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ITALY, DENMARK AND GERMANY: A COMPARATIVE ANALYSIS IN ACTIVE AND PASSIVE LABOUR MARKET POLICIES

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Abstract

The article analyses the latest reforms in active and passive labour market policies (LMPs) in Germany, Italy and Denmark, within a European perspective. These Member States employ three of the various kinds of social security systems found in the EU - Continental, Mediterranean and Nordic - and provide an interesting example for comparison of differences/common trends in LMPs. This contribution focuses particularly on the principal characteristics of each protection system in the event of unemployment and on the relationships between unemployment benefits and activation policies and highlights the links between the European Employment Guidelines and the regulation under analysis.

Keywords: Unemployment benefits; activation; European labour market policies; flexicurity.

1. INTRODUCTION

In order to address the challenges faced by European trends in labour markets (LMs) in the new century, and as a way of facing the current economic crisis, Member States

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have adopted reforms that move towards the EU notion of *flexicurity*, already considered to be a crucial component of the Europe 2020 strategy.

A key aspect of the strategy is the significant role envisaged for active and passive labour market policies (LMPs). These policies are constantly promoted within the European Employment Strategy's (EES) recommendations, in accordance with specific EU concepts which Member States should consider, such as the modernisation of social security systems, the fostering of active inclusion, the need to strengthen active LMPs by increasing their effectiveness, targeting, outreach activities, coverage, linkage with passive measures, accompanied by rights and responsibilities, etc. At the same time, EU employment policies have been reflected very differently in the domestic systems, due to variety in the Member States in terms of security for the unemployed, the efficiency of initiatives adopted, cultural difference, the legal framework in place, etc.

The article aims to analyse the latest reforms in active and passive LMPs in three Member States - Germany, Italy and Denmark - within a European perspective. The article will also highlight the links between the European Employment Guidelines (EUEG)¹ relating to active and passive LMPs and the regulation under analysis.

These Member States employ three of the various kinds of social security systems found in the EU - Continental, Mediterranean and Nordic - and provide an interesting example for comparison of differences and common trends in LMPs. These systems are also characterised by significant recent reforms and specific outstanding issues in the field under analysis.

The article will focus particularly on the principal characteristics of each protection system in the event of unemployment, and the relationships between unemployment benefits and activation policies. This will be addressed in detail in the section concerning the activation duties of beneficiaries in the case of unemployment.

1.1. METHODOLOGY REMARKS

The analysis of the systems chosen, in accordance with the goals of this article, focuses on a number of recent passive and active LMP reforms that can be considered useful in helping us understand developments and tendencies in the field. Since space is limited, only those elements deemed most valuable for our research objectives will be analysed.

¹ Barnard, C., *EU Employment Law*, Oxford University Press, 2012.

Furthermore, when referring to passive and active LMPs, only those relating to unemployment are discussed.

In particular, we will consider how reforms affect the eligibility requirements, duration, and financial level of unemployment benefits; how they impact on activation systems, such as administration and management and the outsourcing of public services to private actors; and in particular we will look at the increased burden of activation duties on the person, together with an increase in the *contractualisation* of unemployment benefits. In this context, *contractualisation* is the connection between activation duties and social benefits as a *quid pro quo* of a contractual relationship between public administration and citizen, as adopted in the New Public Management (NPM) approach. This approach, or better, this policy, was launched in the UK by the Thatcher government in the 1980s, in an attempt at modernising the public sector² within the neo-liberal perspective³ and it heavily influenced the systems of other Member States, including all three of those under analysis here.

Where any links between recent reforms and the EUEG are mentioned, the article has taken into consideration the EUEG, the National Action Plans (NAPs) of the Member States under analysis, the National Reform Programmes (after 2005, NRPs) and any Country-specific Recommendations that may have preceded the changes in domestic policy.

In particular, the article will highlight when regulations refer to those concepts included in the EUEG or in Country-specific Recommendations, when considered valuable for the research goals of the article, and when domestic reforms are announced in the NAPs/NRPs to comply with the EUEG or the specific Recommendations.

It is difficult and complicated to determine when EUEG has influenced domestic regulation and when it has not. The process could be akin to that highlighted by Bercusson in the delineation of EU labour law and its interaction with national labour laws;⁴ any influence would be mutual and part of a process conditioned by different and multifaceted variables. This article, however, does not analyse this aspect.

Besides, on the one hand recommendations for the implementation of EUEG are not legally, but rather politically binding, affecting the systems of the Member States in

² Barzelay, M., *The New Public Management: Improving Research and Policy Dialogue*, Un. of California Press, 2001.

³ Tickell, A., and Peck, J. A., 'Social regulation after Fordism: regulation theory, neo-liberalism and the global-local nexus' (1995) *Economy and Society* 24(3), 357-386.

⁴ Bercusson, B., *European Labour Law*, Cambridge University Press, 2009, 14.

different ways. On the other hand, ‘soft-law mechanisms in the area of socio-economic policies may not appear so soft after all’,⁵ especially since the start of the economic crisis and the implementation of the European Semester.

By analysing the recent domestic reforms in the LMs of the Member States under consideration, this article intends to contribute to the development of a wider picture of the connections between national reforms and the EU dimension.

2. THE DANISH SYSTEM

2.2. INTRODUCTION

The relationship between Danish passive and active LMPs is conditioned by specific features of this system, such as the Scandinavian LM culture and the principles on which the welfare system is based which affect the conceptualisation of ‘workfare’ and the approach in activation. The particular LM culture⁶ focuses on the collective dimension of society and on trust among people. Within this context, social partners play a pivotal role in the representation of collective interests,⁷ and the balance between this and macroeconomic policy, heavily supported by public investment, and international economic trends, has been and is still crucial.⁸ The connection between activation duties and unemployment benefits/subsidies is an example of ‘workfare’, or welfare to work, i.e. benefits/subsidies should support people entering or re-entering the job market.

Indeed, Danish workfare can be defined as an ‘offensive’ measure since the aim is ‘social integration through active labour market policies’, and not ‘defensive’, such as the work-first American workfare model.⁹ In accordance with the idea of ‘offensive

⁵ Hendrickx, F., Editorial. ‘Social and Economic policy coordination: a new meaning of soft law?’ (2011) 2 *ELLJ* 2-4.

⁶ Färm, G., Jørgensen, H., Palshøj, P., ‘The story of active societies based on welfare and justice’, *Nordicmodel.info*, 2006: <http://s-dialog.dk/default.aspx?site=nordicmodel&func=article.view&id=161473>, (accessed 1/12/2012).

⁷ Larsen, F., ‘Active Labour Market Policy in Denmark as an example of Transitional Labour Market and *flexicurity* arrangements. What can be learnt?’ (2005) *Tlm.net-Papers* 11.

⁸ Madsen, K., ‘*Flexicurity* in Danish – A Model for Labour Market Reform in Europe?’, *Flexicurity – a European Approach to Labour Market Policy*, *Intereconomics*, 2008.

⁹ Bredgaard, T., ‘The question for the Holy Grail. The Danish Labour Market Strategy of the 1990s’

workfare', activation measures are considered tools for social integration because they empower the individual (*human capital approach*).¹⁰ Within this perspective, unemployment benefits are not a mere *quid pro quo* to specific duties.¹¹ At the same time, the conditionality between unemployment benefits and activation duties is a crucial aspect of the Danish system; this conditionality is regulated by law, and activation initiatives are individually tailor-made in an agreement between the unemployed and the job centres. This agreement would be a 'contract' under the New Public Management perspective (NPM). Thus, the mentioned 'contract' is included in the idea of *contractualisation* of social rights,¹² as a key concept of the NPM. But Danish scholars do not agree that this conditionality is a contractualisation, asserting that no genuine contractual relationship occurs between the unemployed and the PES (or job centre).

The concept of conditionality in Denmark is based on the self-reliance principle and self-support of each able-bodied individual: each person should, when possible, be active and participate in the social life by working or by attending activation initiatives.¹³ The Danish Constitution states both the 'right to work' - which implies efforts to be made to guarantee work - and the right to receive public assistance for 'any person unable to support himself or his dependants'. At the same time, the beneficiary of public assistance 'shall comply with the obligations imposed by statute in such respect'.¹⁴ Sanctions are entailed in the case of non-compliance with activation proposals from the PES.

As is known, the Danish system was taken as a best practice example to look at in the formulation of the EU common principles of *flexicurity* (Com 2007) 359 final). Danish

(2001) *Communication Paper*, 175.

http://www.ibrarian.net/navon/paper/THE_QUEST_FOR_THE_HOLY_GRAIL.pdf?paperid=3467862 (accessed 10/9/2015).

¹⁰ Damgaard, B., Torfing, J., 'Network governance of active employment policy: the Danish experience' (2010) 20 *Journal of European Social Policy*, 248, 250.

¹¹ Ketscher K., 'Contrasting legal concepts of active citizenship – Europe and the Nordic countries', in Hvinden, B., Johansson, H., (eds.), *Citizenship in Nordic Welfare States – Dynamic of choice, duties and participation in a changing Europe*, New York, Routledge, 2007, 146.

¹² Freedland, M., Craig, P., Jacqueson, C., Kountouris, N., *Public Employment Services and European Law*, Oxford Un. Press, 2007, 330.

¹³ Active Social Policy Act, No. 468, 20/05/2016, § 1 'The purpose of providing financial support is to enable recipients to become self-supporting'.

¹⁴ Art. 75 Danish Constitution.

Kristiansen, J., *The growing conflict between European uniformity and national flexibility*, Denmark, Djørf Publishing, 2015, 68.

flexicurity is characterised by high flexibility and high mobility in the LM by providing a reasonably easy way to hire and fire people, together with internal flexibility, such as in working arrangements, company organisation, etc. The social impact of this flexibility is mitigated by a strong welfare system and effective activation policies addressed to the unemployed: these elements make up the so-called ‘Danish triangle’.¹⁵ Furthermore, the Danish model has always focused on the goal of full employment, and thus appears to be in line with the EU idea of building a knowledge society, aimed at ‘full employment and social progress’ (Art. 3 TEU, ex Art. 2 TEC).

With regards to benefits in the case of unemployment Denmark ensures two levels of protection: (i) social assistance for specific social events (e.g. unemployment), i.e. public means-tested cash-benefits, accessible under particular circumstances when the person is temporarily not able to meet his/her needs or those of his/her family (no temporal limits are fixed; the amount depends on different aspects, e.g. children, etc.; an income-related housing benefit system can be also provided); (ii) unemployment insurance benefits (up to a maximum of 90% wage, maximum rate of EUR 562 per week, maximum 2 years), based on voluntary membership in private funds, which are run by trade unions.¹⁶ Eligibility requirements for the insurance unemployment benefits are: at least one year’s membership of the insurance fund; one year worked in the last two years; unemployment status, also linked to the availability to work, and the will to accept suitable job offers, or take part in activation measures (requested also in case of social assistance). This availability implies different duties, such as periodical interviews by the PES, and regular access to the Jobnet website, etc.

2.3. DANISH REFORMS IN LMPS AND THE EUEG

In the last 15 years there have been three main phases that should be highlighted in the development of Danish LMP:

2.3.1. More people in employment, 2002-2003

¹⁵ Tangian, A., ‘Not for bad weather: *flexicurity* challenged by the crisis’ (2010) 3 *ETUI Policy-Brief*, <https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Not-for-bad-weather-flexicurity-challenged-by-the-crisis>, (accessed 1/2016).

¹⁶ Hendeliowitz, J., ‘Danish Employment Policy, National Target Setting, Regional Performance Management and Local Delivery’, *Employment Region Copenhagen & Zealand*, 2008, www.oecd.org/dataoecd/13/53/40575308.pdf, (accessed 1/7/2016).

The 2002 NAP announced the commitment to present an Action Plan to promote ‘more people in employment’, in order to ‘ensure the quickest way into employment’. This was a reply to the specific Council Recommendation, mentioned in the NAP, aiming at encouraging more people to participate in the LM. Coherence between ensuring the quickest way into employment and achieving the goal to promote more people to work was taken for granted. Thus, the 2002/2003 ‘More People at Work’ reform (*Flere i arbejde*) focused on a ‘work-first’ approach, by stressing the priority to place the unemployed in new jobs, providing them with contacts and talks and highlighting the relevance of job matching.

At the same time, the reform provoked a decrease in the provision of educational schemes, reduced by 50 per cent.¹⁷ On the one hand, the reform seemed to be coherent with the EUEG goal of ‘a more employment-friendly approach’ in which benefits and training systems (and also tax) had to be reviewed to ensure effective integration of the unemployed into the LM. On the other hand, the reduction in training and education was not requested by the EUEG and is unlikely to be of value in achieving those more and ‘better’ jobs, demanded by the 2000 Lisbon Agenda. The cut in training and education may have been encouraged by the reform, according to which municipalities receive a rate of reimbursement that is fixed ‘with consideration to substitutable allowances and promotion of active measures in order to reduce passive support’, as highlighted by 2003 NAP. Thus, municipalities receive incentives to integrate workers more quickly into any job rather than taking the time to train them, in a human capital approach, which would be more focused on the quality of training and job offers.

The reform introduced a more bureaucratic approach in activation, with the aim of improving monitoring and matching activities. These goals were highlighted by the 2001 EUEG, whereas since 2000 focus had been on the development of additional indicators specifying national objectives and targets, and improvements in data collection (2000 EUEG). Even if benchmarking aimed to create transparency and contribute to cost-effectiveness through comparison of costs, the bureaucratic approach, which was fostered by the reform, focused on standardisation and consequently

¹⁷ Jørgensen, H., ‘Flexible labour markets, workers’ protection and “the security of the wings”: A Danish *flexicurity* solution to the unemployment and social problems in globalized economies?’ (2009) *Macroeconomía del desarrollo*, 76, <http://archivo.cepal.org/pdfs/2008/S0800883.pdf>, (accessed 1/1/2016).

weakened the relevance of people's preferences in the search for work or vocational training opportunities.¹⁸

2.3.2. *Strukturreformen, 2007*

The 2005 Danish NRP announced the plan to modify the distribution of responsibilities in public administration. This plan was implemented in the administrative reform of 1 January 2007 (2007 Reform, *Strukturreformen*, or Structural Reform), which modified the administrative organisation of LMP in Denmark. The goal was to modernise the public sector to make it more efficient, in accordance with the EU Broad Economic Policy Guidelines aiming at promoting an 'efficient allocation of resources'.¹⁹

This reform had been under discussion for years: on the one hand, some authors believed that the reform would help improve the efficiency of public services and save money by designing a more efficient organisation.²⁰ On the other hand, some other authors believed that it weakened regional corporatism and the role of the social partners, since the pivotal tasks of LMPs were transferred from the social partners to the municipalities.²¹ This aspect could be considered incoherent with several EU indications to involve social partners in the implementation of EUEG.

The reform created one-stop-shop 'job centres' managed by the municipalities that absorbed both the Public Employment Services (PES) and the local authority-led service centres. Their goal was to provide all citizens with employment services, without distinguishing between unemployed people receiving insurance benefits and those receiving social assistance.²²

The reform also introduced new tools for the collection of data and performance measurement.

¹⁸ Jørgensen, H. (2009), op.cit.

¹⁹ COM(2005) 141 final.

²⁰ Hendeliowitz, J., op.cit.

²¹ Jørgensen, H., 'Danish *flexicurity* in crisis – or just stress-tested by the crisis?' in Report Ebert Foundation, 2010, [http://vbn.aau.dk/da/publications/danish-flexicurity-in-crisis--or-just-stresstested-by-the-crisis\(5ce1dfdc-f63d-4a0f-8d05-4f8e372e1901\).html](http://vbn.aau.dk/da/publications/danish-flexicurity-in-crisis--or-just-stresstested-by-the-crisis(5ce1dfdc-f63d-4a0f-8d05-4f8e372e1901).html), (accessed 1/12/2014).

²² Madsen, K., 'Activation Policy in Denmark' (2009) *Centre Labour Market Research*, Aalborg University, Paper, http://vbn.aau.dk/files/18792428/Madsen_Danish_Activation_Policy_Seoul_091009_v2.pdf, (accessed 1 December 2015).

In this regard it is interesting to highlight Jørgensen, Baadsgaard and Nørup's position on those tools; they believe they have been introduced and used without explaining how the information should be considered and what criteria should be used to determine priorities. No political discussion took place and public values such as justice, equality and accessibility were not taken into account. These observations are interesting because they raise the issue of how databases should be used, and how to define efficiency in PESs.

Besides the implementation of the Structural reform which came into force on 1 January 2007, the 2005 NRP announced – as a challenge for the following year – ‘the extension of citizens’ free choice of provider of welfare services’. Consequently, after the 2007 reform, the outsourcing of employment services rapidly expanded and the role of social partners was reduced to an advisory one in projects led by ‘other actors’ in LMP. These ‘other actors’, which are mostly private firms, have become an alternative to the LMP services provided by municipalities.²³

2.3.3. *Spring Package 2008 and increase in contractualisation in 2009*

In March 2009 Denmark implemented the so-called ‘Spring Package’ (*Forårspakke 2.00*) which established public investments to create new jobs, (additional public investments were stated for the period 2010-2013) and more efficient employment services, such as vocational training, with more possibilities to choose the training initiatives in which to participate.

In 2008 the unemployed were asked to meet stricter activation obligations; both categories of unemployed - beneficiaries of unemployment insurance benefits and beneficiaries of means-tested cash-benefits - must register with a job centre and accept any ‘suitable’ job offers and active LM programmes proposed by the municipalities.²⁴ This tendency towards increasing contractualisation has steadily evolved, in the opinion of Anderson, into ‘meaningless activation’,²⁵ i.e. activation focused on duties and on a mere *work first approach* towards ‘any job’ (no longer a *human capital approach*), within a punitive perspective.

²³ Jørgensen, H., 2010, op.cit.

²⁴ Active Social Policy Act, No. 468, 20/05/2016.

²⁵ Andersen, J.G., ‘Denmark: ambiguous modernization of an inclusive unemployment protection system’ in Clasen, J., Clegg, D., (ed.), *Regulating the risk of unemployment*, Oxford University Press, New York, 2011.

But if we look at the specific Council Recommendations addressed to Denmark, no specific pressure towards a *work first* approach had been applied by the EU. The 2005 political agreement ‘A new chance for everyone’ reinforced the rules on availability for recipients of social assistance, in accordance with the 2005 EUEG ‘make work pay for job-seekers, including disadvantaged people and the inactive’.²⁶ A punitive approach was adopted in Denmark also in the case of assistance from 2010 onwards. The person can however legitimately refuse the job offer in case of justified reasons, only partly listed by the law.

2.3.4. From 2010 to now

In May 2010, the year after the announcement of long-term public investments in Denmark, the European Commission highlighted the need to limit the Danish public debt.²⁷ As a response, the government decided to cut tax and implement measures to increase private consumption.

Together with an increase in activation obligations, downsizing of the unemployment benefits system also involved reducing the length of unemployment benefit provision, from 4 years to 2 years from 2012, and a tightening of the eligibility requirements.²⁸ This could be viewed as being in line with one version of the ‘modernisation’ of social security systems, promoted by the EUEG: a downsizing of public expenditures allocated to this field and a tighter link between unemployment benefits and activation duties. The definition and entity of the ‘modernisation’ required to achieve ‘a smart, sustainable and inclusive growth’ (Europe 2020) is not known.

Four policy reforms have been introduced since 2012, all aimed at facilitating entry into new jobs. The first was the 2012 Reform of the Disability Pension and Flexi-job Scheme²⁹ (Disability and Flex reform) which focused on strengthening job skills and social integration for particular categories of people:³⁰ this reform answered in particular to the 2011 Council Recommendation addressed to Denmark,³¹ mentioning expressly Flexi-job; and in part to Council Recommendations in previous years, which

²⁶ Integrated Guidelines No. 19.

²⁷ 15.6.2010 SEC(2010) 744 final.

²⁸ Madsen, K., ‘Adapting unemployment benefit system to the economic cycle’ (2011) *EEO-Review*.

²⁹ Oecd, Denmark 2009, [www. Oecd.org/els/social/workincentives](http://www.Oecd.org/els/social/workincentives) 3

³⁰ Active Social Policy Act, No. 468, 20/05/2016 and Active Employment Act, No. 807, 01/07/2015.

³¹ Council Recommendation (CR) on the NRP 2011 of Denmark and delivering a Council opinion (CO) on the updated Convergence Programme of (CP) Denmark, 2011-2015, (2011/C 213/01).

recommended improving the protection for people at the margins of the LM, such as immigrants, but also disabled persons. Since 1/1/2003 a new form of Flexi-job has been introduced for people with severe disabilities, the employment rate of which in Denmark is below the EU average.³² This new Flexi-job however does not recognise, in contrast to the ‘old’ form, a salary equal to that of a person employed under usual working conditions. Besides the risk of pay discrimination, research has shown the potential negative impact this form of assistance may have on the health of the beneficiary,³³ therefore raising doubts over its consistency with the EU’s social inclusion goal.

The other three reforms were the 2013 Cash Benefit Reform which aims at providing training opportunities and job offers; the 2014 Reform of the Sickness Benefit Scheme, which has the goal of returning the person on sick leave to the LM as quickly as possible; and the 2014 Employment Reform, which focused on the idea of an individually tailored effort to ensure rapid placement in employment. A new agency was formed in Denmark on 1 January 2014; the Danish Agency for Labour Market and Recruitment’s task is to retain people in the LM, and it focuses on the transition from unemployment and social security benefits into education and employment.

In 2014 the European Commission assessed that Denmark had reduced its economic deficit to a sustainable level³⁴ and the Council recommended the continued pursuit of the ‘growth-friendly fiscal policy’, the adoption of further measures to improve employability of people at risk of labour market marginalisation and to foster competition in the domestic service sector,³⁵ whereas both the 2015 and 2016 Recommendations are focused on maintaining medium term budgetary objectives and enhance productivity.³⁶

³² 24.7 % against the EU average of 28.6%

³³ Waddington, L., Pedersen, M., Liisberg, M.V., ‘Get a Job! Active Labour Market Policies and Persons with Disabilities in Danish and European Union Policy’ (2016) *Dublin University Law Journal* 39(1).

³⁴ Commission SWD(2014) 77 final

³⁵ CR on the NRP 2014 of Denmark and delivering a CO on the CP Denmark, 2014 (2014/C 247/04) 2014/c 247/04.

³⁶ CR on the 2015 NRP of Denmark and delivering a CO on the 2015 CP Denmark 2015/c 272/10; Council of the EU, Recommendation for a CR on the 2016 NRP of Denmark and delivering a CO on the 2016 CP Denmark (OR. en) 9195/16.

3. THE ITALIAN SYSTEM

3.1. INTRODUCTION

Active and passive LMPs in Italy have traditionally been characterised by problems, regarding both activation obligations and unemployment benefits. With regard to passive LMP, Italy has tried for years to introduce reforms to harmonise a considerable number of different types of unemployment benefit and short-term assistance, which were - and in some measure still are - different from each other, and offer more protection in traditionally stronger employment sectors.

Another crucial pending issue is the lack of means-tested benefits to support unemployed persons who do not reach the contributory requirements for insurance benefits, such as is often the case with atypical workers. Although new benefits have recently been introduced, as will be mentioned later in the text, these benefits cannot be considered as the achievement of a level of universal assistance protection.

At local level, public administrations can decide to offer support to unemployed people who do not have access to insurance benefits; there is considerable variation in how this is managed between municipalities and between North and South Italy (usually configured as means-tested benefits).

Regarding activation, one of the main problems faced is the inefficiency of public employment offices, together with the non-homogeneity of services at national level, with considerable regional and municipal differences.³⁷

The relationship between unemployment benefits and activation duties in Italy can be based on the link between two constitutional rights: the right (and duty) to work (Article 4 of the Italian Constitution) and the right to protection in the case of unemployment (Article 38).³⁸ Taking it from there, according to Cinelli, protection in the case of unemployment should be intended in two ways: (i) protection against unemployment, by providing citizens with public employment services and vocational training to enable them to be active (active LMP); and (ii) protection in the case of unemployment, by providing citizens with unemployment benefits to cope with the

³⁷ Liso, F., 'Brevi appunti sugli ammortizzatori e sui servizi all'impiego nel Protocollo del 23 luglio 2007', in Perulli, A., (a cura di), *Le riforme del lavoro. Dalla legge finanziaria 2007 al protocollo sul Welfare*, Halley Editrice, 2007.

³⁸ For deepened remarks on Art. 38 Cost., please see: Ales, E., '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* 455 ff.

temporary lack of work.³⁹ It is also relevant here to point out that this constitutional interpretation has been dealing, in the last 15 years, with attempts to base the provision of unemployment benefits on a declaration or agreement to comply with activation duties in accordance with an NPM *contractualisation* of the benefits.⁴⁰

3.2. ITALIAN REFORMS IN LMPS AND EUEG

In the following pages we will analyse the two main reforms of recent years which aimed at reaching flexicurity in accordance with EU indications.

3.2.1. *The Monti-Fornero reform, 2012*

If we look at the Country-specific Recommendations for Italy, especially of 2011 and 2012,⁴¹ the flexibility of the LM is mentioned as a crucial issue to be addressed. As a matter of fact, the EU indications insisted on structural reforms in this direction.⁴²

The reforms of recent years introduced considerable flexibility through deregulation, but flexible arrangements could also have been reached through collective bargaining, without legislative intervention. Instead, the role of the social partners has been downsized in the last 10 years (especially under the Berlusconi Governments), contrary to EU indications, which maintain crucial the role of social partners in the implementation of European Employment policies.

The Monti-Fornero reform, which was adopted through Law n. 92/2012, downsized the level of protection in the case of collective dismissal and modified a number of labour contracts. These new rules aim to answer the 2011 Country-specific Recommendations to ‘reinforce measures to combat segmentation in the labour market, also by reviewing selected aspects of employment protection legislation including dismissal rules’, to which the 2012 NAP referred. The NAP also stressed the need to extend the access to unemployment benefits. Indeed, together with the need for flexibility, the EU

³⁹ Cinelli, M., *Diritto della previdenza sociale*, Giuffrè, Milano, 1994, 177.

⁴⁰ E.g. : Tiraboschi M., Spattini S., Tschöll J., *Guida pratica ai nuovi ammortizzatori sociali*, Milano, 2009.

⁴¹ CR on the NRP 2011 and delivering a CO on the CP Italy, 2011-2014 (2011/C 215/02); CR on the NRP 2012 and delivering a CO on the CP Italy, 2012-2015.

⁴² Ales, E., ‘The Italian Reform of the Labour Market in a growth perspective’ (2012) Vol. 1 *ELLJ*, 70. On the pressure towards structural reforms: Prassl, J., ‘Contingent crises, Permanent reforms: rationalising labour market reforms in the European Union’ (2014) Vol. 5 No. 3-4 *ELLJ*.

Institutions stressed the need for protection in the LM, which should have been particularly relevant in a country such as Italy, with low standards of social security protection compared to those of other MS, such as Denmark.

The Monti-Fornero reform implemented new regulations aimed at better systematisation,⁴³ in order to comply with the ‘fragmented unemployment benefit system’ as described in the above mentioned 2011 Council Recommendations,⁴⁴ to which the 2012 NAP referred. The reform did not, however, solve the problem of the absence of protection assistance for every person, and therefore at national level, Italy provides only insurance benefits in the case of unemployment.

The Monti-Fornero reform did partially increase the level of protection offered to precarious workers through the introduction of two specific benefits⁴⁵ but, at the same time, it progressively transformed another unemployment benefit, the *indennità di mobilità*, by tightening eligibility requirements. This benefit has traditionally been more protective, in terms of duration, level of economic assistance, and activation opportunities, than that of other categories. The reform also introduced a new system to provide new public short-time working schemes in fields where they were lacking.⁴⁶

With regard to activation policies, the reform included several dispositions aiming to improve the management of employment policies, but no significant outcomes seem to have been achieved. The attempt to introduce the mentioned new dispositions was coherent with the Council Recommendation on the Italian 2011 NRP, which asked for better political governance, not only limited to the LM, to address the discrepancies amongst the regions.

Duties on behalf of the State were also established: a specific and minimum level of service must be offered to unemployed people, in adherence to the Constitution (Art. 117), however, a lack of allocated resources makes the regulation ineffective.⁴⁷

a) The punitive approach of the Monti-Fornero reform

⁴³ Renga, S., ‘La riforma degli ammortizzatori sociali’ (2012) 3-4 *Lavoro e Diritto*.

⁴⁴ CR on the NRP 2011 and delivering a CO on the CP Italy, 2011-2014 (2011/C 215/02);

⁴⁵ These benefits are: *Mini Aspi* and *Dis-coll*.

⁴⁶ Alaimo, A., ‘Servizi per l’impiego e disoccupazione nel “welfare attivo” e nei “mercati del lavoro transazionali”’ (2012) 3 *Rivista del diritto della sicurezza sociale*; M. Cinelli, ‘Gli ammortizzatori sociali nel disegno di riforma del mercato del lavoro’ (2012) 2 *Rivista del diritto della sicurezza sociale*.

⁴⁷ Pascucci, P., ‘Servizi per l’impiego, politiche attive, stato di disoccupazione e condizionalità nella legge n. 92 del 2012’ (2012) 3 *Rivista del diritto della sicurezza sociale* 543-511.

With regard to activation duties, the Monti-Fornero reform strengthened the disciplinary aspects related to the conditionality of unemployment benefits. This aspect seems to be more connected to the 2011 NRP of the Berlusconi government than to the 2012 NRP of Monti: the 2011 NRP stressed the need for more conditionality between benefits and training activities or employment offers, ‘in accordance with the active approach recommended by the European Union’. In line with this tendency, the reform modified the concept of suitable job offer, i.e. a job offer from the PES, which cannot be refused by the unemployed person. This definition reduced the level of protection for the unemployed person in terms of consideration of their professional profile. Now a ‘suitable job’ is a job, for which the salary is up to 20% lower than the last benefit amount allocated to the unemployed person. No minimum amount is stated for either the wage or the benefit. Therefore, there is no consideration for the capacities and skills or previous job of the workers.

3.2.2. *The Renzi Job Acts project, 2015*

The 2012-2013 Council Recommendations⁴⁸ on Italy’s annual NRP highlighted crucial issues, which affects the LM, and fixed new goals such as an improvement in the efficiency of public administration, a correct managing of the EU fund in the South of Italy, a better management of banks, the fight against tax evasion, an effective implementation of LM reforms, in the light of an increasing awareness of the discrepancy between regulation and its effective implementations and outcomes. In 2014 the public administration efficiency issue was pointed out also in connection with the need for: more transparency; stricter monitoring and controlling procedures, especially in the South; and the implementation of measures against corruption.⁴⁹ In 2015 the Renzi government introduced new changes in passive and active LMPs,⁵⁰ which should be considered within a wider picture, i.e. the ‘Job Acts project’. The idea

⁴⁸ CR on the NRP 2012 and delivering a CO on the CP Italy, 2012-2015; CR on the NRP 2013 and delivering a CO on the CP Italy, 2012-2017 (2013/C 217/11).

⁴⁹ CR on the NRP 2014 and delivering a CO on the CP Italy, 2014 (2014/C 247/11).

⁵⁰ The entire (2016) 2 *Lavoro e Diritto* on PES; Caruso, B., Cuttone, M., ‘Verso il diritto del lavoro della responsabilità: il contratto di ricollocazione tra Europa, Stato e Regioni’ (2015) *WP C.S.D.L.E. ‘Massimo D’Antona’* 283; Cinelli, M., Nicolini, C.A., ‘L’attuazione del Job Act: le nuove tutele per i disoccupati’ (2015) III *Rivista Italiana di diritto del lavoro*. Concerning passive LMPs: Garofalo, D., ‘Il d.lgs. 4 marzo 2015, n. 55: un primo commento’ (2015) 2 *Rivista del diritto della sicurezza*

is still the need to achieve *flexicurity*, by downsizing the protection in case of dismissal and by increasing the employer's powers in the working relationship. For this reason the government widely liberalised the usage of the fixed-term contract⁵¹ and introduced the *contratto unico a tutele crescenti* – a new form of employment contract - in order to deal with the segmentation of the LM. But this contract involved a downsizing of the protection in case of dismissal in comparison with the traditional employment contract. Lowering the protection for the 'insider' does not seem a way to cope with the segmentation of the LM in a country in which a strong welfare system is lacking. The idea of the Job Act was also oriented towards strengthening social protection in case of unemployment and increasing the effectiveness of activation policies.

a) The attempts of the Renzi reform to strengthen social protect and activation

Particularly from 2013 the Council recommended to Italy to improve the PES' efficiency.

The 2015 Council recommendation⁵² addressed to Italy insisted on an improvement of active LMPs and fight against youth unemployment. Notwithstanding the implementation of the Youth Guarantee, which had a different impact from region to region, the youth unemployment rate remains high, i.e. 40.3% in 2015.⁵³

The Legislative Decrees, which have been adopted to implement the Renzi Job Acts, introduced relevant changes in both in active and passive LMPs.

With regard to unemployment benefits, a new and unique benefit, the Naspi - which is around 75% of the wage, with a maximum ceiling of EUR 1300, and can be allocated for a maximum of 2 years - means literally 'new social insurance for employment' (*Nuova Assicurazione Sociale per l'Impiego*). The Naspi is more accessible than previous benefits for precarious workers because eligibility requirements are 13 weeks of contributions within the previous 4 years together with at least 30 working days

sociale; Bozzao, P., 'I nuovi trattamenti di disoccupazione: a piccoli passi verso l'Europa', in Fiorillo, L., Perulli, A., (a cura di), *Contratto a tutele crescenti e Naspì*, Torino, Giappichelli, 2015; Renga, S., 'Post fata resurgo. La rivincita del principio assicurativo nella tutela della disoccupazione' (2015) 1 *Lavoro e Diritto*.

⁵¹ Decree Law n. 34/2014, converted into law n. 78/2014; Perulli A., 'Il contratto a tempo determinate é la forma comune di rapporti di lavoro', in Fiorillo, L., Perulli, A., op.cit.

⁵² COM(2015) 262 final

⁵³ [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Table_1_Youth_unemployment,_2015Q4_\(%25\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Table_1_Youth_unemployment,_2015Q4_(%25).png)

within the 12 months before the beginning of the unemployment. Before the Naspi, the requirement to access the more common unemployment benefit was one worked year in the last two years.

Nevertheless, the reform does not introduce assistance at national level for the unemployed. In this way, Italy fails to comply with Art. 38 of the Constitution, stating that every citizen who is not able to work and who does not have sufficient resources to live, has the right to social assistance. The same article states also that 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. In this field, the Renzi reform reached just some achievements in creating an unemployment allowance, the *assegno di disoccupazione*, i.e. financed by the general taxation, but still linked to the unemployed person's contributory, until financial resources are available.⁵⁴

The Renzi reform also introduced a new activation tool, the *assegno di ricollocazione*, which allows accessing to employment services and initiatives, even provided by private actors, after 4 months from the PES registration.⁵⁵

This measure seems to be coherent with the specific Council recommendation made to Italy at the end of the 2013 European Semester, by the EU Council, with what concern the LM, in particular in order to strengthen vocational education and training.

But once again, a regulation - which potentially could improve the ALMPs in Italy - meets implementation problems due to a lack of resources, and to other factors such as the traditional inefficiency of PES.

According to the reform, the unemployed person and the public employment office have to sign an agreement (*patto di servizio*), which is now compulsory and which implies the obligation to be immediately available to work and to comply with specific activation duties.

The person, who does not accept a job offer, which is considered suitable by law, can lose her/his benefit or see it reduced. The Renzi reform states new sanctions in case of non-fulfilment of the activation duties. The innovation is that for the first time a graduation of sanctions is introduced.

⁵⁴ Balandi, G.G., 'L'eterna ghirlanda opaca: evoluzione e contraddizione del sistema italiano di sicurezza sociale', (2015) 2 *Lavoro e Diritto* 313 ff.

⁵⁵ Canavesi, G., 'La ricollocazione secondo il Jobs act: dall'attività al contratto?' (2015) 3 *Rivista del diritto della sicurezza sociale*.

b) LMP organisation: the new Agency

The Renzi reform introduced a new Agency, the National Agency for Activation policies (*Agenzia Nazionale per le Politiche Attive del Lavoro*), which should coordinate the active LMPs in the country and, in specific, a services network for employment policies to ensure more efficient public employment services, according to the 2013 Council-specific Recommendations.

This Agency needs to coordinate itself with other actors of the LM. In Italy unemployment benefits are paid by the National Institute of Social Security (INPS) and employment services are provided at the territorial level through the PES at the territorial level, the *Centri per l'Impiego*, together with private actors with specific accreditation.

The role of private providers has already been launched particularly by the reform on the LM of 2003,⁵⁶ with a role to compete with and complete the PES activity, according to a NPM approach. But not significant positive outcomes followed their introduction.⁵⁷ Efforts in improving databases are evident in the reforms of recent years, and brought some achievements, especially as regards the INPS's efficiency.

3.2.3. Focus on the country's system problems, 2015-2016

As described, improvements in active LMP were introduced by the Renzi reform. At the same time, Italy has been experiencing a delay in this field for at least twenty years and the current outcomes are still widely inadequate to cope with the need for efficient active LMPs.

Macroeconomic policies aiming to create jobs through investment are needed in the Member States, as mentioned in the 2015 EUEG.⁵⁸ Incentives to hire new workers and a mere regulation of the functioning of LM – which were introduced by this government – seem to be largely insufficient in Italy to bring an effective positive result in coping with unemployment.

⁵⁶ Legislative Decree n. 276/2003. But even the Legislative Decree n. 196/1997 recognised private actors an increasing role in the LM.

⁵⁷ Varesi, P.A., 'Il workfare territoriale', in Gottardi, D., Bazzani, T., (a cura di), *Il workfare territoriale*, ESI, 2014; Bergamante, F., Marocco, M., *Lo stato dei Servizi pubblici per l'impiego in Europa: tendenze, conferme e sorprese*, ISFOL, Roma, 2014.

⁵⁸ Council Decision (EU) 2015/1848 on EUEG 2015.

The 2016 Council Recommendation, addressed to Italy, highlights the need to implement the new regulation in active LMPs introduced by the Renzi reform, in particular concerning the efficiency of PES, the measures against poverty and the rationalisation of social expenditure, to activate persons out of the market together with the possible introduction of a basic income.

At the same time, one of the Recommendations addressed to Italy in 2016 focused on the need to introduce a public administration reform and to strengthen the fight against corruption.

4. THE GERMAN SYSTEM

4.1. INTRODUCTION

From the reunification in 1990 Germany had to cope with the challenge of harmonising the considerable differences between the East and West German LMs, and of dealing with the long-term unemployment, also by strengthening workers' professional profiles through activation initiatives.⁵⁹

Activation measures were re-launched in 1997, when the *Arbeitsförderungsgesetz* was included into the Social Code (*Sozialgesetzbuch III – SGB III*). *Arbeitsförderung* means 'employment promotion' – a concept that we can also define as 'activation'.⁶⁰

The 1997 reform introduced new activation measures and the 'integration contract'. The latter was an agreement signed - voluntarily - between the *Bundesanstalt für Arbeit*, (the PES), and the unemployed, and used as a tool for more efficient tailor-made initiatives. According to the first EU employment strategy pillar, i.e. 'improving employability', the 1998 German NAP considered the 1997 reform as a way to focus on employment promotion tools both to prevent long-term unemployment and to reintegrate jobless persons as soon as possible into the LM. Moreover, the 1997 reform enlarged the definition of 'suitable job' by including all the jobs corresponding to the abilities of the worker, but with a digressive salary threshold in comparison with the previous employment.

⁵⁹ McGinnity, F., *Welfare for unemployed in Britain and Germany*, Edward Elgar Publishing, Cheltenham;Northampton, 2004, 83.

⁶⁰ Bieback, K.J., 'Die Sozialversicherung' in Maydel, B.B., Ruland, F., Becker, U., *Sozialrechtshandbuch*, Nomos, Baden-Baden, 2008, 941.

In the case of unemployment assistance, there is no a definition of ‘suitable job’, but the Courts usually consider suitable any jobs,⁶¹ according to a principle of ‘unlimited acceptability of work’.⁶² It would be possible also to take into consideration how this principle is coherent with the constitutional right to freely choose an occupation. Personal or general reasons can be considered a justification to refuse the job.

4.2. GERMAN REFORMS IN LMPS AND THE EUEG

The 1998 memorandum ‘*Der Weg nach vorn für Europas Sozialdemokraten*’ / ‘Europe: The Third Way’ / ‘*Die Neue Mitte*’ contained the core of the current ALMP in Germany. This document designed a new relationship between the person and the State, according to which rights should not overcome responsibilities and each person should be responsible for themselves and their family; at the same time, the State should not be just a provider of benefits, but, on the contrary, should contribute to placing jobseekers in jobs. This ‘Third Way’ was intended to be an alternative to the neo-liberalism, trying to re-orient capitalism towards social issues.⁶³

The 1998 NAP focused on the concept that, in order to achieve the first EUEG pillar,⁶⁴ aiming at improving employability, active measures were seen as a way to keep the workers in employment and prevent the claiming of passive benefits (unemployment benefits/assistance). In the 2000 NAP great importance was placed on intensive counselling and placement interviews together with target group-oriented preventive assistance in activation. Long-term unemployment remained one of the main challenges for the ALMP in Germany.

Referring to the specific Recommendation addressed to Germany for 2000, asking for ‘a coherent strategy to fully utilise the employment potential in the service sector’, the federal government stressed, in the NAP, the relevance of contributing to the privatisation of public services and the improvement of training systems.

⁶¹ de le Court, A., *De-commodifying Social Rights: Welfare State Policies in a Multilevel Perspective*, 2014, <http://www.tdx.cat/handle/10803/283752>. See also: de le Court, A., *Protección por desempleo y derechos fundamentales, el caso español en contexto*, Tirant lo blanch, Valencia, 2016.

⁶² Knuth, M., “‘Activation’ as a change of the “unemployment regime””, ASPEND/ETUI conference, Activation policies in the EU, Brussels, 20-21 October, 2006, 9.

⁶³ Eichenhofer, E., *The Law of the Activating Welfare State*, Nomos, 2015.

⁶⁴ Council Resolution of 15 December 1997 on the 1998 EUEG (98/C 30/01).

Concerning, specifically, the guidelines on a revision of the tax and social service system, the EU has often encouraged a diminution of social contributions in Germany (e.g. in the 2000 NAP), which has been gradually followed by the government.⁶⁵

The 2001 EUEG⁶⁶ took into consideration the 2000 Lisbon European Council, without changing the basic four pillars structure, and focusing on some specific challenges, including the transition to a knowledge-based economy and the modernisation of the European social model by investing in people and combating social exclusion.

The 2001 NAP announced the ‘Action plan’ (Job-Aktiv), which would be adopted in late 2001 and entered into force at the beginning of 2002. This Plan focused on activation measures, which were based on the EES; in this way their adoption could be legitimated in the eyes of the sceptics to the new legislation.⁶⁷ In the plan, long-term unemployment was still highlighted as a crucial issue.

4.2.1. *The Hartz reforms*

The anticipated economic recovery did not materialise and a ‘modest reform’ in activation was introduced in 2001. Two months later, in early 2002, a ‘placement scandal’ revealed how the data of the PES had been manipulated, showing false improvements in the unemployment rate. Thus, the so-called Hartz Commission - named after its head - was appointed by the government to reform the PES to achieve ‘Modern Labour Market Services’ within the NPM approach.⁶⁸

The Recommendations addressed to Germany in 2002 confirmed the need to tackle unemployment, particularly with regard to long-term unemployment – taking into account the specific problems of East Germany – and to women, to ethnic minorities and migrant workers, and to the older unemployed. The role of activation was highlighted together with the need to achieve more flexibilisation in working contracts.

With regard to the need for the activation path, the 2002 German NAP mentioned the ‘reintegration agreement’ as a key tool ‘in line with the government’s policy of *Fördern und Fordern*’ in order to encourage and motivate people to look for work. With the

⁶⁵ de le Court, A., 2014, 2016, op.cit.

⁶⁶ Council Decision on EUEG for 2001 (2001/63/EC); Lisbon European Council 23-24.03.2000: Conclusions of the Presidency.

⁶⁷ OECD (2009), ‘Germany: The Hartz reforms of the labour market, 2002-05’ in *The Political Economy of Reform: Lessons from Pensions, Product Markets and Labour Markets in Ten OECD Countries*, OECD Publishing, Paris, 227.

⁶⁸ Knuth, M., op. cit., 2.

Hartz reform this agreement became compulsory, according to the NPM approach and the *contractualisation* of social rights, widely supported by the Hartz commission.

The government implemented the reforms suggested by the Hartz Commission, aiming to modify not only activation measures for the unemployed (Hartz I–III, 2003–04) but also the systems of unemployment benefits and social assistance (Hartz IV, 2005–06)⁶⁹ as a whole.

There are some connections between the Hartz Report and the EES. The Report expressly mentioned the EES even though the EES was not named in the Hartz reforms.⁷⁰ At the same time, the EU openly supported the Hartz project according to the Country-specific Recommendations to which the 2002, 2004 and 2006 NAPs referred.

Nevertheless, it is not possible to say which have been the mutual influences between the domestic and the EU level.⁷¹ Watt believes that the Hartz proposals reflected the EES as weak.⁷² At the same time, some aspects included in the EUEG, especially those regarding increasing activation and ‘modernising’ social security systems, were introduced by the Hartz reforms.

a) New conceptual way to look at the unemployment benefits

The Hartz reform introduced a new ‘conceptual basis’ for benefits and new guideline concepts in social policy, together with new expressions, such as, e.g. ‘activating welfare state’, ‘empowerment’, and ‘enabling’.⁷³

Thus, by claiming self-responsibility while providing an unemployment support, the ‘carrot and stick’ logic was introduced, replacing the previous social benefits system, which was based on a unilateral granting of benefits. The new system conditioned both the eligibility requirements to access benefits and the consequences of the benefits, modifying profoundly ‘legal architecture’ of welfare.⁷⁴

⁶⁹ Kyzyma, I., ‘Changes in the Patterns of Poverty duration in Germany’ (2014) Series 60 *Review of Income and Wealth* 310.

⁷⁰ de le Court, A., 2014, 2016, op.cit.

⁷¹ Jacobsson, K., Schmid, H., ‘Real Integration or Just Formal Adaptation? On the Implementation of the National Action Plans for Employment’, in C. de la Porte and P. Pochet (eds.) *A New Approach to Building Social Europe: The Open Method of Coordination*, 69–95. Brussels: PIE-Peter Lang, 2002.

⁷² Watt, A., ‘Reform of the European Employment Strategy after Five Years: A Change of Course or Merely of Presentation?’, *European Journal of Industrial Relations*, Vol. 10 N. 2, 117–137.

⁷³ Eichenhofer, E., op. cit., 15.

⁷⁴ Eichenhofer, E., op. cit., 16.

The precondition to accessing the benefit was linked to the goal of finding a job placement (§ 25 Abs. 1 BSHG).

All the interventions are meant to be a tool towards education and self-independence. As a matter of fact, in the SGB II (§ 1 Abs. 1 S. 1) it is written as '*Hilfe zur Selbsthilfe*', i.e. help towards self-independence. According to Bieback this idea is used to stress that beneficiaries must comply with duties to keep enjoying the benefit, such as accepting any jobs. In his opinion this is the 'radical idea' of the current labour law ethic in social security - if a person is not ready to be placed in a job, he/she loses the benefit.⁷⁵

b) *The Hartz IV*

The Hartz IV reform changed the structure of the benefits and their administration.

In particular, unemployment assistance and social assistance were merged into a unique benefit, the Unemployment Benefit II, better known as Hartz IV, and regulated by the SGB II. This benefit brought a slight improvement in comparison with the previous social assistance (*Sozialhilfe*), but it weakened protection with regard to the previous unemployment assistance (*Arbeitslosenhilfe*). The *Arbeitslosenhilfe* was a benefit paid through general taxation but awarded only to people, who already accessed insurance unemployment benefits.

Thus, now all the unemployed who no longer qualify for the unemployment insurance benefit, can access Hartz IV if they are in need (means-tested benefit) and if they are willing to work. The Unemployment Benefit II (*Arbeitslosengeld II*) is a flat-rate 'basic income support for jobseekers' and can be provided together with other benefits recognised for children and for housing costs.⁷⁶ The Unemployment Benefit II is financed by taxes paid at the federal and municipality levels.

The *Arbeitslosengeld I*, i.e. the insurance benefit, remains basically the same, and amounts to a percentage of the last former net income (60% or 67%) for a maximum of 12 months, and longer for older workers. But the Hartz reform shortened the duration of the insurance unemployment benefits for older workers from 32 to 18 months, which in

⁷⁵ Bieback, K.J., Fuchsloch, W., Kohte, C., *Arbeitsmarktpolitik und Sozialrecht*, Verlag C.H. Beck, München, 2011.

⁷⁶ Dingeldey, I., 'Fragmented Governance Continued: the German Case', in De Graaf, W., Van Berkel, R., Sirovátka T., *The Governance of Active Welfare States in Europe*, 2011, 67; Zimmermann, *Das Hartz-IV-Mandat*, Nomos, Baden-Baden, 2016.

2008 was re-extended to 24 months.⁷⁷ To access the *Arbeitslosengeld I* one should be unemployed (i.e. working less than 18 hours per week),⁷⁸ have worked 12 months within the last 2 years⁷⁹ and be available to work and participate in activation initiatives is requested, even if less harsh than those requested for the Hartz IV.

c) Hartz reforms and the new organisation of the LM

Although the reform aimed at the creation of Job Centres, as a ‘one-stop shop’ service for the insured and uninsured unemployed,⁸⁰ this goal was not achieved and the fragmentation of the German system did not improve.

With regard to the insurance unemployment benefits, the Federal Employment Office (*Bundesanstalt für Arbeit*) operates as the Federal Employment Agency (*Bundesagentur für Arbeit*). At the local level its offices become Agencies for Work (*Agentur für Arbeit*), which administrate ALMP, placement and the insurance unemployment benefits.⁸¹

Concerning the Hartz IV, or Unemployment Benefit II, joint bodies were created between local *Agenturen für Arbeit* and the municipalities. These consortia are characterised by a division of functions, in which the local *Agentur für Arbeit* finance and implement the activation measures and administrate the benefits for persons willing to work, whereas municipalities administrate the rent subsidies and the social services like childcare facilities, social-psychological counselling, etc. This complex organisation is integrated with *Optionskommunen*, i.e. opted-out communes or municipalities with sole responsibility, which are municipalities fully responsible for the implementation of benefit and activation initiatives of the Hartz IV benefit.⁸²

d) New Public Management: The Hartz approach

⁷⁷ Konle-Seidl, R., ‘Changes in the governance of employment services in Germany since 2003’ (2008) 10 *IAB-Discussion Paper* 6.

⁷⁸ § 138 (3) SGB III.

⁷⁹ § 142 and 143 SGB III.

⁸⁰ Steck, Kossens, *Hartz IV-Reform 2011*, C-H. Beck, Munich, 2011.

⁸¹ Aurich-Beerheide, P., Catalano, S.L., Graziano, P., Zimmermann, K., ‘Stakeholder participation and policy integration in local social and employment policies: Germany and Italy compared’ (2015) vol. 25 (4) *Journal of European Social Policy*.

⁸² Dingeldey, I., op. cit., 68.

According to the NPM, the accountability outcomes of local employment agencies has started to be considered crucial, such as the outsourcing of a number of employment services and the competition between private providers. Public-private partnership of all stakeholders, including of private employment agencies, should play a pivotal role in the effectiveness of active LMPs.

But as regards private providers, researchers have showed that marketisation has not been really effective.⁸³ Furthermore, this shared responsibility with private actors could also be ambiguous in influencing, controlling and cooperating.⁸⁴ The reforms of recent years introduced a competitive contracting-out in training from 2005, in ‘activation measures’ from 2012, and in placements from 2002.⁸⁵ Furthermore, at the beginning of 2000 a voucher system was introduced, leaving beneficiaries free to choose the activation services (placement, training and ‘activation and placement’) providers from a list of accredited providers.⁸⁶

e) The discretionary procedure in the LM in Hartz active LMPs

In determining and planning the activation initiatives, an excessive discretion is left to the civil servant of the *Arbeitsagentur* or of the *Jobcentre* as regards deciding which measures can be proposed to the unemployed. Should the beneficiary not agree with this decision, they rarely refuse it due to the difficulties involved in taking legal action against it. One of the main problems is that beneficiaries usually do not receive enough information to facilitate determining the grounds for their appeal.⁸⁷

f) Role of social partners in Hartz times

⁸³ Jacobi, L., Kluge, J., ‘Before and After the Hartz Reforms: The Performance of Active Labour Market Policy in Germany’ (2006) No. 2100 *Paper IZA DP 26*; Daps, P., Schütz, H., ‘Privatisation of placement services in light of the transitional labour market approach’ in Rogowski, R., Salais, R., Whiteside, N., *Transforming European Employment Policy: Labour Market Transitions and the Promotion of Capabilities*, Edward Elgar, 2011.

⁸⁴ Bieback, K. J., Fuchsloch, C., Kohte, W., *Arbeitsmarktpolitik und Sozialrecht*, Verlag C.H. Beck, München, 2011, 2.

⁸⁵ Zimmermann, K., Aurich, P., Graziano, P.R., Fuertes, V., ‘Local Worlds of Marketization – Employment policies in Germany, Italy and UK Compared’ (2014) Vol. 48, No. 2 *Social Policy & Administration* 136.

⁸⁶ Zimmermann, K., Aurich, P., Graziano, P.R., Fuertes, V., op.cit.

⁸⁷ Bieback, K. J., Fuchsloch, C., Kohte, W., op. cit.

The role of the social partners was weakened in 2001 with the abolition of the corporatist boards of directors at all three levels of the Federal Employment Office; the new bodies, which replaced the previous, limited the social partners' functions to a controlling task.⁸⁸

Moreover, the introduction of the Hartz IV benefit indirectly downsized the social partners' role because municipalities are not legally obliged to create structures/bodies with social partners' participation. Often, they promote advisory bodies including social partners together with other associations.⁸⁹

The weakening of the social partners' role, such as already mentioned for Denmark and Italy, is not coherent with the EU indications to promote the social partners' participation in implementing the EUEG.

4.2.2. Final recommendations

With regard to the LM, the 2015 Council Recommendation addressed to Germany highlights the need to incentivise later retirement, reduce taxes and social contributions and provide a revision of mini-jobs (with monthly earning of EUR 450) in order to favour the transition to other forms of works. Public investments are encouraged in infrastructure, education and research; in particular, the German public spending on education as a proportion of GDP is still below the EU average.⁹⁰ The 2016 Country Recommendation points in the same direction, highlighting that attempts to date are still not sufficient and pointing out the need, from an active LM perspective, to foster the LM participation of women and migrants.⁹¹

5. CONCLUSION (AND MANY QUESTIONS)

Even if it has not been possible to analyse in detail the regulation of unemployment benefits and corresponding activation duties in the three Member States considered

⁸⁸ Dingeldey, I., *op.cit.*, 68.

⁸⁹ Dingeldey, I., *op.cit.*, 69.

⁹⁰ CR 14 July 2015 on 2015 NRP of Germany and delivering a CO on 2015 CP Germany (2015/C 271/01).

⁹¹ CR 12 July 2016 on 2016 NRP of Germany and delivering a CO on 2016 CP Germany (2016/C 299/05).

here,⁹² some conclusions can be proposed and, meanwhile, many questions for possible further analyses can be posed.

There is, in all three of the systems under analysis, a common tendency towards the implementation of NPM ideas, which started as early as the late 1990s/early 2000s, and which continue up to the present day.

NPM has been reflected in the three systems by an increasing ‘work-first’ approach, a tightening in conditionality between activation duties and unemployment benefits, and the progressive adoption of a *contractualisation* perspective towards benefits, insurance benefits and assistance; in substance, towards a *quid pro quo* between benefits and activation duties. Moreover, the marketisation of employment services, together with market-based tools and IT systems to measure performance, have become an integral part of the systems considered, but both the involvement of private actors and the way in which the measuring tools are used, have been criticised by part of the literature (*supra*).

The *contractualisation* of benefits has an impact on the principles, in the three systems, on which unemployment benefits, and therefore their social security systems, have been based.

One question which might be posed, is whether the systems can legitimately transform a right, i.e. the right to unemployment benefit, into a *quid pro quo* for activation duties; activation duties were part of the systems of the three Member States even before the implementation of the reforms presented here, but this does not imply that they should be considered as prerequisites for access to unemployment benefits. We might wonder if this is the way to realise that transition from passive to active measures which has been promoted by the EU up to now, in line with the concept of flexicurity, on which the EU builds its guidelines and strategies, and which promotes the achievement of effective and activating LMPs by the Member States.

Some attempts have undoubtedly been made in this direction. In all the Member States activation themes have become a crucial element of LMP, but what this means in real terms is difficult to ascertain. Denmark has downsized both its active and passive LMP measures, Germany was unable to manage its fragmented system, while Italy, despite relevant attempts, seems still far from practising what we understand as an effective active LMP. Furthermore, the perspective which was adopted by the different reforms focused more on the individual responsibilities of unemployed people than on finding

⁹² Langenbucher, K., ‘How demanding are eligibility criteria for unemployment benefits, quantitative indicators for OECD and EU countries’ (2015) No. 166 *WP OECD Publishing*, Paris.

effective ways to help activate them. The highly discretionary German system leaves few possibilities for the unemployed to control the activation process, and even in Denmark the traditional tailor-made initiatives were downsized, whereas in Italy the implementation of proposed new activation tools is doubtful because of lack of resources and issues over efficiency.

The ‘work-first’ approach, on which the three systems seem to be oriented through the tightening of the suitable job offers, focuses on finding a job - any job - as quickly as possible. In Denmark, municipalities receive funds from the central governments which depend on their success and speed in placing people in jobs, with no consideration for the quality, length, prospects etc. of the employment opportunity. In all the Member States under analysis, placing an unemployed person in employment limits social expenditure. But which kind of jobs? This issue seems to impact the right to work in Italy, the (public) obligation to make efforts to guarantee work for every able-bodied citizen in Denmark, and the right to freely choose an occupation in German.

From the same, qualitative⁹³ perspective, the 2015 and 2016 specific Recommendations for Germany raise the issue of mini-jobs; criticism has also been voiced in Denmark; in Italy ‘*flexibilisation*’ increased whilst levels of social protection were reduced. Fixed-term and precarious jobs however can also have an impact, in the long term, on the social security system, because they mean lower social insurance contributions, crucial for insurance benefits, and may mean an increase in the cost of social assistance. From the perspective of individual responsibility adopted by the NPM approach which focuses on will/choice for the unemployed person, what is the responsibility of the worker, who is hired for a limited period of time, which is not long enough to permit future access to stronger contribution-based protection?

The shift in Germany towards the Hartz IV system, raises also relevant issues about the progressive abandonment of stronger protection, which was linked to the previous wage. This also concerns Denmark, where a decrease in the duration of unemployment benefit provision has meant reduced protection for unemployed persons.

The work-first approach towards any job seems to contradict the Lisbon 2000 idea of becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion, or of achieving the goal of the Flagship Initiative: ‘An Agenda for new skills and jobs’ in accordance with Europe 2020.

⁹³ Weiss, M., ‘European Employment Policies: a critical analysis of the legal framework’ in this issue.

It is crucial, therefore, to understand how much the EU and the Member States really believe in the potential of active LMPs. The human capital approach of the Danish system would seem the more coherent one to achieve ‘inclusive growth’ (Europe 2020), but this system is also progressively changing towards a work-first approach.

Also in the picture is another common aspect of the domestic reforms: the progressive downsizing of the role of the social partners in LMPs, in contradiction with the EUEG, which calls for their active involvement in the field.

As already said at the beginning of this article it is not possible, within the limited scope of the present analysis, to evaluate in detail how effectively the systems of the Member States’ systems have been influenced by EUEG in the field under study. As previously mentioned, reforms often referred to the EUEG, and some of their concepts have effectively been introduced as key goals in the domestic systems, but at the same time, it is also possible that the reforms do not reflect EUEG, or are limited to some aspects of them. This is the main problem of the soft-law nature of the EUEGs, which are not legally, but only politically, binding. Even if the EUEGs were legally binding however, something else must be mentioned here, although not analysed in this contribution, given limitations of space. As is evident, the LMP tendencies highlighted here, with regards NPM, started, in all three Member States, at the end of the 1990s/early 2000s, and correspond to the neo-liberalist approach taken to labour law throughout the whole of the EU. These tendencies developed gradually and were accelerated by the economic crisis and without reflecting contingent needs, rather than as part of a long-term unique strategy. This approach is based on a particular way of looking at LMP, based on unforeseeable market needs and requiring as much flexibility as possible, within the idea of a light State. This perspective would be able to condition the domestic implementation of general concepts and ideas promoted in the EUEG, and therefore a crucial issue should be to take into consideration the best perspective to adopt in order to interpret these concepts and ideas in coherence with EU employment goals.