

Paper

The dock worker: registered or precarious?

In a recent the EFTA court strikes a blow to the regulated labour market scheme for dock work. Such systems are common to many countries, are protected by an ILO convention and designed to benefit both dockworkers and their employers. Nonetheless, at present, they are often regarded as outdated, inefficient and contrary to European law.

1. The origins of the pool system

In many ports in Europe regulations and practices exist which restrict the loading and unloading of goods. Such regulations and practices can be found in a majority of EU member states¹. Often a pool is put into place which requires for the registration of the dockworkers and grants priority or even exclusivity of employment to registered dockworkers. Terminal operators in need of dock work services have to hire dockworkers from the pool which is organised by employers and trade unions jointly.

The restricted access to dock work has been the response to the precarious situation of dockworkers. As the size of the ships and the frequency of their arrivals varied, dock work was usually carried out on a day by day basis. Therefore, in the early 20th century pools of registered port workers were created by management and labour which had to ensure a steady availability to employers of experienced staff as well as an elementary form of job security for registered workers². After the second world war dockworkers gained more extensive income protection as employment and working practices were further regulated by law or on the basis of collective agreements. To give dock workers sufficient guarantees of employment and income, the number of dock workers had to be kept in line with the growth in port demand³. Only in case of a shortage in qualified dock workers, employers were allowed to hire workers outside the pool.

The system was beneficial for both employers and dock workers: the employers could have recourse to a flexible, cheap and competent labour force, while the dock workers enjoyed employment stability or at least income security, as differences in supply and demands were compensated by social security benefits. Furthermore, in several

¹ 16 out of 22 maritime member states, and among those 16 EU member states, 13 states make use of registers and 11 grant preferential rights to registered dockworkers, see E. VAN HOOYDONCK, *Port Labour in the EU, Volume I – the EU Perspective*, Portius - study commissioned by the European Commission, Brussels, Final Report, 8 January 2013, 263-264.

² T. NOTTEBOOM, *Dock labour and port-related employment in the European seaport system*, Report prepared for European Sea Ports Organisation (ESPO), Antwerpen, ITMMA, 2010, p. 53, <http://www.espo.be/media/espopublications/ITTMAREportondocklabourand2010.pdf>.

³ I. KATSAROVA, “Liberalisation of EU port services: issues and consequences for dock workers” in *Library Briefing*, Library of the European Parliament, 20/03/2013, p. 3, <http://www.library.ep.ec>.

countries dock workers were regarded as a specific category of workers. They were subject to separate health and safety regulations and excluded from ordinary labour law⁴.

2. ILO Convention n° 137

Although the ILO conventions generally apply to dockworkers, the ILO already in 1929 dedicated a specific convention to the health and safety of dockworkers. Convention n° 28 on the protection against accidents of dock workers was revisited in 1932 by convention n°32 and in 1979 replaced by convention n° 152 on health and safety and recommendation n° 160, which supplements it. In 1973 another specific convention was adopted. Convention n° 137 concerning the social repercussions of new cargo-handling methods in docks, consolidated the pool system, as article 3 required the establishment and maintenance of registers for dock work and imposed the priority of engagement for registered dockworkers.

The convention was elaborated in a particular context: the introduction of cranes and containers reduced the number of dockworker required to handle cargo, which resulted in most European ports in large-scale redundancies of port labour and a steep decline in the amount of dockworkers between the 1950s and the late 1970s⁵. In view of the casual nature of the work, the ILO felt the necessity to try to provide dockworkers with regular work, or at least to establish a system of allocating work that could give them sufficient guarantees of employment and income. For that purpose, the ILO considered it necessary to create a system for the registration of dockworkers and to control the flow of new entrants to the trade⁶.

Although the convention and recommendation were adopted by a very large majority⁷, the convention was only ratified by 25 ILO member states⁸. Yet, among those 25 states there were ten European states⁹. Nowadays, the ILO considers the convention and recommendation as instruments with interim status which means that they are no longer fully up to date, but remain relevant in certain respects¹⁰. Attempts to revise the convention failed because of widely divergent opinions between the workers' and

⁴ E. VAN HOOYDONCK, *Port Labour in the EU, Volume I – the EU Perspective*, Portius - study commissioned by the European Commission, Brussels, Final Report, 8 January 2013, p. 55.

⁵ T. NOTTEBOOM, *Dock labour and port-related employment in the European seaport system*, Report prepared for European Sea Ports Organisation (ESPO), Antwerpen, ITMMA, 2010, p. 33.

⁶ Report of the Committee of Experts on the Application of Conventions and Recommendations, *Report III (Part 1B), General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, International Labour Conference 90th Session 2002, p. 2.

⁷ ILC, 58th Session, 1973, *Record of Proceedings*, p. 683 and 687-690.

⁸ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312282.

⁹ The ten states are Finland, France, Italy, the Netherlands (which denounced the convention in 2006), Norway, Poland, Portugal, Romania, Spain and Sweden.

¹⁰ Resolutions adopted by the International Labour Conference at its 97th Session, Geneva, June 2008, p. 22, footnote 1.

employers' representatives on the relevance of the convention. At the 1996 tripartite meeting the workers' representatives insisted on the need to promote the ratification of the Convention, while the employers' representatives expressed the view that the convention 'was obsolete as it did not respond to the modern needs of the port industry'¹¹.

3. Pool system under pressure

Since the 1970s the technological innovation in cargo-handling intensified. Containerisation and an enhanced accuracy in ship sailing schedules reduced the use of casual work, while it urged the sector to become highly capital-intensive¹². The explosive growth in containerised trade increased the demand for skilled dockworkers¹³ and triggered a trend toward more permanent employment at container terminals¹⁴. From the 1980's on, the tradition system of dock work was challenged, as port services were liberalised to increase the efficiency and competitiveness of the ports, the result being that sector-specific rules and regulations on recruitment, training and health and safety of port workers were reduced or abolished¹⁵.

Economic and efficiency arguments justified the decline in social protection. Pools were denounced because of their high direct costs and the rigidity of the supply caused by strict job demarcation, low labour mobility and large overmanned gang sizes. They would restrict the freedom enjoyed by both employers and employees, by introducing a bureaucracy and by limiting competition, and would lead to excessive wages. Finally, when dock workers are registered centrally and switch from one employer to another they may not develop loyalty towards one or more employers, which might form a breeding ground for social conflicts between unions and employers' organizations¹⁶.

The reforms were seldom the result of collective bargaining between management and labour. Predominantly, liberalisation was enforced by external interventions of the Court of Justice and the European Commission, or an 'exceptional vigorous national

¹¹ Tripartite Meeting on the Social and Labour Problems caused by Structural Adjustments in the Port Industry, Geneva, 20-24 May 1996, *Note on the Proceedings*, TMPI/1996/10, paras. 31-32.

¹² H.E. HARALAMBIDES, "Port Structural Adjustment and Labour Reform", p. 5-6, www.academia.edu/2037483.

¹³ Report of the Committee of Experts on the Application of Conventions and Recommendations, *Report III (Part 1B), General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, International Labour Conference 90th Session 2002, p. 31.

¹⁴ T. NOTTEBOOM, *Dock labour and port-related employment in the European seaport system*, Report prepared for European Sea Ports Organisation (ESPO), Antwerpen, ITMMA, 2010, p. 38.

¹⁵ E. VAN HOOYDONCK, *Port Labour in the EU, Volume I – the EU Perspective*, Portius - study commissioned by the European Commission, Brussels, Final Report, 8 January 2013, p. 35-43.

¹⁶ T. NOTTEBOOM, *Dock labour and port-related employment in the European seaport system*, Report prepared for European Sea Ports Organisation (ESPO), Antwerpen, ITMMA, 2010, p. 55.

government policy'¹⁷. Moreover, most port reform and port labour reform took place in periods where there was a strong economic downturn and or there were serious problems with the competitiveness of individual ports or the (national) port system, because in periods of recession trade unions are weaker and employers less likely to avoid disputes which could temporarily immobilize their resources¹⁸.

4. Legal challenges: Council of Europe

At the level of the Council of Europe the pool system has been tackled two times in the context of the negative freedom of association as the European Committee on Social Rights suspected the existence of closed shop practices. In the 1990s the European Committee on Social Rights objected to the former pool system in France. Before 1992, in order to be employed, dockworkers had to hold a licence, issued on the recommendation of a committee made up of an equal number of employers' and employees' representatives, which were all members of the CGT. Objections were made against the fact that only dockworkers belonging to the CGT were recruited¹⁹. In 1992 the licence requirement was abolished for the great majority of dockworkers, but the Committee still worried about the implementation²⁰.

The Committee also made observations on the Belgian system. It noted that in certain economic sectors recruitment quotas provided that workers be chosen from among the quotas allocated to various trade unions. The Committee raised questions concerning those closed shop practices and the protection afforded to non-unionised workers and sought clarification²¹. The next report gave the example of the Port of Antwerp, where this system of recruitment should have operated jointly between trade unions and employers. Again the Committee asked for clarification of the legal protection of non-unionised workers²². The subsequent report did not contain the information requested²³, but in the following report the Belgian state was happy to announce that the system of recruitment of dockworkers at Antwerp was fundamentally changed. This change enabled the Committee to consider the situation to be in conformity with the Charter in this respect²⁴.

¹⁷ Italy and Spain were condemned by the Court of Justice, while Greece, Ireland, Malta and Portugal had to adapt their legislation by order of the European Commission. In the UK and France the abolishment of the pool system was the outcome of a government policy by Margaret Thatcher and Nicolas Sarkozy, see E. VAN HOOYDONCK, "Het Spaanse Havenarbeidersarrest (C-576/13): doodsteek voor de klassieke havenpools", *Tijdschrift Vervoer & Recht* 2015, n° 2, p. 37.

¹⁸ T. NOTTEBOOM, *Dock labour and port-related employment in the European seaport system*, Report prepared for European Sea Ports Organisation (ESPO), Antwerpen, ITMMA, 2010, p. 61.

¹⁹ L. HISLAIRE, *Dockers, corporatisme et changement*, Transports Actualités, Parijs, Group Usine Nouvelle, 1993, 25.

²⁰ ECSR, *Conclusions* XIII-1, XIII-3, XIV-1 and XV-1.

²¹ ECSR, *Conclusions* XIII-2 and XIII-4.

²² ECSR, *Conclusions* XIV-1.

²³ ECSR, *Conclusions* XV-1.

²⁴ ECSR, *Conclusions* XVI-1.

At present a collective complaint against the Norway is pending before the European Committee on Social Rights, in which *Bedriftsforbundet*, an employers' organisation for SMEs, alleged that there is a consistent and long term practice at Norwegian ports requiring that employees have membership of the dockworkers union²⁵.

5. Legal challenges: EU

In its 1997 Green Paper²⁶ the European Commission announced its willingness to liberalise port services. A first draft directive, known as the first port services package, was proposed in 2001²⁷. The draft directive which included the principle of self-handling was opposed by the dockworkers' unions and consequently rejected by the European Parliament in 2003. A second draft directive, known as the second port services package, was introduced in 2004²⁸. As it was only slightly adapted, it did meet with the same fate in 2006²⁹. In 2011 the Commission adopted a White Paper³⁰ in which it indicated that market access to ports needed to be further improved. However, a new strategy was developed. While the Commission formulated a new proposal for a regulation³¹, it also did proceed to launch infringement procedures or impose reform in the context of other EU policies³².

In the 1990s employers' recourses to the Court of Justice have been successful in reshaping the Italian legislation on dock work. In *Merci*³³ the Italian legislation which reserved the performance of dock work in the port of Genova to dock-work companies whose workers, who are also members of these companies, had to be of Italian

²⁵ Collective complaint no. 103/2013, *Bedriftsforbundet v Norway*.

²⁶ Green Paper on sea ports and maritime infrastructure, Brussels, 10 December 1997, COM(97) 678 def.

²⁷ Proposal for a Directive of the European Parliament and of the Council on Market Access to Port Services, COM(2001) 35 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:154E:0290:0296:EN:PDF>.

²⁸ Proposal for a Directive of the European Parliament and of the Council on market access to port services, COM(2004) 654 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0654:FIN:EN:PDF>.

²⁹ I. KATSAROVA, "Liberalisation of EU port services: issues and consequences for dock workers" in *Library Briefing*, Library of the European Parliament, 20/03/2013, p. 5.

³⁰ Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM(2011) 144 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0144&from=EN>.

³¹ Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports, Brussels, 23 May 2013, COM/2013/296 def, http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com%282013%290296/_com_com%282013%290296_en.pdf.

³² This option was favoured as 'it would be more targeted and efficient than a legislative proposal which may again stir up controversy and social unrest.', see E. VAN HOOYDONCK, *Port Labour in the EU, Volume I – the EU Perspective*, Portius - study commissioned by the European Commission, Brussels, Final Report, 8 January 2013, p. 314 and 328.

³³ CoJEU 10 December 1991, C-179/90, ECLI:EU:C:1991:464, *Jur.* 1991, p. I-5889.

nationality, was disapproved of. Article 90(1) of the EEC Treaty, in conjunction with articles 30, 48 and 86 of the Treaty, precluded national rules which confer on a local undertaking the exclusive right to organize dock work and require it for that purpose to have recourse to a dock-work company formed exclusively of national workers. The Court also disaffirmed that a dock-work undertaking could be regarded as being entrusted with the operation of services of general economic interest within the meaning of article 90(2) of the Treaty.

In response to the judgement the Italian legislation was modified, and henceforth, restricted the monopoly of the former dock-work companies to the supply of temporary labour. Yet, another case was brought before the Court. In *Raso*³⁴ about the port of La Spezia, the exclusive right to supply temporary labour granted to the former dock-work companies was contested as the companies were also authorised to carry out dock work. The Court considered this to be contrary to articles 86 and 90 of the Treaty, although the national court did not identify any particular case of abuse.

However, in 1999 in *Becu*³⁵ the application of the competition law reached his limits. Since the Belgian legislation merely recognises the occupation of dockworkers without conferring a monopoly on undertakings or on trade associations, the Belgian pool system could not be dealt with on the basis of article 90(1) of the EC Treaty, read in conjunction with the articles 85 and 86 of the EC Treaty. The articles are only applicable on ‘undertakings’, but recognised dockworkers in a port area did not in themselves constitute undertakings within the meaning of Community competition law, nor could they, even taken collectively, be regarded as constituting an undertaking. In the same year three judgements of the Court conferred immunity from competition law to collective agreements³⁶.

These evolutions might have persuaded the Commission to approach the Spanish pool system in a different way. In *Commission v Spain*³⁷ the Spanish law which obliged terminal operators to participate in a dock-work company and prevent them from hiring their own staff, was alleged to be an infringement on freedom of establishment of article 49 of the TFEU. The case basically concerned port services, but was presented under the pretext of the freedom of establishment since the freedom of services might not apply on ports³⁸. The Court found the restrictions not to be justified by imperative reasons of general interest as there exist less restrictive measures to guarantee the same outcome with regard to the continuity, regularity and quality of

³⁴ CoJEU 12 February 1998, C-163/96, ECLI:EU:C:1998:54, *Jur.* 1998, p. I-533.

³⁵ CoJEU 16 September 1999, C-22/98, ECLI:EU:C:1999:419, *Jur.* 1999, p. I-5665.

³⁶ CoJEU 21 September 1999, C-67/96, *Jur.* 1999, p. I-5751 (*Albany*); CoJEU 21 September 1999, C-115/97, C-116/97 and C-117/97, *Jur.* 1999, p. I-6025 (*Brentjens*); CoJEU 21 September 1999, C-219/97, *Jur.* 1999, p. I-6121 (*Drijvende bokken*).

³⁷ CoJEU 11 December 2014, C-576/13, ECLI:EU:C:2014:2430, <http://curia.europa.eu>.

³⁸ See article 58.1 read in conjunction with 100.0 TFEU.

the service as well as the protection of the workers. The ILO convention n° 137 invoked by the Spanish government, was not taken into consideration by the Court. As the Commission in 2004 called on the member states to ratify the convention³⁹, it probably did not see an inconsistency between its interpretation of the freedom of establishment and the ILO convention, being designed as a flexible instrument to establish minimum standards⁴⁰. Accordingly, the Court stated that it would be possible to leave it up to the terminal operators to hire permanent or temporary workers as well as to administer or make use of the services of temporary work agencies.

Meanwhile the Court of Justice acknowledged that the principle of freedom of establishment did apply on collective agreements⁴¹, which permitted the Commission to tackle national systems that could not be contested earlier⁴². In 2014 Belgium received its first notice⁴³. At present the Belgian government is negotiating with the Commission and the social partners. An agreement between government and social partners is reached in April 2016. However, no details have been made public as the agreement has to be approved by the rank and file of the dockworkers' unions. Yet, already leaked out that employers would be allowed progressively to hire their own workers and organise their proper training.

6. Legal challenges: EFTA

On April 19, 2016⁴⁴ the EFTA Court had the opportunity to determine its position on the Norwegian pool system. Different from previous cases before the Court of Justice, in Norway the priority of engagement for registered dockworkers is based on collective agreements. In the port of Drammen these dockworkers are permanently employed by the Administrative Office for Dock Work. As a Danish company, Holship refused to respect the agreement, the Norwegian transport union NTF notified a boycott to compel it to do so. In view of the case law of the Court of Justice on *Viking* and *Laval* it also asked the national courts whether such action was lawful. Before the Supreme Court referred the case to the EFTA Court, two national courts had declared the

³⁹ COM/2004/0654, par. 2.3.

⁴⁰ Report of the Committee of Experts on the Application of Conventions and Recommendations, *Report III (Part 1B), General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, International Labour Conference 90th Session 2002, p. 7.

⁴¹ CoJEU 11 December 2007, C-438/05, *Jur.* 2007, p. I-10779 (*Viking*); CoJEU 15 July 2010, C-271/08, *Jur.* 2010, p. I-7091 (*Commission v Germany*).

⁴² Like pool systems solely based on collective agreements, see with regard to the Netherlands: Rb. Rotterdam 28 januari 1999, 112155/KG ZA 99-119 (*Matrans Marine Services B.V. en Transcore Rotterdam B.V./FNV Bondgenoten*); Rb. Utrecht 24 juli 2009, ECLI:NL:RBUTR:2009:BJ3474, www.rechtspraak.nl.

⁴³ Brief van de Europese Commissie aan België van 28 maart 2014, ref. 20104/2088, C/2014/1874 def.

⁴⁴ EFTA Ct, E-14/15, *Holship Norge AS v Norsk Transportarbeiderforbund*, <http://www.eftacourt.int/cases/>.

boycott lawful. Like the Court of Justice in *Albany* the EFTA Court in *LO*⁴⁵ exempted collective agreements from the scope of the EEA competition rules. However, the EFTA Court applies the recent case law of the Court of Justice which increasingly confines the exemption⁴⁶. Consequently, the EFTA Court ruled that the exemption does not cover the assessment of a priority of engagement rule, or a boycott against a port user in order to procure acceptance of a collective agreement which entails such a priority of engagement rule. Only a very small margin of interpretation is left to the national courts as to the assessment of the AO system under article 53 and 54 EEA, since the Court observed that it appears difficult to demonstrate the necessity and no services of general economic interest are concerned.

Moreover, the Court states that a boycott to procure acceptance of a collective agreement providing for a system which includes a priority clause, is likely to discourage or even prevent the establishment of companies from other EEA states and thereby constitutes a restriction on the freedom of establishment. No credit was given to the ILO convention n° 137 as protocol 35 to the EEA Agreement stipulates that in case of a conflict between national law implementing EEA law and other national provisions not implementing EEA law, the EFTA states has to introduce a statutory provision to the effect that national law implementing EEA shall prevail.

However, the decisions of the EFTA Court do not have the same binding nature as the rulings of the Court of Justice⁴⁷. Particularly in Norway, the Supreme Court held that the opinions of the EFTA Court are of an advisory character only and that it is for the Supreme Court to decide for itself whether and to what extent they were to be applied⁴⁸. Cases in which the Norwegian Supreme Court did depart from the judgement of the EFTA Court are rare⁴⁹. However, in *STX*⁵⁰, a case similar to *Laval*, it refused to follow the EFTA Court's decision and decided that expenses for travel, board and lodging were covered by the term 'pay'⁵¹. As the decision of the Norwegian

⁴⁵ EFTA Ct., E-8/00, *Landsorganisasjonen i Norge*, 2002, Ct. Rep. 114.

⁴⁶

⁴⁷ N. FENGER, M. SÁNCHEZ RYDELSKI, T. VAN STIPHOUT, *European Free Trade Association (EFTA) and the European Economic Area (EEA)*, Alphen aan den Rijn, Kluwer Law International, 2012, p. 157.

⁴⁸ Norwegian Supreme Court, *Finanger*, Rt-2000, 1811; C. BARNARD, 'Reciprocity, Homogeneity and Loyal Cooperation: Dealing with Recalcitrant National Courts?' in EFTA Court (ed.), *The EEA and the EFTA Court*, Oxford and Portland, Oregon, Hart Publishing, 2014, p. 159.

⁴⁹ T.C. POULSEN, 'Norwegian Courts' in C. BAUDENBACHER (ed.), *The Handbook of EEA Law*, Cham – Heidelberg – New York – Dordrecht – London, Springer, 2016, p. 267.

⁵⁰ EFTA Ct, E-2/11, *STX v Norway Offshore AS*, <http://www.eftacourt.int/cases/>.

⁵¹ Norwegian Supreme Court, judgement of 5 March 2013 in Case HR-2013-0496-A (case no. 2012/1447); C. BARNARD, 'Social Policy Law' in C. BAUDENBACHER (ed.), *The Handbook of EEA Law*, Cham – Heidelberg – New York – Dordrecht – London, Springer, 2016, p. 815; C. BARNARD, 'Reciprocity, Homogeneity and Loyal Cooperation: Dealing with Recalcitrant National Courts?' in EFTA Court (ed.), *The EEA and the EFTA Court*, Oxford and Portland, Oregon, Hart Publishing, 2014, p. 160.

Supreme Court was highly debated, it is doubtful whether it will be repeated. Besides, if an EFTA Court's decision is not implemented, the EFTA Surveillance Authority may initiate an infringement procedure⁵². The Court of Justice is not bound by the case law of the EFTA Court, but in practice frequently refers to its judgements⁵³.

7. A happy ending ...

Although favoured by an ILO convention, pool systems which provides for the priority of engagement for registered dockworkers are already for decades subjected to pressure. They have been tackled by national governments as well as at the level of the Council of Europe, the EU and the EEA. Since the beginning of the financial crisis, however, the attacks appear to intensify. The European Commission in particular wants to liberalise port services. On several occasions the commission clarified that its aim is the replacement of the pool systems by permanent or temporary staff hired by the terminal operators or put at their disposal by private recruitment agencies.

Unlike the EFTA Court (which simply denied the ILO convention n° 137), the Commission and the Court of Justice seem to see no discrepancy between the liberalising of ports and the ILO convention n° 137. Although the convention is presupposed to be a flexible instrument which only entails minimum standards, it is unlikely that a full-scale liberalisation of port services corresponds to the convention. The registration of dockworkers not merely a formality, but a mean to allocate the available dock work. The long-term objective of the convention was to either guarantee dockworkers permanent employment, or failing that, at least regularity of employment or stabilization of their earnings, and registration has been the primary means of identifying workers for that purpose⁵⁴.

Moreover, another reason for registration was to ensure that adequate training in cargo-handling is available to the workforce as the use of modern equipment requires the employment of a skilled, trained and responsible workforce. The Committee of Experts stresses that systematic use of casual labour cannot offer the same guarantees⁵⁵. However, although many employers pursue the reversal of decasualization schemes, they still wish their casual dock workers to enjoy appropriate training. But, contrary to the current situation, the training should be

⁵² C. BAUDENBACHER, 'The EFTA Court: Structure and Tasks' in C. BAUDENBACHER (ed.), *The Handbook of EEA Law*, Cham – Heidelberg – New York – Dordrecht – London, Springer, 2016, 161.

⁵³ N. FENGER, M. SÁNCHEZ RYDELSKI, T. VAN STIPHOUT, *European Free Trade Association (EFTA) and the European Economic Area (EEA)*, Alphen aan den Rijn, Kluwer Law International, 2012, p. 75.

⁵⁴ Report of the Committee of Experts on the Application of Conventions and Recommendations, *Report III (Part 1B), General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, International Labour Conference 90th Session 2002, p. 50.

⁵⁵ Report of the Committee of Experts on the Application of Conventions and Recommendations, *Report III (Part 1B), General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973*, International Labour Conference 90th Session 2002, p. 59.

developed in-house or outsourced to professional training agencies⁵⁶. If continued, the outcome of the case law of the Court of Justice and the EFTA Court will be a privatisation of dock work and training, which occurs by bypassing the trade unions and the European Parliament which opposed similar legislative initiatives.

Isabelle Van Hiel is academic assistant at the Department of Criminology, Penal Law and Social Law University of Ghent where she is writing a PhD on freedom of association. She is the author of many publications on collective labour law and complementary pensions.

Universiteitstraat 4, 9000 Gent, Belgium, isabelle.vanhiel@ugent.be.

⁵⁶ T. NOTTEBOOM, *Dock labour and port-related employment in the European seaport system*, Report prepared for European Sea Ports Organisation (ESPO), Antwerpen, ITMMA, 2010, p. 56; E. VAN HOOYDONCK, “Het Spaanse Havenarbeidersarrest (C-576/13): doodsteek voor de klassieke havenpools”, *Tijdschrift Vervoer & Recht* 2015, n° 2, p. 37 and 48.