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European Employment Policies

Active and Passive LMPs,
Domestic Implementation, Current Challenges



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Tania Bazzani

Foreword

For some time, the EU has been suffering a legitimacy crisis. One of the main reasons for this crisis is the lack of a satisfying social profile. To overcome the crisis, it is necessary to significantly promote the social dimension. The main tool in this direction is an employment strategy deserving of its name. What such a strategy may look like is convincingly discussed in Tania Bazzani's book.

European employment politics are confronted with many difficulties. In particular, there is no European labour market. There are 28 national labour markets. The problem is not only the division, as such, but the fact that the cultural and institutional framework (the social security system and the structure and influence of the social partners, etc.) for each of these labour markets are very different, as is well illustrated in this book by the examples of Denmark, Germany and Italy. Therefore, evidently a strategy according to the slogan "one size fits all" cannot work. Country-specific solutions must be found. This, however, is a very difficult task for a supra-national entity. Due to these differences, a strategy like the famous Open Method of Coordination (OMC) quickly faces its limitations. Since employment policies are not to be dissolved from their respective national contexts, so-called 'best practices' cannot simply be transferred elsewhere. Benchmarking, therefore, might turn out to be a futile endeavour.

The main problem in this connection refers to the question of how to find the right balance between social considerations and economic needs. The response from the neo-liberal school of thought would be simple. Protection of workers from this perspective is merely understood as being a residual category. Reduction of labour costs is the main objective. In particular, this means de-regulation, de-institutionalization and de-collectivisation. The austerity measures imposed in the context of crisis management on some countries in the European Monetary Union, particularly on Greece, demonstrate very well this approach: the reduction of the minimum wage, the reduction of protections against unfair dismissal and the dismantling of collective bargaining structures are good examples illustrating this economy-oriented conception of employment regulation.

However, this neo-liberal paradigm not only ignores workers' rights, and in particular their dignity, but is also wrong if the fundamental category of the one-dimensional neo-liberal approach, namely economic efficiency, is taken as the decisive criterion. Even if many long-term benefits are in-

direct and difficult to measure, empirical evidence shows that labour standards result in improved health and human capital, which increases the productivity potential of workers. It particularly shows that fair working conditions result in improved motivation and willingness on the part of workers to perform well. Long-term and stable relationships between workers and companies provide incentives for companies to invest in the training of their workers because the company is able to recover returns from training. Job security provides incentives to workers to share their knowledge and skills with colleagues, and in particular with young people and apprentices. In addition, it allows workers to cooperate and increase productivity without fearing the loss of their job. Moreover, at the macro-economic level, empirical evidence is available for the positive effects of decent labour standards on trade competitiveness and growth.

In short, and to make the point clearly: the protagonists of the neo-liberal paradigm seem to suffer from a reality gap. There should be no doubt that employment protective regulation is an essential input to a functioning market economy, as well as a precondition for comprehensive and sustainable economic development. Therefore, implementation of labour standards must be considered a form of investment in institutions that, in the long run, not only has a positive impact on workers and the economy, but also and foremost has a positive impact on the stability and development of society as a whole.

The lesson drawn from this insight for employment politics is very simple: it must be holistic. The goal must not be merely the reduction of unemployment and the integration of the unemployed into the labour market. The goal must be much more ambitious: jobs in which people are to be integrated must be decent jobs, as is well expressed by Art. 31 (1) of the Charter of Fundamental Rights of the EU (CFREU), which guarantees every worker “the right to working conditions which respect his or her health, safety and dignity.” A good example of what happens if this qualitative aspect is neglected is found in Germany, where – as discussed in this book – as a result of the so-called Hartz reforms, unemployment has significantly decreased, but many unemployed have been shifted into precarious ‘mini-jobs.’ Reducing unemployment by establishing working poor cannot be the solution.

Whereas labour market strategies must be country specific and may only be supported and promoted by the EU, it is possible for the EU to establish minimum standards for quality of jobs, which is not dependent on the national framework. The EU is entitled to develop such minimum stan-

dards, except for “pay, the right of association, the right to strike or the right to impose lock-outs” (Art. 153 (5) TFEU).

Tania Bazzani’s book offers a comprehensive assessment of the merits and weaknesses of European employment politics. Her assessment of the historical development reveals how, over time, *flexicurity* has become the decisive concept framing the European Employment Strategy (EES). Her critical and highly sophisticated analysis demonstrates the ambiguity of this concept, its lack of contextualisation, and the overstated focus on employability, which in the end has led to the fact that the aspect of security has been severely restricted in favour of flexibility. The interplay between the EES and national implementation in three countries not only shows the problematic consequences of this *flexicurity* approach, but also the weakness of the EES resulting from its non-binding character as mere ‘soft law’ and from its lack of understanding of the national particularities.

EES, in all its versions (including the ‘Lisbon Strategy’ and ‘Europe 2020’), has been subordinated to the many instruments developed by the EU for macro-economic governance, culminating in the ‘European semester.’ The social dimension in this view has remained a residual category. Therefore, it is of utmost interest whether the recently proclaimed European Pillar of Social Rights means a new start, abolishing economic dominance, and finally promoting a holistic approach to employment policy. This is the topic of the last chapter of Tania Bazzani’s book.

In a highly sophisticated way, the potential of this pillar is discussed. The broad scope of topics and the decision for the holistic approach, including the quality aspect, is to be welcomed, while the fact that the pillar at least so far remains ‘soft law’ and lacks legal enforceability is seen with scepticism. Tania Bazzani impressively and convincingly insists that the pillar must be embedded in a philosophical theory in which Marshall’s ‘social citizenship concept,’ as well as Sen’s ‘capability concept,’ figure as key points of orientation.

It is exactly this philosophical approach which is to be strengthened in order to liberate employment policies from the one-dimensional dominance of merely focussing on economic efficiency, rather than understanding the social dimension as an important cornerstone of society. Seen in this light, the pillar of social rights may be understood as a change of paradigm, and a strong sign of hope in the quest to finally overcome the legitimacy crisis facing the EU.

Manfred Weiss

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Introduction

The interplay between unemployment protection policies and activation policies is such that its mechanisms cannot be merely accounted for within the confines of legislation. Without doubt, this interaction is influenced by the economic, social and cultural context in which active and passive labour market policies are implemented.

The policies that are analysed here assume a wider importance than one might initially infer. Unemployment protection policies represent not only policies of sustenance to come to the aid of the unemployed, but also have, as public expenditures, a considerable impact on national public debt. At the same time, these policies are closely related to the acknowledgement of the social rights of citizens and, ultimately, to the long-standing debate on whether the reformulation of the notion of social citizenship – particularly in respect of Amartya Sen’s capabilities approach, concerning the link between activation and unemployment benefits – is justified.¹ In this context, activation policies may assume different meanings: on the one hand, these policies may lead to the *contractualization* of social rights, counteracting these very rights by binding them to activation obligations, while on the other hand, activation policies may be regarded as a tool to strengthen *capabilities*, with public employment services seen as instrumental to the objective of participation. In this sense, if we focus more on the activation obligations of the individual, in contrast to the obligations of the public service to integrate the individual into the labour market, the social phenomenon of unemployment is reduced to an individual dimension, in which the unemployed person’s lack of employability seems to be the main issue.² At the same time, an excessive level of protection may trap the unemployed person in a passive mindset, prolonging their phase of unemployment.

All these considerations seem to converge on a crucial question regarding the role of the state and of the EU, and also, at a deeper level, of their legitimacy when faced with a vision of the economic system that posits the market at its centre.³ In this complex picture, of which only some selected

- 1 A. Sen, *Development as Freedom*, Oxford University Press, 1999, p. 144.
- 2 M. Lazzarato, “Neoliberalism in Action. Inequality, Insecurity and the Reconstitution of the Social”, *Theory, Culture & Society*, Vol. 26, Issue 6, 2009.
- 3 Without delving into the definitions of “legitimacy” offered by the different legal theories, in this contribution “legitimacy” is intended as the capacity

aspects will be analysed in this present publication, the EU plays an indisputably pivotal role.

It seems important to delineate in the first section of this volume some of the stages that are deemed important in terms of the definition of the link between active and passive labour market policies. This historical overview facilitates an understanding of the evolution of some key concepts that, to this day, are of central importance in EU law and, as a consequence of the influence of the European Union on its Member States, in domestic law, too. Only selected stages of the link between activation policies and unemployment assistance/subsidy policies will be highlighted, with a particular emphasis on demonstrating the tension between the market and the social dimension at the EU level.

In the second section of this contribution, I will provide an in-depth analysis of selected features of the *flexicurity* strategy, which are still central to the 2020 Strategy, and within the first draft of the Pillar of Social Rights⁴ (although no trace of it is to be found in its final documents).

I will then focus on the implementation⁵ of these concepts, as well as the European employment guidelines concerning passive and active labour market policies in three Member States: Germany, Italy and Denmark. These Member States employ three of the various kinds of social security systems found in the EU – Continental, Mediterranean and Nordic – and provide an interesting example for a comparison of the differences and common trends in LMPs. These systems are also characterised

of institutions – such as the State or the EU – to respond to their citizens' needs, and in particular their needs for unemployment benefits (UBs), unemployment assistance and unemployment benefits' activation policies: T. Bazani, "EUBS implementation: a Chance for Increasing EU Legitimacy," *Economia&Lavoro*, No. 1, 2017, p. 27–42. The proposed definition seems to be coherent with Scharpf's idea of the end of the 1990s to maintain welfare state goals in Europe – nevertheless the increasing international economic competition – as an opportunity to regain both European policy effectiveness and legitimacy: F. W. Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford University Press, 1999. I will speak more about legitimacy in the last part of this book.

4 (COM (2017) 250 final).

5 Here "implementation" corresponds neither to the implementation of rules by the courts nor to the idea of "implementation" used when implementing directives. Here implementation refers to how the Member States follow, in their internal regulation, the indications provided by the EU according to the procedure indicated by Art. 148 TFEU, i. e. the Open Method of Coordination (OMC).

by significant recent reforms and specific outstanding issues in the field under analysis.

Taking into consideration the research outcomes of the first part of this book, which concern key concepts in EU active and passive labour market policy, as well as an analysis of the *flexicurity* concept and comparative work results, the last part of this book will deal with current challenges in European employment policy. The Pillar of Social Rights will be highlighted as a crucial opportunity to develop the social dimension of the EU in order to enable European Institutions to strengthen their legitimacy in the eyes of EU citizens. In order to achieve this goal, I will propose considering the potential of social citizenship as a theoretical-philosophical basis upon which to implement the Pillar. Such a basis is crucial in order to avoid the failings of *flexicurity*. Indeed, this strategy sought to mediate an agreement between different interests but, in the end, favoured only some of them; meanwhile, its implementation has not achieved the planned outcomes and has impacted negatively on workers' rights.

In this regard, it is worth considering Sinzheimer's work, with its focus on the real person, not on a general concept of humanity. In focusing thus, Sinzheimer proposes a critical humanistic and social approach to studying labour law. In his opinion, a person can be effectively free only if she/he is free from economic dependency, thus highlighting a fundamental aspect upon which the concept of social citizenship is grounded. Thus, labour law must be considered to be a driver of social transformation, linked to real life.⁶

6 H. Sinzheimer, "Über soziologische und dogmatische Methoden in der Arbeitsrechtswissenschaft," in O. Kahn-Freund, T. Ramm (eds.), *Hugo Sinzheimer: Arbeitsrecht und Rechtssoziologie. Gesammelte Aufsätze und Reden*, Vol. 2, *Europäische Verlagsanstalt*, 1976[1922]; F. Mestitz, "Hugo Sinzheimer e il diritto del lavoro: ieri e oggi," *Scienza & Politica, per una storia delle dottrine*, Vol. 5, No. 9, 1993, p. 57 ff.