

A European approach to unemployment benefits?

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The economic crisis has brought back into the limelight the question of unemployment and the institutions set up to deal with it. In some countries the amount and/or duration of benefit payments has been increased. Meanwhile, the various institutional formulae, such as part-time unemployment, have had a significant impact on official unemployment rates (Glassner and Galgoczi 2009).

While the official discourse on flexicurity remains dominant, initial estimates indicate that the countries regarded as less flexible and the best institutionally equipped have, for the time being, proved better able to resist the crisis. The debate is only just beginning, particularly because, at the time of writing, in most of the member states, the major employment crisis is still to come. To give only one example, youth unemployment is bound to explode with the arrival on the labour market of young persons just out of school. This will undoubtedly effect a shift in the debate that has previously focused on employment traps (see below). This contribution can of course not anticipate the debates that will inevitably be conducted but that have not (yet) taken place, any more than it can foresee their effects. The analysis presented below deals, in the main, with developments prior to the crisis and seeks, first of all, to propose a methodological approach designed to facilitate perception of the European influence.

The attempt to identify any European influence that might have affected unemployment reforms, in general, and the financing regulations and reforms of the public employment services, in particular, requires a preliminary definition of the different channels of influence. We do not refer to analysis of any one aspect in particular, the idea being to facilitate perception of a cumulative effect. After completion of this exercise, the

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next step will be to identify the various dimensions for examination in this analysis. The central topic on which this special issue focuses is the payment of unemployment benefit. If we were to confine ourselves to the monetary aspect of this topic, the article could end here for, as has been stressed by Dubois (2007: 74-75) 'taking the EU alone, the details of unemployment benefits and, a fortiori, of monitoring the unemployed, remain strictly national competences in which the Community level does not directly intervene.' Common trends, such as the tightening of eligibility criteria, a reduction in the volume of benefits paid and in the amounts received by claimants, are to be found but these cannot be interpreted as 'europeanisation' if this is taken to mean some kind of mechanical application of supranational requirements (Chabanet and Faniel 2007).

In other words, the European influence has to be analysed within policies and associated choices which – may – have consequences that are indirect and have become the focus of attention by the national media, institutions, and actors, and in national debates. This does not mean that it is possible to assume an absence of European influence, as shown by a certain number of national contributions.

What are the possible channels of influence by the European Union?

In the discussions on the possible impacts and interactions of the European level, few attempts have so far been made to produce a systematic analysis of the different channels and mechanisms that can bring about change at the national level. European influence on national policies can take place via different channels entailing effects that are more or less binding. We distinguish four such channels.

The first channel is the classic instance of European legislation (regulations and directives) which affects national law either directly or via transposition of the national law. The recent book by Gerda Falkner and her colleagues shows us that the impact of European social legislation has been considerably under-estimated and that up until 2004 large numbers of social directives were adopted (Falkner et al. 2005; for an analysis up to the present, Pochet 2009). She shows us also that the process of transposing directives is frequently far from straightforward. What is more, a large number of directives contain a combination of mandatory provisions and guidelines (soft law).

Secondly, the European Court of Justice (ECJ) has played an essential role through its case law, principally as a result of its interpretation of legislation governing the free movement of persons and competition, on the one hand, and of the social directives, on the other (Leibfried and Pierson 1995). The recent *Laval*, *Viking*, *Rüffert* and *Luxembourg* judgments, all of which relate to the balance between fundamental social rights and the free movement of businesses and/or competition law, eloquently illustrate the Court's role¹, which includes establishing the boundaries of national public action and the demarcation between what is (or remains) public and what is subject to the rules of competition. These interventions by the Court give rise to a framework that is above all intellectual and normative. They also determine what is no longer possible. Researchers' interest frequently focuses on the policies actually conducted and not on the binding framework that specific policies are required to observe and within which they have to seek achievement of their aims.

Thirdly, national policies may be affected by European economic and monetary policies, particularly with regard to the financing of social protection. The influence here tends to be indirect, relating essentially to the dominant economic model which in turn affects social choices. The limitations on budgetary deficits – such as those defined at Maastricht and subsequently in the Stability and growth pact – might, for example, affect policy choices in relation to benefits. In this way, current social policies are attuned to the economic and monetary model that has been gaining dominance since the 1980s (see also Clegg 2007 in relation to unemployment).

Lastly, the new so-called 'soft' methods have seen a rapid development in the social field (European employment strategy, open method of coordination). Their aim is to foster convergence of European policies. They can also exert a normative and cognitive influence on national policies and the direction of reforms (Zeitlin and Pochet 2005; Serrano 2004).

All European policies are reinterpreted by national actors and this is particularly important when it comes to the 'soft' methods. It thus becomes necessary to analyse the effects of 'selective downloading' (Visser 2005) or the 'leverage effect' (Palier 2002). These are frequently

1 For detailed references, see www.etui.org.

one component of a much broader set of policies at the national level. In other words, it is inappropriate to imagine passive policy-makers subservient to European diktats, especially as, in some cases, it is much more a question of a general direction to be followed than of any precise requirement in terms of policy content (de la Porte et al. 2001).

The actors are not solely recipients of European policies, for they also contribute to their (re)shaping, to their 'uploading' to the European level. Europeanisation has to be thought of as a cycle involving the placing of national preferences on the European agenda and implementation at the national level (Pochet 2007). It represents, accordingly, a complex dynamic among different levels that is constructed in the course of time.

The influence of non-binding soft strategies takes place through ambiguous thematic complexes (flexicurity, employability, making work pay, etc. see below) that are frequently polysemic (Barbier 2008), thereby allowing diverse and indeed divergent interpretations. This is why the approach in terms of indirect and discursive influence has to be conducted so carefully. Countries and actors are not affected in an identical manner, as shown for example by the sophisticated analysis of the press in six countries conducted by Lahusen (2007) who analysed the press coverage of European themes associated with the European employment strategy, whether directly (reference to Europe) or indirectly (reference to the EES categories). The direct influence is negligible and the indirect influence more significant but nonetheless quite variable over time. For example, while Lahusen found little debate in the press in Italy, the Italian contribution in this issue stresses the impact of European reports and documents in the national debates.

One answer to this contradiction is that European influence can also spread through specialised networks (the Permanent Representatives' Committee – or Coreper, the Employment Committee in the EES context, Social Protection Committee in the framework of the Social Protection OMC, networks of directors-general of public employment services) which serve as forums for exchange and socialisation of political and administrative elites and to a lesser extent social partners. As stressed by Jean-Claude Barbier (2008:95), 'the OMCs are also channels via which influence circulates among States, for, even if it is the case that, in terms of the national debate and electoral cycles, as well as the issues directly decided by them, political cultures remain compartmentalised, this does not mean that political communities are impermeable to influence.'

This mode of socialisation of elites and their participation in the construction of a reference discourse at European level are aspects frequently disregarded by researchers. For example, as early as 1997, the directors-general of public employment services created a network and were able to take advantage of incentive measures on the basis of article 129 of the Treaty which allows cooperation between public employment services (benchmarking among services, promotion of cross-border mobility, identification of bottlenecks, for example). Insight into the influence and socialisation of European themes can be gained, for example, from the recent Charpy report on flexicurity issued by the public employment service directors-general (2008).

The topics covered

In their standard reference work on public employment services in Europe, Freedland *et al.* (2007) distinguish five major policy rationales which we have grouped into three categories: institutional change; activation of the unemployed and life-long learning; ‘making work pay’. The links between the unemployed and the employment services are dealt with in conclusion.

A superficial view of the situation would seem to indicate that in this area, of the four channels of influence identified, the Court of Justice and directives have little significant role to play. The reality, at least for the Court, is, as we shall see, somewhat more ambiguous. Where soft law is concerned, the European employment strategy is quite obviously of primary importance². Two aspects appear essential: on the one hand, the whole employability section of the EES and, on the other, the approach in terms of ‘making work pay’, in all its various facets – employment traps, poverty traps, minimum wage, etc. – which are to be found both in the EES and in the European approaches to social protection (that we will not cover here).

² The guidelines are to be found in a box at the end of the article.

Institutional change

Three major changes came about at the beginning of the 1990s: the end of the public monopoly, the partial application of competition law, and territorial extension. The scope for action of public employment services was restricted by recognition of the end of their monopoly on job placement. This came in the wake of the Court of Justice judgments (cases C-41/90 Höfner and C-55/96 Job centre coop.) on the nature of placement services and recognition of the role of the private sector. This is not the place to go into detail about the judgments. It is enough to consider the implications and Freedland *et al.* point out that in both cases, the Court's reasoning focused on the *efficiency* of the monopoly: public enterprise abused its monopoly because it was inefficient in satisfying the relevant demand' (Freedland *et al.* 2007:181). What is more, the Member States supported adoption of the International Labour Organisation (ILO) convention 181 (1997) which removes public monopolies on placement services, calls for regulations to combine private activities with social standards and seeks to foster public-private cooperation. This led to the development of temporary work, particularly in countries that had no legislation in this sphere and where private agencies did not exist (Italy or Spain, for example). After protracted discussions, the European Parliament adopted, in October 2008, the directive on temporary work and temporary agencies that will also have consequences on national employment markets by acting on the terms of pay of agency workers.

This opening up to the private sector and end of the public monopoly are extremely important and frequently ignored points, even in most of the contributions to this issue. The contribution on Poland shows, however, the role played by the European Social Fund (ESF) in support for private placement services (see also Freedland *et al.* 2007: 185-187).

In this debate, it is also important to stress that the principle that placement services must be free of charge has been retained. This stipulation was already mentioned in the charter of fundamental rights of workers (1989) and is also a provision of the charter of fundamental rights (Article 29) adopted in Nice in 2000.

Another aspect is that of competition law applied to national employment services. The latter are considered as general economic and social interest services, which allows certain exceptions to the competition rules

(Freedland *et al.* 2007:183). But that does not prevent the opening up of calls for tenders in situations where formerly there frequently existed historically founded relations of cooperation between the public employment services and private or associative operators.

A third aspect is that of territory. There has been a geographical expansion (from the national territory to that of the European Union) and the EURES programme in which the public employment services take part extends placement beyond national frontiers (this is also an aim of guideline 19, if not also of guideline 20). It should be noted also that European law allows free movement of the unemployed.

Activation and lifelong training policies

Labour market activation and lifelong training policies are a leading topic in the European employment strategy. In this area, the EES has set different targets over the years.

All unemployed persons should be offered a job, an apprenticeship, a training course or other measure intended to facilitate their recruitment. This offer should take place, in the case of young persons just out of school, within a period of maximum four months between now and 2010 and, in the case of adults, within twelve months at most. While national implementation of these guidelines varies (see the national contributions in this issue; Serrano 2004), it remains true that rapid activation of young unemployed persons has become a priority in political agendas.

By 2010 25% of long-term unemployed should take part, according to the aims of the European strategy, in an active measure consisting of training, retraining, job experience or any other measure intended to facilitate their recruitment, the objective being to arrive at the average achieved by the three most advanced member states.

The EES has helped to reinforce national trends to regard unemployment as no longer a mass phenomenon but a series of individual cases to be treated as such (persons suffering from 'employability disorder' to borrow the felicitous expression coined by d'Oriane 2005). Cases of employability disorder are to be found in identifiable categories (migrants, young persons without qualifications, women returning to the labour market, and so on) which should be treated as a matter of priority. The public

employment services have been directly involved in the EES (CEC 1998) for the purpose of ‘modernising’ their action. They also developed, in concerted fashion, a joint vision of their actions and priorities (EU/EEA 2006).

In terms of conceptual framework, the emphasis on employability refers also to an approach based on the supply of labour rather than on the lack of demand for labour as an explanation of unemployment. It thus consolidates the dominant approach in the economists’ sphere, one that is gradually seeping down into other forums for reflection and academic disciplines. This emphasis has thus become legitimised in public discourse without any confrontation of the ideas and results having taken place.

Making work pay

The various national articles and the comparative article by Florence Lefresne provide detailed treatment of the development of the ‘making work pay’ notion and debate. Here we will confine ourselves to analysing the dynamic, in relation to this issue, between the Member States and the European level. Indeed, the theme of work that ‘must be made to pay’ provides an ideal illustration of the theoretical description given in the first part. In a detailed analysis of the Belgian and French cases, Cazenave (2006) shows that the topic of disincentives to work had been much discussed in France and Belgium since the late 1990s, much more even, according to this author, than in other countries. As is well known, the United Kingdom was also a pioneer in this field and central elements of its social discourse were taken up at European level (Freedland *et al.* 2007). Cazenave stresses that the problem in question has received many different names (from ‘employment trap’ to ‘inactivity trap’) depending on the differing situations and preferred solutions (to reduce benefits or increase minimum wages; to adjust, or not, workers’ social security contributions, or to make use of tax mechanisms). This whole question has been the subject of institutional reports (CERC, 2001 in France; CSE, 1998 in Belgium, among others), and it is a topic that extends beyond unemployment *stricto sensu* and also covers minimum income (L’Horty 2004). Though the topic also featured in the explanation of unemployment expounded in the Commission’s Growth, competitiveness, employment white paper (1993), it is the OECD that played a key role in spreading the idea of disincentives. Invention of the concept of ‘making

work pay' (OECD 1997) represented an important milestone in drawing attention to this problematic. The OECD report described the spread and danger of the aforesaid 'traps' and recommended 'making work pay' as a means of removing them, an approach that provoked widespread criticism. The European employment strategy, however, did not initially focus on this question but on the major economic policy directions associated with economic and monetary union. Accordingly, the theme of making work pay did not appear in the employment guidelines until later (2003), following on from a working group recommendation on this topic (Group of experts 2003). As such, the paternity of a debate that sprung up in individual countries, with possibly some involvement of the OECD, cannot be attributed to the EU. The EU formulation, what is more, is particularly ambiguous (guideline 19) 'continual review of the incentives and disincentives resulting from the tax and benefit systems, including the management and conditionality of benefits and a significant reduction of high marginal effective tax rates, notably for those with low incomes, whilst ensuring adequate levels of social protection'.

Though the Kok report on revision of the strategy, issued in 2005, made an even stronger case for making work pay, this approach was soon supplanted by another debate, focussing this time on 'flexicurity', a concept which, to take the standard example furnished by the case of Denmark, is supposed to deliver optimum results on the basis of a high level of unemployment benefits coupled with a virtually compulsory training system. It is to be noted that the generosity of the Danish system has diminished in the course of time and that the government wished to impose further radical cuts (a reform that was not approved for adoption). Thus it is stated in the Communication on flexicurity (CEC 2007): 'Good unemployment benefit systems are necessary to offset negative income consequences during job transfers, but they may have a negative effect on the intensity of job search activities and may reduce financial incentives to accept work. This can be largely offset by setting up efficient job search support and work incentives, ensuring a balance between rights and obligations.'

In recent reports generous benefit levels are equated with a sense of security (CEC 2006:96 ff.). The harsh form of making work pay, otherwise known as 'workfare', is here replaced in the flexicurity debate by a much more positive version that is designed to facilitate transitions within a deregulated labour market. In this debate as a whole, including the flexicurity variant, Europe has invariably reinforced national trends

but without developing any uniform approach to the topic. There is a convergence in terms of the general drift of the ideas expressed, with continuing diversity of the policies actually implemented. More generally, there is a tendency to 'economise' on social debate (for France see Barbier 2008a), corresponding, at the European level, to the growing influence of DG Economy and Finance in social debates (Pochet 2006).

Conclusion

This brief overview of European influence shows that it is undoubtedly more significant than most of the national contributions would seem to indicate. Multiform and constantly evolving, it puts in place a reference framework in terms of public-private links as well as in relation to a normative analysis of the causes of and solutions to unemployment. To put in place a framework does not mean to impose specific measures and, whereas national developments frequently precede the European discourse, the latter serves to reinforce national trends and, above all, contributes to the elimination or marginalisation of different opinions. Influence does not, as we have stressed, mean the convergence of particular policies according to a single model.

It is thus that the European influence offers support for an analysis in terms of individual responsibility and for solutions consisting of early activation of the unemployed and/or those in receipt of welfare benefits. Certain categories of unemployed will be 'privileged'. This applies, for example, to young people, to the detriment of the long-term unemployed. Specific groups – migrants for example – will be singled out and specific forms of so-called 'active expenditure' will also be accorded priority (training) to the detriment of others (partial subsidisation, for example).

The European analysis has taken as its model, in accordance with the current conventional wisdom propagated by mainstream economists, a rational individual who calculates the extent to which it is in his/her (immediate) interest to work. The notion of 'making work pay' entered the European discourse gradually in the wake of recommendations from the OECD and the experience of pioneering countries like Great Britain. Yet this notion entered the Belgian and French discourse before it became standard currency at European level. In other words, it is never a case of automatic or mechanical effect.

The debate on flexicurity displaced, to some extent, the focus on ‘making work pay’, stressing instead the need for a substantial level of unemployment benefit in combination with a deregulated labour market and virtually compulsory training. The debate thus came full circle, a link having been supplied between ‘making work pay’ and the debates on ‘lifelong activation’.

Convergence, as we have emphasised, takes place not at the level of policies but at that of diagnosis. Insofar as this is a process spread essentially by means of specialised networks, it entails both strengths and weaknesses. While the existence of such networks provides a forum for the circulation of ideas, these ideas are less present in national public debate which continues to be conducted in accordance with historically constructed categories and interests.

While new debates will undoubtedly emerge in the wake of the economic crisis, there can be no knowing in advance to what extent they will be consolidated and how far genuinely new issues will be raised and tackled. For the time being there is a tendency, partly attributable to institutional inertia, to hear repetition of the ‘pre-crisis’ debates (particularly in terms of flexicurity) (Andersen et al., 2009). Another reason for this absence of discursive innovation in the immediate aftermath of irruption of the crisis is the general lack of consensus on what caused the crisis and hence on the most appropriate structural responses. This has not ruled out some institutional innovations (short-time work and part-time benefits, etc.) that may well entail important consequences in the longer term. By the same token, topics such as employment traps or the rejection of early retirement as a means of early exit from the labour market have somewhat fallen by the wayside.

Employment guidelines

The main provisions of the Community guidelines 2008-2011 are given below

Guideline 17. Implement employment policies aiming at achieving full employment, improving quality and productivity at work, and strengthening social and territorial cohesion. ...

...

Guideline 18. Promote a lifecycle approach to work (...)

- a renewed endeavour to build employment pathways for young people and reduce youth unemployment, as called for in the European Youth Pact,
 - resolute action to increase female participation and reduce gender gaps in employment, unemployment and pay,
 - better reconciliation of work and private life
- (...)
- (...)

Guideline 19. Ensure inclusive labour markets, enhance work attractiveness, and make work pay for job-seekers, including disadvantaged people, and the inactive through:

- active and preventive labour market measures including early identification of needs, job search assistance, guidance and training as part of personalised action plans, provision of necessary social services to support the inclusion of those furthest away from the labour market and contribute to the eradication of poverty,
- continual review of the incentives and disincentives resulting from the tax and benefit systems, including the management and conditionality of benefits and a significant reduction of high marginal effective tax rates, notably for those with low incomes, whilst ensuring adequate levels of social protection,
- development of new sources of jobs in services for individuals and businesses, notably at local level.

Guideline 20. Improve matching of labour market needs through:

- the modernisation and strengthening of labour market institutions, notably employment services, also with a view to ensuring greater transparency of employment and training opportunities at national and European level,
- removing obstacles to mobility for workers across Europe within the framework of the Treaties,
- better anticipation of skill needs, labour market shortages and bottlenecks,
- appropriate management of economic migration

Guideline 21. Promote flexibility combined with employment security and reduce labour market segmentation, having due regard to the role of the social partners, through:

- the adaptation of employment legislation, reviewing where necessary the different contractual and working time arrangements,

- addressing the issue of undeclared work,
- better anticipation and positive management of change, including economic restructuring, notably changes linked to trade opening, so as to minimise their social costs and facilitate adaptation.

Guideline 22. Ensure employment-friendly labour cost developments and wage-setting mechanisms by:

- encouraging social partners within their own areas of responsibility to set the right framework for wage bargaining in order to reflect productivity and labour market challenges at all relevant levels and to avoid gender pay gaps,
- reviewing the impact on employment of non-wage labour costs and where appropriate adjust their structure and level, especially to reduce the tax burden on the low-paid.

Guideline 23. Expand and improve investment in human capital.

Guideline 24. Adapt education and training systems in response to new competence requirements.

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