Labour Market Policies in the European Union

John Grahl
London Metropolitan University

Abstract

For the last twenty years, European integration has been characterised by an imbalance between economic and social policies. Economic policies, centred on market liberalisation and macroeconomic retrenchment, have increasingly been controlled by the European Union (EU), while social policies are still largely in the hands of the member states. Labour market policies, since they represent the intersection of the economic and social spheres, are of particular interest. A survey of the EU’s labour market policies shows that they are a contested domain, where rival views of the European project come into conflict. These policies take two main forms: a programme of legislation, originally intended to promote an upward convergence in standards, is today threatened with dilution; while a more recent initiative, the European Employment Strategy, an exercise in the “open” coordination of national policies, has, from the start, been heavily influenced by US views of labour “flexibility”. However, both forms of policy could make important contributions to the well-being of European workers, on condition of a basic change in EU strategy. The recent failure of the European Constitution may mean that this basic change is becoming necessary to the survival of the integration project.

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1. Introduction

This chapter attempts to survey and assess the labour market policies of the European Union (EU). Although the assessment is largely negative, certain positive possibilities are detected in aspects of existing strategies and in the debates around them.

Labour market policies have a specific place in the EU, in that they represent an intermediate zone between the economic sphere where the EU has extensive powers and the sphere of social policy, where member states retain almost complete competence. It is also the case that the doctrines which inform these policies are an amalgam – although neoliberal conceptions have predominated since the 1980s, there are also commitments to social partnership, social dialogue and, more recently, to the “European Social Model” (ESM) which are certainly more than cosmetic and which have influenced both the form and the content of EU labour market policies.

The most important aspect of these policies is a continuing programme of labour market legislation; this programme is wide-ranging, affecting all but a few aspects of employment relations. Although the labour standards which are promulgated are usually lower than those which prevail in Germany, Sweden and other member states with advanced social models, they usually work to improve the employment conditions of workers in Britain, Ireland, the Mediterranean and the Eastern member states. The main dangers here are that the legislative programme will in future be diluted and that enforcement will be inadequate.

The European Employment Strategy (EES), on the other hand, is an interesting experiment in “open coordination” with the potential to improve the quality of labour market interventions in the member states. However, the interventions promoted in the framework of the EES are very ambivalent. They are inspired both by the solidaristic labour market interventions which are well established in the Nordic countries and by much harsher, disciplinary, approaches found especially in the US. Nevertheless, experience with these interventions and debate within the emerging policy community may be moving the EES some way towards the first of these two types. At least this seems to be the outcome of the review of the EES undertaken in 2003.

The main dangers with the EES are, firstly, that its effects on member state governments will be very shallow and secondly that the content of the strategy will be determined by very narrow and conservative doctrines.

The plan of this chapter is as follows. After a brief examination of the “Social Deficit” in the EU, there are two longer sections. The first of
these is devoted to labour market legislation and surveys the main content of the legislative programme so far and the role of the notion of social partnership in its formulation. The second surveys the EES, with special emphasis on the “active” employment measures which are one of its main features. There is a brief conclusion: this suggests that in spite of the weaknesses which have been pointed out, a change in political direction could permit the labour market policies of the EU to make a very significant contribution to the welfare of European workers.

2. The “Social Deficit”

It is a truism to say that there is an imbalance between economic and social policies in the EU. The EU has enormous power in the economic sphere, power based on its control over external economic relations but above all on its responsibility for the internal market where the Treaties clearly establish its right to promote the “four freedoms”: the free movement of goods, services, capital and labour throughout the territory of the Union. There are no other policy fields where the institutions of the EU have a similar level of competence. Most social policy fields (with a few exceptions which mostly involve employment regulation) are held firmly within the competence of member states, and EU-level initiatives are only possible using the non-binding procedures of the open method of coordination.

The imbalance between the economic and social content of the European project is often, justifiably, deplored. However, it is important to recognise that this imbalance is very deep-rooted and sustained by the political nature of the European project at least since the Single European Act of 1986.2

Until the 1980s, the powers of the EU (strictly of the EEC, and then the EC which preceded the EU) were, in practice, restricted by its limited legitimacy even in the economic sphere where, in theory, it enjoyed primacy. Thus the Commission rarely litigated against member states which broke the rules; rather it opened negotiations with the government in question. (This happened, for example, when Tony Benn, responsible for energy in the British government, added to British oil refining capacity in defiance of EU policies. Likewise in the first months of the Mitterrand presidency, France took many protectionist measures which, although they were contrary to EC rules, were not sanctioned by the EU.) The “Luxembourg compromise” was widely seen as giving member states a veto in any issue which they chose to claim that vital national interests were at stake.
2.1. The Single Act

In the 1980s this situation changed: the *de jure* powers of European institutions in the economic sphere became increasingly also *de facto* powers. And these powers themselves were greatly enhanced by the Single Act which made it clear that market-led integration would be extended from the manufacturing and agricultural sectors where it was already far advanced, to cover markets for services, financial markets and labour markets. The Luxembourg compromise was jettisoned – the first refusal to accept a claim of “vital” national interests occurred when Britain was not permitted to sabotage an agreement on farm prices in order to pressure the Council of Ministers on other issues. Violations of the competition and market access rules were increasingly likely to lead to litigation and member states increasingly avoided such violations.

Why did this shift come about? One important factor was the neoliberal spirit of the times – governments were disillusioned with the national interventionist strategies they had frequently used in the 1970s and were more ready to promote market-oriented policies, including further, market-led, European integration. Another factor may have been the recognition that with an increasing number of member states (twelve by the time of the Maastricht Treaty) it would be necessary to replace diplomatic negotiations by rules in some areas to avoid long delays in decision-making. The pressure of the big corporations is always present in EC policy formulation, and there can be little doubt that most large companies in Europe supported the kind of changes that were made in the 1980s.

In fact, it is large corporations which actually exercise the four freedoms – individuals and SMEs have much less occasion to do so. The legal situation in the EU since the 1980s is that national governments have no power to block cross-border movements of either resources or outputs and that any attempt to do so will usually be blocked by the courts even in the member state concerned. The rights enjoyed by business enterprises within the EU are thus unique in international law and quite comparable to those which protect inter-state commerce and finance within the US.

2.2. Social policy

In the sphere of social policy, on the other hand, competence remains almost entirely with the member states. The exception which proves this rule is that migrant workers from other member states have to be granted access to the social protection regime of the states in which they are working. This provision, established very early in the process of
integration, was seen as necessary for the mobility of labour and thus as a market integration measure.

Although European integration has never involved a serious challenge to the supremacy of member states in the social sphere, there has always been some recognition of a “social dimension” to the integration project, and this has led to certain interventions. These may have been most intense at the very beginning, in the context of the European Coal and Steel Community. The Social Fund established at that time was intended to compensate the losers from integration (in the event, mostly Wallonian coal miners, see Milward, 2000, p. 114). The Social Fund of course survives to this day as a component of the “structural funds” but the refusal by the strongest member states to increase the EU budget means that it is of very limited significance. There is obviously no longer any attempt to compensate the losers from the ongoing process of market integration (for example the millions of victims of “transition” in the new member states).

There are many structures and interventions representing Europe’s social dimension; none of them, however, compromises member state control in this sphere. One can even identify a specific social philosophy characterising EU pronouncements and initiatives on social policy: there is firstly a strong commitment to the notion of “social partnership” and employers and employees are usually referred to in these terms; secondly, the official discourse of the EU includes abundant references to the ESM, an abstract notion derived from the specific but very different social models found in individual member states.

However, this social philosophy does not have the same kind of importance in practice as the commitment to market-led integration in the economic sphere. In the latter, one finds hard legislation and binding decisions; in the realm of social policy, there are declarations and statements of intent. For economics, there is usually qualified majority voting; for social policy, unanimity is required so that each member state retains a veto. Each phase of economic integration is centrally determined; for social policy we have the “open method of coordination”. And so on – the difference in status of the two policy fields is central to the EU.

2.3. The imbalance

There are at least two main reasons for this imbalance between economic Europe and social Europe. On the one hand, the same dominant interests which drive forward market integration tend to resist any centralisation of social security or social service provision. Their preference is for
the regime competition, which might put pressure on member states
either to cut back social policy expenditures or to move the tax burden
which corresponds to these expenditures away from business and on to
workers or consumers. A second reason may be the very loss of economic
powers which has taken place, both through European integration and
the more general processes of globalisation and economic liberalisation.
Just because governments have so little purchase over economic develop-
ments, they cling more tightly to their powers over social policy since
it is largely through social policy initiatives that they will respond to
political or economic pressures. It can be added that the heterogeneity of
social systems and social policy priorities is such that it would not be
easy to design centralised social policies. The Common Agricultural
Policy can be regarded from one point of view as a not very successful
European social policy, with the social objective of maintaining farm
incomes but bedevilled from the start by conflicting views in different
member states of what would be an acceptable farm income.

It must be added that this imbalance between economic policy and
social policy is very deeply set into the political nature of the EU. While
the essence of the EU is the four freedoms, the EU will tend to enjoy
such deep support from corporations that it can, in practice, do without
any strong feeling of allegiance on the part of individual citizens –
indeed it can even weather considerable unpopularity in many member
states. Our employers can love the EU on our behalf. An economically
interventionist EU, or one that funded ambitious social policies or an
EU which imposed heavy regulations with social objectives might for-
feit this strong support from business. In those circumstances, its lack of
popularity could become a very serious political problem for the EU.
The Constitutional Treaty might be seen as an attempt to respond to
this dilemma – the form of the Treaty can be seen as a bid for deeper
political legitimacy while at the same time, its content tried to preserve
the main structures which guarantee corporate support: the outcome of
the French and Dutch referenda, however, indicates that there is no
easy way to square this circle.

3. EU labour market policies

The situation so far described is a simple dichotomy: economic policy –
EU; social policy – member states. The limited competence which the
EU possesses in labour market policy complicates this picture but does
not alter its main features. In structural terms, the two policy fields
cannot be completely disjoint: there is an intersection between
economic and social policies, and labour market/employment policy supplies much of the content of this intersection. But the existence of certain EU powers in labour market policy can be seen as necessary to maintain the basic dichotomy. If member states were completely autonomous in their labour market interventions, they might use this power to undermine or circumvent the EU’s economic rules – by directing subsidies at certain groups of employees, for example. On the other hand, a centralisation of labour market policy in the hands of the EU would be a long step towards an integrated European social policy – for example it would prevent regime competition in some very important domains, such as employment standards and industrial relations. Thus the rather messy division of competence in the labour market field can be seen as functional to the extent that it works to preserve the existing, largely economic, orientation of the EU as well as its essentially “market-creating” approach to economic issues.

Although this functionality has probably been necessary to the emergence of labour market policy at the EU level, the actual content has to be explained by more contingent factors. This content divides into two distinct components: labour market regulation, beginning as early as the Treaty of Rome of 1957 and gradually becoming rather more ambitious; and labour market interventions, a much more recent development, involving an exercise in open coordination known as the EES. In principle, one might mention a third form of policy, the representation of labour in EU decision-making, but, as will be suggested below, there is little substance to the processes involved.

4. EU labour market legislation

The first general rules promulgated for European labour markets concerned gender equality and arose as early as the negotiations leading to the Treaty of Rome. Although the social economies of both France and Germany exhibited “familialist” (that is to say, patriarchal) characteristics, these were rather more marked in Germany and the French pressed for a commitment to gender equality to avoid competition from underpaid German women workers. From these, rather contingent, beginnings there developed a significant body of EU labour market legislation aimed at the equal treatment of men and women.7

4.1. Health and safety and working time

A second important theme in EU labour market regulation concerns the health and safety of workers. The Single European Act, essentially
concerned with removing non-tariff barriers to intra-EU transactions, did recognise that increased competition within the EU should not rest on inadequate health and safety provision and in consequence the competence of the EU to promulgate health and safety standards (by majority voting in the Council and subject to approval in the Parliament) has a very strong legal basis. A large body of specific safety measures have been introduced by the EU, concerning such issues as handling hazardous substances, the use of visual display equipment and the safe management of construction projects; although there is nothing new in the recognition that unregulated employment relations may compromise the safety of workers, the activism of the EU in this sphere makes a positive contribution to the welfare of employees. It was also as a health and safety measure that the Working Time Directive was introduced because the opposition of some member state governments meant that this type of regulation could only be put through on by majority vote.

However, the Working Time Directive also shows how member states can vitiate European labour market legislation. On British insistence, the Directive permits a derogation from the specified maximum working week (an average of 48 hours over a reference period of about 17 weeks) if this is agreed between employer and employee. None of the other member states made use of this possibility as they transposed the Directive into their own legal systems but the British most certainly did so. At this point, the fact that trade unionism has disappeared from most of the British private sector became decisive: few British employees were ready to insist on a maximum of 48 hours in the context of individual negotiations with their employer and the Directive simply ceased to be a constraint on employers’ practice. The Commission and the Parliament have expressed some concern with this situation in Britain, and especially with the fact that some employers were making agreement to a derogation a condition of recruitment (this is probably illegal). However, little has been done and there seems to be no will to amend the Directive to bring the British into line – indeed the opposite is the case as other member states are more and more attracted to the “flexible” labour markets which, supposedly, characterise the British economy.

The Working Time Directive also illustrates another problem with EU labour market regulation – that of enforcement. In some sectors of British industry, particularly the construction industry characterised by mass pseudo-self-employment, the provisions of the Directive on holiday pay are more honoured in the breach than the observance. In the absence of institutionalised collective bargaining, employer compliance with the law depends either on official inspection and supervision or on
the initiatives taken by individual employees. Both of these are very
weak reeds indeed: most governments today are quite unprepared to
commit the resources necessary for effective enforcement of labour mar-
et regulations which they often consider to be excessive and an impair-
ment of the market economy; whereas it is in fact the asymmetry in
power between employers and individual employees which gives rise to
the need to regulate in the first place. These problems of enforcement
do not just arise in Britain and Ireland (which is often very close to
British practice in employment and social policy) but also in many of
the new member states, where individual employees may be in an even
weaker position and the state even less capable of effective supervision
(Woolfson, 2005).

4.2. The social chapter

In the course of the 1980s, the scope of EU labour market legislation was
widened and this development culminated in the “Social Protocol” of
the Maastricht Treaty. The main motive was probably to compensate, by
some initiatives of social significance, for the extremely economistic
Single European Act, with its drive to open up markets by removing
non-tariff barriers. But, in comparison to the Single Act’s powerful drive
to “create markets” the measures taken to “correct markets” through
employment regulation seem weak and unimpressive.12 There was first
of all the “Social Charter”, a non-binding declaration of workers’ rights
issued in 1989. Britain, having reduced the significance of the docu-
ment by insisting that it has no legal force, then refused to sign. The
Charter was much stronger on individual worker rights than on collec-
tive ones; thus, there was a very clear repudiation of certain forms of
discrimination, but no clear statement of trade union rights.

Although the Charter had no legal force it did lead to a Social Action
Programme adopted by the Commission and fed into the social provi-
sions of the Maastricht Treaty of 1992. The Conservative British gov-
ernment of the time refused to sign and so the agreement took the form
of a Protocol appended to the Treaty which permitted the other 11
member states to use EU institutions to put their agreed policies into
effect – this was an early example of two-speed Europe.

Subsequently, the New Labour British government elected in 1997
endorsed the agreement which then became a fully established Social
Chapter in the Amsterdam Treaty. The Conservative rejection had
always looked like a misjudgement even from the point of view of a gov-
ernment committed to labour market deregulation in the name of “flex-
ibility”. This is because in most fields the Social Protocol only permitted
legislation on the basis of unanimity – thus British abstention deprived
the British of the right to veto European labour market legislation. In
return, of course, Britain had a derogation from such legislation, but this
formal opt-out might not be effective when all other member states had
adopted some measure. For example, the other member states agreed to
require multinationals with employees in more than one member state
to establish European Works Councils to represent their employees on a
transnational basis. Britain’s formal derogation from this requirement
was worth very little when corporations would be reluctant to exclude
their British employees from a structure to which all their other
European employees had access. Thus, when New Labour accepted the
social agreement, this was a sign rather of a higher level of sophistication
in dealing with the EU than of a different approach to labour market
issues. New Labour has in fact portrayed itself as serving business inter-
ests by resisting the threatening tide of EU regulation.

In any case, the Maastricht Treaty extended EU competence beyond
health and safety and gender equality to cover also: the information
and consultation of workers, working conditions and certain types of
intervention in favour of excluded groups. In these areas, majority deci-
sions can be taken and the Parliament has co-decision powers. In addition
the possibility of unanimous decisions in certain other fields was
recognised: social security, employment protection, representation of
workers (including co-determination), the employment rights of non-
EU workers and certain types of “active employment measure”. It is of
course in these areas that the acceptance of the Social Protocol by the
Blair government gives Britain an effective veto. It should be noted,
however, that the agreement also explicitly rules out any EU compet-
ence at all in the most sensitive issues in employment relations – wages
and strikes, which are to be governed only by the member states.

In addition, the Maastricht Treaty introduced a new form of legisla-
tive process – a corporatist arrangement whereby the social partners
themselves draw up legally binding regulations to govern employment
contracts. In itself these arrangements are of limited importance, but
since they relate to the official EU ideology of “social partnership,” they
are discussed below under that heading.

4.3. Atypical contracts

On the basis of the Maastricht Treaty a rather extensive programme of
labour market legislation was enacted during the 1990s. One broad
problem which resulted in a large number of Directives was that of
“atypical” employment contracts. The terminology itself points to the
impact of different legal traditions on employment practice. In many
continental countries employment relations are much more tightly cir-
cumscribed by law than they are in the Anglo-Saxon legal tradition. In
some countries, such as France, there is a specific labour code which
replaces the general law of contract and specifies, in rather narrow
terms, the obligations of employer and employee. For this reason in
many European countries the general drive by employers and govern-
ments for employment and labour flexibility was often concentrated on
the introduction of new, “atypical” employment contracts. For exam-
ple, in Spain regular employment contracts gave employees substantial
job protection; the labour “flexibility” drive took the form of fixed-term
contracts, which were made much easier by legislation in the 1980s,
and which in fact rapidly became the norm for younger workers. Similar
developments can be seen in France and Germany.

Directives regulating atypical contracts were central to the EU legisla-
tive programme in the 90s: legislation covered fixed-term work, part-
time work and the use of agency workers and had, as a broad intention,
the goal of securing that such workers had comparable rights to those of
permanent, full-time employees. It is not clear how this legislation
should be evaluated. On the one hand, it provides, in some countries,
legal rights which did not exist before and which may, to some extent
strengthen the position of vulnerable groups of workers. On the other
hand, the provisions have little effect in many countries, such as France,
Germany and the Netherlands where national labour market regulation
is usually much stricter than anything proposed at EU level. There can
be a suspicion that this legislation works mostly to legitimise new
employer practices without giving genuine compensation to the workers
concerned, who remain for the most part, badly rewarded and insecure.

Indeed, enforcement issues are very important here. In Britain, for
example, workers whose rights are violated can go to an Employment
Tribunal; but all that can be obtained there is an individual remedy.
Most employees will not litigate in this way, because they do not want
to antagonise their employer, because they do not have a good under-
standing of the law, or because they simply wish to avoid the trouble
involved. Thus the law only acts as a very weak constraint on employer
practice, a constraint which becomes less effective when unemploy-
ment rates are high.

4.4. Employee voice

A further important domain of EU employment law concerns what
might be called “employee voice systems” – institutions and practices
designed to give workers a say in the life of their enterprises. Streeck (1997) argues that the legislation here is a very pale reflection of the strong co-
determination systems in Germany, which first gave rise to the view that
employee voice should be strongly institutionalised across the EU. The
original Vredeling proposals, dating back to the early 80s were for a
change in company law which would enshrine strong employee voice sys-
tems. The proposals were defeated in the European Parliament after very
strong lobbying by both UNICE, the European employers’ federation, and
the Thatcher government. Debate continued for decades over a European
company statute and what it should contain, that is, in what ways
European company law should reflect such values as the ESM. The debate
was in the end resolved by a purely formal arrangement which makes it
possible for a company to be registered at the EU as well as at national
level but which avoids any special conditions for such registration.

Thus the legislation in this field is a matter, not of company law, but of
labour law. The first step, the European Works Council Directive, relates to
companies with employees in more than one member state, thus, essen-
tially, to the big multinationals. It requires the establishment of a transna-
tional representative body which can be used for consultation and
information of workers. So far these new institutions have not had a major
impact on employment relations in the firms concerned; one problem is
lack of trust among workers from different countries in a situation where
multinationals often make workforces compete for investment. The
European Works Council Directive was followed by a Directive requiring
the consultation and information of Employees in all enterprises with
more than 50 employees, but at this point the tendency for EU labour leg-
islation to become more and more permissive becomes even more
marked. The British legislation supposedly introducing the Directive into
British law does not even require any action by employers: existing voice
systems are acceptable unless explicitly rejected by employees and noth-
ing needs to be done unless 10 per cent of employees request it. During
the 1990s, the “diversity” of employment relations systems was increas-
ingly put forward as an advantage by the Commission and member states
were given wider and wider scope to take national “practices” and “tradi-
tions” into account as they transposed EU legislation. The result has been
a loss of any ability to reform inadequate national systems, such as those
of Britain, Ireland or some of the new member states.

4.5. Other forms of flexibility

In Britain, one of the most important forms of flexibility is the use of,
supposedly, self-employed workers. The notion is that once workers
accept this status most of the legal constraints on employers disappear. (In fact courts and employment tribunals are very reluctant to accept that workers are self-employed, perhaps because this would narrow their jurisdiction.) Much EU employment legislation tries to close this self-employment loophole by referring to “workers” rather than to “employees”. In the field of health and safety, it is probably difficult to evade responsibilities by claiming that workers are self-employed, but once again there are general issues of enforcement. The issue is related to the status of workers sent for brief periods to other countries, since these were often construction workers, supposedly self-employed. Countries such as Germany saw this practice as undermining their established systems of labour market regulation; countries such as Britain, which often sent workers abroad wanted to apply less restrictive domestic regulations – indeed, during the German construction boom of the 1990s lax regulation was perhaps the key factor ensuring the competitiveness of such posted workers. A compromise Directive in 1996 maintained the employment contracts of workers sent to other member states but specified that basic regulations of the host country (health and safety, minimum wages, gender equality) must be applied. Once again a very wide measure of diversity was permitted – not only did each host country specify what exceptions to its labour market regime would be acceptable for posted workers, but the specification of a maximum time period over which a foreign worker could be regarded as “posted” was also left to the member states. The issue is likely to gain in importance as the Commission tries to stimulate cross-border trade in services as the main thrust of the next phase of economic integration, since the export of services often necessitates the presence of workers in the importing country: the usual division on this kind of policy issue can be found – between those who favour regime competition and those who wish to protect public goods by general rules governing the integrating economies.

4.6. Working life and the family

A domain in which there seems to have been recently more will to constrain employers is that of “work–life balance” and the reconciliation of family and working life – themes important not only from a feminist viewpoint but also from the familialist perspective of Christian Democracy. An important step here was the parental leave directive of 1986, which, it is argued by Treib and Falkner (2004), has had important effects on practice in the member states, even though the formal requirements were not very stringent.
4.7. Social partnership and the European social model

EU labour market policy, including both legislation and the EES discussed below, make frequent reference to two concepts which are seen as providing specific content to social policies (including, as is consistent with French and German rather than Anglo-Saxon terminology, labour market policy) in a European context. The first of these is the notion of “social partnership”, a concept of employment relations as non-adversarial which, however, is clearly distinct from the notion of a “right-to-manage” often favoured in Britain and the US, since it insists on agreement and consensus between the two sides of industry and on some collective aggregation of employee interests (the social partners are supposed to hold a “social dialogue”, which is thus a closely related notion). The two strongest political tendencies in the EU, that is Christian Democracy and Social Democracy, are both committed to this notion of partnership which is expressed in most EU statements on employment and is repeated in the Treaties and other key documents.

Clearly, the notion of social partnership is something more than cosmetic: there is a long history of the organised representation of interest groups, including employees, within the EU. The Economic and Social Council brings together these organised interests and gives them an institutionalised voice in EU decision-making. The Maastricht Treaty went further in this corporatist direction, by opening up the possibility for the social partners at the EU level, UNICE and the ETUC (together with CEEP, which represents public sector employers), to determine EU employment law by agreement. When this happens the normal legislative instances, Council and Parliament, retain a veto on the draft directive which emerges from the corporatist negotiations, but this is a simple yes or no decision; the agreed document is not to be amended. In fact this kind of arrangement, giving legal force to the outcome of collective bargaining, already existed in several member states. One can even find some examples in Britain, although in the common law tradition there are problems in making such agreements binding on those who are not party to them, such as firms who do not belong to employers’ association involved. Indeed, such problems of representation also arose when corporatist legislation was attempted at the EU level – there are many employers and workers who can plausibly claim not to have been adequately represented by UNICE or the ETUC.

The two main cases where these corporatist procedures have been used are the parental leave directive and the fixed-term contract directive – the former probably having more effect on employment practice than the
latter. There has been some suggestion that the union side has tended to make many concessions in the negotiations leading to this kind of labour market regulation – just in order to establish the procedure. The employers, on the other hand, have only been ready to negotiate when threatened by ordinary legislation through Council and Parliament.

Although the commitment of EU institutions to Social Partnership is genuine, there is also a commitment to labour market “flexibility” which works in the opposite direction, works, that is to say, towards the deregulation of employment, the reduction of social protection and the dismantling of collective, in favour of individualised, bargaining. One can even identify conflicting views inside the Commission – although support for social partnership is widespread, the key Directorates-General which deal with the internal market and with economics and finance are most closely aligned with the “flexibility” agenda.

In fact, successive expansions may have reduced the weight of social partnership thinking in the EU: it was above all in the original member states that this view was strongest: Britain differed at first by the adversarial nature of its employment relations, subsequently by the unilateral triumph of the employers; the new entrants of the 1980s, Greece, Spain and Portugal, did not have the same kind of tradition; in the ex-communist countries the collapse of institutions again tended to reinforce a unilateral, employer-controlled “right-to-manage” approach; the Scandinavian countries relied more on government policies and strong trade unions than on partnership structures to advance the interests of workers.

As time has passed the dominance of the “flexibility” over the “partnership” agenda has become clearer. In the 80s, relatively strong employment regulation was seen as at least a symbolic counterweight to the liberalisation and market creation of the Single Act. In the later 90s, however, the countries, above all Germany, where social partnership had previously enjoyed considerable prestige seemed to under-perform while the US and Britain seemed to have increased their growth prospects.\(^\text{15}\)

A second theme in EU thinking, more recently, is an emphasis on the values of the ESM. This is a wider notion than “social partnership”; although partnership is certainly one component of the ESM, it also includes comprehensive systems of social protection together with high quality public services in such fields as housing, health care and education. Use of the singular represents an abstraction from the ESMs found at the member state level, and which are very different from one another although family resemblances can of course be detected. The
The discourse of EU leaderships over the last five or six years makes continual reference to the ESM. As with the notion of social partnership, these references are not vacuous – for one thing, the ESM is seen as a way of differentiating the European project from the US models which are elsewhere so obviously influential on EU policies, for another, the ESMs, in the plural, are still central to politics in the member states. Nevertheless, the ESM is hardly seen as a key political objective. The Lisbon agenda, which continues to dominate the direction of EU policies in the first decade of the twenty-first century, clearly subordinates social objectives to economic ones. Although the EU has taken a number of initiatives on the problem of poverty, these are very much a matter of “open coordination”, of trying to nudge policy at the member state level towards more adequate minimum income schemes, for example, and have not as yet had a detectable effect on outcomes. The EU has also enthusiastically adopted the theme of the “future finance” of the ESM, but this concern appears to be a question of reducing member state pension liabilities by methods which might be seen as an erosion of the ESM.

At the same time, there are clear inconsistencies between EU economic strategies and the effective functioning of actual ESMs. At the macroeconomic level, EU pressures for fiscal retrenchment promotes reductions in social expenditures. At the same time, EU structural policies have sacrificed social objectives to the pursuit of competition, as with the ill-fated Bolkestein Directive, which tried to open up key social services to external competition from both EU and non-EU corporations. The rejection of the first version of this Directive in the Council as well as the Parliament (a more dilute form is currently under discussion) demonstrated the widespread fear that integration was unleashing market forces which threatened established social models.¹⁶

4.8. A retreat from employment regulation?

It is important that the EU is committed, by clauses in its founding documents repeated in all subsequent Treaties, to a levelling up of employment conditions through improvements which maintain the highest standards reached in any member state.¹⁷ In general these clauses stand as a legal barrier to regressive policies. Increasingly, however, EU leaderships have claimed that economic advance in itself could be taken as securing these improvements, even though there is little evidence for such a view. In the language of Lisbon, growth and employment are the necessary, and perhaps the sufficient, conditions for social progress while growth and employment are to be secured by market-led integration. In the usual fuite en avant, the complete failure of the Lisbon strategy to
generate an expansion of either output or employment is only taken as
evidence that not enough market-led integration has been achieved.

At the same time, the official discourse of the EU is moving away from
the commitment to constraining legislation as a way of advancing
working conditions. Increasingly official voices echo the employers’
complaints about the burden of regulation and there are even promises
that existing employment regulation will be “streamlined”, “simplified”
and so on. Since, as was illustrated above, recent legislation has hardly
been much more than symbolic, this language may imply an attempt to
dilute some earlier measures – the Working Time Directive is sometimes
mentioned in this context, although it is hard to believe that it would
be politically possible to amend it in a deregulatory sense. On the other
hand, one original force behind EU employment law has weakened –
the desire of employers in such countries as Germany to avoid competi-
tion from other countries on the basis of lower standards. Partly,
perhaps, because the other countries today are more likely to be outside
Europe, partly because large German companies are today so multi-
national, the original fear of “social dumping” seems to have given way
to a celebration of “regime competition” – the hope that external com-
petitive forces will work to lower standards in Germany.

Overall, the following assessment might be made of EU employment
legislation. It has little or no impact in France, Benelux, Germany or
Scandinavia because in those countries national legislation is usually
 stricter. Indeed, from the point of view of those countries, EU employ-
ment directives might be seen as legitimising a less stringent approach to
regulation at member state level. On the other hand, in Britain, Ireland,
southern Europe and many of the new member states, the legislation
often works to the advantage of employees and reinforces workers’
rights. The problems are: firstly, the dilution of legislation by member
state governments who are hostile to it; secondly, the lack of effective
enforcement in countries where trade unions do not have a strongly
institutionalised role in the enterprise; finally, the increasingly pusillan-
imous approach of legislators in recent years as they have been more and
more reluctant to place real constraints on employers. However, much of
the legislation is on balance useful and it could become more so if EU
policy in general started to move away from the bankrupt Lisbon
agenda. Thus a shift in the political balance might have a major impact
– especially in fields, such as health and safety, where EU competence
has a very firm legal basis. It would be possible to use health and safety
measures to take major steps to improve the well-being of workers.18
Nothing of the kind, however, is on the present agenda.
5. The Luxembourg process and the EES

Since 1997, EU labour market policies have gone beyond the issue of employment regulation to embrace also certain types of labour market intervention. At the European Council of Luxembourg, heads of state and government adopted a EES which, while it does not disturb member state competence for these interventions, tries to make member state policies more dynamic and effective by a process of peer review and recommendation. Indeed the EES has become perhaps the paradigmatic example of the “open method of coordination” which is being used to circumvent issues of competence while pushing forward the integration process outside the core domains of economics and the internal market.

The conjuncture which saw the launch of the EES was one where it was becoming increasingly necessary, from a political point of view, to demonstrate that the EU had other objectives besides market creation. The drive towards the single currency had taken the form of restrictions on macroeconomic policy which had a clearly damaging effect on levels of activity and employment. The Luxembourg Council tried to demonstrate a will to deal with rising unemployment across the EU. It was decided to anticipate the provisions of the Amsterdam Treaty in this respect and to initiate coordination of labour market policies straight away.

The actual content of the Luxembourg process was, at least at the start, strongly influenced by the newly elected Labour government in Britain. At the time, the Blair administration enjoyed considerable prestige in Europe because of the scale of its recent victory and its declared wish to repair relations between Britain and the EU after the many frictions of the Conservative era. The actual direction of British labour market policy, however, was probably more influenced by the US than by European examples – in particular, the “New Deal”, essentially an “activation” strategy aimed, first of all, at the young unemployed, drew on the US experiments under the Clinton presidency.

The earliest formulations of the EES identified four principal themes for labour market intervention: equal opportunities, especially between men and women and seen as a response to female activity rates substantially below male ones in many countries; “employability”, understood as a lack of elementary skills which was holding many of the unemployed back; “adaptability” which, following the “flexibility” agenda, related to the supposed rigidity of “typical” employment contracts; and “enterprise” which related both to a perceived need for more
business start-ups and to the hope that some of the unemployed could 
be helped to go into business on their own account. These themes were 
known as the four “pillars”. They were sometimes expressed, in an 
idiom with a more pragmatic resonance, as a series of “gaps”: the gen-
ner gap, the skills gap, the adjustability gap and the job creation gap, 
respectively. This alternative language signals the presence of the 
usual ambivalence (sometimes portrayed as “creative ambiguity”) 
which characterises EU policy statements: multiple interpretations are 
invited as a means of achieving, by rhetorical means, a degree of con-
sensus incompatible with any narrow and specific interpretation of the 
texts involved. In fact, the commitment to social partnership meant 
that union representatives had to be given, if not a veto, then at least a 
voice in the open coordination process. Things could be smoothed out 
if the use of language was sensitive to their susceptibilities.

5.1. The employment targets

To render the EES, more concrete quantitative targets were adopted to 
act as a measure of success and these were expressed in terms of 
increased employment, rather than reduced unemployment, rates (an 
overall employment rate of 70 per cent by 2010 was adopted as the 
main target by the Lisbon Council). There are both advantages and dis-
advantages to this procedure. The main motive was probably to dis-
courage the use of early retirement strategies and similar devices which 
had been used to mop up unemployment either in reality or in the sta-
tistics (in Britain, as in several other countries, the reclassification of the 
unemployed as incapacitated was such a device). There are also clear 
disadvantages – employment as such can hardly be regarded as a maxi-
mund, both because there are many good reasons why someone might 
not be economically active and because the quality of jobs is also a con-
sideration. In fact, repeated criticisms of the functioning of the EES did 
eventually compel the Commission to pay more attention to job qual-
ity. To these overall targets there were added targets first for women (EU 
employment rate of 60 per cent by 2010) and then for older workers (50 
per cent by 2010).

It was always hopelessly unrealistic to expect such targets to be 
achieved by the supply-side measures of the EES. In fact, considerable 
progress towards the targets was made in the early years between 1997 
and 2001. The Commission was unwise enough to attribute this 
progress to structural reforms of the European labour market. This raises 
the question of how to explain the subsequent rise in EU unemploy-
ment from a low of 8.4 per cent in 2001 up to 9 per cent in 2004 (for
the EU as a whole; the figures for the EU15, those countries involved in
the EES since its inception, are 7.2 per cent and 8.1 per cent). Have the
structural improvements been rapidly reversed? Or are we dealing with
a conjunctural downturn? If the latter, why are macroeconomic instru-
ments not being deployed? (See Table 5.1.)

The form of the EES is a cycle of policy proposals and policy assess-
ments for each country. The Council of Ministers prepares each year
Employment Policy Guidelines, for the EU as a whole and for individ-
ual member states. These are translated by the member state govern-
ments into “national reform programmes” (originally “national action
plans”) for developments in their labour market policies. These meas-
ures are then assessed in a Joint Employment Report which feeds into
the next cycle. In principle, the open method of coordination involves
a lot more than this simple interaction between each member state and
the centre: comparative studies and peer review of policy are intended
to help build a transnational policy community and to make for more
informed and successful policy formation in each country. However,
this multinational policy debate is only developing slowly and the
essence of the EES process at present remains a series of dialogues
between national governments and the centre, in practice, the
Commission. Even this dialogue does not necessarily have a very big
impact on national labour market policies – some governments clearly
take the Luxembourg process very seriously; for others it is a question
of tweaking some details and making some presentational changes.22
Recent reforms of the EES tried to streamline procedures and to stabilise
recommendations so that the process would be less burdensome for

\[\text{Table 5.1 EU–15 EES targets and outcomes (per cent)}\]

<table>
<thead>
<tr>
<th>Year</th>
<th>Employment rate</th>
<th>Female employment rate</th>
<th>Older workers employment rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>60.7</td>
<td>50.8</td>
<td>36.4</td>
</tr>
<tr>
<td>1998</td>
<td>61.4</td>
<td>51.6</td>
<td>36.6</td>
</tr>
<tr>
<td>1999</td>
<td>62.6</td>
<td>53.0</td>
<td>37.1</td>
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<tr>
<td>2000</td>
<td>63.4</td>
<td>54.1</td>
<td>37.8</td>
</tr>
<tr>
<td>2001</td>
<td>64.0</td>
<td>55.0</td>
<td>38.8</td>
</tr>
<tr>
<td>2002</td>
<td>64.2</td>
<td>55.6</td>
<td>40.2</td>
</tr>
<tr>
<td>2003</td>
<td>64.3</td>
<td>56.0</td>
<td>41.7</td>
</tr>
<tr>
<td>2004</td>
<td>64.7</td>
<td>56.8</td>
<td>42.5</td>
</tr>
</tbody>
</table>

\[\text{Source: Employment in Europe (2005).}\]
member state governments. Here, as with labour market legislation, we can see the new EU minimalism at work.

5.2. **Content of the EES**

The Directorate-General for Employment and Social Affairs protests that the EES is concerned with more than active employment measures. This is indeed the case. Every aspect of labour market policy is covered: training systems, the working of government employment agencies, regional policies in so far as these bear on employment issues and so on. Nevertheless, active employment measures have been at the centre of the EES so far and the success and failure of the EES has depended on the potential of such measures to increase employment. In fact additional targets have been formulated for such interventions – for instance, that every young unemployed worker should be offered some kind of placement with a specified period of time.

Now the general expression, “active employment measures” is deeply ambiguous. The term active is used to signal that something more is being done than indemnify an individual’s unemployment (the payment of indemnities is a so-called “passive” measure presumably because of the passivity of the individual in question). But what that more is requires close examination. Contrast the following polar cases.

Firstly, “active” employment measures can be thought of as solidaristic interventions in favour of disadvantaged groups. Although macroeconomic policies are the most potent measure to deal with unemployment, it is never exactly true that a rising tide lifts all boats. Some localities – where for example an important employer has gone out of business – and some groups – perhaps ethnic minorities – will be left behind. When unemployment is particularly high because of the closure of a major company or the rapid run-down of an industry there will be an “island” of unemployment which will stand out even when the general level of demand is rising. The tradition of the Nordic social models has been to use both job creation measures and relocation/retraining in such circumstances; although there are certainly disciplinary aspects to active measures even in the Nordic countries, their overall impact is to widen the possibilities open to the members of disadvantaged groups. It should be noted that this kind of intervention is bound to be to some extent *ad hoc* and contingent, because the need for active measures is cyclical. In practice, such programmes are initiated in downturns and dismantled in booms. This is very logical and turns the increased expenditure, which active measures require into a stabilising force.
On the other hand, there are active employment measures which are best understood as instruments of social discipline or even social punishment. The training or work experience “opportunities” which are offered to the unemployed are seen as testing the authenticity of their claims as well as reinserting them into employment. In the 1990s, reforms of the social security system in the US dissolved the main federal welfare programme, Aid to Families with Dependent Children, and transferred responsibility for poverty relief to the states, some of which proceeded to introduce extremely harsh “workfare” regimes (FAIM – families achieving independence in Montana, or WW – Wisconsin works).

One aspect of these disciplinary programmes is that they are often designed not just to move people off welfare benefits and into employment, but also to encourage people to cease claiming relief even when they do not find work.

From the beginnings of the EES in the Luxembourg summit of 1997, official statements of the strategy have deliberately maintained a measure of ambiguity about its underlying social logic. For example, member states are enjoined to “improve the incentives to accept work”, which might mean increasing minimum wage rates, but which could equally mean reducing unemployment indemnities. It seems clear that the political motives behind the EES were mixed. An important consideration was to legitimise the process of European construction, at that time focussed on painful preparations for monetary union, by doing something to address the central social problem of unemployment. On the other hand, certain governments represented at Luxembourg, notably that of Britain, were already committed to methods of employment intervention which drew heavily on the US experience and which marked a break with traditional social-democratic approaches to social security.

5.3. Active employment measures

A key criterion in the assessment of “active measures” is their impact on the liberty of the individual. Do the measures widen the opportunities available to an unemployed individual and relax the constraints which he or she confronts? Or do they, on the other hand, tighten these constraints and attempt to induce decisions previously rejected by that individual? In the latter case, we are faced with what Standing (2002) calls “the new paternalism” – an authoritarian reinforcement of market disciplines. Standing analyses in some detail the attempt to give an ethical veneer to such initiatives, by appealing to “reciprocity”, “balance between rights and responsibilities”, “the work ethic” and so on and so
forth. There is, at the least, a certain tension between such pronounce-
ments and the simultaneous celebration of market processes not char-
acterised by any clear conformity to the values invoked.

It is not possible to survey all the policies adopted by member states
under the rubric of “activation” but the huge substantive variations can be
illustrated by contrasting the approach in Britain with that in Denmark.

The main British policy associated with the EES is certainly the “New
Deal” initiative, aimed initially at the activation of the young unem-
ployed. The Labour government elected in 1997 certainly intended to
introduce a more generous and humane regime than those used from
time to time to control youth unemployment by its Conservative prede-
cessors. Nevertheless the “New Deal” had a clear economic logic: to
increase employment while intensifying competition among (in practice,
lower-paid) workers and thus to reduce the non-accelerating inflation
rate of unemployment (NAIRU) (see Layard, 1997, for a clear account of
this reasoning). In this regard, it was to be seen as a success of the inter-
vention, if a young person, confronted by a distasteful activation experi-
ence, chose instead to renounce their unemployment indemnities and
either to take a job or to find some other means of subsistence.

The British report on its EES policies (ECOTEC, 2002) shows that the
main consequence of the “New Deal” was indeed to drive young people
off the unemployment register, without their having benefited from the
“opportunities” offered to them, which “opportunities” indeed most of
them refused. Of 166,000 young people reaching the point of activation
between January 1998 and July 2001, only 39 per cent in fact accepted
one of the training or job experience options; 26 per cent are known to
have taken employment outside the scheme, often perhaps, employ-
ment they would otherwise have refused; 8 per cent transferred from
unemployment indemnities to other social security benefits; the destiny
of 17 per cent is unknown. As a mechanism of social discipline, the New
Deal is an obvious success; as a contribution to the well-being of those
affected by it, it is much harder to assess.

By contrast, the Danish exercise in activation is usually interpreted as
following a completely different social and economic logic – one that
rejects the recasting of the welfare state along Anglo-American lines.
Thus Bredgaard (2001) writes:

A more generous welfare state does not seem to corrode work moti-
vation or job search flexibility. Labour market marginalisation is
in general better understood in relation to mismatch between the
structure of jobs and the distribution of skills combined with the
in institutional mechanisms of job allocation. . . . The universal and expensive welfare state has not been retrenched or dismantled but rather consolidated and in some areas partly improved, corporatist institutions have been reinforced, and Keynesian inspired fiscal policy (initially) adopted successfully (p. 10).

Gilbert (2000) offers a similar assessment. The Danish strategy, which has certainly achieved a substantial reduction in unemployment, involved macro-economic measures and a wage policy as well as labour market policies. The latter certainly involved some tightening of the rules and constraints which apply to the unemployed, but these were minor. They focussed above all on vocational education with programmes tailored to the needs of the individual concerned.

It is not intended here to recommend the universal adoption of Danish practices. Rather, the point of the contrast between British and Danish policies is to pose the question: What does it mean to assert that these two opposed approaches to labour market reform are both legitimate components of a unified European strategy? If the two approaches both lead to a higher volume of employment, is it the same kind of employment?

5.4. Review and reformulation of the EES

The EES has always involved contestation and debate around the types of intervention which it proposes. There are, of course, different points of view among the participating governments but the main frictions are probably between the social partners. In the dialogue around the EES, trade union representatives have argued for a more generous treatment of the unemployed, for a more “Nordic” approach to unemployment and so on. However, they have not had a great deal of influence on the implementation of the EES. Indeed, the procedures of the EES reinforce a narrow and restrictive approach to labour market policy. Although the Employment Policy Guidelines are prepared each year in the Directorate-General for Employment and Social Affairs, they are given their definitive form by the D-G for Economic and Financial Affairs. This means that employment policy recommendations are subordinated to the annual “Broad Economic Policy Guidelines”, which never fail to prioritise fiscal consolidation, reduced labour costs and market-led integration. The obvious way to make employment policies compatible with the unchanging agenda of the Economic Policy Guidelines is to reduce expenditure, deregulate labour markets and promote competition between the unemployed and those in insecure employment in order to achieve further labour cost reductions. Thus the last word in the annual
policy round is always given to the most conservative voice. From 2005, Economic and Employment Guidelines are published together as an “integrated” document, but this integration seems only to confirm the subordination of the latter to the former.

However, repeated criticism, backed up by evidence, does seem to have called some of the original presuppositions of the EES into question. One issue is the quality of employment – more recent formulations of the strategy are less likely to make the level of employment a simple maximand, independently of the quality of the job. Similar considerations are also now more likely to be invoked as regards the quality of active measures.

One should not exclude, from this somewhat negative account, the generally helpful approach adopted within the EES to the employment problems of immigrant workers. Nor is it possible to object to the emphasis on gender inequalities, although of course their correction implies a lot more than rising female participation rates.

In the course of 2003, as part of a comprehensive review of the Lisbon agenda, the EES was subject to a basic review which, while reaffirming its main content, reformulated its objectives (for a full assessment, Watt, 2005). Instead of the four “pillars” the strategy was now expressed as three “overarching and interrelated objectives’ – full employment, quality and productivity at work and social cohesion and inclusion. Then ten guidelines, “the ten commandments” are derived from these overarching goals. These are:

1. Active and preventive measures for the unemployed and inactive
2. Job creation and entrepreneurship
3. Address change and promote adaptability and mobility in the labour market
4. Promote development of human capital and lifelong learning
5. Increase labour supply and promote active ageing
6. Gender equality
7. Promote the integration of and combat the discrimination against people at a disadvantage in the labour market
8. Make work pay through incentives to enhance work attractiveness
9. Transform undeclared work into regular employment
10. Address regional employment disparities.

The guidelines for individual member states, on which national action plans are based, are laid out in terms of these “commandments.” In general they are close to the four pillars but items 7, 8 and 10 may
signal a certain shift in policy thinking. The review of the strategy also attempted to simplify the open coordination process by making major changes to the national action plans less frequent. From year to year the main concern will be the implementation of existing guidelines with qualitative changes made at longer intervals. This is intended to reduce the administrative burden on member state governments – but it too may be a sign of the new minimalism.

A recent change in the guidelines for Britain reinforces the impression of a certain shift in priorities. As usual, Britain is congratulated on the rise in employment and on the working of such schemes as the “New Deal”. However three other issues are raised which the British government might find less to their taste. They are enjoined to give more consideration to the quality of jobs – which might be a difficult task given that many of the new jobs in Britain have been part-time jobs at low rates of pay. Secondly, the Commission expresses concern about the productivity of the new jobs in Britain. This may be a coded expression; it should be remembered that the EU can say nothing about wages, even within the open coordination process, because the Social Chapter explicitly bars it from doing so. To speak of productivity, that is, the main determinant of wages may be a way of making the critical point that many of the jobs being created in Britain are very low-paid. Finally, a point is made about social dialogue – the British are encouraged to develop the role of the social partners within the EES. Since most British workers are no longer represented by trade unions this recommendation might lead to a little embarrassment in Whitehall.

These changes in the Guidelines for Britain suggest a certain welcome modification in the priorities of the EES. Another change that should be signalled is in the approach taken by D-G Employment and Social Affairs to “atypical” contracts. The standard position in the past was that these are absolutely necessary to deal with the “adjustment gap”. However, extensive empirical studies indicated that at least in one case, short-term contracts, these “flexible” forms of employment add nothing to total employment but do make employment much more volatile.28 This should mean, but perhaps will not, that the drive for “flexibility” in this form will be abandoned.

One further change, at least in the presentation of the EES, is the now frequent reference to “flexicurity” or, as the latest Guidelines have it, what is to be promoted is “flexibility combined with employment security”. Nordic models seem to be behind this notion: it is a challenging one for most advocates of the “flexibility” agenda because what makes atypical contracts so attractive to employers is exactly the insecurity to
which they give rise and the consequent readiness to settle for lower
rewards and less satisfactory conditions. The interpretation of
“employment security” which will be made is suggested by the EU’s
own account of this guideline, which calls for “support for transitions
in occupational status, including training, self-employment, business
creation and geographic mobility” (European Commission, 2005b).

5.5. Overview of the EES

It has to be recognised, then, that the EES is a contested domain, that
criticism, above all from employees’ representatives, backed up with
strong evidence on the effects of some labour market policies has mod-
ified at least the language of the EES and led to a certain enrichment of
its objectives. The changes, however, are minor: the basic logic of the
strategy is to bring about higher employment by intensifying supply-
side competition in the labour market. The social consequences of such
an approach will tend to be negative because those most affected by the
strategy will be the more vulnerable parts of the population (the young
unemployed, for instance). The economic benefits are justified more by
the doctrine of “flexibility” than by strong evidence.

In any case, the impact of the EES on member state policy is probably
very limited. The open method of coordination is a promising approach
to policy formation but it is still in its early stages. Reference to
European comparisons and to European policy communities is perhaps
becoming more important in many countries but at present they do not
have much impact on policy decisions.

The European Commission (2005a) argues that the structural rate of
unemployment has been reduced by the EES, or at least during the five
years after 2000 when the EES was fully functional. (This claim applies
to EU15, not to the new member states, in many of which the “NAIRU”
is said to have risen.) However, the Commission has to recognise that
unemployment as such has increased and that this is a demand effect:

In the period 2001–2004, the average annual GDP growth rate for the
EU-15 turned out to be around half of what had been initially antici-
pated. Obviously, given the strong relationship between economic
growth and labour market performance, this had a negative impact on
employment creation. Moreover, the weakness of domestic demand in
some EU Member States, especially in Germany since 2000, is worry-
ing not only in itself, but also because of the potential knock-on effects
in the rest of Europe . . ., which represents a major downward risk to
the current economic recovery in Europe in general, and job creation
in particular. Given the low levels of economic confidence, firms might not want to expand in the present circumstances (early on in the upswing), fearing a possible “double-dip” economic downturn. 

*Employment in Europe, 2005, p. 75*

It is immediately added that ongoing labour market “reforms” in Germany will reverse this situation but that is perhaps the triumph of hope over experience. The claims still put forward for a “structural” improvement do not seem to be very soundly based. The actual technique used by the Commission to separate structural from cyclical unemployment is purely statistical, that is, unemployment is treated as cyclical if it does not persist, structural if it does. This begs a lot of questions about the persistence of demand shocks.

6. The macroeconomic dialogue

For the sake of completeness, a third component of EU labour market policies can be mentioned; this is the macroeconomic dialogue, which brings together the ETUC, UNICE and CEEP as representing the social partners with the ECB, the Commission and the Council of Ministers in two forms (economics ministers (Ecofin) as well as ministers of employment and social affairs). The structure was designed by Oskar Lafontaine during his brief tenure as German Finance Minister and was agreed at the Cologne Council (Dufresne, 2002). Lafontaine had in mind a neo-Keynesian process through which income formation, in the hands of the social partners, would be loosely coordinated with monetary policy (the ECB) and fiscal policies (member state governments, as represented by the ministers referred to).

Of course, even if this kind of neo-Keynesian process were accepted, it would not permit any precise macroeconomic strategy. The actual economic structures of the EU, apart from monetary policy, are much too decentralised for that. But dialogue could develop general guidelines which might reduce inconsistencies among the three components of the macroeconomic mix and reduce the probability of negative sum games between the central bank and the other actors. It would not be a question of an optimal policy mix but of seeking to avoid very inefficient outcomes.

In practice, however, not even this limited form of coordination has been possible, because the institutional structure of the EU rules it out. The ECB formulates monetary policy in perfect independence and would certainly not involve either the member states or the social partners in its...
deliberations. The governments of those member states which use the euro, although they are the victims of the ECB’s first mover advantages, mostly seek to enjoy the same advantages as against the social partners in their own countries (although there are exceptions to this rule in some of the smaller states which are experimenting with social pacts). Thus the social partners are pre-empted twice, by both monetary and fiscal authorities. As for the Commission – it is hardly acting as a neutral referee in these discussions – rather it pursues its agenda of fiscal stabilisation together with the kind of labour market “reform” which was discussed in the previous section. Thus, in practice, the macroeconomic dialogue has never amounted to more than a rather sterile “exchange of views”.

As with the other aspects of labour market policy which have been discussed – regulation and intervention – one can envisage changes which would give the macroeconomic dialogue a different and more positive significance. But at present, it cannot be regarded as a serious attempt to affect macroeconomic circumstances in the EU.

7. Conclusion

The two main forms of labour market policy at EU level are, firstly, labour market legislation and secondly, the “open” coordination of member state labour market interventions, through the EES.

The various programmes of legislation, going back almost to the beginning of European integration, are by far the more important of the two forms. Their immediate effect is to establish minimum labour standards in several fields, including equal opportunities, health and safety, the use of “atypical” contracts, the information and consultation of employees and “work-life” balance. This legislation can be criticised on several grounds: inadequate attention to enforcement; a lack of ambition which means that convergence on the highest standards in the EU is too slow; in some cases, the danger of doing more to legitimise “flexible” employment practices than to regulate them. However, the general impact of these directives is positive – it works to raise both actual standards and aspirations in many member states where standards in the past are too low. The main problem is that new legislation may be avoided or weakened, and existing legislation also perhaps weakened, in an attempt to placate business interests by a war on “red tape”.

The second aspect of EU consists of the coordinated interventions of the EES. Although they have a more constructive side, these have been influenced by a regressive and inegalitarian view of the labour market which regards it as possible and desirable to achieve higher levels of employment
by intensifying competition among the weakest and most vulnerable sections of the population. As such, the EES is a manifest failure. This, however, does not mean that the open method of cooperation as such is a failure. On the contrary, it is a promising and imaginative approach to public policy. Labour market interventions will never lead to full employment – that requires expansionary macroeconomic measures. But the interventions proposed in the EES could become very useful if they were clearly developed as forms of social solidarity rather than social discipline.

The EU today is basically a set of economic arrangements designed to liberalise market exchange within the member states, and involving a macroeconomic regime which seeks to use restrictive policies to constrain member state expenditure and contain labour costs. The social aspects of the EU are secondary, often little more than cosmetic, and completely subordinated to its economic content. Initiatives in the EU focus on further market creation, today for example, the creation of big integrated financial markets, rather than market correction on social or environmental grounds.

This situation is not an accident, nor is it a simple expression of a neoliberal Zeitgeist, although ideological factors are important. The democratic and social policy deficits of the EU reflect, firstly, the structural predominance of large corporations in the international economy, as well as the failure of countervailing forces to integrate and aggregate their own interests at the European level. A second cause is the refusal of member states to part with their autonomy in social policy, which autonomy is seen as all the more valuable just because they have lost so many of their economic powers.

However, this narrow and socially regressive model of European integration has led to an impasse, as is shown by the failure of the European constitution. If the priorities and strategies which predominate in the EU today are not changed then the EU itself will stagnate and the existing structures may start to erode. More positive developments, based on an expansion of the demand for labour and on reinforced social policies, are possible. Such developments could draw much from the experience of EU labour market policies.

References


Notes

1. Official EU documents usually refer to “employment policy” rather than labour market policy but this is a misnomer in that the policies referred to do not include the macroeconomic measures central to the generation and maintenance of high levels of employment. The policies dealt with here on the other hand concern the regulation of the labour market and of the employment relation, and such interventions in the labour market as “active employment programmes.” The general term, “labour market policy” has therefore been preferred.

2. Even in the 1950s a move away from social policy can be detected in that the social provisions of the Treaty of Rome were already weaker than those of the Treaty of Paris (1951) which established the ECSC.

3. Social Fund expenditure was planned to be 62.5 billion over the period 2000–2006. The annual average of about 10 billion should of course be related to the 450 million inhabitants of EU member states.

4. Welfare economics does not allow us to say that a reform represents an improvement (or even, in strict logic, an efficiency gain) unless it is accompanied by full compensation of the losers. This result is usually forgotten by neoliberals, unless the probable losers are rich and powerful.

5. For an amusing discussion of this terminology see the introduction to the second edition of Ferner and Hyman (1998).


7. In Britain, some key moves against gender discrimination (Equal Pay Act, 1970; Equal Opportunities Commission, 1975) were taken on a British basis prior to, or independent of, Britain’s accession to the EEC; however, European legislation is usually seen as helping to reinforce the movement for gender equality, although the movement is still a long way from its goals.


9. Recent press reports suggest that the British government may agree to the elimination of individual derogations from the Directive.

10. This case illustrates how far populist British complaints about the imposition of rules by Brussels are from reality. British ministers are in fact almost never put into a minority in the Council. What would need to be explained is rather why other member state governments are so reluctant to challenge British positions.

12. This terminology, more accurate than the distinction between negative and positive integration, is taken from Scharpf (1999).

13. For critical assessments of this legislation from a labour movement perspective see the publications of the Institute of Employment Rights, www.ier.org.uk

14. See Cremers and Donders (2004). Increasing concern has been expressed by British unions about the use of the Posted Worker Directive to circumvent national labour market regulation or national collective agreements (National Engineering Construction Committee, 2004).

15. For a discussion of these debates in Germany, Grahl and Teague (2004).

16. For the opposition, see www.stopbolkestein.org

17. Currently Article 136 of the Treaty Establishing the European Community: “The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.”


19. Parts of this section draw on a joint report on the EES prepared in 2003 for the Euromemorandum group and available on http://www.epoc.uni-bremen.de/publications/pup2003/files/Brussels_Grah}\_2003.PDF. The other authors were Frank Brouwer, Anne Dufresne, Mahmoud Messkoub, Ingo Schmidt and Andrew Watt. None of them is responsible for the views expressed here.

20. On OMC, see, for example, Hodson and Mayer (2001).

21. A necessary complement would have been the output gap, in the usual sense of an aggregate demand for goods and services below the productive potential of the economy. This last gap, however, was never mentioned.

22. A year or two ago a colleague told me that she had had some difficulty finding a single official in the British Department for Work and Pensions who had any knowledge of the EES.

23. See, for example, Serrano Pascual (2003a and 2003b). Of course it can be argued that a certain degree of ambiguity is a political necessity if any progress is to be made in European construction. The view taken here is that to apply the same term to interventions which reduce and those which expand the personal autonomy of disadvantaged groups such as the unemployed can only increase cynicism about European policies.

24. An interesting topical example is the case of the “intermittent” workers in France, often in the performing arts, who have benefited until now from a relatively generous regime of unemployment indemnities. This might be seen as an “active” policy which extends the autonomy of the individuals concerned.

25. Although it can be noted that there is a certain drift in official rationale for disciplinary labour market interventions – away from the battle against inflation and towards the promotion of a low-wage service sector as a necessary aspect of global competitiveness.
26. For detailed critical analysis of the Economic Guidelines see the annual memoranda published by the Euromemorandum group (European Economists for an Alternative Policy) available on www.memo-europe.unibremen.de

27. Sometimes the results of these procedures are simply absurd. For example, the Employment Guidelines addressed to Sweden, after congratulating that country on its success in more than meeting all its EES targets, suggested that even more employment could be achieved with lower taxes. Anyone familiar with the Swedish labour market is aware that its very high employment levels are based on high taxation in order to support public service employment. See Raveaud (2004) who comments that “this calls the nature of the Commission’s recommendations into question. Are they really positive, aiming at improved efficiency or do they defend, of course without saying so explicitly, a certain theoretical (and normative) conception of how an ideal labour market should function, a conception which they maintain despite the empirical results obtained in this field by the Nordic countries, above all by Sweden.”

28. See Employment in Europe, 2002 edition, p. 57: “The ‘bonus’ provided by flexible forms of contractual arrangements is somewhat reduced when countries are ‘over-exploiting’ the possibilities of temporary contracts and use them as a substitute for permanent employment.”

29. For the link between “flexibility” and insecurity see Standing (1999).

30. The rationale for “flexibility” measures has shifted: in the 1980s, the main issue was inflation and “flexibility” was seen as necessary to reduce the NAIRU. Today this rationale persists but is less convincing in a low inflation environment. A new rationale, based on globalisation and competition from low-wage countries is today often advanced instead or as well. The recommended policies, however, have hardly changed.
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