

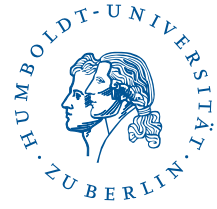


**“Security” in the EU.
An overview of the passive
and active labour market
policies in
the Netherlands, Poland, Italy,
Spain and Greece.**

Editors: Tania Bazzani, Reinhard Singer

Authors: Tania Bazzani, Effrosyni Bakirtzi, Nicola Gundt,
Agata Ludera-Ruszel, María Salas Porras

2016 Humboldt-Universität zu Berlin



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Preface

Since the 1990s, impressed by the Danish success, “flexicurity” has become an important strategy of the European social policy. Labour market flexibility combined with security for employees seemed to be the best solution to fight unemployment in Europe. The concept of flexicurity focuses on the idea of combining flexible and reliable contractual arrangements with comprehensive lifelong learning strategies, effective active labour market policies and modern social security systems. In particular, the active labour market policies and social security systems should support people in their transitions and this research focuses on the relationship between activation and benefits, to which the unemployed can have access.

Thus, the essays collected in this e-book offer a multifaceted insight into methods and strategies of active and passive employment policies meant to implement aspects of the flexicurity principle in selected Member States of the European Union. Tania Bazzani, Italian researcher in the field of Labour and Social Security Law, invited young researchers to the Humboldt-Universität zu Berlin, where she currently conducts research as a Marie Curie Fellow, to discuss the current state of employment policies in selected European countries.

Nicola Gundt, Assistant Professor at Maastricht University (The Netherlands), analyses the protection of the unemployed in the Netherlands. She describes how the strict system of activation and work before welfare pursued by the Dutch legislator lost its balance due to the fact that it over-emphasises coercive measures while too little has been done to actively enable those that are dependent upon unemployment or social welfare benefits. The author illustrates in depth, that the rigorous Dutch “flexicurity” policy, based on coercion and duties of the unemployed, could not prevent the devastating effects provoked by the 2008 financial crisis, such as a dramatic surge of unemployment, reaching levels previously unknown to the Dutch, as well as an increase

in precarious employment among those that are not considered to be “mainstream” workforce.

Similar effects of the 2008 crisis are described by Agata Ludera-Ruszel, Assistant Professor at the University of Rzeszów (Poland), when painting the post-crisis picture of the Polish labour market. She points out that the current legal situation led to a segmented labour market where pseudo self-employed workers, civil-law contract workers and fixed-term employees enjoy no protection whatsoever against dismissal or contract termination. Furthermore, the author notes deficits as regards the activation of unemployed persons and proposes a number of measures to improve existing instruments and their organisation. She rightly criticises the fact that unemployment benefits are calculated on the basis of region, age and family situation instead of past remuneration or the national minimum wage. While the period of notice for fixed-term and permanent employment contracts has been unified in 2015, following a decision of the European Court of Justice, fixed-term contracts can still be terminated without reason.

Tania Bazzani investigates the protection of the unemployed in Italy. She concludes that the flexicurity concept led to an increase of atypical forms of employment and a deregulation of traditional employment contracts in the Italian labour market. For example, fixed-term employment contracts up to 24 months can be concluded without any specific reason whatsoever, even longer, if provided for by an agreement of the social partners. Considering the position of unemployed workers, Tania Bazzani criticises the normative fragmentation of the Italian benefits system, especially an excess of laws and different measures. Furthermore, compared to other Member States, such as Denmark, the amount of the benefits is, at best, modest. Regional differences and bureaucratic obstacles also lead to grave inefficiencies and the failure of employment promotion measures. Consequently, her proposals aim at increasing the efficiency of employment offices. In addition, she promotes the newly created national agency (ANPAL) which, in theory, has the potential to streamline and unify the application of labour policies. It remains to be seen, however, whether the rejection of constitutional reforms by the

Italian people in the 2016 Italian constitutional referendum will affect this centralisation of competences.

Effrosyni Bakirtzi, Legal Research Associate at Johann Wolfgang Goethe-Universität Frankfurt am Main (Germany) and Doctoral Fellow at the Cooperative Graduate School on Social Human Rights of the University of Kassel (Germany) and the University of Applied Sciences Fulda (Germany), examines passive and active labour market policies in post-crisis Greece. She criticises a generally outdated legal environment as regards the protection of the unemployed suggesting the inadequacy of labour policy measures. Not only has the level of unemployment benefits been lowered to worryingly low amounts, but, in addition, administrative inefficiencies and frequent changes of legislation lead to insufficient protection in terms of active and passive employment policies. She argues that public resources have been unjustly distributed and she indicates that the Greek welfare regime can be regarded as dual and unequal, offering protection to those who work under conventional employment contracts and have an advantage compared to atypical workers who are effectively unprotected. In her concluding remarks she highlights that the comparably weak position of social partners in the Greek labour law system renders desirable adjustments more difficult.

María Salas Porras, Assistant Professor at the University of Málaga (Spain), describes the implementation of the flexicurity concept in Spain. She contends that the massive liberalisation of the Spanish labour law did not have a positive influence on the dismal employment statistics. The author holds that one could therefore conclude that greater flexibility of the labour market alone does not lead to satisfactory results as regards the level of employment; on the contrary, it will lead to an increase in unemployment. Thus, she calls for increased efforts to create jobs as well as appropriate actions to ensure adequate support for the unemployed. Furthermore, she indicates that unemployment benefits, which are effectively expressions of social solidarity, are nowadays undermined by individualism, resulting in people choosing not to seek employment as soon as the amount of benefits reaches a certain level. While this explains why passive policy measures are to a growing extent

conditional on the fulfilment of certain duties, the author criticises a narrative prevalent in Spanish labour policy according to which unemployed individuals are deemed responsible for their situation. This would explain two underlying premises of the Spanish labour policy, namely that active employment policies will reduce unemployment while passive measures will lead to an increase thereof. María Salas Porras, finally, concludes that the aforementioned concept would foster a tendency to actively assist unemployed people who receive public assistance benefits to a greater extent compared to other people who do not receive state support, which, in turn, leads to discrimination against young unemployed people and those that have never worked or have not worked sufficiently in order to benefit from social security benefits. The author, *inter alia*, recommends that labour market policies should focus on the support of groups that were hit hard by the recent waves of unemployment, in particular the youth and people aged over 55. She suggests that Spain could “learn” from the experience of other countries where labour market policies managed to cope with the 2008 crisis in a better way.

This suggestion allows us to return to the objective of the workshop which was drawing comparisons between European countries as well as between the different routes taken in terms of employment policies. Based on the findings, it may be possible to identify best practices, but also some preconditions without which certain policy options are bound to produce suboptimal results or, in the worst case scenario, fail. The growing discontent of groups that feel deprived of their rights and the rise of populist parties and nationalistic leaders should be considered a warning that worries of certain social strata cannot be ignored any longer. One can only hope that the many constructive proposals submitted by the authors offer the EU and the Member State officials food for thought on future employment policies.

Berlin, 28 December 2016

Prof. Dr. Reinhard Singer

Introduction

Due to the economic crisis, unemployment has become a major issue in many countries. Different paths are used in order to tackle the rising numbers and to conserve the financial sustainability of the system. In the first place, labour law has been deregulated in order to provide easier access to work. Secondly, benefit conditions like eligibility criteria, maximum duration and amounts of benefits have been tightened. In the third place, activation has become an important tool.

Here, we can distinguish several aspects, a focus on insertion in the labour market through employment services, but also the activation duty linked to the right to unemployment or social assistance benefits. One core question with all of this is whether this flexibilisation and “de-securisation” coupled with responsabilisation of the (unemployed) individual does not lead to a loss of security. Therefore, this book aims at providing an overview of the development in five countries, the Netherlands, Poland, Italy, Spain and Greece, focussing on the question of security.

Security is understood as one of those conditions, which support the unemployed in their transitions from an unemployment situation to a job. In this perspective, both unemployment benefits and activation measures are worth to provide “security”.

The Member States here analysed belong to three main social security systems: the Dutch system, considered a best practise example in activation and a pioneer in having adopted a flexicurity perspective; the Polish system, within the East European system, which legal development depends also by the transition from the communist regime to the democratic one; the Mediterranean system, in their different versions, i.e. the Italian, the Spanish and the Greek one.

Both at the EU and the domestic level, the relationship between unemployment benefits and activation duties is linked to the concept of transition from passive to active policies, which has been promoted in the first pillar of the Luxembourg process and included in the employment guidelines since 1998. The idea of an active society is supporting a further transition, from welfare to workfare: welfare to work, in which the benefits should support individuals to be placed in a job through activation measures and services. Effective activation policies and adequate benefits are also relevant for being key elements of the flexicurity strategy.

The flexicurity concept is based on four main elements, which are described in the Communication of the Commission on the common principle of flexicurity (Com(2007) 359 final): flexible and reliable contractual arrangements, comprehensive lifelong learning, together with, as aforementioned, effective active labour market policies and modern social security systems.

Europe 2020 re-launched the goal of achieving flexicurity in order to address the new challenges in employment/skills/fighting poverty for the new decade and to enable “people to acquire new skills to adapt to new conditions and potential career shifts” (Com(2010) 2020).

Within the Flagship Initiative “An Agenda for new skills and jobs”, the EU should implement the second phase of the flexicurity agenda, to “manage economic transitions and to fight unemployment and raise activity rates”. At the same time, Member States are requested to implement their national pathways for flexicurity, even by reviewing “the efficiency of tax and benefit systems so to make work pay with a particular focus on the low skilled, whilst removing measures that discourage self-employment”. Furthermore, still according to the Europe 2020 strategy, short-term unemployment supports should be kept until an achievement in GDP growth and in employment, and structural unemployment should be reduced through an increasing labour participation.

The economic crisis at the end of 2008 highlighted the need for changes in the domestic regulation of the EU Member States in order to cope with unemployment. In doing this, Member States had also to deal with limited public expenditure due to the European austerity policy. Thus, the need for economic sustainability was particularly stressed in adopting initiatives and benefits to address unemployment.

At the same time, if we look at the development of the flexicurity project in the last decade it is possible to highlight that the flexibility side seems to have been more developed in comparison to the security part. Furthermore, the security side, which is the unemployment benefits provided by Member States, have been increasingly linked to specific activation duties. Nevertheless, the conditionality of unemployment benefits, which links them to the activation measures, was introduced even before in many Member States.

At the EU level, the need for conditionality was particularly pointed out since the end of the Nineties. Thus, activation initiatives and services could be seen as a relevant way to avoid the unemployment trap, and the benefits should also be able to make work pay. Conditionality soon started to be envisaged for assistance supports, too, as a path towards an active society.

The relationship between unemployment benefits and activation measures can also be analysed under the perspective of the contractualization of social rights, which was introduced according to the New Public Management and the new ideas in managing public services. Thus, often Member States introduced specific types of “contract” between public employment services and the unemployed, linking expressly the right to access certain services or benefits to specific duties. These different influences, together with the particular domestic features and developments, conditioned the implementation of the security side of the flexicurity concept in the Member States.

How much “security” has been achieved, until now, in these Member States? Each author will draw a picture on the last reforms in the field – i.e. passive labour market policies and activation initiatives addressed to the unemployed - and current pending issues, trying to propose some remarks on the security side of flexicurity, which is achieved at domestic level.

Apart from the insurance unemployment benefits, the analysis will also take into consideration those assistance and subsidies, from which the unemployed can benefit while searching for a job. This includes short-term earnings replacement benefits, when relevant for contributing to create a security net in order to support the workers, who are losing their job or who are confronted with a temporary lack of work. These consist of unemployment benefits/assistance subsidies/short-term earnings replacement benefits which provide the unemployed with economic support while searching for a job or while training or attending activation initiatives on the one hand and, on the other hand, activation measures intended enable the unemployed to reach an adequate professional profile according to the labour market needs.

The structure of all the national reports is the same: every report will be introduced by a short description of the latest flexibility regulation. This part will enable the reader to understand better last developments in the domestic regulation and its impacts on the unemployed. Then, a part will focus on the passive labour market policies supporting workers in case of lack of work. A further part will highlight the activation measures addressed to the unemployed. Specific pending issues will be taken into consideration in both the fields. In the conclusive part, each author will propose some remarks in looking at the regulation and the level of protection – in both meanings of economic and pro-activation supports – in the domestic system.

The idea of this book comes from a workshop, which was held at the Faculty of Law of the Humboldt-Universität zu Berlin in June 2016, within a Marie Curie research project granted to Dr. Tania Bazzani, with

supervisor Prof. Dr. Reinhard Singer, and funded by the European Commission.

We are really grateful for the collaboration and the network, which are developing with the colleagues, who are the authors of this book, together with all the participants, who joined us during the discussion.

Berlin, 28 December 2016

Prof. Dr. Reinhard Singer

Dr. Tania Bazzani

**The protection of unemployed persons in the Netherlands:
Fördern und Fordern in the Polder**

Nicola Gundt

Abstract

This contribution aims at offering an analysis of the protection of unemployed persons in the Netherlands. The term ‘protection’ is understood very broadly here and includes measures regarding income support as well as measures concerning the activation and re-integration of unemployed into the first labour market.

After the introduction, which paints the general picture of the socio-economic situation of the Netherlands, the first part of the contribution starts off with the moment where unemployment usually starts, the rules on dismissal. As flexible or atypical employment has become a quite normal route to circumvent the applicability of employment protection legislation, the possibilities of flexible work will also be discussed briefly. The narrative will focus on the key developments, being the Act on Flexibility and Safety of 1999 and the very recent Act on Employment and Security (2015). The second part discusses forms of income support that are potentially available to unemployed persons. Therefore, this will not only include unemployment benefits as such, but will also touch upon the possibilities for other benefits including benefits for elderly unemployed and social assistance. In the third part, activation measures and policies in the field of unemployment legislation and – where relevant – other social security and social assistance legislation will be analysed. Here, a distinction will be made between enabling measures like individual counselling and guidance on the one hand and more ‘coercive’ measures like the duty to look for suitable work and accept that suitable work. Finally, a critical assessment of policies concerning (the prevention of) unemployment will take place.

Summary: Introduction. - 1. Prevention of unemployment. 1.1. Dismissal law. 1.2. Flexible contracts. 1.3. The Act on Flexibility and Security. 1.4. The Act on Employment and Security. Changes in the field of flexible employment. Changes in the field of dismissal law. 2. Income protection of unemployed persons. 2.1. Unemployment benefits. The right to benefits. Duration of benefits. Amount of benefits. 2.2. Short-time work and calamity unemployment benefits. 2.3. Extra allowances (Toeslagenwet). 2.4. Social assistance. 3. Activation measures. 3.1. Enabling measures for employees: training, counselling and re-integration. Young persons. Persons above school and training age. Unemployed. Social Assistance. 3.2. Enabling measures: Incentives for employers. 3.3. Coercive measures. Unemployment legislation. a. Reprehensibly becoming unemployed (*verwijtbaar werkloos worden*). b. Reprehensibly remaining unemployed (*verwijtbaar werkloos blijven*). 3.4. Sanctions. 4. Assessment. 5. Conclusion.

Introduction

In the Netherlands, activation policies in labour and social security law can be traced back to the 1980s. Back then, the Netherlands were Europe's sick man with about a million individuals getting (partial) invalidity pensions. It became clear that, in order to keep the social security system affordable, things had to change.¹ From then onwards, Dutch policies have concentrated on reducing the number of persons that are eligible for social benefits or social assistance. In order to reach this goal, several policy strands have been developed. Initially, during the 1990s, the core idea was the so-called flexicurity approach.² By that time, the Netherlands had accepted the OECD's and ECB's views on how to combat unemployment.³ OECD and ECB promoted a rather orthodox economic understanding of the labour market, stating that once the rigidities concerning hiring, firing and payment were abolished,

¹ Speech "Nederland is ziek" by Minister president R.F.M. Lubbers, Nijmegen, 5 September 1990.

² For a general discussion on the concept of flexicurity as understood and implemented in the Netherlands see e.g. A.C.J.M. Wiltshagen, (1998) *Flexicurity: a new paradigm for labour market policy reform?*, (1998), WZB Discussion Paper: <https://www.econstor.eu/handle/10419/43913>; S. Bekker, (2011), *Flexicurity: explaining the Development of a European Concept*, Nijmegen, Ipskamp Drukkers

³ D. Ashiagbor, (2005), *The European Employment Strategy*, Oxford University Press, Oxford, p. 36; K. Jacobsson, Soft regulation and the subtle transformation of states: the case of EU Employment policy, (2004) 14(4), *Journal of European Social Policy*, p. 360.

unemployment would decline.⁴ Flexibility, reduction of employment protection legislation, active labour market policies and the modernisation of social security systems thus became cornerstones of Dutch national employment policy.

By the middle of the 2000s, the Dutch labour market seemed to be doing fine. When the European economic and financial crisis became visible in 2008, the immediate results on the Dutch labour market were moderate. Unemployment initially rose only marginally, but rocketed from 2011 onwards, reaching 8,5% in 2014.⁵ For a country used to figures of less than 3%, this was a huge shock. Moreover, it became clear that the Dutch employment market had become rather segregated during the twenty years of flexicurity policy.⁶ While on the one side, fulltime permanent contracts with good employment conditions and protection against dismissal still existed, many young, elderly or otherwise “not mainstream” employees experienced great difficulties reaching that stage, and often had to accept successive offers of precarious employment in order to get a job at all.⁷ Being underprotected, persons in precarious employment rely on social security much more frequently, leading to problems with social security budgets and public spending. The crisis thus became the long-awaited catalyst for necessary changes to the Dutch labour law and social security system.

Core ideas were taken over from EU employment policy as defined in the Europe 2020 Agenda. For the EU, access to employment must be made easier, e.g. by deregulation of rules regarding termination of employment contracts and a (wider) acceptance of atypical forms of employment such as agency work or fixed-term contracts. Secondly, active labour market policies, which include training schemes and employment subsidies should be promoted.⁸ Finally, States are urged to

⁴ D. Ashiagbor, (2005), *The European Employment Strategy*, Oxford University Press, Oxford, p. 37.

⁵ CPB (Netherlands Bureau for Economic Analysis): Road to Recovery: available at: <http://www.cpb.nl/publicatie/roads-to-recovery>, p. 14.

⁶ *Kamerstukken II*, 2013/14, 33 818 nr. 3, p. 4, 10.

⁷ Whether or not the changes in social security and social assistance law also added to this development, will be discussed later in the paper.

⁸ Council Decision of 21.10. 2010 (2010/707/EU), OJ L 308/46, Guidelines 8 and 9.

implement or keep activation requirements in unemployment legislation, preferably within the framework of a ‘mutual responsibilities approach’.⁹ All these policy aspects can be recognised in the Dutch reforms.

1. Prevention of unemployment

1.1. Dismissal law

Prevention of unemployment can be a much more effective remedy against unemployment than activation out of unemployment. The first and foremost aspect of this prevention is protection against dismissal. Therefore, the paper will start with a brief overview of Dutch dismissal law. This regulation can best be characterised as intransparent, unfair and costly. The reason is that until the systematic changes in 2015, all changes that were made to the law on dismissal were merely additions to the existing rules rather than real changes. This led to several parallel systems existing next to each other. Their main feature was (and still is) the preventive test, meaning the employer cannot dismiss the employee lawfully without prior authorisation. This authorisation could be given by an administrative authority, in which case no severance pay was due, but a (small) risk of a review procedure on the grounds of obviously unreasonableness existed. The other option was to address the district judge and ask for dissolution of the contract. In this case, the employer had to pay a severance payment which could be substantial in case of older employees with high seniority or in cases where a dismissal was not possible, due to specific restrictions e.g. with respect to sick employees. The district judge’s decision was final, no appeal or cassation was possible. Obviously, these two possibilities that existed equally next to each other and were at the employer’s discretion, led to unequal treatment and incomprehension. It also made dismissal rather expensive and cumbersome. Hence, legal schemes to circumvent the applicability

⁹ Commission Communication “Towards a job-rich recovery”, COM (2012) 173 final, 10; see also Council Decision of 21.10. 2010 (2010/707/EU), OJ L 308/46, Guideline 7, first section.

of these rules, such as the use of contracts that terminate as of right or triangular employment relations became very appealing.

1.2. Flexible contracts

Another aspect of prevention of unemployment is access to the labour market. A more extensive recourse to atypical forms of employment can make this access easier. The use of flexible contracts became appealing for at least two more reasons. One is the inapplicability of rules on dismissal explained in the previous paragraph, the other is the fact that with contracts that terminate as of right the heavy responsibility of re-integration of sick or partially incapacitated employees comes to an end with the end date of the contract as well. In the Netherlands, building on the idea that re-integration into work is easier while there (still) is an employer, the employer is responsible for (partially) incapacitated employees' re-integration during the first 104 weeks of sickness.¹⁰ For the employer, this is costly as he will not only have to pay wages, but also re-integration costs and possibly the costs for a replacement worker. Fixed-term and agency contracts in particular offer ways to circumvent these obligations. Therefore, they were used also in situations in which the need for a worker was permanent. They were seen as a means to tailor labour costs to the precise production needs of the enterprise. By the end of the 1990s, fixed-term work and temporary agency work therefore had become an accepted part of Dutch labour law.¹¹

1.3. The Act on Flexibility and Security

In order to offer employees in precarious employment situations more security, the Act on Flexibility and Security was introduced in 1999.¹²

¹⁰ In 1994 the *Wet terugdringing ziekteverzuim* prolonged the duty to pay wages up to a period of 6 weeks, in 1996, the *Wet uitbreiding loondoorbetaling bij ziekte* made this a period of 52 weeks and finally, in 2004, the *Wet verlenging loondoorbetalingsverplichting bij ziekte* made it the current 104 weeks.

¹¹ H. Houwing, (2011), *A Dutch approach to flexicurity? Negotiated change in the organisation of temporary work*, eigen uitgave, p. 147-151.

¹² *Wet flexibiliteit en zekerheid*, Stb 1998/300.

Flexible contracts of employment were seen as stepping stones, offering access to the employment market for those groups who usually had trouble entering the employment market. The idea was that, once the individual concerned had entered the employment market - using an atypical form of employment – a more secure employment position would develop with growing seniority and job experience. These ideas can be clearly seen in the changes the act brought about. Up to three consecutive fixed-term contracts that followed each other in a three-year period with breaks of no more than three months, could be agreed upon before automatic conversion into a permanent contract took place. Furthermore, rules on consecutive employership were developed in order to prevent revolving door constructions between different but connected employers.¹³ It is interesting to note that the Act on Flexibility and Security offered much leeway to the social partners to deviate from the legal standards in order to allow for even more flexibility. In many collective agreements, this leeway was used to its fullest extent, which effectively meant that only the flexibility part of the Act actually materialised, while the security part was gradually set aside.

1.4. The Act on Employment and Security

Ten years later, in 2009, when the economic and financial crisis finally reached the Dutch employment market, it became clear that the segregation between well-protected insiders on the one hand and precariously employed outsiders on the other side had become a real problem. Fixed-term and agency work, instead of providing stepping stones into more secure forms of employment had become a dead end for many. The Act on Employment and Security¹⁴ intends to rebalance the Dutch employment market. Excesses of flexibility left people in precarious employment during long periods without a prospect of growing into more secure forms of employment.¹⁵ These employees do

¹³ Art. 7:668a (2) BW).

¹⁴ *Kamerstukken II*, 2013/14, 33 818 nr. 3, p. 4, 10.

¹⁵ G.C. Boot, A.R. Houweling, M.J.M.T. Keulaerds, (2015), *Parlementaire Geschiedenis Wet Werk en Zekerheid*, Boom Juridische Uitgevers, Den Haag, p. 6.

not have the same access to training as employees working on indefinite term contracts, and consequently, their prospects of getting an indefinite employment contract deteriorate with time.¹⁶ Therefore, they must be given better prospects and more security.¹⁷ On the other hand, people in permanent employment had to be encouraged to move from one job to another to create more dynamism on the employment market and their sometimes excessive employment protection had to be reduced.¹⁸

Changes in the field of flexible employment

A first change is the reduction of the maximum period of fixed-term employment from 36 months to 24 months.¹⁹ According to the government, this will result in a quicker offer of a permanent position.²⁰ Furthermore, the waiting period that breaks the chain of contracts is doubled from three to six months.²¹ This measure intends to prevent ‘revolving door constructions’ between chains of fixed-term contracts and spells during which unemployment benefits are paid.²² With the new rules, the employee needs a longer employment history before he can bridge the gap between two periods of fixed-term employment.²³ Obviously, he will also be expected to apply for jobs during these six months. If the employer wants to keep the employee, he will have to balance the risk of losing him against the risk of offering a permanent contract. Another form of protection and security for fixed-term

¹⁶ *Ibidem*.

¹⁷ *Kamerstukken II*, 2013/14, 33 818 nr. 3, p. 10-11.

¹⁸ *Kamerstukken II*, 2013/14, 33 818 nr. 3, p. 21.

¹⁹ Article 7:668a (1) (a) and (b) BW (revised).

²⁰ *Kamerstukken II*, 2013/14, 33818, nr. 3, p. 12.

²¹ This applies to the same employer as well as to a “consecutive employer”, see art. 7:668a (2) BW (revised).

²² For an example, see: *Rechtbank Amsterdam*, 11 mei 2012, ECLI:NL:RBAMS:2012:BW6495.

²³ In the Netherlands, an individual who has been in employment for 26 out of 36 weeks prior to unemployment has a right to benefits for three months. A prolongation of the benefit has to be earned in the sense that the individual must have earned wages during 52 days in four out of the five years prior to the year of unemployment, and for each year of working experience, a month of benefit rights is added. See for more detail paragraph 2.1.

workers is provided by article 7:668 Dutch Civil Code (*Burgerlijk Wetboek*, BW). It states that the employer must notify the employee of his intentions concerning the prolongation of a fixed-term contract at least one month before the contract terminates. That way, the individual will know his future and can make arrangements.

Changes in the field of dismissal law

The second main aim of the new Act is to make the termination of contracts easier, more transparent, more just and less costly.²⁴ In line with the new law's focus on activation, employability and work-to-work transitions, the administrative authority as well as the district court judge will not only take account of the reasons for the dismissal, but will also inquire whether there really are no possibilities to keep the employee, e.g. in another job, after training if necessary.²⁵ If any possibilities exist, no permission to terminate the contract will be granted.

Another measure that shows the Government's focus on preventing unemployment is the strong reliance on measures that guide the employee from work to work, like the abovementioned article 7:668 BW. The new severance pay is another example. The payment, officially labelled 'transitory compensation' is a lump sum payment due at the end of a (series of) contract(s) that lasted at least 24 months.²⁶ According to the Government, the payment should be used to ease the transition from one job to another, e.g. by paying for training.²⁷ The employer may deduct costs incurred for training during the job from the amount due at the end of the contract.²⁸ The transitory compensation is meant to cover all disadvantages, and therefore, additional compensation will only be

²⁴ *Kamerstukken II*, 33 818, nr. 3, p. 25.

²⁵ Article 7:669 (1) BW.

²⁶ Exceptions apply for young persons of up to 18 years of age who work less than 12 hours a week, as well as for employees whose contracts are terminated due to them reaching pensionable age and in case of summary dismissal.

²⁷ *Kamerstukken I*, 2013/14, 33 818, nr. A, p. 10-11.

²⁸ Article 7:673 (6) BW, *Besluit voorwaarden in mindering brengen kosten op transitievergoeding*, 23 april 2015, Stb. 2015/171.

awarded in case the employer acts in a seriously reprehensible way.²⁹ The government explicitly stated that these cases must remain the exception and that it will monitor the use of this possibility by judges very closely.³⁰ The 2015 Act clearly shows the policy aim of preventing (long-term) unemployment, preferably by guiding employees from work to work. In order to add even more weight to this line of thoughts, the Act on Unemployment Benefits was changed as well. As will be explained below, the maximum duration of benefits has been shortened from 38 months to 24 months and the definition of suitable jobs to be accepted has been widened considerably. In the following paragraphs, these two aspects of social security legislation in the Netherlands will be analysed in greater detail. I will start with the traditional aim of social security - providing some income security - and discuss the activation measures afterwards.

2. Income protection of unemployed persons

2.1. Unemployment benefits

The right to benefits

The right to unemployment benefits depends on several cumulative criteria being fulfilled. In the first place, the individual concerned must be considered an employee to fall within the personal scope of application of the Act on Unemployment Benefits (*Werkloosheidswet, WW*³¹).³² Secondly, the individual has to be unemployed in the sense of art. 16 WW. This means that the employee must have lost at least five working hours and the right to wages over these five hours.³³ Finally, the

²⁹ Article 7:682 BW.

³⁰ This is the so-called 'mouse-hole' (*muisengaatje*): *Kamerstukken II* 2013/14, 33818 nr. 3, p. 34; *Kamerstukken II* 2013/14, 33818 nr. 4, p. 15-16.

³¹ Wet van 6 november 1986, Stb. 1986 nr 566.

³² Art. 3-9 WW.

³³ See art. 1a WW.

ex-employee must be available for work.³⁴

The right to benefits does not come into being if an exclusion ground is present. These grounds are listed in art. 19 WW and include many different situations such as the employee's imprisonment or residence outside the Netherlands.³⁵ The right to benefits can revive if the exclusion ground terminates within six months.³⁶ The benefits are terminated as soon as and as long as one of the exclusion grounds is present. Furthermore, the benefit is terminated, as soon as the wage earned in any new job amounts to at least 87,5⁰% of the wages earned before.³⁷

Duration of benefits

The employee who has lost at least five hours of work, including the right to wages over these hours and who is available for work must show a certain link to the employment market in order to qualify for unemployment benefits. This link exists if the employee can show employment during 26 of the 36 weeks directly preceding the unemployment.³⁸ It is irrelevant how much work has been carried out each of these weeks, and in particular circumstances, different employment contracts can be taken into account.³⁹ In certain cases, the reference period of 36 weeks can be prolonged, so the employment history before the 36 weeks can still be relevant. An individual who

³⁴ This is examined in the light of the concrete facts of the case by the UWV. A sick employee, for example, is not available for work, the same goes for an individual who receives a 100% invalidity pension. The individual's behaviour can also lead to the conclusion that he or she is not available for the employment market, see CRVB 29 december 1993, ECLI:NL:CRVB:1993:ZB2423.

³⁵ Since the most recent changes, the non-completion of the so-called fictitious period of notice also became an exclusion ground. This basically means that unemployment benefits only become available after the legally applicable period of notice has ended, see art. 19 (3) and (4) WW.

³⁶ Art. 20 jo 21 WW.

³⁷ This interesting notion is due to the new rules on keeping a part of the income from a low paid new job, for further explanations see subtitle 'amount of benefits' below.

³⁸ Art. 17 WW.

³⁹ Art. 17a (2) WW.

meets the requirements of art. 16 and 17 WW is entitled to three months' unemployment benefits.⁴⁰ This minimal duration is prolonged when the conditions of art. 42 WW are met. According to this legal provision, the individual must be able to show that during the five years immediately preceding the year in which the unemployment occurred, in four years wages have been earned during at least 52 days / 208 hours per year.⁴¹ This is called the “*arbeidsverleden-eis*” roughly translatable as employment history requirement. Each full year in the individual's employment history amounts to one extra month of benefits. The employment history is composed of the fictions employment history stretching from the individual's 18th birthday to, but excluding 1998 and the real employment history which encompasses all years from 1998 onwards in which during at least 52 days / 208 hours wages have been earned.⁴² Since the latest reforms, benefits are being built up more slowly. Concerning the first ten years, nothing changes, but after that, each extra year of employment history only leads to half an additional month of benefits after 2016. All rights accumulated until January 1st 2016 will be completely respected, therefore amounting to one month of benefits per year of employment history. The maximum period during which unemployment benefits are available is reduced from 38 months to 24 months in steps from January 1st 2016 onwards for new cases. The reason behind this is twofold. In the first place, the Government explicitly said it wanted to save money⁴³, on the other hand, according to the Government, shorter periods in which benefits are available lead to people looking for jobs more quickly, therefore remaining unemployed for a shorter period of time.⁴⁴

⁴⁰ Art. 42 WW.

⁴¹ Before January 2013 this used to be 208 hours of employment for which wages were due.

⁴² To elucidate this with myself: If I become unemployed in 2016, my real employment history consists of the years 2002 (me starting my first job) to 2015 (the year preceding the year in which I become unemployed). To this I can add the fictitious employment, encompassing in my case 1994, when I turned 18 until and including 1997. Until July 2015, this would have offered me a right to 18 months of benefits in total.

⁴³ *Kamerstukken II*, 2013/14, 33 818 nr. 3, p. 54.

⁴⁴ *Kamerstukken II*, 2013/14, 33 818 nr. 3, p. 54/55.

Amount of benefits

Unemployment benefits in the Netherlands amount to 75% of the difference between the monthly wage of the job lost and any income from employment for the first two months and then 70% thereof. If there is no income from any kind of employment, the benefit therefore is equal to 75% and 70% respectively of the (maximised) monthly salary from which any income from work is subtracted. The formula for this can be found in article 47 WW. In order to make this subtraction mechanism understandable, let's take the example of Jan.⁴⁵ Jan lost his fulltime job completely. His monthly wage was 2.175 Euro. As long as Jan doesn't work, the benefit is calculated as 75% or 70% of this amount, being 1.631,25 Euro and 1.522,50 Euro respectively. If Jan finds a job after four months, in which he earns 1.000 Euro, the monthly wage remains 2.175 Euro, but now the 1.000 Euro he earns is deducted from the monthly wage of 2.175 Euro = 1.175 Euro, and the benefit is 70% of this, being 822,50 Euro. Accepting a job will therefore lead to a lower benefit. However, as Jan already earned 1.000 Euro, his total income will be 1.822,50 Euro. Therefore, accepting work, even below the wage standard that the individual was used to before unemployment, will be rewarded in the present system. The employee will have more money with a low paid or part-time job than without and the public authority saves on benefits as they have to be paid over the difference between the lost wages and the actual wages only. One could therefore characterise this solution as a win – win at least in financial matters. Nevertheless, the fact that the employee may lose skills or that qualifications and experience become irrelevant, may be a disadvantage for the employee as well as for the economy at large. After all, the person in question may have been enrolled in costly subsidised university training, on the job training and so on and these qualifications may be lost or become obsolete once a lower-ranking job is accepted.

⁴⁵ Example taken from: S. Klosse, G.J. Vonk, (2015) *Hoofdzaken Socialezekerheidsrecht*, Boom juridische uitgevers, Den Haag, p. 136.

2.2. Short-time work and calamity unemployment benefits

Although, technically speaking, short-time work is not the same as unemployment, in Dutch daily conversation, the benefit that is awarded in these cases is called an unemployment benefit⁴⁶ by many, therefore it will be dealt with here.

The calamity unemployment benefit will be available in situations in which an external, extraordinary event takes place during the employment relation and which lead to a situation in which the employer cannot make use of at least 20% of his employment capacity.⁴⁷ Two main situations have to be distinguished here, which so far are regulated in different legislative measures. In the first place, the benefit is available in cases where continuous bad weather prevents the employee to do his work.⁴⁸ In other cases, the employer has to ask for permission to unilaterally reduce the employees' working hours.⁴⁹ The aim of this measure is to shift part of the wage costs from the employer to the social security in order to prevent employers from going bankrupt in a situation that might not be more than temporary difficulties due to external factors. This instrument has been used in the meat industry during outbreaks of foot-and-mouth-disease, mad-cow disease and the like. During the 2009 crisis, in order to prevent large-scale dismissals which would have been even more disruptive to the national economy than the strain on social security systems, the admissibility criteria were widened and the regulation became known as part-time unemployment benefit.⁵⁰ By now, the old, strict rules are back in place⁵¹ until the new calamity unemployment benefit enters into force.

⁴⁶ The regulation is called *Regeling calamiteiten WW*, to be translated roughly as calamity unemployment benefit, and can be found at Stcrt 2013/20486.

⁴⁷ The more general decree (*Regeling*) was scheduled to enter into force by 1st of April 2016, but so far it has not entered into force. Therefore, the old rules from 2004 still apply.

⁴⁸ *Regeling onwerkbaar weer*, based on art. 18 WW.

⁴⁹ *Beleidsregels ontheffing verbod op werktijdverkorting*, Stcrt 2004/199, p. 13 ev; For an extensive overview, see W.A. Zondag, (2001), *Werkijdverkorting*, Gouda Quint, Arnhem.

⁵⁰ *Besluit deeltijd-WW tot behoud van vakkerachten*, 31 maart 2009, Stcrt 2009, nr. 64.

⁵¹ *Regeling Calamiteiten WW* van 7 July 2014, Stcrt 2014/20387.

2.3. Extra allowances (*Toeslagenwet*)

If the benefit a person receives on the basis of one of the employee insurance systems does not amount to the minimum subsistence level, this person may have a right to an extra allowance (*toeslag*) on the basis of the *Toeslagenwet*⁵² which guarantees a minimum subsistence level. As it seeks to guarantee a minimum household income, any income of a partner will be considered relevant for the right to and the calculation of the benefit. In contrast to social assistance, however, assets are not taken into account. The social minimum is calculated according to art. 2 and is 100% of the gross minimum wage for a married couple, 90% thereof for a single parent and 70% for a single person. In the last category, the individual's age also matters. The extra allowance will never be more than the difference between any income and the social minimum applicable in the situation.⁵³ In case the former income was already below the social minimum, e.g. due to working part-time, the ceiling of the extra allowance will be defined by that former income.⁵⁴

2.4. Social assistance

For those who do not have any other source of income, including any social security benefit, reliance on social assistance is the last possibility to ensure a minimum subsistence level. The new act on social assistance entered into force on January 1st 2015 and is called "*Participatiewet*" to be translated as Participation Act (Pw)⁵⁵. True to its title, the act not only provides a basic subsistence level assistance, but in the first place intends to get people out of the assistance system as quickly as possible.⁵⁶ Social

⁵² Wet van 6 november 1986, Stb. 1986 nr. 562.

⁵³ Certain income (30% of wages earned up to a certain ceiling) will be left aside in order to encourage work, see art. 7 TW.

⁵⁴ S. Klosse, G.J. Vonk, (2015), *Hoofdzaken Socialezekerheidsrecht*, Boom juridische uitgevers, Den Haag, p. 242.

⁵⁵ Wet van 9 oktober 2003, Stb. 2003 nr 375.

⁵⁶ S. Klosse, G.J. Vonk, (2015), *Hoofdzaken Socialezekerheidsrecht*, Boom juridische uitgevers, Den Haag, p. 220.

assistance is meant to provide the bare subsistence level, therefore all income and assets are taken into account.⁵⁷ It is interesting to note that fictitious wages, being wages which could have been earned in a job that was available, will be taken into account as assets that the individual can reasonably use and can lead to a reduction of benefits.⁵⁸ Different basic norms apply according to the family situation. Furthermore, the actual amount of benefits depends on the composition of the household and decreases with every additional household member.⁵⁹ Once a right to assistance is established, the assistance recipient has to fulfil strict duties and obligations in order to keep this assistance. In the first place, the individual must inform the authorities on every detail that may relate to the right to assistance. Non-compliance will lead to an administrative fine equal to the advantage the individual got. Furthermore, the individual must comply with any measures taken by the administrative authorities when implementing the right to benefits. This also includes the duty to accept an inspection of the place where the individual lives. Even though the law says that the benefit recipient needs to approve the inspection, a refusal to grant entry to the social services can lead to reduction or refusal of the benefit.⁶⁰

2.5. Special regimes for elderly long-term and partially incapacitated unemployed

After the right to unemployment benefits has finished, certain groups of persons have a right to specific benefits on the grounds of one of two laws which target the situation of elderly unemployed in particular. These laws are the IOAW (*Wet inkomensvoorziening oudere en gedeeltelijk arbeidsongeschikte werkloze werknemers*)⁶¹ and the IOW (*Wet*

⁵⁷ This applies to partners' assets only and not also to assets of mere house hold members.

⁵⁸ CRvB 14 juli 2009, ECLI:NL:CRVB:2009:BJ2763.

⁵⁹ The *kostendelersnorm*, meaning a possibility to profit from economies of scale in case more than two adults live under the same roof. See art. 21 and further *Participatiewet*.

⁶⁰ Art. 54 Pw, for case law under the previous Act on social assistance see CRvB 11 april 2007, ECLI:NL:CRVB:2007:BA2447.

⁶¹ Wet van 6 november 1986, Stb. 1986 nr. 565.

inkomensvoorziening oudere werklozen)⁶² respectively. The importance of both legislative measures lies in the fact that they offer exemptions to the harsh rules on assets in the *Participatiewet* while providing a minimum income.

The IOAW intends to ensure a minimum subsistence level and is available to unemployed persons born before January 1st 1965 who have become unemployed after their 50th birthday. They must have consumed all rights to their (prolonged) unemployment benefits.⁶³ The right to benefits comes into existence, in case the subsistence levels for the household laid down in art. 5 (3) to (6) are not reached. The benefit level equals the difference between the household income and the subsistence level mentioned in articles 5 and 6 IOAW. This means that any income in the household is relevant for the right to and the calculation of the benefit. Benefits are available until the pensionable age, when the statutory pension replaces this minimum benefit.

The IOW is a law that will expire in 2027. It was originally meant to mitigate the consequences of the reduction of the maximum period of unemployment benefits from 60 months to 38 months in 2006, but was prolonged in 2016, as that Act also reduced the period of unemployment benefits.⁶⁴ The IOW offers particular benefits to those who become unemployed between September 30th, 2006 and January 1st 2020, who at that time are at least 60 years old and who fulfil the criteria laid down in art. 42 (2)(a) or (b) WW.⁶⁵ Art. 3a IOW also opens the benefit to those becoming partially incapacitated between December 31st 2007 and January 1st 2020, who have a right to the so-called wage-related invalidity benefit (*loongerelateerde WGA-uitkering*) and are sixty years or older at that moment. The benefit is calculated according to art. 10 IOW and can never be more than 70% of the statutory minimum wage. As this is

⁶² Wet van 19 juni 2008, Stb. 2008, nr. 340.

⁶³ Art. 2 IOAW.

⁶⁴ S. Klosse, G.J. Vonk, (2015), *Hoofdzaken Socialezekerheidsrecht*, Boom juridische uitgevers Den Haag, p. 243.

⁶⁵ See art. 3 IOW. Art. 42 (1)(a) WW contains the four-out-of-five requirement described in paragraph 2.1 that allows for a prolongation of the unemployment benefit after three months, sub (b) relates to the right of invalidity benefits immediately preceding the right to unemployment benefits.

substantially more than the subsistence level, the IOW is a more generous benefit than the IOAW. It is available regardless of any income of a partner or the individual's assets.

3. Activation measures

Activation measures can be classified according to their main focus. In the first place, activation measures can have an enabling character, offering guidance to the unemployed, e.g. by individual counselling, tailor-made training opportunities or general (re)training of skills, like presentation skills. On the other hand, there are measures that aim not so much at enabling the individual to find and keep a job but to make them accept any kind of paid employment in order to keep benefit reliance at a minimal time space. Both types of measures will be discussed in more detail below.

3.1. Enabling measures for employees: training, counselling and re-integration

Young persons

Generally speaking, Dutch law contains many possibilities for training and education. Young persons are obliged to attend school or undergo training until the age of 18 at least. Up to the age of 16, this is called '*leerplicht*'⁶⁶ and means that the young person must be attending some kind of (secondary) education. If a young person between the age of 16 and 18, has not yet achieved a final grade in secondary education, this duty is called the '*kwalificatieplicht*'.⁶⁷ Students who leave school at 16 without even a basic qualification will be monitored by the municipality and be offered either further education or practical training. In the branches of education that aim to qualify students for practical work, practical training, including internships is part of the study programme. Furthermore, there are forms of dual training and education in the form

⁶⁶ Art. 3 *Leerplichtwet*.

⁶⁷ Art. 4a *Leerplichtwet*.

of the *beroepsopleidendeleerweg* (BOL) and the *beroepsbegeleidendeleerweg* (BBL) linked to the lowest grades of secondary education. Both combine school and practical training in an enterprise by means of an (unpaid) internship. Theory is dealt with at school and relevant training is provided under circumstances that resemble actual work as much as possible, in an undertaking. The difference is that in the latter, the BBL, the practical part forms at least 60% of the training programme. The BBL usually takes two years to complete and it offers possibilities for tailor made solutions for each student according to his / her level when starting the trajectory. The BOL consists of at least 60% theoretical education, takes between two and four years and leads to higher qualifications. Furthermore, special regimes exist for students with low IQ and / or social and emotional problems. The aim is to lead them towards basic forms of employment or the lowest level of theoretical education. The age limit for these programmes usually is 18 years.⁶⁸

Persons above school and training age

Training opportunities for older persons are less structured and – more importantly – much less generous. However, during the last years much attention has been paid on efforts to keep everyone in society employable. In labour law legislation, article 7:611a BW has been added to the general duty of good employership. It contains a duty for the employer to keep offering training and education which is necessary for the employee to remain able to fulfil his job. Furthermore, the employer must, as much as reasonably possible, offer training aimed at different jobs in case the employee's job is no longer available or the employee is no longer fit to do the job. The costs incurred for this necessary training cannot be deducted from the transitory compensation that is due in case the employment contract is terminated.⁶⁹ Costs relating to training not

⁶⁸ <https://nl.wikipedia.org/wiki/Praktijkonderwijs>.

⁶⁹ *Besluit voorwaarden in mindering brengen kosten op transitievergoeding*, 23 April 2015, Stb. 2015/171.

related to the specific job may be deducted from the transitional fee.⁷⁰

Unemployed

Persons receiving an unemployment benefit may enrol for training and education measures. The current Unemployment Act (*Werkloosheidswet, WW*)⁷¹, however, contains more enabling measures than just the right to training and education. To begin with, unemployed persons have a right to assistance concerning re-integration into employment.⁷² However, this right to assistance is not a hard and fast right. It is rather the administrative authority that decides the scope of the right to assistance in each individual case.⁷³ The eventual decision about concrete measures is laid down in a so-called re-integration plan. This plan contains concrete steps and measures, rights and duties. Originally intended to be a mutual agreement, in practice, the plan is drawn up by the administrative authority and then discussed. However, in case of disagreement, the administrative authority decides. In practice, assistance in finding a new suitable job during the first three months of unemployment is limited to access to the administrative authority's digital environment where employers post their job offers and unemployed can look for jobs. Only if the search for a job has not been successful during the first three months, personal coaching will take place. An advisor will then assess whether re-integration measures are necessary and if so, which ones.⁷⁴

In the second place, unemployed persons have a right to training and education if this is deemed necessary for their employment chances. According to art. 2 of the Policy Guidelines for training⁷⁵, a necessity for

⁷⁰ *Besluit voorwaarden in mindering brengen kosten op transitievergoeding*, 23 April 2015, Stb. 2015/171.

⁷¹ Wet van 6 november 1986, Stb. 1986 nr 566.

⁷² Art. 73 WW.

⁷³ S. Klosse, G.J. Vonk, (2015), *Hoofdzaken Socialezekerheidsrecht*, Boom juridische uitgevers Den Haag, p. 248.

⁷⁴ *Ibidem*, p. 250.

⁷⁵ *Beleidsregels Scholing 2016*, Stcrt 2016, nr. 24765, art. 2 sub a en b.

training is present if the training is relevant for the employment market⁷⁶ the training can be completed within a year and the individual in question has sufficient capacities for training (*schoolbaarheid*). If these conditions are fulfilled, the individual may undergo training while keeping the benefits and being exempted from the duty to apply for jobs until the training is completed.⁷⁷ If the training is not considered necessary within the meaning of the Decree on education in unemployment, the unemployed may still enrol in training programmes, but will not be exempted from the duty to apply for and to accept suitable jobs. For this category, therefore, acceptance of paid work prevails over training and education, even if the latter may offer more stable prospects of work and a better long-term perspective.

In the third place, according to art. 76a WW, an employee can be placed at an enterprise for an unpaid trial period for a maximum of 26 weeks in order to experience work (*proefplaatsing*). In order to prevent abuse, strict requirements have to be met, amongst which the perspective that after the trial period work for at least the same number of hours is available for at least half a year. A different possibility is the use of art. 77a WW, which offers the opportunity to start a business from unemployment by allowing the starter to keep benefits for 26 weeks after the business is set up and running.

Finally, for persons who are extremely unlikely to find a job and who are categorised as impossible to re-integrate (*niet bemiddelbaar*) on the employment market at the moment, art. 78c WW offers the possibility to let them do unpaid work for a maximum of 2 years on a so-called participation place (*participatieplaats*). This measure is well known in social assistance, but now has also been introduced in unemployment legislation. The work that is done must be of an additional nature and must not lead to real jobs being made redundant. The aim of placing someone in a measure like this is to make them experience work or to

⁷⁶ See art. 3 of the Policy guidelines. There are three possibilities, a guarantee of declaration of intention from a prospective employer, the job being defined as “kansberoep” by the UWV or a substantiated argumentation that the training helps finding a job or self-employment after completion.

⁷⁷ Art. 6 and 6a of the Decree on exemptions from duties in social security legislation (*Regeling vrijstelling verplichtingen socialezekerheidswetten*).

develop certain skills and / or competences.

Although it is not part of the re-integration chapter in the Act, in my view, the rules on *'inkomensverrekening'* explained above within the context of the amount of benefits can be classified as an enabling activation measure. By assuring that the individual who accepts a job below his former pay rate or even below benefit level will always be better off working than not working, this measure is a strong incentive to accept work more quickly than might be the case otherwise. Only when the wages earned amount to more than 87,5% of the former wages will the benefit be lost as this loss is no longer deemed relevant.⁷⁸

Social assistance

The Participation Act (*Participatiewet*, Pw⁷⁹) certainly contains most activation measures of all social security and social assistance legislation. It distinguishes between assistance (*ondersteuning*) on the one hand, which means assistance in finding employment that can be exercised independently and measures (*voorzieningen*) which are meant for those who are not yet able to independently find a job. Concerning assistance, the most important right is the right to assistance in finding a job discussed above, which can be found in article 10 Pw. Also most of the measures discussed above, like participation placements (art. 10a Pw), are available under the Participation Act. Again, this means that an individual who is not fit to find a job on his / her own may be obliged to perform unpaid work in order to get closer to the employment market. However, within the framework of the Participation Act, some extra rules apply. For example, after working on a participation place for half a year the individual who does not have a degree in secondary education will be offered a place at school or training, except if this is not feasible due to the individual's (intellectual) capacities.⁸⁰ Secondly, an incentive can be added to this placement, the so-called stimulation bonus. It is a bonus the individual receives if he has sufficiently participated in

⁷⁸ Art. 20 (1) (c) WW.

⁷⁹ Wet van 9 oktober 2003, Stb. 2003 nr 375.

⁸⁰ Art. 10a (5) Pw.

enhancing his chances for a real job and amounts to almost 2.500 Euro per year which may be kept in addition to the social assistance benefit.⁸¹ If there is no chance whatsoever of finding any job, placement in sheltered jobs is possible as a means of last resort.⁸²

3.2. Enabling measures: Incentives for employers

Some enabling measures do not target the unemployed or social assistance benefit recipient, but rather their prospective employers. One of these incentives for employers is the no-risk social security coverage available for (partially) incapacitated and elderly unemployed employees.⁸³ The employer will then be exempted from the duty to pay wages while the employee is sick if the sickness manifests itself within five years of starting the job. This may help inciting employers to offer a job to someone with health problems, who, usually, due to the 104 weeks of wages in case of sickness, will be a liability and therefore more or less without a chance on the employment market. A comparable instrument is the reduction of social security contributions in case elderly or partially incapacitated unemployed are taken on.⁸⁴

For persons trying to re-enter the employment market from a social assistance benefit situation and who are at that point unable to earn at least the statutory minimum wage, there is a possibility to ask for a wage cost subsidy. The employer pays the employee the statutory minimum wage and is compensated for up to 70% of that amount, depending on how valuable the work is.⁸⁵ The employer thus only pays the “real value” of the work, while the person in question can start on a real job with “real” minimum wages.

⁸¹ Art. 10a (6) Pw.

⁸² Art. 10b Pw.

⁸³ Art. 29b, 29d *Ziektenwet* (Zw).

⁸⁴ Art. 47 and 48 *Wet financiering sociale verzekeringen* (Wfsv).

⁸⁵ Art. 10d Pw. The *Besluit loonkostensubsidie Participatiewet* (Decree on wage cost subsidy in the Act on Participation) and a *Regeling loonkostensubsidie Participatiewet* (Regulation on wage cost subsidy in the Act on Participation) contain the specific rules for the determination of the value of the work done.

3.3. Coercive measures

In full agreement with EU activation policies, the enabling measures discussed above are complemented by measures of a rather coercive nature, intended to incite the individual to leave the benefit situation as quickly as possible. Irrespective of the benefit / assistance that is sought, the first duty of the benefit recipient is a duty to inform the relevant instances on all facts that can be relevant for the benefit, particularly, but by no means exclusively, income from other jobs, finding / accepting a job offer or job applications,⁸⁶ changes in the household or family situation⁸⁷ and the like.

Unemployment legislation

A much more interesting obligation is not to become or remain unemployed. The unemployed is furthermore obliged to accept suitable job offers and must refrain from putting the social security agencies at a disadvantage.⁸⁸ These obligations have been set out in the law in great detail and will be discussed below.

However, before the duties to accept, keep and get a suitable job can be explained properly, the notion of ‘suitable employment’ must be explained as only this allows for a proper assessment of the strictness of these duties. The definition of suitable work in the Decree on suitable work is of crucial importance here.⁸⁹ During the first six months of unemployment, suitable work is work that resembles the kind of work that was done before the unemployment. This means that the job must fit the education and training, offer a salary that amounts to at least 70% of the salary earned in the old job and does not demand more than two hours of commuting per day. However, suitable work can also be work on a lower level which offers perspectives to get back on the old level

⁸⁶ Art. 25 WW.

⁸⁷ Art. 17 Pw.

⁸⁸ Art. 24 WW.

⁸⁹ *Besluit passende arbeid WW en ZW* (Decree on suitable work in unemployment and sickness legislation), Stb 2014, 525.

within six months. Intermittent work of a lesser nature, with lower qualification requirements and lower wages before a new job that has been secured is started also is suitable.⁹⁰ The person in question is therefore allowed to restrict the search for jobs to a level and to functions comparable to the one he or she just lost, but must be prepared to start on a lower level or to accept intermittent work in order not to remain unemployed longer than necessary. After six months, every kind of job, taking into account the individual's capabilities is deemed suitable, except if acceptance cannot be demanded due to physical, mental or social reasons connected to the individual. This may mean that the individual in question will be required to commute to even faraway places or to move houses. It may also mean employment far below the level of skills and responsibility (and therefore wages) the individual was used to.

a) Reprehensibly becoming unemployed (*verwijtbaar werkloos worden*)

The Unemployment Act defines two situations in which the individual is held to be reprehensibly unemployed. The first situation is where the individual through his behaviour or deeds gives a reason for summary dismissal.⁹¹ The second ground is that the employee takes the initiative concerning the termination of the contract, even though it could reasonably have been continued.⁹² However, it is not necessary to defend oneself in court against an employer's action to terminate the contract, as in this case the initiative for termination is clearly with the employer.⁹³ It is also possible to agree to a termination proposal made by the employer without risking one's unemployment benefits. Still, sometimes acquiescence or approval of a termination can amount to disfavoursing the social security agency, for example in case the employee is sick for less than 104 weeks and cannot be dismissed. As in that case the employee voluntarily and unnecessarily surrenders his legal protection,

⁹⁰ Art. 4 *Besluit passende arbeid WW en ZW*.

⁹¹ Art. 24 (2) (a) WW.

⁹² Art. 24 (2) (b) WW.

⁹³ Art. 24(6) WW.

this will be deemed a ‘disfavouring of the social services’ (*benadelingshandeling*) and will be sanctioned.⁹⁴

b) Reprehensibly remaining unemployed (*vernijtbaar werkloos blijven*)

A second main obligation is not to remain unemployed for a longer period than necessary. It is within this framework that the concept of suitable work discussed above is of crucial importance. A first aspect of this duty is the duty to apply for suitable jobs. It is important to document the activities so the social security agency can verify the efforts. If these are deemed insufficient, the benefits will be cut according to art. 27(3) WW.⁹⁵

A second aspect of the duty of not remaining unemployed is that the employee must not neglect to accept suitable work (art. 24 (1) sub b 2 WW). In short, this means that the employee must not reject a concrete job offer that is deemed suitable. This obligation starts even before unemployment has arisen, namely the moment when unemployment becomes a realistic prospect.⁹⁶

This duty must be distinguished clearly from the duty to keep suitable work (art. 24 (1) sub b 3 WW). This falls within the ambit of reprehensibly becoming unemployed, therefore, as long as the employee cannot be blamed for not keeping suitable work, the benefit will be safe. There is one exception to this, being that the employee does not accept an offer to continue a fixed-term contract while there are no relevant changes in the employment and working conditions. This shows that as long as the employment conditions do not change substantially, the criterion will be whether the individual kept his job (*passende arbeid behouden*). On the other hand, if there are significant changes in the job,

⁹⁴ Art. 24(5) jo (6) WW.

⁹⁵ The general rule is a reduction of 25% for four weeks, but sanctions can be harsher or less harsh according to the concrete circumstances of the case. See the paragraph on sanctions below.

⁹⁶ S. Klosse, G.J. Vonk, (2015), *Hoofdzaken Socialezekerheidsrecht*, Boom juridische uitgevers, Den Haag, p. 150.

the criterion will be whether the employee should have accepted the job (*passende arbeid aanvaarden*).⁹⁷

3.4. Sanctions

The Unemployment Act also contains sanctions. They can be found in art. 27-29 WW. The most important article to discuss here is article 27 WW as this contains the different sanctions to the duties explained in more detail above.

Non-compliance with the duty to keep suitable work (*passende arbeid behouden* ex art. 24 (1) sub b 3 WW) triggers the sanction of article 27 (1) WW. This category applies to situations in which there is no substantial change in employment conditions, for example if the employee is offered a continuation of a fixed-term contract under essentially the same conditions as the contract that just expired. The sanction article 27(1) WW prescribes is a permanent reduction of the benefit, but there is an escape: if the reason why the work was not kept is not reprehensible, the sanction can be limited to a temporary reduction of benefits.⁹⁸ On the other hand, if there are significant changes in the job, the duty that has been neglected is that the employee should have accepted the job (*passende arbeid aanvaarden*). According to article 27 (2) WW, the sanction in this case is the permanent reduction of benefits. There is no possibility to moderate the sanction. It is interesting to notice that the thin line between significant and insignificant changes in employment conditions, which is often less clear *in concreto* than *in abstracto*, can make a huge difference in sanctions. It is even more astonishing that the harsher sanction applies in cases that entail bigger changes, as one might expect the sanctions to be stricter in case the differences between the old job and a prospective new one are relatively irrelevant.

To make things more complicated, in addition to the sanctions contained in the WW itself, there also is the Decree on sanctions in

⁹⁷ CRvB 14 november 2012, ECLI:NL:2012:BY3495.

⁹⁸ Article 24(2) WW jo Art. 27 (1) WW.

social security legislation⁹⁹ and policy guidelines on sanctions in social security law.¹⁰⁰ Therefore, if a sanction cannot be found in the WW itself (e.g. non-compliance with art. 24 (1) b 1 or 4 (not b2 and b3 as they are regulated in art. 27 WW), the decree defines the sanction. The Decree describes the different categories of sanctions in social security law (art. 2) and defines the cases in which any of those five categories of sanctions is applied. The normal sanction consists of a reduction or even complete withdrawal of the benefit and range from a 5% reduction of benefits during at least one month for the first category up to a complete and permanent refusal of benefits in the fourth category. Special rules apply in case the non-compliance is not reprehensible and in case the person in question has been sanctioned before.¹⁰¹ The policy guideline on sanctions offers some more guidance for individual cases, where it states that, generally speaking, the sanction should be equal to the amount of benefits that have been paid. This means that the individual will not only have to pay back the benefits to which he / she was not entitled, but also that he / she has to pay a fine of the same amount by way of sanction. In case the individual has been sanctioned before, the fine will be 150% of the amount of benefits received.¹⁰² In every individual case, according to art. 4 of the guideline, an assessment has to be made whether the fine is in line with the seriousness of the individual's neglect of duties. The fine must be in balance with the seriousness of the facts and must reflect the circumstances of the concrete case.¹⁰³

Sanctions can also be found in the *Participatiewet*. Municipalities are responsible for the implementation of the *Participatiewet*, including the sanctioning part and therefore have their own decrees which concretise the rights, duties and sanctions.¹⁰⁴ With regard to certain duties, specified

⁹⁹ *Maatregelenbesluit socialezekerheidswetten*, Stb. 2007/304.

¹⁰⁰ *Beleidsregel boete werknemer 2013*.

¹⁰¹ Art. 8 *Maatregelenbesluit Socialezekerheidswetten*.

¹⁰² Art. 3 *Beleidsregel boete werknemer 2013*.

¹⁰³ CRvB 27 mei 2010, ECLI:CRVB:2010:BM5914.

¹⁰⁴ See e.g. art. 18 (5) Pw from which it becomes clear that the municipal authorities must have a regulation on sanctions concerning non-compliance with the duties in the *Participatiewet*.

in art. 18 (4) Pw, the municipality must react with a reduction of the social assistance, but may still be free in determining the period of time during which this sanctions apply. Just to give an idea on how strict the sanctions can be, art. 18 (6) and (7) Pw allow for a 100% reduction of social assistance allowances for a period of time to be specified in the municipal regulation. This essentially means that a household can be left without any means of subsistence due to non-compliance with duties specified in art. 18 Pw.

4. Assessment

Considering all the aspects of Dutch legislation concerning the protection of unemployed persons, where do the strengths and weaknesses of the Dutch system lie?

Although the Act on Employment and Security has barely been in force for a year, it has already become clear that not all the intended aims have been reached. Recent figures show that instead of limiting dismissal protection, the introduction of limited grounds for dismissal actually made dismissal harder.¹⁰⁵ This leads to employers becoming even more risk-averse and opting for even more flexible contracts which eventually leads to no dismissal protection at all. On the activation side, the transitory compensation does not seem to have much effect yet, which may be due to the fact that there is no obligation to spend the money on education and re-training. As before 2015, any compensation awarded because of the dismissal could be used freely, the envisaged mindset may just need some time to develop.

With regard to income protection of unemployed persons, the Dutch Unemployment Benefit Act offers relatively generous benefits of 75% and 70% respectively of the maximised daily wages. If the person in question receives a benefit below subsistence level, recourse to the *Toeslagenwet* may alleviate the financial hardship, while eligibility for the

¹⁰⁵ Under the old system about 10% of all requests for dismissal were turned down, that figure now seems to stand at somewhere between 30 and 40%. For more details, see VAAN-VvA Evaluatieonderzoek WWZ 2016, A.R. Houweling, M.J.M.T. Keulaerds, P. Kruit, (2016), *Boom juridische uitgevers*, Den Haag .

IOW or the *IOAW* prevents the application of the harsh income and asset tests of social assistance legislation. A social assistance benefit is only available if the individual in question does not have income or assets. In that case, a minimum subsistence level is provided by the state in order to prevent the (long-term) unemployed from having to rely on charity.

Concerning activation measures, a first thing that has to be noted is the importance attached to all forms of training, particularly at a young age. The Dutch authorities try to prevent as much as possible that young persons leave school without any kind of basic qualification. Once in employment, employees have a right to training and education that is needed to stay fit in their job or another job in the enterprise if the current job is likely to disappear. For the unemployed, training opportunities, due to lack of funds of the administrative authority, are few. Generally speaking, an individual may enrol in training, but only if this is deemed necessary by the authority will this lead to an exemption from the duty to accept suitable work. Anyone fit to accept suitable work without training may enrol, but will always be supposed to leave educational measures in favour of taking up suitable employment. For those in real need of training, the rules suffice, but for those who want to improve their prospects on the labour market, the current rules actually are a disincentive to engage in training.

Possibly the most important and – potentially most effective – enabling activation measure is assistance in re-integration through guidance and counselling in finding a new suitable job. Therefore it is astonishing that, although all social security and social assistance legislation contain this right, little seems to be achieved in practice. This may be due to the fact that many of the activation policy measures that were meant to help people back into employment quickly have become starved of funds and staff. As described above, the UWV does not offer any personal counselling during the first three months of unemployment, all communication is held via the UWV website, which, incidentally, often has technical problems. It seems therefore, that although the law offers a lot of instruments to help people back into work, in practice, very little happens, and particularly those who do not possess great computer,

reading or cognitive skills are placed at a disadvantage right from the beginning. After all, it is this group that has the greatest difficulties with the digital approach and the concept of self-help. Incidentally, this may also be the group that is in greatest danger of becoming long-term unemployed. Once it has become clear that the individual will not be able to get out of unemployment by himself, other measures become available. These include training, trial periods and even unpaid work if that helps the individual in getting back into or closer to the employment market. However, the easiest moment of getting someone back on track has passed by then. A second potentially valuable activation measure – although not being labelled as such - is the '*inkomensverrekening*', the concept explained above according to which an individual on benefits will always be better off accepting (low paid) work than just living off a benefit. It offers a financial incentive to the individual to accept paid work. Therefore I am not sure whether it can be classified as truly enabling, as it does not depend on funding or active participation on the authorities' side. Maybe one could state that the *inkomensverrekening* is the more enabling or incentive aspect of duty to accept suitable work.

The second track of the activation measures consists of duties and the corresponding sanctions. Benefit recipients, regardless of the legal basis of the specific benefit sought, are confronted with many duties ranging from information duties to the duty to provide unpaid work. Sanctions are harsh. As described above, failure to accept a suitable job can result in a complete withdrawal of benefits. This sanction is even harsher when one takes into account the new definition of 'suitable employment'. Unemployed persons eventually are nudged into jobs, even if they are below their qualifications, skills and competences and offer lower wages. If applied too harshly, this measure threatens to undermine the employment market in several ways. In the first place, the question needs to be asked whether employers really are queuing for overqualified job applicants. In other words, why would an employer choose an overqualified engineer above someone who is sufficiently qualified for the job on offer? In the second place, one has to take into account how rejection for a job below the level of qualification affects the individual in question. What are the consequences for that person's self-esteem and

what does that mean for long-term possibilities of getting back into employment? Finally, if a job below the former level of capacities, skills and competences is accepted, this leads to a loss of human capital and loss of investment by society (e.g. expensive subsidised university degrees don't pay off) even though from a purely financial point of view, acceptance of a lower paid job is appealing for the individual and the social security authorities. The duties contained in the different legislative acts are meant to assure that the individual does everything reasonably within his power to stay out of the social security system and once in the system, does his best to get out again. Non-compliance will be sanctioned and these sanctions can be harsh, up to a complete, permanent withdrawal of a right to benefits. If benefits have been paid without proper cause, the individual will not only have to pay back the full amount of benefits, but on top of that is liable to be fined the same amount, except if there is no or little fault on his side.

5. Conclusion

Overall, one can say that in Dutch law a reasonable protection is ensured in the first place by relatively harsh rules on dismissal and generous benefits. Once a person is unemployed, activation aspects complete this picture: benefits for more than three months have to be earned. Once unemployment occurs, strict duties apply. If these are neglected, harsh sanctions will follow. When assessing the protection system as a whole, it is interesting to note that some of the most effective measures like individual guidance and counselling are not generally available until after three months of unemployment, which makes persons with a small network and low digital skills vulnerable. It seems that within the framework of activation, the Dutch legislator and also the executive authorities believe in coercion and sanctions rather than in enabling measures. This may be due to the fact that enabling measures tend to cost money before any benefits in the form of shorter unemployment duration, better matches leading to higher wages and higher contributions can be reaped. Right now, this money is not readily (made) available due to budgetary restraints. Instead, coercive measures are

chosen, which also are costly, if one thinks about enforcement. Maybe the rewards are more visible if the individual has to pay back benefits and a fine on top of that while the costs are hidden? However, this emphasis on repression and duties rather than on prevention and enabling measures means that the whole system seems out of balance. Activation towards participation is definitely the main focus in all social security, but this is achieved via duties, responsabilisation of the individual and sanctions rather than by enabling measures.

Protection in case of Unemployment in Poland. The existing situation and future challenges

Agata Ludera-Ruszel

Abstract

Unemployment became a new social problem in Poland after the collapse of the socialist regime and the transition to the free market economy. The experiences gained by other free-market countries have proved that the effective fight against unemployment requires appropriate public policy in this regard. Since 1989 Polish labour law has undergone a number of significant changes. Most of them were introduced after Poland's accession to the EU and were aimed at the better integration of unemployed people with the labour market. Although Poland was not severely hit by the results of the global economic crisis of 2008, it is emphasized that the economic recession was one of the main driving forces of the last legislative changes, especially those adopted in 2014. Despite significant improvements in this regard, changes aimed at making the labour market work better are still necessary. After the introduction and brief description of the existing protection against unfair dismissal, this study focuses on the mechanisms with regard to protection in case of unemployment – both insurance and activation. Taking into account the strengths and weaknesses of the system of protection against unemployment, the study is going to identify challenges that Poland still faces in this area.

Summary: Introductory remarks. 1. Protection against unemployment: dismissal law. 2. Income protection for unemployed people. 2.1 Unemployment benefit. The right to benefit. Duration of benefit. Amount of benefit. Conditionality and activation duties. 2.2 Social assistance benefits. 2.3 Additional benefits. 3. Activation measures. 3.1 Professionally active people. 3.2 People at risk of unemployment. 3.3 Unemployed people. Individualized approach. Institutional dimension: public-private model of cooperation. 3.4 Active inclusion tools. Support by social assistance services. Support from public employment services. Institutional dimension: cooperation between agencies. 4. Conclusions.

Introductory remarks

The process of political and economic transition which began in 1989 played a decisive role for unemployment issues in Poland and in other so-called Eastern block countries. The pre-1989 socialist political system, based on the idea of full employment, did not at all allow for the existence of the phenomenon of unemployment, which was attributed only to the capitalist economy. As a result, at this time neither public employment services nor social assistance services existed in their current form.¹⁰⁶ The already existing legislation against unfair dismissal remained with no practical significance. The application of the full employment policy resulted in considerable employment overgrowth, which over the time has led to the emergence of hidden unemployment phenomena. In these circumstances the transition to the free market economy was reflected in massive unemployment, which at the end of 1990 covered the stunning level of more than one million people. Protection against unemployment has become, since that time, a highly debated issue, especially with regard to the existing differences in protection between different forms of employment that coexist in the labour market.

The socioeconomic effects of unemployment forced the Polish government to address this problem, which was new for Polish reality. In these circumstances “the social policy system had to be created immediately and from scratch”.¹⁰⁷ The experience gained by countries that already had a free market economy proved that the fight against unemployment requires appropriate public policy in this regard.¹⁰⁸ As business practice shows, the free market mechanism could not itself effectively address the issue of unemployment, which, besides the grave

¹⁰⁶ D. Zalewski, (2005), *Opieka i pomoc społeczna – dynamika instytucji*, [Social assistance – Dynamics of the institution], Warszawa, p. 108-109.

¹⁰⁷ S. Mandes, (2016), *Activation policy in a fragmented welfare system: the case of Poland*, in: *Integrating Social and Employment Policies in Europe: Active Inclusion and Challenges for Local Welfare Governance*, ed. Marin Heidenreich, D. Rice, UK, USA, p. 72.

¹⁰⁸ E. Staszewska, (2012), *Środki prawne przeciwdziałania bezrobociu*, [Legal measures to tackle unemployment], Wolters Kluwer.

economic effects, also causes far-reaching social consequences. The model of the social market economy as an economy that takes into account its social aspects, and that was accepted in the newly adopted Constitution from 1997 as the basis for an economic system in Poland (Article 20 of the Polish Constitution¹⁰⁹), constituted an additional justification for state intervention in this regard. In this model the economic system is based, not only on free market forces, freedom to conduct business activity and private ownership, but also and foremost on solidarity, dialogue and cooperation between the social partners, which all are pillars of the economy defined as “social”.¹¹⁰

Shortly after the transition to the free market economy the key priority of the institutional reforms was to improve the functioning of the Polish labour market. At this time the role of the activation policy within employment and social policy was, however, secondary compared to the primary role that was then played by the social policy aimed at alleviation of the negative social effects of the transition, which was based on well developed and generous social security benefits. The ability of individuals to adjust to the changing market needs was then naively believed in.¹¹¹ However, hard reality quickly changed this wrong approach when the level of unemployment gradually grew to its peak of above 16% in 1993 and 20% in the early 2000s. The negative effects of unemployment hit first and foremost fixed-term employees, who remained without protection compared to indefinite-term employees. Polish legislation has not addressed this problem, just as the emergence of the phenomena of the massive use of self-employment and civil law contracts as working arrangements has occurred.

The accession to the European Union (EU) caused a decrease in the unemployment rate, which was not the result of the improvement of the situation in the labour market, but the strong mass emigration that Poland experienced at this time, due to the opening of the labour market

¹⁰⁹ Constitution of the Republic of Poland dated 2 April 1997, (Journal of Laws from 1997, No 78, item 483).

¹¹⁰ T. Liszcz, *Praca i kapitał w Konstytucji Rzeczypospolitej Polskiej*, [Labour and capital under the Constitution of the Republic of Poland], (2014) No 22, *Studia Iuridica Lublinensia*, p. 259-260.

¹¹¹ S. Mandes, (2016), *Activation policy...* p. 74.

of the “old EU Member states” for Polish citizens. At this time, Poland was faced with implementing objectives provided for in programming documents on employment issues, in particular in the Lisbon strategy.¹¹² On the basis of the *flexicurity* strategy, which provides for the adequate combination of effective active labour market policy and a modern social security system, the newly adopted Act on employment promotion and labour market institutions¹¹³ completely restructured the system of support for individuals who fail to meet the challenges of the labour market. In comparison to the previous relevant legislation in this area, it is the current legal act that has been based on different, as previously, assumptions that may be seen from its title that puts emphasis on an active approach to labour market policy, and not only on the alleviation of the negative consequences of unemployment phenomena.¹¹⁴ As such, the Act on employment promotion fits in with the implementation of effective active labour market policy (ALMP) that helps people cope with rapid changes and reduces periods of unemployment and eases the transition to new jobs. Since this time, in Poland the activation policy was also implemented by the social assistance institutions, within the social assistance system, whose key principle is not only to provide support to those in a difficult situation in life, who are threatened with social exclusion in the form of redistributive measures (which, however, remains the primary objective of social assistance services under the Act on social assistance¹¹⁵), but also “to offer them help in social re-inclusion and in becoming socially independent, also in view of their professional integration and return to the labour market” in the form of activation

¹¹² See Lisbon strategy, <http://www.wrpo.wielkopolskie.pl/files/117372424745f59c57e9cb1/att1155.pdf> (accessed on 13 April 2016) - here in after referred to as the Lisbon strategy.

¹¹³ Act of 20 April 2004, (Journal of Laws from 2013, item 674 –hereinafter referred to as the Act on employment promotion or the Act from 2004.

¹¹⁴ Z. Góral, (2011), in: *Ustawa o promocji zatrudnienia i instytucjach rynku pracy. Praktyczny komentarz*, [Act on employment promotion and labour market institutions. Practical commentary], Z. Góral (ed.), Wolters Kluwer, Lex/el.

¹¹⁵ Act on 12 March 2004 on social assistance, (Journal of Laws from 2004, No 64, item 593) – hereinafter referred to as the Act on social assistance.

policies.¹¹⁶ The legal basis for active forms of social assistance aimed at the activation of individuals of marginalized groups at the risk of social exclusion is provided for in the Act of 13 June 2003 on social employment.¹¹⁷ In this respect, the Act of 27 April 2006 on social co-operatives¹¹⁸ is also of particular importance.

Following a period of positive developments, which could be observed up to the end of 2008, Poland, like the rest of the Europe, had faced the challenge of the financial crisis. Although the effects of the crisis were relatively mild for Poland, the weakening economy led to a clear increase in the unemployment rate, which reaches a high of 28.4%, including, especially, young people. Finally, in April 2013 unemployment amounted to the level of 14%. Almost 35% of the unemployed remained out of work longer than 12 months, and most of them entered the so called “shadow economy”. The high unemployment rate was supported by such phenomena attributed to the Polish labour market as: low labour market participation of the young (under 30 years old) and older population (over 50 years old), especially women, low flow from economic inactivity to economic activity, high risk of women who decide to have a family leaving the labour market for a longer period of time, long-term unemployment, low labour and spatial mobility, deficits in terms of professional qualifications, increasing pace of ageing of the population, and low efficiency of the activity of public employment services. In the last one, and so far, the largest amendment of the Act on employment promotion from 2014,¹¹⁹ the legislator made

¹¹⁶ Ź. Mecych, E. Chylek, (2009), *The Polish experience of active inclusion tools targeted to the most vulnerable groups – comments on Norwegian good practice of the National Qualification Programme*,

https://www.google.pl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi04pfT9tHMAhXDiywKHf6jBi8QFggcMAA&url=http%3A%2F%2Fec.europa.eu%2Fsocial%2FBlobServlet%3FdocId%3D8346%26langId%3Den&usg=AFQjCNGMJ28MtzHyyw_yhX9lpQnLBksGYQ (accessed on 10 May 2016), p. 5.

¹¹⁷ Journal of Laws from 2003, No 122, item 1143 – hereinafter referred to as the Act on social employment.

¹¹⁸ Journal of Laws from 2006, No 94, item 651 – hereinafter referred to as the Act on social co-operatives.

¹¹⁹ The Act on Amending the Act on employment protection and labour market institutions– hereinafter referred to as the Act from 2014 r.

an attempt to address all those challenges. By maintaining the already existing shape of the regulations, based on the primacy of the active labour market programmes, a strong emphasis was then put on increasing the efficiency and effectiveness of the operation of the public employment services, as well as on greater, as before, individualization of support for the most disadvantaged groups in the labour market.

Despite significant improvements on the labour market that have been reported compared to 2014, changes are still necessary aimed at making the labour market work better.¹²⁰ The challenges that face Poland in the field of employment and social policy that had been previously reported have not been properly addressed. These are, firstly, the low level of employment and relatively high level of unemployment, especially among younger and older workers, particularly women. The employment rate, at 68.4%, is one the lowest among OECD countries and below the EU average, despite an increase compared to 2014. The same is the case with the unemployment rate, at 7.1% in 2015, which indeed was back to the pre-crisis level, although it is still relatively high. The high unemployment among younger people is caused by the significant difficulties that they experience in entering into the labour market. A similar situation exists for older people, and is related to the mismatches between the professional qualifications of employees and the changing labour market needs, and leads to a situation where these people exit the labour market early by benefiting from early retirement. The lower participation level among women is mainly caused by difficulties in combining professional and family life, because of the weakly developed system of institutional care on the one hand, and also the insufficient number of measures that allow for better organization of working time that put more emphasis on the individual allocation of working time than only on its reduction. Secondly, low internal labour market mobility persists in regional differences in employment outcomes, which is impeded by the differences in employment prospects and cost of living among regions. Thirdly, labour market segmentation, due to the differences in the employment and income protection between particular

¹²⁰ OECD (2016), OECD Economic Surveys: Poland 2016, OECD Publishing.

categories of employed. Fourthly, the rapidly ageing population that Poland is experiencing at a greater and greater pace, compared to other European countries.¹²¹ Fifth, imperfect functioning of the public employment services, due to the lack of human resources both quantitatively and qualitatively, serious coordination problems, and poor access to information at local level, and insufficient effectiveness of active labour market policies.

1. Protection against unemployment: dismissal law

The implementation of dismissal law, under existing regulations of the Polish Labour Code,¹²² leads to a strong labour market segmentation between employee who have a permanent, full time employment contract and the rest engaged on different working arrangements, especially fixed-term employees, the self-employed, and those on civil-law contracts. The first and foremost problematic aspect of the dismissal law in Poland is the fact that it applies only to the employment regulated by the labour law provisions – an employment contract. It does not cover employment arrangements on the basis on self-employment and civil law contracts, which both are widespread in the Polish labour market. Moreover, although employment protection in the employment contract is not stringent, there is a significant differentiation with respect to ordinary termination by an employer of an indefinite-term and fixed-term employment contract, and that is the second aspect of the Polish dismissal law that deserves our attention. As was mentioned before, the transition to a free market economy was not accompanied by changes in the regulation on protection against dismissal, which became even more flexible with regard to fixed-term employment contract compared to the rules that apply to indefinite-term employment contracts. Under existing regulations, which do not properly reflect the nature of temporary

¹²¹ C. Żołędowski, *Starzenię i ludności – Polska na tle Unii Europejskiej*, [The ageing society – Poland and the European Union], (2012) Vol. 17, *Problemy polityki społecznej. Studia i Dyskusje*, p. 38-39.

¹²² Act of 26 June 1974 The Labour Code, (Journal of Laws from 1998, No. 21, item 93 with subsequent amendments).

employment, a fixed-term employment contract may be terminated by an employer at any time, with no reason, under no control of trade unions, with only limited judicial control, and the right to relatively small compensation in cases of unlawful dismissal. Moreover, until 2015, the notice period for the termination of a fixed-term employment contract was fixed at 2 weeks, regardless of the length of the service of the dismissed employee. For these reasons, at the time moving towards greater flexibility in the labour market both temporary work arrangements, especially on the civil-law basis and self-employment (that is often bogus), are considered by employers as “attractive” alternatives to regular permanent and full-time employment contracts. As a result, besides self-employment and the civil law contract, fixed-term employment contract appears excessive in Poland. Currently, Poland has the highest share of fixed-term employment in the EU, and one of the highest among OECD countries. In 2015 fixed-term employment covered more than a quarter of all the employed (28,4%), which is characterized by a disproportionately higher proportion of young people (15-29) compared to other EU countries, especially labour market entrants and the low skilled, for whom fixed-term employment is not a voluntary choice.¹²³ Temporary contracts are thus rarely a step towards permanent employment. The Polish government has not yet addressed this problem. The last legislative amendment from 2015¹²⁴ only aligned the notice period for fixed-term and indefinite-term employment contracts, which currently in both cases depend on the length of the service of the employee, but has again not put any limitations on the ordinary termination of fixed-term employment contracts, leaving fixed-term employees without any, even minimal, stabilization of their employment relationship, and so adding to the risk of the unjustified use of temporary employment.

¹²³ Eurostat (2014), *Labour Force Survey*, Luxembourg, European Communities.

¹²⁴ Act of dnia 31 August 2015 amending the Labour Law Act and amending certain acts (Journal of Laws from 2015, item. 1220).

2. Income protection for unemployed people

Under the *flexicurity* strategy, the social security system, together with effective active labour market policies should provide for adequate income support, encourage employment and facilitate labour mobility. In this very sense the social security system in the case of unemployment should alleviate the adverse effects of unemployment, providing unemployed people with adequate income support, while not imposing negatively on the employment activity of individuals due to certain activation requirements of the unemployed. In Poland the right to social security, as a constitutional right, is guaranteed under Article 67(2) of the Polish Constitution. Unemployment is one of the risks that provides the right to certain social benefits in the form of compulsory insurance, social assistance and certain additional benefits.

2.1 Unemployment benefit

Unemployment benefit is the basic social security benefit under the Act on employment promotion. It has been designed as a universal benefit, financed from the Labour Fund, which is a State purpose fund at the disposal of the Ministry of Labour and Social Policy. The main sources of revenue of the Labour Fund are contributions paid by employers, which are deducted from employees' remuneration, and additional financing is provided by EU-funded projects and budgetary donations.

The right to benefit

The right to unemployment benefit may be exercised by a person who is unemployed not of their own will in the absence of any other means of subsistence and registered in the labour office on further conditions specified by the law. The person who is unemployed of their own will, which means the termination of the employment relationship on their own initiative or by mutual agreement, or termination without notice within 6 months before registration in the labour office, would be temporarily deprived of the right to unemployment benefit. Due to the

priority of active forms of support over the passive measures, the person who is registered in the labour office receives unemployment benefit only when they have no job offer or other forms of support for their professional activation suited to them in the form of an internship, professional preparation of adults, training, intervention works or public works. Theoretically, no category of employed person is excluded from the unemployment benefit scheme. However, due to further strict eligibility rules on access to the unemployment benefit scheme certain categories of employed persons are in a less favourable position in this regard. This refers foremost to the second statutory condition that a person who applies for unemployment benefit must be employed directly before registration within at least 18 months for a total period of 365 days for remuneration equivalent to at least the amount of the minimum wage. This significantly restricts the right to unemployment benefit for part-time workers, who usually receive pay that is lower than the minimum amount, and those employed under civil-law contracts, e.g. contracts of service that are not covered by the provisions on the minimum wage. Therefore, in practice these categories of employed may be excluded from the unemployment benefit scheme. Given the above, it is not surprising that in 2015 only 13.4 % of registered unemployed were entitled to unemployment benefit, much less than in other OECD countries. The differentiation as regards employment and income security which affect part-time workers and those employed on the basis on civil-law contracts significantly contributes to the segmentation of the Polish labour market, which appears to be one of the most problematic aspects of the use of those working arrangements. The existing legal regulations only partially address this problem with regard to unemployed persons who have already received unemployment benefit. According to the relevant regulations, if such a person takes up employment or any other kind of gainful activity, business activity or obtains income exceeding half of the minimum wage per month and/or for a period shorter than 365 days, they will not lose the right to unemployment benefit in the case of re-registration within 14 days from the date of the termination of the abovementioned circumstances. In this case the legislator has rightly assumed that at the

time of re-registration it may not always be possible to demonstrate that all the conditions for the acquisition of the unemployment benefit referred to in law have been fulfilled, e.g. when the unemployed person worked in part-time work receiving a salary less than the minimum wage, which might significantly weaken the motivation for professional activity of unemployed persons even on a small scale. It has to be mentioned that with the aim to reducing labour market segmentation, in January 2016 a draft was presented to introduce an hourly minimum wage of 12 PLN (apox. 3 EURO) applying to the employed on civil law contracts that may facilitate access to unemployment benefit for this category of workers.

Duration of benefit

Due to the amendment from 2014 the right to unemployment benefit may be exercised from the first day of registration in the labour office, not as previously after the period of 7 days. The period of receiving unemployment benefit basically depends on the level of unemployment in the area of the *poviat* (county). It amounts to 180 days or 365 days for unemployed persons who are residing, respectively, in the area of the *poviat* where the rate of unemployment does not exceed 150% of the average national employment rate, or where the rate of unemployment exceeds 150% of the average national employment rate. The unemployed person is entitled to longer unemployment benefit even in the case of a change in their place of residence. This encourages low internal labour mobility, while the unemployment benefit system is more generous in high-unemployment regions. This is additionally supported by the level of the minimum wage, which is not differentiated across regions according to differences in the costs of living. However, the right to unemployment benefit for 365 days is granted in any event to: unemployed persons over 50 years old, with at least a 20-year period for entitlement to unemployment benefit; unemployed persons who support a child under 15, whose spouse is also unemployed and has lost the right to unemployment benefit; unemployed person who maintain single-handedly at least one child under 15 years old. For this category of the

unemployed a longer period of eligibility may discourage their faster re-employment, and that especially concern persons over 50 years old, who, as mentioned before, may be entitled to unemployment benefit in a higher amount.

Amount of benefit

The amount of unemployment benefit is not related to the minimum wage or the past remuneration of individuals. Unemployment benefit at the level of the so-called basic amount depends on the length of time for which the right to unemployment benefit may be exercised. Within the first 90 days a beneficiary is entitled to unemployment benefit in the amount of 823.60 PLN per month [around 196 Euro], while in the later days the unemployment benefit is in the amount of 646.70 PLN per month [around 153 Euro]. The amount of unemployment benefit, depending on the joint period of employment or other paid activity, is calculated at the level of: 80% of basic unemployment benefit in the case of persons with a total period of employment not exceeding 5 years; 100% of basic unemployment benefit in the case of persons with a total period of employment between 5 and 20 years, and 120% of basic unemployment benefit in the case of persons with a total period of employment of at least 20 years. On the one hand, the lower level of unemployment benefit may encourage faster re-employment, but at the same time it involves greater risk of poverty during inactivity, especially within the category of the less educated young. On the other hand, the higher amount of benefit in combination with the longer duration of such support may result in the long-term unemployment of those who due to their age are already in a disadvantageous position in the labour market. In this regard Polish legal arrangements do not meet the standards set out in ILO Social Security Convention No 102¹²⁵ and in the European Social Security Code of the Council of Europe from 1964,¹²⁶ under which unemployment benefit should compensate suspension of

¹²⁵ Adopted at the 35th ILC session on 28 June 1952. Entered into force on 27 April 1955, www.ilo.org (accessed on 2 August 2016).

¹²⁶ Adopted in Strasbourg on 16 April 1964, www.coe.int (accessed on 2 August 2016).

earnings due to the inability to obtain suitable employment, and determined at the level of 45% of the beneficiary's previous remuneration of a "typical" beneficiary – a man with a wife and two children. In the Protocol to the Code from 1964 this amount was determined at the level of 50%. According to ILO Convention No 168 on Employment Promotion and Protection against Unemployment¹²⁷ the level of unemployment benefit, which is not based on the beneficiary's previous remuneration, should amount to at least 50% of the minimum wage, or at the level that is necessary for the beneficiary's basic expenses, depending on which one is higher. For a transitional period unemployment benefit may, however, be established at lower levels, but no more than 45% of the beneficiary's previous remuneration or 45% of the minimum wage or the wage of a "typical" employee, but no less than at the level that is necessary for his/her basic expenses. In 2016 in Poland the minimum wage is 1850 PLN gross, and thus the threshold mentioned has been not met. Since that time Poland has not ratified either the European Social Security Code or ILO Convention No 168. ILO Convention No 102 has been partial ratified, but without the above-mentioned provisions concerning unemployment benefit.

Conditionality and activation duties

Both the unemployment status and unemployment benefit payments are conditional on some job-seeking behaviour of unemployed person, which are "passive" rather than "active". It does not go beyond the duty of the unemployed person to be ready to accept certain activation measures taken by the labour office, nor the real self-active job search of the unemployed person under effective monitoring of the public employment service.¹²⁸ Among the duties a primary one is a duty to accept a suitable job offer from a labour office. The law

¹²⁷ Adopted on 75th ILC session on 21 June 1988. Entered into force on 17 October 1991, www.ilo.org (accessed on 2 August 2016).

¹²⁸ D. Venn, (2012), *Eligibility Criteria for Unemployment Benefits: Quantitative Indicators for OECD and EU countries*, OECD Social, Employment and Migration Working Papers, No 131, OECD Publishing.

provides for a relatively broad definition of 'suitable job' that is determined by four conditions: qualification, health, geography and income. Under these conditions a suitable job is defined as employment or other gainful work, subject to social insurance, and for the performance of which the unemployed person has sufficient qualifications or occupational experience, or which the unemployed person can perform after prior training or apprenticeship for adults; the health condition of the unemployed allows him/her to perform it, and the total time of commuting to the place of work and back by public transport does not exceed 3 hours, and for the performance of which the unemployed person collects monthly gross remuneration in the amount of at least the minimum remuneration for work calculated as the full-time equivalent. The broad definition of a suitable job facilitates the rejection by the unemployed person of a job offer from a labour office. This especially concerns the geographical condition that still exists even though the law already provides for certain forms of mobility allowances for an unemployed person who decides to take a job outside the place of his/her permanent residence. Moreover, the qualification condition is not sufficiently enforced in practice as the labour office usually does not refer an unemployed person to jobs for which they are overqualified. The refusal without a justified reason of a job offer or proposal of any kind of support from a labour office is subject to a relatively mild sanction, which is only temporary suspension of the unemployed status and/or a reduction of unemployment benefit. This significantly contributes to the perception of unemployment benefit as a substitute for remuneration, especially by low-earners. The law provides for certain instruments as income compensation for unemployment benefit which are designed to encourage unemployed people to engage in professional activity. These are activation allowance, in the amount of 50% of basic unemployment benefit, if they undertake part-time employment with a wage lower than the minimum wage, as a result of a referral by the local labour office or in the case of re-employment on their own initiative, and other cash benefits that an unemployed person receives in return for undertaking particular forms of activation provided for by the labour office, which are internships, professional preparation of adults, or on-

the-job training, in the amount of 120% of basic unemployment benefit, as well as in the case of continuation of education in secondary school or in a high school in the amount of 100% of basic unemployment benefit, including post-graduate studies in the amount of 20% of basic unemployment benefit. However, as existing studies show that in the cases where the amount of the cash benefit is lower than unemployment benefit, the unemployed postpone the decision to actively search for a job to the end of their benefit entitlement period.

2.2 Social assistance

Unemployment is one of the reasons for social assistance benefits due to the provisions of the Act on social assistance. As was mentioned before, the key principle of the social assistance system in Poland is to provide support to those in a difficult situation in life, and to offer them help in social re-inclusion and in becoming socially independent, also in view of their professional integration and return to the labour market¹²⁹. Therefore, the social assistance benefits are not of a universal character and are limited to persons and families without sufficient income, i.e. lower than the legal income criterion. A person who is unemployed is eligible to cash benefits in the form of temporary benefit for a period that in any single case is determined by the social assistance centre. The amount of a temporary benefit is stated as up to the difference between the income criterion and the personal income. However, according to the provisions of the Act on social assistance, the level of the single benefit cannot be lower than 50% of the difference between the income criterion and the person's income. The amount of the temporary benefit cannot be lower than 20 PLN [5 Euro] by month. With regard to an unemployed person who is running a household alone, their personal income may not exceed 461 PLN [round 109 Euro] per month. That in practice excludes persons who at the same time receive unemployment benefit, who as a result may be more interested in re-employment. For a person in a family the income per person may not exceed 316 PLN

¹²⁹Ż. Mecych, E. Chylek (2009), *Polish experience...*, p. 5.

[around 75 Euro] per month, which automatically does not exclude a person who also receives unemployment benefit, for whom, by contrast, temporary benefit together with unemployment benefit may encourage inactivity and result in long-term unemployment. The risk of long-term unemployment among social benefit recipients increases the lack of any active job-search requirements. This is due to the fact that social assistance services are not primarily oriented towards an active inclusion approach, but instead on securing the biological needs of recipients. Therefore, unemployed persons who apply for social assistance services have no job-search duties.

2.3 Additional benefits

Within additional benefits, unemployed persons and the members of their family have a right to sickness insurance.¹³⁰ Moreover, an unemployed person during the period of unemployment benefit is covered by pension and disability pension insurance.¹³¹ The coverage by sickness insurance, but not real willingness for professional activation, many times remains a major reason for registration in the *poviat* labour office. That situation significantly weakens the effectiveness of public employment services, while the support provided is not always addressed to people who are really interested in employment. Due to the fact that this type of service entails a lot of extra work for the *poviat* labour office staff, separation between the unemployed status and the right to sickness insurance has long been called for, through the transfer of power to decide on the coverage of unemployed person by sickness insurance from labour offices to social security institutions.

¹³⁰ Article 66(24) *publicznych* of the Act of 27 August 2004 on health services financed through public funds, (Journal of Laws from 2004, No 210, item 2135 as amendment).

¹³¹ Article 6(1) point 9 of the Act of 13 October 1998 on social security system (Journal of Laws from 1998, No 137, item 887 as amendment).

3. Activation measures

Active labour market policies reflect two dimensions of the constitutional right to work which are: a full and productive employment policy and support for unemployed persons (Article 65 of the Polish Constitution). The first scope of this right covers the labour market policy aimed at planning tasks, while its second aspect applies to the provisions on active measures to combat unemployment that are aimed at inhibiting the rise in unemployment and increasing employment. In this very sense active labour market policies are based on different forms of support that are aimed at enhancing the spatial and occupational mobility of the unemployed, encouraging employers to hire them, as well as to support the creation of new jobs and the maintenance of already existing ones.¹³²

3.1 Professionally active people

Active labour market policies are dedicated not only to unemployed people, but also - to some extent - to professionally active people, including those who are at risk of unemployment. In this regard special attention has to be paid to the preventive function of job matching and occupational guidance, where the first one involves informing employers about expected changes in the labour market, while the second one is aimed at the professional development of employers and their employees. The application of these labour market services may allow employers and employees to take appropriate actions in order to be better prepared for changes in the situation in the labour market. In this regard, the training of employees is of particular significance as it enhances their employability, and strengthens the company's potential

¹³² J. Wratny, [in:] M. Kabaj, G. Uścińska, J. Wratny, (2007), *Metody i mechanizm ograniczania bezrobocia oraz realizacja zadań władz publicznych w zakresie prawa do pracy i zabezpieczenia społecznego bezrobotnych*, [The methods and unemployment limiting mechanisms and the implementation of tasks of public authorities related to labour law and social security of unemployed], Ekspertyzadla Rzecznika Praw Obywatelskich, Warszawa, p. 23.

and job protection.¹³³ For this purpose the law provides for the possibility of co-financing, in the amount of 80% of the total costs, of training of employees from a special public fund – the National Public Training Fund (KFS), which was created by the Amendment from 2014. The previously existing financing mechanism based on a company training fund which could have been established by employers proved to be ineffective in this respect.

3.2 People at risk of unemployment

For employees at risk, unemployment training, aimed at adjusting the qualifications already acquired or gaining new ones, may also be implemented in order to facilitate their transition to new employment. Apart from that, this category could also be assisted with other labour market services and instruments tailored to them, aimed at their swift professional activation. These could be implemented through the mechanism of monitoring dismissals. This institution, inspired by the outplacement known in some European countries, is defined by the law as the termination of the employment relationship for reasons related to the employer, in connection with which labour market services are provided for employees during the notice period, or at the risk of termination of the employment relationship. It is therefore an institution of a preventive character, whose fundamental objective is to cover employees who are dismissed or who are at a risk of dismissal, with assistance in labour market participation to facilitate their re-employment. In this respect the institution of monitoring dismissals to some extent fills a gap which occurs in the act on collective dismissals,¹³⁴ which in that case does not provide for cooperation between employers and public employment services in activities enabling the quick re-

¹³³ E. Bielak-Jomaa, (2011), *Ustawa o promocji zatrudnienia i instytucjach rynku pracy. Praktyczny komentarz*, [Act on employment protection and labour market institutions. Practical commentary], Z. Góral (ed.), Lex, commentary to Article 67, thesis 2.

¹³⁴ The Act of 13 March 2003 on specific rules regarding the termination of employment relationships for reasons beyond the employees' control, (Journal of Laws from 2015, item 192).

employment of dismissed employees.¹³⁵ The monitoring of dismissals occurs when an employer intends to dismiss at least 50 employees within the period of 3 months. In this case an employer has a duty to agree with the *poviat* labour office on the type of support for dismissing disabled employees, which may involve training. Previously, the Act provided for a higher level of the number of employees for which the institution of monitoring dismissals was applicable, which amounted to 100 dismissed employees. A reduction in the number of employees dismissed was made by the amendment of 2007,¹³⁶ which was argued by the necessity to adjust that institution to the situation in the labour market and its dissemination. This change was welcomed by the social partners. With regard to employees to be made redundant, at the time of termination or within a period of 6 months after the termination of their employment relationship an employer has a duty to provide access to the labour market services that are implemented in the form of a programme, in particular with regard to job matching, vocational guidance and training. An employer, in consultation with the *poviat* labour office, can also offer to those employees other labour market services that are adjusted to the local labour market. Depending on the offered labour market services, the programme may be implemented by the *poviat* labour office, an employment agency or a training agency. Basically, the programme is financed by an employer. However, subject to the type of programme, the law provides that it can also be financed by an employer and the relevant public administration units, as well as "on the basis of an agreement of organization and legal entities with an employer". If the programme provides for the participation of an employee in training, the employer, at the employee's request, may provide him/her with a training benefit, which he/she shall then be entitled to after the termination of the employment relationship for a duration of the training, but for no more than a period of 6 months in the amount equivalent to the remuneration of an employee, but no more than 200%

¹³⁵ E. Bielak-Jomaa (2011), *Ustawa o promocji...*, Z. Góral (ed.).

¹³⁶ The Act of 25 September 2007 amending the act on employment promotion and labour market institutions and certain other acts, (Journal of Laws from 2007, No 176, item 1243).

of the minimum wage. During the period of training benefit the dismissed employee is also entitled to support with regard to vocational guidance provided by the *poviat* labour office. An employee may also be delegated to one-time training that is organized and financed by the *poviat* labour office, in accordance with principles specified by law. If the right to training benefit is granted to an employee by an employer, the labour office refunds the employer's social security contributions.

3.3 Unemployed people

With regard to unemployed persons, job matching is a basic form of support. Occupational guidance, training and other instruments of the labour market are only applied where it is not possible to ensure them a suitable job. In this regard instruments that enhance the occupational mobility of unemployed people and facilitate their quick re-employment have special importance. These are training, intervention works, internships, socially useful work and public work. Among them training aimed at enhancing new qualifications or the development of existing ones that may protect unemployed persons against long-term unemployment have special importance. From this point of view internship also seems to be significant, which allows gaining new experience and allows the unemployed, especially the young, to enter the labour market, even if after the period of support the employer does not decide to continue the employment. The training may be effectively connected with intervention works, socially useful work and public work as it enhances the opportunities of the unemployed to find a permanent job. The effectiveness of training increases when it responds to the needs of the local labour market and when it is adjusted to the needs of a relevant beneficiary. From this perspective special attention should be paid to the practical aspect of the training and the possibilities which entails the involvement of potential employers in such training which identifies their needs with regard to professional qualifications and undertakes to employ an unemployed person after the end of the training. Such option introduced through the Amendment from 2014 may significantly contribute to the effectiveness of training. The law also

provides for a loan on preferential terms for financing the cost of training, which may be applied individually by an unemployed person, and a new instrument in the form of a training voucher that may be given to an unemployed person under 30 years old as a guarantee of referring them to particular training and financing its costs. Apart from occupational mobility several instruments that may enhance the spatial mobility of an unemployed person in the case of the necessary to take a job outside the place of his/her permanent residence are available, which include: financing the costs of travelling to an employer or the place where the internship, professional training or occupational guidance are performed; financing the costs of accommodation in the work place of a person who has been employed or who started an internship or professional training, and an accommodation voucher for unemployed people under 30 years old. The introduction of all these instruments become a step towards addressing the obstacle of the relocation of unemployed persons that impeded internal labour mobility, as was mentioned before, but were not, however, supported by the change in the definition of “suitable job”. The law provides for a number of instruments that are aimed at encouraging employers to hire unemployed persons and the creation of new jobs. These are various forms of subsidized employment. The Amendment from 2014 also introduced a new one, which is a loan to an employer for financing a new job position, and a few additional instruments addressed at increasing the employment of young persons under 30 years old, people who have difficulties with re-entering the labour market, long-term unemployed persons who benefit from social assistance services, and people over 50 years old. The controversy over these instruments, which entail concrete financial support for the employer, relates to the question of their real long-term effectiveness. It is emphasized that subsidies increases the risk of treatment by employers of such workers as a cheap labour force, and lack of willingness to continue employment after the end of public support. Therefore, these instruments should be applied carefully to an appropriate person.

Individualized approach

With the aim of more effective active measures to combat unemployment, the amendment from 2014 introduced new rules on the application of labour market instruments towards its greater than previously flexibility and individualization according to the needs of a particular unemployed person. First and foremost, this has resulted in the elimination of the previously existing category of additional labour market instruments that were addressed exclusively to the group of unemployed who need additional support because of their weaker starting position in the labour market influenced by such factors as age, sex, qualifications, educational level or family situations. The favourable treatment of this category of unemployed under previous legislation led to the situation where this category covered almost 90% of registered unemployed people, while the low effectiveness of support for people not fitting into any of these groups has been recognized.¹³⁷ By holding the view that some persons, due to their disadvantageous position, should be given priority, the legislator, based on available statistics, redefined a category of people whose situation in the labour market is special”, and that now includes unemployed persons: under 30 years old; above 50 years old; who benefit from social assistance; who maintain single-handedly at least one child under 6 years old or at least one disabled child under 18 years old, and addressed them only with a preference in access to special programmes that are aimed at the maintenance of a job or the swift re-employment of a person who is at risk of unemployment or is already unemployed. Special programmes include a specially designed set of actions that involve services and instruments of the labour market aimed at adjusting the qualifications already acquired or gaining new qualifications and professional skills, and

¹³⁷ E. Flaszynska (ed.), L. Antkowiak, (2015), *Dialog na regionalnym rynku pracy. Przegląd i analiza możliwych rozwiązań w kontekście znowelizowanej ustawy o promocji zatrudnienia i instytucjach rynku pracy* [Dialogue on regional labour market. Review and analysis of possible solutions in the view of amended Act on employment promotion and labour market institutions], http://www.dolnoslascypracodawcy.pl/upload/upload/Ekspertyza_dialog_na_regionalnym_ryнку_pracy.pdf (accessed on 9 April 2016), p. 49.

supporting jobs threatened with liquidation, or existing and newly created jobs. The possibility to implement a special programme in cooperation with the employer may significantly improve its effectiveness.

The “universalisation” in the application of the labour market instruments was accompanied by the institution of the profiling of assistance for unemployed persons. The profiling of assistance is implemented immediately after the registration of unemployed person in the labour office with the aim of determining and adopting the relevant forms of support for the individual needs of that person, and which may be applied within particular profiles. Consent for the profiling of assistance has been recognized as one of the “activation” duties of an unemployed person, sanctioned by the temporary revocation of the status of unemployed and related forms of public support. The law provides for three profiles of assistance that are based on the degree of alienation of the unemployed person from the labour market and his/her readiness to enter or reintegrate into the labour market. Profile I addresses active persons that need only job matching, and only exceptionally may require other certain forms of support, in particular vocational guidance or training. Profile II is directed toward persons that are not managing well with individual job searching, and who need support in this regard. For these categories of the unemployed most of the forms of support may be implemented, except actions within the Activation and Integration Programme. Profile III, which is dedicated to unemployed persons who are furthest from the labour market and therefore at risk of social exclusion, those who remain inactive towards the transition to employment, and those who compose the “grey area” of the labour market. This profile covers unemployed people who are at the same time recipients of social assistance for whom the Activation and Integration Programme may be implemented, aimed at their professional activation and social inclusion. The process of profiling is based on a hard profiling method through a standardized questionnaire consisting of 24 closed questions processed by a specially designed

system.¹³⁸ Doubts arise over the accuracy of such a profiling technique that to a great extent is based on the generalization and categorization of unemployed persons, and does not take into account the specific life circumstances of a person concerned. The risk of simplifications and inappropriate forms of support that it entails is not balanced by the possibility of the labour office employee changing the profile generated by the system through the mechanism of soft profiling adopted simultaneously. As practice shows, labour office employees relatively rarely decide to determine a different profile, which as a consequence significantly alleviates the individualization of assistance. These concerns particularly relate to young persons under 30 years old, people who have difficulties with re-entering the labour market, long-term unemployed persons who benefit from social assistance services, and people over 50 years old who address the number of additional labour market instruments for their professional activation. Belonging to one of these groups does not automatically create a condition for obtaining instruments addressed to them, which is definitely dependent upon its qualification to the relevant profile.¹³⁹ Moreover, in the case of a change in the circumstances relevant for profiling there is no legal obligation for the labour office to provide an unemployed person with a new profile of assistance, which then reduces the effectiveness of support, and that does not address the real needs of the person concerned. Profiling of assistance is followed by the preparation for the unemployed person of their individual action plan, which is an individual programme of job-search assistance, tailored to the assistance profile and established with the involvement of the unemployed person. Within an individual action plan, there would be determined a set of measures that are possible to implement by the labour office, and those for their own implementation by the unemployed person, including deadlines set for the completion of

¹³⁸ The questionnaire is provided for in the Regulation of the Minister of Labour and Social Policy of 14 May 2014 on assistance profiling for the unemployed, (Journal of Laws from 2014 r., item 631).

¹³⁹ See also A. Drabek, Ł. Ciołkiewicz, (2015), *Bezrobotni do 30 roku życia jako nowa grupa szczególnego ryzyka na rynku pracy*, [Unemployed persons under 30 years old as a new special risk group in the labour market], *Zeszyty Naukowe Politechniki Łódzkiej* Nr 1196. Organizacja i Zarządzania, p. 21.

a particular task. The final effect of such support should be finding appropriate employment within the period of time indicated in law. This might be impeded by the lack of legal obligation for the flexible modification of the scope of support due to the changing situation of the unemployed person and the weak mechanism of control over the effective implementation of actions to be implemented within the plan. A sanction, in the form of a temporary depriving of the unemployed status, is applied only in the event of the interruption of the implementation of an individual action plan. The greater individualization of support addressing the unemployed person, and improvement of the effectiveness and professionalization of the activity of the *poviat* labour offices were also the objectives of the new institution of 'customer advisor'. The customer advisor is an employee of the *poviat* labour office, who would be in charge of the unemployed person during the whole time of their job search process, from profiling, the preparation of an individual action plan, and the control over its implementation, as well as providing the unemployed person with all the other forms of support available. Similar to that model, the activity of public employment services in relation to institutional customers was organized. For this purpose, every employer who benefits from the services and instruments of the labour market will continually cooperate with the institutional customer advisor, who in particular will be responsible for determining the demand for a new employee and acquisition of employment offers, as well as facilitating access to the other forms of support determined by law.

Institutional dimension: public-private model of cooperation

Due to the process of Europeanization, employment services were based on the public-private model of cooperation of different labour market actors who fulfil tasks which so far were under the monopoly of the State.¹⁴⁰ In this model the implementation of activities within employment services may also be entrusted to private institutions of

¹⁴⁰ M. Szyłko-Skoczny, (2006), *Zwrot w polityce...*, p. 1.

varying character and responsibilities, in particular non-governmental organisations (NGOs), as well as employment agencies or training institutions, as separate labour market institutions. The model of cooperation adopted by the Polish legislator responds to the challenges of the modern labour market, and are related to its greater flexibility and the need to take integrated, multidimensional actions in this field, with the involvement of institutions operating at different levels. The experiences of other European countries show that the privatization of public tasks is a good and effective means of fostering not always sufficient public services.¹⁴¹ Training remained activities that are the most likely to be the subject of contractualization (almost 80% of all partnerships), especially for NGOs within the framework of ESF-funded programmes. As a key area of concern within a partnership with training institutions, the public money that it entails is considered a waste. Many times, the organizers, catering companies, etc. and not the unemployed, are the *de facto* beneficiaries of financial support. The Amendment from 2014 opened up a new option for strengthening cooperation between public and non-public labour market institutions. It introduced the possibility of outsourcing activation services by public employment services to employment agencies, addressed to the long-term unemployed, including those covered by assistance profiles II or III. The remuneration of the employment agency shall be dependent on the effectiveness of activation, which is aimed at bringing an unemployed person to employment and maintaining them in employment for an indicated period of time. Apart from the benefits resulting from the outsourcing activities, it at the same time also entails the risk of fraud concerning public money. Moreover, a question arises over the real willingness of public employment services to cooperate with employment agencies, whose activity (if successful) could be perceived as a threat to their position with regard to job placement.

¹⁴¹ Z. Góral (2011), *Ustawa o promocji...*

3.4 Active inclusion tools

Active inclusion tools consist of measures aimed at the activation of the most vulnerable groups who are the furthest from the labour market and therefore at a risk of social exclusion. These people, due to their disadvantageous starting position in the labour market, need special treatment in order to fulfil their professional and social re-integration aimed at reviving their capacity to fully participate in society and to take up employment. It is emphasized that initiatives for professional activation of social assistance clients represent an essential step towards the development of social assistance institutions in Poland.¹⁴² The concept of active social policy comprises eliminating social assistance based on mechanical social transfers, in favour of assistance which is focused on the professional activity of inactive beneficiaries who are at risk of social exclusion.¹⁴³

Support by social assistance services

Active inclusion tools implemented by social assistance services are addressed to unemployed people who are at greater risk of social exclusion than persons in a special situation in the labour market under the Act on employment promotion.¹⁴⁴ This category includes, in particular: long-term unemployed persons, persons with disabilities, homeless persons, those addicted to alcohol or drugs, the mentally ill, persons released from prison, those facing particular difficulties with social integration, and refugees. The activities especially include the institution of social employment under the Act on social employment,¹⁴⁵

¹⁴² J. Krzyszkowski, M. Skrzyński, Ł. Kutuło, (2007), *Twoja szansa. Analiza efektywności form wsparcia dla osób zagrożonych wykluczeniem społecznym*, [Your chance. The analysis of the efficiencies of the forms of support for people at risk of social exclusion], Łódź, p. 32.

¹⁴³ *Ibidem*, p. 33-34.

¹⁴⁴ R. Szarfenberg, (2006), *Aktywna polityka społeczna*, [Active social policy], <http://rszarf.ips.uw.edu.pl/pdf/APS.pdf> (accessed on 10 May 2016), p. 12.

¹⁴⁵ Ż. Mecych, E. Chylek (2009), *Polish experience...*, p. 6.

which consists in ensuring the possibility to participate in activities conducted by specially developed institutions - Social Integration Centres (CIS) and Social Integration Clubs (KIS), or within supported employment. The CIS and KIS provide for its participants complex support, and are aimed at professional and social integration for the purpose of “recovery and maintenance” - in the first case - of their ability to participate in the local community and fulfil their social roles in the place of employment or residence” – and in the second case - of their capacity to work independently”. The implementation of the actions within CIS is made on the basis of the individual programme of social employment that is signed by a participant. The objectives within CIS are pursued by means of the following labour market services: a) providing practical skills in order to fulfil social roles and to achieve social status; b) the acquisition of new professional skills, and apprenticeships, requalification or improvement of professional qualifications; c) learning how to plan one’s life and to meet one’s needs, in particular through the opportunity to achieve one’s own income by employment or business activity; d) education on the ability to manage financial resources, while within the activity of KIS the following forms are carried out through: a) actions taken to find a job or preparation for starting employment or undertaking activity in the form of a social cooperative; b) useful social work; c) public works; d) legal advice; e) self-help activities in finding employment, housing and social services; f) internships subject to the regulations on the Act on employment promotion. The audit carried out by the Polish Supreme Chamber of Control (NIK) that covered the years of 2011-2013 revealed the rather low effectiveness of activities within CIS and KIS with regard to the number of participants that become professionally and socially independent after this form of support. This is mostly attributed to the lack of adjustment of social employment to the participants, training in occupations already sufficiently covered by the local labour market, and lack of developed follow-up actions.¹⁴⁶ The activities covered by the

¹⁴⁶ NIK (2013), *Zatrudnienie socjaln jako instrument działań na rzecz rozwiązywania trudnej sytuacji życiowej oraz wzmocnienia aktywności osób zagrożonych wykluczeniem społecznym*, [Social employment as an instrument of support for solving difficult life situations

scope of the supported employment may be described as social employment *sensu stricto*.¹⁴⁷ The supported employment may be implemented through: a) social useful work; b) work for an employer or in the Social Integration Centre on the basis of delegation from the *powiat* labour Office; c) vocational, psychological or social guidance for those who take up employment, useful social work, business activity, or establish or join a social cooperative. The supported employment is implemented on the basis on an individual social employment programme or social contract. The latter is a kind of agreement with the social assistance seeker, specifying the rights and duties of the parties – the beneficiary and the Social Assistance Centre, within joint actions aimed at counteracting the difficult life position of that person and/or his/her family. The aim of the social contract is to mobilize the social assistance beneficiary to undertake economic activity. The use of the individual social employment programme or social contract ensure an individual approach to the social assistance services adjusted to the specific needs of every single beneficiary. However, unlike the Individual Action Plan, signing the social contract is mandatory. The controversy over supported employment refers to its effectiveness, which is the regaining by recipients of the capacity to be fully integrated into the labour market. It is emphasized that social employment preserves the stereotypes among employers, who consider social assistance beneficiaries as a “second category” of workers and are not interested in their employment after the end of the public support.¹⁴⁸ The report of the Supreme Audit Office (NIK) indicated the following shortcomings with regard to the social contract: wrong choice of aims set out in the contract, as well as the ways to achieve them; organization of training in professions that are not in demand in the local labour market;

and improving the activity of people at risk of social exclusion], www.nik.gov.pl, (accessed on 10 August 2016).

¹⁴⁷ *Ibidem*, p. 12.

¹⁴⁸ M. Rymśa, (2008), *Aktywna polityka społeczna w Polsce. Szanse i ograniczenia upowszechniania koncepcji*, [Active social policy in Poland. The opportunities and limitations for dissemination of concept], in: *Polityka aktywizacji w Polsce. Nowy paradygmat zmiany społecznej*, [Polish activation policy. New paradigm of social change], H. Kaszyński, A. Karwacki (ed.), Toruń, p. 54.

insufficient support in the area of activation measures and bias towards the passive tools, such as the payment of cash benefits, while active measures such as internships, socially useful work and public work covered only 12% of the resources utilised in the contract, and supporting activities (psychological counselling, support groups etc.) covered 7% of resources; insufficient legal provisions for the enforcement of the contract. Given the individual situation of the clients, in particular their family status, benefits are frequently delivered even if the conditions of the contract are not fulfilled.¹⁴⁹

Support from public employment services

Unemployed people benefiting from social assistance services has been, at the same time, recognized under the Act on employment promotion as a risk factor that justifies the treatment of such a category of the unemployed as those “whose situation in the labour market is special”. For this category of unemployed persons, being qualified by the labour office or III profile of assistance, actions may be implemented related to their professional activation and social inclusion within the Activation and Integration Programme (AIP), which was introduced by the Amendment from 2014. This programme, which involves a mix of instruments, is aimed at keeping an unemployed person who benefits from social assistance in contact with the labour market in order to minimize the practice of long-lasting social assistance financial support without any professional activation, and to improve their transition from inactivity to professional activity. The law opens an option to implement this programme in cooperation with social assistance services. After the end of the programme an unemployed person may be delegated to supported employment or to employment in social co-operatives, or be provided with appropriate forms of support from public employment services.

¹⁴⁹ European Commission (2015), *ESPN Thematic Report on integrated support for the long-term unemployed. Poland*, p. 13-14.

Institutional dimension: cooperation between agencies

It appears from the above that, in many areas, the activities of employment and social assistance institutions focus on support for the same individuals, who as unemployed are at the same time the recipients of social assistance.¹⁵⁰ The effectiveness of actions within active inclusion tools, which involve both vocational and social activation, therefore needs the close cooperation of public employment services and social assistance services. According to the OECD, it requires the creation of a one-stop shop approach to the activation of the unemployed, which under the existing regulatory structure is rather difficult, if not impossible. The tasks within active inclusion tools are implemented at various levels: the municipal level within the Gmina (Municipal) Social Assistance Centres (*Gminne Ośrodki Pomocy Społecznej*) and district within the *powiat* labour office (*Powiatowe Urzędy Pracy*). Both systems of support – employment and social security – at national level are supervised by the Ministry of Labour and Social Policy, but at local level they are independent of each other, and in practice do not cooperate closely.¹⁵¹ Among the obstacles towards coordination between employment and social assistance services there are indicated no general rules for the exchange of data on their clients and no non-legislative mechanism supporting the development of such coordination, for example in the form of the promotion of best practices. The insufficient cooperation between public employment services and social assistance services reduces the effectiveness of the vocational aspects of social employment as it leads to the shortcomings that have been indicated by the Polish Supreme Chamber of Control (NIK).

¹⁵⁰ B. Piotrowski, K. Sztandar-Sztanderska, M. Zielińska, (2008), *Powiatowy urząd...*, p. 18.

¹⁵¹ *Ibidem*, p. 76, 78.

4. Conclusions

When we look at the system of the protection in the case of unemployment in Poland as a whole, one may agree that there are several pending issues that are still “waiting for” resolution in this regard. At the first line the changes should start with the segmented labour market in which certain categories of workers (self-employed, civil-law contract workers, fixed-term workers) are pushed out of the protection of employment. In the ongoing race to achieve better economic results, workers who have a permanent employment contract and are the most protected in case of dismissals, usually win over the rest on different working arrangements, who lack such protection, and are the first ones who suffer the consequences of economic fluctuations. This requires an effective fight with the abuses in the use of self-employment and civil-law contracts, and changes in dismissal law that should not be discriminatory for fixed-term employees.

The already existing preventive role of job placement and vocational guidance should be strengthened. Comprehensive information about expected changes in the local labour market and - related to this - professional development opportunities may help avoid dismissals and facilitate employees in the transition to a new job within the same employer or another employer. In this regard, what seems to be important is to enhance the position of company- based vocational training of employees.

The construction of the system of social insurance, addressed to the unemployed, should be changed. The eligibility rules with regard to access to unemployment benefit should be less rigid in order to make this benefit more open and equal for all categories of workers. Health-insurance has to be disconnected from registration as “unemployed”. With the aim of improving the spatial mobility of the unemployed and stimulating the initiative for their re-employment, unemployment benefit should be related to past remuneration or the national minimum wage (not related to the level of unemployment in the region, age, or personal or family situation of the beneficiary), while its duration should be lower. The existing mechanism that provides for higher unemployment benefit

to certain categories of the unemployed and for a longer period of time produces strong disincentives to take a job, which is even higher when unemployment benefit is supported by social assistance benefits that are still mainly aimed at satisfying the essential biological needs of recipients. The social security system should be more “activating” for the unemployed. This requires the adoption of more instruments - those making work pay - encouraging unemployed people to seek re-employment. Moreover, more attention should be paid to the conditionality of unemployment and social assistance benefits. This especially concerns the necessary for the greater engagement of the unemployed person in his/her individual job search process, and the implementation of his/her Individual Action Plan and/or Social Contract, which should be more effectively monitored by the relevant public employment/social security office. Finally, it is necessary to redefine the concept of “suitable job” so that it would not weaken the already available activation measures aimed at enhancing the spatial mobility of the unemployed person.

The activation measures should be better matched to the needs of a particular unemployed person. To avoid mismatches in this regard, the approach to the activation measures should be more individualized. This will require the greater involvement of labour office employees (individual customer advisors) in the process of preparing the assistance profile for every particular unemployed person, taking into account the specific life circumstances of the person concerned, and should be more eager to derogate from the profile applied automatically by the system. At the same time, a legal obligation for the labour office to provide the unemployed person with a new profile of assistance and a new individual action plan in the case of a change in the circumstances relevant for its activation should be introduced.

The improvements within income and activation benefits should be accompanied by improvements in the functioning of public employment and social assistance services. With the aim of strengthening the vocational aspect of active inclusion tools a one-stop shop approach of public employment services and social assistance services should be promoted for the activation of the unemployed who as recipients of

social assistance are the furthest from the labour market. This requires the coordination of activities between public agencies operating at different levels – employment and social assistance services – employers and non-public operators, the introduction of rules on the exchange of data on clients of both public agencies, as well as strengthening the current function of the Ministry of Labour and Social Policy, including the promotion of best practices in this regard. To make the measures tailored as closely as possible to the particularities of the local labour market, there is a need for better cooperation between employers that operate in the local labour market and education institutions. Public institutions, both employment and social assistance, should open up to non-public actors, especially NGOs. The commercialization of labour market services that would be addressed to particular groups of unemployed, who need a specific approach, and to the specific needs of the local labour market may improve the effectiveness of labour market services. At the same time, however, it is necessary to control their activities in order to prevent possible fraud in spending public money. Finally, the way in which employees of public employment and social assistance services are remunerated needs to be changed, by introducing an incentive component, connected with achieving the primary objective of activation – bringing the unemployed to employment.

Unemployment protection in Italy: achievements and pending issues

Tania Bazzani

Abstract

Both active and passive labour market policies are crucial to provide protection to the unemployed: unemployment benefits and subsidies (passive LMPs) economically support the unemployed while they are searching for a new job or enhancing their employability through activation initiatives (active LMPs).

This article aims at analysing the Italian active and passive LMPs by highlighting the latest reforms in the field – in relation to specific and traditional problems of the system - and their impact on the protection of the unemployed.

In the first part, a description of the development of the Italian LM system will be provided together with the latest tendencies in the regulation of flexibility at the domestic level. As a matter of fact, active and passive LMPs should play a crucial role in balancing flexibility in the labour market and guaranteeing adequate protection in case of unemployment.

In the second part, the benefit, which are provided by the Italian system in case of both unemployment and temporary lack of work, will be analysed by highlighting their characteristics in terms of eligibility requirements, lengths and amounts.

The third part will focus on activation by considering the initiatives and duties which beneficiaries are requested to comply with as a requirement to access or to maintain the benefit. Problems, which make it difficult to achieve effective active LMPs, will be highlighted. Activation possibilities to promote vocational training at the company level and the apprenticeship working contract apprenticeship will be also mentioned since they can be considered a way to avoid dismissals and to re-qualify both the work force and unemployed people to be hired.

In the last part, some conclusions will be proposed on the relationship between the Italian active and passive LMPs and on the protection in case of unemployment. In

highlighting the pending issues in the field, the attempt of this contribution will be to provide some proposals to cope with them.

Summary: Introduction. 1. Flexibility in the Italian system. 1.1. Flexibility: the other side of security. 1.2. Protection in case of dismissal. 1.3. Flexibility in working contracts: fixed term contract. 1.4. Flexibility in working contracts: atypical working contracts. 1.5. Internal flexibility. 2. Security: benefits in case of unemployment and in case of temporary lack of work. 2.1. Unemployment benefit: Naspi. Eligibility requirements. Duration of benefits. Amounts of benefits. 2.2. *Indennità di mobilità*. Eligibility requirements. Duration of benefits. Amounts of benefits. 2.3. *Assegno di disoccupazione* and Dis-Col. 2.4. Short-time arrangement. 2.5. Pending issues. Excessive regulation and lack of national assistance in case of unemployment. Types of beneficiaries, benefits amounts. 3. Activation. 3.1. Harsher activation duties and the National Agency for Activation policies. 3.2. Active labour market services. Conditionality of benefits. Definition of suitable job. 3.2.c. Compatibility between benefits and working. 3.3. *Fondi paritetici interprofessionali per la formazione continua* (FPFCs). 3.4. Apprenticeship. 3.5. Further changes in the last regulation. 3.6. Pending issues. 4. Conclusion.

Introduction

Article 4 of the Italian Constitution states the right and the duty to work and article 38 states the right to be protected in case of unemployment. Within this constitutional framework, according to Cinelli, the protection in case of unemployment should be intended in two ways: (i) protection against unemployment, by providing citizens with public employment services and with vocational training to enable them to be active; (ii) protection in case of unemployment, by providing citizens with unemployment benefits to cope with the temporary lack of work.¹⁵²

In the EU perspective, activation and unemployment benefits are two crucial elements of the *flexicurity* strategy, and they should be worth to secure transitions in the labour market.

In both fields the Italian system has to face issues, which make achieving satisfactory results difficult.

¹⁵² M. Cinelli, (1994), *Diritto della previdenza sociale*, Giuffrè, Milano, p. 177.

Activation profiles were included in Italian legislation from 1924, by requesting the beneficiaries of unemployment benefits to register with the public employment services and be available to work or to take part in vocational initiative.¹⁵³ But activation has never actually been effective, and just recently it was taken into consideration by the legislator.

In 2001 the White Book¹⁵⁴ on the Italian labour market was presented by the Italian Ministry of Labour and Social Policy as a project to be carried out according to the European indications in the field, asking for both flexibility and security for workers.¹⁵⁵ This book caused a rather heated debate, especially in calling for the need for more flexibility in the labour market.

In 2003 a reform was adopted in order to increase the employment rate and promote the quality and stability of work.¹⁵⁶ This regulation implemented part of the White Book, without including those aspects focused on strengthening the level of security; at the same time, it introduced a number of new atypical forms of contract, which also have been misused to avoid hiring workers through the traditional unfixed form of subordinate working contract.

During Berlusconi's second term of Government, which issued the above-mentioned 2003 reform, the main idea was gaining flexibility through legislation. This is interesting, because until then, flexibility issues had been managed by the social partners through collective bargaining. The switch to regulation by legislation shows a limitation of the contractual autonomy of the social partners.

In 2007 Prodi's new left-wing Government signed the tripartite "Welfare Agreement" with social partners in order to focus on

¹⁵³ Royal Decree n. 2270/1924: F. Liso, Part time, disoccupazione e ammortizzatori sociali, in C. Lagala (a cura di), (2004), *Part time e disoccupazione nella riforma degli ammortizzatori sociali*, Milano, p. 21.

¹⁵⁴ *Libro bianco sul mercato del lavoro in Italia*, Ministero del lavoro e delle politiche sociali, October 2001.

¹⁵⁵ The „security“ was debated at the EU level in connection with the sustainability issue at least since the 90ies: E. Ales, Dalla politica sociale europea alla politica europea di coesione economica e sociale. Considerazioni critiche sugli sviluppi del modello sociale europeo nella stagione del metodo aperto di coordinamento, (2007), 51, *WP C.S.D.L.E. Massimo D'Antona*.

¹⁵⁶ Legislative Decree n. 276/2003.

strengthening the security net for workers. Despite some improvements in the field, this goal wasn't achieved and in 2008 the right-wing Government won the election (Berlusconi's IV Government).

In the meanwhile, at the European level, the flexicurity strategy was launched as a central idea in the EU's employment policy through the Commission's Communication on the common principles of flexicurity.¹⁵⁷ According to this Communication, flexicurity should focus on flexible and reliable contractual arrangements; on comprehensive lifelong learning strategies to ensure the continual adaptability and employability of workers, particularly the most vulnerable; on effective active labour market policies (ALMP), and on modern social security systems that provide adequate income support, encourage employment, and facilitate labour market mobility.

These concepts were debated at the domestic level, and a number of scholars¹⁵⁸ expressed the position that the main problem of the Italian labour market was the lack of flexibility. Other reasons, such as the lack of an adequate macroeconomic policy, or traditional problems, such as inefficiency of the public administration, have been downplayed or attributed to the lack of flexibility.

In 2011 "art. 8" (art. 8 Decree Law n. 138/2011, converted into law n. 148/2011) introduced - by law - the possibility to derogate from National Collective Bargaining Agreements through specific collective bargaining at the company level, affecting directly and incisively a field, which was traditionally let to social partners.¹⁵⁹ By doing so, one of the possible security mechanisms in labour law, collective representation, has been heavily damaged.

The 2012 Monti-Fornero reform heavily modified the dismissal regulation by lowering the protection for workers, and also introduced relevant changes in the passive and active labour market fields.

¹⁵⁷ Towards Common Principles of Flexicurity: More and better jobs through flexibility and security, COM(2007) 359 final.

¹⁵⁸ Some influential authors, advocating greater flexibility, are: P. Ichino, (1996) *Il lavoro e il mercato. Per un diritto del lavoro maggiorenne*, Milano, Mondadori; T. Boeri, P. Garibaldi, (2008), *Un nuovo contratto per tutti*, Chiarelettere.

¹⁵⁹ V. Leccese, Il diritto sindacale al tempo della crisi. Intervento eteronomo e profili di legittimità costituzionale, (2012), n. 4, *Giornale di diritto del lavoro e relazioni industriali*.

In 2014 the Renzi's job Acts project was drawn by Law 183/2014, which delegated the implementation of that plan to the Government.¹⁶⁰ The purposes mentioned in the Law are: (i) to guarantee, in case of unemployment, homogeneous protection to the unemployed and to foster their activation; (ii) to guarantee a minimum standard of activation services in the entire country; (iii) to simplify and rationalize the creation and the function of working relationships, even within work health and safety; (iv) to strengthen the opportunities to re-access the labour market for people who are searching for a job; (v) to reorganize the contracts in order to make them more coherent with the productive and employment context; (vi) to make more efficient the labour inspection activities; (vii) to guarantee support for parental care, to support maternity, and to guarantee a trade-off between professional life and leisure time.

The same year, the so-called *decreto Poletti*¹⁶¹ completely deregulated the fixed contract in the sense that any temporary reason is requested in order to sign a fixed contract.

The idea of Renzi's job Acts is still one of achieving a *flexicurity* model, by downsizing the protection in case of dismissal, and by increasing the employer's powers in the working relationship.¹⁶² At the same time, the idea is also oriented to strengthening social protection in case of unemployment and increasing the effectiveness of activation policies.¹⁶³

¹⁶⁰ Problems of constitutionality seems to concern this law: M. V. Ballestrero, La riforma del lavoro: questioni di costituzionalità, *Lavoro e Diritto*, n. 1, 2015, p. 39 ff.

The Legislative Decrees which have been adopted - in the field under analysis - according to the Law n. 183/2014 are: Legislative Decree n. 22/2015; Legislative Decree n. 150/2015; Legislative Decree n. 148/2015.

¹⁶¹ Decree Law n. 34/2014, converted into law n. 78/2014.

¹⁶² F. Martelloni, Stagione 183: prevedibilità del diritto del lavoro e sue perversioni, (2015), n. 1, *Lavoro e Diritto*, p. 53 ff.; in the same review and number: A. Lassandari, L'ordinamento perduto, (2015), n. 1, *Lavoro e Diritto*, p. 63 ff.

¹⁶³ Latest references in active LMPs:

L. Mariucci, P. Bianchi, M. Barbieri, B. Caruso, L. Valente, Tre domande e quattro risposte sul governo del mercato del lavoro, (2016), n. 2, *Lavoro e Diritto*; A. Lassandari, La tutela immaginaria nel mercato del lavoro: i servizi per l'impiego e le politiche attive, (2016), n. 2, *Lavoro e Diritto*; V. Ferrante, Le politiche attive del lavoro fra decentramento e accentrato: un dolce girotondo?, (2016), n. 2, *Lavoro e Diritto*; R. Salomone, Le prestazioni di politica attiva del lavoro al tempo del Jobs Act, (2016), n. 2, *Lavoro e Diritto*; A. Donini, Effettività dei servizi per l'impiego: forme e garanzie nella ricerca di lavoro, (2016), n. 2, *Lavoro e Diritto*; B. Caruso, M

Nevertheless, one can affirm that currently the system has achieved more flexibility than security. In this regard, one should highlight the introduction of a new form of contract, the “*contratto unico a tutele crescenti*”. This would be a subordinate unfixed working contract, but it actually consistently downsizes the protection in case of dismissal.

At the same time, the EU employment guidelines and the specific Council recommendations addressed to Italy over the years have also always asked for “security”, i.e. adequate unemployment benefits and effective activation policies. Although some improvements have been achieved in both these fields, the Italian system still has to cope with issues in providing adequate protection in terms of benefits and activation services.

1. Flexibility in the Italian system

1.1. Flexibility: the other side of security

Within the EU flexicurity concept, flexibility should be achieved within the enterprise (internal flexibility) and in the labour market, from one enterprise to another (external flexibility). In line with the 2006 Green Paper on the modernisation of labour law to meet the challenges of the 21st century, a premise on which the regulation should be shaped is the idea that a “light” protection in case of unemployment, such as a “light” employment protection legislation as a whole, would be useful to encourage the hiring of people. This should be combined with adequate

Cuttone, Verso il diritto del lavoro della responsabilità: il contratto di ricollocazione tra Europa, Stato e Region, (2015) 283, *WP C.S.D.L.E. “Massimo D’Antona”*; M. Cinelli, C.A. Nicolini, L’attuazione del Job Act: le nuove tutele per i disoccupati, (2015), III, *Rivista Italiana di diritto del lavoro*. Concerning passive LMPs: D. Garofalo, Il d.lgs. 4 marzo 2015, n. 55: un primo commento, (2015), n. 2, *Rivista del Diritto della Sicurezza Sociale*; P. Bozzao, I nuovi trattamenti di disoccupazione: a piccoli passi verso l’Europa, in L. Fiorillo, A. Perulli, (a cura di), (2015), *Contratto a tutele crescenti e Nاسpi*, Torino, Giappichelli; S. Renga, Post fata resurgo. La rivincita del principio assicurativo nella tutela della disoccupazione, (2015), n. 1, *Lavoro e Diritto*; M. Cinelli, C. A. Nicolini, L’attuazione del Jobs Act nei decreti di settembre. Il nuovo assetto delle discipline degli ammortizzatori sociali in costanza di rapporto, S. Renga, Post fata resurgo. La rivincita del principio assicurativo nella tutela della disoccupazione, (2015), n. 4, *Lavoro e Diritto Rivista Italiana di diritto del lavoro*.

active labour market policies, and “substantial investment in training as well as high unemployment benefits with strong conditionality”.¹⁶⁴

In this regard, the Italian system shows itself to have adopted regulation in recent years, and is oriented towards flexible and atypical working contracts and towards a deregulation of the working relationship. Below we will discuss the most important changes in this field.

1.2. Protection in case of dismissal

Regulation in protection in case of dismissal is very articulated in Italy.

First of all, there is a difference in protection for workers who are employed in a medium/big or in a small company. In the former case, workers are more protected.

In Italy it is possible to dismiss workers for specific reasons, which can be summarised in: 1) right causes (e.g. the worker is found to have been stealing); 2) for justified reasons, which can be 2.a) subjective (e.g. the employee always comes to work late) and 2.b) objective (e.g. the company closes its activity).

If the worker decides to contest the dismissal and the judge verifies that there were no good reasons to dismiss, or specific formal elements/procedures were not followed, the judge orders reimbursement and/or reinstatement.

In recent years, from the 2012 Monti-Fornero reform, the amount of reimbursements and the possibilities for reinstatement have been downsized. Moreover, the deadline for suing was reduced.

1.3. Flexibility in working contracts: fixed term contract

At the beginning of the labour law development, the fixed-term contract was perceived as necessary in order to avoid slavery in the case of unfixed contracts. Then things changed and the need for a stable job became crucial.

¹⁶⁴ COM (2006) 708 final, p. 10.

The regulation of the Sixties required compulsory and specified reasons to sign a fixed contract. In the Eighties the excessive rigidity of the system was attenuated by the possibility to admit further reasons – in order to sign a fixed term contract - as a result of agreements between social partners.

In 2001 the European Directive on fixed-term work¹⁶⁵ was implemented in Italy¹⁶⁶ and substituted the specified reasons – a catalogue to which the social partners could add reasons - with a generic formula, i.e. technical, substitutive, organizational and productive reasons.

In 2012 the Monti-Fornero reform (L. 92/2012) considerably changed the protection in case of dismissal, downsizing the rights in favour of the workers and, at the same time, introduced wide possibilities to sign fixed contracts without specifying the temporal reasons within a certain period. Until that moment, this contract could be signed just in cases of the above-mentioned technical, substitutive, organizational and productive reasons.

In 2014, the so-called *decreto Poletti*¹⁶⁷ abolished the formula of technical, substitutive, organizational and productive reasons in favour of mere time and percentage limits to cope with.

1.4. Flexibility in working contracts: atypical working contracts

Since 2003, new types of working contracts have been introduced in the Italian system: the job on call, job sharing, a new regulation of temporary work, a completely different regulation in apprenticeships, work paid through vouchers, and employer-coordinated freelance work.¹⁶⁸

A new regulation of part time introduced clauses, which allow increasing working hours and/or differently distributing working hours.

¹⁶⁵ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

¹⁶⁶ Legislative Decree n. 368/2001.

¹⁶⁷ Decree Law n. 34/2014, converted into law n. 78/2014; see A. Perulli, Il contratto a tempo determinato é la forma comune di rapporti di lavoro, in L. Fiorillo, A. Perulli, (a cura di), (2016), *Tipologie contrattuali e disciplina delle mansioni: Decreto legislativo 15 giugno 2015, n. 81*, Giappichelli Ed.

¹⁶⁸ Legislative Decree n. 276/2003.

1.5. Internal flexibility

National collective agreements provide the wide possibility to shape the company's organisation for its particular needs, following specific procedures or through company collective agreements.

Working time and shifts can be adjusted to different necessities during different periods of time. Vocational training is encouraged by collective agreement to enrich skills and strengthen the workforce, even if it is not actually widespread.

In spite of these potentialities, collective bargaining has been progressively weakened. At the same time, it concerns usually big companies.

2. Security: benefits in case of unemployment and in case of temporary lack of work

2.1. Unemployment benefit: Naspi

The 2015 Renzi reform introduced the “new social insurance for employment” (*Nuova Assicurazione Sociale per l'Impiego*), named Naspi, which is the most common unemployment benefit.

This benefit replaced two previous benefits, which were introduced in 2012 by the Monti-Fornero reform, i.e. Aspi and MiniAspi. These benefits replaced two other previous benefits, i.e. the *indennità di disoccupazione* and the *indennità di disoccupazione a requisiti ridotti*. Thus, many changes occurred towards an attempt to simplify the system.¹⁶⁹

With this regard, the Monti-Fornero reform introduced the Aspi by stating the progressive homogenization of another benefit – the *indennità di mobilità* – to the Aspi. This was intended to systematise the benefits legal framework. At the same time, this also brought negative outcomes, as we will explain in the paragraph 2.2.

¹⁶⁹ Special unemployment benefits are still used in particular sectors, i.e. in agriculture, in the construction sector and for journalists.

The Renzi reform transformed Aspi and MiniAspi into one benefit, contributing always in the direction of a more systematised picture. This also brought better conditions for people who were used to accessing MiniAspi.

Eligibility requirements

In Italy a person who applies for unemployment benefits has to be dismissed in order to prove that the unemployment is involuntary. The only exceptions are: (i) in the case of resignation for good reasons, such as, for example, when the worker is not paid by the employer for his work for a certain number of months; (ii) in the case of mutual agreement between the employer and employees, in the presence of a specific condition: the agreement has to follow a particular procedure according to the law 92/2012.

To access Naspi¹⁷⁰ one should: (i) have 13 weeks of contributions within the previous 4 years; (ii) have worked at least 30 days within the 12 months before the beginning of the unemployment; (iii) acquire the status of unemployment according to a specific regulation.¹⁷¹ This latter status is achieved by submitting – through online access in the national active policies portal – a declaration in which the person affirms to be unemployed and immediately available for work and to participate in the activation initiatives agreed with the public employment services. The declaration links the benefit to activation duties, which we will discuss in more detail when speaking about activation.

¹⁷⁰ The regulation of this new unemployment benefit refers to the Legislative Decree n. 22/2015 and the eligible requirements are in particular included in art. 2.

¹⁷¹ The regulation to achieve the unemployment status has for years been included in the Legislative Decree n. 181/2000 and following modifications. Now the Legislative Decree n. 150/2015 has abrogated it, with the exception of art. 1 bis and art 4 bis. Currently, the regulation of the unemployment status is included in the Legislative Decree n. 150/2015, art. 19, which states that art. 1, c .2 lett. C) of the Legislative Decree n. 181/2000 should refer to the definition provided by art. 19, c. 1, Legislative Decree n. 150/2015.

Duration of benefits

The length of Napsi corresponds to half of the weeks of paid contributions in the last 4 years, so a maximum of 2 years. Before the introduction of Napsi, the duration depended on the unemployed person's age. Napsi doesn't contemplate any differences linked to the unemployed person's age, with the exception of collective dismissal, as we will see.

Amounts of benefits

Napsi amounts to 75% of the reference wage, up to € 1.195; for amounts higher than € 1.195 the recognised percentage is 25%.

The maximum amount is in any case € 1.300. The benefit decreases every month by 3%. It is interesting to highlight that in Italy legislation doesn't state a minimum benefit amount. This aspect could be considered problematic with article 38 of the Italian Constitution, stating both the right to be provided with and assured adequate means for their needs and necessities in cases of unemployment.¹⁷²

2.2. Indennità di mobilità

This benefit was introduced at the beginning of the Nineties (Law n. 223/1991) and addressed to the unemployed in cases of collective dismissal. Collective dismissal is the dismissal of at least 5 workers within a period of 120 days for reasons that are related to the company's organisation and restructuring. The particular regulation of collective dismissal is applied in a company with at least 15 employees in the industrial sector, and, since 2013, at least 50 employees in the commercial sector and 200 in the touristic sector.

¹⁷² For deepened remarks on art. 38 Cost., please see: Edoardo Ales, *Diritti sociali e discrezionalità del legislatore nell'ordinamento multilivello: una prospettiva giuslavoristica*, (2015) n. 147, 3, *Giornale di diritto del lavoro e di relazioni industriali*, p. 455 ff.

This benefit has been traditionally more protective – in terms of amounts, lengths and activation opportunities - than other unemployment benefits. This particular protection was meant to cope with dismissals with a relevant social impact, i.e. collective dismissals. But the Monti-Fornero reform started a progressive transformation of this benefit in the common one, i.e. currently Naspi.

Eligibility requirements

To access the benefit the person should: (i) have been dismissed within collective dismissal in a company of a certain dimension (at least 15, or 50, or 200 employees); (ii) have worked for the company for at least 6 months in the last 12 months before the dismissal; (iii) have registered on a specific list with the public employment services.

Duration of benefits

The regulation, until the 2012 Monti-Fornero reform, stated a length depending on the beneficiary's age: (i) 1 year up to 40 years old; (ii) 2 years up to 50 years old; (iii) 3 years for over 50s.

But the new regulation introduced a different system, which will gradually bring the *indennità di mobilità* at the same amounts and lengths as Naspi, with exception of the over 50s, who will receive the benefit for 18 months instead of 12.

Amounts of benefits

Until the Monti-Fornero reform this benefit amounted to 80% of the previous wage for the first 12 months: this percentage was recognised within maximum amounts, which are stated every year. The amount is reduced by 5.84%.

For the further months, the amount is 80% of the previous benefit-amount, without the 5.84% reduction.

As for the lengths, the amount will gradually become equivalent to those of Naspi.

2.3. *Assegno di disoccupazione* and Dis-Col

An unemployment allowance was introduced by the Renzi reform in 2015, the *assegno di disoccupazione*. This allowance is not an assistance allowance, even though it is financed by general taxation. As a matter of fact, it is addressed just to those beneficiaries who have already enjoyed Naspi.

The *assegno di disoccupazione* is means-tested.¹⁷³ It is not a subjective right but subject to availability of means. Priority to enjoy it is given to beneficiaries with dependants. Thus, we can say that the reform made a mix between some assistance allowance characteristics (means-tested) and insurance benefits (needs of contributions).

The unemployment allowance amount is 75% of the last Naspi, and its length is 6 months.

Another change that was brought by the Monti-Fornero reform is the introduction of a particular benefit to protect contract workers, who are not dependent workers but could be in a situation of economic dependency. This benefit, known as Dis-coll, has already been introduced before, but the difference is that the Monti-Fornero reform shows the will to verify if it is possible to stabilise this measure, without doing it. The benefit is linked to a maximum amount of resources, which means that the right is recognised within the available resources. Other self-employed workers have no protection in case of unemployment.

2.4. Short-time arrangement

The Italian system also provides protection in case of temporary lack of work through what is named *tutele in costanza di rapporto di lavoro*, i.e. protection measures during the working relationship.

¹⁷³ S. Renga, Post fata resurgo: la rivincita del principio assicurativo nella tutela della disoccupazione, (2015) n. 1, *Lavoro e Diritto*, p. 77 ff.

G.G. Balandi, L'eterna ghirlanda opaca: evoluzione e contraddizione del sistema italiano di sicurezza sociale, (2015) n. 2, *Lavoro e Diritto*, p. 313 ff.

These measures can be summarized in *indennità di Cassa integrazione guadagni ordinaria* (Cigo),¹⁷⁴ *indennità di Cassa integrazione guadagni straordinaria* (Cigs), *Ammortizzatori in Deroga* and *Contratti di solitarietà*.

Cigs and Cigo are permanent parts of the protection system, and *Ammortizzatori in Deroga*, for which resources are defined year by year, are extraordinary measures. For handicraft companies other options are possible through the intervention of special entities, i.e. bilateral entities, which are made by companies and workers' delegates and funded by both companies' and workers' contributions.

Cigo should intervene in case of ordinary lack of work, such as lack of orders or temporary market reasons, and Cigs should intervene in case of restructuring, reorganization, corporate restructuring, corporate crisis and bankruptcy proceedings. The maximum length of Cigo is 1 year in a period of 2 years; the length of Cigs can reach 2 years: in any case, the maximum length for both measures is 24 months in a period of 5 years. This is as a result of the last reforms, but some years ago the maximum length could reach 4 years.

Ammortizzatori in Deroga have been introduced for specific reasons over the years and recently because of the crisis. A particular kind of *Ammortizzatore in Deroga* is the *Cassa in deroga*,¹⁷⁵ addressed to companies and workers who cannot access Cigo and Cig. The maximum length is now 3 months for 2016, i.e. 2 months less than for 2015.

With regard to the amounts, Cigo, Cigs and *Cassa in Deroga* recognised 80% of the previous wage.

Even in the case of all these measures, beneficiaries have to comply with specific activation duties, i.e. orientation interviews, vocational training, etc. At the same time, since the measures are addressed to workers who still belong to a specific company, beneficiaries don't have to accept eventual suitable job offers from public employment offices.

¹⁷⁴ Special "*indennità di Cassa integrazione guadagni*" are still used in particular sectors, i.e. in agriculture, in the construction sector and for journalists.

¹⁷⁵ Inter-ministerial Decree (*Decreto Interministeriale*) n. 83473 1/8/2014 and Agreement (*protocollo d'intesa*) between the Province of Trento and social partners (*Provincia Autonoma di Trento – Parti Sociali*) signed the 30th December 2015.

The *Contratto di solidarietà* is a particular agreement between the company and the trade unions in order to avoid dismissals or to hire new employees. By signing this agreement the employees of a company will work fewer hours for a certain period of time, i.e. maximum 24 months (and 36 for Southern regions). The non-worked hours will be covered by the State, which will recognise the same amount for Cigs.

The Monti-Fornero reform introduced a new measure addressed to those companies, which cannot access Cigo and Cigs. In this way, companies can provide a specific benefit to workers in case of temporary lack of work.

This new system focused on special funds, i.e. the bilateral solidarity funds (*fondi di solidarietà bilaterali*) and has to be compulsory implemented in companies with at least 15 dependent workers.¹⁷⁶ These funds are not bilateral entities, but legislations allow bilateral entities to coordinate themselves with the new systems. As aforementioned, the bilateral entities are made by companies and workers' delegates and funded by both companies' and workers' contributions. They can manage both passive and active policies and are particularly effective in the handicraft sector.

2.5. Pending issues

Excessive regulation and lack of national assistance in case of unemployment

The Italian unemployment benefits system, including the benefits in case of temporary lack of work, is characterized by an excessive production of laws and different measures in order to support unemployed people with specific supports.

This stratification caused confusion and difficulties in managing the available measures.

One of the reasons for this excessive regulation is the need to provide economic support for those unemployed persons who cannot access traditional unemployment insurance benefits. Another reason focuses on

¹⁷⁶ M. Cinelli, Gli ammortizzatori sociali nel disegno di riforma del mercato del lavoro, (2012) 2, *Rivista del Diritto della Sicurezza Sociale*, p. 228 ff.

the hypothesis that after the duration of the benefit, the unemployed might still need economic support because he/she is unable to find a job. This is a likely situation in times of crisis, such as the current one.

The problems just mentioned are basically linked to a lack of assistance, at national level, in case of unemployment. Assistance benefits can be provided at a local level, and they vary between one territory and another and depend on regional or municipal resources. But a unique national assistance subsidy addressed to people who are not employed doesn't exist yet.

By failing to provide an assistance level of protection at the national level, Italy doesn't comply with art. 38 of the Constitution: (i) every citizen who is not able to work and who does not have sufficient resources to live, has the right to social assistance; (ii) workers have the right to be provided by the State with means which enable them to cope with living needs in case of accident, sickness, disability and old age, and involuntary unemployment.

Types of beneficiaries, benefits amounts

Another traditional problem in the Italian system, which has been mitigated by the recent regulation in the field, consists in linking a higher level of protection – in terms of benefits – to particular “types” of beneficiaries, depending to the type of company sector where they are employed. Thus, traditionally the industrial sector has enjoyed the best conditions in terms of social security protection through access to both *cigo/cigs* and *indennità di mobilità*.

As above mentioned, in order to fill the protection gap, new tools and extraordinary measures have been adopted: (i) new tools, i.e. the creation of *bilateral entities*, in order to provide protection in case of temporary lack of work in sectors which couldn't access Cigo/Cigs; (ii) extraordinary measures, i.e. the *Ammortizzatori in Deroga*. These means have been widely put under discussion, and have been considered to be both negative and positive instruments: negative because they were not

stable;¹⁷⁷ because the procedure to determine the order of acceptance was not clear;¹⁷⁸ because their recognition depended on the financial resources available. They have also been considered useful because they could achieve a stronger protection for unemployed people – even for those traditionally excluded from protection - and brought, at least at the beginning,¹⁷⁹ the compulsory involvement of trade unions.

Furthermore, often the amount of benefits cannot be considered sufficient to guarantee effective protection in the transition from unemployment to other work. This is best illustrated at the nutshell of an example with numbers and in comparison with a strong welfare system such as the Danish one. Danish insurance unemployment incomes amount to 90% of the last 3 months or 12 weeks' earned wage¹⁸⁰ and the ceiling is around DKK 801 (€101) per day for full-time workers, i.e. it would mean € 2.020 per month.¹⁸¹ This ceiling is around double of that in Italy: as aforementioned, the Naspi ceiling is 1.300 €.

Thus, a Danish worker, whose wage is € 2.000 per month, receives in Denmark, as unemployment insurance benefit, € 1.800, whereas in Italy she/he receives (75% of 1.195) 896.25 + (25% of 805=) 201,25, i.e. in total 1.097,5.¹⁸²

¹⁷⁷ F. Liso, Gli ammortizzatori sociali. Percorsi evolutivi e incerte prospettive di riforma, in P. Curzio (a cura di), (2009), *Ammortizzatori sociali. Regole, deroghe, prospettive*, Cacucci, p. 33 ff.

¹⁷⁸ M. Miscione, La riforma degli ammortizzatori sociali iniziata e delegata, in F. Carinci, M. Miscione, (a cura di), (2008) *Il Collegato lavoro 2008*, Milano, Ipsoa.

¹⁷⁹ M. Barbieri, Ammortizzatori in deroga e modelli di welfare negli accordi Stato-Regioni e Regioni-Parti Sociali, (2011) *Rivista Giuridica del Lavoro*, p. 379 ss.

¹⁸⁰ The 1972 Unemployment Insurance Act (Arbejdsløshedsforsikringsloven) raised the percentage from 80 to 90 of the previous pay: J. Kristiansen, (2015), *The growing conflict between European uniformity and national flexibility*, Denmark, Djørf Publishing, p. 63.

¹⁸¹ J. Hendeliowitz, (2008) Danish Employment Policy, National Target Setting, Regional Performance Management and Local Delivery, ArbejdsMarkedstyrelsen, Employment Region Copenhagen & Zealand, The Danish National Labour Market Authority, www.oecd.org/dataoecd/13/53/40575308.pdf, (accessed 1 January 2016), p. 9; European Commission - Employment, Social Affairs & Inclusion, Your social security rights in Denmark, European Union, 2013, p. 27, http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Denmark_en.pdf, (accessed 1 April 2015).

¹⁸² To simplify we refer to the monthly wage, but the calculation of the reference wage would be more complicated.

In the case the worker's wage is € 3.000 per month, he/she would receive in Denmark, as unemployment insurance benefit, € 2.020 per month – because of the ceiling (instead of 2.400) -, whereas in Italy she/he would receive (75% of 1.195) 896.25 + (25% of 1.805=) 451,25, i.e. in total 1.300 (instead of 1.345,5 without ceiling).

In the case the worker's wage is € 4.000 per month, he/she would receive in Denmark, as unemployment insurance benefit, € 2.020 per month – because of the ceiling (instead of 3.200) -, whereas in Italy she/he would receive (75% of 1.195) 896.25 + (25% of 1.805=) 701,25, i.e. in total 1.300 (instead of 1.597,5 without ceiling).

And a worker, whose wage is € 1.500 per month, probably more common in Italy, would receive in Denmark, as unemployment insurance benefit, € 1.200 per month, whereas in Italy she/he would receive (75% of 1.195) 896.25 + (25% of 5=) 1,25, i.e. in total 897,50.

This difference should also be linked to living costs and to the services provided by the entire welfare states to be properly understood, since even the entire Italian welfare system seems to be definitely too weak to support unemployed people. Moreover, an insufficient amount of benefits could potentially foster undeclared work, which is widespread in Italy. As a matter of fact, if the amount is insufficient to cope with the personal and/or familiar needs, the person could be look for undeclared work in the case the labour market would be weak and would not offer adequate wage. Thus, undeclared work would be easier to find and would avoid to loose the benefits while working.

3. Activation

The active labour market policy includes a wide range of different measures in order to promote employment. These measures can intervene on the job offer side, by providing specific services, such as orientation and vocational training, in order to favour the job matching and adapt the workforce to the labour market needs. These measures are addressed to the unemployed, but also to inactive people or to employed people who are running the risk of losing their job. The vocational

training, which is carried out in companies that are not firing, can be considered activation, too.

Specific initiatives can be devoted to disadvantaged categories of persons to favour their placement in the labour market.

At the same time, activation measures can also consist of incentives – such as payment reduction for social contributions within a certain period - for employers to hire new employees. Thus, these measures intervene on the job request side in the labour market.

3.1. Harsher activation duties and the National Agency for Activation policies

With regard to unemployment benefits, specific activation duties are linked to the right to access and maintain the benefit. Alongside the legal development of this conditionality – between unemployment benefits and activation – activation duties and the definition of suitable work have been changed gradually. As we will mention, over the last years these activation duties have been made harsher and the definition of suitable work has been narrowed.

The Renzi reform, though the Legislative Decree n. 150/2015, introduced relevant changes in the field of active labour market policies, such as the creation of a new Agency for managing these policies: the National Agency for Activation policies (*Agenzia Nazionale per le Politiche Attive del Lavoro*, ANPAL). This Agency, which set up is currently underway, should coordinate the active labour market policies in the country and, specifically, a services network for employment policies. This network should be made by several private entities created by the social partners and public actors, such as *in primis* the ANPAL, but then also by the Regional structures, by the National Institute for Social Security (INPS), by the National Institute of work insurance (INAIL), the public employment services, the inter-professional vocational training funds,¹⁸³ bilateral entities, Italia Lavoro,¹⁸⁴ the system of

¹⁸³ These funds are made by employers' associations and trade unions, and are funded by a public quote that the employer can choose to pay to INPS or to pay to one of these funds. These funds provide funds to implement activation initiatives.

chambers of commerce, industry, handicraft and agriculture, the universities, and the intermediate schools.

Thus, such as in the case of the Monti-Fornero reform, the Renzi reform pays some attention to the need to connect different actors in the labour market in order to make active policies more effective.

3.2. Active labour market services

The Monti-Fornero reform already stated the so-called “essential level of public services”: these are the public employment services, which should be provided in all the territory of the state to ensure a minimum standard of services. This minimum standard should be common in every Region, even if it could be improved by each of them.

The Renzi reform re-writes these services by stating that the unemployed, the employees benefiting through benefits in case of temporary lack of work and risking transit in unemployment should have access to: (i) a. basic orientation; b. competencies analysis, according to the local market situation; c. user profiling; (ii) support in job searching, even through group meetings, within three months from registration; (iii) specialised and individualised orientation, through competencies analysis and analysis of eventual training needs, work experience or other activation measures, by evaluating the coherence between personal skills and the territorial, domestic and European labour market; (iv) individual orientation towards self-employment and tutoring during the further phases after the beginning of the business; (v) training towards qualification and re-qualification, towards self-employment and towards immediate job placement; (vi) support towards job placement, including through the individual allowance, *assegno di ricollocazione*; (vii) promotion of new work experience in order to acquire more skills, including through intership; (viii) managing of incentives

¹⁸⁴ *Italia Lavoro* is a subsidiary company, entirely held by the Italian Ministry of Economy and Finance. *Italia Lavoro* works for the Ministry of Labour and Social Policy and promotes initiatives in the field of employment policies and social inclusion. *Italia Lavoro* became *ANPAL Servizi S.p.A.* from December 2016 (Law 11 December 2016, n. 232).

towards self-employment; (ix) managing of incentives towards territorial mobility; (x) managing of measures/tools towards a trade-off between professional life and leisure time according to caring activities in favour of minors and non-self sufficient persons; (xi) promotion of community services.

The above-mentioned services can be provided by Regions and municipalities, through public employment services, and by private actors with specific accreditation. We should wait some years to understand if this regulation will really work. In the Italian system, some public employment services can be provided by private actors since at least 2003. Temp agencies are entitled to play a role in the job matching and to provide temporary work since 1997 already.

Conditionality of benefits

The Renzi reform also re-defined the sanctions addressed to beneficiaries in case of non-complying with activation duties.

The Renzi reform states for the first time a gradation of sanctions. In particular, a person loses $\frac{1}{4}$ of the benefit if she/he doesn't comply with the first request, by the public employment service, to go to the public employment offices, which will check her/his availability to work and propose eventual activation initiatives; he/she loses half of the benefit if he/she doesn't comply with the second request to go to the public employment offices; loses the unemployment status if she/he doesn't reply to the third one. This is also valid as regards the orientation initiatives.¹⁸⁵ Other sanctions apply in case of non-attendance at activation initiatives.

The beneficiary has to comply with the above-mentioned obligations in the case of Naspi, Dis-coll and *indennità di mobilità*. Similar duties are requested in the case of Cigo, Cigs and *Ammortizzatori in Deroga*.

In any case, the beneficiary can be considered exempted of complying with these duties in case of justified reasons.

¹⁸⁵ Legislative Decree n. 150/2015, art 20, c. 3, lett a.

It is possible to appeal to ANPAL. Against the loss or curtailment measure of the public employment benefit within a specific procedure, which entails the presence of social partners.

Beneficiaries lose benefits which are recognised in case of unemployment, if they don't accept a suitable job offer or if they don't comply with the specific obligations which are stated in the *patto di servizio*. This *patto* is an agreement signed between the unemployed person and the public employment office within 30 days from the online registration; before the Renzi reform, this agreement could be adopted at the Regional level.¹⁸⁶ This agreement seems to be linked to the idea of New Public Management, which started to be introduced in the Italian system since the end of the 90ies.

Definition of suitable job

The definition of a suitable job offer was considerably changed by the Monti-Fornero reform, and further modifications have been introduced by the Renzi reform. Specific limitations concerning the length and the distance to reach the place are still kept.

According to the Monti-Fornero reform, a suitable job corresponds to a wage, which cannot be lower than 20% of the benefit amount. Since the Naspi amount progressively decreases, it can be that a job offer that cannot be refused, would reach around 400 €.

In this regard, the Renzi reform keeps this criterion, but adds the need to consider the “acquired experiences and acquired skills” (*esperienze e competenze maturate*). This disposition could help to revive another regulation, which was abrogated by the Monti-Fornero reform. This previous regulation¹⁸⁷ stated that the suitable job offer should refer to the professional profile of the person. Thus, the higher the professional profile was, the higher the professional profile requested by the job offer

¹⁸⁶ Legislative Decree n. 150/2015, art. 20.

¹⁸⁷ According to the Decree Law 247/2004, implemented with changes by the law 291/2004. This regulation linked the suitable job offer to the professional profile of the person. This aspect was better specified by a 2006 Ministerial circular, which clarified that the suitable job offer should be linked to the skills and job position of the worker.

had to be. This meant also higher wages because, according to article 36 of the Constitution, the wage should reflect the quantity and “quality” of the work. Thus, if we consider that the new regulation of the Renzi reform would make live again the old regulation – because of its reference to the “acquired experiences and acquired skills”, we could say that it wouldn’t be possible to oblige a person with a certain professional profile to accept “any” job, and thus also any wage, even if respectful of the limit of 20% less of the benefit amount.

A person who doesn’t accept a job offer which is considered suitable by law loses her/his benefit.

Compatibility between benefits and working

For many years the Italian system allowed the interruption - in some cases and under certain conditions – of the benefit duration in order to let the unemployed person work for a period and then eventually to come back into the benefit regime.

It is possible - under certain conditions - to maintain a part of the benefit while working below a certain income, too.

Under specific conditions it is also possible to ask for the entire benefit amount to be outright paid in order to be used in starting a new self-employment activity. This opportunity was introduced in 1992 in the case of *indennità di mobilità*.

The Renzi reform introduces a new regulation on the compatibility between part time work and unemployment benefit, which had been denied for a long time.

3.3. Fondi paritetici interprofessionali per la formazione continua (FPFCs)

FPFCs are national funds, which are created by agreements between trade unions and employers’ associations. Currently there are active 19 funds, while three funds have been put under guardianship due to transparency issues concerning the funds.

The FPFCs finance training projects – collective or individual - at company, sector and territorial level.

These funds can be particularly interesting both for the lifelong training and for those training projects, which are requested to provide the skills requested by companies' industrial transformation and to avoid dismissals. Additionally, it is also possible to finance training projects for unemployed people the company intends to hire.

3.4. Apprenticeship

Apprenticeships were introduced in the Italian system in 1955. Since then regulation has changed considerably.¹⁸⁸

The main idea is to provide a contract whose scope is not just about working, but also provides the possibility to learn how to work.

Recently, especially from 2003 until today, this form of work has been re-launched in order to provide a valuable tool for the job placement of young people.

Currently, there are three forms of apprenticeship, by which it is possible to reach a job qualification, a school certificate or the completion of a doctoral project.

The first form of apprenticeship – towards a job qualification – remains the most common.

Nevertheless, despite the increased attention devoted by the legislation to this contract, it still does not play a crucial role in supporting youth employment. Moreover, its utilization in implementing the EU project for a “Youth Guarantee”¹⁸⁹ has been really modest.¹⁹⁰ We will say more about this guarantee in paragraph 3.6.

The Legislative Decree n. 81/2015 – part of the Jobs Act project – introduced the possibility to sign an apprenticeship contract between

¹⁸⁸ M. D'Onghia, Il contratto di apprendistato, in P. Chieco (a cura di), (2013), *Flessibilità e tutele nel lavoro. Commentario della legge 28 giugno 2012, n. 92*, Cacucci, Bari, pp. 145-170.

¹⁸⁹ Council Recommendation of 22 April 2013 (2013/C 120/01).

¹⁹⁰ A. Balsamo, XV Rapporto Isfol sull'apprendistato: d'ora in Avanti più attenzione a quello scolastico?, (2015) *Bollettino Adapt*: <http://www.bollettinoadapt.it/xv-rapporto-isfol-sullapprendistato-dora-in-avanti-piu-attenzione-a-quello-scolastico/>
This article contains remarks on the Report of the National Research Institute ISFOL.

companies and people over 29 years. In particular, the apprenticeship contract can be signed in the case the person is unemployed, is benefiting an unemployment benefit and has signed the individual *patto di servizio*.

This contract provides companies with tax cuts and the possibilities to recognise lower wages than those fixed by the collective agreements. At the same time, the contract is meant to provide unemployed persons with the opportunity for retraining.

3.5. Further changes in the last regulation

A new activation tool which was introduced by the Renzi reform is the *assegno di ricollocazione*. This is a new allowance for which the unemployed can apply after 4 months of registration in cases when public employment offices are not able to provide them with activation initiatives of suitable job offers in this period of time. In particular, this allowance allows beneficiaries to access employment services and initiatives, according to their specific employability profile. But one should highlight that it is still unclear how the public employment offices will implement this disposition, and which would be the criteria to link the services with the employability profile. Operative indications and possible amounts should be determined by the ANPAL. At the same time, the recognition of the *assegno di ricollocazione* depends on the availability of resources.¹⁹¹

3.6. Pending issues

Even with regards to activation policies, traditional issues have characterised the system over the years. In particular, the non-homogeneous public employment services within the national territory, with considerable regional and municipal differences are worth

¹⁹¹ G. Canavesi, La ricollocazione secondo il Jobs act: dall'attività al contratto?, (2015) n. 3, *Rivista del Diritto della Sicurezza Sociale*.

stressing.¹⁹² One should also highlight the wide inefficiency of these services, with the exception of virtuous cases. But even the virtuous cases are not able to provide appropriate answers to cope with the need for social protection because of the lack of resources.

One historical reason for the public employment offices' inefficiency has been the transition – in the employment offices development - from a bureaucratic approach to an employment services approach, more dynamic and active. In the Nineties, two European decisions accelerated the liberalisation process of the European national employment systems. Indeed, job placement is regulated according to the European Union's rules on competition, in the same way as economic activities.¹⁹³ In 1991 the European Court of Justice (ECJ) declared the illegitimacy of the state's monopoly of job placement because it was not able to cope with labour offers.¹⁹⁴ In 1997 the ECJ pushed the state's monopoly of job placement in Italy to change.¹⁹⁵ This process deeply transformed the public employment offices, which had to face the transition from a

¹⁹² F. Liso, Brevi appunti sugli ammortizzatori e sui servizi all'impiego nel Protocollo del 23 luglio 2007, in A. Perulli (a cura di), (2007), *Le riforme del lavoro. Dalla legge finanziaria 2007 al protocollo sul Welfare*, Halley Editrice; A. Alaimo, (2009), *Il diritto sociale al lavoro nei mercati integrati. I servizi per l'impiego tra regolazione comunitaria e nazionale*, Giappichelli; F. Liso, Servizi all'Impiego, in (2007) *Enciclopedia Giuridica Treccani*, pp. 1-10; F. Liso, Appunti sulla trasformazione del collocamento da funzione pubblica a servizio, in De Luca Tamajo, Rusciano, L. Zoppoli (a cura di), (2004), *Mercato del lavoro: riforma e vincoli di sistema*, Editoriale scientifica; F. Liso, I servizi all'impiego, in D. Garofalo, M. Ricci, (2006), *Percorsi di diritto del lavoro*, Cacucci; F. Liso, Collocamento. I) Diritto del lavoro (voce; aggiornamento), in (1988) *Enciclopedia Giuridica Treccani*, pp. 1-24.

In particular, on the non-homogeneity of the employment services: Indagine sui servizi per l'impiego. Rapporto di monitoraggio, 2013. A cura del Ministero del Lavoro e delle Politiche Sociali – DG Politiche dei Servizi per il Lavoro e Italia Lavoro – Staff di Statistica, Studi e Ricerche sul Mercato del Lavoro, in *Lavoro/Documents/Rapportomonitoraggio SPI 2013.pdf*, (accessed 1st October 2016).

¹⁹³ C. Barnard, (2012), *EU Employment Law*, Oxford University Press; S. Sciarra, Job centre: an illustrative example of strategic litigation, in S. Sciarra (ed.), (2001), *Labour Law in the Courts*, Oxford, p. 241.

¹⁹⁴ Judgment of the Court (Sixth Chamber) of 23 April 1991. Klaus Höfner and Fritz Elser v Macrotron GmbH. Case C- 41/90.

¹⁹⁵ Judgment of the Court (Sixth Chamber) of 11 December 1997. Job Centre coop. arl. Case C-55/96. Please see (1998), II, *Rivista critica del diritto del lavoro*, p. 93 ss., E. Ales.

bureaucratic to a services approach. But the bureaucratic mentality of that period has still not yet entirely vanished.

The legislative choice to recognise the role to private actors has not brought significant improvement in the functioning of the labour market.¹⁹⁶ At the same time, due to public expenditure limits, local administrations intervene more and more rarely to protect unemployed people who have to cope with particular difficulties. Indeed, at the territorial level public administration – i.e. Regions and Municipalities - could promote some initiatives and provide specific assistance support for people in particular circumstances.

Furthermore, the traditional lack of national oversight¹⁹⁷ could have contributed to exacerbating the scarce results of employment services.

The activation field has also been characterised by endless competence disputes between the State and the Regions¹⁹⁸ and a Constitutional reform proposal was put to a popular referendum in 2016, supporting a competence division in favour of a more central management¹⁹⁹ but without being approved.

The public employment offices' inefficiency is also detrimental in terms of the lack of valid opportunities for young people. This is particularly relevant if we think that the Italian youth unemployment rate is one of the highest in the EU, i.e. 40.3% in comparison with 20.1% in the EU on average (25 countries) and in comparison with 7.2% in Germany,

¹⁹⁶ P. A. Varesi, *Il workfare territoriale*, in D. Gottardi, T. Bazzani (a cura di), (2014), *Il workfare territoriale*, Editoriale scientifica; Bergamante, Marocco, (2014), *Lo stato dei Servizi pubblici per l'impiego in Europa[Risorsaelettronica]: tendenze, conferme e sorprese*, ISFOL, Roma, in <http://sbnlo2.cilea.it/bn5ne2/opac.aspx?WEB=-ISFL&IDS=19755>, (accessed 1st October 2016).

¹⁹⁷ Mariucci, A very bad text? Note critiche sulla riforma, (2012), *Lavoro e Diritto*, p. 415 ss.

¹⁹⁸ M. Napoli, Disegno di legge delega e modifiche al Titolo V della Costituzione, (2002), 3, *Diritto delle Relazioni Industriali*, p. 361 ff.; P. Varesi (a cura di), (2000), *I servizi per l'impiego. Un nuovo ruolo delle strutture pubbliche nel mercato del lavoro*, Milano; F. Carinci, I due volti della riforma: regionalizzazione e privatizzazione, in *I servizi per l'impiego tra pubblico e privato*, (1999) 22, *Quaderni di diritto del lavoro e delle relazioni industriali*, p. 3 ff.; V. Fili, (2002) *L'avviamento al lavoro tra liberalizzazione e decentramento*, Ipsoa Milano.

¹⁹⁹ This would have been more coherent with the introduction of a National Agency. At the same time, the Referendum concerned several other different, complicated and substantial issues.

where this rate is the lowest in the EU.²⁰⁰ With regards to the crisis impact on youth employment, the Council Recommendation of 22 April 2013 (2013/C 120/01) outlined the strategic aim to invest in the human capital of young Europeans in order to achieve “long-term benefits and contribute to sustainable and inclusive economic growth”. The Council asked Member States to introduce in their legal system a Youth Guarantee to “ensure that all young people under the age of 25 years receive a good-quality offer of employment, continued education, or an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education”. The implementation of the Youth Guarantee in Italy has been carried out with different outcomes from one Region to another, considering unsolved problems regarding public employment services’ and apprenticeships’ inefficiency.

With regards to efficiency in employment policies, particular attention should be dedicated to the conditionality of unemployment benefits in Italy.

First of all, from a theoretical perspective, one should highlight the eventual relationship between the delineation of unemployment benefits conditionality and the Constitution. This would allow a better understanding of how this concept – of conditionality – is introduced in the Italian framework.

In this regard, in Italy unemployment protection is not expressly linked to any constitutional duties. At the same time, art. 38 of the Italian Constitution – stating protection in case of involuntary unemployment - can be linked to the right and duty to work, included in art. 4.

The relationship between art. 38 and art. 4 of the Italian Constitution has been interpreted differently by Italian scholars.

On the one hand, in Cinelli’s opinion these articles provide different protection: art. 38 would provide merely economic support and art. 4 would guarantee placement in a new job. Thus, he thinks the ordinary

²⁰⁰ <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

This unemployment rate refers to people under 25 years of age.

legislation should link the two aspects.²⁰¹ At the same time, this would be possible only if such a process were supported by a macroeconomic policy aiming at creating employment.²⁰²

On the other hand, Renga looks at art. 38 and art. 4 as two complementary dimensions.²⁰³ Actually, since the Royal Decree n. 2270/1924 unemployment benefits are linked to activation duties, implying the acceptance of a suitable job offer or a vocational training offer.²⁰⁴ Furthermore, the social security system can contribute to improving job offers by being connected with active labour market policies, which have to look at the market.²⁰⁵ Thus, it is of the utmost importance to understand how to direct these policies and make them effective in order to favour high quality growth.²⁰⁶ This is still an open problem in Italy because even though the latest reforms pointed out the importance to network different actors, a clear way to connect vocational training needs and a territorial economic development plan is still lacking. The ordinary legislation has tried and is still trying to realise the connection between art. 38 and art. 4 of the Italian Constitution. A recent attempt has endeavoured to transform activation policies in legitimate conditions to access the unemployment benefits,²⁰⁷ but this probably wouldn't be coherent with the constitutional dispositions because, as aforementioned, the Constitution doesn't expressly make the unemployment protection dependent on active behaviour.

²⁰¹ M. Cinelli, *Diritto*, cit., p. 177 ff.; M. Cinelli, (1982), *La tutela del lavoratore contro la disoccupazione*, Franco Angeli, Milano, p. 31.

²⁰² M. Cinelli, *La tutela*, cit. In 1982 Cinelli mentioned the project of creating a national agency. See also F. Carinci, Il quadro istituzionale dell'intervento pubblico sul mercato del lavoro, (1979) 75, *Politica del Diritto*.

²⁰³ S. Renga, (1996), *Mercato del lavoro e diritto*, Franco Angeli, Milano.

²⁰⁴ F. Liso, Part time, disoccupazione e ammortizzatori sociali, in C. Lagala (a cura di), (2004), *Part time e disoccupazione nella riforma degli ammortizzatori sociali*, Milano, p. 21.

²⁰⁵ S. Renga, *Mercato*, cit., p. 265.

²⁰⁶ M. Ricci, Mercato del lavoro e licenziamenti collettivi, (2007) 116, *Giornale di diritto del lavoro e delle relazioni industriali*, pp. 749-798; M. D'Onghia, Un itinerario sulla qualità del lavoro, (2009) 2, *Rivista Giuridica del Lavoro e della Previdenza Sociale*, p. 261.

²⁰⁷ C. Lagala, F. Liso, La riforma degli ammortizzatori sociali nel disegno di legge del Governo (A.S. n. 848-bis), (2003) *Rivista Giuridica del Lavoro e della Previdenza Sociale*, p. 675 ff.

M. Tiraboschi, S. Spattini, J. Tschöll, (2009), *Guida pratica ai nuovi ammortizzatori sociali*, I Libri di Guida al Lavoro, Il Sole 24 Ore, Milano, p. 141 ff.

At the same time, passive and active policies should be linked – through ordinary legislation - by reciprocal duties and rights addressed to unemployed people and employment services. This perspective opens a relevant pragmatic issue in the Italian system, i.e. the inefficiency of the conditionality of unemployment benefits, which is due both to the inefficiency of public employment offices to provide valuable activation or job offers, and to a lack of punitive measures implementation. Basically, the lack of efficiency means firstly an inability to provide adequate services to be useful for both companies and workers. This makes it impossible for unemployed people to comply with their activation duties. Moreover, the duty/right to work is also affected by the lack of macroeconomic policies oriented at job-creation.

4. Conclusion

As mentioned in the first part of this contribution, in Italy the last reforms increased flexible contract typologies and downsized protection in case of dismissal. This increase in flexibility has not been balanced by a similar increase in security.

As a matter of fact, notwithstanding some relevant improvements in the field coming from the current reforms, open issues are still pending and negatively effect protection in case of unemployment.

These specific pending issues still have to find a solution. In this part it is meant to highlight these open matters and suggest some remarks. In particular:

- 1) Assistance in case of unemployment is lacking at the national level. In order to comply with the State obligation ex art. 38 Italian Constitution, Italy could introduce this protection through means-tested benefits based on general taxation.
- 2) Precarious workers/self-employed. The Renzi reform enlarged the eligibility requirements and made Naspi more accessible. This tendency towards ironing out the protection between workers with significant social contributions in recent years and workers without such contributions can be dangerous for the sustainability of the insurance system, which needs enough social contributions from

employers and employees to function and be sustainable. Thus, people who couldn't be included in this type of protection should access an assistance level of protection, based on general taxation. At the same time, one should also raise the issue of the increasingly precariousness of current employment – which is often fixed term and with low contributions – might be a crucial problem to cope with in order to guarantee the future sustainability of the insurance unemployment benefits.

The new unemployment allowance creates some confusion within this approach. This is a tool paid through general taxation and addressed just to people who have been able to access the insurance protection: this is a mixture of different kinds of protection systems.

- 3) In order to support the possibility for transitions in and out the labour market, it would be advisable to strengthen the compatibility between the right to keep the benefits while working under a certain limited amount. Some relevant attempts have been done for self-employed work and for part-time work. But the regulation could be further improved.
- 4) In order to implement effective activation policies which could be useful to enable the unemployed to find a job, an investment of resources in improving public employment offices' efficiency would be advisable, e.g. by hiring more staff and providing them with adequate vocational training to deal with the activation needs of both workers/unemployed people and companies.
- 5) In order to clearly understand which are the vocational training needs requested by local companies, it would be worth to strengthen the public employment offices networking with crucial actors of the labour market. At the same time, it would be desired that public and private entities, which provide vocational training services, would have a clear picture of the companies' and the territorial development needs.
- 6) The responsibility of public employment offices in providing adequate services is an open issue in Italy. A responsibility has been introduced for workers of the public employment offices to inform public authorities about non-fulfilment of the activation duties. But

this responsibility doesn't aim at affecting the public employment office's inefficiency.

- 7) By analysing the Italian system, one could highlight that legislative changes are not enough to cope with the pending issues in LMPs. Changes in the system, as a whole, would be needed. In particular:
- a. A macroeconomic policy towards the creation of new jobs would be crucial in order to comply with art. 4, c.1 Italian Constitution (right to work);
 - b. Despite the attempt of the Monti-Fornero and the Renzi reforms, a lack of an efficient network, which is able to manage activation policies, is still a crucial problem. Tackling this problem would entail the political will to make the networks function. The capacity to plan territorial development would also be a prerequisite for an efficient system.
Databases are relevant tools to plan and evaluate the system, but for different causes their development is still not completed.
 - c. Reasons, which are not legislative, influence the efficiency of public employment offices and should be taken into consideration. These reasons are of different natures, such as economic, i.e. the lack of resources to invest in offices workers, or cultural, i.e. the bureaucratic mentality, etc.
 - d. The cultural factor of the system as a whole has to be taken into consideration, too. Corruption, unclear public procurement procedures and undeclared jobs are problems, which are also highlighted by the County-specific recommendations addressed to Italy.²⁰⁸ These aspects undoubtedly affect social security or activation, such as the efficiency of initiatives aimed at facing unemployment.
 - e. With regards to the traditional lack of national oversight,²⁰⁹ the introduction of an *ad hoc* National Agency would seem to be worth

²⁰⁸ E.g. since the Council Recommendation on the National Reform Program 2014 of Italy and delivering a Council opinion on the updated Convergence Programme of Italy, 2014 (2014/C 247/11).

²⁰⁹ Mariucci, A very bad text? Note critiche sulla riforma, (2012), 3-4, *Lavoro e Diritto*, p. 415 ss.

implementing to face the problem. Some months are needed to better understand its outcomes.

Thus, improvements have been introduced in the recent regulation in both active and passive LMPs, but these advancements need to be further developed, according to both social and economic sustainability. The personal energies of the people should be channelled in a way, which can guarantee them to be fairly recognised, even in terms of adequate protection against unemployment and efficiency of public employment services and activation measures as a whole. The need for a change is evident and should first of all entail a cultural and institutional level.

With regard to the relationship between activation duties and unemployment benefits, their link should be strengthened by enabling people to be effectively more active. This would be possible first of all by providing qualitative good employment services for the unemployed, services connected with a LM characterized by a strong demand, thus driven by a strong macroeconomic policy.

Labour market policies “in crisis”: the case of Greece

Effrosyni Bakirtzi²¹⁰

Abstract

Given the ongoing effects of the current economic crisis and the widespread demographic problems, the Greek working population has decreased resulting in high unemployment rates and an increase in the number of people who are receiving social security benefits. These two last factors have further worsened the active/passive ratio in the labour market, posing the latter under severe pressure. In the face of these developments, it is worthwhile to investigate the ways in which the Greek government has responded to these problems. On the one hand, flexible forms of work have been introduced to the Greek labour market. On the other hand, certain activation employment policies dealing with high unemployment rates have been launched. For example, public welfare programmes targeting temporary employment of the unemployed and other programmes, aiming at mitigating youth unemployment, long-term unemployment and promoting self-employment. Nevertheless, studies regarding short- and long-term developments in the field of employment policies in Greece expect that unemployment rates will reach the levels before crisis only after 2036. This paper examines passive as well as active labour market policies in Greece in view of the difficult economic situation in which the country is currently immersed and highlights some of the pending issues regarding employment protection that need to be addressed.

Summary: 1. Introduction. 2. Flexibility of the labour market in times of crisis. 3. The (un)employment protection system. 3.1 Entitlement to unemployment benefits. 3.2 Qualifying criteria for unemployment compensation. 3.3 Required level of contributions. 3.4 Regular unemployment benefit. 3.5 Unemployment assistance benefits. 3.6 Youth unemployment. 3.7 Long-term unemployment. 3.8 Labour supply

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reduction policies as passive labour market policies. 4. Active labour market policies. 5. Some thoughts on the existing employment policies.

1. Introduction

Employment policies in Greece have been developed in a wider historical context which is quite different from the respective contexts of other European countries. The period following the civil war in Greece, and more specifically after 1952, has left the country in great economic distress. At that time, unemployment has been “targeted” by way of two policy-substitutes: immigration policy and the policy of employment at the public sector. The proper employment policies were marginal and only limited to paying benefits to the unemployed. Furthermore, employment policies pursued in the 1980s aimed at broadening the scope of social protection (e.g. increase in the amount and the duration of unemployment benefits, extension of the unemployment protection to further categories of employees and “loosening” the requirements for retirement for many groups of employees) accompanied by promoting employment at the public sector as a means of maintaining low rates of unemployment. In fact, active labour market policies made their appearance in 1982 as an initiative originated with the European Union. At the same time, the social protection policies were no longer broadened and the income support in the form of unemployment benefit was further reduced.

Notably, unemployment increased significantly during the 1990s with a considerable growth in long-term, female and youth unemployment as well as wide differences between regions.²¹¹ The primary protection against the risk of unemployment is based on the so called system of unemployment compensation which has been and is still receiving the main part of public expenditure on labour market policies. This system provides social insurance coverage due to unemployment to persons

²¹¹ See T. Papadopoulos, (2000), *Integrated approaches to active welfare and employment policies: Greece*, Eurofound report, p.1 (available at: http://people.bath.ac.uk/hsstp/TP-Publications/TP_Employment_Policy_Greece_2002.pdf) (accessed 1st October 2016).

affiliated with the Institute for Social Insurance (*Ιδρυμα Κοινωνικών Ασφαλίσεων* – hereafter I.K.A.) who must establish a long contribution record in order to be entitled to unemployment benefits. For long-term unemployed persons no longer qualifying for unemployment benefits, there are limited social assistance arrangements and, consequently, this vulnerable group is almost excluded from any kind of welfare support.

Indeed working on the issue of high unemployment rates in Greece has been a matter of great importance for the Greek policy makers during the past years. Especially, since the outbreak of the economic and financial crisis, the unemployment rates have remarkably increased. In terms of numbers, looking at the statistics of the Greek Labour Force Employment Organisation (*Οργανισμός Απασχόλησης Εργατικού Δυναμικού* - hereafter O.A.E.D.) shows us that in December 2010 the persons registered as unemployed amounted to 804.597, of which 277.904 persons received unemployment benefits, while in December 2015 the number of unemployed persons reached 1.047.661, of which only 186.737 received unemployment benefits. In order to paint a clearer picture of the size of unemployment in Greece, one should bear in mind that the total population is around 10.770.000 people with a labour workforce consisting of 4.791.000 persons.²¹² Notably, unemployment affects all age groups of the labour force. However, newcomers to the labour market are those who are facing the greatest difficulties in finding a job: the unemployment rate in the age group 15-24 (youth unemployment) is 52,4%.²¹³ This should be taken seriously into consideration because of the long-term direct and indirect impact unemployment has to young people and their families.

Therefore, combating those high unemployment rates and promoting economic growth is the prime priority for the Greek policy makers who

²¹² Statistics provided by OAED (published on its website: <http://www.oaed.gr/synkentrotika-stoicheia>).

²¹³ See statistics from the World Fact Book: <https://www.cia.gov/library/publications/the-world-factbook/geos/gr.html> (accessed 1st October 2016). For more information on policies against youth unemployment, see A. Apostolidou, Active labour market policies against youth unemployment in times of austerity, the case of Greece, (2015) Vol. I, Issue 3, *International E-Journal of Advances in Social Sciences*, pp. 430-435.

have been establishing both passive and active labour market policies and recognizing their social and economic role. Broadly understood labour market policies - beyond passive and active labour market policies – include flexibility policies which aim at increasing the labour demand by restricting labour costs.

This paper which examines labour market policies in Greece, comprises four sections. In the first section, reform policy aspects regarding labour market flexibility will be analyzed. The second section describes the system of unemployment protection in Greece while the third section touches upon the active labour market policy initiatives which have been taken lately, especially after the beginning of the economic crisis which has resulted in a massive loss of jobs and limited government expenditure. The final section summarizes the problems identified in the implementation of the aforementioned policies and investigates the way in which these issues can be dealt with in the future.

2. Flexibility of the labour market in times of crisis

With the onset of the debt crisis, Greek authorities had to undertake strict austerity measures and perform reforms in order to receive financial assistance funded by the European Union and the International Monetary Fund with the aim of reducing government budget deficits and avoiding default. These measures as set of policies attached to this assistance began with reducing salaries in the public sector, but soon a spill over effect to the private sector was perceived and further measures targeting at a more flexible labour market followed. The ulterior purpose of these measures was, on the one hand, the reduction of labour costs combined with an increase in flexible working arrangements so that the Greek economy would be competitive in the global market and, on the other hand, the reduction in unemployment rates and the creation of new jobs.

Apart from the transformation of the Greek labour market due to the crisis, the reforms are connected with the European legislation which promotes the employee protection as well as flexibility of the labour market. Furthermore, the obligation of the Greek labour legislative

reforms did not only arise from the difficult economic situation and the rapid changes in the labour market. This obligation has been also included in the action plans agreed between the Greek governments and its creditors which have been implemented in the Greek legal order without the prior negotiation with social partners.

We could categorize the measures targeting at flexibility in three groups. The first includes measures promoting temporary employment, covering the extensive use of fixed-term employment contracts and temporary agency work. For instance, new legislation has loosened the strict requirements for the establishment of a temporary work agency.²¹⁴ Temporary employment exists in Greece since the 1990s²¹⁵ and it has been used to provide businesses promptly with the necessary workforce for their smooth operation, especially in times of crisis. Nevertheless, in many cases temporary work can be abused and, consequently, inequalities between employees can be developed. At the beginning of the crisis, the Greek legislator amended the legal framework on temporary employment²¹⁶ in a positive way providing greater protection to employees in such employment relationships as it has restricted the use of temporary employees to specific cases within the functional activity of the enterprise for reasons justified by exceptional, temporary or seasonal needs. Furthermore, the principle of equal treatment of employees in the event of temporary employment has been extended. Equality is no longer limited to the application of the wage clauses of collective agreements, but it is now extended to any form of

²¹⁴ Article 123 of the Law Number 4021/2012 (this law has implemented the second Memorandum of Understanding - MoU). The MoUs contain detailed macroeconomic adjustment programs which have been negotiated between the Greek authorities and officials from the European Commission, the European Central Bank and the International Monetary Fund as conditions of financial support.

²¹⁵ It has been recognized and regulated by Law Number 2956/2001.

²¹⁶ With the Law Number 3846/2010 implementing Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. This legislative initiative has been inspired by the Ministry of Labour Commission on the conjunction of flexibility and security.

compensation and includes all forms of benefits.²¹⁷ However, a subsequent Law²¹⁸ has amended the rules regarding the duration of the temporary work assignment and has set the maximum duration to 36 months (as opposed to 18 months allowed before) making the use of temporary work even more flexible. Similarly, three more recent Laws²¹⁹ changed the existing legal framework governing the terms of operation of temporary work agencies by loosening the strict requirements for their operation. Moreover, the legal terminology used in these later Laws is very different. Notably, the law does not mention any longer temporary work “companies”, but rather temporary work “businesses” (as temporary employment can be used by most types of companies and individuals), and the term used therein is “placement” of temporary employees rather than “assignment”.²²⁰

The second category of measures aiming at increasing flexibility in the labour market is those promoting part-time employment. In times of financial difficulties, the employer-company has the possibility to employ employees for a number of days less than those stipulated in the employment contracts while the employees receive only part of their contractual salary, without receiving any benefits making good the loss. This so-called “partial unemployment” could be imposed unilaterally by the employer for a maximum period of six months should the economic activity of the undertaking be reduced.²²¹ Since 2010 the maximum duration of this “partial unemployment” has been increased to nine months per calendar year.²²² This measure has been in force so that

²¹⁷ C. Papadimitriou, *The Greek labour law face to the crisis: A dangerous passage towards a new juridical nature*, (2013) Issue 3, *ELLN Working Paper Series*, p. 6.

²¹⁸ The Law Number 3899/2010 on the implementation of the necessary measures required for supporting the Greek economy.

²¹⁹ The Laws Number 4052/2012, 4093/2013 and 4254/2014.

²²⁰ C. Papadimitriou, *Οι νέες νομοθετικές ρυθμίσεις για την προσωρινή απασχόληση* [The new legislative regulations on temporary employment], (2016) Vol. 72, Issue 1684, *Δελτίον Εργατικής Νομοθεσίας [Bulletin of Employment Legislation]*, p. 3.

²²¹ Article 38 of the Law Number 1892/1990.

²²² Article 17 of the Law Number 3899/2010 on the implementation of the necessary measures required for supporting the Greek economy. An interesting judgment of the Greek Supreme Court (*Areios Pagos*) 1252/2014 decided on the forms and requirements of “partial unemployment”. According to this judgment, it is unacceptable to impose partial unemployment selectively to specific employees

dismissals may be avoided in times of financial difficulties and workplaces may be retained. Nevertheless, the extension of the maximum duration to nine months may be regarded disproportional to the purpose of the measure.

The third category of measures considers reforms in the dismissal protection law. In the past, the Greek labour law has been accused for inflexibility due to the high severance pay in case of dismissal and the strict legal regime of collective redundancies. At the demand of the employers and on the pretence of the crisis, the dismissal protection legal regime has been made more flexible. Firstly, the cost of dismissal has been indirectly reduced because the maximum notice period for the termination of an employment contract has been reduced to four months (compared to 24 months in the previous regime) and if the employer complies with this shortened notice period, the amount of severance pay is reduced to half.²²³ Secondly, during a probationary period of 12 months employees are not entitled to severance pay, should their employment contract be terminated within this period.²²⁴ Thirdly, the Greek collective dismissals regime in situations of structural changes, economic crisis or loss of competitiveness has changed as the threshold for collective redundancies has increased to 6 employees (instead of 4 previously) over a period of 30 days in establishments with 20 to 150 employees and for establishments with more than 150 employees the threshold is set to 5% (instead of 2% previously) of all the staff, but maximum 30 employees.²²⁵ In Greece the flexibility supported by

only, while the others continue to work full-time, as well as when specific work is covered by one and only person who cannot be replaced by somebody else during her obligatory absence.

²²³ It should be noted that if the severance pay is not fully paid, then the dismissal is null and void under Greek law. In order to better understand the Greek dismissal protection regime one should take into consideration that in case of an open ended employment contract the lawfulness of the dismissal does not depend on the existence of a cause.

²²⁴ Article 74 of the Law Number 3899/2010. Under the previous legislation employees having less than a year of service were entitled to severance pay equal to one month's salary.

²²⁵ Article 74 of the Law Number 3899/2010.

austerity measures has been directed towards the facilitation of dismissals usually at the expense of employment protection.

Interestingly, flexibility has been implemented by the Greek legislator in a way that the austerity measures in the labour market supporting such flexibility resulted in the deregulation of work and labour relations. Moreover, apart from examining the legal framework and reforms of the legal regime, one should investigate what the reality reveals in practice. It is often observed that flexibility is being abused at the cost of employment protection. We currently see practices of hiring and firing persons in one day and employing people only for the probationary period of 12 months so that no severance pay would be owed.

In a similar vein, undeclared and under-declared work is quite common in Greece. Undeclared work is the best-known form of social security fraud and it has to be clearly distinguished from mere cases of error. Fraud concerns the deliberate violation of reporting provisions resulting in a loss of funds due to evaded social security contributions. This affects, primarily, the revenue of the welfare state. The fraudulent behaviour can be found among all kinds of work, from self-employment to different types of dependent employment. Under-declared work concerns the misrepresentation of the actual employment. Instead of completely hiding the employment relationship, the employer misreports to the competent authorities as to the nature and the extent of a particular employment relationship.²²⁶ As a result, an officially declared employee is paid by the formal employer two wages (an official-declared one and a supplementary-unofficial one: the so-called envelope wage). This is also referred to as grey labour market or under-declared waged employment, which consists of envelope wages for regular or overtime/extra work. Undeclared work has been characterised as a phenomenon detrimental to working conditions, social protection, health and safety of workers and overall labour standards. One of the consequences of the economic crisis could be identified the increase of

²²⁶ S. Reindl-Krauskopf, M. Meissnitzer, Types of social security fraud - A legal analysis, in L' Association luxembourgeoise des organismes de sécurité sociale (ed.), Annual conference of the European Institute of Social Security on "Social security and fraud". (2013) Vol. 30, *Bulletin luxembourgeois des questions sociales*, p. 11.

undeclared and under-declared work. The main attraction of undeclared and under-declared work is financial as these types of activities allow employers to reduce their costs and employees to increase their take-home earnings by evading taxation and social security contributions.

3. The (un)employment protection system

In Greece, passive labour market policies primarily refer to income support for the unemployed with the objective of limiting the consequences of unemployment in the living standards for the unemployed. The Greek Labour Force Employment Organisation (O.A.E.D.) has assumed the responsibilities of the insurance against the risk of unemployment and the payment of the unemployment benefits. This organisation implements the governmental policies in the fields of:

- a) employment and combating unemployment,
- b) the reinforcement and facilitation of integration of the labour force into the labour market,
- c) the insurance against the risk of unemployment,
- d) the promotion of professional training and its linking with employment,
- e) the intellectual and social development of the labour force and their families.²²⁷

The main reform of O.A.E.D. took place through the setting up of a National Unemployment Protection System (*Εθνικό Σύστημα Προστασίας από την Ανεργία* – E.S.P.A.) under Law Number 1545/1985 where for the first time the participation of the State to the financing of the insurance protection against unemployment has been established.

3.1. Entitlement to unemployment benefits

The persons insured against the risk of unemployment and members of the Greek Labour Force Employment Organisation (O.A.E.D.) are

²²⁷ Article 25 of the Law Number 4144/2013.

those who perform work, as a main profession/activity²²⁸ in a dependent (either fixed-term or open ended) employment relationship with remuneration (wage), if they have been insured for health care in a social security institution²²⁹ and they are between the ages of 15 and 74.²³⁰ The requirement of being in a dependent employment relationship is not fulfilled by persons on a service contract, managing directors and members of the board of directors,²³¹ trainees and students and, therefore, these persons are excluded from the entitlement to unemployment benefits. Relatives of first and second degree as well as husbands/wives are insured at O.A.E.D.²³²

Special provisions apply for civil servants who are excluded from the system of unemployment protection of O.A.E.D and they are insured by a special social security fund.²³³ Moreover, special provisions apply for homeworkers or those employed with vouchers, persons in apprenticeships²³⁴ or vocational training,²³⁵ pensioners, prisoners, etc. Self-employed persons can be insured against the risk of unemployment within a special fund administered by O.A.E.D.²³⁶ This regulation has been regarded as a positive legal intervention in the times of the crisis,²³⁷

²²⁸ Main profession/activity is regarded the one that mainly supports the living of the employee, defines her professional and social position and in which she dedicates most of her time. Whether an employee performs work as a main profession/activity is an issue which is examined on a case by case basis by the Institute for Social Insurance according to the given facts.

²²⁹ Article 11 para. 1 of the Law Decree 2961/1954.

²³⁰ Exceptionally registration at the Labour Force Employment Organisation is permitted for persons who are over 74 years old.

²³¹ If they are shareholders of 3% at least (Article 49 of Law Number 4144/2013).

²³² This was regulated by article 1 para. 1 and 2 of the Law Number 4075/2012. In the past these persons were not insured at all (relatives of second degree) or they were insured under certain conditions.

²³³ Article 12 of the Law Number 2961/1954.

²³⁴ Article 3 para. 2 lit. (c) of the Law Number 1545/1985 as amended by Article 30 para. 4 of the Law Number 4144/2013.

²³⁵ Article 30 para. 2 of Law Number 4144/2013.

²³⁶ Article 50 of the Law Number 4144/2013.

²³⁷ O. Aggelopoulou, *Ασφάλιση ανεργίας και αποκατάσταση απώλειας μισθού* [Unemployment insurance and compensation for loss of wages], (2014) *ΕΕργα* [Greek Labour Law Review], p. 99.

especially given the high levels of self-employment which is a distinctive feature of the Greek structure of employment.

3.2. Qualifying criteria for unemployment compensation

This income support usually takes the form of unemployment benefits granted to unemployed persons under certain conditions. These conditions are the qualifying criteria for receiving unemployment compensation and they will be analyzed in detail below.

To begin with, the person should be unemployed according to the provisions of the Law Number 1545/1985 which is one of the main legal instruments for the Greek national unemployment system. This law defines as unemployed a person whose employment relationship has been legally and validly terminated or has expired,²³⁸ who is seeking employment, agrees to work in an employment relationship within a broader employment sector suggested by the employment services of O.A.E.D. or consents to undergo vocational training or retraining.²³⁹ Therefore, the first requirement is the status of being unemployed. Furthermore, the person should be capable of working in a sense that depending on his/her capacities, capabilities and professional training he/she can earn at least 1/3 of what a physically and intellectually healthy person with the same professional training usually earns in the same region.²⁴⁰ Consequently, a rebuttable presumption exists that a person with a disability of 66,6% and higher cannot be capable of work and, thus, is not entitled to unemployment benefits.²⁴¹ In addition, the unemployed person has to be available for work which means that he/she has to accept any kind of suitable employment offered or undergo updating training.²⁴² In case the unemployed person does not

²³⁸ It is worth mentioning that those who leave their jobs voluntarily are not considered unemployed (Article 15 para. 1 of the Law Decree 2961/1954, Articles 3 and 7 of the Law Number 1545/1985).

²³⁹ Article 3 para. 1 of the Law Number 1545/1985.

²⁴⁰ Article 15 para. 2 of the Law Decree 2961/1954.

²⁴¹ This person can be, however, eligible for disability benefits, if he/she fulfils certain requirements.

²⁴² Article 15 para. 4 of the Law Decree 2961/1954.

accept the suitable employment²⁴³ offered, he/she will no longer be considered unemployed and, hence, will not qualify for receiving unemployment benefit. If the unemployed person does not agree to undergo the updating training, he/she will be deprived of the unemployment benefit for 15 days.²⁴⁴ The last requirement of entitlement to the unemployment benefit is the reference period of insurance against the risk of unemployment. As a general rule, the unemployed persons must have realized 125 full-time working days during the last 14 months prior to the termination of employment not taking into account the working days of the past two months.²⁴⁵ Within the meaning of working days are included fictitious working days, such as days of sickness, vacation, maternity leave, etc. given that they have been recognized as such by I.K.A.-E.T.A.M. (Institute for Social Insurance Institute – Unified Insurance Fund for Employees – *Ιδρυμα Κοινωνικών Ασφαλίσεων Ενιαίο Ταμείο Ασφάλισης Μισθωτών*).

A procedural requirement can be considered the registration of the unemployed person within the services of O.A.E.D. of his/her residence or place of work. After the termination of employment, the unemployed also has to submit an application for acquiring the benefit within a deadline of 60 days since the termination of his/her employment contract. Should this requirement not be fulfilled, the application shall be rejected.²⁴⁶

In case a person receiving unemployment benefit works undeclared for an employer, strict sanctions shall be imposed on the employer

²⁴³ For an analysis of the definition and nature of suitable employment see A. Stergiou, (2014), *Δίκαιο Κοινωνικής Ασφάλισης [Social Security Law]*, Sakkoulas publications, pp. 687-688.

²⁴⁴ Article 15 para. 6 of the Law Decree 2961/1954.

²⁴⁵ Article 4 para. 1 of the Law Number 1545/1985. Should the unemployment benefit be requested for the first time, the person applying for it shall have realized additionally at least 80 working days during each of the two years prior to the unemployment support (Article 5 of the Law Number 1545/1985). Special provisions apply for seasonal workers, long-term unemployed and youth aged 20-29.

²⁴⁶ Article 2 para. 1 of the Law Decree 2961/1954 as amended by Article 7 para. 4 of the Law Number 1545/1985 and Article 4 para. 4 of the Law Number 2434/1996.

according to the existing legal framework which provides for such sanctions, both administrative and pecuniary.²⁴⁷

3.3. Regular unemployment benefit

The regular unemployment insurance benefit is the basic insurance benefit granted by O.A.E.D. This benefit consists of a basic income support plus increments due to family responsibilities. Since March 2012 the amount of the basic insurance benefit is 55% of the current national minimum wage of an unskilled worker²⁴⁸ and it is independent from the previous wage records of the unemployed person. The basic insurance benefit is increased by 10% for each protected family member. The benefit can be paid for a period of 5 to 12 months depending on the previous employment record of the person and from January 2014 onwards the benefit cannot exceed 400 days during the past 4 years.²⁴⁹ The unemployment benefit is payable upon the completion of a waiting period which begins with the termination of employment and includes the first 6 days of unemployment (excluding the day of dismissal).²⁵⁰

3.4. Unemployment assistance benefits

Apart from the regular unemployment benefit, the Greek system of unemployment protection covers several other benefits for particular situations. These benefits are granted exclusively to insured persons. The first of these is provided to those unemployed whose employer is

²⁴⁷ Pecuniary sanctions in cases of detected undeclared work by the Labour Inspectors and IKA are provided for in Law Number 4093/2012. Both agencies can conduct controls and impose penalties which are calculated in a specific manner and are extremely high. Cases, like hiring the concerned persons one day before the inspections or firing them one day after the completion of the controls or avoiding the unexpected controls through the sea way in tourist areas, have been reported in Greece. Moreover, sanctions for the illegal employment of a person receiving unemployment benefits are foreseen in Law Number 4144/2013.

²⁴⁸ Article 5 para. 3 of the Law Number 3552/2007.

²⁴⁹ Before January 2014 the maximum was 450 days during the past 4 years.

²⁵⁰ Article 18 of the Law Decree 2961/1954.

insolvent or bankrupt.²⁵¹ In such a case, the employment relationships with the employer are terminated and the unemployed persons are entitled to a benefit equal to three unpaid monthly wages which refer to a period of six months before the employer's bankruptcy or insolvency. In addition, an allowance of work suspension can be paid to employees whose work is suspended by the employer. This allowance amounts to 10% of the average of their regular full-time wage during the last two months and it can be paid only for a period of three months on a yearly basis.²⁵² This allowance is not paid to persons working part-time or in rotational work. A further ad hoc allowance is given to persons due to the withholding of labour or business stoppage.²⁵³ Moreover, a seasonal allowance is provided to persons of certain professions who cannot qualify for unemployment benefits because they do not fulfil all the necessary legal requirements.²⁵⁴ Last but not least, an allowance for all other persons who do not qualify for the regular unemployment benefit constitutes a "bridge" from unemployment insurance to social assistance.²⁵⁵ The procedure, its requirements, amount and all other details are regulated by the decision of the Minister of Labour.²⁵⁶

3.5. Youth unemployment

Young persons aged 20-29 years who enter the labour market for the first time after completing their studies, are entitled to a monthly benefit of 73,37€ for 5 months in total.²⁵⁷ This entitlement is repealed if the unemployed person does not accept employment offered to him/her by the employment services.²⁵⁸

²⁵¹ Article 16 of the Law Number 1836/1989.

²⁵² Article 27 para. 5 lit. (c) of the Law Decree 2961/1954.

²⁵³ Article 27 para. 5 of the Law Decree 2961/1954 and Article 20 para. 1 of the Law Number 1836/1989.

²⁵⁴ Article 22 para. 1 of the Law Number 1836/1989.

²⁵⁵ O. Aggelopoulou, *Ασφάλιση ανεργίας και αποκατάσταση απώλειας μισθού* [Unemployment insurance and compensation for loss of wages], (2014) *ΕΕργα* [*Greek Labour Law Review*], p. 99.

²⁵⁶ Article 22 para. 6 of the Law Number 1836/1989.

²⁵⁷ Article 2 of the Law Number 1545/1985.

²⁵⁸ Article 2 para. 4 of the Law Number 1545/1985.

3.6. Long-term unemployment

Long-term unemployed are considered insured persons in uninterrupted unemployment for a period of more than 12 months. They are entitled to long-term unemployment benefit assuming that they have exhausted their entitlement to the regular unemployment benefit and their family yearly income does not exceed a certain limit.²⁵⁹

3.7. Labour supply reduction policies as passive labour market policies

Among passive labour market policies in Greece one could classify labour supply reduction policies, such as early retirement, staff suspension, parental and sabbatical leave, job sharing, etc. These policies have a passive nature, because they absorb unemployment without increasing the volume of employment.²⁶⁰ For instance, the early retirement and pre-retirement reserve of civil servants has been implemented by recent legislation.²⁶¹ Yet, the recent pension reforms in Greece, along with reducing the amount of pensions, have put obstacles to the early retirement of employees.

4. Active labour market policies

Active labour market policies in Greece were established in the mid 1980s under the auspices and with the financing of the European Social Fund. Such policies were related to programs of vocational training for unemployed and employees, subsidies for employers in order to hire unemployed persons and subsidies to unemployed in order to create their own business. These policies are complementary to social protection policies for unemployed (for example, granting unemployment benefits) known as passive labour market policies.

²⁵⁹ Article 1 para. IA.1 lit. III of Law Number 4093/2012.

²⁶⁰ A. Apostolidou, Active labour market policies against youth unemployment in times of austerity, the case of Greece, (2015) Vol. I, Issue 3, *International E-Journal of Advances in Social Sciences*, pp. 430-435, 433.

²⁶¹ Article 33 of the Law Number 4024/2011.

The task of implementing activation policies is entrusted to O.A.E.D. which is providing technical and professional training either through apprenticeships where teaching and practice are combined or through shorter professional training regarding specializations which are on demand in the labour market on a short-term basis.

The initiation of a series of activation measures can be found in the Law Number 2434/1996 where a system of “employment cards” combined with training vouchers, new subsidized training programs, non-wage subsidies for firms who employ young people and first-time job seekers and financial incentives for unemployed to start their own business as self-employed have been introduced. In the course of time, further initiatives were taken, such as the program “Young People in Active Life” with two subcategories: “New Jobs” (employment subsidization program) and “Young Professionals” (promotion of self-employment). Moreover, young unemployed could participate in the so-called Stage program so that they can gain work experience.

Lately, employment programs for unemployed run by O.A.E.D. offer subsidies for social security contributions.²⁶² Other programs aim at the promotion of employment and usually concern the preservation of jobs (for instance, in the hotel businesses during the winter period), the subsidization of employers for the creation of new jobs, the support of young self-employed persons and public welfare programs for the temporary employment of unemployed persons for short terms at communal and regional administrative bodies (the so-called workfare program which regards fixed-term quasi employment in not-for-profit agencies and public services).²⁶³

In general, activation measures take the form of either job or social security contributions subsidization or they are vocational training programs offered in particular to those who have lost their entitlement to unemployment benefit.²⁶⁴ In principle, these measures are targeting

²⁶² Article 18 of the Law Number 3833/2010.

²⁶³ C. Dimoulas, Exploring the impact of employment policy measures in the context of crisis: The case of Greece, (2014) Vol. 67, 2, *International Social Security Review*.

²⁶⁴ C. Papadimitriou, Κρατική πολιτική και δημιουργία νέων θέσεων εργασίας [State policy and the creation of new jobs], in P. Agallopoulou, (2001), *Η πολιτική*

young people, long-term unemployed and older unemployed persons which are seen as the most vulnerable groups.

Further aspects of the future reform policy can be identified in the National Reform Plan 2016 where it is provided that the life-long learning and apprenticeship systems will be upgraded and extended and the O.A.E.D. services will be modernized. Programs enhancing employability and promoting employment have been redesigned and will be further developed in four pillars: i) programs intended for the dynamic sectors of the Greek economy, supporting businesses in guaranteed employment, ii) programs providing targeted training and consulting for the unemployed or the new businessmen, iii) programs leading to the certification of knowledge and development of skills, and iv) programs specially designed for regions with high unemployment rates. During 2015 three workfare programs have been realized for more than 50.000 full-time jobs and pursuant to new legislation ²⁶⁵ improvements in their realization have been introduced. For the year 2016 the workfare programs shall focus on the unemployed person and they should be linked to the development of one's skills so that one's sustainable integration into the labour market should be assured. Furthermore, programs for older and young unemployed persons have been designed and will be implemented in the course of time. Regional actions for the social integration of vulnerable groups which were completed during 2012-2015, will be continued within the Regional Business Programs in the future as well.

5. Some thoughts on the existing employment policies

The Greek welfare regime can be described as dual and unequal, because, on the one hand, offers protection to the insiders who are provided with safe employment and social security coverage, and, on the other hand, there is no minimum protection for outsiders who work in undeclared and precarious jobs with no social security coverage and

απασχόλησης στο πλαίσιο της Ευρωπαϊκής Ένωσης [Employment policies within the European Union], Ant. N. Sakkoulas publications, pp.11-22.

²⁶⁵ Article 1 of the Law Number 4368/2016.

access to social assistance benefits.²⁶⁶ As a matter of fact, the existing legislative framework of unemployment protection has been adopted more than 20 years ago and does not take into consideration the developments of all these years, especially the fact that the standard employment relationship in the labour market is no longer the rule. As a result, the current legislation can be regarded as ineffective because the legal rules no longer correspond to the social reality they seek to regulate. In addition to the out-dated legislative framework, the interpretation of the legal rules by the public administration is often problematic as this tends to be done at the expense of the protection of the unemployed usually in order to avoid economic and organizational costs.

Moreover, the pension system used to provide generous pensions to those retired from public service employment and certain other professions while farmers and labourers received the minimum national pension. However, the 2016 reform of the social security system strives to eliminate such discrepancies the results of which are to be seen in the near future.

Unemployment benefits in Greece are available mainly to individuals with long or uninterrupted contribution records. Consequently, a large number of vulnerable employees who do not fulfil the strict requirements because they have short or interrupted contributions or no records (first-time job seekers), are excluded from unemployment protection.²⁶⁷ The personal scope of application of the unemployment protection legislation should be changed providing unemployment insurance coverage to atypical workers who usually do not fulfil the requirement of dependency or insurance periods due to the particularity of their employment relationship.

²⁶⁶ C. Dimoulas, Exploring the impact of employment policy measures in the context of crisis: The case of Greece, (2014) Vol. 67, 2, *International Social Security Review*, p. 52. A. Mouriki, (2009) Πόσο ευέλικτη είναι στην πραγματικότητα η ελληνική αγορά εργασίας: τυπικές ακαμψίες και απορρύθμιση στην πράξη [How flexible is the Greek labour market in reality: typical rigidity and deregulation in practice], in *Πολιτικές για την ενίσχυση της απασχόλησης και ασφαλιστική κάλυψη της ανεργίας [Policies supporting employment and unemployment insurance coverage]*, Greek Ombudsman, Sakkoulas, p. 65.

²⁶⁷ T. Papadopoulos, (2000), *Integrated approaches to active welfare and employment policies: Greece*, Eurofound report, p. 9.

Furthermore, unemployment benefits are available for a short-term period after the expiration of which there used to be no safety net, like social assistance arrangements for the long-term unemployed. There has been only access to some form of income support through, for instance, participation in vocational training programs. However, this participation is neither obligatory nor guaranteed for all.²⁶⁸ The absence of social assistance for the unemployed leads to an intensification of the level of poverty.

In addition, the monetary value of the unemployment benefits is very low. Because of a decrease of 22% the national minimum wage for persons over 24 years and nearly 32% for young persons during the past years, the amount of the unemployment benefit has been readjusted lately and equals 360€ per month, an amount far below the minimum standards of social security as set in the 102 ILO “Convention concerning Minimum Standards of Social Security” as well as below the poverty line according to the European Committee of Social Rights Conclusions XIX-2 (2010).²⁶⁹ This readjustment of the unemployment benefit amount was necessary due to the major reductions in the public expenditure because of the austerity measures taken to amortize the public debt directed at social benefits. As employment policy costs need to be maintained at low levels, the financing of passive employment policies has been rendered insufficient.²⁷⁰

The termination of the employment relationship required for the activation of the unemployment protection and the entitlement to unemployment benefits, is a “legal” fact, which sometimes complicates the access to the right to unemployment benefits. This happens, because employers may sometimes refuse to provide a dismissal notice²⁷¹ and the cases will be pending before the courts. O.A.E.D. will only pay the

²⁶⁸ *Ibidem*, p.9.

²⁶⁹ O. Aggelopoulou (2014), Ασφάλιση ανεργίας και αποκατάσταση απώλειας μισθού [Unemployment insurance and compensation for loss of wages], *ΕΕργλ* [*Greek Labour Law Review*], p. 107.

²⁷⁰ As for the financing of activation policies it should be highlighted that most of the actions and programs are (co-)financed by the European Union.

²⁷¹ If the employer refuses to provide a dismissal notice, then the termination of employment is null and void and overdue wages will be owed.

unemployment benefit after the judicial decision has been issued which may be very time-consuming. This way, the unemployed person is deprived of the right to unemployment benefit, especially in a period when she is most vulnerable after having lost her job.

Alongside the employment protection, another important factor in relation to the support towards the unemployed was the family. During the past years, families in Greece used to support their members if they were in economic need. Over the course of time, this has changed and because of the reduction of the purchasing power of most Greeks and the loss of their wealth, many households can no longer offer financial support to their unemployed family members.²⁷²

As far as active labour market policies are concerned, in the 2000's Greek National Action Plan for Employment the government committed to a shift from passive to active labour market policies. However, active labour market policies in the context of this National Action Plan take the form of job subsidisation or vocational training programmes offered to persons who lost their entitlement to unemployment benefits. The situation remains unchanged today with a number of negative consequences that have been reported so far, such as the substitution of unemployment benefits with active labour market policy benefits, which have not actually contributed to limiting unemployment. Moreover, it has been argued that active labour market policies in Greece have supported clientelism.²⁷³ This is because they have been assisting financially not the most vulnerably and disadvantaged unemployed persons, but those with established network contacts with politicians.

There are some other important points to be mentioned in relation to the active labour market policies. First, activation policies for technical and professional training of the labour force are directed towards satisfying the needs of certain businesses rather than addressing the actual needs of the unemployed persons and the necessities in the labour

²⁷² C. Dimoulas, Exploring the impact of employment policy measures in the context of crisis: The case of Greece, (2014), Vol. 67, 2, *International Social Security Review*, p. 54.

²⁷³ *Ibidem*, p. 53.

market. Second, the lack of a single institution providing this kind of training is seen as problematic.²⁷⁴ Third, the systematic introduction of active labour market policies in the Greek labour market has been regarded to a certain extent ineffective because of the institutional and functional weaknesses of O.A.E.D. in realising such programs.²⁷⁵ Although the services of O.A.E.D. have been reformed and reorganised,²⁷⁶ there are still many issues that need to be addressed, especially with regard to the quality of services provided to unemployed persons. Last but not least, it should be noted that the activation policy measures adopted lately in the Greek legal system have been introduced without taking into serious consideration the proposals of the social partners. However, a positive development is that the Greek governments tend to utilize the European funds more compared to the past, especially when it comes to combating youth unemployment.

In addition, the legal regime concerning activation measures in Greece is considered instable due to the sudden changes of the regulatory framework of programs supporting employment. This renders their administrative implementation even more difficult and inefficient. It should be highlighted that a large number of complaints submitted to the Greek Ombudsman concerned activation measures and their insufficient implementation by O.A.E.D., in particular with regard to providing information and individualized advice to the interested persons and the non-timely payment of the subsidies. Consequently, such difficulties in administering effectively the complexity and increased bureaucracy attached to the realization of active employment policies may jeopardize the credibility of the actions of O.A.E.D.

Several legislative initiatives have been taken in order to fight unemployment and support employment during the crisis in Greece. Nevertheless, these initiatives proved ineffective and failed to restrain the high unemployment rates, especially because flexible forms of work

²⁷⁴ V. Papadogambros, (2009), *Πολιτικές απασχόλησης. Όροι και προϋποθέσεις* [Employment policies. Terms and conditions], in *Πολιτικές για την ενίσχυση της απασχόλησης και ασφαλιστική κάλυψη της ανεργίας* [Policies supporting employment and unemployment insurance coverage], Greek Ombudsman, Sakkoulas, p. 98.

²⁷⁵ *Ibidem*, pp. 99-101.

²⁷⁶ For example through the Law Number 2956/2001.

(such as fixed-term, part-time and rotational work) were incapable of counterbalancing the reduction in full-time employment. Taking into consideration the impact of the facilitation of dismissals on the labour market without promoting the creation of new jobs, one could argue that this flexibility cannot offset the weakening of the employment protection.

In turn, flexible forms of employment, such as part-time work, partial (un)employment and temporary work, tend to be dominating the Greek labour market replacing the standard employment relationship. According to data from the information system ERGANI,²⁷⁷ one of the two employees hired in September 2016 were employed in a flexible employment relationship (i.e. other than full-time open ended employment contract). Apart from the statistics on the newly hired persons, one should take into consideration the fact that many standard employment relationships in Greece are converted into part-time or other flexible work arrangements. Of course, it is plausible to have pluralism in the Greek labour market promoting flexibility of work arrangements, but this flexibility should be accompanied with security and employment protection for persons employed under the flexible work arrangements. Otherwise, there is a high risk that these employees will be deprived of security in terms of employment stability, professional development and entitlement to social security benefits as well as access to state benefits; a risk that is currently one of the problems that the labour force in Greece is facing.

It is currently discussed whether some elements of the Danish flexicurity model, such as a deregulated legal framework of employment protection, active labour market policies, lifelong learning and social dialogue, could

²⁷⁷ An information system called “ERGANI” has been developed since March 2013(See Decision of the Minister of Labour, Social Security and Solidarity No. 5072/6/25.2.2013 as amended and complemented by Decision No. 28153/126/30.8.2013). This information system monitors the flows of employment in the private sector and was created in order to minimize the bureaucratic procedures for employers and to combat undeclared work. The employers have to register their employees to the information system “ERGANI” upon hiring and before the latter start working, by using the forms E3 and E4.

be “imported” in the Greek system.²⁷⁸ The success story of this model is based on job mobility coupled with a safety net for unemployed persons and the involvement of social partners. The Danish labour law system is rooted in a negotiating culture with an emphasis on the willingness of management and labour to reach compromise,²⁷⁹ an element which does not exist in the Greek labour law system. As a matter of fact, in the past years the Greek social partners tend to play a less important role in the establishment of terms of employment and working conditions and their position has been weakened, especially in comparison to the one of the employers. Moreover, an equivalent to the Danish safety net for the unemployed does not exist in Greece and it is difficult to be developed due to the lack of the needed funds. Such a net would have been required for promoting activation policies and supporting job mobility in the labour market.

To conclude, the current legislative framework regarding employment protection in Greece needs to be up-dated in order to correspond to the social reality it seeks to regulate. It remains to be seen whether future initiatives will be effective enough to mitigate the negative impact of the rapid changes overrunning the Greek labour market on the employment protection of the workforce. Appropriate activation measures should be put in place in order to complement efficiently passive labour market policies alongside the flexibilization of work. The key question would seem to be whether an apparent shift towards active labour market policies and flexibility of work can make a difference to supporting the (re)integration of unemployed into the labour market.

²⁷⁸ See 3rd Quarterly Report of the Parliament of Greece, State Budget Office, pp. 44-46 (October 2016).

²⁷⁹ J. Kristiansen, (2015), *The growing conflict between European uniformity and national flexibility. The case of Danish flexicurity and European harmonization of working conditions*, Djof Publishing, p. 13.

Flexicurity in Spain in order to help unemployed people: A barren relationship between active and passive measures?

María Salas Porras²⁸⁰

Abstract

The analysis of protective measures for the unemployed in the Spanish Labour Law includes both active and passive policies by forming a single block since the flexibility has been installed in European labour markets. The effects of this so-called flexicurity are analysed in the first section of this article which defines the current regulatory context ordering labour relations and the impact that deregulation is generating, from which we want to provide an unbiased objection to the alleged efficiency of labour flexibility.

Once the old and new problems plaguing the Spanish labour market are detected, we first present the mechanisms of economic support for the unemployed, especially highlighting the organization of two new protection programs. After this, the actions that are studied are those that seek not only the activation of the unemployed but also other measures that reflect the necessary co-responsibility of all those involved in this area, so there are two sections for activation of public services and of businesses. It will become clear that only when activation measures for unemployed, the labour market and the employment services are applied in a coordinated manner, high levels of employment will be reached. Finally, a reflection is offered on how the interaction between active and passive policies is legally provided, to the extent that these relegated to complements of those, cease to be a social right to become a complement that the citizen loses if he does not behave in a way the authorities deem suitable.

²⁸⁰ This work was carried out during the development of a quarterly stay at the Library of the International Labour Office in Geneva, Switzerland, during the months of August, September and October 2016. The completion of the stay has been possible thanks to economic and institutional support of the University of Malaga, as well as the invaluable assistance of Mrs. Richelle Van Snellenberg, Mrs. Sonia Sanchez Cubero and Mrs. Susana Cardoso.

Summary: 1. Flexibility of labour market to avoid unemployment: Does it work? 2. Spanish National System of protection for unemployed people. 2.1. Contributory Level – *Nivel Contributivo*. Unemployment Benefit. Unemployment Subsidy. 2.2. Assistance Level - *Nivel Asistencial*. 2.3. Temporary Extraordinary Programs. 3. Spanish Strategy for Activating the Employment. 3.1. Strengths and weaknesses of the Strategy: Variations according to the evaluation method. 3.2. Materialization of its content. Activation of the unemployed people. Activation of the labour market. Activation of the Employment Public Services. 4. The necessary activation for having access to unemployment social protection. 5. Conclusion.

1. Flexibility of the labour market to avoid unemployment: Does it work?

Making labour markets more flexible is one of the flagships of the European Employment Strategy since 1998 when it was formulated for the first time. Flexibility has been brought about by the deregulation of labour standards, or, what is the same, the reduction of state intervention in the management of labour relations because, according to the neoliberal philosophy, labour market rigidity stifles economic growth. On the other hand, it leaves ample leeway to private will, which encourages competitiveness and production, and therefore the creation of employment and wealth.

Since the economic and financial crisis in 2008, dizzying labour law reforms have taken place in our country that have led to very strong labour market liberalization with a clear erosion of permanent contracts. Currently, Spain has one of the highest levels of temporality within Europe,²⁸¹ to which must be added poor working conditions and low wages.²⁸² Scholars²⁸³ have repeatedly stated that these reforms, and

²⁸¹ Data available on http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_eppga&lang=en, (accessed on 16 October 2016).

²⁸² Spanish Interprofessional Minimum Wage for 2017 is 707,70 €/month, as provided in the Royal Decree 1171/2015, 29 December, published in BOE nº 312, 30 December.

²⁸³ M. Serrano Argüeso, *Medidas de reparto de empleo en España en un contexto de crisis económica ¿Solución contra el desempleo o vía de incremento de la*

especially the one of 2012, represent a significant shift towards job insecurity, to the extent that stable employment has become a burden that stifles economic growth and competitiveness.

With regard to the threat to stable and permanent employment, we will now indicate here some of the regulatory provisions affecting the stability and quality of employment. First, the figure of the “contract for supporting entrepreneurs”,²⁸⁴ which establishes an annual trial period that allows dismiss without a cause the workers hired under this formula. Second, the increased flexibility of a learning and training contract, which extends the age until which young people can benefit from this contractual type to 30 years and enables them to be hired by a company on both contracts after each other without the contract changing into a permanent one.²⁸⁵ As anyone employed on a learning or training contract can be dismissed without any cause, it is easy to imagine what consequences these new contract types have for young people employed on their basis. This significantly increases the precarious and irregular employment as contracts are linked to low pay and poor conditions even with the level of training acquired by the worker. Thirdly, the amendment of the regulation of part-time contract, also means a pay cut. Although the regulatory reform has limited overtime, - which cost more than ordinary work-hours -, ironically, it has made it possible to increase the number of additional hours,²⁸⁶ being their cost the same as of ordinary work-hours. Fourthly, the government granted legal protection and promotion of contractual arrangements of atypical employment located in the so-called “gray areas” of productive relations such as economically dependent or “false autonomous”, whose employment, depends on both, subordinate and independent work, is formally described as autonomous work but, in reality, follows the same guidelines of work or subordinate employee with a significant degree of dependence on the employer. On the other hand, grants, practical

precariidad laboral?, (2016), Vol. 3, núm. 3, *Revista Internacional y Comparada de Relaciones Laborales y Derecho del Empleo*.

²⁸⁴ Article 4 of Law 3/2012, 6 July, published in BOE nº 162, 7 July.

²⁸⁵ Article 2 of the same norm.

²⁸⁶ Article 5 of the same norm.

training or other work situations without employment relationship can also be understood as a covert or informal ways of employment, which particularly affects young people forced to accept precarious working conditions with the expectation to gain professional experience or just to enter the labour market in exchange for low or no wages, lack of Social Security coverage, little or no training and no labour rights. Fifth and finally, it is necessary to underline the modifications regarding flexibility in the regime of layoffs. This is doctrinally²⁸⁷ recognized as a problem of greater importance than the temporality, to the extent that the destruction of employment generated at all is comparable to the difficulty that our labour market has to create it. To this, one must add that the contracts most affected by the layoffs are mostly temporary, due to reasons of security, efficiency and cost savings. In this sense, the “last in, first out” option discourages the formation of human capital, undermines productivity, directs the production model for temporal activities, favors outsourcing, which creates insecurity and hinders social integration.²⁸⁸

This legal and regulatory flexibility, is also recognized internationally, it places Spain among European countries with high rates of liberalization.²⁸⁹ However, it strongly contrasts with the overwhelming levels of unemployment that still exist in our country. On September 2016, these figures rose to 19.5%, with youngsters bearing the brunt. For example, for young people of an age up to 25 years, the unemployment

²⁸⁷ These are the terms used by Professor Aurelio Desdentado Bonete in his work of 2016, ¿Un miércoles de ceniza para la contratación temporal?, Por Almacén de derecho, (2016), *Derecho Laboral, Sentencias*. Available on: <http://almacenderecho.org/miercoles-ceniza-la-contratacion-temporal/> (accessed on 14 October 2016).

²⁸⁸ *Ibidem*.

²⁸⁹ B. Lamotte, C. Massit, (2014), *Questioning the “flexicurity” model with regard to the rise of job insecurity. Focus on Germany, Spain, Italy and France*, HAL, pp. 13, available on <https://halshs.archives-ouvertes.fr/halshs-01092370>, (accessed on 16 October 2016).

rate stands at 46.5%, compared with 18.5% of the population between 25 and 55 years and 16.5% of those over 55 years.²⁹⁰

Adding to this, the most recent studies²⁹¹ conducted in the Euro zone in order to deepen the analysis of the efficiency of employment policies show that our country has the worst results, reaching only 75.65% of efficiency instead of the 98% measured in other territories such as Germany or Denmark. Ironically, never before have so many resources been allocated to the prevention of unemployment and the results had never before been so terrible. Therefore, it is clear that the greater flexibility of the labour market, by itself, does not lead to sufficient levels of employment, or at least a bearable level of unemployment, but quite the opposite. At least in the Spanish case, deregulation or flexibility therefore must be accompanied by actions that encourage job creation and, of course, measures to ensure the livelihood of unemployed citizens while employment opportunities arise. Thus, the following sections are dedicated to analyzing one and the other, in order to present the way the authorities have planned their interaction.

2. Spanish National System of protection for unemployed people

In Spain, as in many other countries of the European territory, the Social Security system is an essential tool of social protection to alleviate the contingencies which cause loss of income, such as health – regarding disability benefits temporarily or permanently -, death - including cases of widowhood and orphanhood-, old age - retirement pension - and, finally, job loss-creating two kinds of aid, contributory benefits and assistance, depending on whether there had been a previous contribution period or not.

²⁹⁰ Data published by the Spanish Statistic Institute, available on <http://www.ine.es/infografias/tasasepa/desktop/tasas.html?t=0&lang=es>, (accessed on 16 October 2016).

²⁹¹ Among other works, we quote here M.d.C. Pérez Gutiérrez, F.J. Maza Ávila, M. Blanco Canto, M. Jiménez García, Eficiencia y productividad de las políticas de empleo en la Eurozona, (2015), Vol. XXII, nº1, *Revista de Ciencias Sociales*, Universidad del Zulia, p. 19, and the study of B. Lamotte, C. Massit, (2014), *“Questioning the “flexicurity...”*, *op.cit.*

This positive vision of the solidarity purpose of Social Security, however, is being tarnished, especially nowadays, from an unwanted collateral individualist effect regarding the fact that this can lead to discouraging someone to look for a job, or rejecting job offers to the point that once guaranteed a certain level of income, the unemployed citizen may no longer be interested in working.

Indeed, this positive, but particularly the negative vision on social security justifies the increasing institutional and political concern about harmonizing active and passive employment measures going to the extreme of accepting this activation to even have access to what was once an unconditional social right. Specifically the combined reading of Article 41 of the Employment Act²⁹² (hereinafter RDL 3/2015) and Article 263 of the General Social Security Law²⁹³ (hereinafter GSSL) establish the obligation of recipients of benefits – from the contributory or assistance level - to sign the known as “commitment of activity”, meet the requirements of that engagement and accept a suitable job offer when it arises if they want to have access to such economic aids. Consequently, the breach of this commitment –without a justified cause- causes temporary suspension or even loss of the right to receive the benefit.

2.1. Contributory Level – *Nivel Contributivo*

The Spanish Social Security System is characterized by being public, mandatory, and contributory. This explains that this is where we find most of the measures aimed at replacing the income due to losing a job, or a reduction of working hours. Here we can distinguish two types of aid: Unemployment Benefit and Unemployment Subsidy.

²⁹² Royal Legislative Decree 3/2015, 23 October, approving the revised text of the Employment Act, published in BOE n° 255, 24 October. This Royal Decree is to compile all the changes made on the previous Law 56/2003 of Employment, on which it has had the opportunity to rule the Social Economic Council in its publication Dictamen 13/2015, available at <http://www.ces.es/dictamenes>, (accessed on 11 October 2016).

²⁹³ Royal Legislative Decree 8/2015, 30 October, approving the revised text of the General Social Security Act, published in BOE n° 261, 31 October.

Unemployment Benefit

In order to be eligible for unemployment benefits three requirements have to be met.²⁹⁴ One, being registered as a jobseeker with the public employment service, which involves willingness and availability to work by signing the commitment of activity. Two, having contributed for at least 360 days within the six years prior to the legal unemployment situation. And three, losing a previous job. Within this category, several possibilities can be distinguished. First, in case of dismissal, it must not be the employee's fault. Secondly, in case of sexual harassment, the employee is allowed to quit the job in order to safeguard her physical and mental integrity.²⁹⁵ Third, suffering the suspension of the contract for technical, organizational, economic or production reasons.²⁹⁶ Fourth, the worker had endured a reduction of his/her initial working hours, provided that said reduction ranging between 10% and a maximum of 70%, with similar a salary drop, established by the employer on the occasion on technical reasons, organizational, economic and production. Once these requirements are fulfilled, the right to receive unemployment benefits becomes automatic, being the basis of the benefit the average contribution bases for this contingency corresponding within the last 180 days during the period of occupation. The duration of this benefit depends on the days worked in the six years prior to the legal situation of unemployment, so the worker can receive the benefit for 4 to 24 months.²⁹⁷ The amount of the benefit is also subject to maximum and

²⁹⁴ Article 266.e) LGSS.

²⁹⁵ Article 267.b).2 LGSS.

²⁹⁶ Under the provisions of Article 47 Royal Decree Law 2/2015, 23 October, approving the revised text of the Statute of the Workers, published in BOE n° 255, 24 October.

²⁹⁷ As far as the duration is concerned, it is dependent upon the time listed occupation in the six years prior to legal unemployment, which is scheduled as follows: From 360 to 539 days of contribution, the benefit is paid for 4 months; from 540 to 719 days of contribution, the benefit is paid for 6 months; from 720 days to 899, the benefit is paid for 8 months; from 900 to 1079 days of contribution, the benefit is paid for 10 months; from 1080 to 1259 days the benefit is paid for 12 months; from 1260 to 1439 days of contribution, the benefit is paid for 14 months; from 1440 to 1619 days of contribution, the benefit is paid for 16 months; from 1620 to 1799 days of contribution, the benefit is paid for 18 months; from 1800 to 1979 days of

minimum limits, which depend on a series of factors, such as the number of dependent children of the beneficiary and, public indicator of income monthly multiple effects (IMME, hereinafter) in force at the time of entitlement, increased by a sixth of the amount²⁹⁸ Expressed in other words, if a citizen without children is entitled to the minimum contributory benefit, he/she will obtain 497,01 €/month, but if they have one or more children, they will receive monthly 664,75 €. While the maximum contributory benefit without children is 1.087,20 €, with a child it is 1.242,52 €, and with two or more children, the amount is 1.397,84 €.

Bearing in mind that the minimum wage in Spain is around 650 €, it can be accepted without much reticence that at unattractive employment offers, the citizen may choose the unemployment benefit while a more desirable opportunity reaches, whether in economic or professional terms.

Unemployment Subsidy

The “assistance level” of the Spanish unemployment protection is quite different in comparison to other European systems of protection. Because although it is set to complement the so-called “contributory level”, however it is compulsory for the beneficiary to have been working previously at least three month.²⁹⁹

contribution, the benefit is paid for 20 months; from 1980 to 2159 days of contribution, the benefit is paid for 22 months, and, if they have contributed 2,160 days or more, then the benefit is paid for 24 months.

²⁹⁸ Under the provisions of Article 270.3 GSSL. On one hand, the amount of the IMME remains unchanged since 2010 (8th AD of Law 48/2015): 17.75 euros per day; 532.51 euros per month; 6390.13 per year. The annual amount of 7,455.14 euros be taken into account when the rules refer to IMW calculated annually and being excluded the extra payments. Regarding the maximum amount of benefit is 175% of the IMME if the worker has no dependent child; 200% of the IMME, if he/she has a dependent child and 225% of the IMME, if he/she has two or more dependent children. On the other hand, the minimum amount will be equal to 107% of the IMME, if the worker has dependent children, or 80%, if not.

²⁹⁹ Under the provisions of Article 274.3.a) GSSL, the minimum period is three months if the beneficiary has minor in his/her charge.

This misnamed “assistance level” (*Nivel Asistencial*) can provide longer unemployment protection to beneficiaries who have already exhausted the supply, or can offer some protection to workers who have not enjoyed the contributory unemployment benefits for not having met the minimum contribution period. This category also includes special situations in which are certain groups of workers -returned emigrants, released from prison or permanently disabled declared fit for work-. The unemployment subsidy also offers some kind of public protection to the elderly unemployed, enabling them to link said subsidy with their retirement pensions.

Although in common with those already listed for the contributory level, the requirements for accessing to this level of protection are much stricter. Such is the case of the condition, according to which, the citizen has to lack of income exceeding 75% of the IMW, has to sign the commitment of activity, and must appear registered as a jobseeker at the Employment Office, during and at least one month before receiving the aid, unless he/she has never enjoyed the contributory benefit.

The amount of unemployment subsidy is equal to 80% of the IMME in force at each time,³⁰⁰ which means that the value of the subsidy may be increased by the same extent as it does the minimum wage.³⁰¹ Its duration will depend on different factors as whether the supply is exhausted,³⁰² whether the citizen has never been entitled to it,³⁰³ the age of the applicant³⁰⁴ or the existence of children in their care.

Therefore, this second level of protection, as one can see, still tied to the working life of the citizen and not so much the actual lack of income as

³⁰⁰ By 2016, this amount has been set at 426 €/month.

³⁰¹ However, in the contributory benefit, its maximum and minimum limits are calculated in relation to the IMME in force at the time of creation of the right.

³⁰² Article 277.1 GSSL, if the applicant has previously exhausted the provision, the duration of the unemployment subsidy is six months, renewable for six-month periods for up to 30 months.

³⁰³ Unemployed who have not generated right to unemployment contributory benefit for not having covered the required contribution period, the duration of the subsidy varies depending on the time of contribution accredited and tenure of family responsibilities, but will move between a range of 3 to 21 months.

³⁰⁴ Older unemployed workers over 55 years who enjoy the so-called “pre-retirement benefit” to meet the requirements of art. 274.4 GSSL may continue perceiving this until at least the age that allows them to access the contributory retirement pension.

would be desirable, leaves important protection gaps in the social safety net. For example young people under 30, people over 30 years who have never entered the labour market, or long-term unemployed who have exhausted their contributory social aid.

2.2. Assistance Level (*Nivel Asistencial*)

Some of the aforementioned gaps are precariously filled by the assistance level in which, by constitutional mandate, the Autonomous Communities play a key role. The action which is developed nationally – or by the state level- is set by the Active Insertion Income Program³⁰⁵ (hereinafter AIIP).

The Active Insertion Income is an instrument that seeks to combine social assistance and employment policy (both directed especially to the employment of the most “sensitive” unemployed cases), and uses a type of aid which could be described as a “third tier” within the system of unemployment protection, added, next to the benefits and subsidies described before.³⁰⁶ It is largely connected with the so-called “minimum insertion income” or “social wage” enhanced by the European Community since the late eighties, to fight against the situation of social exclusion of groups, facilitating their integration into society and the labour market. So far in our country, this type of welfare benefits has been launched, with slight variations, in the territory of most of the Autonomous Communities.

The program began as a temporary annual measure subject to the budgetary availability, which by now has become permanent for providing protection to populations sectors that in its absence would be discovered. It consists of granting applicants for financial aid amounts to 80% of IMME in force at the time of application and its duration is 11 months.

The groups addressed are part-time workers whose income does not exceed 75% of the IMW and unemployed older than 45 years who are registered as jobseekers continuously for at least 12 months before the

³⁰⁵ Royal Decree 1369/2006, 24 November, published in BOE n° 290, 5 December.

³⁰⁶ Final Disposition 8th, GSSL.

application to join the program and who have exhausted the contributory benefits from a later period to 6 months. To receive this financial aid, they should sign the commitment of activity, accept suitable job offers that arise during the development of the program and make a personalized itinerary of labour insertion of participating in promotion, training, retraining, or other activities to increase activity. Refusal to accept and participate in such actions without just cause, leads to the suspension or deregistration in the program, and therefore, the loss of the economic accompanying measure.

2.3. Temporary Extraordinary Programs

High levels of unemployment, their persistence over time and the existence of groups of citizens unprotected have led our legislator to the creation of so-called “extraordinary temporary activation programs for employment”, which will remain in force until unemployment levels are reduced to 18% -Article 4 RDL 1/2016.³⁰⁷

Its purpose is to set up a “fourth safety net” for rescuing, in economic and labour terms, specific groups that are especially suffering unemployment since the economic and financial crisis burst. Thus these programs are addressed to young people under 30 who have never accessed the labour market and, therefore, are not entitled to social assistance, and the long-term unemployed, usually located between the group of over 45 and 55, to the extent that last longer the unemployed have exhausted all possible economic aid from the contributory and assistance level.

In general terms, except for the subjective aspect of the specificity of the groups to whom they are addressed, it could be said that both programs are a continuation of unemployment benefits, one can expect the inclusion of the unemployed in activation programs as a mandatory preliminary step to access an economic accompanying measure. Therefore, the subscription commitment of activity is a prerequisite, and

³⁰⁷ Royal Decree Law 1/2016, 15 April approving the extension of the Activation Plan for Employment, published in BOE n° 92, 16 April.

failure to do so will cause the disenrollment in the program and the loss of the economic support.

The first of these programs, known as PREPARA,³⁰⁸ comprises four different types of performances.

The first involves incentives for hiring young people under 30 and unemployed who have been registered with the employment services for more than two years. These include reducing corporate contributions Social Security for every contract signed if its duration is at least six months. What is bizarre though, is that, although the specific purpose of this measure is “to promote the transition to stable employment”, provides that contracts with these groups are part-time, when precisely the partiality of the working day does not offer stability but quite the opposite. These measures could be described as being insufficient to the extent of trying to cure a haemorrhage with a plaster. It would have been a completely different story if commitments to quality medium and long term employment had been made. However, it seems that the chosen option merely helps to patch up an important structural problem in a bad and temporary manner.

The second action, addressed exclusively at long-term unemployed who have exhausted their benefits and subsidies, seeks to integrate the applicants in various activation measures complemented with support valued at 75% of the IMME and during a maximum of six months. These activation measures are rather general, regarding the “completion of the insertion itinerary and other activation actions”³⁰⁹ that, according to the needs of each applicant, will be presented by the competent employment service. To breach any of these actions without justified cause, will result in automatic unsubscribing of the program and in losing the accompanying support. It is necessary to note here that the norm does not clarify what should be understood by breaching the activation actions. Neither, if there is the possibility of suspension rather than the disenrollment of the program, and what is meant by justified cause.

³⁰⁸ Royal Decree Law 1/2011, 11 February, on urgent measures to promote the transition to stable employment and retraining of unemployed persons, published in BOE n° 37, 12 February.

³⁰⁹ Article 2 RDL 1/2011.

Those indeterminate concepts generate helplessness to these citizens whose survival depends only on these economic aids.

The third and fourth measures of the program, which are addressed to young and unemployed over 45 years, open the possibility of integrating into actions of labour activation even when it is not mandatory for them, since they are not receiving any unemployment pension. This way these collectives are invited to participate in personalized insertion itineraries and to receive specific training courses for their professional profile, thus filling a possible gap protection, albeit not economic, but at least in order to activate them and to help them to fight unemployment.

The second special activation program introduced by the RDL 16/2014,³¹⁰ opens the possibility that it can be requested by both, part-time workers whose income does not exceed 75% of the IMME, and long-term unemployed with family responsibilities who have exhausted all alternatives of social protection possible without finding a new job opportunity.

Specifically it does not provide any novelty on any of the actions contained in the contributory or assistance unemployment benefits presented above. It merely extend for another six months the financial aid replacement or supplement income, while dilates, in an equal number of months, the required occupationally activation.

This one consists not only in underwriting the commitment of activity, but also on the accreditation of having developed at least three performances of job search, do the designed insertion itinerary and to accept any suitable job offer arising. In view of the proportionality of its breach –provided in the norm-, the temporary suspension or permanent expulsion of the program will take place, with the consequent loss of the economic aid.

Therefore, as can be seen, both programs reproduce the same model of interaction between passive and active measures of employment. They are a continuation of actions of unemployment protection that exist in our social security system with the exception of being destined for specific groups, although this is not reflected in the actions that entail. It

³¹⁰ Royal Decree Law 16/2014, 19 December, published in BOE nº 307, 20 December.

was hoped that these programs would take into account the existence of unprotected collectives – such as the young or people who never accessed the labour market. However, the option has been to duplicate measures and forward to citizens to regional employment services. The absence of guidelines in the Spanish activation measures regarding what these should be, based on deadlines that have to be implemented, of the assessments on its effective implementation and of the assessment of the degree of user satisfaction, abound in the inefficiency of a protection system still far from recognizing the structural and complex problem of unemployment.

In conclusion, the Spanish social security system, originally designed for temporary financial support of unemployed citizens has been modified to adapt to the new social context. Its current formulation has been affected greatly by the market's inability to create jobs which has caused the configuration of programs that allow delay the perception of financial assistance up to a limit of uncertain time. The perception that this configuration may be generating is not only a waste of national economic funds, but a harmful tendency towards “welfarism”, which has led the legislator to counter this trend through the compulsory activation of the unemployed. In this sense it stands as indispensable requirement to enjoy financial support sign a commitment of activity whose failure causes decay entitlement to benefit. Although the causes, effects, offender and sanction mechanisms that make up the Spanish model of interaction between active and passive employment measures are briefly studied in paragraph 5 in this work, we would like to introduce two key ideas. The first is related to the philosophical approach, as indicated lines back, supports and feeds the active employment policies. Indeed here it would show that the citizen is considered solely responsible for the unemployment situation in which they are to such an extent that only if he/she proves amply wants to work will recognize the right to receive social assistance. The second idea put on the table the issue of job quality and what to do regarding the extent the freedom of citizens is curtailed to reject an offer that does not meet the expectations of what qualified as “decent work”.

3. Spanish Strategy for Activating the Employment

A theoretical framework like this, -which aims to show the kind of interaction that links active and passive employment measures- implies to analyze the Spanish Strategy for Activating the Employment (hereinafter, SSAE) pointing out its content and strong and weak points.

3.1. Strengths and weaknesses of the Strategy: Variations according to the evaluation method

Determining the success or failure of active policies in Spain, it's necessary to observe two different analyses. One which comes from Europe and other carried out by national institutions themselves.

From the European point of view, our country is experiencing, in general, a gradual improvement in the economy, to the extent that there has been a growth of 2.7⁰% of GDP by 2016 –setting it in the fourteenth place in the world ranking³¹¹- and because of its aim is to create 480,000 new jobs by the end of this year 2016. However, unemployment levels continue to occupy second place among the highest of unemployment in the entire territory of the Union. Groups that are particularly hard hit are young people between 26 and 30 years, the long-term unemployed, and those over 50 years. However, this “improvement” has neither led to a reduction of the rate of youngsters abandoning the studies or to increase the continuous vocational training of “NEET”, nor achieved the restructuration of our business tissue.³¹² Moreover, no information exists about the cost/benefit ratio of investment in active policies and results, so nothing can be argued to defend the “improvement” of the situation in our country. The questions in the end are: Can improvement be described as mere economic growth? What are the social and economic

³¹¹ The information comes from International Monetary Fund, available on http://economia.elpais.com/economia/2015/04/15/actualidad/1429060990_180502.html, (accessed on 16 October 2016).

³¹² EURES. European Job Mobility Portal, available on <https://ec.europa.eu/eures/main.jsp?catId=2627&countryId=ES&acro=lmi&lang=en®ionId=ES0&nuts2Code=%20&nuts3Code=®ionName=National%20Level>, (accessed on 16 October 2016).

costs of deconstruction of Labour Law through making poor of contract types, the increase in temporary contracts and the disappearance of job security? What are the social and economic costs of a completely unstructured business fabric, of such levels of unemployed, of discouraged citizens, and of a generation of youth without a future?

On the other hand, from the Spanish point of view, the results derived from the implementation, in our public policies, of evaluation procedures; an innovation regarding to employment that is ordered in Article 39 of RD Law 3/2015. This assessment is expected to materialize through the annual publication of a report³¹³ containing information on the results of active policies throughout the country. This was implemented for this year by Annex I of the Order ESS/1978/2015,³¹⁴ where the allocation of subsidies to the Autonomous Communities (hereinafter, AA.CC.) was made to depend on the compliance with the estimates contained in the Activation Plan for Employment (hereinafter, APE), as well as the degree of success of these measures. Specifically, the AA.CC. should³¹⁵ get 60% of the subsidies only if they managed to insert in the labour market, recipients of financial support accompanying the APE, while the remaining 40% will have been granted based on a criterion more quantitative than qualitative, as was the number of potential beneficiaries Activation Program for Employment estimated to be attended by each region, based on the information taken into account when developing the Memory of Regulatory Impact Analysis of RDL 16/2014 of 19 December.

³¹³ We were able to recover here the Reports that the State Agency for Evaluation of Public Policies issued for the years 2011, 2013 and 2014, published respectively in Resolution of 15th July 2015, (BOE n° 176, 24th of July), in Resolution of 27th of June 2014, (BOE n° 164, 7 July) and Resolution 18 December 2012, (BOE n° 1, 1st of January 2013). None of these reports makes allusions to active employment policies or the services themselves.

³¹⁴ Order ESS/1978/2015, 17 September that distributes territorially for the fiscal year 2015 for management by the Autonomous Communities with assumed powers, grants workplace financed from the State Budget aimed at the implementation of the tasks Program Activation Employment published in BOE n° 234, 30 September.

³¹⁵ We use a perfect future because there is no available information about it.

By 2016 these prognoses had suffered certain changes that, from our point of view, do not solve some of the major problems which thrusts our country into a true “culture of evaluation”³¹⁶ and therefore hinder a deep and real analysis about successes and failures of active policies.

So, first, it is not indicated, quantitatively or qualitatively, when we have a positive or negative evaluation. Specifically, paragraph 7 of the Annual Plan for Employment Policy (APEP, hereinafter) intended to arrange financing, expressly states that “the amounts provided for management by the Autonomous Communities are distributed in accordance with the approved criteria in the respective Sector Conference on Employment and Social Affairs”. The conference took place on April 18, 2016,³¹⁷ and its (publicly available) report of this shows that only “30% of the funds to be distributed is allocated among the different Autonomous Communities according to their relative importance in the year 2015”. The remaining 70% is allocated between the different Autonomous Communities depending on the degree of compliance with the objectives set in the Annual Plan for Employment Policy 2015”. The papers do not offer any other indication that facilitate the understanding of these deals or clarify the parameters that have been reached.

On the other hand, although Annex V of APEP itemizes the indicators that will guide the evaluation of each of the Plan's objectives, important deficiencies are perceived as a result of the ineffectiveness of the evaluation system.

In this respect, although the effective employment of the job seeker is evaluated, it does not cover monitoring of the insertion in terms of quality and permanence in the workplace, so that the evaluation would be incomplete for the purposes of determining its quality as well as its

³¹⁶ This expression comes from the work of G. Schmid, *Process Evaluation: Policy Formation and Implementation*, in G. Schmid, J. O'Reilly, K. Schömann (Eds.) (1996), *International Handbook of Labour Market Policy and Evaluation*, Edward Elgar Publishing, Chentelham, UK, pp. 230-232.

³¹⁷ It is possible to have access to the press new uploaded by the Employment Secretary on <http://prensa.empleo.gob.es/WebPrensa/noticias/laboral/detalle/2795> (accessed on 15 October 2016).

efficiency in cost-benefit terms, to weigh the positive effects on beneficiaries, and the direct and indirect costs associated.

Similarly, the actions undertaken with the employers are not subject to systematic, multidimensional and efficient assessment, since the proposed indicators are limited to poor indicative results such as the number of jobs offered and applications served by the services. No reference has been noted to the time spent towards a candidate, the number of rejected candidates before the employer accepts one, recruitment difficulties and a long list of issues that will undoubtedly have a positive effect on the validity and usefulness of the evaluation.

The public-private interaction is also expected to be under evaluation, but once again there are shortcomings in regards to crucial aspects such as how the service is provided or the results achieved, understood in terms of number of users served and degree of satisfaction. And the fact that the Placement Agencies can benefit from grants and economic incentives, funded by public funds, proves that they should be included in the evaluation process. By this, a positive evaluation is what allows access to said grants, which contributes to the rationalization of cost and efficiency of active policies.

Finally, there are some aspects that have not received any attention by the evaluation procedure, although, their relevance has been recognized by the norm itself. This is the case of the underground economy, the promotion and development of entrepreneurial culture, as well as new emerging economic sectors. However, when it comes to creating labour demand, the public and employment policies cannot be left out. They should anticipate labour market needs and ensure the social and economic (re)integration of people. Some aspects which is vital to point out their importance, especially in times of strong economic crisis, when the fundamental work of public and employment policies powers, should be provided for the change, anticipating market needs and ensuring socio-professional integration of people.

In conclusion, it might be noted that the evaluations conducted from the international and national level regarding the active employment policies in Spain continue to focus their objective of analysis in purely economic aspects, so that what is considered a sign of social improvement is the

increase in GDP, creation of jobs in quantitative terms, the number of workers who entered the labour market and the offers have been satisfied. Contradictory to the ILO conception of work, it is treated as a commodity, since it cannot be glimpsed between the tools and procedures of international and national assessment, one of them attending other human dimensions than the economic one. Personal satisfaction, environmental quality of the relationship, stability and, ultimately, happiness, are factors never taken into account. Thus, by omitting any analysis of these social variables, is suppressed any possibility of that active measures and consequently the passive policies that complement them, develop their potential to achieve not only a project of decent work but also a good life.

3.2. Materialization of its content

As it has been outlined before, one of the biggest problems of the Spanish labour market is related to its incapacity for creating employment, and consequently it is justified that the Spanish Strategy has been confined almost entirely to boosting employment through economic incentive to hiring³¹⁸ since the early nineties and until almost the second half of the year two thousand. It is therefore not surprising that the activation had traditionally been identified with making the worker attractive to the employers, encouraged by receiving large amounts of money, subsidies or reducing Social Security costs.³¹⁹ However it is fair to point out that, since the labour reform introduced by the Law 35/2010 of September 17th,³²⁰ this technique has been

³¹⁸ J. I. Palacio Morena, (1998), *¿Crea empleo...*, *op.cit.*, p. 41; J. A. Alujas Ruíz, (2004), *La política de fomento del empleo: eje fundamental...*, *op.cit.*, pp. 15-16, and by the same author, Políticas activas de mercado de trabajo en España: Alcance y limitaciones, (2015) n° 14, *Revista Trabajo*, pp. 226-227; B. Cueto, P. Suárez, El papel de las políticas activas: una perspectiva desde las comunidades autónomas, (2015) n° 87, *Ekonomiaz*, p. 287; VV.AA., La política de empleo como prioridad para salir de la crisis, (2015) n° 30, *Revista Cauces*, Consejo Económico y Social, p. 35, available on <http://www.ces.es/web/guest/revista-cauces>, (accessed on 11 October 2016).

³¹⁹ Law 43/2006, 29 December, published in BOE n° 312, 30 December, still in force.

³²⁰ Published in BOE n° 227, 18 September.

substantially reduced. Emphasizing, in return, the activation of the labour market itself three types of actions have been developed. They are aimed at: a) promoting self-employment and the business tissue; b) at creating micro-business projects; c) at activating the Public Employment Services.

However, although we recognize the improvements achieved in the design of our active policies, we consider it necessary to point out here the way they are effectively being implemented. Specifically, the Spanish Strategy for Activating the Employment 2014-2016³²¹ and the APEP that develops it,³²² outline several axes of action comprising six groups of actions in which can be distinguished executives actors - that is, the Public Employment State Service (PESS, hereinafter) and the PEAS - from the beneficiaries, the final recipient of the actions contained in the correspondingly Axis. Thus, Axes 1 to 4 seek for the activation of citizens –these actions are related to Axis of guidance, Axis of training, Axis of employment opportunities and equal opportunities-. Only Axis 5 aims at the activation of the labour market and Axis 6 refers to activation of the public employment services by enhancing the institutional framework. This distribution therefore shows two key features of our active policies. On the one hand, the emphasis on the unemployed person's responsibility -given that four, even five, of the six axes are intended for their activation-, while scarce attention has been put on the necessary co-responsibility among citizen-labour market-public service as a whole. On the other hand, it shows the comparably meagre interest in other ways to improve the labour market and the employment public services. Regarding to these, in the single Axis intended, neither an increase of staff nor an increase of its material resources is mentioned. And, related to the promotion of the business sector, the Axis 5 refers to it as an area in which to invest in strictly economic terms, either in subsidies or incentives, as if this were the only existing possibility.

Below, we dedicate the following lines to a further analysis of these three aspects, in order to highlight what specific activation measures are ordered from the SSAE, although some key ideas can already be

³²¹ Royal Decree 751/2014, 5 September, published in BOE n° 231, 23 September.

³²² Resolution of 22 August 2016, published in BOE n° 210, 31 August.

anticipated. First, the absence of rules to ensure the co-responsibility in the division of responsibilities between the parties involved in the labour market to reduce unemployment; second, the lack of juridical-legal mechanisms that allow the unemployed to require the exercise of their right to work, with the consequent unemployed helplessness before public administrations. And third, the absence of a true purpose in the active policies for socio-labour integration.

Activation of unemployed people

In the SSAE 2014-2016, most of the performances ordered from the active policies focus on two specific groups³²³, the young people under thirty years old³²⁴ and long-term unemployed. This indicates a clear attempt to address the specific circumstances of these collectives, although the policies seek to mould them to the demands of the market and not on the other way, as would be desirable in a fair society.

Regarding the measures to promote the activation of the unemployed, in particular, concerning young people, it is necessary to note here two milestones. The approval of the action “Your First Job EURES”³²⁵ to

³²³ We would like to emphasize here that the above measures were specific ones and not generalized, being an exception, maintaining, therefore, the continuous line of subsidized employment, as shown by the provisions contained in Articles 9 to 11 of Royal Decree Law 4/2013, of February 22, measures to support entrepreneurs and to stimulate growth and job creation, published in BOE No 47 of 23 February; the approval of Royal Decree Law 16/2013 of 20 December on measures to promote stable employment and improve the employability of workers, published in BOE No. 305 of December 21; Royal Decree Law 3/2014 of 28 February, on urgent measures to promote employment and permanent contracts, published in BOE No. 52 of March 1; Resolution of May 7, to improve the employability of young people, published in BOE No. 125, May 23; Chapter I of Title VI on National Youth Guarantee System approved by Law 18/2014 of 15 October on urgent measures for growth, competitiveness and efficiency, published in BOE No. 252 of October 17; Chapter II of Law 25/2015, of 28 July, second chance mechanism, reducing the financial burden and other measures of social order, published in BOE No. 180 of 29 July.

³²⁴ In the European version of this call, the maximum age is 35 years. It is available on <http://ec.europa.eu/social/main.jsp?catId=1160&langId=es>, (accessed on 15 October 2016).

³²⁵ Royal Decree 1674/2012, 14 December, by which the regulatory bases for granting public subsidies to finance the action “Your first EURES job” are established,

facilitate the employment³²⁶ of those who have been selected to attend employment vacant managed by the EURES Network in 2012. This action was the first of a series of measures that also includes incentives for youth training both for the acquisition of key competencies of those who have left school and for acquiring professional certificates or training in info-communication technologies and languages, and hiring by businesses where they have been trained. It consists of a series of economic aids financed from the European Program for Employment and Social Innovation that young people perceive when hiring involves a change of country of residence in the territory of the Union. This commitment aims at relieving the pressure on the Spanish labour market and the surplus of work by redirecting labour to places that suffer from labour shortages.³²⁷ This European initiative suffers from a limited economic prevision, taking into account the number of potential beneficiaries and the number of people in need. In this sense, the measure does not exceed of 500 beneficiaries, while in Spain the unemployed young people under 25 years exceeds 775.000.³²⁸ Secondly, in February 2013, the Entrepreneurship and Youth Employment Strategy 2013-2016³²⁹ was agreed. This measure falls within the ambit of

published in BOE n° 301, 15 December. The second edition of this action was approved by Royal Decree 379/2015, 14 May, published in BOE n° 138, 10 June.

³²⁶ Article 1 RD 1674/2012, mentions youth as jobseekers and SMEs as suppliers.

³²⁷ In this sense we mention here the work of Professor José Manuel Morales Ortega, (2015), *La respuesta comunitaria y española a la realidad de los ninis: Los grandes damnificados por la crisis*, Ediciones Laborum, Madrid, where the author makes a complete reflection, in our view, on the proposed alternatives and the real needs of a group identified as the “lost generation”.

³²⁸ Data obtained from Statistic National Institute, available on http://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259925463174&p=1254735110672&pagename=ProductosYServicios%2FPYSLayout¶m3=1259924822888, (accessed on 15 October 2016).

³²⁹ It is interesting to remember in this note the incidents occurred regarding the legal regulations of the known as Youth Guarantee. Dated 22 April 2013, the European Council published its recommendation on the establishment of the Youth Guarantee, initially designed as a continuation of the pattern of active employment policy based on corporate bonus for hiring young people. This initiative to combat youth unemployment aims to “ensure that all young people under 25, whether registered or not in employment services, receive a concrete and good quality offer within 4 months after the end of his training or the start of their period of unemployment. The offer should consist of a job, a traineeship, training in a

the European Youth Guarantee and marks the return to the traditional Spanish active policies, as most of the measures³³⁰ contained therein promote employment by encouraging the hiring of this group through economic incentives to the employers' contributions to Social Security. The long-term unemployed and those over 45, are beneficiaries of measures aimed at professional training and retraining. Such is the case of the resolution of 19th March 2014,³³¹ which provides, on a competitive basis, subsidies to entities and organizations offering training courses and internships in companies on “intensive use of new technologies, especially information and communications and the digital economy”. The trends highlighted above, though still in an embryonic stage compared to other countries, make that the Spanish active labour market policies, although traditionally focused on labour supply, at least pivot now on two legs: employment incentives and training. However significant gaps remain. Thus, options equally valid for the integration of these groups treated harshly by the crisis would consist on articulating mechanisms, from the quality, that equip them with skills to enter or remain in the labour market, and on arbitrating measures that shape the labour market according to the needs of young and long term unemployed. Such is the example of offering paid internships in public and private companies and institutions practices as happens in Belgium, making bank loans at 0% interest – such as for example in Germany - offering free higher education courses that allow their continuous recycling and updating of skills.

company or a course at a school, and adapt to individual needs and situations”. The EU endorsed the principle of the Youth Guarantee in April 2013 and in particular Spain, with two months in advance, had enacted measures to develop the Entrepreneurship and Youth Employment Strategy, contained in Title I of Royal Decree Law 4/2013. The final development of the Strategy 2013-2016 did not occur until September 2013, when was approved the Annual Plan for Employment Policy 2013, (Resolution of August 28, published in BOE n° 217, 10 September). Finally, Law 18/2014, of October 15, cited in the previous note, contains the final and management currently in place National Youth Guarantee System.

³³⁰ It must be emphasized here that, as discussed below, also some performances are intended to activate the labour market by encouraging entrepreneurship, although it is true that the least of them.

³³¹ Resolution of 19th March 2014, published in BOE n° 136, 5 June.

Activation of the labour market

Even though a lot still has to be done, measures to promote labour market activation, have begun to receive some attention. In this sense, three actions may be mentioned intended to promote self-employment, to improve the business tissue and to develop micro-business projects. Far from the logical assumption that may arise from its magnanimous statement, actually these performances are limited to simple measures, consistent in providing economic incentives for newly created entities,³³² or for those who are autonomous in the special Social Security regime,³³³ and the business financing facilitating the supervision of private insurance.³³⁴ Social Economy, meanwhile, is mentioned exclusively to make reductions in contributions to Social Security for those cases where young people are hired³³⁵ preserving or returning to the previous active policy model, where activation means to encourage hiring and make attractive the work force. With regard to generating employment, Orders IET/1157 and IET/1158,³³⁶ both of 2014, provide for the funding between 30.000 € and 500.000 €, for activities started from 31 December 2014 to 31 December 2018. These actions should be aimed at promoting small business investment projects located in areas affected by the restructuring of coal mining and environment,³³⁷ with the ultimate aim of generating alternative economic activities to coal mining, with the consequent generation of new jobs and/or maintenance of existing ones, to encourage development of these areas, considering their status as disadvantaged regions.

³³² Article 7 of February Royal Decree Law 4/2013, 22 February, published in BOE n° 47, 23 February.

³³³ According to article first seven eight paragraphs of Law 31/2015.

³³⁴ Article 7 of Law 31/2015.

³³⁵ Law 31/2015, 9 September, by amending and updating rules on self-employment and building measures and promotion of self-employment and social economy, published in BOE n° 217, 10 September.

³³⁶ Orders IET 1157 y 1158, both from the 30th June 2014, for which the regulatory bases for granting aid aimed at business projects that generate employment, promote alternative development of mining areas was approved for the period of 2014-2018, published in the BOE n° 132, 4 July.

³³⁷ According to Annex II of those Orders, the regions of Asturias, Huesca, Palencia, Teruel and Zaragoza.

Our country should improve some of the interesting measures adopt in other areas of labour inclusion as for example the ones stated in the Fifth Additional Provision of Royal Legislative Decree 3/2011 of contracts in the public sector, where a percentage of public contracts is reserved for social insertion companies or Special Employment Centers. From our point of view it should be established as a *conditio sine qua non* to be beneficiary of a public contract or concession hire citizens enrolled as unemployed registered as unemployed in the public employment services. Also, other less burdensome measures could be developed and provided – for example with regard to the free enterprise for hiring workers- as the conclusion of agreement³³⁸ between businesses and public employment services. According to which these commit themselves to the companies to carrying out functions of intermediation and placement at no cost, in exchange for access to first-hand information about their work and professionals needs. In fact, a similar practice is structured in the Thirty Second Additional Disposition of RDL 3/2011. This provides for the possibility that the concessionaires companies and public employment services adopt collaborative framework agreements for performing tasks of intermediation.

Activation of the Employment Public Services

Both, the Spanish Strategy for Activating the Employment 2014-2016 and the Annual Plan for Employment Policy establish specific economic tools which allow an increase of material resources, and improve human resources. Indeed, the most interesting fact in our opinion is the expansion of the term “orientation”, ranging from the simple intermediary role that traditionally was provided by employment services, to the configuration of the activation route of managing job offers. However, in this expansion gaps can be detected. In this regard, we believe that an efficient and effective National Employment System could and should go much further, performing tasks that go beyond the management of supply and demand to achieve, even anticipating the

³³⁸ *Ibidem*, p. 212.

needs of the labour market. This aspect is crucial to prepare society for the rapid and profound changes that are being generated from digitalisation and automation. Thus it has become necessary to possess and to have access to labour market information through a very close collaboration with the businesses in exchange for a formidable service of placement -in quantitative, qualitative terms-. This implies the adoption of measures that, in the medium and long term, contribute to reorder outsourcing actions. Setting up a well thought and planned system of employment services where public and private actors interact according to a common pattern and a single project for the future. A true commitment of interactive participation will allow achieving a labour market and, consequently, a society, where each and every one of the participants assumes his share of responsibility and acts accordingly.

It is also important to underline the democratization in the build-up of the Spanish active policies. On one hand because the national Employment Strategy is shaped in axes or orientations that must be developed by the Autonomous Employment Services according to the needs of their labour markets. On the other hand because the Strategy has been elaborated by the Sector Conference on Employment Labour Affairs and this sets the first step³³⁹ to ensure a coherent and coordinated National Employment System against the fragmented scenario³⁴⁰ that was created with the Law 56/2003. The presence of the Autonomous regions in the creation of active policies and the collaboration with the national level prevent that their role of active agents be relegated to passive, disaffected, disinterested agents. What's more, the acknowledgment of its responsibility in decision-making involves a correlative requirement results which facilitates both a true assessment of its viability, such as participation in designing the model of society that is sought.

³³⁹ We indicate that it is only the first step because no attention has been devoted to local authorities or private agencies. They remain key players in the National Employment System, given the proximity to the unemployed and immediate knowledge of the possible employment areas.

³⁴⁰ For the sake of completeness on this matter, *El servicio público de empleo...*, *op.c.*, pp. 200-202.

We deem it necessary, in this sense of participation, mentioning the muteness imposed on local authorities, relegated to weakened and almost unknown, managers in the field of employment, Article 4 RDL 3/2015. Although its closeness with the social and economic realities of citizens, makes them first hand connoisseurs of the citizen needs and its possible solutions. This error, not fixed by the Sector Conference on Employment and Labour Affairs, could have been corrected if it had been observed the closer international reality, since countries like France, Germany and the UK, where the local entities are precisely the starting point³⁴¹ in the design of active employment policies. This hiatus of participation generates an absence of pluralism and interest to improve the functioning and effectiveness of active employment policies.

Therefore, one can conclude that although the Spanish legislator has been able to explore new legal avenues to improve the validity of active employment policies, there is still a large distance to cover, looking to improve not only in quantitative terms, but also in quality. Thus, against attempts to recognize and institutionalize the involvement of some participants in the labour markets, the omission of others, like the citizens themselves, or local authorities, reflects a biased view of the unemployment problem, which is the product of a lack of reflection on its eminently social character and not just economic and commercial perspective.

4. The necessary activation for having access to unemployment social protection

Although in Spain the separation between active and passive employment policies has never been absolute, -as can be seen from the adoption of the social collaboration works³⁴² in 1982 where recipients of unemployment benefits were obliged to accept a job in order not to lose

³⁴¹ M. Heidenreich, Deborah Rice (2016): *Integrating Social and Employment Policies in Europe: Active Inclusion and Challenges for Local Welfare Governance*, Edward Elgar Publishing, Cheltenham, UK.

³⁴² Royal Decree 1445/1982, 25 June amending various measures to promote employment, published in BOE n° 111, 9 of May.

the economic aid-, it is no less true that in recent decades a significant increase in the interaction between unemployment benefits and labour activity can be acknowledged. A reflection of this can be found in Article 36.2 of the Employment Act which introduces an explicit reference to the complementary nature of passive employment measures concerning active with which they will have to coordinate in the terms provided in Chapter III of the same rule.

Specifically, it is stated in this section that coordination between active policies and economic protection against unemployment –never named passive policies- materializes by requiring the recipients of such aid to underwrite the “commitment of activity”, to comply with the requirements contained therein and specifically to accept a “suitable job offer”.

Looking at the “commitment of activity”, as provided in Article 300 GSSL, is defined as the compromise between the unemployed person as an autonomous being and public employment services of the Autonomy or on the national level that the applicant or beneficiary of social aid to actively seek employment, accepts a suitable job and participate in specific actions of motivation, information, guidance, training, retraining or insertion to increase the chances of getting a job. The legislator therefore uses that commitment to refer to the entire set of actions that European authorities consider essential to improve the employability of citizens, and creates a kind of “contract” that is not synallagmatic, but one-sided to the extent that its obligations arise only for one party. The unemployed person is obliged by the public employment services while no obligation is expected from them. No legal and procedural actions are provided that enable citizens to exercise their right to work in the case of eventual breaches or negligence on the side of the employment services. And, of course, no reference is made to companies, considered “untouchable” in the neoliberal Western culture. The absence of rules and policies that make all players participating in the labour market co-responsible, causes not only the overhead of one of the parties, but the inefficiency of the whole national employment system, insofar as it reduces the problem and solutions to the unemployment to subjectivity and resources of the citizen. It would have been desirable to incorporate

explicit reference to the authorities' obligations as well in order to make it clear to both parties – service and citizens - have responsibilities. Similarly commitments of activity could have been articulated for companies, under which - services and companies - engage to interact through cooperation agreements that bring advantages for both, such as an efficient free intermediation service, the priority in awarding public contracts in the case the companies hire unemployed recipients of social aids, facilitating information about new employment niches -on the part of companies- in exchange of offering training and professional courses to its workers by employment services or entities that collaborate with them.

The concept of “suitable job” is regulated independently in Article 301 GSSL, which offers several definitions depending on the time that the unemployed have been enjoying the benefit. Thus, during the first months an adequate job will be the one that the citizen considers and so has been expressed in the commitment of activity. However, after a year of receiving the contributory benefit or assistance without having accepted any of the proposed offers, the norm enables the public employment service to decide whether or not an offer of employment it is suitable. In order to establish whether an offer is considered suitable, art. 301 GSSL offers three criteria. The first one is related to *distance*, which means that the offered job cannot be located more than 30 kilometres from the habitual residence of the worker. This limit will not be taken into account if the worker states that the minimum time for travelling back and forth, takes over 25 per cent of daily working hours, or that the travelling cost is more than 20% of the monthly salary. The second one refers to *working conditions*. Here, the employment public service has to take into account working hours, permanent or temporary duration, full or part time and the salary which must be equivalent to the salary provided for the same job in any other company. The last requirement concerns the *professional and personal circumstances of the unemployed*, and the reconciliation of their family life and work.

Indeed, the concept of suitable job that is understood in the Spanish legal system tries to comply scrupulously with the provisions contained

in Article 6 of ILO Convention No. 88³⁴³ taking into account the qualifications, experience and desires of the unemployed. The assessment of professional and physical skills and the design an itinerary of insertion to facilitate their job counselling and retraining, are undoubtedly strong quality steps in order to improve the effectiveness of the national system.

Finally, to provide a general idea of how active and passive policies interact in order to alleviate the situation of the unemployed, it is necessary to stop, briefly, the consequences derived from the unemployed person's rejection to be activated. In this sense, the mandatory character of the activation and the fact of attaching sanctions to its breach, are a clear reflection of the consideration of the citizen as solely responsible of his unemployed situation. Concerning employment services and particularly business, no mechanisms exist to determine, let alone sanction a lack of action on their side. Consequently, when the unemployed person rejects an offer or refuses to participate in promoting, training or retraining activities, she may temporary suspension, the definitive loss of the benefit or the disenrollment in the protection program.³⁴⁴ Minor breaches³⁴⁵ are e.g. failing to appear at the place or date indicated in order to cover vacancies or not showing up for training courses or orientation guides planned within the insertion itinerary, although they had previously been accepted by the unemployed. The penalty attached to these behaviours is the suspension of the benefit for a month. The definitive loss of the benefit or disenrollment in the corresponding program without the right to reapply is linked with the direct refusal by the unemployed to be activated. So, these are considered serious offenses, such as rejecting an offer of suitable employment or refusal to participate in social collaboration work, employment programs, including employability, or promotion, training or retraining.

³⁴³ This is the Convention of 1948 on Public Employment Services, ratified by Spain in May 30th, 1960.

³⁴⁴ Article 274 GSSL.

³⁴⁵ Stated in Articles 17 and 47 of RDL 5/2000 of 4 August approving the Law on Offences and Sanctions in the Social Order, published in BOE n° 189, 8 August.

However, the consequences described above do not apply in case a “justified cause” exists, even though the concept lacks a legal definition. It is clear from case law that it includes a variety of reasons that “exculpate” the unemployed person’s behaviour. Some examples are the fact of being in prison, being sick, performing union work or a part-time job existing prior to the application of the aid.

Therefore, the coordination of active and passive policies in Spain presents techniques of protection of the unemployed that have some positive aspects. Amongst these are the concept of “suitable job” or the flexibility that the “justified cause” introduces into the sanctioning process of breaches of activation. However, other aspects in our view are less admirable. Examples are the fact that activation is a duty put exclusively on the unemployed by the commitment of activity, while not even trying to involve employment services and businesses. If this was changed, this would not only avoid the helplessness unemployed are experiencing now, but also improve the functioning of the labour market by remedying one of its big problems: the inability to create jobs and quality employment.

5. Conclusion

High rates of unemployment suffered by the Spanish society intermittently since the early eighties and continuously since the outbreak of the crisis of 2008 have no doubt, complex and multifaceted origins at all depend only on the flexibility of our labour market. Proof of this are the poor results revealed in the latest labour survey, in spite of the strong reforms that have de-constructed the socio-labour guarantees of the citizens. In this sense, the principal change comes from the expansion of a philosophical impost that holds the socio-productive paradigm and affects especially the perception we have of employment and unemployment. From this ideological approach, employment is understood as another of the goods that co-exist in the exchange markets. Its abundance and scarcity depends on the rancid rules of supply and demand. Unemployment, therefore, is the result of this

mismatch. Consequently the interest of one of the parties involved in its reduction is enough for this to take place.

Starting from the premise that the person who is unemployed is so because he/she wants to be, it is easy to explain both, the political and legal treatment given to active and passive employment policies, - according to which the first contribute to reducing unemployment, while the latter increase it- and the tendency to invest public money in active policies and to tighten the conditions for access to the passive. Consequently, passive policies have more or less lost their autonomous meaning as policies and instead have become mere appendices to leave having entity themselves as economic support mechanisms in cases of unemployment to become only appendices accompanying active policies. This explains that in the Spanish legal system access to passive measures have to obligatorily pass by activation of unemployed according to the Article 36.2 of the Employment Act. In particular it requires recipients of pensions – contributory or assistance – to accept activity commitment, compliance with the requirements contained therein and to accept any suitable job offer which comes around. And the other hand, to such an extreme passive policies are considered a drag on employment that the unemployed who receive economic aids are a priority group for activation against other groups also unemployed and lack of income that are not beneficiaries of any social protection. This is the case of youth and people who have never worked or have worked but not enough time as to enjoy a social aid.

The gaps that these vulnerable groups represented in the Spanish social security net affect the fragility of our labour market, characterized by temporality, poor working conditions and low wages.

The active policy measures contained in the Spanish Employment Strategy offer actions that continue the path drawn by the European provisions, but have not yet managed to adapt them to the real national needs, identified with the creation of stable employment and quality jobs and with specialized attention to groups with the highest unemployment rates, as youth and over 55s. The measures have so far been allocated to them, marked by job insecurity, only result in inefficiency of the system, the waste of resources and despair.

In this aspect, the approaches presented by this article come from, on the one hand, the critical observation of reality, the experiences and failures of other countries that were hit by the 2008 crisis, but have managed to overcome it better than Spain. It isn't one's intention to give mayor importance to these measures, but at least they could inspire us to develop new tools which help improve the quality of our labour market. On the other hand, question the goodness behind the philosophical approach which not only torments work relations, but also human ones, reducing the individual as a factor of economy and material wealth. In this sense, some reflections have been introduced to think about which our idea of development is, if a human improvement or simply an economic one- and the true price that our societies have to pay for being competitive and productive.

Conclusions

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The essays here presented draw a multifaceted picture of some aspects of the flexicurity implementation due to the differences between the social security systems, but also between cultural, social and political characteristics of the Member States under analysis. Furthermore, these States have been differently affected by the economic recession starting from the end of 2008 and some of them are still facing intensively the consequences.

Notwithstanding these domestic peculiarities, it is possible to highlight some common aspects and tendencies, which might also depend on the method adopted in employment policy at the European level.

The 1997 Luxembourg European Council (Luxembourg Process) launched the European Employment Policy (EES) and introduced the “open method of coordination” to coordinate Member States’ reforms in labour market and social policies. This method has provided a way to connect the different domestic labour market policies – nevertheless their peculiarities – to some common concepts to take into account by Member States in their employment regulation. The EES four pillars - improving employability, developing entrepreneurship, encouraging adaptability and strengthening the policies for equal opportunities – have started to be considered in the domestic systems configurations.

Through the EU guidelines and the intensive debate on this topic, the flexicurity strategy has started to influence the Member States’ systems. All contributions clearly show that the flexibility side of the concept has been implemented to a great extent. Labour law has become more flexible, dismissal protection was lessened and atypical forms of employment have become more common. Thus, in this book is highlighted a tendency to achieve more flexibility goals than security ones.

The “security side” could consist of relatively generous benefits, light eligibility criteria as well as measures to help people back into employment and to help them to become employable for the labour market. This part of the flexicurity concept seems to be still a challenge for all the systems under analysis, even the more developed in this field. Until quite recently, passive forms of security played the more important role. It was important to repair the income gap but the individual was responsible for finding a new job. This worked as long as jobs were available and social security was affordable. Due to demographic and economic challenges such as an ageing population and high and persistent unemployment, the sustainability of passive policies have become one of the most debated issues on employment policy.

Therefore, the focus has shifted to active labour market policies or activation measures. Activation measures pursue a clear aim in all the countries here taken into consideration, i.e. the transition from a passive to an active society. But it is interesting to note that in none of the Member States this relatively coherent approach has led to a coherent implementation: specific countries’ problems in this field jeopardise the activation policies.

Furthermore, with what concerns the relation between active and passive LM policies, it is also possible to highlight a clear tendency towards a contractualization characterized by a punitive approach. The unemployed are requested to perform specific activation duties, but it doesn’t seem that a same compulsoriness is on charge of the State in providing adequate employment services. Besides, the need of “security” – in terms also of adequate unemployment benefits and assistance - remains a crucial problems in many Member States and should counterbalance the increasing in flexibility and deregulation adopted in the last decades. Moreover, this flexibility should be re-thought and limited in what regards the need to ensure jobs able to support the sustainability of the insurance unemployment benefits.