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# 5 Labour Market Policies in the European Union

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## 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.

**JEL Classification:** J88 Labour Standards, Public Policy, F15 Economic Integration

**Keywords:** European Union, labour market regulation, European employment strategy

## 1. Introduction

This chapter attempts to survey and assess the labour market policies<sup>1</sup> 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

1 these is devoted to labour market legislation and surveys the main con-  
2 tent of the legislative programme so far and the role of the notion of  
3 social partnership in its formulation. The second surveys the EES, with  
4 special emphasis on the “active” employment measures which are one  
5 of its main features. There is a brief conclusion: this suggests that in  
6 spite of the weaknesses which have been pointed out, a change in polit-  
7 ical direction could permit the labour market policies of the EU to make  
8 a very significant contribution to the welfare of European workers.  
9

## 10 2. The “Social Deficit” 11

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

24 The imbalance between the economic and social content of the  
25 European project is often, justifiably, deplored. However, it is important  
26 to recognise that this imbalance is very deep-rooted and sustained by  
27 the political nature of the European project at least since the Single  
28 European Act of 1986.<sup>2</sup>

29 Until the 1980s, the powers of the EU (strictly of the EEC, and then **AQ1**  
30 the EC which preceded the EU) were, in practice, restricted by its lim-  
31 ited legitimacy even in the economic sphere where, in theory, it  
32 enjoyed primacy. Thus the Commission rarely litigated against member  
33 states which broke the rules; rather it opened negotiations with the gov-  
34 ernment in question. (This happened, for example, when Tony Benn,  
35 responsible for energy in the British government, added to British oil  
36 refining capacity in defiance of EU policies. Likewise in the first months  
37 of the Mitterrand presidency, France took many protectionist measures  
38 which, although they were contrary to EC rules, were not sanctioned by  
39 the EU.) The “Luxembourg compromise” was widely seen as giving  
40 member states a veto in any issue which they chose to claim that vital  
41 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

1 integration, was seen as necessary for the mobility of labour and thus as  
2 a market integration measure.

3 Although European integration has never involved a serious chal-  
4 lenge to the supremacy of member states in the social sphere, there has  
5 always been some recognition of a “social dimension” to the integration  
6 project, and this has led to certain interventions. These may have been  
7 most intense at the very beginning, in the context of the European Coal  
8 and Steel Community. The Social Fund established at that time was  
9 intended to compensate the losers from integration (in the event,  
10 mostly Wallonian coal miners, see Milward, 2000, p. 114). The Social  
11 Fund of course survives to this day as a component of the “structural  
12 funds” but the refusal by the strongest member states to increase the EU  
13 budget means that it is of very limited significance.<sup>3</sup> There is obviously  
14 no longer any attempt to compensate the losers from the ongoing  
15 process of market integration (for example the millions of victims of  
16 “transition” in the new member states).<sup>4</sup>

17 There are many structures and interventions representing Europe’s  
18 social dimension; none of them, however, compromises member state  
19 control in this sphere. One can even identify a specific social philoso-  
20 phy characterising EU pronouncements and initiatives on social policy:  
21 there is firstly a strong commitment to the notion of “social partner-  
22 ship” and employers and employees are usually referred to in these  
23 terms;<sup>5</sup> secondly, the official discourse of the EU includes abundant re-  
24 ferences to the ESM, an abstract notion derived from the specific but  
25 very different social models found in individual member states.<sup>6</sup>

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

### 36 2.3. The imbalance

37  
38 There are at least two main reasons for this imbalance between economic  
39 Europe and social Europe. On the one hand, the same dominant inter-  
40 ests which drive forward market integration tend to resist any centrali-  
41 sation of social security or social service provision. Their preference is for

1 the regime competition, which might put pressure on member states  
2 either to cut back social policy expenditures or to move the tax burden  
3 which corresponds to these expenditures away from business and on to  
4 workers or consumers. A second reason may be the very loss of economic  
5 powers which has taken place, both through European integration and  
6 the more general processes of globalisation and economic liberalisation.  
7 Just because governments have so little purchase over economic devel-  
8 opments, they cling more tightly to their powers over social policy since  
9 it is largely through social policy initiatives that they will respond to  
10 political or economic pressures. It can be added that the heterogeneity of  
11 social systems and social policy priorities is such that it would not be  
12 easy to design centralised social policies. The Common Agricultural  
13 Policy can be regarded from one point of view as a not very successful  
14 European social policy, with the social objective of maintaining farm  
15 incomes but bedevilled from the start by conflicting views in different  
16 member states of what would be an acceptable farm income.

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

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### 3. EU labour market policies

37 The situation so far described is a simple dichotomy: economic policy –  
38 EU; social policy – member states. The limited competence which the  
39 EU possesses in labour market policy complicates this picture but does  
40 not alter its main features. In structural terms, the two policy fields  
41 cannot be completely disjoint: there is an intersection between

1 economic and social policies, and labour market/employment policy  
2 supplies much of the content of this intersection. But the existence of  
3 certain EU powers in labour market policy can be seen as necessary to  
4 maintain the basic dichotomy. If member states were completely  
5 autonomous in their labour market interventions, they might use this  
6 power to undermine or circumvent the EU's economic rules – by direct-  
7 ing subsidies at certain groups of employees, for example. On the other  
8 hand, a centralisation of labour market policy in the hands of the EU  
9 would be a long step towards an integrated European social policy – for  
10 example it would prevent regime competition in some very important  
11 domains, such as employment standards and industrial relations. Thus  
12 the rather messy division of competence in the labour market field can  
13 be seen as functional to the extent that it works to preserve the existing,  
14 largely economic, orientation of the EU as well as its essentially “mar-  
15 ket-creating” approach to economic issues.

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

#### 26 27 **4. EU labour market legislation**

28  
29 The first general rules promulgated for European labour markets con-  
30 cerned gender equality and arose as early as the negotiations leading to  
31 the Treaty of Rome. Although the social economies of both France and  
32 Germany exhibited “familialist” (that is to say, patriarchal) characteris-  
33 tics, these were rather more marked in Germany and the French pressed  
34 for a commitment to gender equality to avoid competition from under-  
35 paid German women workers. From these, rather contingent, begin-  
36 nings there developed a significant body of EU labour market legislation  
37 aimed at the equal treatment of men and women.<sup>7</sup>

##### 38 39 **4.1. Health and safety and working time**

40 A second important theme in EU labour market regulation concerns the  
41 health and safety of workers. The Single European Act, essentially

1 concerned with removing non-tariff barriers to intra-EU transactions,  
2 did recognise that increased competition within the EU should not rest  
3 on inadequate health and safety provision and in consequence the com-  
4 petence of the EU to promulgate health and safety standards (by major-  
5 ity voting in the Council and subject to approval in the Parliament) has  
6 a very strong legal basis. A large body of specific safety measures have  
7 been introduced by the EU, concerning such issues as handling haz-  
8 ardous substances, the use of visual display equipment and the safe  
9 management of construction projects;<sup>8</sup> although there is nothing new in  
10 the recognition that unregulated employment relations may compro-  
11 mise the safety of workers, the activism of the EU in this sphere makes a  
12 positive contribution to the welfare of employees. It was also as a health  
13 and safety measure that the Working Time Directive was introduced  
14 because the opposition of some member state governments meant that  
15 this type of regulation could only be put through on by majority vote.

16 However, the Working Time Directive also shows how member states  
17 can vitiate European labour market legislation. On British insistence, the  
18 Directive permits a derogation from the specified maximum working  
19 week (an average of 48 hours over a reference period of about 17 weeks)  
20 if this is agreed between employer and employee. None of the other  
21 member states made use of this possibility as they transposed the  
22 Directive into their own legal systems but the British most certainly did  
23 so. At this point, the fact that trade unionism has disappeared from most  
24 of the British private sector became decisive: few British employees were  
25 ready to insist on a maximum of 48 hours in the context of individual  
26 negotiations with their employer and the Directive simply ceased to be a  
27 constraint on employers' practice.<sup>9</sup> The Commission and the Parliament  
28 have expressed some concern with this situation in Britain, and espe-  
29 cially with the fact that some employers were making agreement to a  
30 derogation a condition of recruitment (this is probably illegal). However,  
31 little has been done and there seems to be no will to amend the Directive  
32 to bring the British into line – indeed the opposite is the case as other  
33 member states are more and more attracted to the “flexible” labour mar-  
34 kets which, supposedly, characterise the British economy.<sup>10</sup>

35 The Working Time Directive also illustrates another problem with EU  
36 labour market regulation – that of enforcement. In some sectors of  
37 British industry, particularly the construction industry characterised by  
38 mass pseudo-self-employment, the provisions of the Directive on holi-  
39 day pay are more honoured in the breach than the observance.<sup>11</sup> In the  
40 absence of institutionalised collective bargaining, employer compliance  
41 with the law depends either on official inspection and supervision or on

1 the initiatives taken by individual employees. Both of these are very  
2 weak reeds indeed: most governments today are quite unprepared to  
3 commit the resources necessary for effective enforcement of labour mar-  
4 ket regulations which they often consider to be excessive and an impair-  
5 ment of the market economy; whereas it is in fact the asymmetry in  
6 power between employers and individual employees which gives rise to  
7 the need to regulate in the first place. These problems of enforcement  
8 do not just arise in Britain and Ireland (which is often very close to  
9 British practice in employment and social policy) but also in many of  
10 the new member states, where individual employees may be in an even  
11 weaker position and the state even less capable of effective supervision  
12 (Woolfson, 2005).

#### 13 14 **4.2. The social chapter**

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

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

36 Subsequently, the New Labour British government elected in 1997  
37 endorsed the agreement which then became a fully established Social  
38 Chapter in the Amsterdam Treaty. The Conservative rejection had  
39 always looked like a misjudgement even from the point of view of a gov-  
40 ernment committed to labour market deregulation in the name of “flex-  
41 ibility”. This is because in most fields the Social Protocol only permitted

1 legislation on the basis of unanimity – thus British abstention deprived  
2 the British of the right to veto European labour market legislation. In  
3 return, of course, Britain had a derogation from such legislation, but this  
4 formal opt-out might not be effective when all other member states had  
5 adopted some measure. For example, the other member states agreed to  
6 require multinationals with employees in more than one member state  
7 to establish European Works Councils to represent their employees on a  
8 transnational basis. Britain's formal derogation from this requirement  
9 was worth very little when corporations would be reluctant to exclude  
10 their British employees from a structure to which all their other  
11 European employees had access. Thus, when New Labour accepted the  
12 social agreement, this was a sign rather of a higher level of sophistication  
13 in dealing with the EU than of a different approach to labour market  
14 issues. New Labour has in fact portrayed itself as serving business inter-  
15 ests by resisting the threatening tide of EU regulation.

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

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

### 36 4.3. Atypical contracts

37  
38 On the basis of the Maastricht Treaty a rather extensive programme of  
39 labour market legislation was enacted during the 1990s.<sup>13</sup> One broad  
40 problem which resulted in a large number of Directives was that of  
41 "atypical" employment contracts. The terminology itself points to the

1 impact of different legal traditions on employment practice. In many  
2 continental countries employment relations are much more tightly cir-  
3 cumscribed by law than they are in the Anglo-Saxon legal tradition. In  
4 some countries, such as France, there is a specific labour code which  
5 replaces the general law of contract and specifies, in rather narrow  
6 terms, the obligations of employer and employee. For this reason in  
7 many European countries the general drive by employers and govern-  
8 ments for employment and labour flexibility was often concentrated on  
9 the introduction of new, “atypical” employment contracts. For exam-  
10 ple, in Spain regular employment contracts gave employees substantial  
11 job protection; the labour “flexibility” drive took the form of fixed-term  
12 contracts, which were made much easier by legislation in the 1980s,  
13 and which in fact rapidly became the norm for younger workers. Similar  
14 developments can be seen in France and Germany.

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

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

#### 38 4.4. Employee voice

39 A further important domain of EU employment law concerns what  
40 might be called “employee voice systems” – institutions and practices  
41

1 designed to give workers a say in the life of their enterprises. Streeck (1997)  
2 argues that the legislation here is a very pale reflection of the strong co-  
3 determination systems in Germany, which first gave rise to the view that  
4 employee voice should be strongly institutionalised across the EU. The  
5 original Vredeling proposals, dating back to the early 80s were for a  
6 change in company law which would enshrine strong employee voice sys-  
7 tems. The proposals were defeated in the European Parliament after very  
8 strong lobbying by both UNICE, the European employers' federation, and **AQ3**  
9 the Thatcher government. Debate continued for decades over a European  
10 company statute and what it should contain, that is, in what ways  
11 European company law should reflect such values as the ESM. The debate  
12 was in the end resolved by a purely formal arrangement which makes it  
13 possible for a company to be registered at the EU as well as at national  
14 level but which avoids any special conditions for such registration.

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

#### 38 **4.5. Other forms of flexibility**

39  
40 In Britain, one of the most important forms of flexibility is the use of,  
41 supposedly, self-employed workers. The notion is that once workers

1 accept this status most of the legal constraints on employers disappear.  
2 (In fact courts and employment tribunals are very reluctant to accept  
3 that workers are self-employed, perhaps because this would narrow their  
4 jurisdiction.) Much EU employment legislation tries to close this self-  
5 employment loophole by referring to “workers” rather than to “employ-  
6 ees”. In the field of health and safety, it is probably difficult to evade  
7 responsibilities by claiming that workers are self-employed, but once  
8 again there are general issues of enforcement. The issue is related to the  
9 status of workers sent for brief periods to other countries, since these  
10 were often construction workers, supposedly self-employed. Countries  
11 such as Germany saw this practice as undermining their established sys-  
12 tems of labour market regulation; countries such as Britain, which often  
13 sent workers abroad wanted to apply less restrictive domestic regula-  
14 tions – indeed, during the German construction boom of the 1990s lax  
15 regulation was perhaps the key factor ensuring the competitiveness of  
16 such posted workers. A compromise Directive in 1996 maintained the  
17 employment contracts of workers sent to other member states but spec-  
18 ified that basic regulations of the host country (health and safety, mini-  
19 mum wages, gender equality) must be applied.<sup>14</sup> Once again a very wide  
20 measure of diversity was permitted – not only did each host country  
21 specify what exceptions to its labour market regime would be acceptable  
22 for posted workers, but the specification of a maximum time period  
23 over which a foreign worker could be regarded as “posted” was also left  
24 to the member states. The issue is likely to gain in importance as the  
25 Commission tries to stimulate cross-border trade in services as the main  
26 thrust of the next phase of economic integration, since the export of  
27 services often necessitates the presence of workers in the importing  
28 country: the usual division on this kind of policy issue can be found –  
29 between those who favour regime competition and those who wish to  
30 protect public goods by general rules governing the integrating  
31 economies.

#### 32 **4.6. Working life and the family**

34 A domain in which there seems to have been recently more will to con-  
35 strain employers is that of “work–life balance” and the reconciliation of  
36 family and working life – themes important not only from a feminist  
37 viewpoint but also from the familialist perspective of Christian  
38 Democracy. An important step here was the parental leave directive of  
39 1986, which, it is argued by Treib and Falkner (2004), has had impor-  
40 tant effects on practice in the member states, even though the formal  
41 requirements were not very stringent.

**AQ4**

#### 1      **4.7. Social partnership and the European social model**

2  
3      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.

4      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.

5      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

1 latter. There has been some suggestion that the union side has tended to  
2 make many concessions in the negotiations leading to this kind of labour  
3 market regulation – just in order to establish the procedure. The employ-  
4 ers, on the other hand, have only been ready to negotiate when threat-  
5 ened by ordinary legislation through Council and Parliament.

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

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

26 As time has passed the dominance of the “flexibility” over the “part-  
27 nership” agenda has become clearer. In the 80s, relatively strong  
28 employment regulation was seen as at least a symbolic counterweight to  
29 the liberalisation and market creation of the Single Act. In the later 90s,  
30 however, the countries, above all Germany, where social partnership  
31 had previously enjoyed considerable prestige seemed to under-perform  
32 while the US and Britain seemed to have increased their growth  
33 prospects.<sup>15</sup>

34 A second theme in EU thinking, more recently, is an emphasis on the  
35 values of the ESM. This is a wider notion than “social partnership”;  
36 although partnership is certainly one component of the ESM, it also  
37 includes comprehensive systems of social protection together with high  
38 quality public services in such fields as housing, health care and educa-  
39 tion. Use of the singular represents an abstraction from the ESMs found  
40 at the member state level, and which are very different from one  
41 another although family resemblances can of course be detected. The

1 discourse of EU leaderships over the last five or six years makes contin-  
2 ual reference to the ESM. As with the notion of social partnership, these  
3 references are not vacuous – for one thing, the ESM is seen as a way of  
4 differentiating the European project from the US models which are else-  
5 where so obviously influential on EU policies, for another, the ESMs, in  
6 the plural, are still central to politics in the member states. Nevertheless,  
7 the ESM is hardly seen as a key political objective. The Lisbon agenda,  
8 which continues to dominate the direction of EU policies in the first  
9 decade of the twenty-first century, clearly subordinates social objectives  
10 to economic ones. Although the EU has taken a number of initiatives  
11 on the problem of poverty, these are very much a matter of “open coord-  
12 ination”, of trying to nudge policy at the member state level towards  
13 more adequate minimum income schemes, for example, and have not  
14 as yet had a detectable effect on outcomes. The EU has also enthusiastically  
15 adopted the theme of the “future finance” of the ESM, but this  
16 concern appears to be a question of reducing member state pension lia-  
17 bilities by methods which might be seen as an erosion of the ESM.

18 At the same time, there are clear inconsistencies between EU eco-  
19 nomic strategies and the effective functioning of actual ESMs. At the  
20 macroeconomic level, EU pressures for fiscal retrenchment promotes  
21 reductions in social expenditures. At the same time, EU structural poli-  
22 cies have sacrificed social objectives to the pursuit of competition, as  
23 with the ill-fated Bolkestein Directive, which tried to open up key social  
24 services to external competition from both EU and non-EU corpora-  
25 tions. The rejection of the first version of this Directive in the Council  
26 as well as the Parliament (a more dilute form is currently under discus-  
27 sion) demonstrated the widespread fear that integration was unleashing  
28 market forces which threatened established social models.<sup>16</sup>

#### 29 **4.8. A retreat from employment regulation?**

30  
31 It is important that the EU is committed, by clauses in its founding doc-  
32 uments repeated in all subsequent Treaties, to a levelling up of employ-  
33 ment conditions through improvements which maintain the highest  
34 standards reached in any member state.<sup>17</sup> In general these clauses stand  
35 as a legal barrier to regressive policies. Increasingly, however, EU leader-  
36 ships have claimed that economic advance in itself could be taken as  
37 securing these improvements, even though there is little evidence for  
38 such a view. In the language of Lisbon, growth and employment are the  
39 necessary, and perhaps the sufficient, conditions for social progress while  
40 growth and employment are to be secured by market-led integration. In  
41 the usual *fuite en avant*, the complete failure of the Lisbon strategy to

1 generate an expansion of either output or employment is only taken as  
2 evidence that not enough market-led integration has been achieved.

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

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

## 5. The Luxembourg process and the EES<sup>19</sup>

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.<sup>20</sup>

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

1 business start-ups and to the hope that some of the unemployed could  
2 be helped to go into business on their own account. These themes were  
3 known as the four “pillars”. They were sometimes expressed, in an  
4 idiom with a more pragmatic resonance, as a series of “gaps”: the gen-  
5 der gap, the skills gap, the adjustability gap and the job creation gap,  
6 respectively.<sup>21</sup> This alternative language signals the presence of the  
7 usual ambivalence (sometimes portrayed as “creative ambiguity”)  
8 which characterises EU policy statements: multiple interpretations are  
9 invited as a means of achieving, by rhetorical means, a degree of con-  
10 sensus incompatible with any narrow and specific interpretation of the  
11 texts involved. In fact, the commitment to social partnership meant  
12 that union representatives had to be given, if not a veto, then at least a  
13 voice in the open coordination process. Things could be smoothed out  
14 if the use of language was sensitive to their susceptibilities.

### 15 5.1. The employment targets

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

34 It was always hopelessly unrealistic to expect such targets to be  
35 achieved by the supply-side measures of the EES. In fact, considerable  
36 progress towards the targets was made in the early years between 1997  
37 and 2001. The Commission was unwise enough to attribute this  
38 progress to structural reforms of the European labour market. This raises  
39 the question of how to explain the subsequent rise in EU unemploy-  
40 ment from a low of 8.4 per cent in 2001 up to 9 per cent in 2004 (for  
41

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1 the EU as a whole; the figures for the EU15, those countries involved in  
 2 the EES since its inception, are 7.2 per cent and 8.1 per cent). Have the  
 3 structural improvements been rapidly reversed? Or are we dealing with  
 4 a conjunctural downturn? If the latter, why are macroeconomic instru-  
 5 ments not being deployed? (See Table 5.1.)

6 The form of the EES is a cycle of policy proposals and policy assess-  
 7 ments for each country. The Council of Ministers prepares each year  
 8 Employment Policy Guidelines, for the EU as a whole and for individ-  
 9 ual member states. These are translated by the member state govern-  
 10 ments into “national reform programmes” (originally “national action  
 11 plans”) for developments in their labour market policies. These meas-  
 12 ures are then assessed in a Joint Employment Report which feeds into  
 13 the next cycle. In principle, the open method of coordination involves  
 14 a lot more than this simple interaction between each member state and  
 15 the centre: comparative studies and peer review of policy are intended  
 16 to help build a transnational policy community and to make for more  
 17 informed and successful policy formation in each country. However,  
 18 this multinational policy debate is only developing slowly and the  
 19 essence of the EES process at present remains a series of dialogues  
 20 between national governments and the centre, in practice, the  
 21 Commission. Even this dialogue does not necessarily have a very big  
 22 impact on national labour market policies – some governments clearly  
 23 take the Luxembourg process very seriously; for others it is a question  
 24 of tweaking some details and making some presentational changes.<sup>22</sup>  
 25 Recent reforms of the EES tried to streamline procedures and to stabilise  
 26 recommendations so that the process would be less burdensome for  
 27  
 28

29 *Table 5.1* EU–15 EES targets and outcomes (per cent)

	<b>Employment rate</b>	<b>Female employment rate</b>	<b>Older workers employment rate</b>	<b>AQ6</b>
30	Target	70.0	60.0	50.0
31	1997	60.7	50.8	36.4
32	1998	61.4	51.6	36.6
33	1999	62.6	53.0	37.1
34	2000	63.4	54.1	37.8
35	2001	64.0	55.0	38.8
36	2002	64.2	55.6	40.2
37	2003	64.3	56.0	41.7
38	2004	64.7	56.8	42.5

39  
 40  
 41 *Source:* Employment in Europe (2005).

1 member state governments. Here, as with labour market legislation, we  
2 can see the new EU minimalism at work.

### 3 4 **5.2. Content of the EES**

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

16 Now the general expression, “active employment measures” is deeply  
17 ambiguous. The term active is used to signal that something more is  
18 being done than indemnify an individual’s unemployment (the pay-  
19 ment of indemnities is a so-called “passive” measure presumably  
20 because of the passivity of the individual in question). But what that  
21 more is requires close examination. Contrast the following polar cases.  
22 Firstly, “active” employment measures can be thought of as solidaristic  
23 interventions in favour of disadvantaged groups. Although macroeco-  
24 nomic policies are the most potent measure to deal with unemploy-  
25 ment, it is never exactly true that a rising tide lifts all boats. Some  
26 localities – where for example an important employer has gone out of  
27 business – and some groups – perhaps ethnic minorities – will be left  
28 behind. When unemployment is particularly high because of the clo-  
29 sure of a major company or the rapid run-down of an industry there will  
30 be an “island” of unemployment which will stand out even when the  
31 general level of demand is rising. The tradition of the Nordic social  
32 models has been to use both job creation measures and  
33 relocation/retraining in such circumstances; although there are cer-  
34 tainly disciplinary aspects to active measures even in the Nordic coun-  
35 tries, their overall impact is to widen the possibilities open to the  
36 members of disadvantaged groups. It should be noted that this kind of  
37 intervention is bound to be to some extent *ad hoc* and contingent,  
38 because the need for active measures is cyclical. In practice, such pro-  
39 grammes are initiated in downturns and dismantled in booms. This is  
40 very logical and turns the increased expenditure, which active measures  
41 require into a stabilising force.

1 On the other hand, there are active employment measures which are  
2 best understood as instruments of social discipline or even social punish-  
3 ment. The training or work experience “opportunities” which are offered  
4 to the unemployed are seen as testing the authenticity of their claims as  
5 well as reinserting them into employment. In the 1990s, reforms of the  
6 social security system in the US dissolved the main federal welfare pro-  
7 gramme, Aid to Families with Dependent Children, and transferred  
8 responsibility for poverty relief to the states, some of which proceeded to  
9 introduce extremely harsh “workfare” regimes (FAIM – families achieving  
10 independence in Montana, or WW – Wisconsin works).

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

15 From the beginnings of the EES in the Luxembourg summit of 1997,  
16 official statements of the strategy have deliberately maintained a meas-  
17 ure of ambiguity about its underlying social logic. For example, member  
18 states are enjoined to “improve the incentives to accept work”, which  
19 might mean increasing minimum wage rates, but which could equally  
20 mean reducing unemployment indemnities.<sup>23</sup> It seems clear that the  
21 political motives behind the EES were mixed. An important considera-  
22 tion was to legitimise the process of European construction, at that time  
23 focussed on painful preparations for monetary union, by doing some-  
24 thing to address the central social problem of unemployment. On the  
25 other hand, certain governments represented at Luxembourg, notably  
26 that of Britain, were already committed to methods of employment  
27 intervention which drew heavily on the US experience and which  
28 marked a break with traditional social-democratic approaches to social  
29 security.

### 30 5.3. Active employment measures

31 A key criterion in the assessment of “active measures” is their impact on  
32 the liberty of the individual. Do the measures widen the opportunities  
33 available to an unemployed individual and relax the constraints which  
34 he or she confronts? Or do they, on the other hand, tighten these con-  
35 straints and attempt to induce decisions previously rejected by that  
36 individual?<sup>24</sup> In the latter case, we are faced with what Standing (2002)  
37 calls “the new paternalism” – an authoritarian reinforcement of market  
38 disciplines. Standing analyses in some detail the attempt to give an eth-  
39 ical veneer to such initiatives, by appealing to “reciprocity”, “balance  
40 between rights and responsibilities”, “the work ethic” and so on and so  
41

1 forth. There is, at the least, a certain tension between such pronounce-  
2 ments and the simultaneous celebration of market processes not char-  
3 characterised by any clear conformity to the values invoked.

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

7 The main British policy associated with the EES is certainly the “New  
8 Deal” initiative, aimed initially at the activation of the young unem-  
9 ployed. The Labour government elected in 1997 certainly intended to  
10 introduce a more generous and humane regime than those used from  
11 time to time to control youth unemployment by its Conservative prede-  
12 cessors. Nevertheless the “New Deal” had a clear economic logic: to  
13 increase employment while intensifying competition among (in practice,  
14 lower-paid) workers and thus to reduce the non-accelerating inflation  
15 rate of unemployment (NAIRU) (see Layard, 1997, for a clear account of  
16 this reasoning).<sup>25</sup> In this regard, it was to be seen as a success of the inter-  
17 vention, if a young person, confronted by a distasteful activation experi-  
18 ence, chose instead to renounce their unemployment indemnities and  
19 either to take a job or to find some other means of subsistence.

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

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

37  
38 A more generous welfare state does not seem to corrode work moti-  
39 vation or job search flexibility. Labour market marginalisation is  
40 in general better understood in relation to mismatch between the  
41 structure of jobs and the distribution of skills combined with the

1 institutional mechanisms of job allocation. . . . The universal and  
2 expensive welfare state has not been retrenched or dismantled but  
3 rather consolidated and in some areas partly improved, corporatist  
4 institutions have been reinforced, and Keynesian inspired fiscal pol-  
5 icy (initially) adopted successfully (p. 10).  
6

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

14 It is not intended here to recommend the universal adoption of Danish  
15 practices. Rather, the point of the contrast between British and Danish  
16 policies is to pose the question: What does it mean to assert that these two  
17 opposed approaches to labour market reform are both legitimate compo-  
18 nents of a unified European strategy? If the two approaches both lead to a  
19 higher volume of employment, is it the same kind of employment?  
20

#### 21 **5.4. Review and reformulation of the EES**

22 The EES has always involved contestation and debate around the types  
23 of intervention which it proposes. There are, of course, different points  
24 of view among the participating governments but the main frictions are  
25 probably between the social partners. In the dialogue around the EES,  
26 trade union representatives have argued for a more generous treatment  
27 of the unemployed, for a more "Nordic" approach to unemployment  
28 and so on. However, they have not had a great deal of influence on the  
29 implementation of the EES. Indeed, the procedures of the EES reinforce  
30 a narrow and restrictive approach to labour market policy. Although the  
31 Employment Policy Guidelines are prepared each year in the Directorate-  
32 General for Employment and Social Affairs, they are given their defini-  
33 tive form by the D-G for Economic and Financial Affairs. This means  
34 that employment policy recommendations are subordinated to the  
35 annual "Broad Economic Policy Guidelines", which never fail to priori-  
36 tise fiscal consolidation, reduced labour costs and market-led integra-  
37 tion.<sup>26</sup> The obvious way to make employment policies compatible with  
38 the unchanging agenda of the Economic Policy Guidelines is to reduce  
39 expenditure, deregulate labour markets and promote competition  
40 between the unemployed and those in insecure employment in order to  
41 achieve further labour cost reductions. Thus the last word in the annual

1 policy round is always given to the most conservative voice.<sup>27</sup> From  
2 2005, Economic and Employment Guidelines are published together as  
3 an “integrated” document, but this integration seems only to confirm  
4 the subordination of the latter to the former.

5 However, repeated criticism, backed up by evidence, does seem to  
6 have called some of the original presuppositions of the EES into ques-  
7 tion. One issue is the quality of employment – more recent formula-  
8 tions of the strategy are less likely to make the level of employment a  
9 simple maximand, independently of the quality of the job. Similar con-  
10 siderations are also now more likely to be invoked as regards the qual-  
11 ity of active measures.

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

17 In the course of 2003, as part of a comprehensive review of the Lisbon  
18 agenda, the EES was subject to a basic review which, while reaffirming  
19 its main content, reformulated its objectives (for a full assessment, Watt,  
20 2005). Instead of the four “pillars” the strategy was now expressed as  
21 three “overarching and interrelated objectives” – full employment, qual-  
22 ity and productivity at work and social cohesion and inclusion. Then  
23 ten guidelines, “the ten commandments” are derived from these over-  
24 arching goals. These are:

- 25 1. Active and preventive measures for the unemployed and inactive
- 26 2. Job creation and entrepreneurship
- 27 3. Address change and promote adaptability and mobility in the
- 28 labour market
- 29 4. Promote development of human capital and lifelong learning
- 30 5. Increase labour supply and promote active ageing
- 31 6. Gender equality
- 32 7. Promote the integration of and combat the discrimination against
- 33 people at a disadvantage in the labour market
- 34 8. Make work pay through incentives to enhance work attractiveness
- 35 9. Transform undeclared work into regular employment
- 36 10. Address regional employment disparities.
- 37

38  
39 The guidelines for individual member states, on which national  
40 action plans are based, are laid out in terms of these “commandments.”  
41 In general they are close to the four pillars but items 7, 8 and 10 may

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1 signal a certain shift in policy thinking. The review of the strategy also  
2 attempted to simplify the open coordination process by making major  
3 changes to the national action plans less frequent. From year to year the  
4 main concern will be the implementation of existing guidelines with  
5 qualitative changes made at longer intervals. This is intended to reduce  
6 the administrative burden on member state governments – but it too  
7 may be a sign of the new minimalism.

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

26 These changes in the Guidelines for Britain suggest a certain welcome  
27 modification in the priorities of the EES. Another change that should be  
28 signalled is in the approach taken by D-G Employment and Social  
29 Affairs to “atypical” contracts. The standard position in the past was  
30 that these are absolutely necessary to deal with the “adjustment gap”.  
31 However, extensive empirical studies indicated that at least in one case,  
32 short-term contracts, these “flexible” forms of employment add noth-  
33 ing to total employment but do make employment much more  
34 volatile.<sup>28</sup> This should mean, but perhaps will not, that the drive for  
35 “flexibility” in this form will be abandoned.

36 One further change, at least in the presentation of the EES, is the now  
37 frequent reference to “flexicurity” or, as the latest Guidelines have it,  
38 what is to be promoted is “flexibility combined with employment secu-  
39 rity”. Nordic models seem to be behind this notion: it is a challenging  
40 one for most advocates of the “flexibility” agenda because what makes  
41 atypical contracts so attractive to employers is exactly the insecurity to

1 which they give rise and the consequent readiness to settle for lower  
2 rewards and less satisfactory conditions.<sup>29</sup> The interpretation of  
3 “employment security” which will be made is suggested by the EU’s  
4 own account of this guideline, which calls for “support for transitions  
5 in occupational status, including training, self-employment, business  
6 creation and geographic mobility” (European Commission, 2005b). **AQ8**

### 8 5.5. Overview of the EES

9 It has to be recognised, then, that the EES is a contested domain, that  
10 criticism, above all from employees’ representatives, backed up with  
11 strong evidence on the effects of some labour market policies has mod-  
12 ified at least the language of the EES and led to a certain enrichment of  
13 its objectives. The changes, however, are minor: the basic logic of the  
14 strategy is to bring about higher employment by intensifying supply-  
15 side competition in the labour market. The social consequences of such  
16 an approach will tend to be negative because those most affected by the  
17 strategy will be the more vulnerable parts of the population (the young  
18 unemployed, for instance). The economic benefits are justified more by  
19 the doctrine of “flexibility” than by strong evidence.<sup>30</sup>

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

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

32  
33 In the period 2001–2004, the average annual GDP growth rate for the  
34 EU-15 turned out to be around half of what had been initially antici-  
35 pated. Obviously, given the strong relationship between economic  
36 growth and labour market performance, this had a negative impact on  
37 employment creation. Moreover, the weakness of domestic demand in  
38 some EU Member States, especially in Germany since 2000, is worry-  
39 ing not only in itself, but also because of the potential knock-on effects  
40 in the rest of Europe . . . , which represents a major downward risk to  
41 the current economic recovery in Europe in general, and job creation

1 in particular. Given the low levels of economic confidence, firms  
2 might not want to expand in the present circumstances (early on in  
3 the upswing), fearing a possible “double-dip” economic downturn.

4 *Employment in Europe*, 2005, p. 75 **AQ9**

5  
6 It is immediately added that ongoing labour market “reforms” in  
7 Germany will reverse this situation but that is perhaps the triumph of  
8 hope over experience. The claims still put forward for a “structural”  
9 improvement do not seem to be very soundly based. The actual tech-  
10 nique used by the Commission to separate structural from cyclical  
11 unemployment is purely statistical, that is, unemployment is treated as  
12 cyclical if it does not persist, structural if it does. This begs a lot of ques-  
13 tions about the persistence of demand shocks.

## 14 15 **6. The macroeconomic dialogue**

16  
17 For the sake of completeness, a third component of EU labour market  
18 policies can be mentioned; this is the macroeconomic dialogue, which  
19 brings together the ETUC, UNICE and CEEP as representing the social  
20 partners with the ECB, the Commission and the Council of Ministers in **AQ10**  
21 two forms (economics ministers (Ecofin) as well as ministers of employ-  
22 ment and social affairs). The structure was designed by Oskar Lafontaine  
23 during his brief tenure as German Finance Minister and was agreed at  
24 the Cologne Council (Dufresne, 2002). Lafontaine had in mind a neo-  
25 Keynesian process through which income formation, in the hands of  
26 the social partners, would be loosely coordinated with monetary policy  
27 (the ECB) and fiscal policies (member state governments, as represented  
28 by the ministers referred to).

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

38 In practice, however, not even this limited form of coordination has  
39 been possible, because the institutional structure of the EU rules it out.  
40 The ECB formulates monetary policy in perfect independence and would  
41 certainly not involve either the member states or the social partners in its

1 deliberations. The governments of those member states which use the  
2 euro, although they are the victims of the ECB's first mover advantages,  
3 mostly seek to enjoy the same advantages as against the social partners  
4 in their own countries (although there are exceptions to this rule in some  
5 of the smaller states which are experimenting with social pacts). Thus the  
6 social partners are pre-empted twice, by both monetary and fiscal author-  
7 ities. As for the Commission – it is hardly acting as a neutral referee in  
8 these discussions – rather it pursues its agenda of fiscal stabilisation  
9 together with the kind of labour market “reform” which was discussed in  
10 the previous section. Thus, in practice, the macroeconomic dialogue has  
11 never amounted to more than a rather sterile “exchange of views”.

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

## 17 18 **7. Conclusion**

19  
20 The two main forms of labour market policy at EU level are, firstly,  
21 labour market legislation and secondly, the “open” coordination of  
22 member state labour market interventions, through the EES.

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

38 The second aspect of EU consists of the coordinated interventions of the  
39 EES. Although they have a more constructive side, these have been influ-  
40 enced by a regressive and inegalitarian view of the labour market which  
41 regards it as possible and desirable to achieve higher levels of employment

1 by intensifying competition among the weakest and most vulnerable sec-  
2 tions of the population. As such, the EES is a manifest failure. This, how-  
3 ever, does not mean that the open method of cooperation as such is a  
4 failure. On the contrary, it is a promising and imaginative approach to  
5 public policy. Labour market interventions will never lead to full employ-  
6 ment – that requires expansionary macroeconomic measures. But the  
7 interventions proposed in the EES could become very useful if they were  
8 clearly developed as forms of social solidarity rather than social discipline.

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

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

27 However, this narrow and socially regressive model of European inte-  
28 gration has led to an impasse, as is shown by the failure of the European  
29 constitution. If the priorities and strategies which predominate in the  
30 EU today are not changed then the EU itself will stagnate and the exist-  
31 ing structures may start to erode. More positive developments, based on  
32 an expansion of the demand for labour and on reinforced social poli-  
33 cies, are possible. Such developments could draw much from the expe-  
34 rience of EU labour market policies.

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10 **Notes**

- 11
- 12 1. Official EU documents usually refer to "employment policy" rather than  
13 labour market policy but this is a misnomer in that the policies referred to  
14 do not include the macroeconomic measures central to the generation and  
15 maintenance of high levels of employment. The policies dealt with here on  
16 the other hand concern the regulation of the labour market and of the  
17 employment relation, and such interventions in the labour market as "active  
18 employment programmes." The general term, "labour market policy" has  
19 therefore been preferred.
- 20 2. Even in the 1950s a move away from social policy can be detected in that  
21 the social provisions of the Treaty of Rome were already weaker than those  
22 of the Treaty of Paris (1951) which established the ECSC.
- 23 3. Social Fund expenditure was planned to be 62.5 billion over the period  
24 2000–2006. The annual average of about 10 billion should of course be  
25 related to the 450 million inhabitants of EU member states.
- 26 4. Welfare economics does not allow us to say that a reform represents an  
27 improvement (or even, in strict logic, an efficiency gain) unless it is accom-  
28 panied by full compensation of the losers. This result is usually forgotten by  
29 neoliberals, unless the probable losers are rich and powerful.
- 30 5. For an amusing discussion of this terminology see the introduction to the  
31 second edition of Ferner and Hyman (1998).
- 32 6. Esping-Andersen (1990) for the seminal discussion.
- 33 7. In Britain, some key moves against gender discrimination (Equal Pay Act,  
34 1970; Equal Opportunities Commission, 1975) were taken on a British basis  
35 prior to, or independent of, Britain's accession to the EEC; however,  
36 European legislation is usually seen as helping to reinforce the movement for  
37 gender equality, although the movement is still a long way from its goals.
- 38 8. For an overview of the actual legislation and its impact in Britain see Hendy  
39 and James (2001), pp. 17–24, "The European Revolution".
- 40 9. Recent press reports suggest that the British government may agree to the  
41 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.
11. See Harvey (2001) on the mass illegality of the British construction industry.

- 1 12. This terminology, more accurate than the distinction between negative and  
2 positive integration, is taken from Scharpf (1999).
- 3 13. For critical assessments of this legislation from a labour movement perspective  
4 see the publications of the Institute of Employment Rights, [www.ier.org.uk](http://www.ier.org.uk)
- 5 14. See Cremers and Donders (2004). Increasing concern has been expressed by  
6 British unions about the use of the Posted Worker Directive to circumvent  
7 national labour market regulation or national collective agreements  
8 (National Engineering Construction Committee, 2004).
- 9 15. For a discussion of these debates in Germany, Grahl and Teague (2004).
- 10 16. For the opposition, see [www.stopbolkestein.org](http://www.stopbolkestein.org)
- 11 17. Currently Article 136 of the Treaty Establishing the European Community:  
12 "The Community and the Member States, having in mind fundamental  
13 social rights such as those set out in the European Social Charter signed at  
14 Turin on 18 October 1961 and in the 1989 Community Charter of the  
15 Fundamental Social Rights of Workers, shall have as their objectives the pro-  
16 motion of employment, improved living and working conditions, so as to  
17 make possible their harmonisation while the improvement is being main-  
18 tained, proper social protection, dialogue between management and labour,  
19 the development of human resources with a view to lasting high employ-  
20 ment and the combating of exclusion."
- 21 18. See James (2003)
- 22 19. Parts of this section draw on a joint report on the EES prepared in 2003 for  
23 the Euromemorandum group and available on [http://www.epoc.uni-bremen.de/publications/pup2003/files/Brussels\\_Grahl\\_2003.PDF](http://www.epoc.uni-bremen.de/publications/pup2003/files/Brussels_Grahl_2003.PDF). The other  
24 authors were Frank Brouwer, Anne Dufresne, Mahmoud Messkoub, Ingo  
25 Schmidt and Andrew Watt. None of them is responsible for the views  
26 expressed here.
- 27 20. On OMC, see, for example, Hodson and Mayer (2001).
- 28 21. A necessary complement would have been the output gap, in the usual sense  
29 of an aggregate demand for goods and services below the productive poten-  
30 tial of the economy. This last gap, however, was never mentioned.
- 31 22. A year or two ago a colleague told me that she had had some difficulty find-  
32 ing a single official in the British Department for Work and Pensions who  
33 had any knowledge of the EES.
- 34 23. See, for example, Serrano Pascual (2003a and 2003b). Of course it can be  
35 argued that a certain degree of ambiguity is a political necessity if any  
36 progress is to be made in European construction. The view taken here is that  
37 to apply the same term to interventions which reduce and those which  
38 expand the personal autonomy of disadvantaged groups such as the unem-  
39 ployed can only increase cynicism about European policies.
- 40 24. An interesting topical example is the case of the "intermittent" workers in  
41 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 infla-  
tion and towards the promotion of a low-wage service sector as a necessary  
aspect of global competitiveness.

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- 1 26. For detailed critical analysis of the Economic Guidelines see the annual  
2 memoranda published by the Euromemorandum group (European  
3 Economists for an Alternative Policy) available on [www.memo-europe.uni-](http://www.memo-europe.uni-bremen.de)  
4 [bremen.de](http://www.memo-europe.uni-bremen.de)
- 5 27. Sometimes the results of these procedures are simply absurd. For example,  
6 the Employment Guidelines addressed to Sweden, after congratulating that  
7 country on its success in more than meeting all its EES targets, suggested that  
8 even more employment could be achieved with lower taxes. Anyone famil-  
9 iar with the Swedish labour market is aware that its very high employment  
10 levels are based on high taxation in order to support public service employ-  
11 ment. See Raveaud (2004) who comments that “this calls the nature of the  
12 Commission’s recommendations into question. Are they really positive, aim-  
13 ing at improved efficiency or do they defend, of course without saying so  
14 explicitly, a certain theoretical (and normative) conception of how an ideal  
15 labour market should function, a conception which they maintain despite  
16 the empirical results obtained in this field by the Nordic countries, above all  
17 by Sweden.”
- 18 28. See *Employment in Europe*, 2002 edition, p. 57: “The ‘bonus’ provided by flex-  
19 ible forms of contractual arrangements is somewhat reduced when countries  
20 are ‘over-exploiting’ the possibilities of temporary contracts and use them as  
21 a substitute for permanent employment.”
- 22 29. For the link between “flexibility” and insecurity see Standing (1999).
- 23 30. The rationale for “flexibility” measures has shifted: in the 1980s, the main  
24 issue was inflation and “flexibility” was seen as necessary to reduce the  
25 NAIRU. Today this rationale persists but is less convincing in a low inflation  
26 environment. A new rationale, based on globalisation and competition from  
27 low-wage countries is today often advanced instead or as well. The recom-  
28 mended policies, however, have hardly changed.
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