECR I-01061.

CJEU, Opinion 1/03 Lugano Convention [2006] ECLI:EU:C:1993:106.

## 6.6. LEGISLATION

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4.11.1950

Charter of Fundamental Rights of the European Union, *OJ* [2012] C 326/391, 26.10.2012

Information and Notices, *OJ* [1998] C 21/148, 22.1.1998.

Information and Notices, *OJ* [2004] C 40/4, 14.2.2004.

Cotonou Agreement, *OJ* [2000] L 317, 15.12.2000.

Cotonou Agreement, *OJ* [2004] L 297, 22.9.2004.

Cotonou Agreement, *OJ* [2005] L 209, 11.8.2005.

Cotonou Agreement, *OJ* [2005] L 287, 28.10.2005.

Cotonou Agreement, *OJ* [2006] L 247, 9.9.2006.

Cotonou Agreement, *OJ* [2010] L 287, 4.11.2010.

EU-CARIFORUM Agreement, *OJ* [2008] L 289, 30.10.2008.

EU-South-Korea Free Trade Agreement, *OJ* [2011] L 127, 15.5.2011.

Regulation No 651/2014, *OJ* [1988] L 187, 16.7.1988.

Regulation No 3281/94, *OJ* [1994] L 348, 31.12.1994.

Regulation No 143/2010, *OJ* [2010] L 45, 20.2.2010.

Regulation No 1173/2011, *OJ* [2011] L 306, 8.11.2011.

Regulation No 1209/2012, *OJ* [2012] L 348, 17.12.2012.

Regulation No 978/2012, *OJ* [2012] L 303, 31.10.2012.  
Regulation No 1421/2013, *OJ* [2013] L355, 31.12.2013.  
Regulation No 155/2013, *OJ* [2013] L 48, 21.2.2013.  
Regulation No 2016/326, *OJ* [2016] L 62, 8.3.2016.  
Directive 2000/43/EC, *OJ* [2000] L 180, 29.6.2000.  
Directive 2000/78/EC, *OJ* [2000] L 303, 27.11.2000.  
Directive 2004/81/EC, *OJ* [2004] L 261/19, 6.8.2004.  
Directive 2011/36/EU, *OJ* [2011] L 101, 15.4.2011.  
Directive 2012/29/EU, *OJ* [2012] L 315, 14.11.2012.  
ILO, Constitution of the International Labour Organisation, 1.4.1919.  
ILO, Freedom of Association and Protection of the Right to Organise Convention, C87, 9.6.1948.  
ILO, Right to Organise and Collective Bargaining Convention, C98, 1.6.1949.  
ILO, Forced Labour Convention, C29, 28.6.1930.  
ILO, Abolition of Forced Labour Convention, C105, 25.6.1957.  
ILO, Minimum Age Convention, C138, 26.6.1973.  
ILO, Worst Forms of Child Labour Convention, C182, 17.6.1999.  
ILO, Equal Remuneration Convention, C100, 23.4.1953.  
ILO, Discrimination (Employment and Occupation) Convention, C111, 25.6.1958.