

The background of the image is a microscopic view of plant tissue, showing large, rounded, light-colored cells with distinct cell walls. The cells are arranged in a somewhat regular pattern, and the overall color is a light blue/teal. The text is overlaid on this background.

Rethinking EU Employment Policy; a legal and economic analysis

Kees van Duin

*Rethinking
EU Employment Policy;
a legal and economic analysis*

*Het EU werkgelegenheidsbeleid beschouwd;
een juridische en economische analyse*

Kees van Duin

© 2013 Cornelis Petrus Simon van Duin

ISBN/EAN: 978-90-6464-720-8

Print: GVO drukkers en vormgevers | Ponsen&Looijen, Ede, The Netherlands

All rights reserved. No part of the thesis may be reproduced, stored in a retrieval system or transmitted in any form or by any means, without the permission in writing of the author, or, when appropriate, of the publishers of the publication.

*Rethinking
EU Employment Policy;
a legal and economic analysis*

*Het EU werkgelegenheidsbeleid beschouwd;
een juridische en economische analyse*

Thesis

to obtain the degree of Doctor from the
Erasmus University Rotterdam
by command of the
rector magnificus

Prof.dr. H.A.P. Pols

and in accordance with the decision of the Doctorate Board

The public defense shall be held on

Wednesday 4 December 2013 at 11.30 hours

by

Cornelis Petrus Simon van Duin

born in Leiden, The Netherlands



ERASMUS UNIVERSITEIT ROTTERDAM

Doctoral Committee

Promoters:

Prof.dr. F. Amtenbrink

Prof.dr. J. De Haan

Other members:

Prof.mr.dr. H. Vletter – van Dort

Prof.dr. K. Heine

Prof.dr. A. Paccès

Preface

“Better to get lost altogether than to turn back half-way”

Guido Biessen, 2012

It is with great joy that I write this preface. The story of the creation of this study has come to an end and has been a ride that I would never have imagined possible. Starting work at the Ministry of Economic Affairs in 2006, simple curiosity and ambition pushed me to start this research project at Erasmus University, which since then has taken me countless Fridays, weekends, evenings and vacations to complete. This would never have been possible without the help of so many people. First of all I would like to thank my supervisors Fabian Amtenbrink and Jakob de Haan for their excellent supervision, flexibility and understanding. The numerous sessions, often followed by diner or lunch, which we enjoyed in Amsterdam, Utrecht and Rotterdam are events I will remember for a long time, not in the least because the implications of our discussions often took me a couple of days to fully comprehend. I would also like to thank the other members of the Doctoral Committee, H el ene Vletter – van Dort, Klaus Heine, Alessio Paccas.

Furthermore, I would like to thank my colleagues at the Ministry of Economic Affairs. It is their flexibility and compassion that allowed me to take the time needed to write this study. Special thanks in this regard go out to Steven van Weyenberg, Jeroen Sas, Remco Zeeuw, Peter Martens and Guido Biessen who never complained about me not being there all those Fridays (although the concept of a “Blackberry” might have had something to do with that as well).

I would also like to thank my family, Hans, Els en Peter van Duin, for supporting me throughout the writing of this study and giving me a positive boost whenever it was needed. Finally, and most of all, I would like to thank Ren e Noppen for never complaining (at least not that much) when another weekend went down the drain, and sharing this adventure with me for the past years.

Kees van Duin

27 June 2013

List of abbreviations

ALMP	Active Labour Market Policies
BEPG	Broad Economic Policy Guidelines
CBS	Centraal Bureau voor de Statistiek
CPB	Centraal Planbureau
CEPR	Centre for European Policy Research
EC	European Communities
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs
ECU	European Currency Unit
EES	European Employment Strategy
EEC	European Economic Community
EERP	European Economic Recovery Plan
EFC	Economic and Financial Committee
EIM	Employment Incentive Measures
EMCO	Employment Committee
EMS	European Monetary System
EMU	Economic and Monetary Union
EP	European Parliament
EPC	Economic Policy Committee
EPL	Employment Protection Legislation
EPSCO	Employment and Social Affairs
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
EWCO	European Working Conditions Observatory
GDP	Gross Domestic Product
IFO	Institute for Economic Research
ILO	International Labour Organisation
IMF	International Monetary Fund
IMI	Internal Market Information System
IZA	Institute for the Study of Labor
MIT	Massachusetts Institute of Technology
NAP	National Action Plan
NBER	National Bureau of Economic Research
NGO	Non-Governmental Organisation
NRP	National Reform Programme
PISA	OECD Programme for International Student Assessment
PROGRESS	Programme for Employment and Social Solidarity
OECD	Organisation for Economic Cooperation and Development
OMC	Open Method of Coordination
QMV	Qualified Majority Voting
RBC	Real Business Cycle
RQMV	Reversed Qualified Majority Voting
SEA	Single European Act
SGP	Stability and Growth Pact
SME	Small and Medium sized Enterprises
SPC	Social Protection Committee

TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEN	Trans European Network
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TFP	Total Factor Productivity
TRESS	Training and Reporting on Social Security Network
UA	Unit of Account
ULC	Unit Labour Costs

Table of contents

Doctoral Committee

Preface

List of Abbreviations

Table of contents

1. Introduction	13
1.1 More and Better Jobs!	14
1.2 Outline of the book	14
2. Economic objectives of employment policy	17
<i>2.1 Introduction</i>	18
<i>2.2 Labour utilization, or: how much do how many people work?</i>	19
<i>2.2.1 The working age population as part of the total population</i>	26
<i>2.2.2 The share of the working age population that participates in the labour market</i>	26
<i>2.2.3 The number of hours worked per employed person</i>	31
<i>2.2.4 The share of the participating working age population that is actually employed</i>	32
<i>2.2.5 Interlinkages</i>	43
<i>2.3 Labour productivity, or: what is the added value of an hour worked?</i>	45
<i>2.3.1 Human Capital</i>	46
<i>2.3.2 Total Factor Productivity</i>	50
<i>2.4 The link between labour utilization and labour productivity</i>	52
<i>2.4.1 The role of wages in labour utilisation and labour productivity</i>	53
<i>2.4.2 Unemployment and productivity</i>	56
<i>2.5 Demand and business cycles</i>	58
<i>2.6 Government policy objectives</i>	62
3. EU employment policy instruments	67
<i>3.1 Introduction</i>	68
<i>3.2 The Treaty of Rome</i>	68
<i>3.3 The early days: changing perspective</i>	72
<i>3.4 The Single European act and the Maastricht Treaty</i>	78
<i>3.5 Towards and beyond the Treaty of Amsterdam</i>	86

3.6	<i>Employment in the Lisbon Strategy</i>	99
3.7	<i>The Europe 2020 strategy and Europe in crisis</i>	110
4.	EU instruments and economic objectives: the focus and impact of EU employment policy	121
4.1	<i>Introduction</i>	122
4.2	<i>Employment policy coordination</i>	122
4.2.1	<i>Employment policy coordination and economic developments</i>	126
4.2.2	<i>Employment policy coordination; impact on Member States' policies</i>	157
4.3	<i>Social employment policy</i>	161
4.3.1	<i>Equality between men and women; impact on Member States' policies</i>	164
4.3.2	<i>Improvement in working environment and working conditions; impact on Member States' policies</i>	172
4.3.3	<i>Social protection and social inclusion; impact on Member States' policies</i>	177
4.4	<i>Internal market legislation</i>	179
4.4.1	<i>Internal market legislation; impact on Member States' policies</i>	180
4.5	<i>EU funds spending</i>	186
4.5.1	<i>EU funds spending; impact on Member States' policies</i>	188
5.	The functioning of EU employment policy: institutional issues	193
5.1	<i>Introduction</i>	194
5.2	<i>Distribution of power in the supranational order</i>	196
5.2.1	<i>Conferral</i>	196
5.2.2	<i>Subsidiarity</i>	206
5.2.3	<i>Proportionality</i>	213
5.3	<i>Democratic legitimacy and accountability</i>	221
5.4	<i>Coherence and practical application</i>	233
6.	Rethinking EU employment policy	247
6.1	<i>Main findings</i>	248
6.2	<i>Rethinking EU employment policy</i>	249
	References	267
	Nederlandse samenvatting	291
	About the author	295

Introduction

1.1. More and Better Jobs!

In a world in which the majority of the people spend most of their lifetime working, the labour market can rightfully be considered as one of the core features of today's society. The income of workers as well as the utility that is derived from the act of working influence society's welfare. Given this central role of the labour market in determining the welfare of citizens it is no wonder that governments aim for influencing the labour market process.

Government interventions aimed at influencing labour market outcomes have been around for centuries and have been conducted by all levels of government, be it local, regional or national. In more recent years, policy measures in the area of the labour market have even transcended the boundaries of the nation state. The European Union, ever since its inception in the nineteen fifties, has influenced and facilitated the labour market process by policies ranging from the promotion of the free movement of workers and the laying down of work standards to spending from EU funds and the setting up of systems for the coordination of national policies. It is these EU policy efforts, their interplay and the way they influence the labour market that are the subject of analysis in this study. More specifically, this study asks the following research question:

“What are the economic objectives of the European Union employment policies and how effective are EU policies in this regard?”

1.2 Outline of the book

This study will deal with the research question set out above by subsequently discussing the economic objectives of employment policy, the development over time of the different EU instruments of employment policy, the focus and impact of these instruments, and a number of institutional elements that influence the manner in which the EU instruments are able to contribute to the achievement of the various economic objectives. The final chapter then draws this study to a close by drawing conclusions and looking ahead, “rethinking” EU employment policy and coming up with proposals for improvement.

Chapter 2 will address the question of which objectives governments may have for employment policy from an economic point of view. The chapter will be based on a standard growth accounting equation, in which GDP per capita growth is determined by growth in labour utilisation and labour productivity. This equation will be further developed to unravel the various aspects that influence the manner in which GDP per capita develops. In the end, this will lead to five objectives governments can pursue in setting employment policy, all of which are linked in a number of different ways to increasing GDP per capita growth, namely increasing incentives for work, improving the functioning and flexibility of markets, improving the human capital stock,

improving framework conditions and short-term stabilisation policy.

Chapter 3 addresses the question of what type of employment policy instruments have been developed in the EU. Describing the development of EU employment policy instruments, this chapter will relate these instruments to the economic objectives for government policy of chapter 2. Here it will become apparent that the development of EU employment policy has led to four different instruments of policy-making, namely employment policy coordination, internal market legislation, social employment policy and EU funds spending.

Chapter 4 will take a closer look at the links between the economic objectives and the EU employment policy instruments and the role that the instruments actually play in influencing real world developments. In general, this chapter will analyse the link between the economic objectives of chapter 2 and the various EU employment policy instruments. However, the fit will be shown to be far from perfect, something which will become especially apparent when taking into account social aspects of employment policy. Analysis of the manner in which EU employment policy instruments have contributed to achieving the economic objectives will subsequently show a large heterogeneity between the EU Member States in both starting positions and development of the various economic output and policy variables. Also, when examining effects of the instruments large differences between the various instruments in terms of their contribution to the objectives will be identified.

Chapter 5 will go deeper into this functioning of the EU employment policy instruments, analysing three different institutional aspects that can influence the manner in which the EU employment policy instruments are able to contribute to achieving the economic objectives, including the distribution of power in the supranational legal order, democratic legitimacy and accountability, and coherence and practical application. Analysis in this chapter will show that these aspects help explain the success (or lack thereof) of the various instruments.

The general conclusions that can be drawn from the analyses offered throughout this study provide a mixed picture. On the one hand, as far as the aims of the various instruments are concerned, they are largely in line with the policy prescriptions from the economic framework. On the other hand, overall, EU employment policy is a complex system with large overlaps and vague terminology, which impact is uncertain. These findings combined, will form the basis to “rethink” EU employment policy, which is done in the final chapter.

**Economic
objectives of
employment policy**

2.1 Introduction

The general economic rationale behind government employment policy is based on the concept of labour as one of society's scarce productive resources. The economic concept of employment policy used here is therefore rooted in the assumption that the goal of government policy is to set a framework to ensure the most efficient and productive use of this production factor. This is an important assumption to highlight, since it means that this chapter will focus on ways the government can use employment policy to ensure the most efficient use of labour as a productive factor, thereby increasing economic growth. GDP per capita growth will be used as indicator of economic growth, since this is the most commonly used measure¹ for material living standards and is readily available for a large number of countries on a timely basis. However, there are also some downsides to using this measure. GDP per capita e.g. does not capture some aspects that may be important for assessing overall well-being, including the value of leisure or inequality of income², and empirical measurement of key production activities e.g. in the provision of health and education services can be further improved upon. All this means that focussing solely on GDP per capita as an indicator of how well-off people are, can give misleading indications, something which will have to be kept in mind³.

Starting from the basis of GDP per capita, employment policy in essence can be aimed at two different aspects of labour as a productive factor. The standard macroeconomic growth accounting equation that will be used as a basis to differentiate between the two is the following:

Equation 1:

$$\frac{GDP}{P} = \left(\frac{hours}{P} \right) \times \left(\frac{GDP}{hours} \right)$$

The left-hand side of the equation gives GDP per capita. The right-hand side of the equation is divided in two parts, which each stand for a distinct aspect of labour usage. The first part is the hours worked per capita, or *labour utilisation*. The second part is GDP per hour worked, or *labour productivity*. The formula therefore describes that GDP per capita is equal to the number of hours each person on average works times how productive the average person is per hour worked.

¹ See European Commission, 'GDP and beyond, measuring progress in a changing world', COM(2009)433.

² See also e.g. OECD, *Going for growth* (2008) or European Commission, 'GDP and beyond, measuring progress in a changing world', COM(2009)433. For an extensive discussion on the pros and cons of GDP per capita as indicator of wellbeing see R. Boarini, A. Johansson and M. Mira d'Ercole, 'Alternative Measures of Well-Being' (OECD Economics Department Working Papers, no 476, 2006).

³ On this see also Stiglitz, Sen and Fitoussi, "*Report by the Commission on the Measurement of Economic Performance and Social Progress*" (2009)

Even though the two different aspects are closely interlinked they will first be discussed separately. Section 2.2 focuses on the labour utilisation element of the equation, section 2.3 will discuss labour productivity and section 2.4 will discuss the linkages between the two, giving the full picture of the labour market from a supply side point of view. Section 2.5 will add to this by discussing the elements of demand and business cycles. Section 2.6 will conclude, summarizing the various policy objectives that governments can pursue in the area of employment policy.

2.2 Labour utilisation, or: how much do how many people work?

This section deals with the first part of the growth accounting equation, labour utilisation. Before diving into the basic micro economic foundations behind this variable the different elements need to be made more explicit. The number of hours worked per capita, $\left(\frac{\text{hours}}{P}\right)$ in equation 1, can be subdivided as follows:

Equation 2:

$$\left(\frac{\text{hours}}{P}\right) = \left(\frac{E}{P}\right) \times \left(\frac{\text{hours}}{E}\right)$$

The number of hours worked per capita is the number of employed persons (E) as part of the population (P) times the number of hours worked per employed person.

Subsequently, the number of employed persons as part of the population $\left(\frac{E}{P}\right)$ can be broken down as follows:

Equation 3:

$$\left(\frac{E}{P}\right) = \left(\frac{WP}{P}\right) \times \left(\frac{PWP}{WP}\right) \times \left(\frac{E}{PWP}\right)$$

WP stands for the total population of working age. PWP are the number of people of working age that actively participate in the labour market. This means that they are either working or actively looking for a job. Substituting equation 3 in equation 2 gives the central equation used in this section.

Equation 4:

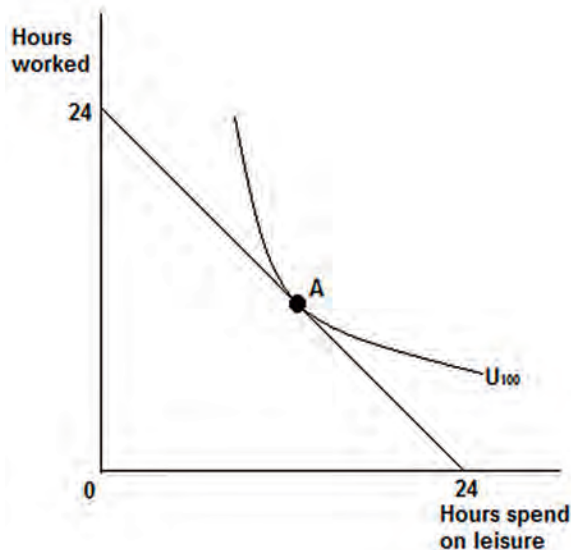
$$\left(\frac{\text{Hours}}{P}\right) = \left(\frac{WP}{P}\right) \times \left(\frac{PWP}{WP}\right) \times \left(\frac{\text{Hours}}{E}\right) \times \left(\frac{E}{PWP}\right)$$

Increasing $\left(\frac{\text{Hours}}{P}\right)$ (i.e. the number of hours worked per capita) is achieved by increasing:

1. The working age population as part of the total population
2. The share of the working age population that participates in the labour market
3. The number of hours worked per employed person
4. The share of the participating working age population that is actually employed.

To ultimately get to the economic objectives of government employment policy some more general micro economic notions need to be discussed first. The basic microeconomic concepts⁴ presented in this chapter are based on a theory of (free) choice and on the concept of “incentives”, the general notions of which can be explained by the following graph.

Graph 1



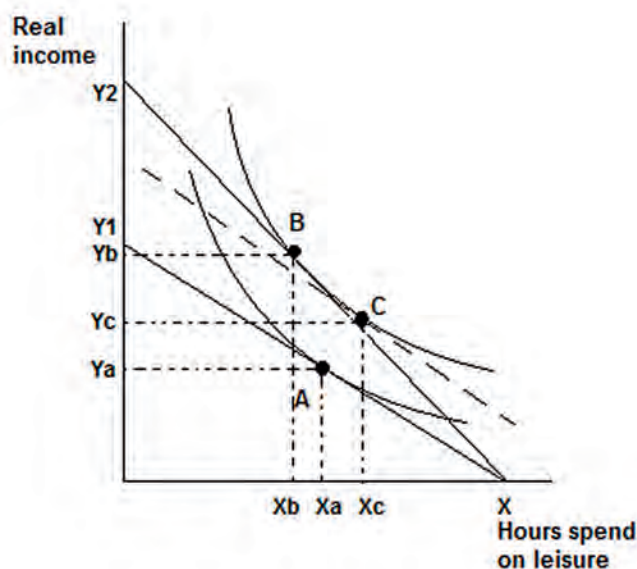
The graph illustrates a single person’s decision to allocate the hours he has in a day to different utility generating activities. For simplicity’s sake the graph gives just two choices. The person either works or he spends his time on “leisure activities”. In this simple framework leisure activities consist of all non-work activities (including sleep). The straight line in the graph depicts the person’s “budget constraint”: there are only 24 hours in a day. The U curve depicts the person’s indifference curve for a given utility (in this case “100”). For any combination of hours worked and hours spend on leisure that lies on the curve the utility (or welfare) the person obtains is the same. The person is therefore “indifferent” between the various options. The fact that the curve is convex to the origin is an illustration of diminishing returns to scale. In

⁴ Based on McConnell, Brue and MacPherson, *Contemporary labor economics* (7th edition, McGraw-Hill, 2008).

short, this means that an individual becomes increasingly reluctant to give up an hour of leisure when leisure time becomes increasingly scarce. In this graph, there is only one U curve presented. However, one could draw an infinite number of identically shaped curves, each reflecting a different level of utility. The further away from the origin the higher the utility reflected by the curve. A person would therefore prefer to be on a curve as far away from the origin as possible.

When the assumption is added that hours worked generates utility for the person in question because they generate income the adapted graph below can give a number of interesting insights.

Graph 2



The Y-axis now stands for real income (or real wage times hours worked). In the original situation, real income is Y_a and number of hours spend on leisure is X_a .

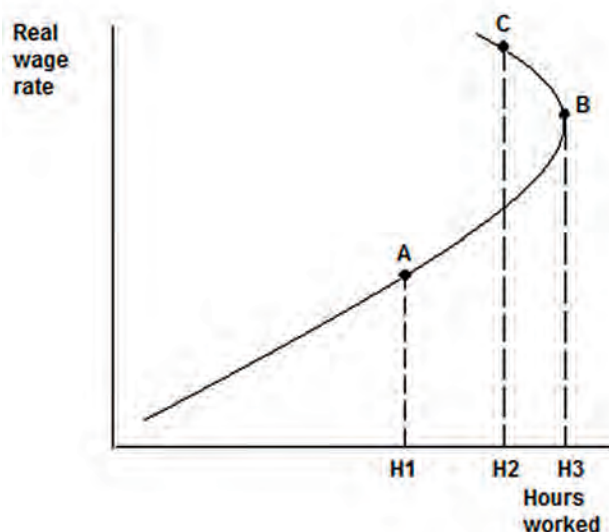
The adapted graph can give some insight into what happens when the wage rate rises. First of all, the maximum amount of income that can be generated rises from Y_1 to Y_2 . This means that the budget constraint becomes steeper. This in turn means that a higher level of utility can now be obtained. The highest possible utility that can be obtained with the new budget constraint occurs at point B, with the person obtaining a higher income Y_b and spending fewer hours on leisure activities.

There are two different and opposing forces at work that lead to this outcome. The first one is what is called “the income effect”. The income effect consists of the change in hours spend on leisure activities and income that would have occurred if the person would have been able to obtain the level of utility at B, but without a change in the wage rate (or the change from A to C in the graph). This pure income effect increases the number of hours spend on leisure. The counteracting effect is what is

called the “substitution effect” (or the shift from C to B). This reflects the fact that the increased wage rate makes it more expensive to “buy” an hour of leisure.

In this example the substitution effect is greater than the income effect. However, this is not necessarily always the case. The outcome depends both on the budget constraint and the shape and position of the indifference curves. Repeating the exercise above with an ever increasing wage rate and therefore a steeper and steeper budget constraint will show that eventually there is a turning point. From that point on, the income effect will dominate the substitution effect with an increase in the wage rate effectively lowering the number of hours worked. Graphically this looks as follows:

Graph 3



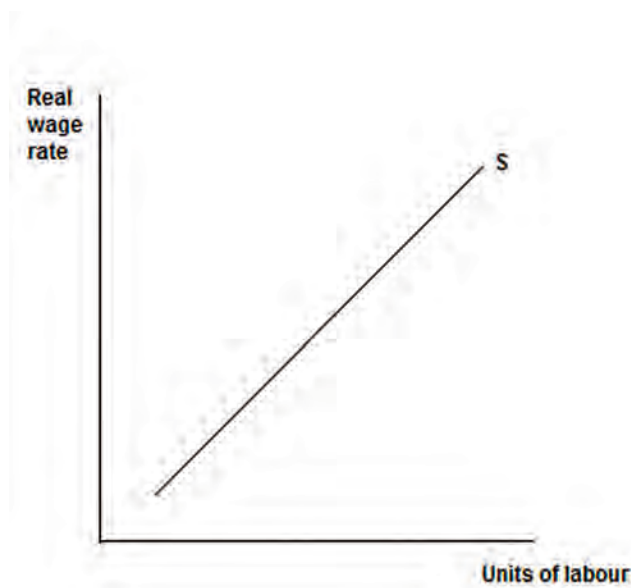
Point A represents a person in the position depicted in graph 2 experiencing an increase in wage rate. Point B is the turning point. A person at point C will decrease his hours worked when confronted with a further wage increase.

When expanding this framework to the macro level the manner in which labour supply reacts to a change in wage rate becomes uncertain. Depending on the preferences of the persons in the specific group and the size of the wage interval the shape of the total labour supply curve can be either backward bending or a diagonally upward moving line. For the remainder of this study it will be assumed that for realistic real wage rates the aggregation of the individual labour supply curves give a straight upward moving labour supply curve. This assumption is largely confirmed by reality. Empirical studies on the elasticities of labour supply to wages give widely varying results. Studies generally support the existence of a positive elasticity, and therewith an upward sloping supply curve. There are, however, important differences between subgroups to be identified here. For instance, the elasticity for males is

generally estimated as being much lower than that of females, especially second earners. Furthermore, the elasticity around the participation versus no participation threshold (or extensive margin) is greater than the elasticity in increasing hours worked (or intensive margin)⁵. These differences will therefore always have to be kept in mind.

The macroeconomic model used here will assume that higher wages attract people away from leisure activities, thereby increasing work hours. This leads to the following upward sloping labour supply curve.

Graph 4



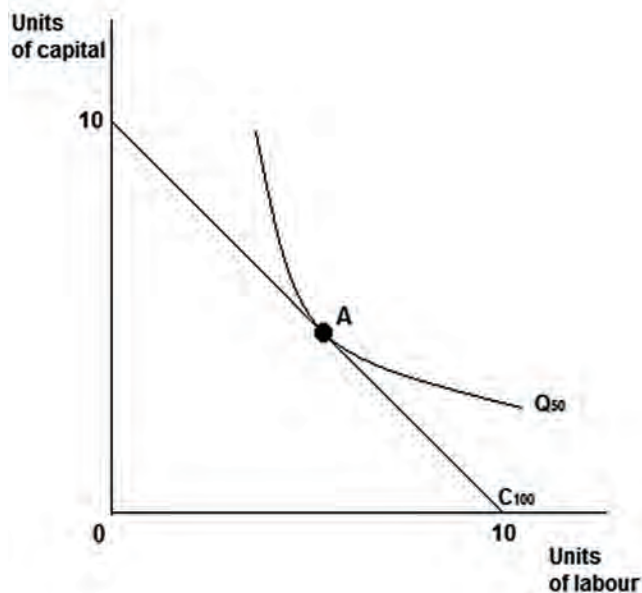
Where the analysis of labour supply is built on a worker's decision to allocate his hours, analysis of labour demand is built on the behaviour of firms and their business decisions, since firms demand labour as input for their production processes⁶. This means that labour demand is a “derived demand”. The amount of labour demanded is derived from the amount of products firms sell on a market and the relative costs and productivity of the different production inputs (labour, capital etc.). The amount of products a firm sells on a market in turn depends on the demand for its products and the firm's profit maximisation decision, with firms setting their production at the point where marginal return equals marginal costs of production. This setup in fact gives a two stage game, where a firm's demand for labour depends on the costs of its production factors and the firm's supply of goods, which in turn depends on the costs of its production process, including labour. This decision can be simplified by

⁵ For a comprehensive overview see Evers, de Mooij and van Vuuren, ‘What explains the variation in estimates of labour supply elasticities?’ (CESinfo working paper, no 1633, 2005).

⁶ It should be kept in mind that this is a simplification of reality. Government as an employer is, for instance, not dealt with separately here. Furthermore, self-employed persons would in this framework simultaneously be supplying and demanding labour.

assuming that there are only two production factors (capital and labour) and that the initial amount of goods supplied by a firm (Q) is an exogenously given outcome of the goods market, say $Q = 50$, which gives the following graph:

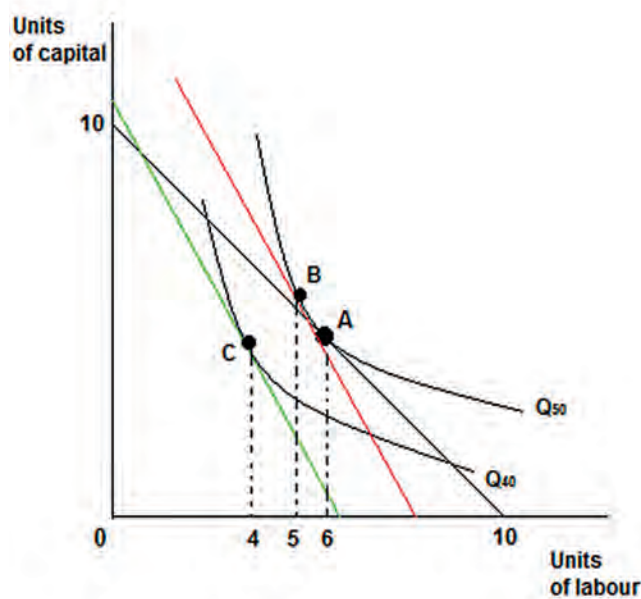
Graph 5



The $Q = 50$ curve (or isoquant) gives all different combinations of capital and labour that will lead to a production of $Q = 50$ and illustrates the fact that both experience diminishing returns to scale. The $C = 100$ line (or isocost) gives all combinations of capital and labour with a total cost of 100. In this example both labour and capital cost 10 per unit. Point A gives the most efficient production input combination of capital and labour to produce $Q = 50$. Every other point on the $Q = 50$ line will lie on a higher, and therefore in this setting more expensive, isocost curve.

This simple framework provides a reference to observe what happens in different situations affecting the amount or price of labour in the market. Assume that the price of labour rises, which gives the following graph.

Graph 6

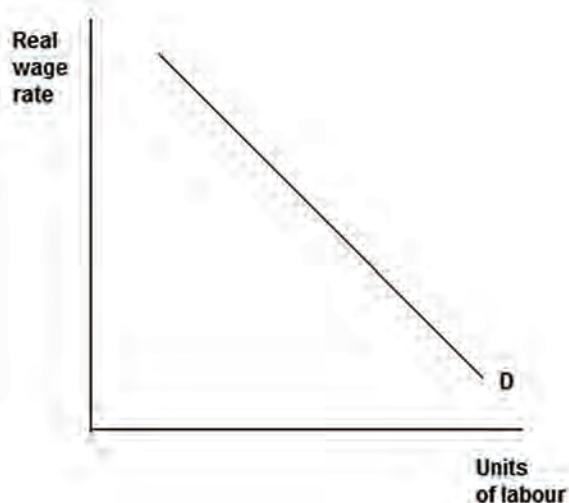


Starting point is at point A, like in the previous graph, with 6 units of labour being used (or demanded) by the firm. The increase in the price of labour leads to a pivoting of the isocost curve, since labour becomes relatively more expensive than capital. Again there are two effects. The first one is a substitution effect. This term in this case is illustrated by the pivoting of the isocost curve, while assuming that production remains at $Q = 50$ (the red line in the graph). Point B becomes the most efficient production input mix, with 5 instead of 6 units of labour being demanded⁷.

The second effect is the income effect. Since the marginal costs of production become higher, the marginal rate of return at $q=50$ is no longer sufficient to counter the marginal costs. Profit is no longer maximised and the firm will decrease its production. This effect in the graph is illustrated by the green line. The new production point will be point C with $Q = 40$ being produced with 4 instead of 6 units of labour being used (or demanded). It is interesting to note in this context that, contrary to the discussion on labour supply, for labour demand both the income and the substitution effect work in the same direction, which does not lead to the same uncertainty as regards the shape of the labour demand curve that exists for labour supply. When aggregated, the labour demand curve will be downward sloping as portrayed in graph 7.

⁷ Note that this assumes that both the amount of capital and labour can be altered automatically and instantaneously.

Graph 7



Similar to the labour supply framework discussed earlier, this simple framework is based on a number of assumptions which significantly influence the underlying logic and conclusions that can be drawn. As a starting point, however, it provides all the tools needed to delve deeper into the different elements of the growth accounting equation and subsequent government policy implications.

2.2.1 *The working age population as part of the total population*

The working age population as part of the total population is for a large part a matter of defining the term “working age”. What is considered to be working age can in essence be considered a political choice based on fundamental human values and cultural preferences⁸. In this study the standard EU/Eurostat definition for working age will be used, which is the population between the ages of 15 and 64⁹. Taking the Eurostat definition as starting point, changes in the working age population follow changes in general demographic set up of the total population. Defining “flow variables” in this account are the net population growth rate and the net migration rate. For example, a (temporary) increase in the birth rate will increase the working age population as part of the total population. Eventually, however, this effect will subside and reverse simply because this wave of people turns 65. The same holds for a (temporary) increase in migration from other countries (assuming that they will also remain members of the host country’s population after they turn 65).

2.2.2 *The share of the working age population that participates in the labour market*

To adequately deal with the aspect of “participating in the labour market” the concept

⁸ See e.g. International Labour Organisation, *Key indicators of the labour market* (7th edition, 2011).

⁹ See <http://epp.eurostat.ec.europa.eu>, last accessed 2 January 2013.

of “participating” first needs to be defined. Again, the standard Eurostat definition will be used. A participating (or “economically active”), member of the working age population is either employed or unemployed but actively seeking for a job. To be even more precise:

“- At work

Persons stating they are 'currently' working for pay or profit in a job or business for at least one hour, or not currently working but with a job or business from which they are temporarily absent. Persons 'at work' comprise therefore 'paid employees', 'self-employed (together with employers)', persons in 'training under special scheme related to employment' or in 'paid apprenticeship'. Persons 'working unpaid in family enterprise' are also included.

- Unemployed

Persons that are currently not working (i.e. 0 hours) and are available to start work within the next two weeks AND

(a) that have already found a job to start in the future or are awaiting the outcome of an application or interview, or

(b) that are actively seeking a job (i.e. contacted a public employment office for finding work, applied directly to an employer, studied or replied to advertisements, contacted a private employment or vocational guidance agency, asked friends or contacts or have taken steps to start an own business), or

(c) that are seeking a job and have received a job offer during the past 4 weeks.”¹⁰

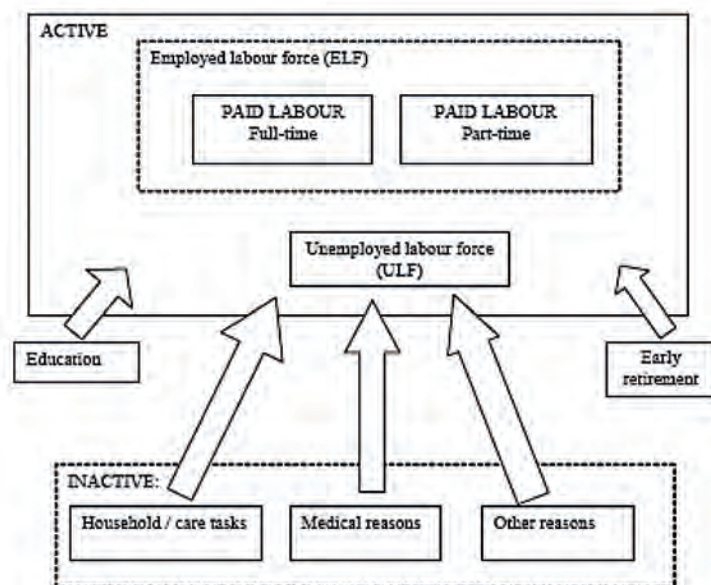
Increasing the number of people that participate in the labour market therefore means increasing the number of people in the working age population that fall in the two categories above, or in other words, decreasing the number of people of working age that do *not* fall under this definition.

There are several types of people that do not rank as a participating member of the working age population, with each type having its own characteristics and reasons for not participating. Based on a life cycle approach to the labour market, the following chart from Broersma, van Dijk and van Wissen (2004)¹¹ distinguishes between the various types.

¹⁰ See <http://epp.eurostat.ec.europa.eu> last accessed 2 January 2013

¹¹ Broersma, van Dijk and van Wissen, ‘Making the Unused Labour force work: assessing the facts for the Netherlands’ (CBS working paper, no 04008, 2004) 31.

Chart 1



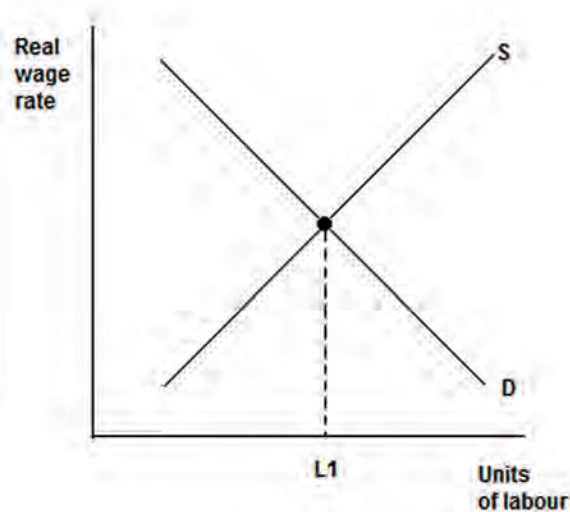
On the left in the middle education is posted as a reason for not participating. This mainly stands for the large amount of young people that are of working age (which starts at 15) but do not work or look for work, because they are currently enjoying education. As mirror image, on the right in the middle it says early retirement. This stands for the people that still belong to the working age population (i.e. are younger than 65) but have already retired from employment.

Between these two categories lie the people of working age that do not participate in the labour market, either because they

1. choose to perform household/care tasks
2. do not work for medical reasons
3. do not work for other reasons

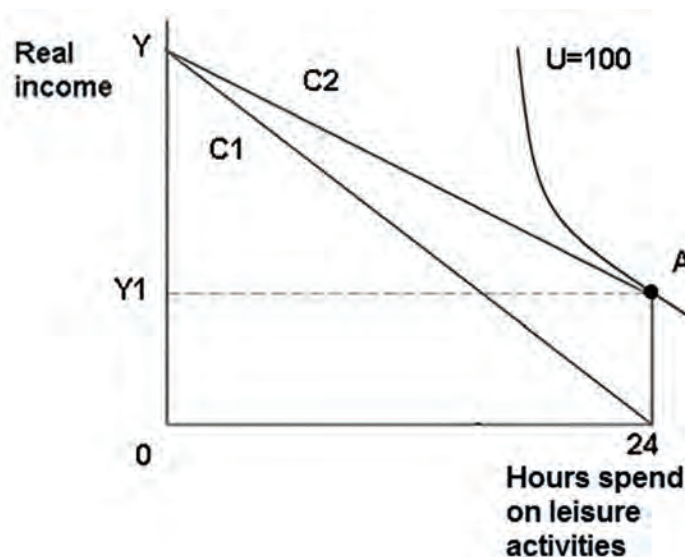
The different categories can be incorporated in the general economic framework developed in the previous section in a number of different ways. The actual participating labour force is found in combining the labour supply and labour demand curves previously derived, or graphically at point A in graph 8 with participating labour force L1.

Graph 8



Recalling graph 1 on labour supply the labour supply decision is dependent on a person's preferences between income generating activities (work) and other activities (leisure). A person will only participate in the labour market if the utility generated is higher than the utility generated when not participating. In other words, there is a threshold beneath which a person will not participate in the labour market which can be shown using the following graph.

Graph 9



The difference in this graph compared to the earlier ones lies in the existence of outside income (or Y_1 in the graph). This gives a budget constraint curve with a different shape than usual (the C_2 line in the graph). In the situation pictured in the graph this outside income ensures that the person spends all his hours on leisure activities. This is because at point A he can reach the highest utility isoquant. Besides

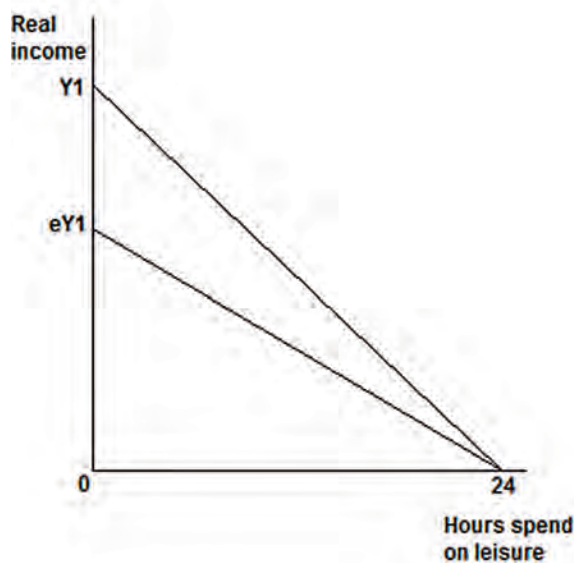
the additional income there are several other factors that contribute to this outcome. First of all, the person has a relatively flat budget curve AY, which means that the person would have a relatively low wage rate if he chooses to work. Furthermore, the utility curve is rather steep, which means that the person attaches a relatively high utility to hours spend on leisure activities. Increasing the wage rate (steeper budget curve) or decreasing the outside income can lead to a person crossing the participation threshold.

The concept of outside income can have a whole variety of different sources and apply to a number of the different groups mentioned above. The outside income can be any type of welfare provisioned (e.g. general social security or disability allowance for the unemployed for medical reasons). It can even represent the earnings of having a spouse working. However, even with such a wide variety of interpretations this simple framework cannot incorporate all the different elements of the participation decision. The category “not participating for medical reasons”, for instance, incorporates a core number of people which are physically not capable of working. In other words, it is not a matter of choice, as they simply cannot participate. The category “not participating for reasons of education” incorporates a time element as well as a productivity element which can not be dealt with in this simple model, since it only gives the work leisure decision for a given moment in time. In reality, this decision is not just based on maximising utility at this particular moment, but should be considered in the form of maximising utility throughout a person’s life-time. For education this means that people forego direct utility for the sake of obtaining a higher utility in the future by increasing productivity. This last point will be further discussed under labour productivity¹².

Furthermore, a more general critique of the simple model worked with so far is that it does not incorporate transaction costs. Most relevant here is the “looking for a job” phase. This is part of the definition of participating labour force but cannot be incorporated in this model, since it only models the choice between working and not working, assuming that a person, if he wants to, can work immediately and for as many hours as he would like. Reality in this regard is more complex. People incur costs looking for a job, and might remain unemployed despite search efforts. A simple way to incorporate this uncertainty in the model is by changing real income into expected real income. Search costs would be deducted from real income, and the remainder would be multiplied by the chance of actually getting and keeping a job. This would lead to lower expected real income, and a flatter budget curve, like in the following graph:

¹² See section 2.3.1.

Graph 10



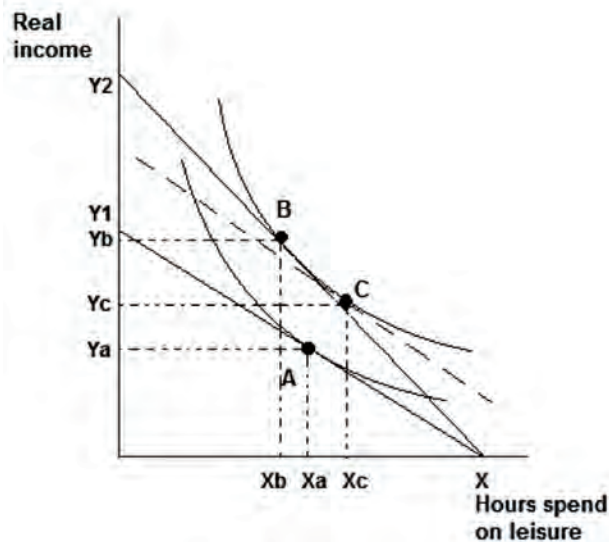
Even then, however, this model has a number of drawbacks. For instance, it does not allow for a clear distinction between different types of variables influencing the expected real gains of participating, and can therefore only intuitively help in explaining the consequences for the participation threshold. There is another type of model, called a “search model”, which gives further insights in this regard. Since this model incorporates not only the participation decision but also (and is even mainly aimed at) the employment/unemployment division this will be dealt with later on¹³.

2.2.3 The number of hours worked per employed person

The individual decision on how many hours a person works can be derived using roughly the same framework used in deriving a person’s decision whether or not to participate in the labour market. The difference is that in this case the participation threshold is met, and the person decides to spend some of his time working. In fact, a lot of the dynamics within the decision on how much hours to work have already been discussed. To recall, the following graph can be revisited.

¹³ See section 2.2.4.

Graph 11



In the original situation at point A, a person works $24 - X_a$ hours a day and earns Y_a . A wage increase leads to higher utility, and since the substitution effect is greater than the income effect the person spends more hours a day working ($24 - X_b$), earning Y_b .

Even though this is a simple framework it can give some important insight into the different elements influencing the decision on how many hours a person opts to work¹⁴. The first one is the wage rate. A higher wage rate leads to more hours worked¹⁵. A higher wage rate in this regard can be interpreted very broadly. Since people care about disposable income, lower income taxes on the existing wage rate have the same effect as increasing the wage rate. Decreasing the costs people incur when deciding to work an extra hour also has the same effect (reducing the cost of childcare is an often mentioned example here¹⁶). Government-imposed limitations on maximum hours worked are another aspect which can influence the outcome.

2.2.4 The share of the participating working age population that is actually employed.

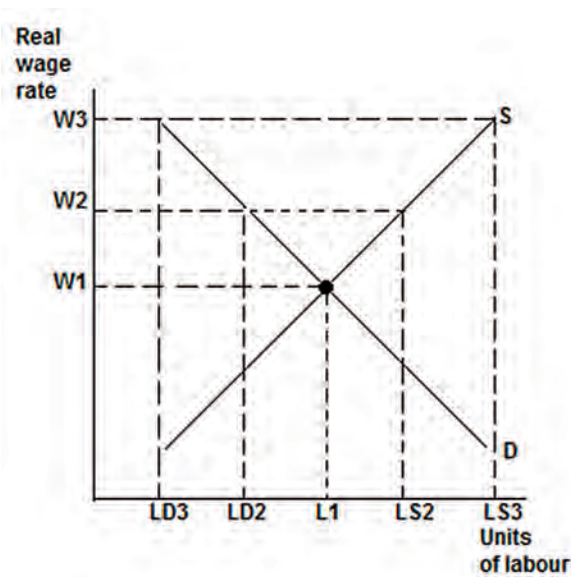
Unemployment when placed in the framework developed up to now is fairly straightforward to illustrate by looking at the following graph.

¹⁴ Large parts of the following are also applicable to the participation decision.

¹⁵ Assuming that the substitution effect outdoes the income effect, as we have seen a reasonable assumption when looking at the whole economy with realistic wage rates.

¹⁶ Studies that empirically examine the impact of child care costs on hours of work find that mothers' hours of work tend to fall in response to an increase in the cost of formal child care with the response typically larger for mothers with younger children. See OECD, *Employment Outlook* (2010) for an overview.

Graph 12



The combination of wage W_1 with labour supply L_1 gives the general equilibrium for units of labour demanded and supplied. The economy is at its “natural rate of unemployment”, with the amount of labour supplied L_1 being described as the economy having achieved full employment¹⁷. The phrase natural rate of unemployment seems a bit odd since in at this point there actually is no unemployment. In the model of perfect information and no transaction costs the difference between LS_3 and L_1 is the non participating labour force which does not fall under the Eurostat definition of unemployed. Actual, involuntary, unemployment can be created in this model by deviating from equilibrium and not immediately returning to it. This could be the case, e.g., when a government introduces a minimum wage rate that is higher than the equilibrium level, say W_2 . The supply of labour will be LS_2 , demand will be LD_2 and unemployment will be the difference between the two, reflecting people that are willing to work, but cannot find a job.

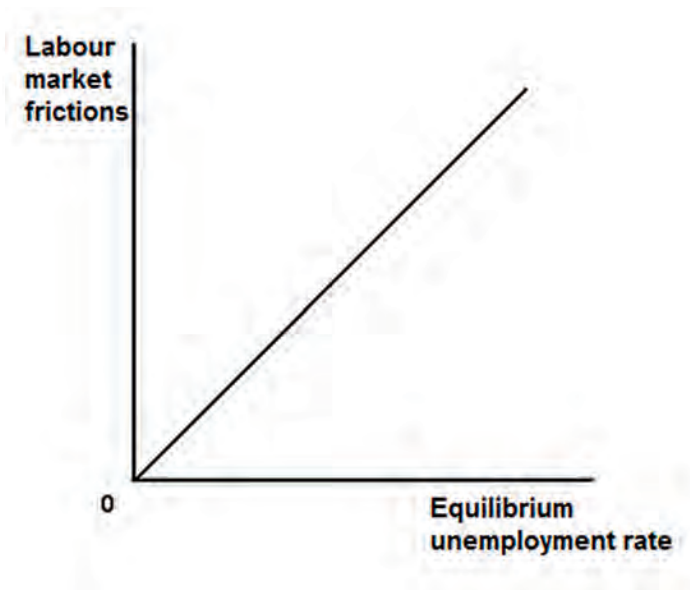
Policy conclusions in this simple framework are straightforward: there is no unemployment in equilibrium, so let the market do its work. No government intervention is needed, in fact it can be counterproductive. However, problems here lie in the fact that the assumptions of this model and the underlying logic have proven not to fit reality very well, and changing some of these assumptions leads to different conclusions.

The first important assumption is the non-transaction costs environment. The model used so far assumes that workers and firms automatically and instantly find each other to create jobs and that there is a perfect match between the employers’ desires and the

¹⁷ See, for instance, Burda and Wyplosz, *Macro economics, a European text* (4th edition, Oxford University Press, 2004).

employees' characteristics. However, in reality, there are costs incurred in every stage of the creation, finding and switching of a job for both employers and employees. The existence of these costs implies that even in equilibrium a number of people will be involuntarily unemployed. The existence of this type of unemployment in the standard model used so far is either called *frictional* (short-term) or *structural* (long-term) *unemployment*, depending on the cause and duration of the mismatch. In graphical form this can be expressed as follows.

Graph 13



Beyond assuming the existence of these types of unemployment the model set out so far is not equipped to discuss unemployment. Therefore a different route needs to be taken to dive into the more specific causes of types of unemployment. For this a search model will be used¹⁸, which is based on the stylized fact that the labour market in the real world seems unable to clear. At the same moment in time, there are always a number of people involuntarily unemployed as well as a number of job vacancies that are not fulfilled. At least part of the problem here lies in the no transaction costs assumption. There are several reasons why this assumption is not realistic. The existence of heterogeneities, search frictions and information imperfections makes it necessary for both firms and workers to spend time and resources on finding a productive job match. Heterogeneity in this regard means that not all persons supplying their labour are identical and that not all jobs offered are identical. Search frictions stand for aspects as distance from worker to jobs and is also linked to imperfect information on e.g. the exact jobs (or workers) available on the market. The search model of the labour market is based on these frictions and their consequences

¹⁸ This section is largely based on Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000).

for the labour market equilibrium¹⁹.

The central equation of the search model is a so called “matching function”. In its standard form it gives the number of new jobs formed at any moment in time as part of the participating labour force (or number of successful matches mL) as a positive function F of the number of workers looking for jobs (or number of unmatched workers uL) and the number of firms looking for workers (or the number of vacant jobs as a fraction of the participating labour force vL):

Equation 5

$$mL = F(uL, vL)$$

The probability that in any given moment in time a vacancy is filled is

$\frac{mL}{vL}$ or $\frac{F(uL, vL)}{vL}$. This rate is assumed a function of the ratio of vacancies to

unemployment only²⁰. The probability of a vacancy being fulfilled increases with the number of unemployed job seekers relative to the number of vacancies on the market.

Exactly the opposite reasoning can be followed when looking at the probability that a

job seeker finds a job. Probability here is $\frac{mL}{uL}$ or $\frac{F(uL, vL)}{uL}$, meaning that the

probability of a job seeker finding a job increases with the number of vacancies relative to the number of job seekers on the market. In other words, both the probability of a firm finding a worker and the probability of a worker finding a job are dependent on the relative “tightness” of the market, or the ratio of vacancies versus job seekers, but with opposing signs. This ratio, called θ , plays a central role in this model.

The mere assumption that all workers have a positive probability that they will not find a job is not enough to create a positive unemployment rate in equilibrium.

Workers can still just try and try again until eventually all find jobs. What is needed to create unemployment, next to a job creation rate, is a job destruction rate. Job destruction is assumed to be caused by shocks that arrive to occupied jobs at a certain rate or probability λ . The shock changes the value of production, which means that the job loses its profitability and will therefore cease to exist. This could be a negative demand (or taste) shock or a negative productivity (or technology) shock. In the

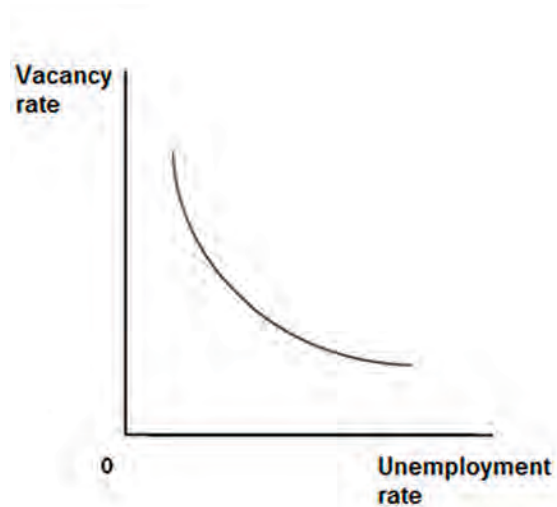
¹⁹ This type of search matching models when properly derived and used quite quickly becomes mathematically challenging. For simplicity's sake, most of the formulas and formal derivation will be left out. For an extensive overview of the development of these types of models see Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000).

²⁰ This is due to the (assumed) homogeneity of equation, or the existence of constant returns to scale: See Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000) ch 1.

model discussed here this rate is considered exogenously determined.

Equating the job destruction and job creation rate as set out above determines the equilibrium or natural rate of unemployment. Graphically this can be represented in vacancy unemployment space by the following graph also known as the Beveridge curve²¹.

Graph 14



The driving force behind the equilibrium unemployment rate is job creation²². Job creation in turn is dependent on the ratio of vacancies to workers looking for a job (market tightness) and therefore on the demand for and supply of labour.

Concerning the demand for labour, the decision of how many workers a firm wishes to employ has its roots in the profit maximisation decision. Firms will keep on hiring workers until the marginal revenue of the extra worker is equal to the marginal costs incurred. In a one production factor one period world this means that the job output or extra productivity is equal to the extra wage costs incurred (or $p - w = 0$). This can be elaborated upon by introducing two additional aspects: transaction or search costs and a time element.

The existence of search costs assumes that a firm does not automatically find a worker, but needs to spend resources to find one. These resources depend on the productivity of the worker (the more productive, the higher the search costs)²³. Also

²¹ Originally derived from Beveridge, *Full employment in a free society* (Allen and Unwin, 1944), who discussed the relationship between the demand for workers as captured by vacancies and the rate of unemployment.

²² For an example of a search theoretic model with endogenous job destruction rate see Rogerson, Shimer and Wright, 'Search theoretic models of the labor market, a survey' (Journal of Economic Literature, vol XLIII, 2005) 959–988.

²³ In a long-run equilibrium this assumption is a natural one to make, since the costs of a firm have to

there is a positive chance that in a given period of time the vacancy will not be filled, and a positive and exogenous chance that a fulfilled job will cease to exist (λ). The time element entails that the profit maximisation procedure maximizes the present discounted value of all expected profits from job. With some simplifying assumptions²⁴ and mathematical derivation this leads to the following equation.

Equation 6

$$p - w - \frac{(r + \lambda)pc}{q(\theta)} = 0$$

A firm will keep on creating vacancies until this equation is met. The extra element as compared to the simple equation $p-w=0$ is the $\frac{(r + \lambda)pc}{q(\theta)}$. This stands for the expected

capitalised value of the firms hiring costs, and as such are the extra costs a firm incurs in the creation of a job. Note that the hiring costs increase with r (which stands for the real interest rate and is a reflection of the time element) and λ (which stands for the likelihood a job will cease to exist in a moment in time), times pc (which stands for the search costs c proportionate to job output or productivity p) and $1/q(\theta)$. This last element stands for the expected duration of a vacancy, with $q(\theta)$ standing for the rate at which vacant jobs become filled²⁵. The higher the rate at which vacancies are fulfilled the more vacancies will be created. Equation 6 replaces the downward sloping labour demand curve used in the neo classical model so far, and can be depicted in wage – labour tightness space as follows:

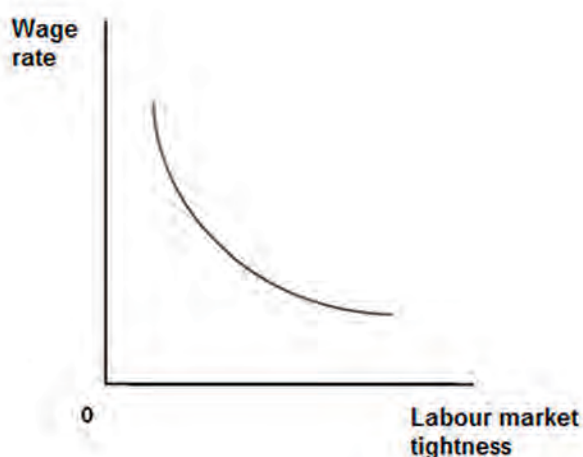
rise along side productivity to ensure the existence of a steady state. The assumption may however be less easy to justify over the business cycle, see also Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000).

²⁴ Including perfect capital market, infinite horizon and no dynamic change in parameters.

²⁵ Due to the underlying mathematical derivation, the $q(\theta)$ notation might seem unfamiliar. This is created by rewriting the process that changes the state of vacant jobs, which is Poisson with rate

$\frac{F(uL, vL)}{vL}$, separating out the v/u ratio (θ). $q(\theta)$ then stands for $F\left(\frac{u}{v}, 1\right)$. For more information on

the formal derivation see Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000) ch 1.

Graph 15

To determine labour supply in this model what needs to be taken into account is that a worker has a different income when he is unemployed/searching for a job than when he is employed. The income of a person unemployed/searching for a job depends upon possible outside income (called z) and the probability that a person finds a job times the expected increase in income. This last element is depicted by the rate at which unemployed workers move into employment, or $\theta q(\theta)^{26}$. This gives the following equation

Equation 7

$$rU = z + \theta q(\theta)(W-U)$$

The expected real income for an employed person is dependent on the wage minus the chance a person loses his job (λ) and the difference between the working and searching income ($W-U$), which leads to the following equation.

Equation 8

$$rW = w - \lambda(W-U)$$

Permanent discounted income in both situations is therefore dependent on income (w for employed, z for unemployed) and the transition rate between unemployed –

²⁶ As earlier with $q(\theta)$, $\theta q(\theta)$ might also seem unfamiliar. This is derived in exactly the same manner as $q(\theta)$, with the difference that $\frac{F(uL, vL)}{uL}$ is used as the starting point. For more information on the formal derivation see Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000) ch 1.

employed ($\theta q(\theta)(W-U)$) and vice versa ($\lambda(W-U)$). When solving the two equations it follows that a worker will prefer the status of employed as long as wage w is higher than outside income z . In the remainder of this section it will be assumed that this holds and that a worker will therefore always prefer working to being unemployed/searching for a job.

With labour demand and labour supply determined, there is one more aspect of this model that needs to be developed before coming to its equilibrium dynamics, and that is the aspect of wage determination. Contrary to the standard micro model dealt with so far, the search model assumes that due to market imperfections there are rents to be earned, even in equilibrium. How these rents are divided between the worker and the firm is the last essential element needed, since this determines the wage rate in this model. Quickly revisiting and somewhat extending earlier paragraphs, the expected return for a firm of a filled job satisfies the following equation:

Equation 9

$$rJ = p - w - \lambda J$$

The expected return equals the extra productivity minus the wage rate minus the (exogenous) chance a job will cease to exist. The returns for a worker are:

Equation 10

$$rW = w - \lambda(W-U)$$

The firm's gains J from a successful match²⁷, and the worker's gain $W-U$. Together these two make up the total rents or surplus. This surplus can be divided between workers and firms in a number of ways. A standard assumption in matching theory is that the division is decided through Nash bargaining²⁸. Nash bargaining leads to a wage rate that maximises the weighted product of both firm and worker rents as depicted in the following equation.

²⁷ The value of a vacancy V is assumed to be 0 or equal to the expected search costs, a safe assumption in a world with free entry and exit and no costs in opening a vacancy. If V would have some sort of positive value, this would have to be deducted from J , the same way the gains a worker incurs when searching for a job U are deducted from W .

²⁸ See Shimer, *Labor markets and business cycles* (Princeton University Press, 2009) with reference to Nash, 'Two person cooperative games' (*Econometrica* 21(1), 1953).

Equation 11²⁹

$$W - U = \beta (J + W - U)$$

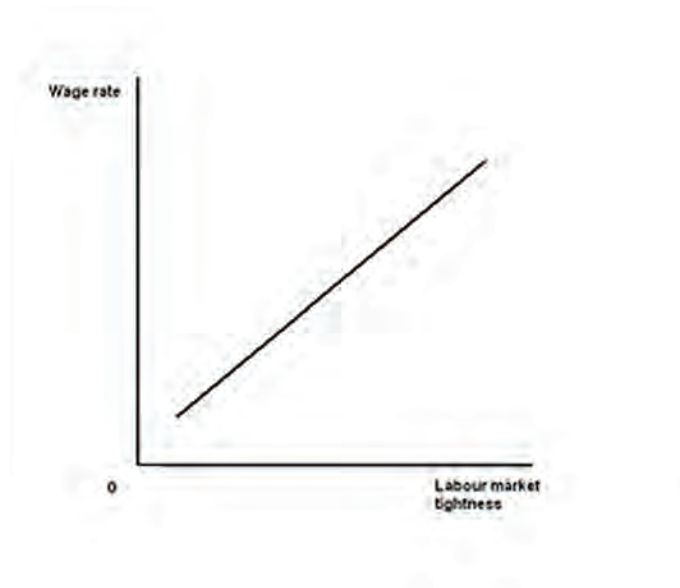
β in these equations is a number between 0 and 1 and stands for the respective bargaining weights of workers and firms, or in other words, labour's share of the total rent that an occupied job creates. In symmetric situations, with equal bargaining power $\beta = \frac{1}{2}$. This last equation can be rewritten in a number of ways to form the central wage determining equation of this model. The most convenient one for further analysis is the following:

Equation 12

$$w = (1 - \beta)z + \beta p(1 + c\theta)$$

Wages depend on outside income z (which has a smaller impact when bargaining power rises), productivity, a firm's hiring costs and market tightness³⁰. The worker is rewarded for saving the firm extra hiring costs the moment a job is formed according to his bargaining power. Market tightness is related to bargaining power as well: with more vacancies relative to workers searching for a job the share of surplus allocated to the worker increases.

In wage – labour tightness space this curve slopes upward:

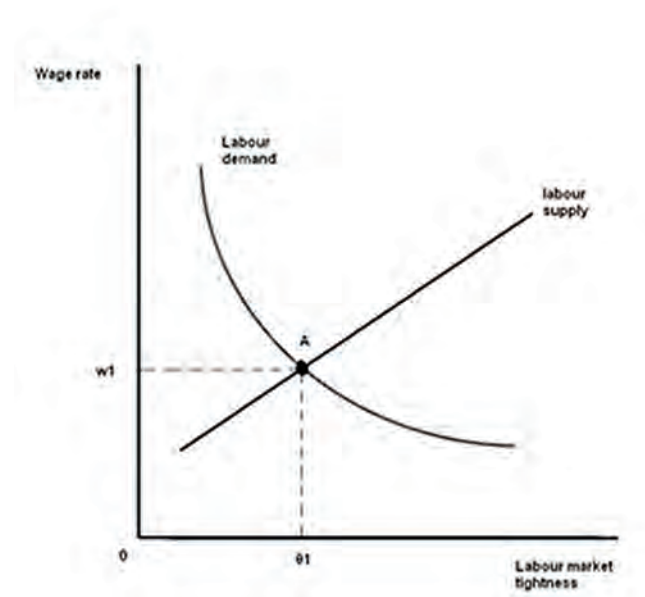
Graph 16

²⁹ This is the first order maximization condition of $w = \arg \max (W - U)^\beta (J)^{1-\beta}$.

³⁰ Note that $pc\theta$ equals the average hiring costs for each unemployed worker (remember $\theta =$ vacancies divided by number of unemployed).

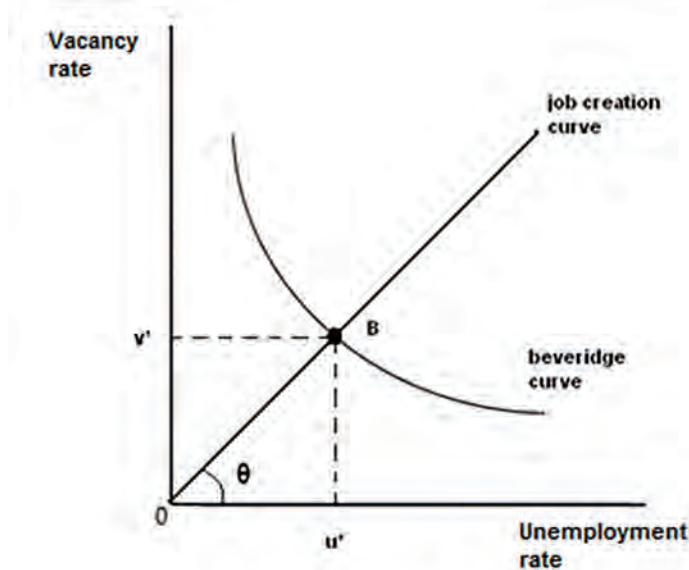
To get to an equilibrium wage the alternative labour supply and labour demand curves, or graphs 15 and 16, still need to be combined, which is done in the following graph.

Graph 17



Equilibrium is at point A with corresponding wage rate w_1 and labour market tightness θ_1 . To figure out the equilibrium unemployment level, a further step is needed, which is the inclusion of the equilibrium labour market tightness equilibrium. The Beveridge curve shows the relationship between vacancies and unemployment, while the ratio of vacancies to number of unemployed v/u is the definition of the labour market tightness parameter θ . The labour market tightness equilibrium can therefore be incorporated into the Beveridge curve by means of a diagonally upward sloping line with slope θ , called the “job creation curve”. This gives the last step towards the calculation of the equilibrium unemployment rate shown in graph 18. Equilibrium is reached at point B, with equilibrium vacancy rate v^* and equilibrium or natural unemployment rate u^* .

Graph 18



Looking at the different elements of these graphs and their underlying equations a number of interesting conclusions can be drawn. For instance, take the effect of an increase in negotiating power of the workers, which can be due to an increase in the level of unionisation. This shifts the labour supply curve in graph 17 up, increasing wages, but decreasing market tightness. Workers claim a higher wage, which causes firms to create fewer jobs. This causes the job creation curve in graph 18 to turn clockwise, increasing unemployment³¹. Empirical studies have provided support for this prediction, though the manner in which unionisation actually causes upward pressure on wages has been shown to depend on union power in wage bargains, union coverage and the degree of coordination of wage bargains. Strong trade unions with large coverage have the ability to push wages above market-clearing levels, at the cost of lower employment. However, in practice, union influence on wage formation can vary depending on the structure of collective bargaining. Decentralised wage bargaining at the firm level can be regarded as employment-friendly, preventing excessive wage claims since this would lead to a loss of market shares to competitors with detrimental effects on employment. On the other hand, very centralised or coordinated bargaining systems are more likely to lead to wage moderation, because they induce unions to internalise the detrimental effects – *e.g.* on employment – that excessive wage pressure may have at the macroeconomic level. These considerations suggest that the relationship between employment and the degree of corporatism may be “hump-shaped”³². While certain studies have found support for the “hump-shaped”

³¹ The same reasoning goes for an increase in the amount of outside income z .

³² Also known as the Calmfors-Driffil hypothesis, see Calmfors and Driffil, ‘Bargaining Structure, Corporatism and Macroeconomic Performance’ (Economic Policy, vol. 3, no. 6, 1988). Furthermore, while co-ordination can reduce overall wage pressure, which tends to lower equilibrium unemployment, through the decreased flexibility it may raise the rate of idiosyncratic job shifts which, in the presence of an *endogenous* job destruction rate, will tend to shift the Beveridge Curve to the right

hypothesis³³, the empirical literature remains inconclusive overall.³⁴

Another interesting aspect that can be analysed using this framework is the effect of the existence of employment protection legislation (EPL), which can be incorporated into this model in the form of a “firing tax” T ³⁵. This firing tax shifts the labour demand curve in graph 17 to the left, decreasing wages as well as market tightness. This leads to a clockwise turning of the job creation curve. The lower return of a job leads to fewer vacancies and unemployment increases. This fits empirical results on this issue, although the simple framework presented here is not nuanced enough to give the full picture. Specifically, the effects of EPL on the job destruction rate cannot be taken into account, because in the model this is determined exogenously. If EPL decreases the job destruction rate, the Beveridge curve would shift to the left, further decreasing vacancies, but making the effect on unemployment ambiguous. Empirical results seem to confirm this presumption³⁶. Overall, the main conclusion from empirical research on this issue is that the effects of a higher EPL on unemployment are negative but small, while EPL reduces the flows in and out of employment and increases unemployment duration³⁷.

2.2.5 Interlinkages

As the previous sections have shown, both the participation element (in persons and hours worked) and the employment/unemployment divide in the economy are influenced by several variables. What has not been examined so far is the interrelationship between the two elements. This section will elaborate on this issue, using an extended version of the search model.

The search model used in the previous sections relied on the assumptions of both a fixed number of people actively participating in the labour market and a fixed number of hours worked per person when employed. In this section both assumptions will be abandoned. First, the participation decision will be incorporated into the framework of the search model. There are a number of variables that have an impact on the decision to participate in the labour market which can be divided into two categories: variables that influence the expected return of participating and variables that influence the

and have an offsetting effect.

³³ Elmeskov, Martin and Scarpetta, ‘Key Lessons for Labour Market Reforms: Evidence from OECD Countries’ Experiences’ (Swedish Economic Policy Review, vol 5, 1998).

³⁴ See Flanagan, ‘Macroeconomic Performance and Collective Bargaining: An International Perspective’ (Journal of Economic Literature, vol 37, no 3, 1999) for a survey. See also Bassanini and Duval, ‘Employment patterns in OECD countries, reassessing the role of policies and institutions’ (OECD Economics department working papers, no 486, 2006).

³⁵ Making e.g. equation 12 $rJ = p - w - \lambda(J + F)$.

³⁶ See e.g. Nickell et al., ‘The Beveridge Curve, Unemployment and Wages in the OECD from the 1960s to the 1990s’ (London School of Economics and Political Science, 2001).

³⁷ For an overview see Bartelsman, Gautier and de Wind, ‘Employment protection, technology choice and worker allocation’, (IZA discussion paper, no 4895, 2010).

expected costs of participating. Incorporating this into the framework of the search model gives the following equation.

Equation 13

$$rU \geq lo$$

With rU being the present discounted value of entering the labour force and lo being the value of leisure when not participating. This last variable differs between people depending on the position of their respective utility curves. rU is still determined by equation 7, for convenience repeated below, with income depending upon outside income z and the likelihood that a person finds a job times the expected increase in income.

Equation 14

$$rU = z + \theta q(\theta)(W-U)$$

Using the equilibrium dynamics as captured by graph 18 and its underlying equations equation 13 can be rewritten as the following equation defining the size of the participating labour force³⁸

Equation 15

$$PWP = WP \left(\frac{\beta}{1-\beta} pc\theta \right)$$

This means that the higher the share of labour in the wage bargain (β), the hiring costs/productivity (pc) and the labour market tightness (θ), the greater the chance that a random person will participate in the labour market, and therefore the greater the participating labour force PWP as a part of the working age population WP . Intuition here is rather straightforward, with all elements either meaning that there is more money to be made or that there is a greater chance to find a job. This equation gives the basis to further analyse the relationship between the different stages of employment. These interrelationships will be discussed by way of two typical hypotheses, namely the discouraged worker effect and the added worker effect.

According to the hypothesis of the discouraged worker effect, the experience of unsuccessful job search increases the propensity to withdraw from the labour market. Or in other words: when people try and try again to get a job and fail they will

³⁸ For mathematical derivation see Pissarides, *Equilibrium unemployment theory* (2nd edition, MIT press ltd, 2000) ch 7.

become discouraged and stop searching all together. In the model this effect can be observed in a decrease in labour market tightness θ . To recall, a decrease in labour market tightness means a relatively large amount of workers compared to vacancies in the market. With a low θ the expected returns of participating drop, decreasing incentive to participate³⁹. This decreased incentive leads to a lower participation rate compared to the population of working age⁴⁰.

According to the hypothesis of the added worker effect, once a member of a household becomes unemployed this will have a positive effect on the decision of other members of the household to participate. In the model this effect can be analysed by looking at variable l_0 . If this variable is taken to constitute household wealth instead of an individual's wealth one can see how this fits. If a household constitutes of two persons, one employed and one non-participating, and the employed person becomes unemployed household wealth drops. With a lower l_0 , there is a higher possibility that the non-participating member of the household will start to participate⁴¹.

These elements are not mutually exclusive, and empirical work suggests that both effects actually exist⁴². Which effect dominates has been shown to depend on the specific situation and country under examination, with the discouraged worker effect generally dominating in more severe economic downturns⁴³. This implies that the participation rate behaves pro-cyclically, increasing at times when labour market tightness is high and decreasing in times when labour market tightness is low. The unemployment rate, in response, would be lower than expected at times of low market tightness because of people leaving the participating labour force (and vice versa), dampening fluctuations in the unemployment rate⁴⁴.

2.3 Labour productivity, or what is the added value of an hour worked?

The previous section dealt with the labour utilisation element of promoting GDP per capita growth, or the question of how much how many people work. This section will focus on the other half of the equation, the labour productivity element, defined as

$\left(\frac{GDP}{hours} \right)$ or GDP per hour worked. This section will discuss various elements

³⁹ See equation 14.

⁴⁰ See equation 15.

⁴¹ See equation 13.

⁴² See e.g. Stephens, 'Worker displacement and the added worker effect' (Journal of Labor Economics, 2002) for evidence on the added worker effect and Benati, 'Some empirical evidence on the discouraged worker effect' (Economics Letters, vol 70, issue 3, 2001) on the discouraged worker effect.

⁴³ See e.g. OECD, *Economic Outlook* (vol 1, 2010).

⁴⁴ With a dominating added worker effect the opposite would be the case.

influencing labour productivity growth, using the following subdivision⁴⁵.

Equation 16

$$\Delta\left(\frac{GDP}{hours}\right) = \Delta\left(\frac{Capital}{hours}\right) + \Delta\left(\frac{Humancapital}{hours}\right) + TFP$$

Labour productivity growth or growth in GDP per hour worked is positively influenced by the growth of capital intensity per hour worked, human capital intensity per hour worked and the growth of total factor productivity. This last term is an error term catching the different elements influencing productivity growth which do not directly flow from the changes in capital and human capital inputs.

This section will not discuss all elements which the economic literature has identified as influencing labour productivity growth. More specifically, the element of capital per hour worked and various elements that influence total factor productivity will be left out⁴⁶. In this section focus will lie on the human capital intensity and those elements which fall under the total factor productivity growth heading with a direct link with employment policy, starting with discussing $\left(\frac{Humancapital}{hours}\right)$ or human capital intensity as a determinant of labour productivity growth.

2.3.1 Human Capital

To understand the theoretical concept of human capital as a driver of productivity one needs to delve deeper into an aspect of the labour force only briefly discussed up to now; the heterogeneity of workers. The economic models set out so far embraced the concept of heterogeneity by e.g. allowing for differences in preferences and wage rates. The macro labour supply curve was derived by adding different individuals, thereby treating labour as a homogenous mass.

The idea of homogeneity of labour has been challenged ever since the 18th century Scottish economist Adam Smith. He believed that economic activity was fuelled not by workers as a collective mass but by “the acquired and useful abilities of all the inhabitants or members of the society”. An individual had to pay a price to gain such talents and abilities, added Smith, but once attained they stood as “a capital fixed and

⁴⁵ Based on a standard Solow/Swan model for economic growth, see Solow, ‘A contribution to the theory of economic growth’ (Quarterly Journal of Economics, vol 70, no 1, 1956).

⁴⁶ Examples of issues that will not be discussed directly are the level of competition in product markets and the level of innovation, R&D and ICT investments as possible drivers for productivity growth. For a more comprehensive overview, see OECD, *Sources of economic growth in OECD countries* (2003).

realized, as it were, in his person”⁴⁷. These ideas were the roots for the concept of human capital, which according to the current OECD definition is “productive wealth embodied in labour, skills and knowledge”, or the “quality” of labour⁴⁸.

Macroeconomic models of human capital and growth are mostly built around the hypothesis that knowledge and skills embodied in humans both directly raise productivity and increase an economy's ability to develop and to adopt new technologies. Both aspects have been thoroughly tested empirically and found robust⁴⁹.

To gain more insight into the possibilities for government to increase human capital accumulation the individual decision making process in this area has to be analysed. The micro economic theory on human capital was given a great impetus by the work of Gary Becker. In his book “Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education”⁵⁰, Becker analysed a person’s participation in education and training within the framework of investment theory. The nexus of this theory is that a person will decide to spend time participating in education and training activities when the expected benefits outweigh the expected cost. More specifically, an additional year of education and training is a good investment when the increased benefits both pay back the initial costs and yield a rate of return at least as high as alternative investments of one’s time and money⁵¹. Taking the example of the decision to enrol for college education of four years this can be pictured as follows:

⁴⁷ Smith, *An inquiry into the nature and causes of the wealth of nations* (1st edition, W. Straham, 1776) as quoted by Keely, *Human capital, how what you know shapes your life* (OECD, 2007) 22.

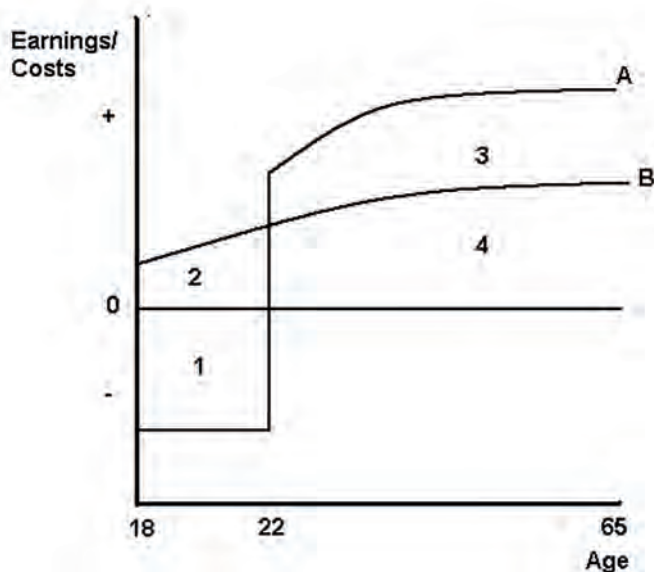
⁴⁸ The definition of quality of labour used here is significantly different from the definition mostly used in the EU dialogue on employment issues. We will come back to this divergence of definitions in chapter 4.

⁴⁹ See, for instance, de La Fuente and Ciccone, *Human Capital and Growth in a Global and Knowledge-based Economy* (Report for the European Commission, 2003).

⁵⁰ Becker, *Human capital; a theoretical and empirical analysis, with special reference to education* (National Bureau of Economic Research, Columbia University Press, 1964).

⁵¹ See also Kaufmann and Hotchkiss, *The economics of labour markets* (7th edition, Thomson/South Western, 2006). The positive effect of education on wages has been thoroughly tested and confirmed empirically, see also de La Fuente, Angel and Antoni Ciccone, *Human Capital and Growth in a Global and Knowledge-based Economy* (Report for the European Commission, 2003).

Graph 19



The two different lines in the graph depict the alternative of enrolling for college (line A) and the alternative of starting to work at 18 instead (line B). Earnings and costs in this graph can both depict actual monetary values, but can also be interpreted more widely as utility gains and losses.

Looking at the alternative of starting to work at 18 the total earnings over a person's life-time are relatively simple, and depicted by the area under line B, or $2+4$. Intuitively this makes sense: a person will start working for a relatively low salary, which will increase steadily during his life-time. When looking at the alternative of enrolling for college one can see that during the period 18-22 a person will incur extra costs worth 1 (e.g. college tuition fees) and 2 (wages lost by not working). When this person starts working, however, his wage will start on a higher level, with total life-time earnings amounting to areas $3 + 4$. Since in both situations a person will eventually earn the amount of money depicted in area 4 the decision in essence boils down to the difference in size between the areas 1 and 2 combined and area 3. As long as area 3 is larger than areas 1 and 2, enrolling for a 4-year college education for the person concerned is worthwhile.

To come to a more realistic picture, however, timing still needs to be taken into account. The costs in enrolling in college education are incurred immediately while the benefits only accrue in the future. The benefits and costs have to be compared in terms of their present value. A simple representation of calculating present value is given in the following equation.

Equation 17

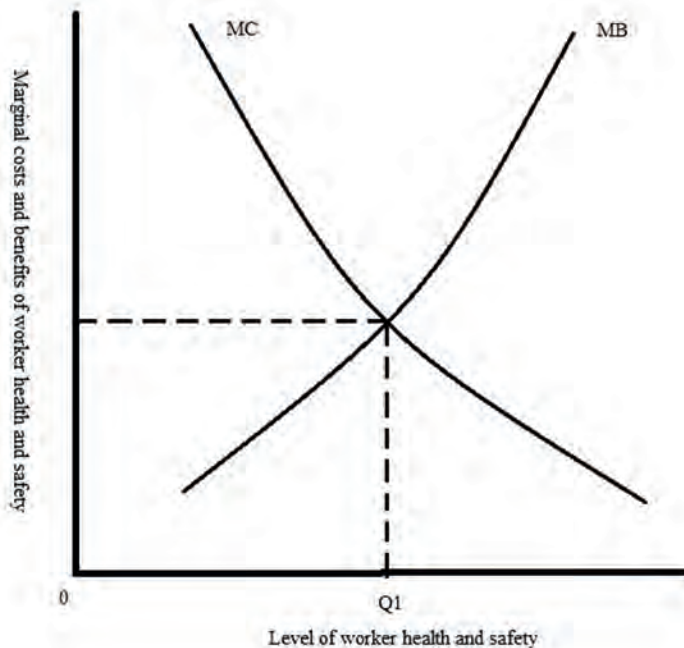
$$PV = \frac{Y}{(1+i)^n}$$

With Y being the sum of money earned, i being the interest rate and n being the number of years in the future. Note that this significantly decreases the worth of extra earnings from enrolling for college, since the benefits are relatively distant and therefore relatively heavily discounted.

This simple model gives some important insights into an individual's decision to increase his human capital. Consider, for instance, the difference in incentives between a younger and an older person. In graph 19, area 3 will be much larger for the younger person than for the older person, simply because he has more years to enjoy revenue from his investment. The younger person will therefore be much more inclined to postpone his decision to participate in the labour market in order to participate in education and training activities. Furthermore, the costs of education 1 and 2 negatively impact a person's decision to participate in education and training. When allowing for differences in quality of education, however, where higher costs lead to higher quality, this factor becomes uncertain, since the expected payoff 3 will probably also increase.

There are a number of other aspects that can be put under the human capital umbrella, such as workers' health, professional experience and social networks. Most relevant for this study is the aspect of workers' health. Improved health of workers could enhance productivity as well as labour supply by improving framework conditions, e.g. by reducing the risk of injury of workers. Furthermore, the extra costs an employer has to make in case of an injury are reduced, improving competitiveness. There is, however, a trade off involved here. Increased worker health also comes with costs. For instance, employers have to make additional costs in meeting health and safety conditions and they see their administrative burdens increased and flexibility as far as possible business models are concerned reduced. Both aspects could decrease competitiveness and GDP per capita growth. This means that there is an optimal level of workers' health that will be ensured in a situation of perfect information in a given company. This can be graphically portrayed as follows.

Graph 20



With the MB curve representing marginal benefits of increasing worker health and safety and the MC curve representing the marginal costs of increasing worker health and safety. Point Q1 is the optimal level of health and safety provided. There are, however, reasons why this point will not be reached, most prominently being information imperfections, for instance, when workers and companies inaccurately assess the job hazards or risk of injury. In this case, the level of workers' health and safety protection will be lower than optimal. Policy could then be aimed at both improving information availability and laying down legally binding minimum requirements for workers' health and safety.

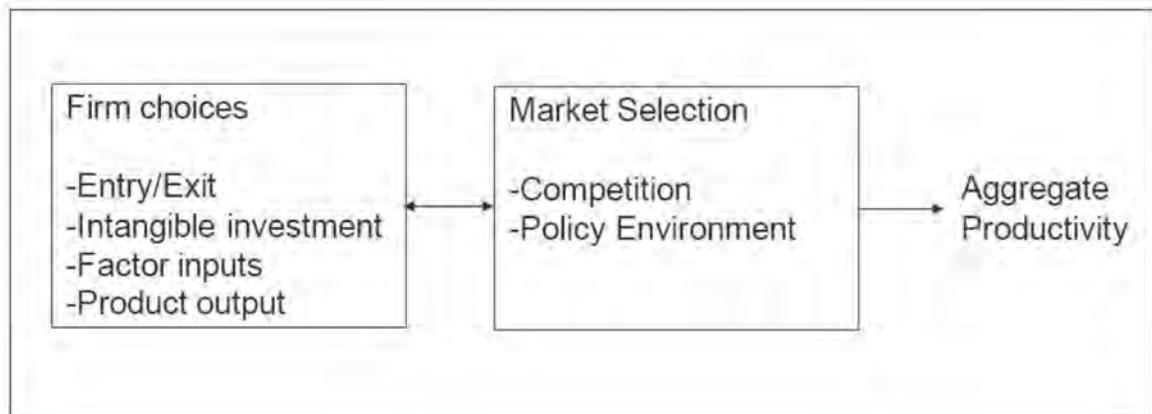
2.3.2 Total Factor Productivity

The element of total factor productivity influencing labour productivity in the growth accounting methodology is an error term, catching all the different effects not directly incorporated in the capital and human capital elements of the equation⁵². The concept of total factor productivity in essence can be said to capture the increases in effectiveness of the use of the different factor inputs (capital, human capital and hours worked). This makes for a large number of different explanatory routes and matching

⁵² It is good to realise that statistically this also includes those instances where an element is not fully covered by the chosen indicator to represent it. The element of human capital is a good example here. An indicator often chosen to represent this factor is average years of schooling. As said earlier on, the theoretical concept of human capital is broader than just schooling and also includes aspects like health and social networks. Furthermore, human capital indirectly affects productivity by increasing an economy's ability to develop and to adopt new technologies. Since these aspects are not captured by the indicator they will fall in the error term of total factor productivity.

economic theories. Establishing the various relationships this section will follow the work of Bartelsman⁵³ in search of the different sources of total factor productivity growth. The various links in this regard can be portrayed as follows:

Chart 2



Source: Bartelsman (2010)

Productivity per hour worked depends on firm choices and market selection mechanisms. The firm makes the decision how to combine the various production factors and put them to use to produce a product. Prominent among the elements affecting the effectiveness of the use of factor inputs are technological advances/innovation and the functioning of markets. Technological advances can create, e.g., more advanced production processes which increase the amount of output that can be derived from a given amount of input. Improving the functioning of markets in general allows the factor inputs to 'travel' and be used in the manner and by the firms that use them most efficiently.

The link with employment policy therewith lies in the ability for workers to use their abilities in the most productive manner. Employment policy can therefore be linked to improving the ability of workers to search for the most effective way to use their labour and their human capital. Increasing the flexibility of labour markets (both within and between firms), is a good example here. This increased flexibility as a policy prescription, however, is somewhat ambiguous, notably because of the link between the two aspects of labour productivity dealt with in this section. Taking the example of employment protection legislation, the reasoning in the previous section would lead to the conclusion that the mere existence of this type of legislation would have a negative effect on labour productivity growth, since employment protection

⁵³ Bartelsman, 'Searching for the sources of productivity, from macro to micro and back', (Industrial and Corporate Change, 19(6), 2010). See also the work of van Ark, Timmer and Inklaar on the decomposition of causes for (total factor) productivity growth, e.g. Inklaar, Timmer and van Ark, 'Mind the gap! International comparisons of productivity in services and goods production', (German Economic Review, vol. 8, issue 2, 2007)

legislation hinders the efficient allocation of labour to sectors where labour and human capital could be used in the most productive manner. However, the impact of this type of legislation becomes less clear cut if one realises that this impediment for firing employees prevents the disappearance of firm specific knowledge and productivity that would accompany dismissal. Moreover, such impediments may even encourage existing enterprises to raise worker productivity, e.g., through the provision of firm specific training to their employees in order to remain competitive and avoid paying redundancy costs as a result of output loss⁵⁴. The two effects run counter to one another, leaving empirics to determine which one dominates. Bartelsman, Gautier and de Wind⁵⁵, using a country industry panel dataset find a negative relationship between the level of employment protection legislation and the size of high-risk innovative productive sectors, with their model being able to explain a large portion of the slowdown in productivity in the EU relative to the US since 1995. In addition, Bassanini, Nunziata and Venn⁵⁶, using annual cross-country aggregate data on the degree of regulations and industry level data on productivity from 1982 to 2003, examine the impact of employment protection legislation on productivity in the OECD. Their empirical results suggest that mandatory dismissal regulations have a depressing impact on productivity growth in industries where layoff restrictions are more likely to be binding.

2.4 The link between labour utilisation and labour productivity

Up to now, the two defining aspects of GDP per capita, labour utilisation $\left(\frac{\text{hours}}{P}\right)$ and labour productivity $\left(\frac{GDP}{\text{hours}}\right)$, were discussed separately. However, there are a number of ways in which the two elements are linked, which also have important implications for government employment policy. In the previous sections several theoretical links between labour participation and productivity have already been dealt with. Both the standard neo classical model and the search model showed the results of an increase in worker productivity, through a rise in the wage rate, on an individual's decision to enter the labour market. Within a reasonable range of wage rates the income effect is stronger than the substitution effect, and an increase in worker productivity increases a person's propensity to enter the labour market, get a job and increase his or her hours worked. This would suggest a positive relationship between productivity and labour utilisation. When one introduces the possibility of inflexibility in quantities and prices, however, in the short-run an opposite effect could occur. With increased worker productivity there is simply less labour needed to

⁵⁴ See European Commission, *Employment in Europe report* (2008).

⁵⁵ Bartelsman, Gautier and de Wind, 'Employment protection, technology choice and worker allocation' (IZA discussion paper, no 4895, 2010).

⁵⁶ Bassanini, Nunziata and Venn, 'Job protection legislation and productivity growth in OECD countries' (IZA discussion paper, no 3555, 2007).

produce the same amount of goods for the same price. These inflexibilities would make a share of existing labour (temporarily) redundant. Furthermore, the relationship between employment and productivity increase depends on the elasticities of demand in the goods and services markets. In markets where the price elasticity of demand for the goods and services produced is relatively low (<1) productivity increases can lead to decreasing employment when the rise in quantity of the product sold does not outweigh the drop in price associated with the productivity increase. The opposite holds true in markets where the price elasticity of demand for the goods and services produced is relatively high (>1).

Theoretically the causal effect between labour utilisation and labour productivity can also run the other way around. In the short run, the standard labour demand curve in the neo classical model keeps the amount of capital fixed. Increasing labour supply would therefore decrease the amount of capital per worker, and thereby labour productivity⁵⁷. In the long run, however, this would be predicted to be undone by increased investment and increases in the capital stock. Furthermore, both in the short and the long run an increase in labour utilisation or employment could affect labour productivity by influencing the composition of the labour force. An influx, for instance, of highly skilled labour into the labour force would increase the average labour productivity and vice versa.

All these possible channels through which the two elements can influence each other make the exact sign of the macroeconomic effects as well as their duration and magnitude theoretically largely uncertain, therewith leaving the ultimate answer for empirical research. Even though results vary, recent results seem to indicate that there is a valid case to be made for the existence of a positive relationship between employment and productivity⁵⁸.

The remainder of this section will focus on two more specific issues regarding the relationship between productivity and labour utilisation, namely the role of wages as linking pin between the two elements and the specific relationship between unemployment and productivity.

2.4.1 The role of wages in labour utilisation and labour productivity

The linking pin in the relationship between productivity and labour utilisation lies in the setting of wage rates. This section will further develop two distinct theoretical issues and their practical consequences. The first one being the question of who benefits from increases in productivity, and whether the extent to which productivity

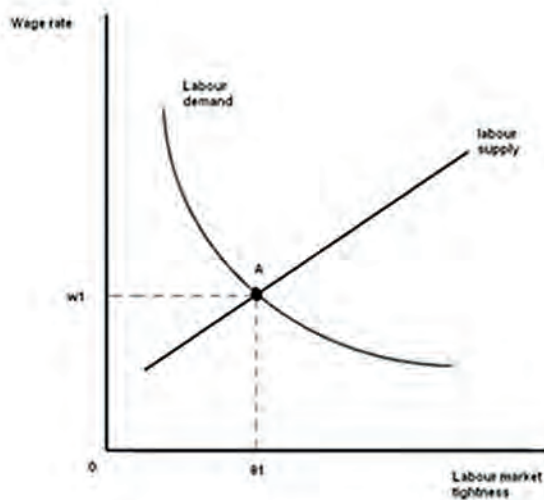
⁵⁷ See also Dew-Becker and Gordon, 'The role of labour market changes in the slowdown of European productivity growth', (CEPR discussion paper, no 6722, 2008).

⁵⁸ See van der Horst, Rojas-Romagosa and Bettendorf, 'Does employment affect productivity?' (CPB discussion paper, no 119, 2009).

increases are transferred into wage increases influences the labour utilisation element of the equation. The second question relates to the theoretical concept of efficiency wages. This question in short is whether next to an effect from productivity to wages there might also be an effect the other way around, from wages to productivity.

Returning to the search model discussed earlier the effects of a rise in worker productivity can be illustrated by shifting the curves in the following graph.

Graph 21



A rise in worker productivity shifts the labour demand curve to the right, but at the same time causes the labour supply curve to move upward. Since the effect on labour demand is per definition greater than that on labour supply (caused by β being smaller than 1) both the wage rate and labour market tightness increases. This in turn rotates the job creation curve anticlockwise, decreasing the unemployment rate⁵⁹. Note however, that if wage increases exceed productivity increases, the effect on labour supply becomes larger than that on labour demand, which leads to an increasing unemployment rate.

The same reasoning can be applied for the participation decision, depicted earlier as the following equation

⁵⁹ Note, however, that in this model the only reason why the market tightness increases and unemployment rate decreased is because of the existence of a fixed z (outside income), which also partly determines the wage rate. Because of this fixed z , wages do not fully absorb productivity increases. Making z fully flexible, for instance, in relation to the wage rate, would cause wages to fully absorb productivity increases therewith making the unemployment rate independent of changes in productivity.

Equation 18

$$\frac{\beta}{1-\beta} pc\theta \geq lo$$

With participation changes being independent from productivity changes when lo is made fully flexible in relation to the wage rate.

The second theoretical question concerns the relationship between wages and productivity. Up till now it was assumed that a higher wage is paid because of higher productivity of the person concerned. This assumption has, however, proven not to be realistic in all instances. Studies on the relationship between the age structure of the labour force and productivity, for instance, have shown that the productivity picture looks more like an inverted U, meaning that productivity increases up to a certain age and then starts to decline⁶⁰. When the highest point on the curve is reached differs between different professions, but on average it lies around the mid to late forties. Wages on the other hand tend to rise steadily until retirement⁶¹.

Furthermore, “efficiency wage theories” predict that under some circumstances higher wages would actually induce higher productivity⁶². There are a number of reasons why such an effect would occur. Labour turnover can be one reason: employees earning a higher wage will be less inclined to switch jobs. When a firm incurs training costs for new workers, a profit maximising decision by the firm could include increasing wages above market clearing level. Information imperfections could also be a reason. With imperfect information about worker characteristics firms can increase the probability of attracting high productivity workers by increasing wages offered. The higher wage also works as a disciplining device, with workers having more to lose in case of termination of labour contracts and therewith a higher incentive to be productive. The underlying reasoning here is that a worker has an incentive to work at a level below his maximum productivity, since the extra “leisure” that is derived in that manner increases his utility enjoyed. More generally, worker productivity could also be influenced by their impression of being treated “fairly”⁶³.

⁶⁰ See, for instance, Evers and Wilthagen, ‘Arbeidsproductiviteit en arbeidsmarktdynamiek’ (Organisatie voor strategisch arbeidsmarktonderzoek, 2006).

⁶¹ This age related loss of productivity in literature as far as the individual himself is concerned has been mostly attributed to a combination of cognitive or physical decline and obsolete skills, but also for a large part works through the complex interaction with other workers and other factors of production which takes place within a certain economic environment constituted by the available technology, public infrastructure, characteristics of a given firm and sector and many other things beside. See also Werding, ‘Ageing and productivity growth: are there macro level cohort effects of human capital?’ (CESifo Working paper, no 2207, 2008).

⁶² See e.g. Akerlof, ‘Labor Contracts as Partial Gift Exchange’ (Quarterly Journal of Economics, XCVII, 1982) and Shapiro and Stiglitz, ‘Equilibrium Unemployment as a Worker Discipline Device’ (American Economic Review, LXXIV, 1984).

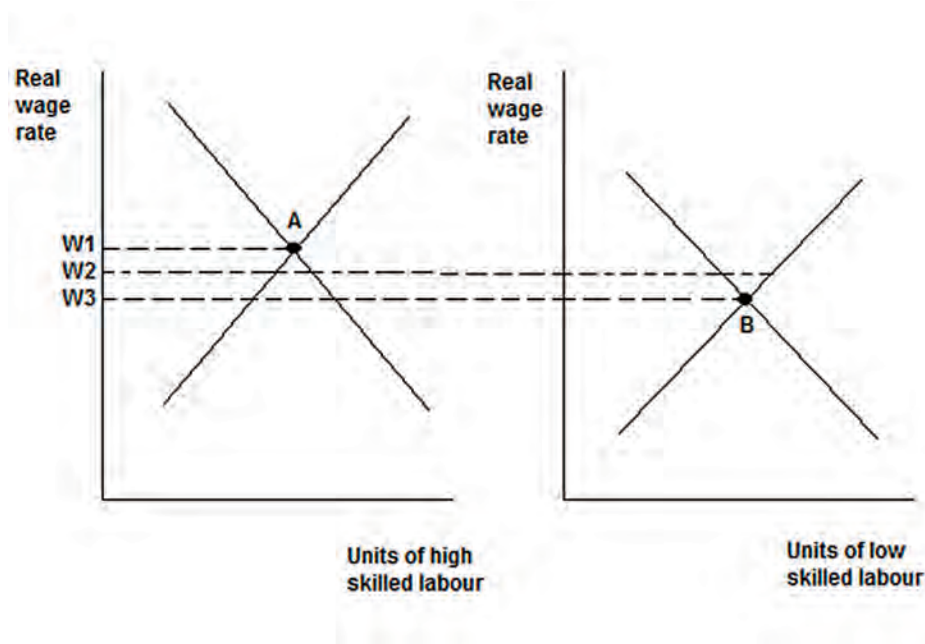
⁶³ Stiglitz, ‘Theories of wage rigidities’ (NBER working paper, no 1442, 1986).

The outcome of efficiency wages would be a heterogeneous wage level for different workers and wages above market clearing level combined with downward wage rigidity. Since there is some evidence as to the existence of efficiency wage type arrangements in the economy⁶⁴ this should be kept in mind as addition to earlier predictions and policy instruments.

2.4.2 Unemployment and productivity

In the models set out in the section on labour utilisation⁶⁵ several labour market aspects that influence the level of unemployment in the economy were encountered. This section further investigates two of those aspects, and their link to productivity performance. These two elements are the existence of a government imposed minimum wage and the existence of unemployment benefits⁶⁶. A government-imposed minimum wage above the long-run equilibrium wage rate leads to involuntary unemployment. Extending the earlier analysis this can be graphically portrayed as follows:

Graph 22



The extension of the analysis is the identification of two distinct types of workers. The units of labour in the left graph are units of high-skilled labour. The units of labour in the right hand graph are units of low-skilled labour. The difference between the two is the amount of human capital incorporated. Since the amount of human capital present in the high-skilled workers increases their productivity the equilibrium wage rate is at w_1 , significantly higher than the equilibrium wage rate of w_3 for the

⁶⁴ See, for instance, Kugler, 'Employee referrals and efficiency wages' (Labour Economics 10, 2003).

⁶⁵ See section 2.2.

⁶⁶ See also OECD, *Employment Outlook* (2007).

low-skilled worker. The result of the introduction of a government-set minimum wage w_2 here still leads to involuntary unemployment, but with a distinct division between the two types of workers. Since the minimum wage lies below the equilibrium wage rate of w_1 for the high skilled workers, the minimum wage for this group of workers does not lead to unemployment. For low-skilled workers on the other hand involuntary unemployment is created, since companies are forced to pay the higher wage rate w_2 instead of the equilibrium wage rate w_3 .

The existence of a minimum wage rate could also increase productivity. First of all, the general composition of the employed labour force is influenced. The decreased demand for low-skilled workers actually increases the average skill level of the labour force, increasing productivity per hour worked. Second, the reduced demand for low-skilled labour increases incentives for low-skilled workers to invest in education and training to increase their skill level (or in the terms of the graphs, to become high-skilled workers). The aggregate effect of a minimum wage on GDP per capita therewith becomes uncertain⁶⁷. In general, empirical studies find no significant effect of minimum wages on employment, labour allocation or productivity performance⁶⁸. This suggests that they in general are low enough to avoid general negative impact, although in some instances a negative employment effect for specific vulnerable groups such as young people and low-productivity workers⁶⁹ has been identified.

Unemployment benefits can influence productivity through several channels. The first one is the composition effect of the employed labour force. Unemployment benefits increase the reservation wage z , and since the average wage rate for low-skilled workers is lower than that for high-skilled workers, this will lead to a proportionately larger share of low-skilled workers becoming unemployed. This in turn increases average labour productivity per hour worked. Furthermore, higher unemployment benefits increase incentives for workers to search for a good job, increasing the quality of matches. These higher quality matches should increase productivity since production factors are used more efficiently. On the other hand, an increase in search time for workers could also lead to a deterioration of human capital incorporated in the persons searching for a job, which in turn has a negative effect on productivity. The effect on both productivity and GDP per capita therefore becomes ambiguous. Empirical studies generally confirm these findings, with Bassanini and Duval finding that high and long-lasting unemployment benefits increase unemployment⁷⁰. However, when benefits are combined with high expenditure on active labour market

⁶⁷ Even more so since the extra influx of high skilled labour would shift the labour supply curve, lowering the wage rate towards or even beyond the government set minimum wage.

⁶⁸ See e.g. Bassanini et al., 'Institutional Determinants of Worker Flows: A Cross-Country/Cross-Industry Approach' (OECD Social, Employment and Migration Working Papers, no 107, 2010) and OECD, *Employment Outlook* (2010).

⁶⁹ See e.g. Rutkowski, *The minimum wage; curse or cure?* (World Bank, 2003).

⁷⁰ Bassanini and Duval, 'Employment patterns in OECD countries, reassessing the role of policies and institutions' (OECD Economics department working papers, no 486, 2006).

policies, shorter duration and strict activation requirements embedded in the system, this effect can be mitigated and even lead to positive productivity effects⁷¹. The positive productivity effect in turn is empirically shown to exist in a study by Acemoglu and Shimer. Using US data for high school graduates they show that economies with moderate unemployment benefits can have higher output and welfare than those without unemployment insurance⁷².

2.5 Demand and Business cycles

The models developed in the previous sections have given an extensive overview of the labour market from an economy's supply side perspective. The demand side of the product market has not been fully taken into account up to now, nor has the existence of temporary or cyclical changes in employment been elaborated upon. To relate these aspects to analysis on supply and labour market aspects an economic tool called the called Phillips curve will be used. On the basis of economic data for the UK for nearly a century A.W. Phillips in 1958⁷³ found an inverse empirical relation between the level of inflation and the level of unemployment in an economy. As an underlying rationale he argued that nominal wage formation in period T was related to unemployment in period T-1, or simply put, in case of higher demand for labour in period T-1 (and therewith lower unemployment), workers would demand a higher wage for period T. This can be portrayed in the following simple equation

Equation 19

$$W_t = f(U_{t-1})$$

From this he deduced that there was a trade off between unemployment and inflation, which policy makers could exploit to choose between different combinations of inflation and unemployment. According to Phelps and Friedman, Phillips' theory contained a serious flaw however. In particular, they argued in the late nineteen sixties⁷⁴, that both firms and workers care about real wages and not nominal wages. Therefore it is the real wage that should rise in period T when there is excess demand for labour in period T-1, something which adds an inflation expectation element to the simple picture painted by Phillips. Inflation expectations were assumed to evolve over time as a result of actual past experience so that inflation expectations are determined by what happened during the last period. This can be represented as follows:

⁷¹ See, for instance, Nickell et al., 'The Beveridge Curve, Unemployment and Wages in the OECD from the 1960s to the 1990s' (London School of Economics and Political Science, 2001).

⁷² Acemoglu and Shimer, 'Productivity Gains from Unemployment Insurance' (European Economic Review 44, 2000).

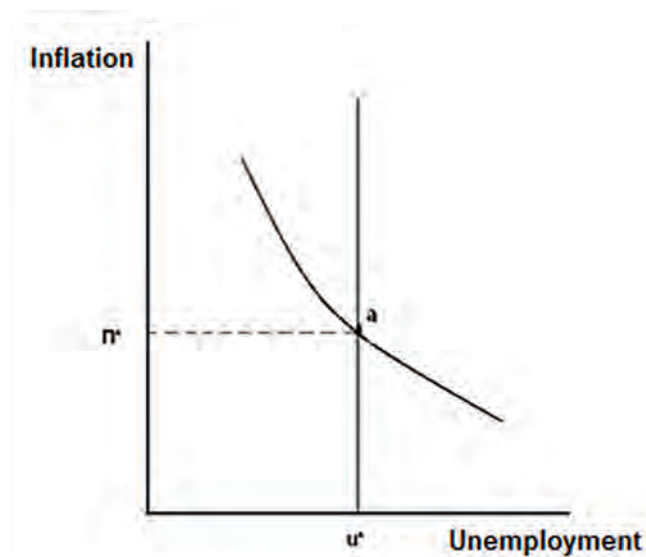
⁷³ Phillips, 'The Relationship between Unemployment and the Rate of Change of Money Wages in the United Kingdom 1861-1957' (Economica 25, 1958).

⁷⁴ See, for instance, Friedman, 'The Role of Monetary Policy' (American Economic Review 58, 1968).

Equation 20

$$W_t = F(U_{t-1}) + \pi_t^e(\pi_{t-1})$$

The wage rate at period t is a function of the unemployment rate at $t-1$ and the expected inflation at period t . The latter is formed adaptively and is based on inflation in the previous period $t-1$. Phelps and Friedman argued that in the long run there are no systematic mistakes made in predicting inflation, which makes the long-run Phillips curve vertical⁷⁵. This is portrayed in the following graph.

Graph 23

The convex curve depicts the standard Phillips curve as explained above. The vertical line is the long-run Phillips curve, which is vertical at the natural rate of unemployment. The equilibrium level of inflation that is consistent in the long run with the equilibrium level of unemployment is level Π^* .

Friedman and Phelps' adaptive expectations argument was rejected by Lucas and Sargent in the nineteen seventies⁷⁶, since this does not allow for the idea that agents process all available information in an optimal manner. To include this idea they introduced rational expectations, which can be portrayed as follows.

Equation 21

$$W_t = F(U_{t-1}) + \pi_t^e(\pi_{t+1})$$

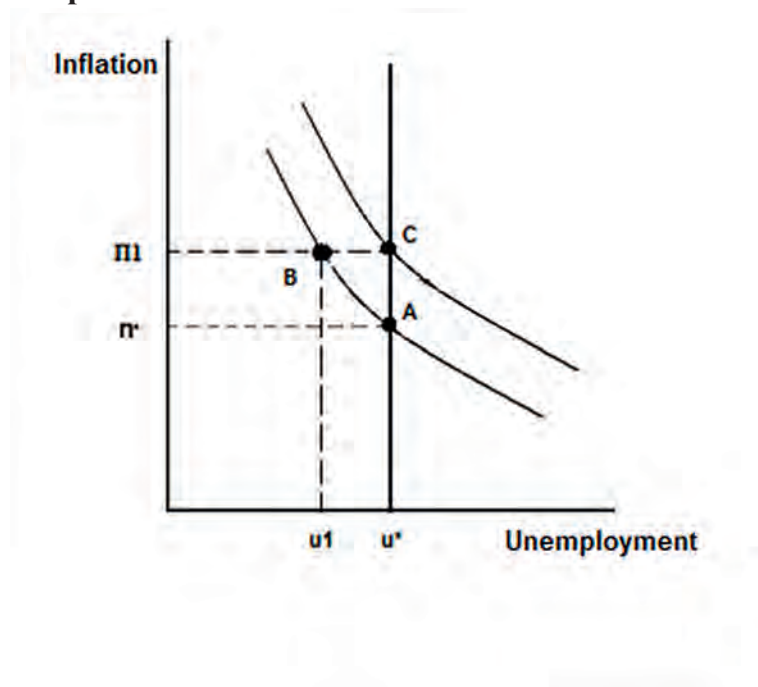
⁷⁵ For derivation see McCallum, *Monetary economics; theory and policy* (MacMillan publishing Company, 1989) ch 9.

⁷⁶ See originally e.g. Lucas and Sargent, 'After Keynesian Macroeconomics', in Federal Bank of Boston, *After the Phillips Curve* (Conference Series, no 19, 1978).

Note that the essential difference with the previous equation is that inflation in period T now depends on expected inflation in period $t + 1$.

However, in a world of fully flexible prices and wages and perfectly rational expectations even the short-term Phillips curve is vertical, which empirics had proven to not be the case. Lucas and Sargent explained the convex short run Phillips curve by misperceptions, with people not instantly identifying and reacting to changes in inflation. The New Keynesian version of the Phillips curve builds on this by focussing on rational forward looking expectations combined with nominal rigidities, or the “sticky prices and wages” encountered earlier⁷⁷, which means that firms and workers can not instantaneously change product prices and wages to accommodate changes in inflation perception.

Graph 24



Relating this rational expectations version of the Phillips curve to the business cycle, the various models translate to different views on the causes and policy response and the manner in which they are either supply or demand related. Real Business Cycle theory (RBC)⁷⁸ in this regard argues that business cycles can be seen as a market clearing, equilibrium phenomenon. The only shocks that affect the economy are shocks affecting aggregate supply, for instance, an increase in productivity, shifting the long-run Phillips curve. The business cycle in this framework is created by two reactions to the shock. The first one is the accumulation of additional capital. The increased productivity makes it worthwhile for companies to increase the capital

⁷⁷ For more information on the possible micro economic explanations for price and wage stickiness in a world of rational expectations see Heijdra and van der Ploeg, *Modern Macro Economics* (Oxford University Press, 2009).

⁷⁸ See originally e.g. Kydland and Prescott, ‘Time to Build and Aggregate Fluctuations’ (*Econometrica*, 50, 1982).

stock. Since the accumulation of capital is a gradual process, this increases production over time. With the productivity shock being temporary the following decline in productivity would decrease the capital stock, and decrease production. This leads to the properties of a business cycle. The second reason relates to labour supply. The productivity shock increases productivity per hour worked, which translates in higher wages and higher labour supply. The cycle is then created by the intertemporal choice between labour and leisure meaning a person will maximise utility over a life time, working in periods of high wages and enjoy leisure in times of lower wages. This process would reinforce the business cycle properties of the model. In this model it is not even desirable to smooth business cycles, since by definition both firms and workers are maximising utility levels.

In New Keynesian models⁷⁹, on the other hand, business cycles result due to lags in economic relationships as well as persistence of effects. These lags include slow responses of demand to income and of supply to demand. Prices and wages adjust gradually to changing demand and supply conditions and therefore cause actual adjustment in a Phillips curve setting like graph 24 to take place in of a “loop” around the long-run Phillips curve. With plausible lags on both the demand and supply side, this adjustment to shocks can broadly explain observed actual business cycles.

Mirroring the models with actual empirical outcome both models under various assumptions could be made to reflect reality relatively well. RBC theory would predict both employment and productivity to rise in a period of boom and fall in a period of slowdown, something which is observed in practice⁸⁰. The New Keynesian theory came to the same results using the concept of “*labour hoarding*”. Because dismissal costs are positive and human capital is often firm-specific, firms will avoid firing employees immediately in downturns, even though production is reduced. This leads to lower productivity. During the expansion phase labour is then gradually put to more productive use.

In recent years somewhat of a convergence has occurred between these two different strands of theory⁸¹, incorporating rational expectations, the link between the short and long-term from the RBC framework (and therewith the possibility of intertemporal substitution of labour leisure), and the price and wage rigidities present in the New Keynesian approach (and in practice⁸²). This means that government policy aimed at stabilisation is not necessarily ineffective, and that ideal stabilisation policies in

⁷⁹ See originally e.g. Ball, Mankiw and Romer, ‘The New Keynesian Economics and the Output-Inflation Trade-off’ (Brookings Papers on Economic Activity, vol 19, no 1, 1988) 1-82.

⁸⁰ Burda and Wyplosz, *Macroeconomics, a European text* (Oxford University press, 2001).

⁸¹ See e.g. Woodford, ‘Convergence in macro economics, elements of the new synthesis’ (American Economic Journal, vol 1, issue 1, 2009) and Blanchard and Gali, ‘Real wage rigidities and the new Keynesian model’ (Journal of Money, Credit and Banking, Supplement to vol 39, no 1, 2007).

⁸² See e.g. Mankiw, ‘Real Business cycles, a new Keynesian perspective’ (Journal of Economic Perspectives, vol 3, no 3, 1989).

theory at least can be designed. Government could, in the short run, for instance, stimulate employment, or speed up the process of overcoming a negative employment shock⁸³. Tools at hand include e.g. increasing government spending, lowering taxes or, on the monetary side, an increase in the money supply. Furthermore, next to short-term stabilisation policy, measures taken can have a more structural effect on labour market characteristics. Central for this argument is the concept of “hysteresis”, which in the labour market means that short-term cyclical unemployment under some conditions can be transformed into structural unemployment. In an economic slump, when unemployment is above its initial structural level, wages will decrease but by less than predicted due to the fact that, when workers become unemployed their disconnection from work starts a process of degeneration of their skills and reduction in their motivation to search for a job (an effect quite similar to the discouraged worker effect discussed earlier). As a result, unemployment will settle at a new but higher rate than predicted by the model without hysteresis effects. Ball⁸⁴ finds evidence for the existence of these hysteresis effects, as do Furceri and Mourougane⁸⁵. The latter also find that strict employment protection legislation and product market regulation negatively influence both the extent of the initial shock and the adjustment pattern in the aftermath of a downturn⁸⁶. However, in general, designing and implementing these measures is difficult since one cannot expect a simple answer about the effects of a given policy action. Whether the action is anticipated in advance or not, whether the change in policy is expected to be persistent or not, and what the policy authority announces about its policy intentions are, for instance, all relevant factors to be taken into account.

2.6 Government policy objectives

In analysing the various channels through which government policy influences labour market outcomes policy prescriptions have not always been clear cut, leaving empirics to decide which effect dominates. And even then results have not always been without debate. All in all, however, this chapter has left a number of possible channels through which government policy can increase both labour utilisation and labour productivity, which can be summarised under the following five objectives.

1. Increasing incentives for work.

This first channel for policy intervention is mostly based on the micro economic notions developed in the first part of the chapter and the work-leisure trade-off described. In increasing labour market participation government policy can influence this trade-off, making work more attractive. This applies to the decision

⁸³ For a more comprehensive handling of these issues see e.g. Heijdra and van der Ploeg, *Modern Macro Economics* (Oxford University Press, 2009).

⁸⁴ Ball, ‘Hysteresis in unemployment, old and new evidence’ (NBER working paper, no 14818, 2009).

⁸⁵ Furceri, D. and A. Mourougane, ‘How Do Institutions Affect Structural Unemployment In Times Of Crises?’ (OECD, Economics Department Working Paper, no 730, 2009).

⁸⁶ See also European Commission, *Employment in Europe* (2010).

to work or not to work, as well as to the decision to work additional hours. Concrete policy prescriptions in this area become more nuanced when taking into account the effect on productivity. Although a good case can be made for a positive relationship between participation and productivity, there are trade-offs here. Also, the elasticity of labour supply differs between subgroups, with elasticity for males being in general far lower than those for females (especially if they are second earners), and the elasticity around the participation threshold being greater than the elasticity in increasing hours worked.

Government instruments identified in this chapter which can increase these incentives include decreasing tax rate on wages, reducing generosity of benefits, as well as reducing costs incurred when working more (like childcare). Trade-offs between participation and productivity figured most prominently in the area of benefit generosity, where higher benefits can encourage people to keep looking for higher productivity jobs. A possible solution here to obtain both positive participation and productivity effects would be a combination of relatively generous benefits and active labour market policies, shorter duration and strict activation requirements.

2. Improving the functioning and flexibility of markets.

The second avenue for policy intervention is mainly based on the search theory, as well as the general theory behind stimulating total factor productivity and (new) Keynesian macroeconomics. In short, the existence of search frictions and information imperfections have been shown to make it necessary for both firms and workers to spend time and resources on finding a productive job match. Furthermore, flexible markets increase possibilities for firms to take risks and production factors, including labour, to move to the most productive sectors, increasing productivity. Finally, general inflexibility in wages and wage growth in excess of labour productivity growth have been shown to increase unemployment and decrease participation, although some productivity enhancing effect of wages above market clearing level might ensue from the efficiency wage theorem in general and in the specific case of minimum wages.

Government policy aimed at reducing frictions can decrease unemployment, increase participation and increase productivity. A prominent policy tool in this area is the existence of employment protection legislation. Although highly debated, the overall empirical conclusion on this issue is that effects on unemployment are negative but small, while EPL does reduce the flows in and out of employment and increases unemployment duration and the creation of insiders and outsiders in the labour market. Furthermore, countries with high EPL normally have a lower participation rate. Finally high EPL can have a depressing effect on productivity performance in general as well as on the emergence of high productivity sectors.

3. Improving the human capital stock.

The third avenue for policy intervention is mainly based on the theory of quality of work, more specifically human capital theory. Knowledge and skills both directly raise productivity and increase an economy's ability to develop and to adopt new technologies. Both aspects have been confirmed empirically. Incentives in this area have been found to differ greatly between various subgroups, with cost benefit analysis of enjoying education versus higher future income being central in determining them.

Government policy in this area can be linked to increasing incentives (or removing disincentives) for education, with an emphasis on increasing the flexibility of human capital obtained. Since societal benefits have been found to be greater than personal benefits from education, there is an additional reason for government intervention.

4. Improving framework conditions.

The fourth avenue for policy intervention can also be linked to the theory on quality of work dealing with worker health as well as discussion on minimum wage level. Improved health of workers can enhance worker productivity as well as labour supply by improving framework conditions, e.g. by reducing the risk of injury of workers. Furthermore, the extra costs an employer has to make in case of an injury are reduced, improving competitiveness. There is, however, a trade-off here. Increased worker health also comes with costs. For instance, employers have to make additional costs in meeting health and safety conditions: their administrative burdens increase while their flexibility as far as possible business models is concerned reduces. Both aspects can decrease competitiveness and GDP per capita growth.

Government policy in this area can be aimed at both improving information available and introducing minimum health and safety regulations. Policy in the area of minimum wages has been specifically discussed, where a minimum wage rate could influence the general composition of the labour force, increasing incentives for low-skilled workers to invest in education and training to increase their skill level. The aggregate effect on GDP per capita therewith becomes uncertain and arguably subject to the same kind of optimisation question.

5. Short-term stabilisation policy.

The previous four objectives of government policy intervention focussed on structural aspects of the labour market. This last objective of policymaking in contrast is based on business cycles and temporary fluctuations in the labour market. This chapter has shown that government policy aimed at stabilisation is not necessarily ineffective, and that ideal stabilisation policies in theory at least can be designed. The discouraged worker and hysteresis concepts discussed in this chapter provide additional reasons for governments to act. However, designing

and implementing these measures is difficult since the policy effects are uncertain.

Concerning specific government policy there is a large overlap with the more structural policy prescriptions above. Improving flexibility of markets and increased incentives to supply labour, for instance, will allow a faster recovery from economic downturn, decreasing the effects described above. Other measures such as expansionary fiscal policies and increasing incentives for labour hoarding could have positive effects as well, although a cost benefit analysis is very complicated, with actual effects very much depending on the specifics.

With these five possible policy objectives identified, the next chapter will zoom in on the European Union and the development of EU labour market policy, from its inception in the nineteen fifties up to the present day. Against the backdrop of the five policy objectives, the following chapter will describe the areas in which EU employment policy has developed over time as well as the instruments that have been put in place to achieve its objectives.

EU employment policy instruments

3.1 Introduction

The previous chapter has given a general overview of the different policy objectives governments can pursue in order to contribute to increasing GDP per capita growth. The government actor, however, has not been elaborated upon. In reality there are several governments, varying from local to supranational, all implementing policy measures that, to some extent, aim at or influence the five different objectives. This study will specifically focus on the role that the European Union plays in this area. Using the five objectives from the previous chapter as background for analysis, this chapter will give an overview of the development of EU employment policy over time, unveiling the motivation for the different steps that have been taken and that have led to EU employment policy as it stands today. In doing so, this chapter will be based on the development of table 1. The first column depicts the five different policy objectives that were identified in the previous chapter. The first row gives four different EU employment policy instruments: employment policy coordination, internal market legislation, social employment policy and EU funds spending.

Table 1

Instruments Objectives	<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work					
Improving the functioning and flexibility of markets					
Improving the human capital stock					
Improving framework conditions					
Short-term stabilisation policy					

3.2 The Treaty of Rome

The roots of EU employment policy go back to the beginning of the process of

European integration, over fifty years ago. The Treaty establishing the European Economic Community (TEEC)⁸⁷, also sometimes referred to as the Treaty of Rome, of 1957 was clear about its task and the means to perform it. Article 2 states:

“The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the states belonging to it.”

Removing barriers to trade, and ultimately creating a common market, was seen as the main tool in reaching the TEEC’s central goal, namely “the constant improvement of the living and working conditions of their people”⁸⁸. The cause and effect relationship between creating a common market and improving the living and working conditions of the people was based on economic reasoning that was dominant at the time, and is best explained by a reference to the report of the International Labour Organisation (ILO) Committee, chaired by Bertil Ohlin, published in 1956⁸⁹. The report gives an economic analysis of the social aspects of European integration and formed an important basis for the Spaak-report⁹⁰ later that year, which in fact recommended the creation of a European Economic Community.

The general philosophy underlying the ILO report is that free trade will automatically lead to higher productivity and higher economic growth. This in turn automatically has a positive effect on employment. Furthermore, unemployment was not a large problem at the time, and the general opinion was that existing unemployment could be contained by the increased freedom of movement that the common market would create. Concerning working conditions, Member States were already (striving to) adhere to relevant ILO standards in this area, and the general sentiment was that the internal market in this regard would lead to a race to the top, also because of the relatively strong position of labour unions at the time⁹¹. Lastly, the report did not consider wage differentials between Member States to be a problem since they were considered a reflection of differences in labour productivity.

The EEC Treaty reflects this philosophy, first of all by not including employment as a separate objective in article 2 TEEC and secondly by the central role that was given to articles 48 to 51 TEEC on free movement of workers that form one of the pillars of the common market. There are, however, two other places in the Treaty were

⁸⁷Treaty establishing the European Economic Community [1957], OJ C 340/173 (TEEC).

⁸⁸ TEEC, recitals 2 and 3.

⁸⁹ International Labour Office, *Social aspects of European Economic co-operation* (1956).

⁹⁰ Intergovernmental Committee on European Integration, *Rapport de chefs de delegation aux ministres des affaires etrangeres* (1956).

⁹¹ Kenner, *EU employment law, from Rome to Amsterdam and beyond* (Hart Publishing, 2003) 2.

employment is mentioned, namely Title III on social policy and Title II on economic policy.

The subject of social policy as described in Title III of the EEC Treaty is related to employment as there is an explicit obligation in article 119 TEEC for Member States to ensure that men and women receive equal pay for equal work. Besides this specific provision, employment policies are left entirely to the Member States. Article 117 TEEC on social provisions paints this picture clearly, stating that “Member States agree upon the need to promote improved working conditions and an improved standard of working for workers, so as to make possible their harmonization while the improvement is being maintained”. The common market⁹² is mentioned as the main source for the obtainment of these goals. In article 118 TEEC, the Commission is given the task to promote coordination between Member States in several employment related areas, but only gets the power to “make studies, deliver opinions and arrange consultations”. An exception to this approach is the European Social Fund (ESF), set out in chapter 2 of this Title. Article 123 TEEC⁹³ constitutes the ESF, which is administered by the Commission and directly aimed at improving employment opportunities⁹⁴. The reasoning on how to improve employment opportunities is very much in line with the overall reasoning as explained above. The fund was entrusted to the Commission to “render the employment of workers easier and to increase their geographical and occupational mobility”. In other words, employment policy to ensure the functioning of the Common market, which in turn would lead to positive employment effects.

Title II on economic policy also makes a reference to employment in the provisions regarding the approximation of the economic policies of the Member States⁹⁵. Specifically the obligation is created for Member States to:

“pursue the economic policy needed to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency while *taking care to ensure a high level of employment, and a stable level of prices*”⁹⁶

It is obvious from the phrasing that within the approximation of the economic policies of the Member States emphasis lies on exchange rate policy and balance of payment

⁹² The term “common market” and “internal market” are used interchangeably in this study. “Common market” as used in the EEC Treaty embodied the concept of removing trade barriers between Member States. With the Single European Act in 1987, the broader concept of “internal market” was introduced in the Treaty, being an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.

⁹³ There are more (equality between men and women, equivalence between paid holiday schemes) but these obligations are expressly laid in the hands of the Member States. See art 119 and 120 TEEC.

⁹⁴ Art 124 TEEC, see also Barents, *Het verdrag van Amsterdam in werking* (Kluwer, 1999) 175.

⁹⁵ The second way to promote the goal of “constant improvement of the living and working conditions of their people” as mentioned in art 2 TEEC.

⁹⁶ Art 104 TEEC. Emphasis added.

equilibrium. High employment comes second only when these goals are met. In order to achieve these goals, Member States were to coordinate their economic policies⁹⁷ by providing for cooperation between administrative departments and central banks⁹⁸. The role of the Commission is limited to submitting recommendations on how to achieve this cooperation⁹⁹. The general system with regard to the division of responsibilities is therefore much like the system applicable to the social provisions of article 117 TEEC. Member States remain responsible, which is made even clearer by article 145 TEEC, where coordination of economic policy is expressly laid in the hands of the Council.

Summarizing these developments and their relationship to the different policy objectives gives the following table. A red X marks changing or emerging EU employment policy instruments:

Table 2

Instruments Objectives	<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work					
Improving the functioning and flexibility of markets		X			X
Improving the human capital stock					
Improving framework conditions					
Short-term stabilisation policy					

The EEC Treaty showed a large confidence of its drafters in the economic reasoning behind the establishment of the Common market. Employment related areas were not seen as a big issue at the time since development in this field was assumed to be positive in response to the opening up of markets on the basis of the free movement articles. The employment policy at the European level that did exist (including the European Social Fund) was largely aimed at ensuring the optimal functioning of the

⁹⁷ Art 6 and 105 TEEC.

⁹⁸ Art 105(1) TEEC.

⁹⁹ Art 105(2) TEEC.

Common market and promoting the coordination of national policies, with the latter having a marginal Treaty base for any action at the European level. The promotion of coordination of national policies also comes back in the macroeconomic part of the Treaty, where the Commission has an equally marginal role in ensuring a high level of employment in Member States.

3.3 The early days: changing perspective

In the years directly following the creation of the European Economic Community the EEC Treaty was elaborated upon by a number of different acts of secondary legislation. These were mainly based on the free movement articles 48-51 and were therefore designed to increase labour mobility and to enhance the functioning of the common market. General principles on the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Community in order to pursue activities as employed persons were, for instance, laid down in Regulation 1612/68¹⁰⁰. More specifically, Regulation 1408/71¹⁰¹ coordinated the national social security legislation in order to protect the social security rights of persons moving within the European Union. This measure is based on articles 2, 7¹⁰² and article 51 TEEC. The latter article states that:

“The council shall (...) adopt such measures in the field of social security as are necessary to provide freedom of movement for workers.”

Its objective is to eliminate barriers for the free movement of persons, which automatically comes with a form of “worker protection”. In the recitals this reasoning is made even clearer, with recital 9 stating:

“Whereas the provisions for co-ordination of national social security legislations *fall within the framework of freedom of movement for workers* who are nationals of Member States and *should, to this end, contribute towards the improvement of their standard of living and conditions of employment (...)*”¹⁰³

¹⁰⁰ Regulation (EEC) 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257.

¹⁰¹ Regulation (EEC) 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L 149 and its Regulation (EEC) 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community [1972] OJ L 74.

¹⁰² Anti discrimination on the basis of nationality.

¹⁰³ Emphasis added.

However, TEEC policies with a binding impact on Member States' legal systems were scarce until the nineteen seventies. In this period the creation of the first Social Action Program in 1974¹⁰⁴ paved the way for the use of other, more general clauses of the EEC Treaty, such as article 100 TEEC¹⁰⁵, as legal basis for employment policy. Article 100 TEEC states that:

“The Council shall (...) issue Directives for the approximation of such provisions laid down by law (...) in Member States as directly affects the establishment or functioning of the internal market.”

That this provision relating to the *functioning* of the internal market was deemed appropriate for Community action in the area of employment can be interpreted as a sign of the changing opinion on the economic effects that the establishment of the common market was having on the Member States. Even though the common market had led to greater prosperity, the Social Action program concludes that it had not solved employment problems in Member States, and had even led to increased problems in certain areas, mainly related to inequality in income and wealth distribution. Therefore more attention was paid to these social effects of economic integration. Following the Social Action Program¹⁰⁶ some measures were implemented¹⁰⁷, but the limited Treaty base for social employment action continued to hinder the development of further Community legislation, mainly because article 100 could only be used if there was a direct relationship with the functioning of the internal market. As will be highlighted hereafter, this issue remained until the Single European Act came into effect in 1987.

The European Social Fund in this period developed similar to the application of the social chapter¹⁰⁸. Working within the strict confines of article 125 TEEC, in the 1960s the ESF provided grants reimbursing national governments for the retraining of almost a million workers and the resettlement of another 700,000¹⁰⁹. The fund was financed up to 1969, when the Community budget became based on “own resources”, by direct contributions from the Member States. Even though ESF money was spent

¹⁰⁴ See European Commission ‘Social action program’ COM(73)1600.

¹⁰⁵ See also, to a lesser extent, art 235 TEEC.

¹⁰⁶ For a detailed account see Kenner, *EU employment policy, from Rome to Amsterdam and beyond* (Hart Publishing, 2003).

¹⁰⁷ See, for instance, Directive 75/117/EEC of the Council of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L 045 and Directive 76/207/EEC of the Council of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L 39, Directive 75/129/EEC of the Council of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [1975] OJ L 048 and Directive 80/987/EEC of the Council of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer [1980] OJ L 283, all based on art 100 TEEC.

¹⁰⁸ Title III chapter 1 TEEC on social provisions.

¹⁰⁹ Commission ‘European Social Fund, an overview of the programming period 1994-1999’ (1997)14.

by subject and not by country, the ESF did have a redistributive effect since the direct contributions differed per country. Italy, for example, paid relatively little but was a large beneficiary¹¹⁰.

Article 126 TEEC included the possibility of a review that coincided with the end of the 12 year transitional period for completion of the Customs Union. The adjustments made in the beginning of the nineteen seventies to the ESF and its functioning reflect the same change in attitude towards the functioning of the common market. Next to a significant budget increase, Council decision 71/66/EEC¹¹¹ enlarged the scope of ESF action. Focus became twofold. The first part was aimed at balancing supply and demand in the Community labour market and on specific categories of workers¹¹² that *were hurt* by measures taken to complete the Common market. The second part focused on structural unemployment in the less developed regions. Both parts clearly reflect a less optimistic view on the results of the development of the Common market and the need for additional action at the EU level. Deteriorating labour markets in the 1970s led to a further increase in the categories of workers eligible for ESF funding¹¹³. In addition, because of the increased attention for regional disparities, the maximum aid percentage was increased for some regions with high unemployment. This increased attention also led to the establishment in 1975 of a separate fund that specifically focused on regional development from a broader point of view than employment, the European Regional Development Fund¹¹⁴.

Finally, looking at employment policy in macroeconomic policy coordination, both the prioritization and the limited competence discussed in the previous section remain clearly visible. Discussion in the area of monetary and economic cooperation in the 1960s mainly focused on the stability of the exchange rate regime. Prioritization in this area was very much influenced by the economic debate at the time between the so called “monetarists” and the “economists”. The monetarists highlighted the need for institutional arrangements and commitments in the area of monetary policy. This would induce common policies and convergence in other areas of economic policy, which would in turn pave the way for a common currency. The economists on the other hand, argued that close coordination in all the different areas of economic policy

¹¹⁰ See Commission, ‘European Social Fund, 50 years of investing in people’ (2007) 10. This was also due to a protocol attached to the Treaty that envisaged use of the ESF for an Italian regional development program.

¹¹¹ Council Decision 71/66/EEC of 1 February 1971 on the reform of the European Social Fund [1971] OJ L 28.

¹¹² For instance, workers in the agricultural and textile industry, but also persons with disabilities, see Regulation 2396/71 of the Council of 8 November 1971 implementing the Council Decision of 1 February 1971 on the reform of the European Social Fund [1971] OJ L 249.

¹¹³ Examples are young people, especially first job seekers and migrant workers, see Regulation 2893/77 of the Council of 20 December 1977 amending Regulation 2396/71 of the Council, implementing the Council Decision of 1 February 1971 on the reform of the European Social Fund [1977] OJ L 337.

¹¹⁴ See Regulation 724/75 of the Council of 18 March 1975 establishing a European Regional Development Fund [1975] OJ L 73.

(including employment policy) should be the starting point, and that a common monetary policy and currency should be the crowning achievement¹¹⁵.

Discussion on economic policy in general and concerning employment in particular between the different Member States took place at civil servant level in different committees set up by the Council. The Conjunctural Policy Committee was installed¹¹⁶ in 1960, followed in 1964 by the installation of the Medium Term Economic Policy Committee¹¹⁷. The goal of the Conjunctural Committee was to participate in and facilitate the consultations between Member States and the Commission as mentioned in article 103 TEEC. The Medium Term Economic Policy Committee was to prepare a medium term economic policy program outlining in broad terms the economic policies which the Member States and the institutions of the Community intended to follow. This program covered a period of about 5 years and was very broad in scope. Regarding employment policy, increasing labour supply, labour mobility, and education were mentioned in very general wording as goals Member States should strive for¹¹⁸. Both committees were intended to improve the process of coordination of economic policy, but the Treaty base continued to put severe limits on its functioning. Meetings mainly functioned as a get together for high officials of the EEC countries and the Commission to get acquainted with each other's problems and to understand the differences in philosophy and implementation of national policies and institutional arrangements¹¹⁹.

After the completion of the Customs Union ahead in 1968, the need for achieving economic and monetary union became more apparent, even more so since it coincided with monetary crises and large exchange rate fluctuations. The advances towards integration at the time were thought to *“have the result that general economic disequilibrium in the member countries will have direct and rapid repercussions on the global evolution of the Community”*, with *“a grave danger of disequilibria arising if economic policy cannot be harmonized effectively”*¹²⁰. Starting with the increased mandate of the Conjunctural committee in 1969¹²¹ and the Werner report on the

¹¹⁵ See Ungerer, *A concise history of European monetary integration, from EPU to EMU* (Quorum books, 1997) 84.

¹¹⁶ Council Decision of 9 March 1960 on co-ordination of the conjunctural policies of the Member States [1960] OJ 31, based on art 103(2) TEEC.

¹¹⁷ Council Decision of 15 April 1964 on the installation of a Medium term economic policy committee, [1964] OJ 64, based on art 105 TEEC.

¹¹⁸ See Council Decision 67/264/EEC concerning the Medium-term economic policy program 1966-70 [1967] OJ 79.

¹¹⁹ See Ungerer, *A concise history of European monetary integration, from EPU to EMU* (Quorum books, 1997) 87/88.

¹²⁰ Werner, 'Report to the Council and the Commission on the realization by stages of economic and monetary union in the community' [1970] OJ C 136, 8/9.

¹²¹ Council Decision 69/227/EEC of 17 July 1969 on co-ordination of the short-term economic policies of the Member States [1969] OJ L 183, art 1 created the obligation for Member States for prior *consultation* with other Member States and the Commission when taking high impact short term economic measures.

realization by stages of Economic and Monetary Union in the Community¹²², economic policy coordination schemes were strengthened as a set up for economic and monetary union. Economic and Monetary Union was to be completed in three stages, eventually leading to full EMU by 1980, which would notably include a “centre of decision for economic policy”, something the Werner report identified as an indispensable part of the final set up¹²³. Working towards this final aim and as part of the first phase, which would take three years with the second phase starting at the 1st of January 1974, the various coordinating Committees were combined in one single Economic Policy Committee¹²⁴. Furthermore, a decision¹²⁵ and a Directive¹²⁶ were adopted in 1974 that introduced an extensive system of medium and short-term economic policy guidelines Member States had to follow in their national policies to ensure “stability, growth and full employment”. For employment the overarching goals were still increasing labour supply, labour mobility and education. The short-term guidelines were EU wide as well as country specific, with detailed recommendations as to how national public policy should be brought in accordance with the overarching guidelines¹²⁷.

Even though this was a relatively strict and complicated regime, there was no enforcement mechanism included, which proved an Achilles' heel. Economic circumstances had worsened shortly after the publication of the Werner report, with the breakdown of the Bretton woods exchange rate system in 1971. It was attempted to regain stable exchange rates against the US dollar by the Smithsonian agreement in December 1971¹²⁸, followed by more narrow exchange rate bands between the six EEC Member States and three that were about to join under the Basle agreement in April 1972¹²⁹. However, different visions on how to deal with the economic downfall with sharp rises in oil prices in 1973, increased inflation and high unemployment led

¹²² Werner, ‘Report to the Council and the Commission on the realization by stages of economic and monetary union in the community’ [1970] OJ C 136.

¹²³ Werner, ‘Report to the Council and the Commission on the realization by stages of economic and monetary union in the community’ [1970] OJ C 136, 12.

¹²⁴ Council Decision 74/122/EEC of 18 February 1974 setting up an Economic Policy Committee [1974] OJ L 63.

¹²⁵ Council Decision 74/120/EEC of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community [1974] OJ L 63, based on art 103 TEEC.

¹²⁶ Directive 74/121/EEC of the Council of 18 February 1974 on stability, growth and full employment in the Community [1974] OJ L 63 based on art 103 TEEC.

¹²⁷ Commission, ‘proposal for a Council Decision on the adjustment to the guidelines for economic policy for 1974’ COM (74) 689.

¹²⁸ The so called “tunnel”, see International Monetary Fund, ‘Communique of the group of ten ministerial meeting, December 18 1971’ (International Financial News survey, vol 23, 1971) 417. The group of ten referred to consisted of the US, Belgium, Netherlands, Germany, UK, France, Italy, Japan, Sweden, Canada and Switzerland.

¹²⁹ The “snake in the tunnel”, see Basle Agreement of 10 April 1972, implemented on 24 April 1972, between the central banks of the Member States of the Community on the narrowing of the margins of fluctuation, at http://ec.europa.eu/economy_finance/emu_history/documentation/documentation_chapter6.htm, last accessed 2 January 2013.

to diverging Member States' policies and non-compliance with both the economic and the monetary side of the system¹³⁰. Stage two as envisioned in the Werner report was postponed and the Commission asked a group of experts chaired by Robert Marjolin to draw up a study on EMU 1980. The expert group declared the failure of the Werner plan, stating “unfavourable events, a lack of political will and insufficient understanding in the past of the meaning of an EMU and the conditions which must be fulfilled”¹³¹ as the main culprits. In a similar vein, the Economic Policy Committee and the Commission in its medium-term economic policy program 1976-1980 concluded that a better functioning of policy coordination could to a certain extent be realized by more efficient use of the current system, but that the real response had to be political and institutional¹³². In the years after the start of the European Monetary System in 1979¹³³ attempts were made for more efficient and stricter use of the coordination mechanisms¹³⁴. As will be highlighted hereafter, however, the first real changes only occurred when the first steps towards a new attempt to establish EMU were made.

Developments during this period of changing perspectives can be summarized in the following table. Again, a red X marks changing or emerging EU employment policy instruments:

¹³⁰ Despite attempts for a coordinated response, see for instance Council Resolution of 17 December 1973 on measures to be taken against rising prices and the maintenance of a high level of employment in the Community [1973] OJ C 116.

¹³¹ Commission, “*Report of the studygroup economic and monetary union 1980*” (1975) 3.

¹³² Commission, ‘Draft fourth medium-term economic policy program’ [1977] OJ C 012.

¹³³ See e.g. Giavazzi and Giovannini, *Limiting Exchange Rate Flexibility: the European Monetary System* (MIT Press, Cambridge, 1989) and De Grauwe, *Economics of Monetary Union* (Oxford University Press, Fourth Edition, 2005).

¹³⁴ See, for instance, Commission, ‘Communication on improving economic policy coordination’ COM(80)101 final.

Table 3

Instruments Objectives	<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work	X				X
Improving the functioning and flexibility of markets	X	X			X
Improving the human capital stock	X				X
Improving framework conditions		X			
Short-term stabilisation policy	X				

Two main tendencies can be observed. The first one is the change in perspective towards the functioning of the common market and its effects on employment. An increased awareness arose of the need for additional action to promote employment where the common market did not deliver or even had adverse effects. This significantly influenced how the various aspects of employment policy were used, with e.g. increased attention for the aspect of improving framework conditions in both the internal market and EU funds instruments. The second tendency that can be observed is the persistent lack of possibilities for action in the sphere of employment at the EU level. This becomes most apparent when looking at the social title of the EEC Treaty and the macroeconomic policy coordination. In the area of social policy, lack of formal competencies led to creative (but still restrictive) solutions, using the general article 100 TEEC in relation with the provisions from the social title. Concerning employment policy coordination efforts can be identified, but they eventually proved futile due to lack of power.

3.4 The Single European Act and the Maastricht Treaty

Even though all tariffs between Member States had been removed with the completion of the Customs Union in 1968, the Commission and Member States in the beginning of the 1980s became aware of the importance of non-tariff barriers like product standards as obstacles for free movement within the EEC. This was mainly because of the rise in volume and therefore significance of these types of barriers between Member States for protectionist reasons during the economic downfall in the 1970s. After the publication of the Delors Commission White Paper on the

completion of the internal market in 1985¹³⁵ and the introduction, with the Single European Act in 1987¹³⁶, of Qualified Majority Voting (QMV) on measures proposed by the Commission aimed at the completion of the internal market in 1992¹³⁷, the removal of the remaining barriers was vigorously pursued. Though mostly aimed at improvement of the free movement of goods, also in the area of employment significant steps were made. An important element here is the setting up of a general system for mutual recognition between Member States of a person's professional qualifications, which consisted of three Directives from the late 1980s and the 1990s¹³⁸. For political reasons, mainly fear by some Member States for too much meddling in national social systems¹³⁹, however, those areas of the internal market that dealt with the free movement of persons and the rights and interests of employed persons were legally excluded from QMV¹⁴⁰. This meant that article 100 and the free movement articles 48-51 still remained the main source for internal market related employment policy.

The Delors' internal market program also introduced a clear social dimension, designed to balance the possible negative effects of further opening up of markets. Delors contended that some degree of equality in social standards was desirable as otherwise in an increasingly competitive environment those countries with lower standards would undercut those with higher standards¹⁴¹. Two aspects are of special interest to elaborate on. First of all, the introduction of article 118a TEEC in the social title of the Treaty, which widened Community competence with regard to employment issues considerably. With the adoption of this article the ability for the Community to introduce, using QMV and by means of Directives, minimum requirements in the area of "health and safety of workers", was created. Even though health and safety Directives had been adopted in the past on the basis of article 100 TEC¹⁴² this was a major step, as a link between employment measures and the internal market was no longer legally necessary. Also, unanimity in the Council was no longer required. With the adoption of the Community charter of basic social rights for workers in 1989, a legally non-binding declaration adopted by all Member States

¹³⁵ Commission, 'Completing the Internal Market', COM(85)310 final.

¹³⁶ Single European Act [1987] OJ L169/1.

¹³⁷ Then art 100a juncto 8a TEEC.

¹³⁸ Directive 89/48/EEC of the Council of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [1988] OJ L 19, Directive 92/51/EEC of the Council of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [1992] OJ L 209 and Directive 99/42/EEC of the European Parliament and the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the General Systems for the recognition of qualifications [1999] OJ L 201.

¹³⁹ Kenner, *EU Employment law from Rome to Amsterdam and beyond* (Hart Publishing, 2003) 82.

¹⁴⁰ see 100a(2) EEC.

¹⁴¹ See Swann, *The Single European Market and beyond, a study of the wider implications of the Single European Act* (Routledge, 1992) 220.

¹⁴² See section 3.2.

except the UK which laid down an extensive list of worker rights that both Member States and the Commission would strive to ensure within their own competences¹⁴³, article 118a TEEC became widely used, with the Commission interpreting the term “health and safety of workers” in the broadest possible sense¹⁴⁴.

The second issue of interest is that the new attention for the social dimension of the internal market was reflected in a Commission proposal in 1991 on the posting of workers¹⁴⁵. Based on the free movement articles, this proposal laid down a number of minimum requirements applicable to workers from other Member States temporarily posted to provide services in another Member State concerning e.g. the minimum wage¹⁴⁶. After long discussions in Council and the European Parliament the proposal was adopted in 1996¹⁴⁷.

Following the Single European Act, the Treaty on European Union, also known as the

¹⁴³ Including the right to freedom of movement, the right to adequate social protection and the right to freedom of association.

¹⁴⁴ Directive 93/104/EC of the Council of 8 February 1993 concerning certain aspects of the organisation of working time [1993] OJ L 38, laying down a maximum weekly working time was, for instance, based on art 118a TEEC, even though this measure is only remotely connected to health and safety. Other important measures that were implemented are Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183 and Directive 91/383/EEC of the Council of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship [1991] OJ L 206.

¹⁴⁵ Commission, ‘Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services’ COM(91)230.

¹⁴⁶ Art 2(1) of the Directive reads that “Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in art 1(1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

- by law, regulation or administrative provision, and/or
 - by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:
- (a) maximum work periods and minimum rest periods;
 - (b) minimum paid annual holidays;
 - (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
 - (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - (e) health, safety and hygiene at work;
 - (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
 - (g) equality of treatment between men and women and other provisions on non-discrimination.”

¹⁴⁷ Directive 96/71 of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18.

Maastricht Treaty¹⁴⁸, laid down even more clearly the then perceived balancing act between economic and social policy. The new article B TEU formulated the goal of the newly formed Union as “to promote economic and social progress which is balanced and sustainable...” Likewise, the new article 2 TEC included a high level of social protection as goals of the European Community, and introduced “achieving a high level of employment” as a separate policy goal.

The division between the UK and the other eleven Member States on social policy as a separate area of EU legislative competence persisted during negotiations leading up to the Maastricht Treaty. In the text that was finally accepted in 1991 the division was still clearly present. The social provisions in the Treaty itself were not significantly altered compared to the situation under the Single European Act and remained applicable to all Member States. In addition, however, a protocol, including an agreement on social policy was attached to the Treaty. The agreement, which did not apply to the UK, set out a whole range of new Community competences and legal bases¹⁴⁹ and made for a significant strengthening of the process of “social dialogue” with the European social partners that had been installed with article 118B of the Single European Act¹⁵⁰. A number of employment related areas, such as “pay”, were also explicitly excluded from the scope of the protocol, which limited the possibilities for Community action in this specific field¹⁵¹.

The existence of two different legislative routes for employment related social policy made for a complicated system in the years after the coming into force of the Treaty on European Union in 1993. The Commission tried to use the “normal” legal bases within the Treaty itself as much as possible, and only resorted to the protocol when there was no hope for agreement¹⁵². Furthermore, a number of proposals that faced difficulties in the Council because of UK opposition were transformed to fit under the new protocol¹⁵³.

With the adoption of the Single European Act, the position of the ESF and the other Structural Funds was radically changed. Whereas before the ESF played a relatively

¹⁴⁸ Treaty on European Union [1992] OJ C 191 (TEU).

¹⁴⁹ An adapted form of QMV voting was installed for measures relating to, for instance, working conditions, information and consultation of workers and the integration of persons excluded from the labour market. Unanimity was, for instance, required in the field of protection of workers whose employment contract was terminated.

¹⁵⁰ Before the SEA, dialogue with the social partners on employment issues had already been taking place in several advisory committees like the Advisory Committee on freedom of movement of workers and the Standing Committee on employment.

¹⁵¹ See, for instance, Commission, ‘Opinion on an equitable wage’ COM(93)388.

¹⁵² See Commission, ‘Communication concerning the application of the agreement on social policy’ COM(93)600.

¹⁵³ Which was, for instance, the case with Directive 94/45/EC of the Council of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees [1994] OJ L 254, see Addison and Siebert, ‘Recent developments in social policy in the new European Union’ (Industrial and Labor Relations Review, vol 48, no 1, 1994).

isolated role, now a system in which the ESF was integrated with that of the other Structural Funds aimed at achieving the common goal of “economic and social cohesion”¹⁵⁴ was introduced. The most important “other” Structural Fund was the European Regional Development Fund, which had been given an explicit Treaty base¹⁵⁵. Five different objectives were formulated for the Structural Funds¹⁵⁶: regional development (objectives 1 and 2), agricultural reforms (objective 5) and employment (objectives 3 and 4). The ESF was to coordinate action with the other Structural Funds in objectives 1, 2 and 5¹⁵⁷, with objectives 3 and 4, “combating long-term unemployment” and “facilitating the occupational integration of young people”, remaining the sole responsibility of the ESF.

Next to the change in content, the system of reimbursement of funds was replaced by a system of programming and partnership. Member States (in cooperation with regional authorities) had to submit programs up front in which they outlined action they were planning to take under the five objectives. After discussion with the Commission, Community Support Frameworks were set up, setting out priorities for Structural Fund assistance. EEC assistance still remained additional to the aid provided for by Member States themselves. Priorities for Community funding were established by means of guidelines¹⁵⁸ and operations in backward (objective 1, 2 and 5) regions were given priority. Almost 55% of the 20 billion ECU ESF budget under all objectives was, for instance, spent in these regions in the period 1989-1993¹⁵⁹.

With the Maastricht Treaty cohesion as a Community goal was further strengthened¹⁶⁰. The budget for the Structural Funds was changed accordingly¹⁶¹, as were the specific provisions relating to the ESF¹⁶². Next to “rendering the employment of workers easier and increasing their geographical and occupational mobility” that had already been included in article 123 TEEC “facilitating [the

¹⁵⁴ See art 130 B TEU.

¹⁵⁵ See art 130 C TEU.

¹⁵⁶ See Regulation (EEC) 2052/88 of the Council of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the EIB and the other financial instruments [1988] OJ L185/9, art 1.

¹⁵⁷ In the regions that were covered by objectives 1, 2, and 5 a broader category of workers were eligible for ESF funding. See Regulation 4255/88 of the Council of 19 December 1988 laying down provisions for the implementing Regulation 2025/88 as regards the European Social Fund [1988] OJ L 374.

¹⁵⁸ See, for instance, Commission, ‘Guidelines concerning European Social Fund intervention in respect of action against long-term unemployment and occupational integration of young people ESF intervention’ [1989] OJ C45/6.

¹⁵⁹ See Commission, ‘The European Social Fund, an overview of the programming period 1994-1999’ (1997).

¹⁶⁰ See Protocol attached to the Treaty on European Union on economic and social cohesion [1992] OJ C 191 and the strengthened art 130(b) TEC.

¹⁶¹ Out of the rise to a total of 142 billion for the structural funds in the period up to 1999, 42 billion were for the ESF, see Commission, ‘The European Social Fund, an overview of the programming period 1994-1999’ (1997) 23.

¹⁶² See for more extensive motivation Commission, “From the Single Act to Maastricht and beyond”, COM (92)2000.

workers] adaptation to industrial changes and to changes in production systems” was added. Objectives 3 and 4 were altered accordingly¹⁶³. The “old” objectives 3 and 4 were merged into one with the addition of “helping the socially excluded”. The facilitation of adaptation was laid down as the new objective 4. The categories of programs eligible for ESF funding in objectives 1, 2 and 5 regions was also increased¹⁶⁴. Decision making proceedings were streamlined, systematic evaluation was provided for and greater flexibility in the attribution of the funds was introduced¹⁶⁵.

Concerning employment policy coordination, the setting of fixed exchange rates around the newly introduced ECU within the EMS in 1979 was not accompanied by a shift of power in the area of macroeconomic policy towards the EU level. Member States still had very different views as to how to deal with their macroeconomic policy in general and employment policy more specifically¹⁶⁶. France, e.g., under president Mitterand in the early 1980s introduced the “leftist medicine” for the economic downfall by raising minimum wages, reducing the working week and increasing government expenditure, while Germany took a diametrically opposite stance, remaining committed to its low inflation policy¹⁶⁷. The resulting inflation differentials led to frequent devaluations of the French franc. The resulting loss of French competitiveness did in fact eventually force France in 1983 to change its policy to fit that of the Germans (“franc fort”), but this “convergence of policy” was for the aforementioned national reasons only.

With the institutional arrangements for Economic and Monetary Union (EMU) set out under the Maastricht Treaty, the system of macroeconomic policy coordination changed substantially. As mentioned earlier, the Werner rapport of 1970 had been the first to describe the possible economic counterweight to monetary integration. It had envisioned setting up a European centre of decision for economic policy as a strong

¹⁶³ See Regulation 2081/93 of the Council of 20 July 1993 amending Regulation 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments [1993] OJ L 193 and Regulation 2084/93 of the Council of 20 July 1993 amending Regulation 4255/88 as regards the European Social Fund [1993] OJ L 193. For a more detailed description of the development of the various funds see Evans, *The EU Structural Funds* (Oxford University Press, 1999).

¹⁶⁴ Training schemes, education and research and development schemes became eligible as well. See website European Commission, DG Employment http://ec.europa.eu/employment_social/index_nl.html Last accessed July 2012.

¹⁶⁵ See Regulation 2081/93 of the Council of 20 July 1993 amending Regulation 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments [1993] OJ L 193.

¹⁶⁶ See also Decision of the Council and of the representatives of the Governments of the Member States 82/534/EEC meeting within the Council of 28 July 1982 adopting the fifth medium-term economic policy programme [1982] OJ L 236.

¹⁶⁷ See Baldwin and Wyplosz, *The Economics of European Integration* (2nd edition, McGraw-Hill Education, 2006).

institution to balance the increased EU power in the monetary area, giving it power in structural areas like employment matters¹⁶⁸. Already with the Delors Report in 1989 on EMU¹⁶⁹, however, this vision had been significantly watered down. The Delors Report proposed to change the poorly functioning policy coordination system that had been in place since 1974 with a system based as much as possible on voluntary cooperation, with strict adherence to the new “principle of subsidiarity”. The report states that “all policy functions which could be carried out at national (...) level without adverse repercussions on the cohesion and functioning of the economic and monetary union would remain within the competence of the member countries”¹⁷⁰.

Despite the fact that the French in their vision on EMU did propose a strong economic pillar next to the monetary one, with a central role for the Council and the European Council¹⁷¹, the Delors vision was for the most part taken over in the provisions of the Maastricht Treaty. Title VI on economic policy sets out a new system of coordination of the economic policies of the Member States¹⁷². Two main structural differences arise when comparing this system with the system that was in place under the old Treaty provisions¹⁷³. The first one is that a larger number of objectives for economic policy making is included. Instead of the limited list of objectives mentioned in the old article 104 TEEC, economic policy coordination was linked to achieving the goals of article 2 TEC¹⁷⁴, the scope of which had been substantially widened. The second main difference is that the procedure for coordination of economic policy was laid down in the Treaty¹⁷⁵. The Council (i.e. the ECOFIN), on the basis of a recommendation of the Commission and taking into account discussion in the European Council, adopts a recommendation setting out Broad Economic Policy Guidelines (BEPG’s), of which the European Parliament is informed¹⁷⁶. Implementation of the guidelines is monitored by the Commission and Council¹⁷⁷, and the Council can, on a recommendation from the Commission, make recommendations

¹⁶⁸ See Werner, ‘Report to the Council and the Commission on the realization by stages of economic and monetary union in the community’ [1970] OJ C 136.

¹⁶⁹ See Committee for the study of economic and monetary union, ‘Report on Economic and Monetary Union in the European Community’ (1989).

¹⁷⁰ Committee for the study of economic and monetary union, ‘Report on Economic and Monetary Union in the European Community’ (1989) 14.

¹⁷¹ See Corbett, *The Treaty of Maastricht* (Cartermill international, 1993) 247, see also van Riel and Metten, *De keuzes van Maastricht* (van Gorcum & Comp, 2000) 56-58.

¹⁷² Art 103 TEC.

¹⁷³ The old system that comprised Council Decision 74/120/EEC of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community [1974] OJ L 63 and Directive 74/121/EEC of the Council of 18 February 1974 on stability, growth and full employment in the Community [1974] OJ L 63 had actually already been replaced in 1990 by Council Decision 90/141/EEC of 12 March 1990 on the attainment of progressive convergence of economic policies and performance during stage one of economic and monetary union [1997] OJ L 78, adjusting the system in the run up to stage 2 of EMU.

¹⁷⁴ Art 103 juncto 102a juncto 2 TEC.

¹⁷⁵ Art 103 TEC.

¹⁷⁶ Art 103(2) TEC.

¹⁷⁷ Art 103(3) TEC.

to Member States¹⁷⁸. Looking at this new procedure one could say that the criticism from the Marjolin report and the call for help by the Economic Policy Committee in its policy program in the late 1970s¹⁷⁹ was at best only partly answered. The lack of transfer of competence and enforcement authority to the EU level remains apparent. Even though the role of the Commission has increased, the Council decides if and what action is taken in both the formulation and the surveillance phase. The European Parliament is included in the process, but is simply a bystander and the role of the Economic Policy Committee itself remained unchanged.

In summary, developments during this period of large institutional changes can be portrayed in the following table. A red X again marks changing or emerging EU employment policy instruments, with a red arrow marking a change in the strictness of coordination arrangements.

Table 4

Instruments Objectives	<i>Employment policy coordination</i> → <i>(more binding)</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work	→ X				X
Improving the functioning and flexibility of markets	→ X	X			X
Improving the human capital stock	→ X				X
Improving framework conditions		X	X		
Short-term stabilisation policy	→ X				

EU competencies in the area of employment in this period were significantly altered and somewhat expanded. The functioning of the common market was given an enormous boost by the Single Market program, the increased attention for the social and cohesion aspects of integration led to an increase in EU competencies under the social title, adding an additional instrument aimed at improving framework conditions, and a more coherent working of the EU Structural Funds. Furthermore, a new, procedurally more binding, coordination of economic policy was introduced in

¹⁷⁸ Art 103(4) TEC.

¹⁷⁹ See section 3.2.

the Maastricht Treaty. The exclusion of the free movement of persons from QMV and the absence of sanctions or transfer of authority under the procedure for economic policy coordination, however, illustrate that Member States remained hesitant to give up any sovereignty in the area of employment policy.

3.5 Towards and beyond the Treaty of Amsterdam: taking EU employment policy to the next level

After the entry into force of the Treaty on European Union unemployment in the Union became a major issue. Union wide unemployment was at around 17 million people and over two thirds of the European population in 1993 saw unemployment as the most important problem in the European Union¹⁸⁰. Together with the alarming drop in confidence in the European Union as a whole that surfaced in the Danish and French referenda on the Maastricht Treaty¹⁸¹, this drove employment to the top of the EU political policy agenda. The European Council took a leading role in handling this issue. Starting in Edinburgh in December 1992, followed by more detailed discussion in Copenhagen in June 1993, it formulated a strategy to “restore growth, competitiveness and employment”¹⁸². The strategy focused both on the supply and on the demand side of the labour market and gave a number of measures to be taken at both the European and national level in order to reduce unemployment. For the short term, Member States were urged to bring forward their public expenditure on a number of structural issues, such as infrastructure, to boost demand and therewith employment. It also points at decreasing taxes on labour as a way to stimulate supply and therewith labour demand. However, because of the budgetary convergence criteria for EMU¹⁸³, countries at the time had limited room for manoeuvring, something which the European Council also recognizes. As far as the European elements of the strategy are concerned, the European Council underlines the importance of a rapid implementation of the Communities’ structural policy program for the period 1994-1999. Further aspects of the internal market dimension of employment policy are also, though briefly, mentioned. In this regard it is stated that the internal market is an enormous asset to the EU, and that there are only a few last remaining issues to be dealt with before the internal market will be complete¹⁸⁴. For the medium term, the Commission was invited to present a white paper on a medium term strategy for discussion at the Council, taking place in Brussels in December 1993. This white paper was to be expressly linked to the Broad Economic Policy Guidelines that were being prepared for the first time by the ECOFIN Council for December that

¹⁸⁰ See van Riel and Metten, *De keuzes van Maastricht* (van Gorcum & Comp, 2000) 126 and Eurostat, <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>, last accessed 26 December 2012.

¹⁸¹ In the French referendum a very small majority (51%) voted in favour of the Maastricht Treaty. The Danish referendum even resulted in a “no” by 51%.

¹⁸² See Presidency conclusions of the European Council of 21/22 June 1993.

¹⁸³ Most importantly for this issue the maximum yearly budget deficit of 3%, see art 109(j) juncto 104 TEC and the protocol on excessive deficit procedure.

¹⁸⁴ Presidency conclusions of the European Council of 21/22 June 1993, 8.

year.

The Commission White Paper was published a week before the next European Council meeting in December 1993. As for the reason behind the White Paper the Commission states that “*The one and only reason is unemployment*¹⁸⁵”. It sets out a comprehensive vision on the causes of unemployment within the EU and the way forward. The recommendations for structural change of policies within the Member States take up a large part of the document, with the Commission focusing on ways to reduce the level of structural unemployment in the Union. Central theme here is the inflexibility of the labour market¹⁸⁶. Improving both internal flexibility, i.e. optimal use of human resources within firms, and external flexibility (“where supply meets demand”), increasing opportunities for lifelong learning and education, reducing the costs of low qualified work and commencing a thorough overhaul of employment policies are the main messages. Furthermore, the Commission puts emphasis on making the most of the newly established internal market and formulated hard policy goals to strive for, i.e., creating 15 million jobs before the end of the century¹⁸⁷.

The Broad Economic Policy Guidelines that were established for the first time in December 1993¹⁸⁸ focus on returning to a “non inflationary, strong and employment creating growth”, therewith decreasing the unemployment level. After briefly setting out the overall framework by mentioning the need for price and exchange rate stability and sound public finances a whole range of more detailed employment related objectives and specific structural measures are set out which the Member States are “invited” to explore to decrease their unemployment level. The measures follow the same logic as the Commission White Paper and include, for example, examining the adaptation of social security systems, improving educational systems, reintegrating the long-term unemployed, removing excess rigidities and improving labour mobility.

With the Commission White Paper and the BEPGs as input the European Council in Brussels in December 1993 set out an action plan on the fight against unemployment¹⁸⁹. Neither the hard policy goals, nor large EU investments were included¹⁹⁰. Instead the action plan focused on creating a healthy, open, decentralized economy geared to solidarity by “significantly reducing” the number of

¹⁸⁵ Commission, ‘White paper on Growth, competitiveness, employment the challenges and ways forward into the 21st century’ COM (93)700, 9.

¹⁸⁶ Something also emphasized by the OECD in those days as a cause of unemployment. See, for instance, ‘*The OECD jobs study, facts, analysis, strategies*’ (1994).

¹⁸⁷ Commission, ‘White paper on Growth, competitiveness, employment the challenges and ways forward into the 21st century’ COM (93)700, 11.

¹⁸⁸ Council Recommendation 94/7/EC of 22 December 1993 on the broad guidelines of the economic policies of the Member States and of the Community [1994] OJ L 7.

¹⁸⁹ See Presidency conclusions of the European Council in Brussels of 10 and 11 December 1993.

¹⁹⁰ For a more detailed description of this process see van Riel and Metten, *De keuzes van Maastricht* (van Gorcum & Comp, 2000). Also see Goetschy, ‘The European Employment Strategy, genesis and development’ (European Journal of Industrial Relations, vol. 5, no 2, 1999) 117-137.

unemployed¹⁹¹. A general framework for the policies to be pursued by Member States was set up, as were specific accompanying measures at the EU level and a monitoring procedure. The general framework set up by the European Council focuses on defining objectives Member States should strive for, leaving the Member States free to choose the appropriate means. Member States are invited to draw suggestions from the Commission White Paper¹⁹², with Member States' policies to be periodically reviewed within the European Council in order to analyse the results and learn from experience how future action should be concluded. At the EU level the action plan consisted mainly of making full use of the internal market (i.e. by full incorporation of Community legislation in national law), and actively using the social dialogue that was installed with the protocol on social policy annexed to the Maastricht Treaty.

The monitoring procedure that was set up consisted of a yearly evaluation by the European Council, starting in December 1994 in Essen. The discussions were to be based on a summary report by the Commission, a report from the Council on the national policies taken in the area of employment, the annual report of the ECOFIN Council on the implementation of the BEPGs, the Commission's report on the functioning of the internal market. The discussion during the Essen European Council ended in intensifying the monitoring procedure, with the Member States being urged to transpose the recommendations in their individual policies into a multiannual program having regard to the specific features of their economic and social situation. The Labour and Social Affairs Council, the Economic and Financial Affairs Council and the Commission were also asked to keep close track of employment trends, to monitor the relevant policies of the Member States and report annually to the European Council on further progress on the labour market, starting in December 1995.

When relating the four instruments of EU employment policy identified above to the views set out by the European Council, one can come to a number of conclusions. Optimizing the functioning of the internal market was seen as an important source of job creation and the Structural Funds, especially the ESF under objectives 3 and 4, were seen as contributing to promoting employment¹⁹³. The relationships between the

¹⁹¹ Presidency conclusions of the European Council in Brussels of 10 and 11 December 1993, 4

¹⁹² Paying particular attention to the following measures:

1. Improving education and training systems
2. Improving flexibility both within enterprises and on the labour market
3. Examination of economically sound formulas for the reorganization of work
4. Targeted reductions in the indirect cost of labour, especially of less skilled work
5. Better use of public funds by means of a more active policy of information motivation and guidance of job seekers.
6. Specific measures concerning young people with low education
7. Developing employment in connection with meeting requirements linked to the quality of life and protection of the environment.

¹⁹³ On the role and focusing of the ESF on employment creation also see Commission, 'Communication on the medium term social action program 1995-1997' COM(95)134 and Commission, Communication on Community structural assistance and employment, COM (96) 109.

other two parts of EU employment policy, social employment policy and the provisions on macroeconomic policy coordination, and the newly set up system at the European Council in Brussels, however, are not immediately obvious and therefore requires some further explanation.

As to the social provisions in the Maastricht Treaty, the relationship with the Employment action plan is best explained by reference to the Green and White Papers on social policy published by the Commission in 1993 and 1994¹⁹⁴. The white paper sets out the Commission approach to social policy development in the years up until the year 2000. Its relationship to the growth white paper, and to the Broad Economic Policy Guidelines is that “the pursuit of high social standards is a key element in the competitive formula” and that “the principles set out in the White paper need to be born in mind in the formulation of future Union social policy, as do the Union’s macroeconomic guidelines”¹⁹⁵.

In the green and white papers on social policy the implementation of the European Council action plan of 1993 takes centre stage. As the white paper states “employment is the key both for social and economic integration” and “jobs are the top priority”¹⁹⁶. This focus had some consequences for the nature and level of social action proposed. As in the white paper on growth, emphasis in the white paper on social policy is put on active labour market policies for generating employment, rejecting passive instruments of social solidarity based on the redistribution of income. Harmonisation of social policies is explicitly rejected as a goal of the Union. In accordance with the action plan emphasis is put on “mobilization and cooperation” and “fixing common objectives”, based on a level playing field of common minimum standards, accompanied at the EU level by information provision and the analysing of future trends.

As has been highlighted in section 3.3, with the coming into force of the Treaty on European Union and the action program for the implementation of the social charter, a large number of initiatives introducing minimum standards in the field of social employment policy had been announced and (were being) adopted. The Commission states that with this solid base of European social legislation there is no need for a wide ranging program of new legislative proposals in the coming period¹⁹⁷. The emphasis on soft forms of cooperation in the area of employment in general was

¹⁹⁴ See Commission, ‘Green paper on European social policy, options for the Union’ COM (93) 551. and Commission, ‘White paper on European social policy, a way forward for the Union’ COM (1994) 333.

¹⁹⁵ See Commission, ‘White paper on European social policy, a way forward for the Union’ COM (1994)333, 2/3.

¹⁹⁶ Commission, ‘White paper on European social policy, a way forward for the Union’ COM (1994)333, 4 and 9

¹⁹⁷ Commission, ‘White paper on European social policy, a way forward for the Union’ COM (1994)333, 5.

therefore accompanied by a similar emphasis in the area of social policy¹⁹⁸. Noteworthy exceptions here, however, can be found in the area of equal treatment rights and minimum requirements for workers under various flexible types of contracts other than standard open-ended contracts, where EU social partners subsequently laid down framework agreements on part time work and fixed term work, while voicing the intention to come to such a framework on temporary agency work¹⁹⁹.

When examining the relationship between the provisions for economic policy coordination of the Member States and the action plan that was initiated by the European Council, the first thing that sticks out is the large overlap and similarity of approach. The procedure laid down in article 103 TEC was expressly linked to achieving the goals as set out in article 2 TEC. These goals included the attainment of a high level of employment and social protection. Furthermore, even under the “old” system of economic policy coordination employment policy had an important role in the medium and short-term guidelines. The legal situation therefore had not changed. Neither was the type of monitoring used a novelty: despite the lack of a base in the Maastricht Treaty, the monitoring procedure on employment by the European Council in Essen had roughly the same form as the procedure under article 103. The similarity of approach was of course no coincidence, the main political message being that employment mattered just as much as establishing EMU. With the restrictions on public deficit and debt due to the convergence criteria that were part of the road to EMU being seen as one of the causes for the high unemployment level, this approach was perceived as necessary to “retain the confidence of the citizens”²⁰⁰.

In a communication following up on the Essen Council, the Commission provided more clarity on the relationship between the two monitoring procedures and set out to reconcile the guidelines with the Essen priorities to help overcome the danger of a “two track approach”²⁰¹. The basic thought was to develop an overall coherent approach in the context of article 103 TEC. To this end, the year was divided in two, with the broader procedure under article 103 TEC, starting with the Commission’s annual economic report, taking place in the first half, and the more focused Essen procedure, starting with the Commission’s annual employment and overview report,

¹⁹⁸ On this subject see also Ashiagbor, *The European Employment Strategy, labour market regulation and new governance* (Oxford monographs on labour law, 2006) 89.

¹⁹⁹ Directive 99/70/EC of the Council of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L 175 and Directive 97/81/EC of the Council of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC [1998] OJ L 14. The framework on temporary agency work was in fact concluded years later in 2008 by the European Parliament and the Council when the social partners had failed to reach agreement, see Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 327.

²⁰⁰ See also European Parliament, ‘Resolution on a coherent employment strategy for the European Union’ [1995] OJ C 249, 143.

²⁰¹ See Commission, ‘Follow up to the Essen European Council on Employment’ COM (95)74.

taking place in the second half. In practice, this meant that the Broad Economic Policy Guidelines, as before, contained both macroeconomic and structural policy recommendations. As to the structural policy recommendations for employment policy, reference was made to obtaining the priority goals set out in Essen. The second part of the year followed a similar procedure but then focused only on these structural employment measures, adding input by the Social affairs Council and the Standing Committee on employment.

This cumbersome process was a good reflection of the political nature of the Essen process. Public confidence in the EU was waning, and with unemployment being conceived as the main problem facing Europe at the time there was a need to take explicit and visible action, thereby making it absolutely clear that reducing unemployment was a top priority of the EU. The European Council took on a central role on this issue, therewith assuring that the process obtained maximum media coverage. Or in other words, handling unemployment as being just another part of economic policy coordination would no longer do.

The Essen process was implemented, and the progress and guidelines debated at the Madrid European Council in 1995 and the Dublin European Council in 1996. In between the Commission (under the new president Santer) published a confidence pact on action for employment in Europe. As the Commission states “the point of the pact is not to create new European Community powers, nor to increase its expenditure, nor to bring in new criteria for EMU”. It is to “launch a collective enterprise involving the public authorities and the social partners alike and defining their respective commitments in a coordinated comprehensive strategy”²⁰². The link between employment and the setting up of EMU is also apparent here, since one of the main reasons for this extra communication was to act as a “counterweight” to the Stability and Growth Pact²⁰³ on economic policy coordination that was being discussed at the time²⁰⁴. The conclusion of the confidence pact on employment creation is straightforward; “the unemployment statistics are terrible”.²⁰⁵ Participation of the social partners in the employment strategy is judged inadequate, and Member States are blamed for not taking into account the EU wide repercussions of their national multi-annual programs. The EU dimension of employment is emphasized with the Commission stating that “the Union must really treat employment as a matter of common interest” and calling for all actors to set clear objectives in specific timeframes”. Not surprisingly therefore the Commission argues for institutionalisation

²⁰² See Commission, ‘Action for employment in Europe; a confidence pact’ COM (96)0485, 2.

²⁰³ See also Regulation 1466/97 of the Council of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [1997] OJ L 209 and Regulation 1467/97 of the Council of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure [1997] OJ L 209.

²⁰⁴ See Goetschy, ‘The European Employment Strategy, genesis and development’ (European Journal of Industrial Relations, vol 5, no 2, 1999) 117-137. See also Resolution of the Amsterdam European Council of 17 June 1997 on growth and employment.

²⁰⁵ See Commission, ‘Action for employment in Europe; a confidence pact’ COM (96)0485, 27.

of the Essen process in the upcoming Intergovernmental conference.

In preparation of and during the intergovernmental conference for the Treaty of Amsterdam²⁰⁶ there was discussion whether or not the newly to be formed Treaty would provide for the institutionalisation of the Essen process²⁰⁷. The Commission, led by Swedish socialist Alan Larson, the newly appointed Director General for employment, was in favour, as was the European Parliament. As for the Member States, Sweden took a central role in favour of institutionalisation, whereas France, Germany and especially the UK were opposed. There were three main lines of arguments against the inclusion of an employment chapter in said Treaty. The first was the fear, especially on the French side, that a too ambitious approach at the EU level would come into conflict with the basic premise that the primary responsibility for employment policy lies with the Member States. The second reason was that with the introduction of a separate employment chapter the relevant importance of the employment goals in article 2 TEC would be strengthened. The provisions on Economic and Monetary Union are explicitly linked to this article, and the increased weight put on the employment goals could have an indirect effect on EMU. Especially the German government was very wary for any kind of possible interference with the establishment and stability of EMU. Finally, there was a more general concern that, given the primary national responsibilities in the area, including employment as a separate chapter would set expectations with the public for action and results that the EU would not be able to meet. These concerns were somewhat incorporated in the eventual drafting of the employment chapter in the Treaty of Amsterdam. Moreover, a change to a more left wing government in the UK and then France that resulted from general elections in these countries took away the remaining opposition. The German objections as regards EMU were abolished when newly elected left wing French Prime Minister Jospin threatened to refuse signing the Stability and Growth Pact if an employment chapter was not included in the Treaty and a special meeting of the Council to address the “hot issues” of unemployment and job creation was not organized.

Eventually therefore, the decision was taken to institutionalise the Essen process in the Treaty of Amsterdam. The promotion of a high level of employment that had already been part of article 2 TEC was also included in the new article 2 EU. “The promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for

²⁰⁶ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Economic Communities and certain related acts [1997] OJ C 340/01.

²⁰⁷ For more detailed coverage of this process see de la Porte and Pochet, ‘A two fold assessment of employment policy coordination in the light of economic policy co-ordination’, in Foden and Magnusson, *Five Years Experience of the Luxembourg Employment Strategy* (European Trade Union Institute, 2003). See also van Riel and van der Meer, ‘The advocacy coalition for European employment policy – The European integration process after EMU’ in Hegmann and Neumarker, *Die Europäische Union aus politökonomischer Perspektive* (Metropolis, 2002).

employment” was included in article 3 TEC as one of the activities of the Community.

In addition, a new Title VIII on employment was included into the EC Treaty, right after the Title on economic and monetary policy, consisting of six provisions²⁰⁸.

Article 125 TEC states the general goal of this new employment Title:

“Member States and the Community shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in article 2 of the Treaty on European Union and in article 2 of this Treaty.”

Member States’ obligations in this regard are further specified in article 126 TEC, stating that they shall contribute to the article 125 TEC objectives in a way consistent with the BEPGs and that they shall regard promoting employment as a matter of common concern and coordinate their action in this respect within the Council, a process which is laid down in article 128 TEC. This article to a large extent codifies the Essen process of employment coordination, with the procedure installed being a virtual copy of the procedure for the BEPGs under (new) article 99 TEC²⁰⁹.

Furthermore, the employment Title creates an additional legal base for the Council to take action in the area of employment, though harmonisation of the laws and regulations of the Member States is explicitly excluded as a possibility²¹⁰, while the obligation for the Council to create an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies is also formulated²¹¹. The tasks of the Committee is monitoring of the employment situation and employment policies in the Member States and the Community; to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the

²⁰⁸ Art125-130 TEC.

²⁰⁹ Except for the role of the European Parliament and the various committees in 128(2) EC, which gain a right of consultation absent in the art 99 TEC procedure.

²¹⁰ Art 129 TEC. Instead, incentive measures may be adopted to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. In the first years of the strategy several of this article has been used several times to install such Employment Incentive Measures (EIM). See, for instance, Council Decision 98/171/EC of 23 February 1998 on Community activities concerning analysis, research and cooperation in the field of employment and the labour market [1998] OJ L 63 and Decision 1145/2002/EC of the European Parliament and of the Council of 10 June 2002 on Community incentive measures in the field of employment [2002] OJ L 170.

²¹¹ Art 130 TEC. The Council established the Committee by Council Decision 2000/98/EC of 24 January 2000 establishing the Employment Committee. The Committee replaced the Employment and Labour Market Committee.

Council proceedings referred, i.e. the same role in employment policy as the Economic Policy Committee had in the area of economic policy.

The special summit on employment that the French had insisted on during negotiations for the Treaty of Amsterdam took place in November 1997 in Luxembourg. The European Council in its conclusions wanted “to mark a new departure in the thinking and action upon which the Member States had been embarked since the Essen European Council meeting”²¹². The conclusions take roughly the same form as the Essen conclusions, with the European Council setting out her approach to the employment challenge at both the national and the community level. At the European level emphasis is placed on the continuation of a coordinated macroeconomic policy, underpinned by an efficient internal market. Further development of the internal market was to take place on the basis of the “action plan for the single market” that had been published by the commission in June that year with the ambition of completing the internal market by the 1st of January 1999²¹³. In addition, the Council draws special attention and gives its approval to two sets of initiatives specifically geared to developing employment. The first initiative was an action program of the European Investment Bank, which made an additional 10 billion ECU funding available to support small and medium-sized enterprises (SMEs), new technology and trans-European networks. The second concerned an initiative of the European Parliament providing for a 450 million ECU strengthening of budgetary resources earmarked for employment.

Furthermore, the European Council decided to put the provisions of the new Title on employment in the Treaty of Amsterdam into effect immediately²¹⁴. The Commission to this end had already published her first draft proposal for employment guidelines for 1998 in October 1997²¹⁵. The guidelines as adopted by the Social Affairs Council in December 1997²¹⁶ were divided into four pillars:

1. *Improving employability*, aimed at improving access of the unemployed to the labour market by developing a preventive approach regarding long-term

²¹² Presidency conclusions of the extraordinary European Council meeting on employment, Luxembourg, November 1997, par 2.

²¹³ See Commission, ‘Communication to the European Council - Action plan for the single market’ CSE 97/1 final. The action plan set out a strategy based on four specific targets; making the rules more effective, dealing with key market distortions, removing sector specific obstacles to market integration and delivering a single market for the benefit of all citizens. This action plan was followed by a specific action plan for improving the free movement of workers. Its main focus was improving current secondary legislation and improving transparency of the labour market and visibility of the right of free movement, see Commission, ‘An action plan for free movement of workers’ COM(97)586.

²¹⁴ See Presidency conclusions of the extraordinary European council meeting on employment of 20 and 21 November 1997. The intention had already been expressed in the Resolution on growth and employment annexed to the presidency conclusions of the Amsterdam summit of 16/17 June 1997.

²¹⁵ See Commission, ‘Proposal for Guidelines for Member States Employment Policies 1998’ COM (97) 497 final.

²¹⁶ Council resolution of 15 December 1997 on the 1998 employment guidelines [1998] OJ C30/1.

unemployment and by implementing activation policies.

2. *Developing entrepreneurship* aimed at making it easier to start and run a new business and to recruit people, reducing administrative constraints and making the tax structure more employment friendly.
3. *Encouraging adaptability* both for business and their employees.
4. *Strengthening the policies for equal opportunities* by tackling the gender gap and reconciling work and family life.

Each heading consisted of several more detailed guidelines. Where the Commission proposal, similar to the Commission White Paper in 1993, contained a relatively large number of detailed quantitative targets (e.g. the creation of 12 million jobs in the first five years of the strategy), the guidelines in the Council text included only a few²¹⁷, with flexible deadlines²¹⁸, in some instances combined with benchmarking against the best performing Member States²¹⁹.

Member States handed in their first official National Action Plan (NAP) in the area of employment in the spring of 1998. No recommendations were made. Instead, the joint employment report²²⁰ issued by the Commission and Council had a positive focus, emphasising the strong commitment shown by Member States in their NAPs. Comparison between Member States progress is formulated in terms of “challenges” for the least performing²²¹, with a lot of attention paid to the identification of good practices within the EU. Furthermore, attention is drawn to the need to develop more and better common indicators to evaluate performance, but also better integration with the BEPGs and the European Social Fund.

²¹⁷ Instead of the quantitative goal set by the Commission the goal of achieving “a significant increase in the employment rate in Europe on a lasting basis” was installed.

²¹⁸ For example, in the area of tackling youth unemployment and preventing long-term unemployment a guideline was established that stated that “In order to influence the trend in youth and long-term unemployment the Member States will develop preventive and employability-oriented strategies, building on the early identification of individual needs; within a period to be determined by each Member State which may not exceed five years and which may be longer in Member States with particularly high unemployment, *Member States will ensure that every unemployed young person is offered a new start before reaching six months of unemployment*, in the form of training, retraining, work practice, a job or other employability measure”.

²¹⁹ For example, in the area “Transition from passive measures to active measures” it was stated that “Benefit and training systems - where that proves necessary - must be reviewed and adapted to ensure that they actively support employability and provide real incentives for the unemployed to seek and take up work or training opportunities. Each Member State will endeavor to increase significantly the number of persons benefiting from active measures to improve their employability. *In order to increase the numbers of unemployed who are offered training or any similar measure, it will in particular fix a target, in the light of its starting situation, of gradually achieving the average of the three most successful Member States, and at least 20%.*”

²²⁰ See Commission, ‘draft joint employment report’ SEC(1998)1688, adopted by the Social affairs and ECOFIN Council on the 1st of December 1998.

²²¹ The report, for example, states at page 5 that “The challenge in terms of raising the employment rate is relatively greater in Italy, Spain, Greece and Belgium.”

The four pillar approach was maintained in the employment guidelines for 1999, with a few new specific guidelines added²²². On the basis of the implementation of the 1998 NAPs and the newly formulated 1999 NAPs, the joint employment report draws several conclusions as to Member States' compliance with the commitments set out in the employment guidelines. The report concludes that employment performance of the EU as a whole is improving, but that progress varies across individual Member States. Major structural changes remain, with the employment rate still lagging significantly compared to the United States and Japan, long-term unemployment remaining a persistent and severe problem and low employment rates for older workers, youth and women. Member States are seen as responding to the challenges, but progress remains slow and comparability and governance is hindered by lack of common reliable indicators.²²³

Following up on this joint employment report the Commission decided, for the first time, to issue Member State specific recommendations (55 to be precise). Even though this aggressive move from the Commission was met by a frosty response from several Member States, which were irritated by excessive "finger pointing"²²⁴, the recommendations were almost entirely taken over by the Council²²⁵. With the subsequent setting of the employment guidelines for 2000 in March that year the scene was set for the European Council in Lisbon.

Next to the inclusion of a separate employment chapter, the Treaty of Amsterdam introduced changes in the area of social policy as well. The two-track approach to social policy mentioned earlier came to an end with the UK giving up its objections to the social protocol that had been agreed upon at Maastricht. The protocol was integrated in the main text of the social policy Title in the Treaty of Amsterdam. Even though the new Title XI of the Treaty of Amsterdam is mainly an integration of the protocol and the old Title VIII on social policy, some changes can be identified which, together with the integration of the employment Title, led to some confusion.

Article 136 first paragraph, for instance, stating the aim of the newly integrated social

²²² See, for example, the new guideline in the improving employability pillar: "Each Member State will review and, where appropriate, refocus its benefit and tax system and provide incentives for unemployed or inactive people to seek and take up work or measures to enhance their employability and for employers to create new jobs. In addition, it is important to develop, in the context of a policy for active ageing, measures such as maintaining working capacity, lifelong learning and other flexible working arrangements, so that older workers are also able to participate actively in working life".

²²³ Commission, 'draft joint employment report' SEC(1998)1688, chapters 1 and 2.

²²⁴ See Kenner, *EU employment law, from Rome to Amsterdam and beyond* (Hart Publishing, 2003) 479/480.

²²⁵ See Council Recommendation 2000/164/EC of 14 February 2000 on the implementation of Member States' employment policies [2000] OJ L 052. Even though the Council states that 'recommendations should be used sparingly, should concentrate on priority issues and should be based on sound and accurate analysis' and that "The Council acknowledges the significant efforts already undertaken by Member States with a view to implementing the Employment Guidelines; in the assessment of the impact of these policies, the multi-annual perspective of the Employment Guidelines should be taken into account." 52 of the Commission's 55 recommendations were adopted.

Title, reads as follows:

“The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives *the promotion of employment*, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labour, *the development of human resources with a view to lasting high employment* and the combating of exclusion.”²²⁶

The first thing that stands out is the referral to fundamental social rights of the European social charter and the Community Charter of the fundamental social rights of workers. Although not much more than a simple political declaration, this inclusion can be said to lead to the introduction of a normative framework of basic rights on the basis of which social policy should be conducted²²⁷. Moreover, there is a noticeable overlap between the goals of the social chapter and the newly introduced employment chapter. The relationship between the new employment chapter and the chapter on economic policy was recognized early on. The primacy of the economic policy coordination process was laid down in article 126(1) TEC, removing the (mainly German) fear of possible interference of the new employment Title with the constitution and functioning of EMU.

A similar clarification, however, is not given with regard to the interrelationship between the employment chapter and the social chapter. The new article 136 TEC clearly poses the promotion of (high) employment as one of the goals of the social chapter and gives several competencies to the Community in the area of employment that touch upon the different subjects mentioned in the employment guidelines, including the possibility to facilitate coordination in a large number of areas²²⁸. All together there was a significant overlap between the two chapters, and the lack of clarification meant that a danger for different approaches to the same issue under the employment and social chapters was created.

In the same way as giving the promotion of employment a more prominent role in the BEPGs would have been a way to solve the ambiguity between the economic and employment chapter, integrating the employment chapter and social chapters would have been a way to remove the danger of a two track approach. Next to political visibility issues discussed earlier, however, the clarification between the economic

²²⁶ Emphasis added.

²²⁷ See Barents, *Het verdrag van Amsterdam in werking* (Kluwer, 1999) 198.

²²⁸ See, for instance, the fourth pillar (equal opportunities) of the employment guidelines and art 141 TEC in the social chapter or the adaptability pillar and a community legislation based on the health and safety of workers provision.

policy guidelines and the employment guidelines that still would have been necessary could have posed significant political trouble. Giving primacy to economic policy coordination over employment policy coordination with the latter being integrated in the social chapter would have been a way of stating that the economic dimension of integration has primacy over the social dimension, a statement not easily and willingly made.

Even though the EC Treaty does not give a clear relationship between the social chapter and the employment chapter, this did not result in major problems in practice, mainly because of the change in philosophy behind EU social policy that had already started with the green and white papers on social policy of 1993 and 1994, as well as the link between the ESF and the Essen process mentioned earlier. This approach is confirmed by the Social Action Program 1998-2000²²⁹. Noticeably, the action program does exactly what the drafters of the Treaty did not do; it expressly integrates the employment Title as a part of social policy.

Developments during this period of political turmoil can be summarized in the following table. A red X again marks changing or emerging EU employment policy instruments, with a red arrow marking a change the strictness of coordination arrangements.

Table 5

Instruments Objectives	<i>Employment policy coordination</i> → (more binding)	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work	→ X			X	X
Improving the functioning and flexibility of markets	→ X	X			X
Improving the human capital stock	→ X			X	X
Improving framework conditions		X	X	X	
Short-term stabilisation policy	→ X				X

²²⁹ See Commission ‘Social action programme 1998-2000’ COM(98)259.

It is safe to say that the political spotlight that was put on employment issues and especially unemployment as a common European problem introduced several changes in the content and functioning of employment policy at the EU level. The fact that the road towards EMU coincided with this development significantly influenced the outcome as well. At the EU level, a neo-Keynesian spending approach to employment, as well as a large degree of centralisation was largely rejected in favour of a mainly national and labour supply-side oriented approach. However, short-term stabilisation policy in employment coordination and as far as the EU funds is concerned was partially introduced. The Essen process and the following specific employment policy coordination process as laid down in the Treaty of Amsterdam further increased the procedurally binding nature of coordination in this specific period. However, the largely political nature remained apparent and where the Treaty of Maastricht and the Stability and Growth pact introduced sanctions in the area of budgetary coordination, a similar move was not made in the area of employment policy coordination. Furthermore, the manner of integration of a separate employment Title in the Treaty of Amsterdam gave cause to some confusion and overlap with the four strands of employment policy discussed earlier. Economic policy was given a superior position, internal market policy was complementary, but especially the relationship with EU social policy remained unclear. The Social Action Program 1998-2000, which can be considered to include the first real steps towards social employment policy coordination, removed most ambiguities in this area.

3.6 Employment in the Lisbon Strategy

In March 2000, at the spring European Council in Lisbon, European leaders set a new strategic goal for the EU. By 2010 the Union was to become:

“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.”²³⁰

This new impetus for the economic development of the EU, while at the same time emphasising the social (and environmental) dimension, was perceived necessary since the Union at the time, in the words of its political leaders, was confronted with “a quantum shift resulting from globalisation and the challenges of a new knowledge-driven economy”, resulting in “changes affecting every aspect of people’s lives and therefore requiring a radical transformation of the European economy”²³¹.

The overall strategy consisted of three different sub-goals²³², and was designed (among other things) to enable the Union to regain the conditions for *full*, instead of

²³⁰ See European Council conclusions 23/24 March 2000, par 5.

²³¹ See European Council conclusions 23/24 March 2000, par 1.

²³² The three sub goals were

the familiar *high level of*, employment. The process of employment policy coordination, by then referred to as "the Luxembourg process", in this context was given credit for enabling Europe to substantially reduce unemployment, with 4 million people since its inception²³³, while it was also stated that at the same time 15 million Europeans were still out of work. The Luxembourg process was therefore to be given a new impetus by enriching the guidelines and giving them more concrete targets by establishing closer links with other relevant policy areas and by defining more effective procedures for involving the different actors²³⁴.

Even though the Lisbon summit initialised very little in terms of "new" processes, there were some procedural novelties that followed. The Council called for (further) integration of current instruments and emphasised the central role of the BEPGs. The BEPGs were to focus increasingly on the medium- and long-term implications of structural policies and on reforms aimed at promoting economic growth potential, employment and social cohesion, as well as on the transition towards a knowledge-based economy, something which in effect gave the BEPGs an umbrella function for the different aspects of the Lisbon strategy. The Luxembourg process fitted in as a tool to deal with employment matters in greater detail, and served as a role-model for setting up of Open Method of Coordination procedures in other areas like social inclusion²³⁵.

Coordination of national policies in all Lisbon-related areas was tightened and more specifically linked to two working modes, namely that of public and peer pressure and that of policy learning on the basis of best practices. The aspect of peer pressure is based on the yearly process of country specific recommendations. New in this area

-
- preparing the transition to a knowledge-based economy and society by better policies for the information society and R&D, as well as by stepping up the process of structural reform for competitiveness and innovation and by completing the internal market;
 - modernizing the European social model, investing in people and combating social exclusion;
 - sustaining the healthy economic outlook and favorable growth prospects by applying an appropriate macroeconomic policy mix.

²³³ See Commission, 'Joint Employment report' COM(2000)1688 final.

²³⁴ The European Council in this regard set out four priority areas for further action:

Improving employability and reducing skills gaps, in particular by providing employment services with a Europe-wide data base on jobs and learning opportunities; promoting special programs to enable unemployed people to fill skill gaps;

Giving higher priority to lifelong learning as a basic component of the European social model, including by encouraging agreements between the social partners on innovation and lifelong learning; by exploiting the complementarity between lifelong learning and adaptability through flexible management of working time and job rotation;

Increasing employment in services, including personal services, where there were major shortages; private;

Furthering all aspects of equal opportunities, including reducing occupational segregation, and making it easier to reconcile working life and family life, in particular by setting a new benchmark for improved childcare provision.

²³⁵ Other processes of coordination that had been installed in the late nineteen nineties, and which were also integrated in the Lisbon strategy (think of the Cologne process of macroeconomic dialogue and the Cardiff process of structural reform in product and capital markets) will not be dealt with here.

was that with the change of the central employment goal from achieving *a high level of employment* to achieving *full employment* also came the setting of concrete targets, something that was avoided in the past. The overall EU employment rate was to be raised from an average of 61% to as close as possible to 70% by 2010 and the number of women in employment from an average of 51% to more than 60% by 2010²³⁶. The increased public nature of both country specific recommendations and targets as well as the discussion of matters on a political level, most prominently in the European Council, was to induce pressure on national governments to make the right policy decisions. The aspect of policy learning is centred on the mutual provision of information and discussion of policy actions taken in Member States. This would lead to countries “learning” from each other, and taking over and adapting practices that had served well in other countries.

Shortly after the Barcelona European Council of March 2002 had identified “active policies towards full employment; more and better jobs” as one of three priority areas within the Lisbon strategy that needed extra impetus²³⁷ the Commission published its five year review of the European Employment Strategy²³⁸. The exercise, which was jointly carried out by the Commission and Member States, identified several shortcomings in the functioning of the EES. Its conclusions, together with those of the independent study conducted by the “employment taskforce”, chaired by former Dutch Prime Minister Wim Kok, on key employment related policy challenges in the EU in 2003²³⁹ again led to a number of changes in the EES. First of all, emphasis is put on the need for the EES to focus more on the medium-term policy challenges created by the changing context of the EU, such as globalisation, enlargement and ageing. Three overarching goals are established in this regard, including raising employment and participation rates, improving quality at work and promoting productive jobs, and promoting an inclusive labour market. Taking these three goals as a starting position, the guidelines have been simplified. Changing and fine-tuning the existing guidelines on a yearly basis had led to an extensive and complex system, in which the hierarchy of priorities had become blurred and the four pillars mentioned earlier had lost part of their intrinsic coherence²⁴⁰. It was therefore decided that the guidelines should only be fully reviewed once every three years, with the guidelines

²³⁶ The Stockholm European Council of 23/24 March 2001 added the goal of achieving an employment rate of 50% for older workers (55-64) and set intermediate targets to be reached by 2005 (67% total, 57% for women).

²³⁷ See Presidency Conclusions of the Barcelona European Council of 15/16 March 2002.

²³⁸ Commission, ‘Taking stock of five years of the European Employment Strategy’ COM(2002) 416.

²³⁹ Employment Taskforce, ‘Jobs, Jobs, Jobs. Creating more employment in Europe’ (2003).

²⁴⁰ The increased complexity shows clearly when comparing the 1998 with the 2002 guidelines. The first guidelines for 1998 consisted of 19 specific actions under the four pillars mentioned earlier. The 2002 guidelines included 18 actions under the same four pillars, with most of these actions divided into a number of sub actions. In addition, six “horizontal objectives” had been added.

in 2003 covering the period 2003-2005²⁴¹. This working method was maintained until the end of the Lisbon strategy in 2010.

As far as economic policy coordination is concerned, the central umbrella function given by the Lisbon Council to the BEPGs did not change much for the area handling employment. The 2000 BEPGs still mention the need for wage moderation in the context of macroeconomic stability and refer to the employment guidelines for structural measures to improve the employment situation in Member States. The shift of focus towards more medium-term policy challenges and the new three year cycle installed for the employment guidelines in 2002 was also implemented with regard to the BEPGs, further aligning the two processes.²⁴²

The social cohesion goal of the Lisbon strategy finds a place in the BEPGs for 2000 interpreted as “creating better framework conditions for high employment and low unemployment”²⁴³. This should not come as a surprise since it has already been highlighted that in the aftermath of the Growth and Jobs White Paper in 1993 the traditional harmonisation approach to EU social policy had been largely abandoned, in favour of a more flexible approach seeing social policy as an integrative part of EU competitiveness. The social policy agenda 2000-2005 elaborates on the position of social policy in the Lisbon strategy, and more specifically, on the role of social policy as a productive factor²⁴⁴. The employment chapter of the EC Treaty is still seen as an integral part of social policy. The overall focus lies on the promotion of *quality*, striving for more and better jobs, based on high skills, fair labour standards and decent levels of occupational health and safety. Improved quality in this regard also meant, for instance, a high level of social protection to underpin productivity and to facilitate adaptation to change. A whole range of (mainly non legislative) proposals for action are set out²⁴⁵.

The coherence between the Luxembourg process and the EU Structural Funds, especially the European Social Fund, had also been identified as a challenge in the mid-term review of the Luxembourg process. The Treaty of Amsterdam had omitted to create a formal link between the provisions of the new employment chapter and the provisions on the European Social Fund. The Structural Fund Regulation for the period 2000-2006²⁴⁶, next to reducing and simplifying²⁴⁷ the system, had also,

²⁴¹ See in this regard also Commission, ‘Strengthening the implementation of the European Employment Strategy’ COM(2004)239.

²⁴² For more info on the exact procedural changes see Commission, ‘Streamlining the annual economic and employment policy coordination cycles’ COM(2002)487.

²⁴³ Council Recommendation of 19 June 2000 on the broad economic policy guidelines of the Member States and the Community [2000] OJ L 210, 6.

²⁴⁴ See Commission, ‘Social policy agenda’ COM(2000)379, 5.

²⁴⁵ Noteworthy exception here is the conclusion in this period of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299 modifying Directive 93/104/EC of the Council of 8 February 1993 concerning certain aspects of the organisation of working time [1993] OJ L 38.

²⁴⁶ See Regulation 1260/1999 of the Council of 21 June 1999 laying down general provisions on the

together with the Regulation on the ESF remedied this omission by stating that the Fund “shall support measures to prevent and combat unemployment and to develop human resources and social integration into the labour market in order to promote a high level of employment, equality between men and women, sustainable development, and economic and social cohesion” and that “In particular, the Fund shall contribute to the actions undertaken in pursuance of the European Employment Strategy and the Annual Guidelines on Employment”.²⁴⁸

The completion of the internal market was also included as part of the Lisbon strategy. The timing and the manner in which this was to be accomplished is set out in two successive internal market strategies in 1999 and 2002²⁴⁹. Improving the free movement of workers was an important part of the internal market strategy, where the goal was to ensure the European labour markets are open and accessible to all by 2005²⁵⁰. Under the title “reinforcing and promoting the full use of the rights of citizens” the internal market strategy sets out a number of target actions, varying from information provision to the adaptation and simplification of legislation in areas, such as social security regulation and professional qualifications²⁵¹. A yearly evaluation by the Commission is foreseen as input for the Spring European Council and therewith the Lisbon strategy. The announced adaptation and simplification of the Professional Qualifications Directive entered into force in 2005²⁵². Beyond a few innovations, it mainly consolidated and simplified fifteen previous Directives, some of which dated back to the 1960s²⁵³. The adaptation and simplification in the area of social security

Structural Funds [1999] OJ L 161.

²⁴⁷ Only three remained:

1. promoting the development and structural adjustment of regions whose development is lagging behind
2. supporting the economic and social conversion of areas facing structural difficulties
3. supporting the adaptation and modernisation of policies and systems of education, training and employment

²⁴⁸ See Regulation (EC) 1784/1999 of the European Parliament and the Council of 12 July 1999 on the European Social Fund [1999] OJ L 213, art 1.

²⁴⁹ See Commission, ‘The strategy for Europe’s Internal Market’ COM(1999)624 and Commission ‘Internal Market strategy, priorities 2003-2006’ COM(2003)238.

²⁵⁰ See Commission, ‘New European Labour Markets, Open to All, with Access for All’ COM(2001)116.

²⁵¹ See Commission, ‘The strategy for Europe’s Internal Market’ COM(1999)624 and Commission ‘Internal Market strategy, priorities 2003-2006’ COM(2003)238.

²⁵² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255.

²⁵³ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [1988] OJ L 19, Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [1992] OJ L 209 and European Parliament and Council Directive 99/42/EEC of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the General Systems for the recognition of qualifications [1999] OJ L 201. The 2005 Directive also simplifies and consolidates a large number of more specific Directives for the nineteen sixties,

entered into force in 2010²⁵⁴. The original basic principles remain unchanged, but the technical details, procedures and scope of application of the rules have evolved significantly. Furthermore, basic principles for citizens of the Union and their family members to move and reside freely within the territory of the Member States were introduced with Directive 2004/38/EC²⁵⁵, laying down specific situations for workers and self-employed.

Next to these actions, a landmark development in improving the functioning of the internal market was the Commission's proposal for a general Directive on services in the internal market. The aim of this Directive was to "establish a clear and balanced legal framework aiming to facilitate the conditions for establishment and cross-border service provision"²⁵⁶. The highly ambitious Commission proposal was published in early 2004²⁵⁷ and immediately met resistance in the public opinion, since the proposal was feared to clear the way for social dumping and was believed to lead to a race to the bottom regarding workers' rights²⁵⁸. This fear was fuelled by both the very wide scope of application on services as well as the famous "country of origin" principle that the Directive entailed. Pressure from the European Parliament led to a revised Commission proposal in 2006 in which the scope was limited and the country of origin principle was replaced with the general concept of free provision of services. The Directive was adopted at the end of 2006²⁵⁹, and entered into force in 2010²⁶⁰.

The increased drive for consistency and simplification was followed up at the Lisbon strategy's 2005 midterm review. In preparation, a high level group (again chaired by Wim Kok) was installed to evaluate Lisbon's progress and to make recommendations for improvement. Its final report is highly critical and includes proposals for significant reforms. The report concludes that, even though some progress can be observed (especially in the area of employment), the EU is significantly behind on achieving its main strategic goals and will not achieve them unless a significant

seventies and eighties on professional qualifications in the areas of craft commerce and industry, health professionals and architects.

²⁵⁴ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166 and Regulation 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284.

²⁵⁵ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158.

²⁵⁶ Commission, 'Internal Market strategy, priorities 2003-2006' COM(2003)238.

²⁵⁷ Commission, 'Proposal for a Directive on services in the Internal Market' COM(2004)2.

²⁵⁸ See e.g. Barnard, 'Unravelling the services Directive' (Common Market Law Review 45, 2008).

²⁵⁹ Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376.

²⁶⁰ See also Timmerman, 'Legislating amidst public controversy; the services Directive' (Egmond royal institute for international relations, Egmond paper 32, 2009).

change is made to the functioning of the process²⁶¹.

The report does not question the strategic goals or the timeline set to achieve them. Both are still seen as valid and essential for maintaining and improving the competitiveness of the EU economy. It is the inadequate implementation due to lack of focus and political will and commitment that is subject of criticism. The report therefore focuses on ways to increase national commitment and force Member States to take responsibility for implementation by increasing coherence and transparency²⁶². Recommendations in the area of national commitment include the obligation to formulate national reform programs, setting out road maps, including milestones how each Member State plans to achieve the Lisbon targets, the installation in Member States of a political “Mr. (or Mrs.) Lisbon” responsible for the implementation of the Lisbon strategy and increased use of the principle of “naming and shaming”. The most important changes proposed concerning the content of the Lisbon strategy are a renewed, and narrower focus, namely “growth and jobs” and increasing the consistency between the BEPGs and the employment guidelines. With the exception of the increased naming and shaming, the Commission in its proposals for revision of the strategy²⁶³, which in turn are largely followed by the following European Council²⁶⁴, took over the majority of the recommendations in the Kok report. An extension of the Kok report is the creation of a Community Lisbon action program²⁶⁵ to match the national reform programs with the intention to create further clarity on the division of responsibilities between national and European level. Furthermore the BEPGs and employment guidelines are officially integrated in one document and increased consistency between expenditure under the EU Structural Funds and the Lisbon program is again emphasised. Noteworthy is also the Commission’s mentioning of possible consequences of the 2005 revision of the Stability and Growth Pact (SGP) in the area of macroeconomic policy. These changes led to a relation of rules in the preventive as well as the corrective arm of the SGP, with the possibility of exceptions to the rules for budgetary discipline if transgressions were caused by implementation of structural reforms and the Lisbon strategy in general²⁶⁶. This, according to the Commission, would create further possibilities for national Lisbon-related structural reform, because these considerations could be taken into account

²⁶¹ See report from the high level Group chaired by Wim Kok, ‘Facing the challenges; the Lisbon strategy for growth and employment’ (November 2004) 6/7.

²⁶² Furthermore, a number of recommendations are made to improve the involvement of different stakeholders, as well as that of the national parliaments and the European Parliament.

²⁶³ Commission, ‘Working together for growth and jobs; a new start for the Lisbon strategy’ COM(2005)24.

²⁶⁴ See Presidency conclusions of the European Spring Council, Brussels, 22/23 March 2005.

²⁶⁵ See Commission, ‘Common actions for growth and employment, the Community Lisbon program’ COM(2005)330.

²⁶⁶ See Council Regulation (EC) 1055/2005 amending Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2005] OJ L 174 and Council Regulation (EC) 1056/2005 amending Regulation (EC) 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [2005] OJ L 174.

when assessing Member States' stability and convergence programs²⁶⁷. In effect, the Commission statement indicates that the strict budgetary rules that had limited neo-Keynesian employment creating expenditure in the 1990s are in fact not so strict anymore when it comes to the Lisbon strategy's objectives²⁶⁸.

When examining the first set of integrated guidelines (BEPGs and employment guidelines) for the period 2005-2008 it can be observed that the employment guidelines now account for eight out of a total of twenty-four guidelines²⁶⁹, with one overarching guideline namely that "Member States should implement employment policies aiming at achieving full employment, improving quality and productivity at work, and strengthening social and territorial cohesion"²⁷⁰. The efforts to increase the interlinkage and coherence between the BEPGs and the employment guidelines, besides being integrated in one document, are also reflected in the extensive reference that is made in the employment guidelines to the BEPGs and vice versa²⁷¹.

Whereas the overlap and need for consistency between the BEPGs and the employment guidelines took centre stage, the relationship between the social strand of employment policy and the EES as developed since the Growth and Jobs White Paper in 1993 remained unaltered. The new social agenda 2005-2010 lists a number of actions under two priority areas, "moving towards full employment" and "a more cohesive society". The first priority fully overlaps with the EES. The second priority does so partially. Extensive reference is made to "other" Open Method of Coordination (OMC) processes that, with the Luxembourg process as example, had been installed after Lisbon, namely those on social inclusion, pensions and healthcare.

²⁶⁷ See consolidated version of Council Regulation (EC) No 1466/97 as amended by Regulation 1055/2005 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, especially art 5 and 9.

²⁶⁸ Commission, 'Working together for growth and jobs; a new start for the Lisbon strategy' COM(2005)24, 13.

²⁶⁹ See Council Decision 2005/600/EC of 12 July 2005 on Guidelines for the employment policies of the Member States [2005] OJ L 205.

- Guideline No 18: Promote a lifecycle approach to work
- Guideline No 19: Ensure inclusive labour markets, enhance work attractiveness, and make work pay for job-seekers, including disadvantaged people, and the inactive
- Guideline No 20: Improve matching of labour market needs
- Guideline No 21: Promote flexibility combined with employment security and reduce labour market segmentation, having due regard to the role of the social partners
- Guideline No 22: Ensure employment-friendly labour cost developments and wage-setting mechanisms
- Guideline No 23: Expand and improve investment in human capital
- Guideline No 24: Adapt education and training systems in response to new competence requirements

²⁷⁰ See Council Decision 2005/600/EC of 12 July 2005 on Guidelines for the employment policies of the Member States [2005] OJ L 205, 2.

²⁷¹ See for instance the relationship between guideline 18 (promoting a life cycle approach to work) and BEPG nr 2 (to safeguard economic and fiscal sustainability) and, even more clearly, the relationship between guideline 22 (Ensure employment-friendly labour cost developments and wage-setting mechanisms) and BEPG nr 4 (to ensure that wage developments contribute to macroeconomic stability and growth).

The position of these OMC processes was a curious one. Especially the social inclusion OMC process had a large overlap with the EES. Furthermore, the possibilities for community incentive measures in employment and social policy were integrated in the community program for employment and social solidarity (PROGRESS)²⁷². At the same time, however, these OMC systems were not taken into account in the integration of guidelines with the restructuring of Lisbon, and kept separate from the integrated growth and jobs guidelines. This partly reflects the new focus of the Lisbon strategy, which was “growth and jobs” and not social policy per se, but it also shows the hesitance to integrate social and employment policy, and therewith economic policy. Exemplary in this case is a 2005 Commission communication on the future of the social OMC processes, emphasising the need for further alignment with the EES and the BEPGs in the context of the Lisbon restart, while at the same time forcefully stating that the “distinct nature and scope of the inclusion and pensions processes” were to remain intact²⁷³. A distinct nature which also incorporated a very limited use of peer pressure, with almost sole focus on policy learning and best practice as tools for coordination in this area.

Next to the focus on coordination measures, the first years after the Lisbon relaunch also saw an increased attention for EU social employment policy legislation. The Commission communication on the implementation of the Lisbon strategy of December 2006²⁷⁴ had formulated a priority area in the area of employment as “Greater adaptability of labour markets based on flexicurity”. The focus on this subject was mainly due to the still limited progress in the area of adaptability (a problem already identified at the time of the EES midterm review in 2000), but new was the concept of “flexicurity”. Flexicurity was based on the Danish employment system, and was focused upon by the Austrian presidency at the time. It is based on the idea of worker security instead of job security, entailing measures to increase the flexibility of the labour market while at the same time ensuring effective social protection and lifelong learning. Through this it can be linked to all three of the main objectives of the EES, namely to attract and retain more people in employment, increase labour supply and modernise social protection systems; improve adaptability of workers and enterprises; increase investment in human capital through better education and skills. The concept of flexicurity was thoroughly debated among Member States and with the social partners²⁷⁵. Together with the results of an expert

²⁷² TFEU See Council decision establishing a community program for employment and social solidarity, 1672/2006, art 9 based on art 129 and 137(2)a TFEU. The program created possibilities for funding of analysis, mutual learning and support for main actors in the areas of employment, social protection and inclusion, working conditions, antidiscrimination and diversity and gender equality.

²⁷³ See Commission, “Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union” COM(2005)706.

²⁷⁴ Commission, ‘Implementing the renewed Lisbon strategy for growth and jobs; a year of delivery’ COM (2006)816.

²⁷⁵ See, for instance, the EU press release of the stakeholder flexicurity conference of the 20th of April 2007, ‘European partners join lively debate on flexicurity’ IP/07/519.

group that was to further investigate the subject²⁷⁶, this discussion led to a 2007 Commission communication on flexicurity in which different pathways and common principles were set out²⁷⁷. At the same time, the adaptability part of the flexicurity concept spurred discussion in the area of labour law at both the national and the European level. A Commission Green Paper on “modernizing labour law to meet the challenges of the 21st century” was published in November 2006²⁷⁸. With the green paper a public consultation process was initiated to identify key challenges, engage Member States, social partners and other stakeholders in an open debate and stimulate discussion. There was a wide divergence of opinions on the issue. As regards EU employment law the divergence of views centred on two main issues²⁷⁹: the nature of EU action and the division of competences between the EU and Member States. Part of the respondents, consisting mostly of trade unions and social NGOs, but also some academics and Member States, question the dominant focus in the Lisbon strategy on labour law as an integral part of EU competitiveness²⁸⁰. Instead they prefer considering labour law reform in the framework of fundamental human rights²⁸¹. Divergence also occurs in preference for division of competences, differing from a preference for reinstalling full national sovereignty to urging the Commission to use its right of initiative more proactively in the interests of “social Europe”, stating that emerging European labour markets can no longer be managed by relying on national rules in the social sphere. Both the Communication of flexicurity and the results of the Green Paper on labour law served as input for common principles on flexicurity which were later agreed by the EPSCO Council in December 2007²⁸² that year and endorsed by the December European Council²⁸³.

²⁷⁶ See final report of the European expert group on flexicurity, ‘Flexicurity pathways, turning hurdles into stepping stones’ (June 2007).

²⁷⁷ See Commission, ‘Towards Common Principles of Flexicurity: More and better jobs through flexibility and security’ COM(2007)359. In addition in the more specific area of health and safety of workers the Commission in February 2007 published a new strategy for health and safety at work for the period 2007-2012 COM(2007)62. Legislation in this area is seen, just as labour law in general, as an integral part of increasing EU competitiveness.

²⁷⁸ Commission, ‘Green paper on modernising labour law to meet the challenges of the 21st century’ COM(2006)708. The Commission had already announced this green paper in its social agenda 2005-2010 mentioned earlier.

²⁷⁹ See Commission, ‘Outcome of the public consultation on the Commission’s Green paper “Modernising labour law to meet the challenges of the 21st century” COM(2007)627.

²⁸⁰ This focus in fact had already been installed in the early 1990s with the growth and jobs white paper mentioned earlier.

²⁸¹ In particular the charter of fundamental rights of the EU as proclaimed in Nice by the President of the EP, Council and Commission on the 7th of December 2000. The charter was subsequently included in the Lisbon Treaty, where art 6.1 states that the “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.” While “The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”

²⁸² See Conclusions of the Employment and Social Affairs Council of 5/6 December 2007, ‘Towards common principles of flexicurity’.

²⁸³ See Presidency conclusions of the European Council of 14 December 2007.

The EU Structural Funds, and especially the ESF, also did not remain unaffected by the restructuring of the Lisbon strategy. The new Structural Funds Regulations for the period 2007-2013 not only maintained the explicit link between the ESF and the European Employment Strategy²⁸⁴, but, 60% of the total Structural Fund budget under the new objective 1 (convergence for least developed regions) and 75% under the new objective 2 (regional competitiveness and employment objective for regions not falling in objective 1) is explicitly linked to expenditure targeting the European Union's priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008)²⁸⁵.

One can portray the developments during this period in the following summarising table. A red X again marks changing or emerging EU employment policy instruments, with a red arrow marking a change the strictness of coordination arrangements.

Table 6

Instruments Objectives	<i>Employment policy coordination</i> → <i>(more binding)</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i> → <i>(more binding)</i>	
Increasing incentives for work	→ X			→ X	X
Improving the functioning and flexibility of markets	→ X	X			X
Improving the human capital stock	→ X			→ X	X
Improving framework conditions	→ X	X	X	→ X	
Short-term stabilisation policy	X				

²⁸⁴ See Regulation 1081/2006 of the European Parliament and the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999 [2006] OJ L 210, art 2.1.

²⁸⁵ See Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, art 9.3. See also Commission Regulation 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund [2006] OJ L 371/1.

The main changes occurring during this period were linked to the installation of the Lisbon strategy. The emergence of concrete quantitative targets along with increased use of peer pressure and policy learning on a political level increased the manner in which employment policy coordination linked to the various objectives was binding to the Member States. The issue of short-term stabilisation policy formed an exception in this regard, as it did not fit well with the medium- to long-term focus of the strategy. Short-term stabilisation policy was also absent in the EU funds spending instrument during this period. Social employment policy coordination was procedurally intensified by the installation of the open method of coordination in the area of social protection and social inclusion.

3.7 The Europe 2020 strategy and Europe in crisis

The Lisbon strategy came to an end in 2010 amidst a severe economic and financial crisis. EU GDP had fallen by 4% in 2009, with unemployment approaching 10% and government debt levels having increased by 20 percentage points over two years. The Commission's own evaluation of the Lisbon strategy is heavily influenced by this dismal economic situation²⁸⁶. The document comes to the conclusion that the ultimate effect of the strategy on growth and jobs is not straightforward to analyse, and focuses more on the effects the strategy has had on promoting structural reforms in Member States. Several weaknesses are identified. The lack of ownership of the strategy among stakeholders and the difference in reform efforts between countries and policy areas come back again, as do the still insufficient links between the strategy and more specific EU instruments such as the social agenda. The economic crisis furthermore had several effects on the nature of economic policy coordination. First, the Commission had revived and strengthened short-term stabilisation policy as a matter of common concern in its European Economic Recovery Plan published in November 2008²⁸⁷ and approved by the European Council in December 2008²⁸⁸. In this communication the Commission proposes a two pillar approach to handling the crisis with "targeted, timely, temporary and coordinated action", namely by boosting demand and stimulate confidence, where Member States and the EU would agree to an immediate budgetary impulse amounting to 200 billion euro, or 1.5% of GDP. This new-Keynesian demand stimulating policy of course had to respect the Stability and Growth Pact, but possibilities here had been widened significantly since its change in 2005²⁸⁹. Moreover, direct short-term action to reinforce Europe's competitiveness in the long term are proposed. In this regard the Plan sets out a comprehensive programme to direct action to "smart" investment, for instance, in skills.

²⁸⁶ Commission, 'Lisbon strategy evaluation document' SEC(2010)114.

²⁸⁷ Commission, 'A European Economic Recovery Plan' COM(2008)800.

²⁸⁸ European Council conclusions December, Brussels, 11/12 December 2008.

²⁸⁹ See section 3.5.

Second, the crisis is also cause for some new reflections on the specific focus and nature of the Lisbon strategy. Specifically, the Commission identifies a lack of attention for competitiveness problems and macroeconomic imbalances. These in the view of the Commission were at the root of the economic crisis, and were not adequately addressed in the surveillance of Member States' economies carried out through the Stability and Growth Pact and the Lisbon Strategy. Together with this criticism the Commission identifies a lack of attention for the specific nature of the euro area in the strategy. Given the fact that with a single currency economic adjustment and convergence has to come from adjustment in real economic variables the euro area should have been put under stricter surveillance.

With the Lisbon strategy coming to an end in 2010, the Europe 2020 strategy for smart, sustainable and inclusive growth and jobs was presented as its successor and agreed upon at the June 2010 European Council. The Europe 2020 strategy aimed at achieving five EU level headline targets in 2020, three of which fall in the area of employment policy²⁹⁰.

1. The participation target of 70% under the Lisbon strategy was replaced by a participation target of 75%, with a slightly different age group²⁹¹.
2. Increasing education level is added, with concrete targets of reducing school drop-out rates below 10% at least 40% of 30-34 year-olds completing third level education.
3. To decrease the number of people living in poverty or social exclusion by 20 million, defined according to according to three indicators²⁹².

Programmes to achieve these objectives, or “flagships”, were to be set up in seven different areas²⁹³ where EU and national authorities would have to coordinate their efforts. Also, EU instruments like the internal market and the EU budget would have to be further aligned to achieving these objectives²⁹⁴. To increase commitment at the national level and increase possibilities for peer pressure, countries were to translate the EU wide targets into differentiated national targets.

²⁹⁰ The other two are

- R&D/innovation; 3% of the EU's GDP is to be invested in R&D/innovation
- Climate change/energy; Green house gas emissions 20% lower than 1990 20% of energy from renewables and 20% increase in energy efficiency.

²⁹¹ Instead of 15-64 it is now aimed at people 20-64 to better reflect the education status of people between 15-20.

²⁹² at-risk-of poverty; material deprivation; jobless household.

²⁹³ 1. Digital agenda for Europe, 2. Innovation Union, 3. Youth on the Move, 4. Resource efficient Europe, 5. An industrial policy for the globalisation era, 6. An agenda for new skills and jobs and 7. European platform against poverty.

²⁹⁴ See Commission, ‘Europe 2020, A European Strategy for smart sustainable and inclusive growth’ COM(2010)2020.

Linked to this system is a new system of monitoring in the form of a European semester²⁹⁵. Placed at the beginning of the year, this new semester simultaneously incorporates the national monitoring and reporting under the Stability and Growth Pact and the performance of the Europe 2020 strategy. The Council would address country-specific recommendations to Member States, and the Commission, in the case of non-compliance, would issue policy warnings. The latter was a new power conferred to the Commission in the Treaty of Lisbon²⁹⁶ as an addition to what is now article 121 of the Treaty on the Functioning of the European Union (TFEU)²⁹⁷ on economic policy coordination, as was the fact that policy recommendations under article 121(4) TFEU would now be taken without the vote of the Member State involved being taken into account. Where the form of this monitoring process had been created on an ad hoc basis, the European semester is, for the first time, laid down in secondary Union law, added to the already existing Regulation 1466/97 signifying the so-called preventive arm of the Stability and Growth Pact²⁹⁸.

The basis of this monitoring system was a new set of integrated guidelines, now a total of ten, with four pertaining specifically to employment policy coordination, namely²⁹⁹ increasing labour market participation of women and men, reducing structural unemployment and promoting job quality; developing a skilled workforce responding to labour market needs and promoting lifelong learning; improving the quality and performance of education and training systems at all levels and increasing participation in tertiary or equivalent education; promoting social inclusion and combating poverty.

Simultaneous to the introduction of the Europe 2020 strategy and the European semester a wide process was initiated to further strengthen economic policy coordination. Two aspects of this process are of particular relevance for this study. The first one is the conclusion of the Euro Plus Pact. Originally a German idea, this pact which was concluded at the Spring European Council in 2010 was meant to increase political commitment for concrete economic reform in, e.g., the areas of

²⁹⁵ Elaborated in Regulation 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Regulation 1466/97 of the Council on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306, section 1-a.

²⁹⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306/01.

²⁹⁷ The Treaty of Lisbon amended the EU's two core treaties, the Treaty on European Union and the Treaty establishing the European Community. The latter is renamed the Treaty on the Functioning of the European Union.

²⁹⁸ Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Regulation 1466/97 of the Council on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306.

²⁹⁹ See Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union [2010] OJ L 191 and Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 205.

employment and competitiveness³⁰⁰. The 23 countries participating³⁰¹ would commit themselves to specific reform efforts on a year-by-year basis, the progress of which would be reviewed annually by Heads of State or Government. The second aspect was the increased attention for the concept of macroeconomic surveillance in the area of macroeconomic imbalances and competitiveness, with a particular emphasis on euro area Member States³⁰². Two guidelines on this subject were included in the integrated guidelines. Furthermore, the European Commission proposed, as part of a broader legislative package to strengthen economic governance³⁰³ referred to as the Six Pack, two Regulations setting up a separate monitoring system in this area in September 2010, which after some alterations after debate with Council and European Parliament, entered into force in December 2011³⁰⁴. The new surveillance mechanism is largely set up along the lines of the Stability and Growth Pact, with a preventive and a corrective arm, the latter including the possibility of financial sanctions for euro area Member States. In its application it relies on an alert mechanism that uses a scoreboard of indicators and in-depth country studies and better enforcement in the form of financial sanctions for euro area Member States whose economies are characterised by severe macroeconomic imbalances and that do not follow up on recommendations.

The scope of the new procedure is defined by the concept of “macroeconomic imbalances”, which in article 2(1) of the Regulation on the prevention and correction of macroeconomic imbalances is defined as “any trend giving rise to macroeconomic developments which are adversely affecting, or have the potential adversely to affect, the proper functioning of the economy of a Member State or of the Economic and Monetary Union, or of the Union as a whole”. Further clarification of this definition can be found in the alert mechanism that is used, or the so called scoreboard. The scoreboard, which is drawn up by the Commission in close cooperation with the European Parliament and the Council³⁰⁵, includes a number of indicators linked to the labour market, most importantly an indicator of unit labour costs and an indicator of unemployment³⁰⁶. Constant and excessive rising of unit labour costs as well as

³⁰⁰ The other two areas included are the sustainability of public finances and reinforcing financial stability, see European Council conclusions, Brussels, 11 March 2011.

³⁰¹ The 27 EU Member States except for the UK, Hungary, Czech Republic and Sweden

³⁰² See also Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union [2010] OJ L 191, guidelines 2 and 3.

³⁰³ Economic governance is used in this study as comprising the rules, processes and behavior that determine the way economic policy is exercised at the national and European level in the European Union (EU), a definition based on Commission, ‘European Governance. A White Paper’ COM(2001) 428.

³⁰⁴ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306 and Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306.

³⁰⁵ See Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, recital 12.

³⁰⁶ Envisaged design of the scoreboard (November 2011)

excessive levels of unemployment are the main employment related indicators of potential harmful imbalances.

The position of the other instruments of EU employment policy has already been briefly mentioned in the beginning of this section. Internal market policy was deemed one of the central EU instruments for the obtainment of the Europe 2020 objectives. Furthermore, internal market policy in the area of employment was also an important part of several of the flagships initiatives, most notably “an agenda for new skills and jobs” and “youth on the move”. The European Commission in April 2011 published a Communication, setting out “twelve levers to boost growth and increase confidence”³⁰⁷. Three of those relate to the subject here, namely “mobility for citizens”, “services” and “social cohesion”. Under the first heading the Commission announces legislation modernising the system for recognising professional qualifications, for which the Commission presented a proposal in December 2011³⁰⁸. The aim is to simplify procedures for the mutual recognition of mobile workers, modernise the legislative framework, review the scope of regulated professions and strengthen trust and cooperation between Member States. Under the heading of services, the Commission emphasises the need for full implementation and application of the services Directive, something which was not fully yet the case even though the implementation deadline had expired for more than a year. Under social cohesion, the Commission announced legislation aimed at improving and reinforcing the transposition, implementation and enforcement in practice of the Posting of workers Directive, which was presented in March 2012³⁰⁹. Furthermore, Regulation

-
- 3 year backward moving average of the current account balance as a percent of GDP, with the a threshold of +6% of GDP and - 4% of GDP;
 - net international investment position as a percent of GDP, with a threshold of -35% of GDP;
 - 5 years percentage change of export market shares measured in values, with a threshold of -6%;
 - 3 years percentage change in nominal unit labour cost, with thresholds of +9% for euro-area countries and +12% for non euro-area countries.
 - 3 years percentage change of the real effective exchange rates based on HICP/CPI deflators, relative to 35 other industrial countries, with thresholds of -/+5% for euro-area countries and - /+11% for non-euro-area countries;
 - private sector debt in % of GDP with a threshold of 160%;
 - private sector credit flow in % of GDP with a threshold of 15%;
 - year-on-year changes in house prices relative to a Eurostat consumption deflator, with a threshold of 6%;
 - general government sector debt in % of GDP with a threshold of 60%;
 - 3 year backward moving average of unemployment rate, with a threshold of 10%.

See Commission, ‘Scoreboard for the surveillance of macroeconomic imbalances, envisaged design of the scoreboard’ SEC(2011)1361.

³⁰⁷ Commission, ‘Single Market act, twelve levers to boost growth and strengthen confidence, “working together to create new growth”’ COM(2011)206.

³⁰⁸ Commission, ‘Proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation [...] on administrative cooperation through the Internal Market Information System’ COM(2011)883.

³⁰⁹ Commission, ‘Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services’ COM(2012)131 final and Commission, ‘Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services’ COM(2012)130 final.

492/2011³¹⁰ came into force, updating the existing general rules under Regulation 1612/68 on employment and equal treatment for workers from other Member States.

In the area of social policy the Treaty of Lisbon had incorporated a number of changes. First of all, the Treaty incorporates in the new article 153(2) TFEU the possibility for the Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, to decide to change the legislative procedure in the areas of protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers and conditions of employment for third-country nationals legally residing in Union territory, most notably, foregoing the unanimity requirement in the Council in favour of Qualified Majority Voting. Furthermore, the Treaty of Lisbon had given full legal effect to the Charter of Fundamental Rights of the European Union. Even though the Charter does not extend the competences of the EU beyond the competences given to it in the treaties, it does guarantee basic rights in areas such as equality, working conditions and social security for Member States to be taken into account when they are implementing EU law.

With this framework in mind, the flagship initiative “an agenda for new skills and jobs”³¹¹ incorporates a number of plans for alteration of various aspects of EU social policy. The communication emphasises the role of the flexicurity concept as a guiding principle for legislation at both the EU and national level. Amongst other things, the Commission considers this principle to be one of the causes for reviewing the EU definition and common indicators of quality of work, and make them more operational for the evaluation and benchmarking of Member States’ policies in this area. In the same spirit of revision, under the heading “improving the quality of work and working conditions” the communication states that the Union has a solid legislative ‘*acquis*’ in e.g. ensuring minimum standards across the EU on working conditions, health and safety at work and gender equality. The ‘*acquis*’ according to the Commission, however, must nevertheless be adapted: The legislative ‘*acquis*’ must be kept in tune with new working patterns and technologies, so that it helps rather than hinders workplace adaptation. The Commission therefore announces a large scale evaluation in the coming years of the whole of the ‘*acquis*’, with work already started in the areas of the working time Directive and health and safety of workers³¹².

³¹⁰ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L 141.

³¹¹ Commission, ‘An agenda for new skills and jobs; a European contribution towards full employment’ COM(2010)682.

³¹² The area of gender equality had already undergone a large scale modernization exercise in Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204, added to later on by Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men

The role of the various OMC processes in the area of social employment policy is mostly dealt with in the flagship initiative “European platform against poverty”³¹³. With the inclusion of a headline target on poverty and social inclusion in the Europe 2020 strategy and guideline 10 on this issue in the employment guidelines, the OMC processes, which under the Lisbon strategy had a separate and distinct position, are largely integrated in the core of the Europe 2020 strategy. At the same time, however, the Commission is still hesitant to draw concrete conclusions on what this would mean for the processes themselves. The Commission emphasises that “it is important that the instruments and tools that have been developed under the Social OMC cross-fertilise with the governance architecture of Europe 2020, to best serve the purposes of the new strategy. The detailed arrangements must ensure the right balance between integration and focus, continuity and innovation, simplification and accountability, coordination and subsidiarity. Based on the experience of the first European Semester of Europe 2020, the Commission will discuss with Member States and other institutional and non-institutional actors, how to best adapt the working methods of the Social Open Method of Coordination to the new governance of Europe 2020”. The Social Protection Committee in this regard presented a report in 2011, which was endorsed by the EPSCO Council of 17 June 2011 stating that the Social OMC contributes to the goals of the Europe 2020 strategy while still maintaining its specificity³¹⁴.

Finally, as to the role of the EU Structural Funds, the current period for the EU Structural Fund Regulation ends in 2013, so any fundamental changes to these funds will have to wait up till then. However, there are already a number of recent developments which have had short-term effects in this area. Furthermore, the Commission proposals for the period 2014-2020 have been published, already starting discussion on revision. Both elements will be discussed here. Concerning short-term changes, the Europe 2020 strategy claimed the EU Structural Funds as one of the main instruments at the EU level to achieve its objectives. Furthermore, in all of the relevant flagships there is extensive coverage of the role EU funding can play in taking the necessary action. Actual changes in the EU Structural Funds did also occur in response to the crisis. Part of the European Economic Recovery Program was rapid additional action, simplification of procedures and faster implementation of both the European Social Fund and Structural Funds. EU funding was therefore integral part of the short-term stabilisation policy propagated. This was even further developed for specific countries under a financial assistance program³¹⁵ when the Commission in August 2011 proposed to decrease the necessary co-financing rates

and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1.

³¹³ Commission, ‘European Platform against Poverty and social exclusion, a European framework for social and territorial cohesion’ COM(2010)758.

³¹⁴ Social Protection Committee, ‘Opinion on the Future of the Social Open Method of Coordination’ (2011).

³¹⁵ Then Greece, Ireland, Portugal, Romania, Latvia and Hungary.

under a number of EU funds specifically for these countries to stimulate investment³¹⁶, which was subsequently agreed by the Council and the European Parliament in December 2011.

In October 2011 the Commission published its proposals for the Structural Funds in the programming period 2014-2020. In these proposals the link between the Structural Funds and the Europe 2020 strategy is strengthened. The Commission proposes that the funds will be fully aimed at achieving the goals of the Europe 2020 strategy. In this regard, the Commission proposes a menu with eleven themes from which the Member States can choose to invest the funds. Most relevant here are the themes “promoting employment and supporting labour mobility”, “investing in education, skills and lifelong learning” and “promoting social inclusion and combating poverty”³¹⁷. Furthermore, macroeconomic conditionalities are installed, which means that the Commission can propose amendments to Structural Fund programmes to support the implementation of country specific recommendations. Also, when Member States have failed to correct an excessive imbalance according to the macroeconomic imbalances procedure explained above, the Commission shall suspend payments and commitments under the various programs³¹⁸.

Taking all these developments together gives the following table. A red X again marks changing or emerging EU employment policy instruments, with a red arrow marking a change the strictness of coordination arrangements.

³¹⁶ Commission, ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Members States experiencing or threatened with serious difficulties with respect to their financial stability’, COM(2011)482.

³¹⁷ See Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615. Other themes are:

1. strengthening research, technological development and innovation;
2. enhancing accessibility to and use and quality of information and communication technologies;
3. enhancing the competitiveness of small and medium-sized enterprises;
4. supporting the shift towards a low-carbon economy in all sectors;
5. promoting climate change adaptation and risk prevention;
6. protecting the environment and promoting the sustainable use of resources;
7. promoting sustainable transport and removing bottlenecks in key network infrastructures
8. enhancing institutional capacity and an efficient public administration.

³¹⁸ See Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615, art 21.

Table 7

Instruments Objectives	<i>Employment policy coordination → (more binding)</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work	→X			X	X
Improving the functioning and flexibility of markets	→X	X			X
Improving the human capital stock	→X			X	X
Improving framework conditions	→X	X	X	X	
Short-term stabilisation policy	→X				X

Main changes in this period can again be observed in the area of employment policy coordination. With the start of the Europe 2020 strategy and more notably with the installation of the macroeconomic imbalances procedure, the policy coordination processes became more binding for the Member States. This time both from a procedural and political perspective, in e.g. the laying down of the European Semester and national quantitative targets, and by the inclusion of financial sanctions in the macroeconomic imbalances procedure. Short-term stabilisation policy furthermore resurfaced in the light of the crisis, both concerning coordination and in the application of the EU funds instruments.

**EU instruments and
economic objectives;
the focus and impact
of EU employment
policy**

4.1 Introduction

The previous two chapters developed the economic theory underlying employment policy, distilling the various economic objectives government can pursue and saw the development of employment policy instruments in the European Communities and, thereafter, the European Union. The current chapter will further examine the link between the EU's policy instruments and how these relate to the developments of the economic objectives. The aim is to assess how the various EU instruments assist in achieving the objectives, a question which is addressed hereafter for each of the four different employment policy instruments.

4.2 Employment policy coordination

As has been highlighted in chapter 3, employment policy coordination within Europe only really took shape in the beginning of the 1990s with the European Employment Strategy. This coordination developed from an informal setup at the Essen summit in 1994 to formalisation with the Treaty of Amsterdam in 1997 and inclusion in the Lisbon strategy since the year 2000 and the Europe 2020 strategy, Euro Plus Pact and macroeconomic imbalances procedure in more recent years. Furthermore, it has become clear that this coordination in the current set up can be linked to the following economic objectives:

Table 8

Objective	Increasing incentives for work	Improving the functioning and flexibility of markets	Improving the human capital stock	Improving framework conditions	Short-term stabilisation policy
Instrument					
Employment policy coordination	X	X	X	X	X

Looking more closely at the exact contents of the instrument at hand one can see that even though the content of the broad policy directions in the process of employment policy coordination has varied, from the beginning a large overlap can be identified between the directions prescribed and the economic policy objectives distilled in chapter 2. Following this relationship throughout the years, there are a couple of interesting developments.

In the area of increasing incentives for work, focus in the early years was on decreasing unemployment. With the start of the Lisbon strategy, this focus shifted to stimulating employment in general by decreasing unemployment but also by

increasing labour market participation³¹⁹. From an economic point of view, this broadening of focus is to be welcomed. It widens the scope of the exercise to include the participation element of the growth accounting equation. This having been said, the number of hours worked by each person, which forms another important element of the growth accounting equation, has remained largely absent from the process throughout the years. Illustrative for this fact is that both the original Lisbon target in the area of participation of 70% and the Europe 2020 target of 75% include employed persons independent of the hours worked.

Improving the functioning and flexibility of markets and improving the human capital stock are issues that from the beginning figured prominently in the economic and employment guidelines in various terms, the former under a number of different headings. Regarding flexibility of markets we have seen the concepts of flexibility, adaptability and since 2006/2007 flexicurity³²⁰. The aspect of wage developments in line with productivity growth has come back as wage moderation³²¹, employment friendly wage setting³²² and wage setting that contributes to growth³²³. The recent increased attention for wage development in the macroeconomic imbalances procedure therefore is not new, but constitutes an increased focus and stricter surveillance in this area. The position of human capital and education has further been strengthened in the new Europe 2020 strategy, with explicit mentioning of the subject and the incorporation of quantitative targets in the area of education in the guidelines³²⁴.

Improving framework conditions is an aspect that finds its way into the guidelines mainly via the concept of “quality of work”. This aspect of the guidelines has become more of an issue since the start of the Lisbon strategy in 2000 and the formulation of the goal of creating more *and better* jobs. How quality of work relates to economic theory is very much dependent on its definition. On the one hand, the definition of work quality as used by the Organisation for Economic Cooperation and Development (OECD) for instance, takes the productivity of workers as starting

³¹⁹ This despite the introduction in 2000 of the somewhat confusing term full employment as a Lisbon objective, which in economic terms would only imply a move to the steady state level of employment given the current labour supply. For a display of the economic inadequacy of the political concept of full employment see the Speech of Alexander Rinnooy Kan (chairman of the Dutch Social Economic Council) at the Europäisches Forum Alpbach, on 31 August 2008, <http://www.ser.nl/sitecore/content/Internet/en/Publications/Speeches%20chairman/2007/20070831.aspx>, last accessed 3 January 2013.

³²⁰ See chapter 3.

³²¹ See e.g. Council Recommendation 2001/483/EC of 15 June 2001 on the broad guidelines of the economic policies of the Member States and the Community [2001] OJ L 179, par 2.2.

³²² See e.g. Council Decision 2005/600/EC on guidelines for the employment policies of the Member States [2005] OJ L 205, guideline 22.

³²³ See e.g. Council recommendation 2008/390/EC of 14 May 2008 for the broad economic policy guidelines for the Member States and the Community [2008] OJ L 137, guideline 4.

³²⁴ See Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 308, guideline 9.

point³²⁵. In this sense, there is by definition a positive link between aspects of quality of work and productivity development, mainly through the concept of human capital. The line gets blurred when the definition is broadened and also includes areas of worker security possibly linked to policy that has ambiguous economic effects or actually decreases economic effectiveness. A good example are job security issues that could lead to economically unbeneficial decreases in the flexibility of labour markets by, e.g., increasing the level of employment protection regulation³²⁶.

The start of the Lisbon strategy left the concept of “better” jobs practically undefined, while in the 2001 employment guidelines it is only briefly mentioned³²⁷. In subsequent years attention for the concept did increase, however, and its definition was further developed. The 2002 employment guidelines introduced “improving quality of work” as a new horizontal objective across all the pillars, with a definition including both job characteristics (such as intrinsic job quality, skills, lifelong learning and career development) and the wider labour market context encompassing gender equality, health and safety at work, flexibility and security, inclusion and access to the labour market, work organisation and work-life balance, social dialogue and worker involvement, diversity and non-discrimination and overall work performance and productivity³²⁸. This clearly constitutes a very wide definition. The 2005 Lisbon relaunch kept the promotion of quality of work with this broad definition as one of three overarching themes. The difference, however, was that actual policy measures had to be focussed on the economic concepts of human capital, increasing adaptability and creating jobs³²⁹. The new Europe 2020 guidelines follow up on this trend, paying significantly less attention to the concept of quality per se. Instead they focus on flexicurity and human capital³³⁰. Given the already existing focus as far as policy options are concerned, however, the decreased attention for the term presumably will not make a big difference as far as prescribed policy is concerned.

More generally speaking, however, an aspect of the guidelines that stands out is the degree of socialisation throughout the years, or in other words, the incorporation of “social” elements which either partially fall under the economic rationale, or are not purely economic in their goals but may have beneficial economic effects. An important element worth highlighting in this regard is the issue of social inclusion.

³²⁵ See section 2.3.1.

³²⁶ See e.g. section 2.3.2

³²⁷ See e.g. Council Decision of 19 January 2001 on Guidelines for Member States’ employment policies for the year 2001 [2001] OJ L 60, horizontal objective A.

³²⁸ Council Decision of 18 February 2002 on guidelines for Member States’ employment policies for the year 2002 [2002] OJ L 60, further elaborated upon by Commission, ‘A framework for investing in quality’ COM(2001)313.

³²⁹ Council Decision 2005/600/EC on guidelines for the employment policies of the Member States [2005] OJ L 205, guideline 17.

³³⁰ Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 308.

Under various names (e.g. combating social exclusion³³¹ or strengthening social cohesion³³²) this has been part of the guidelines in one manner or another throughout the period, often lacking a clear definition. In general it is safe to say that this concept again does not directly fit into the economic theory developed in chapter 2, since it is more based on equality and redistribution than on increasing economic effectiveness. However, there are significant links to be made here in the sense that beneficial economic policy decisions can also have a beneficial effect on social inclusion. More specifically, looking at the appearance of social inclusion in the guidelines throughout the years one can see a wave-like pattern of economisation and socialisation. In the 1990s, there is a clear focus on economics with hardly any reference to social inclusion, except when referring to getting jobs for the long-term unemployed. This changes with the Lisbon strategy in 2000, where combating social exclusion becomes a separate part of the focus areas of the new strategy. This is reflected in the employment guidelines in these early years of Lisbon, which also more explicitly and elaborately mention combating social exclusion. In this, however, the employment guidelines stick to the promotion of more and better jobs as overarching goal and central manner to fight social exclusion³³³. The issue of social inclusion as a goal per se is placed outside the guidelines with a referral to the new open method of coordination process in this area. The 2005 relaunch of the Lisbon strategy and simplification of the guidelines further increased the instrumental focus in the employment guidelines on job and skill creation. The Europe 2020 strategy, however, has seen a remarkable change of direction on the issue, with the employment guidelines containing a guideline solely on social inclusion *as a direct objective*, even linking this to a target of 20 million people less in social exclusion. The indicators linked to this target also clearly widen the scope beyond the economic rationale, including, next to the number of jobless households, relative poverty³³⁴ and the material deprivation rate³³⁵. This change of position and formulation arguably integrates the entire scope of the open method of coordination on social inclusion in the employment guidelines, even possibly introducing an internal inconsistency between policy prescriptions. The effects of this change of scope will have to work themselves out in the coming years, but it can already be said that this leaves more

³³¹ See e.g. Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001 [2001] OJ L 60.

³³² See e.g. Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 308, guideline 10.

³³³ See Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001 [2001] OJ L 60, 11 (with the title "promoting social inclusion by access to employment").

³³⁴ Eurostat definition: "the persons with an equivalised disposable income below the risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income (after social transfers)".

³³⁵ Eurostat definition: "Severely materially deprived persons have living conditions severely constrained by a lack of resources, they experience at least 4 out of 9 following deprivations items: cannot afford i) to pay rent or utility bills, ii) keep home adequately warm, iii) face unexpected expenses, iv) eat meat, fish or a protein equivalent every second day, v) a week holiday away from home, vi) a car, vii) a washing machine, viii) a colour TV, or ix) a telephone.

room for policy decisions which are not in line with the economic framework. Finally, the attention for short-term stabilisation policy has varied with the economic cycle, with short-term stabilisation policy coming to the forefront most pronouncedly during the crises in the mid 1990s and in 2008/2009. The years in between, especially during the Lisbon strategy, were characterised by an increased focus on medium-term challenges and policy directions. In comparing the approach on short-term stabilisation policy from the mid 1990s and recent years a large overlap can be seen as regards the broad directions given. A combination of short-term (budgetary) stimulus with more medium-term structural reform measures is propagated during both periods, which fits well with the theoretical framework. As far as short-term measures are concerned there is, however, a difference in the level of activism on the part of the Commission as well as the detail of its policy advice. Where the 1990s were characterised by general calls for national level budgetary stimulus and increased investment in e.g. infrastructure³³⁶, during the recent crisis the Commission, within the framework of “temporary, targeted, timely and coordinated” took the level of detail up a bit, prescribing a specific percentage of budgetary stimulus, as well as focussing on more specific policy measures which countries could take, such as increased incentives for labour hoarding. Furthermore, during the recent crisis greater use is made of EU instruments like the EU Structural Funds.³³⁷

4.2.1 Employment policy coordination and economic developments

The further elaboration of the manner in which the instrument of employment policy coordination is linked to economic objectives still does not provide any insight on its actual functioning in practice. For this, insight is required into the manner in which this instrument has been translated into actual developments in policy objectives and, a step further, in actual economic developments within the Union and its Member States. Theoretically, the link would run from the employment guidelines through policy decisions at the Member State level to changes in the underlying economic variables in the Member States. In assessing actual effects, however, there are a number of difficulties stemming from the nature of the coordination process. First, there are some fundamental methodological problems in assessing the causal impact of such an iterative process based on collaboration between EU institutions and Member States, especially in the absence of legally binding sanctions. Furthermore, the potential causal impact of the process on Member State policy can be blurred by ongoing trends and the simultaneous influence of other EU-level processes, such as decisions by the Court of Justice of the European Union or the Structural Funds, other international organisations, such as the OECD, the World Bank, or the IMF, and domestic political changes, such as shifts in government. Finally, Member State representatives continuously participate in the definition of EU objectives, guidelines,

³³⁶ See section 3.4.

³³⁷ See section 3.6.

targets, and indicators, which allows for ‘uploading’ of domestic concepts and preferences and further blurs the causal relationship between the national and European levels³³⁸.

Given these limitations, the following approach will be taken in appraising employment policy coordination’s actual effectiveness. First, several indicators covering economic output will be analysed for the EU 15 Member States³³⁹, as well as policy indicators for Member States linked to the various policy objectives stipulated in the employment policy coordination process. The next section will then take a more qualitative approach in analysing the actual impact of the employment coordination process on policy decisions in various Member States and policy areas.

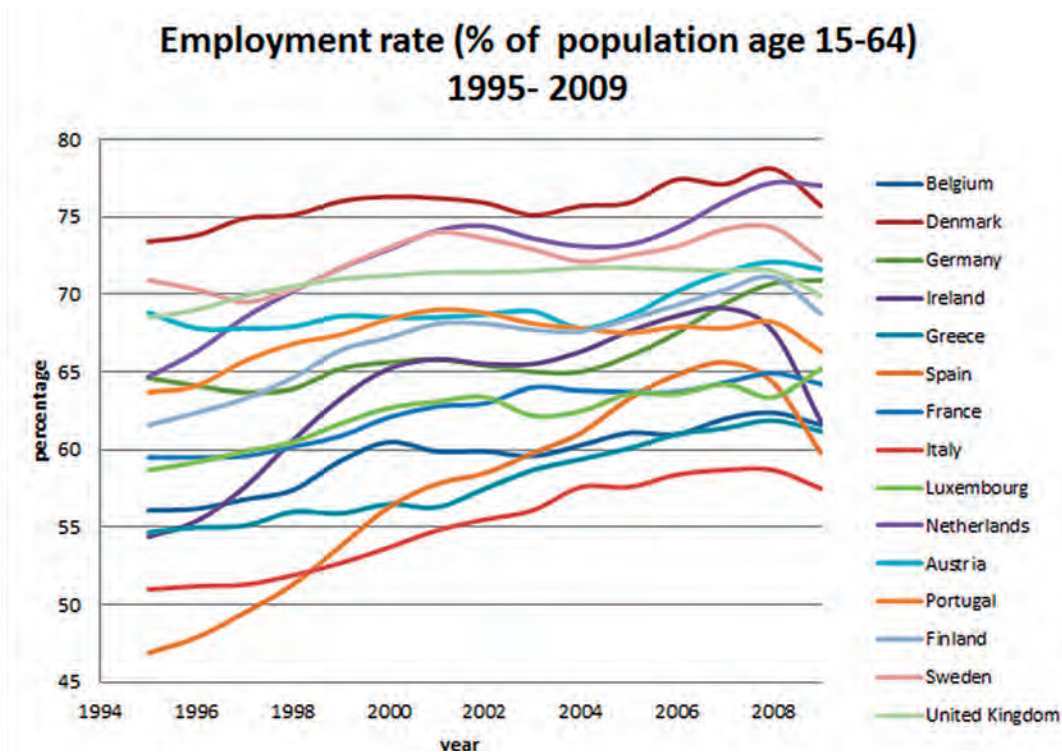
Following the growth accounting approach, the analysis will be divided into an employment and productivity pillar, starting with the objective of higher employment. As shown in chapter 2, stimulating employment boils down to increasing the number of people working and the hours that they actually work. Graph 25 shows the development of the employment rate³⁴⁰:

³³⁸ Zeitlin, ‘Is the OMC an alternative to the community method’ in Dehousse, *The ‘Community method’ obstinate or obsolete* (Palgrave MacMillan, 2011).

³³⁹ The Netherlands, Belgium, Luxembourg, France, Italy, Germany, United Kingdom, Ireland, Denmark, Spain, Portugal, Greece, Sweden, Finland, Austria. Next to data availability issues, the selection of these Member States is justified by the fact that they were EU members from the beginning of the period under consideration, and have therefore gone through the development of employment policy coordination more or less in full.

³⁴⁰ Eurostat definition; Persons stating they are ‘currently’ working for pay or profit in a job or business for at least one hour, or not currently working but with a job or business from which they are temporarily absent. Persons ‘at work’ comprise therefore ‘paid employees’, ‘self-employed (together with employers)’, persons in ‘training under special scheme related to employment’ or in ‘paid apprenticeship’. Persons ‘working unpaid in family enterprise’ are also included.

Graph 25



Data source: Eurostat

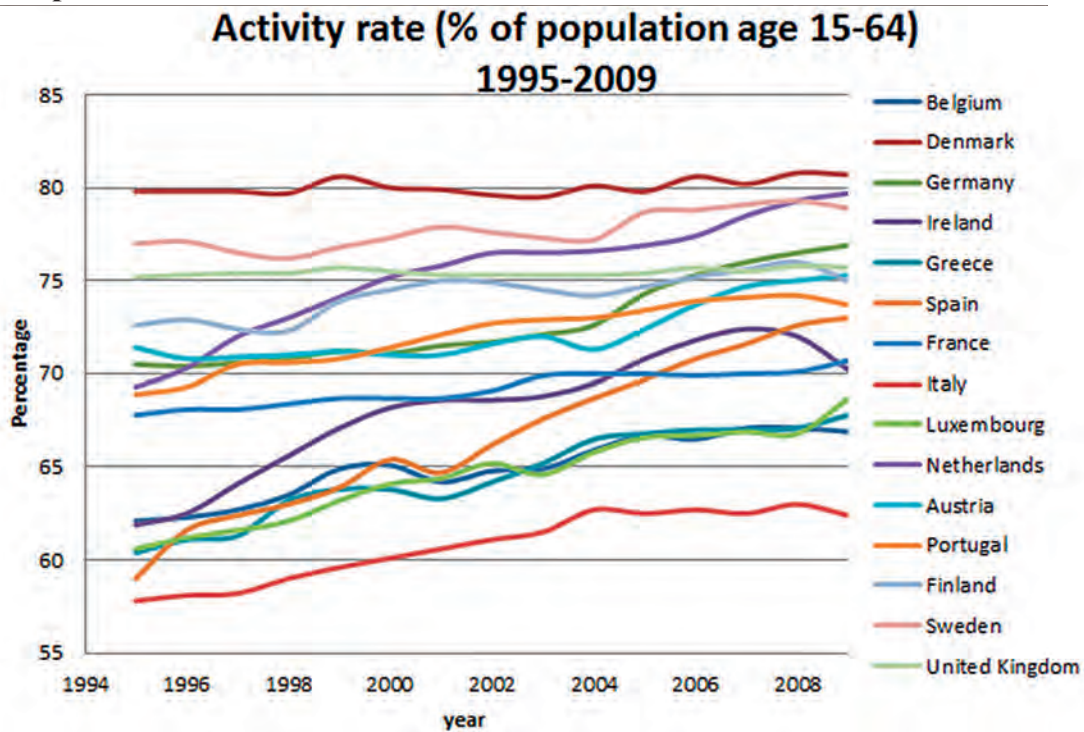
From 1995 up until 2008 there has been a general upward trend in the employment rate, as well as some degree of convergence among Member States. A closer look reveals significant differences between Member States in both starting position and rate of growth. Greece, Italy, Ireland, Spain and Belgium started out with a relatively low employment rate (below 55%), while Denmark and the United Kingdom at the time already had an employment rate of over 70%. As to the growth rate, two of the low starters (Ireland and Spain) in 2008 had caught up in a rather spectacular manner, achieving employment rates of 68 and 65 percent, respectively. The recent economic crisis, however, has had a relatively large negative impact in these countries, leading to a much stronger decrease in the employment rate in 2009 compared to the other countries. Two countries which did manage to significantly increase the employment rate on a seemingly more sustainable basis are the Netherlands and Finland. Starting with an employment rate of 64% and 60%, respectively, they managed to increase to 77% and 71% in 2008, respectively, (with the Netherlands overtaking frontrunner Denmark in 2009) and not be overly affected by the economic crisis in 2009.

There are two distinct ways in which one can improve the employment rate in a country, either by increasing the participation/activity rate³⁴¹, or by decreasing the unemployment rate³⁴². Looking at both variables for the EU 15 gives the following pictures.

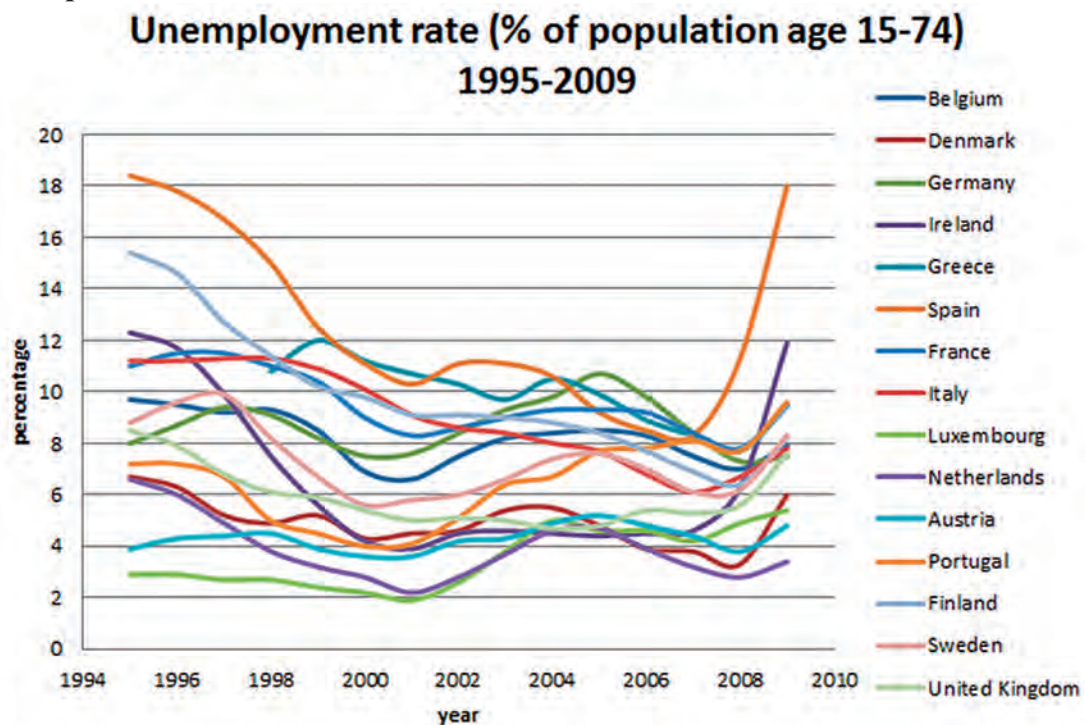
³⁴¹ The activity rate is the sum of the employment rate and the unemployment rate.

³⁴² Eurostat definition: Persons that are currently not working (i.e. 0 hours) and are available to start work within the next two weeks AND
(a) that have already found a job to start in the future or are awaiting the outcome of an application or

Graph 26



Data source: Eurostat

Graph 27³⁴³

Data source: Eurostat

interview, or

(b) that are actively seeking a job (i.e. contacted a public employment office for finding work, applied directly to an employer, studied or replied to advertisements, contacted a private employment or vocational guidance agency, asked friends or contacts or have taken steps to start an own business), or

(c) that are seeking a job and have received a job offer during the past 4 weeks.

³⁴³ Due to data availability issues Unemployment rate is defined for the age group 15-74 in stead of 15-64. The relationship $\text{employment} = \text{participation} - \text{unemployment}$ therefore does not completely apply here.

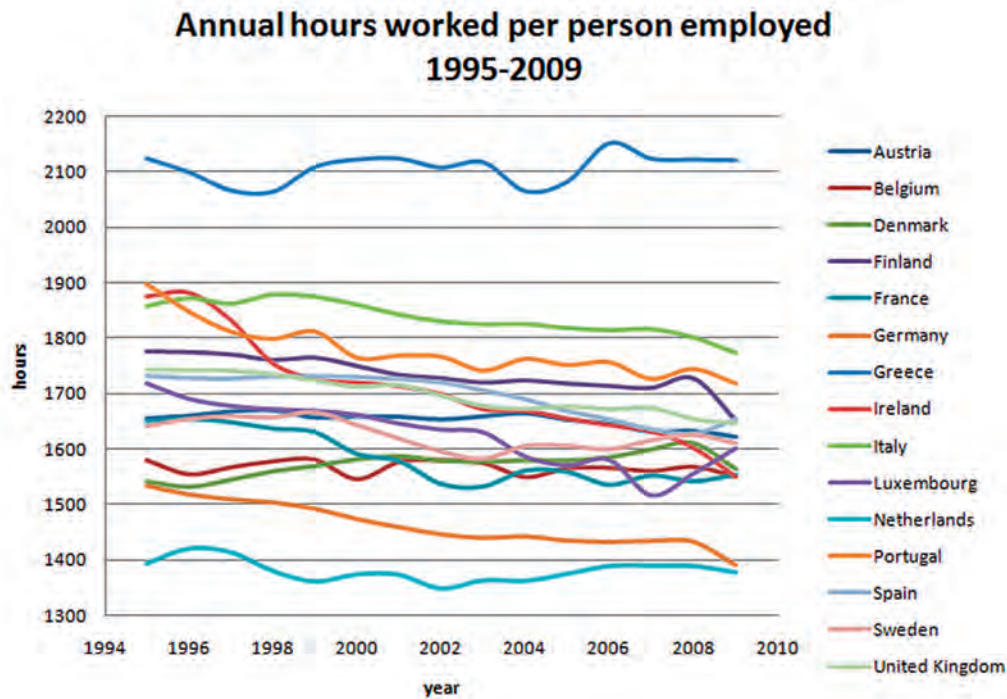
As graph 26 shows, there has been some convergence in activity rates among Member States. The EU 15 can be roughly divided into three different groups of countries. The first group contains Sweden, Denmark and the United Kingdom. These countries had a high activity rate in the beginning of the 1990s and have maintained this high activity rate throughout the period under review. The second group, consisting of Finland, Germany, Austria, Portugal, France and the Netherlands, started with an average activity rate gradually increasing and partly catching up with the first group (with the Netherlands already catching up in 2000). The final group is made up of Luxembourg, Ireland, Belgium, Greece, Spain and Italy. This group started with a relatively low activity rate, with some countries growing rapidly and catching up with the second group (Spain and Ireland) and the rest growing more gradually.

Graph 27 shows the development of the unemployment rate in the various Member States. While general trends are less easy to identify here, a number of countries do stand out. Until 2009, Spain and Finland showed a large drop in unemployment followed at a more moderate pace by Ireland, Denmark, the Netherlands, France, Italy and the United Kingdom. The unemployment rate in Portugal, Austria, Greece and Germany remained relatively stable, with unemployment in Luxembourg actually rising slightly (be it from a very low level). From 2009 onwards, however, there is a turnaround in this trend, with unemployment increasing extremely rapidly in Spain and Ireland.

The development of the employment level is only half the picture as far as employment is concerned. The other half is the average number of hours worked per employed person³⁴⁴. The development of this variable is shown in the following graph.

³⁴⁴ OECD definition: “the total number of hours worked over the year divided by the average number of people in employment”.

Graph 28

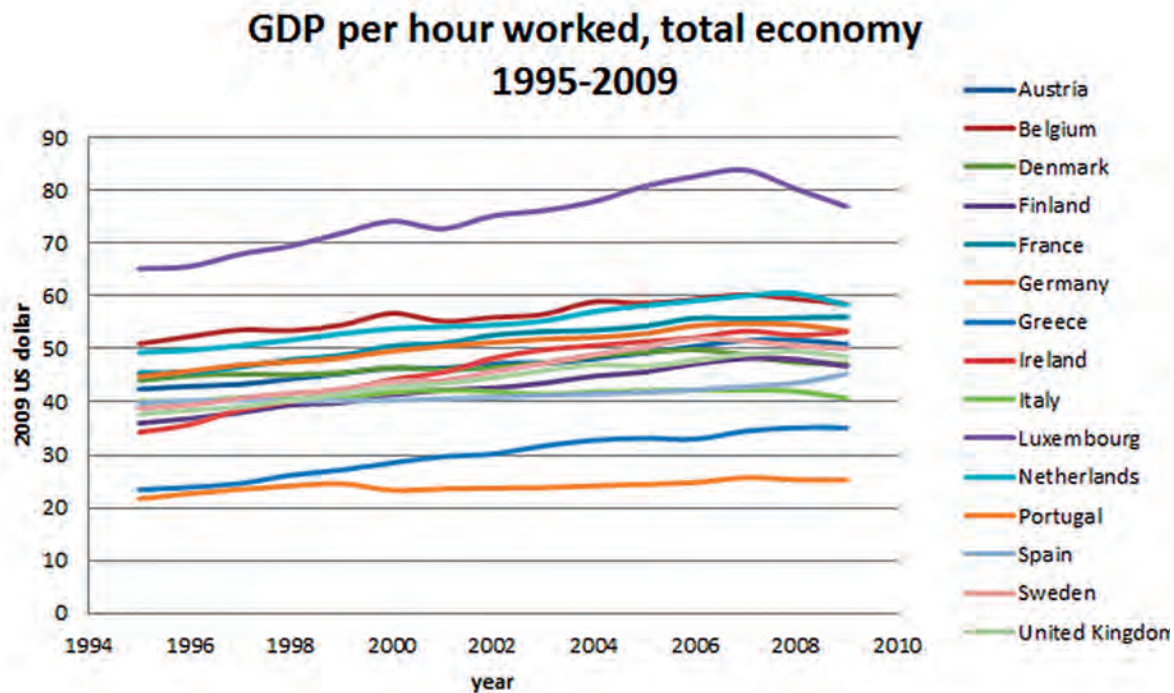


Data source: OECD

There still is a large disparity in annual hours worked per worker between Member States, with Greece and the Netherlands as outliers. There is a general tendency for hours worked to decline, except in Denmark where the average number of hours worked has grown slightly. The observed decline is largest in Ireland, Luxembourg, Portugal, Germany and Finland. On the other hand, in countries such as Austria, Belgium, Greece, the Netherlands and Sweden, hours worked declined very little, remaining roughly the same.

Finally, the development of the productivity side of the growth accounting equation, or the level of GDP per hour worked gives the following picture:

Graph 29



Data source: Total Economy Database, Groningen Development Centre

Similar to employment, a large divergence between Member States appears in the level of productivity. Luxembourg is an obvious outlier on the upside, while Portugal and Greece on the other hand have a relatively low labour productivity. When looking at the developments in the period under consideration it becomes apparent that Ireland has had by far the highest average growth rate, increasing labour productivity by more than 50%. Productivity in countries like Italy, Portugal, Spain and Denmark either remained at the same level or increased only slightly.

Tables 9 and 10 take all of these stylised facts together. The tables give both the starting position and the change in the period 1995 until 2009 that is before the crisis really affected the economies of the Member States. The colours are based on relative performance of the countries, with green meaning that a country had (in absolute terms) a high starting position or a high growth relative to the other EU 15 countries, yellow meaning that a country had (in absolute terms) a medium starting position or a medium growth relative to the other EU 15 and red meaning that a country had (in absolute terms) a low starting position or a low growth relative to the other EU 15³⁴⁵.

³⁴⁵ In analysing the results this should be taken into account. For instance, the fact that a country has a relatively high starting position or absolute growth does not mean that there is no further room for improvement or that performance of these countries is also relatively high in relationship to other countries that are not in the sample.

Table 9: Initial level in 1995

	Employment rate	Activity rate	Unemployment rate	Hours worked	Productivity per hour worked
Ireland	Red	Red	Red	Green	Yellow
Spain	Red	Red	Red	Yellow	Yellow
Italy	Red	Red	Red	Green	Yellow
Greece	Red	Red	Yellow	Green	Red
Belgium	Red	Red	Yellow	Red	Green
Germany	Yellow	Yellow	Yellow	Red	Yellow
France	Yellow	Yellow	Red	Yellow	Yellow
Portugal	Yellow	Yellow	Yellow	Green	Red
Luxembourg	Yellow	Red	Green	Yellow	Green
Netherlands	Yellow	Yellow	Yellow	Red	Green
Finland	Yellow	Green	Red	Yellow	Yellow
Denmark	Green	Green	Yellow	Red	Yellow
Austria	Green	Yellow	Green	Yellow	Yellow
Sweden	Green	Green	Yellow	Yellow	Yellow
United Kingdom	Green	Green	Yellow	Yellow	Yellow

Green = high
Yellow = medium
Red = low

Table 10: Change 1995-2009

	Employment rate	Activity rate	Unemployment rate	Hours worked	Productivity per hour worked
Ireland	Green	Green	Green	Red	Green
Spain	Green	Green	Green	Red	Red
Italy	Yellow	Yellow	Yellow	Yellow	Red
Greece	Yellow	Yellow	Red	Green	Yellow
Belgium	Yellow	Yellow	Yellow	Green	Yellow
Germany	Yellow	Yellow	Red	Yellow	Yellow
France	Yellow	Red	Yellow	Red	Yellow
Portugal	Yellow	Yellow	Red	Red	Red
Luxembourg	Yellow	Yellow	Red	Red	Yellow
Netherlands	Green	Green	Yellow	Green	Yellow
Finland	Green	Red	Green	Yellow	Yellow
Denmark	Red	Red	Yellow	Green	Red
Austria	Red	Red	Red	Yellow	Yellow
Sweden	Red	Red	Yellow	Green	Yellow
United Kingdom	Red	Red	Yellow	Yellow	Yellow

Green

= high

Yellow

= medium

Red

= low

First of all, even though there is a general trend towards increasing employment, decreasing hours worked and increasing productivity, developments have varied widely among Member States. Both in starting position and growth developments of the different variables there is a large disparity between the EU 15. Five different groups of countries can be identified.

1. Good starters: the United Kingdom, Sweden, Austria and Denmark

These countries already in the beginning of the 1990s had a relatively high employment rate, and performed medium to well in all the other areas under consideration³⁴⁶. Given this good starting position the subsequent changes in variables were low to medium.

2. High growers: Finland and the Netherlands

These countries started out as medium to well performing overall while having a specific problem area, the Netherlands with hours worked and Finland with unemployment. These countries subsequently made significant progress, the Netherlands in particular in the area of activity rate and Finland in the area of unemployment, which caused them to catch up with the group of good starters.

3. Medium performers: Luxembourg, France, Germany and Portugal.

Starting out as medium to well performing Member States with specific problems (activity rate in Luxembourg, unemployment in France, hours worked in Germany and productivity in Portugal), they subsequently made low to medium progress in the various fields.

4. Low performers: Italy, Greece and Belgium

Even though these countries had their good points in the beginning of the 1990s, Italy and Greece starting out with a high level of hours worked and Belgium with a high productivity level, these countries were low performing in various aspects which they did not manage to correct, achieving only low to medium progress in all fields in the period under consideration.

5. Bubble growers: Spain and Ireland

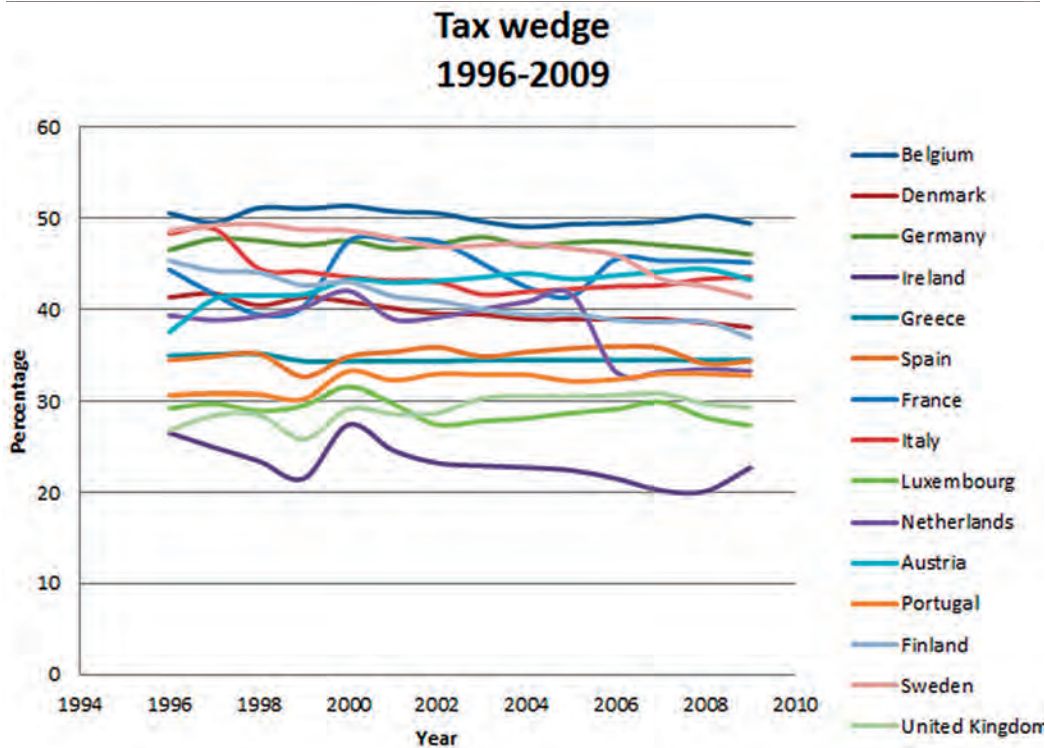
Starting out as low performing Member States these countries made (very) high progress in various fields up until the year 2009. The global economic crisis however has had a relatively large negative impact in these countries, causing strong declines of several indicators in both countries

³⁴⁶ With the exception of the hours worked in Denmark.

The analysis on the previous pages provide a general impression of the developments of the output indicators of employment and productivity in the various Member States and the manner and extent to which convergence between Member States has taken place. Taking one step further towards the functioning of the instrument of employment policy coordination, some more distinct policy elements of the labour market have to be examined, which are part of the process of employment policy coordination and that the economic theory in chapter 2 identified as influencing the variables analysed above. Subsequently, developments in the area of tax incentives, benefit incentives, “active labour market policies”, the functioning and flexibility of markets and human capital are subject of analysis.

Starting with the point of tax incentives for work: as shown in chapter 2, theory predicts that the demand for labour, given its productivity, depends on the wage an employer has to pay. Policy elements include mainly the taxation of labour either through income tax or through social security contributions. Since these effectively increase the cost of labour they decrease incentives for employers to hire additional personnel. A relevant indicator is the so called “tax wedge on labour costs”, defined as income tax on gross wage earnings plus the employee’s and the employer’s social security contributions, expressed as a percentage of the total labour costs of the earner. This indicator varies widely according to the position of the person under consideration. The tax wedge on a person earning a minimum wage, for instance, differs significantly from a person earning once or twice the average wage. Likewise, the tax wedge varies with the family situation of the person under consideration (single, married, children etc.)³⁴⁷. Therefore, graph 30, showing the development of the average tax wedge for a person earning 67% of the average wage, can only serve as an illustration.

³⁴⁷ These disparities are not the only caveats to be taken into account when looking at this indicator. The OECD in its publication *Taxing wages 2009-2010* devotes three pages to the limitations of this indicator. The indicator, for example, does not cover the impact of indirect taxes, the treatment of non-wage labour income and other income components under personal income taxes and the effect of other tax allowances and cash benefits. Given data availability however, this is the best we can do at this time.

Graph 30³⁴⁸

Data Source: Eurostat

There is a large disparity in initial levels across Member States, with low performing countries, such as Italy and Belgium, but also good starters, such as Sweden with a tax wedge of around 50% and the United Kingdom, and bubble grower Ireland having tax rates below 30%. There is no convergence between Member States. The tax wedge in some countries has decreased, most notably in Ireland (even more remarkable in view of its low initial level) but also in Sweden, high grower Finland and low performer Italy. Mostly, however, a constant tax wedge can be observed.

The OECD in its yearly publication “Taxing wages” gives a more comprehensive overview of various tax wedges. In its 2011 edition³⁴⁹ the OECD analyses the developments of tax wedges in the period 2000-2010 for 8 different types of families and earning levels. It shows that the average EU 15 tax wedge has dropped significantly. Finland, Ireland, Sweden, but also Belgium, Denmark, Germany and Luxembourg managed to decrease the tax wedge across the board combined with relatively large decreases for a number of family types. Greece and Spain are the only countries which increased the tax wedge for all groups.

The second policy element to be analysed is benefit incentives for work. As has been highlighted in chapter 2, a person will be less inclined to take up a job when the extra amount of money earned decreases³⁵⁰. An important variable here is the benefit a

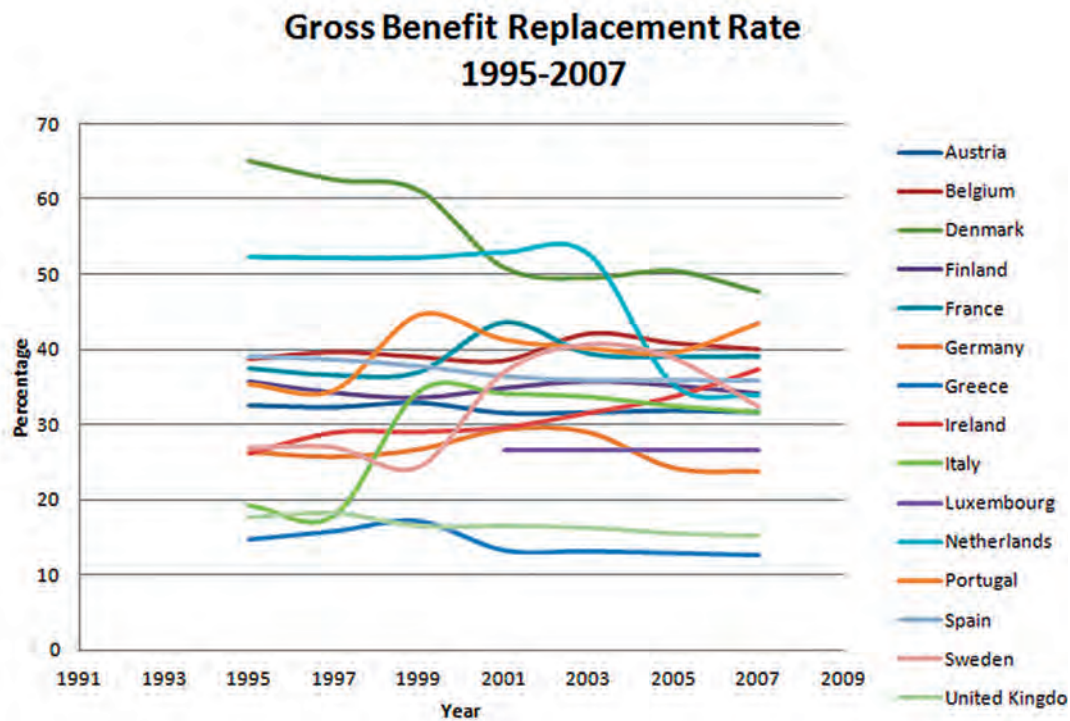
³⁴⁸ The starting year is 1996 due to data availability.

³⁴⁹ OECD, *Taxing wages 2009-2010* (2011).

³⁵⁰ See e.g. section 2.2.2.

person receives that he will have to give up when he gets the job. Developments in this area can be analysed by observing the OECD's summary measure for "gross benefit replacement rate"³⁵¹, defined as the average of the gross unemployment benefit replacement rates for two earnings levels, three family situations and three durations of unemployment.

Graph 31³⁵²



Data Source: OECD

Graph 31 shows that there is no general trend and no convergence between Member States. Initial levels vary greatly, with Denmark and the Netherlands having a replacement rate of over 50% and Greece just over 10%. Developments also vary greatly, with the Netherlands and Denmark decreasing, the replacement rate in Sweden, Portugal Italy and Ireland are actually increasing, whereas other countries have a more or less constant rate.

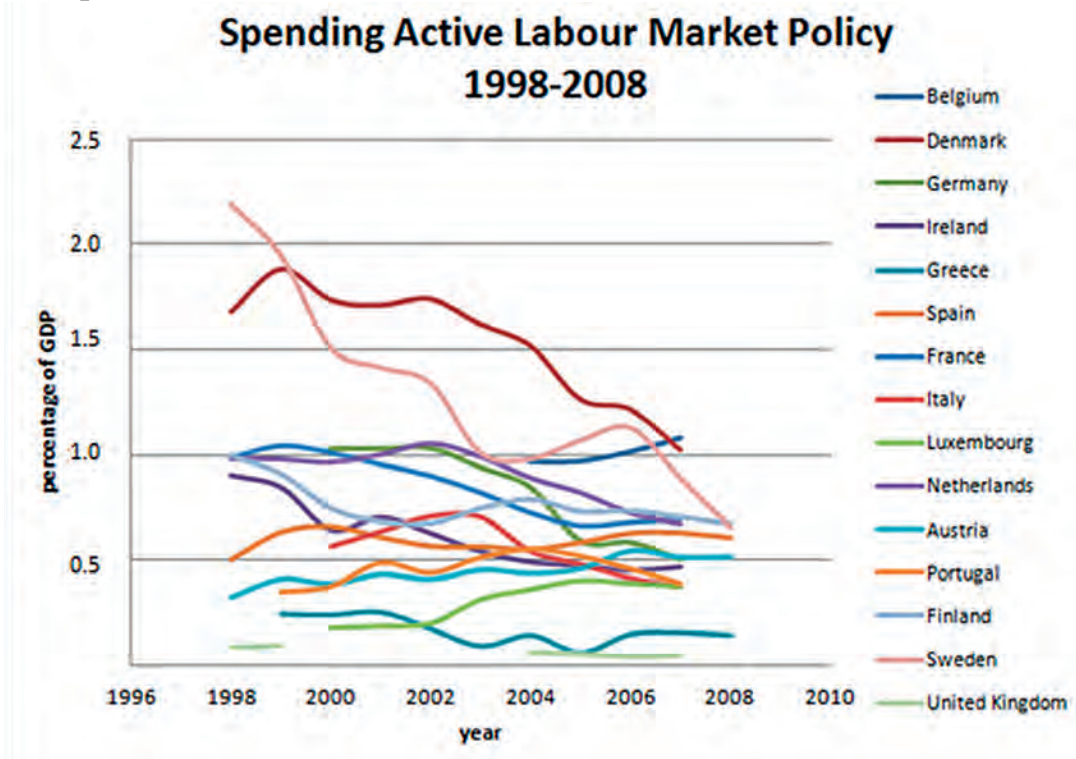
The third policy element is Member States' expenditure on so called active labour market policy measures (ALMP). ALMP measures in the Eurostat definition cover interventions that provide temporary support for groups that are disadvantaged in the labour market and which aims at activating the unemployed, helping people move from involuntary inactivity into employment, or maintaining the jobs of persons

³⁵¹ Even though incentive wise it would be better to analyse the net replacement rate, data availability forces to use the gross benefit replacement ratio. Furthermore, the concept of taxation is already covered in the tax wedge discussed earlier, which also incorporates important elements of the difference between both rates.

³⁵² The end year is 2007 due to data availability.

threatened by unemployment. Categories of action include training, job rotation and job sharing, employment incentives, supported employment and rehabilitation, direct job creation and start-up incentives. Through creating incentives for work, improving the functioning of markets and improving human capital this type of expenditure contributes to increasing participation and productivity. This indicator has developed as follows.

Graph 32³⁵³



Data source: Eurostat

There is some convergence between Member States. However, contrary to what might have been expected, the graph shows a general decline in spending on active labour market policies in the Member States. All Member States that spent a relatively high amount of money in the 1990s have cut their spending considerably, notably good starters Sweden and Denmark. In fact, there are only four countries in which this indicator has increased in the period under consideration, namely good starter Austria, bubble grower Spain, and medium performers Luxembourg and Portugal, all of whom started out at a very low position.

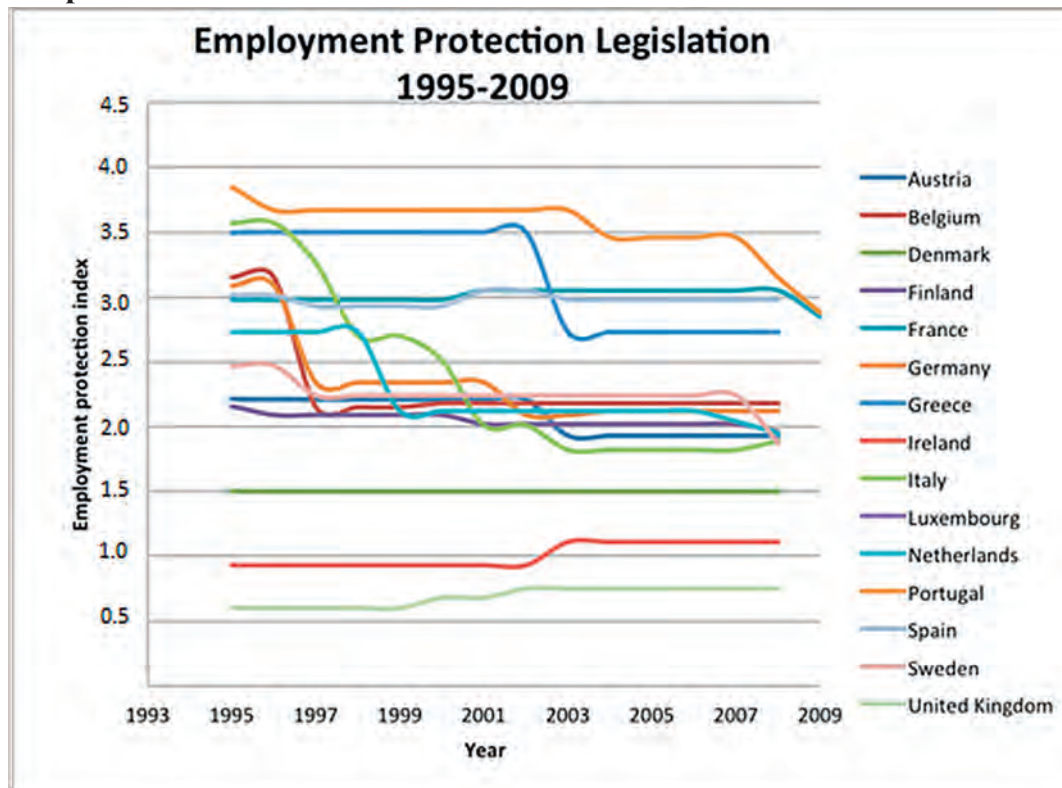
As fourth policy indicator, graph 33 gives an overview of the level of employment protection legislation in the different countries. As argued in chapter 2, this is an important element of (in-)flexibility of the labour market³⁵⁴. The OECD indicator of employment protection measures the procedures and costs involved in dismissing individuals or groups of workers and the procedures involved in hiring workers both

³⁵³ Period selected due to data availability.

³⁵⁴ See e.g. section 2.3.2.

fixed-term and temporary work agency contracts³⁵⁵.

Graph 33³⁵⁶



Data source: OECD

The EU 15³⁵⁷ had very different positions at the beginning of the 1990s. Good starter United Kingdom and bubble grower Ireland already had a very high level of flexibility, where countries, such as medium performer Portugal and low performers Italy and Greece, started out with a high level of employment protection. From the mid 1990s, there is some convergence although disparities between Member States remain high. The already flexible countries United Kingdom and Ireland slightly increased, medium performer France and bubble grower Spain stayed at roughly the same level, and the other countries increased their flexibility. Countries with the highest increases in flexibility are low performers Italy and Belgium (be it from a very high level), medium performer Germany, good starter Denmark and high grower the Netherlands.

Another important feature of the functioning of markets and the fifth policy element is

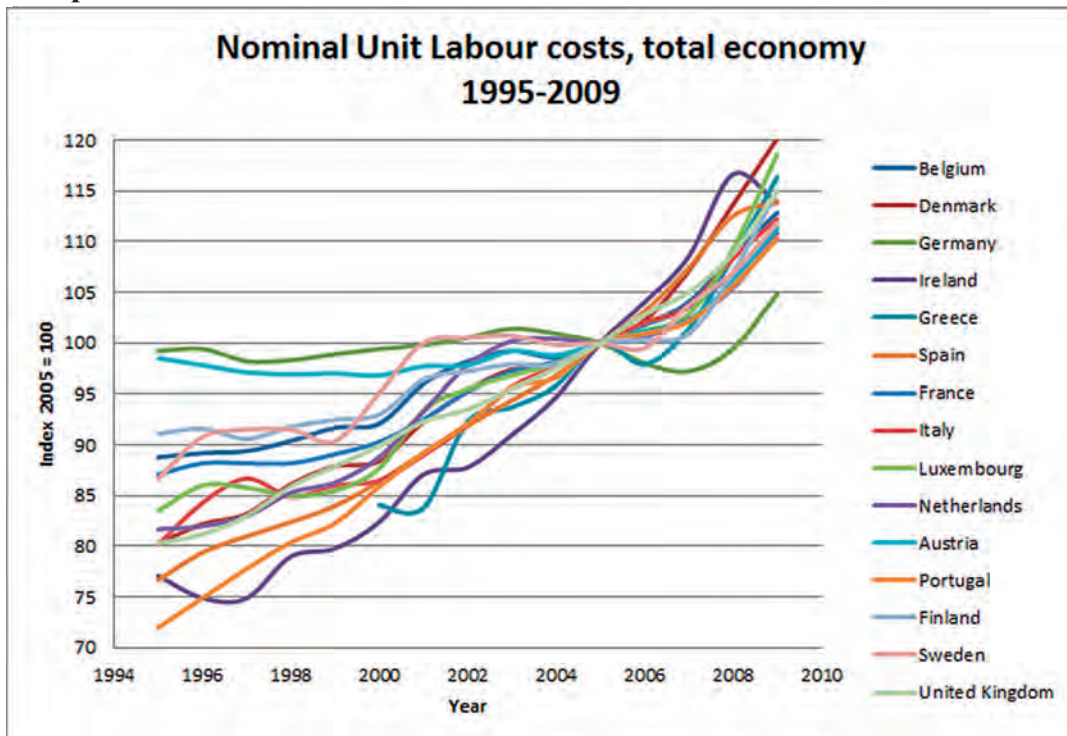
³⁵⁵ In interpreting the results of this indicator one should realise that there are some limitations as to the extent in which this indicator forms an adequate measure of the law in the Member State concerned. As already acknowledged e.g. by Venn, 'Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators' (OECD social, employment and migration working papers 89, 2009) the construction of composite indicators designed to measure qualitative features of the legal system inevitably involves some degree of subjectivity. Furthermore, the indicator only partly integrates issues related to the *enforcement* of the law and only refers to formal-sector employment.

³⁵⁶ Period due to data availability.

³⁵⁷ Except for Luxembourg, that due to data availability issues is not included here.

wage costs. As argued in chapter 2, wage setting in line with productivity can increase employment performance, where wage setting above productivity performance can increase unemployment and decrease participation³⁵⁸. Since it is therefore not so much the initial level but the development over time of this indicator that is of interest, graph 34 shows the development of unit labour costs³⁵⁹ (ULC) as an index, with 2005 as the base year (=100). ULC measures the labour costs incurred in producing an additional unit of output, and therefore covers both productivity developments and labour costs per se.

Graph 34



Data source: Eurostat

As shown by the graph, there is no convergence of ULC, with a wide variety in the development of this indicator across Member States. On the positive side are Germany and Austria, with unit labour costs only rising slightly during the period under consideration. On the other side of the spectrum are Denmark, Portugal, Spain, Ireland, Luxembourg, the United Kingdom, Greece and Italy with large increases in unit labour costs³⁶⁰.

The final variable to be considered is human capital. As stated in chapter 2, the

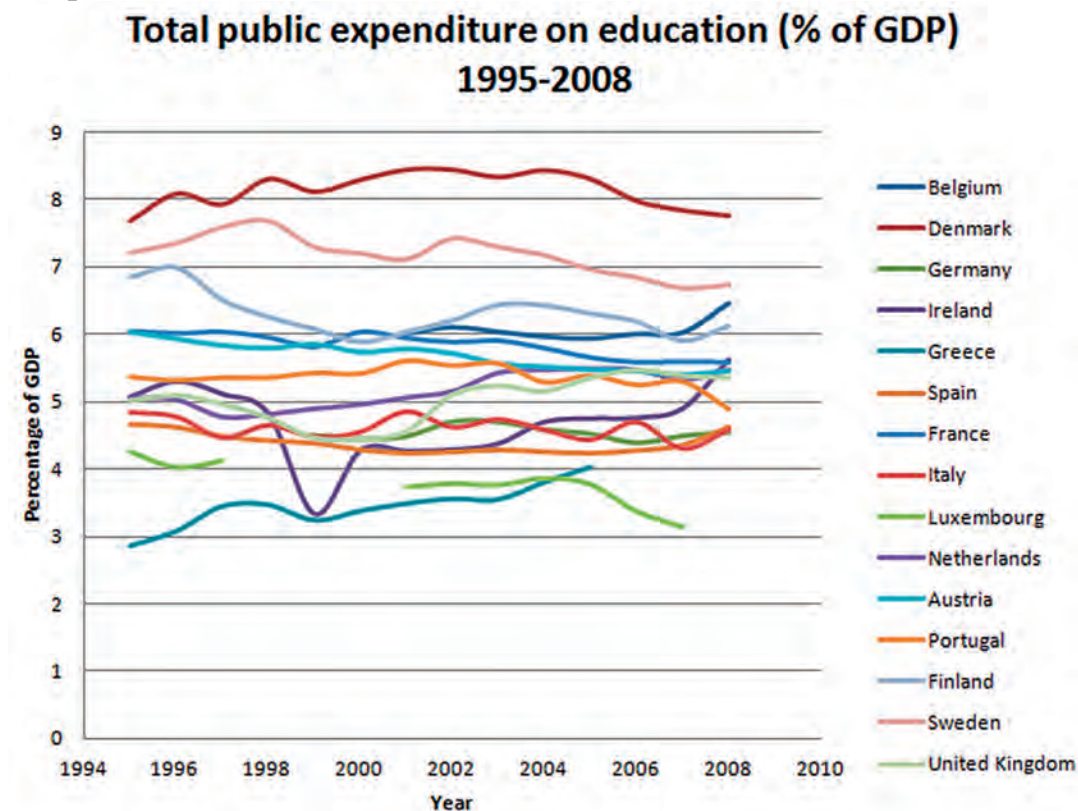
³⁵⁸ See section 2.4.1.

³⁵⁹ Data portrayed concerns nominal unit labour costs, chosen because this also is an indicator in the macroeconomic imbalances scoreboard.

³⁶⁰ Since the focus rests on nominal unit labour costs the position of non-euro states, especially the UK and Denmark, should be judged somewhat differently than the rest. Not being part of the Euro area means that they are prone to different inflation and exchange rate developments and have additional instruments at their disposal to influence developments in this area.

accumulation of human capital increases employment and is an important determinant of labour productivity. Education in this regard was found to be the central element in determining the level of human capital³⁶¹. There are a number of different elements worth examining. A first indicator is government expenditure on education, shown in graph 35.

Graph 35³⁶²



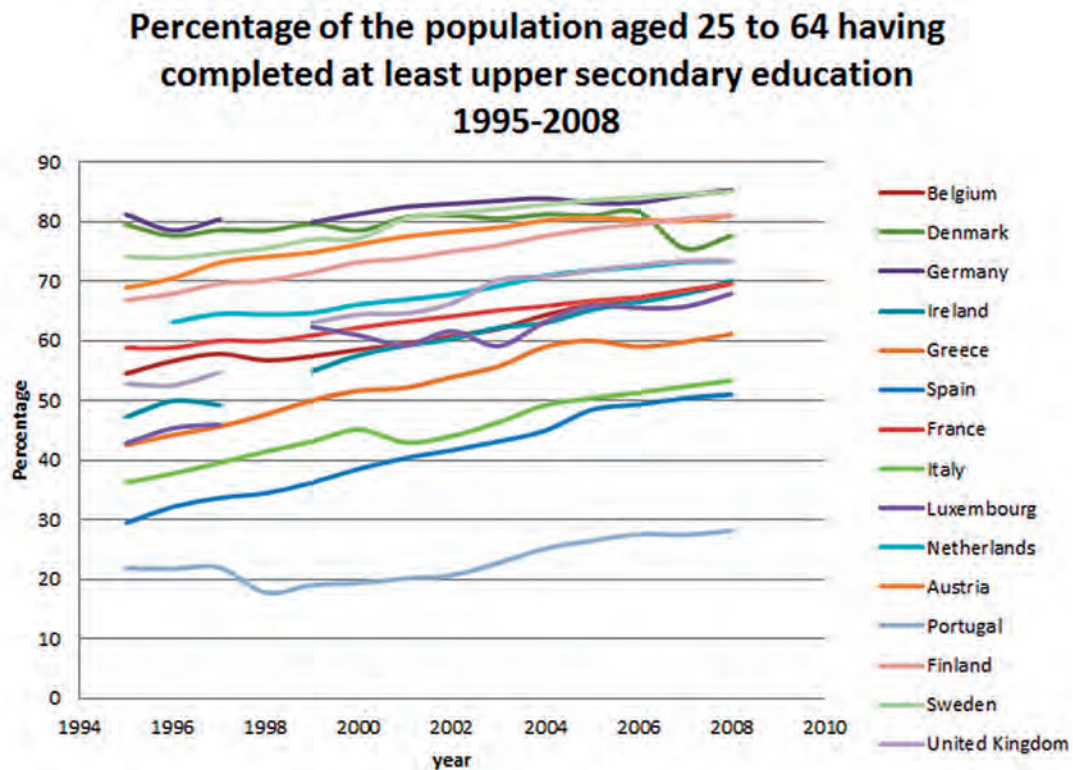
Data source: Eurostat

There is no convergence between Member States, with a large disparity among Member States. Sweden, Denmark and Finland spend between 6 and 8% of GDP, while Greece and Spain but also medium performers Luxembourg and Germany spend far less. Concerning the development, if there is any general picture to be distilled it is that spending on education as a percentage of GDP has more or less remained the same in most EU Member States.

The amount of spending, however, does not tell the whole story. Looking at the education level in Member States, for instance, gives a different impression. One important aspect in this regard is the number of people having completed at least upper secondary education.

³⁶¹ See section 2.3.1.

³⁶² The end year is 2008 due to data availability issues.

Graph 36³⁶³

Data source: Eurostat

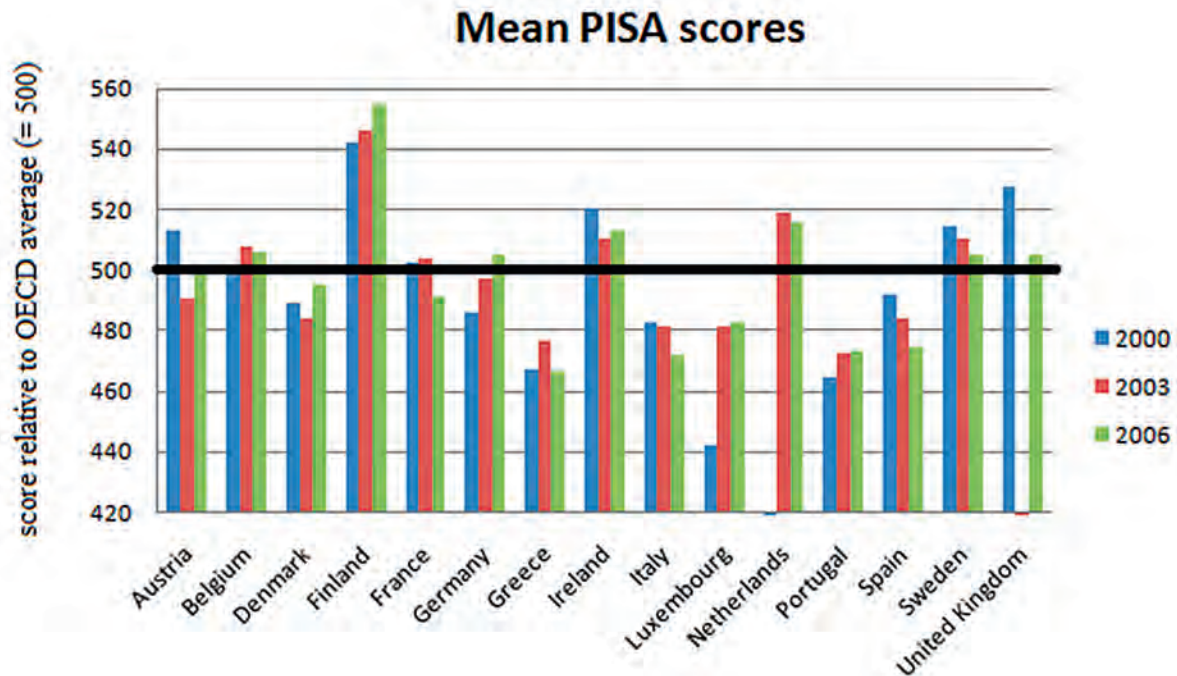
There are large differences between Member States as regards starting position. Whereas Denmark, Sweden and Austria had a very high level of graduates, similar to high growers Finland and the Netherlands and medium performer Germany, low performers Italy and Greece, medium performer Portugal and high grower Spain do not even achieve 40% in the beginning of the 1990s. There is a general upward trend visible for all countries in the period under consideration, with some convergence between Member States. Portugal, however, is clearly lagging behind.

The level of education in general still lacks important elements of the level of human capital in the Member States. There is also an important quality element here that should not be overlooked. To add to the general picture, the following graph presents data from the OECD Program for International Student Assessment (PISA)³⁶⁴.

³⁶³ The end year is 2008 due to data availability issues.

³⁶⁴ PISA is an internationally standardized assessment administered to 15 year olds in school. PISA assesses whether students near the end of compulsory education have acquired some of the knowledge and skills that are essential for full participation in society. In all cycles, the domains of e.g. reading and science are covered not merely in terms of mastery of the school curriculum, but in terms of important knowledge and skills needed in adult life; see also www.oecd.org/pisa last accessed 2 January 2013.

Graph 37



Data source: own calculations based on OECD data on PISA scores

Taking into account that due to data availability this graph only refers to the period 2000-2006, as well as the fact that it gives scores relative to the OECD average there is some confirmation of earlier findings. For instance, Spain, Italy, Portugal and Greece, which have a very low upper secondary education attainment level, also have low PISA scores, while Sweden, the Netherlands and Finland combine high education levels with high PISA scores. The EU 15 largest countries (Germany, France and the United Kingdom) only get an average score in these areas in 2006 with the actual level in France and the United Kingdom dropping from their 2000 values.

Taking the development of all these policy elements together provides the following tables, which give both starting position and change in the period until 2009. The black lines between rows indicate the five different country groups identified in the previous section.

Table 11: Initial level³⁶⁵

	Tax wedge	Benefit replacement rate	Spending on active labour market policies	Strictness of employment protection legislation	Public spending on education	Education attainment level	PISA score
Ireland	Green	Yellow	Yellow	Green	Yellow	Yellow	Green
Spain	Yellow	Yellow	Yellow	Yellow	Red	Red	Yellow
Italy	Red	Green	Yellow	Red	Yellow	Red	Red
Greece	Yellow	Green	Red	Red	Red	Red	Red
Belgium	Red	Red	Yellow	Red	Green	Yellow	Yellow
Germany	Red	Yellow	Yellow	Yellow	Red	Green	Yellow
France	Yellow	Yellow	Yellow	Yellow	Green	Yellow	Yellow
Portugal	Green	Yellow	Red	Red	Yellow	Red	Red
Luxembourg ³⁶⁶	Green	White	Red	White	Red	Yellow	Red
Netherlands	Yellow	Red	Yellow	Yellow	Yellow	Yellow	Yellow
Finland	Yellow	Red	Yellow	Green	Green	Yellow	Green
Denmark	Yellow	Red	Green	Yellow	Green	Green	Yellow
Austria	Yellow	Yellow	Red	Green	Yellow	Green	Yellow
Sweden	Red	Yellow	Green	Yellow	Green	Green	Green
United Kingdom	Green	Green	Red	Green	Green	Yellow	Green

Green = high

Yellow = medium

Red = low

³⁶⁵ Year varies according to data availability of the specific indicators.

³⁶⁶ Employment protection legislation and benefit replacement rate are insufficiently available for Luxembourg.

Table 12: Change³⁶⁷

	Tax wedge	Benefit replacement rate	Spending on active labour market policies	Strictness of employment protection legislation	Unit labour cost development	Public spending on education	Education attainment level	PISA score
Ireland	Green	Red	Yellow	Red	Red	Red	Green	Yellow
Spain	Red	Yellow	Green	Red	Red	Red	Green	Red
Italy	Yellow	Red	Yellow	Green	Red	Yellow	Yellow	Red
Greece	Red	Yellow	Yellow	Yellow	Red	Green	Yellow	Yellow
Belgium	Green	Yellow	Yellow	Green	Yellow	Green	Yellow	Yellow
Germany	Green	Yellow	Red	Green	Green	Yellow	Red	Green
France	Yellow	Yellow	Yellow	Red	Yellow	Yellow	Yellow	Yellow
Portugal	Yellow	Red	Green	Yellow	Red	Yellow	Red	Green
Luxembourg <small>368</small>	Green		Green		Red	Yellow	Green	Green
Netherlands	Yellow	Green	Yellow	Yellow	Yellow	Green	Yellow	Yellow
Finland	Green	Yellow	Yellow	Yellow	Yellow	Red	Yellow	Green
Denmark	Green	Green	Red	Green	Red	Green	Red	Yellow
Austria	Yellow	Yellow	Green	Yellow	Green	Red	Yellow	Red
Sweden	Green	Red	Red	Yellow	Yellow	Yellow	Yellow	Yellow
United Kingdom	Yellow	Yellow	Yellow	Red	Red	Green	Green	Red

Green

= high

Yellow

= medium

Red

= low

³⁶⁷ Period varies according to data availability of the specific indicators. Change in tax wedge is based on the general OECD findings for the period 2000-2010.

³⁶⁸ Employment protection legislation and benefit replacement rate are insufficiently available for Luxembourg.

The two tables do not provide a coherent picture. Especially table 12 shows no general convergence in policies among Member States. Despite the fact that membership of the euro area should have further increased incentives for reform, only taking into account the euro area Member States (leaving out the United Kingdom, Denmark and Sweden) does not change this picture. From the perspective of the five different country groups identified on the basis of the economic output indicators in the previous section, the following picture emerges:

Good starters Denmark, Austria, Sweden and the United Kingdom: started out with a good track record on the majority of the policy variables. The countries did, however, have some initial different approaches to the labour market. This becomes especially apparent in comparing Denmark and Sweden's high spending and the United Kingdom and Austria's low spending on active labour market policy. There are also significant initial differences in the tax wedge, especially between the United Kingdom (very low) and Sweden (high) and in generosity of benefits (which is low in the United Kingdom and Austria and high in Denmark). Looking at the changes in variables, the large decline in active labour market policy spending in Sweden and Denmark and a decrease in generosity of benefits in especially Denmark stand out. On the other side of the spectrum there is the United Kingdom, with constantly low spending in the area of ALMP and a constantly low benefit replacement rate. Austria is the only good starter country that actually raised spending in the area of ALMP, albeit from a very low level. Also, all countries had relatively high results in the area of education, with the United Kingdom significantly increasing its education level as well, be it combined with a drop in quality. Lastly, Denmark managed to significantly increase its market flexibility, almost catching up with the United Kingdom and Ireland in this area.

High growers Finland and the Netherlands: started out with medium scores on the majority of policy variables, with Finland achieving high scores in the areas of labour market flexibility and education. Both countries subsequently had medium to high changes in all policy variables (except for Finland's education spending, which already was very high).

Medium performers: Luxembourg, Portugal, France and Germany. No general trend is visible here. France started out with medium scores on all policy indicators except for a relatively high spending on education and continued with medium progress in all areas except for a low score on labour market flexibility. Germany started out with medium scores on ALMP, benefit replacement rate and labour market flexibility, had a relatively high tax wedge and combined low spending with medium to high outcome variables in the area of education. Portugal and Luxembourg started out in a far worse position, both scoring poorly in all areas except for their relatively low tax wedge. Given this bad starting position both countries made medium to high progress in all fields, except for Portugal's poor progress in the areas of education. Portugal and Luxembourg furthermore performed poorly on unit labour costs development.

Low performers: Italy, Greece and Belgium: had a poor starting position for most policy indicators. The most notable exception is Belgium's high to medium performance in the area of education. Developments of indicators in the period under consideration were mainly medium in nature. Italy and Belgium, however, increased market flexibility considerably, though from a very high level, and both Greece (from a low level) and Belgium (from a high level) had high increases in education spending. Italy and Greece furthermore were characterised by high increases in unit labour costs.

Bubble growers: Spain and Ireland had a significantly different starting position as far as policy indicators are concerned. On the one hand, Spain had a low to medium score in all areas, scoring especially poorly in the area of education. Ireland on the other hand had a much better starting position, scoring medium to high in all areas, with high scores in the areas of taxation, labour market flexibility and education outcome. Spain and Ireland had medium to high scores in the area of taxation, benefit replacement rate and active labour market policy. Especially the decrease in tax wedge in Ireland can be considered quite remarkable given its low initial level. Increase in market flexibility was low in both countries, which can be understood for already flexible Ireland, but less so for Spain. Spain furthermore managed to increase education attainment considerably (albeit from a very low level) with low change in education spending and decrease in education outcome. Ireland's education outcomes are even better, with high attainment level changes through less funding and medium progress in quality. Lastly, both countries experienced high increases in unit labour costs.

Comparing the results for policy indicators in tables 11 and 12 with those for economic output indicators in tables 9 and 10, economic indicators and policy indicators roughly fit the picture which theory predicts. This is seen most clearly when comparing initial starting positions from the group of good starters, with mostly medium to high scores, with the group of low performers, with mostly low to medium scores. At the same time, however, important limitations to the straightforward use of the policy indicators emerge. For instance, there are significant differences between Member States, indicating that economic outcomes have been achieved with various combinations of policy indicators. This is illustrated by comparing the ALMP, benefit replacement rate and tax wedge of the United Kingdom and Sweden, showing significantly different labour market policies. A more straightforward picture emerges in the area of education, where good performance goes together with mainly high performance in this area and low performers have low initial positions³⁶⁹.

Taking a look at changes in variables, the most clear-cut case can be found in

³⁶⁹ Except for Belgium, which has medium to high scores in the area of education. It is good to note here the fact that Belgium gets its low performer status mainly from its participation performance, and has, as theory would predict, a correspondingly high productivity level.

comparing the two high-growth countries (Netherlands and Finland) with low-growth countries Italy, Greece and Belgium. Here too roughly the picture one would expect emerges, with high-growth countries experiencing medium to high changes in all policy variables, except for Finland that already had a high level of education spending. The low performers have mostly medium to low scores. Furthermore, there are a few noteworthy exceptions. Italy's relatively high increase in labour market flexibility can at least partially be explained by its very high initial rigidity. The same reasoning applies for Belgium's performance. In the area of education spending for Greece the same reasoning applies. Belgium's high growth rate in this area is quite remarkable, given its already high level. It is good to recall here, however, that its low performer status was not based on its productivity performance (arguably most affected by the education indicator), but on participation.

Interesting to note is also the development of bubble growers Spain and Ireland. Observing the development of policy indicators and initial position, the change in variables in general gives no clear indication or prediction of the large negative developments in recent years. A poor development of unit labour cost, however, does fit this picture, with such a performance next to the bubble growing countries being mainly linked to poor performing countries³⁷⁰.

Examining more deeply the correlation between specific variables reveals some interesting developments³⁷¹. Concerning the education spending variable, for instance, in general countries with high (growth in) education spending not necessarily get the best results in terms of (changes in) human capital output and productivity performance. This is illustrated by the simple scatter plots shown in graphs 38 and 39.³⁷²

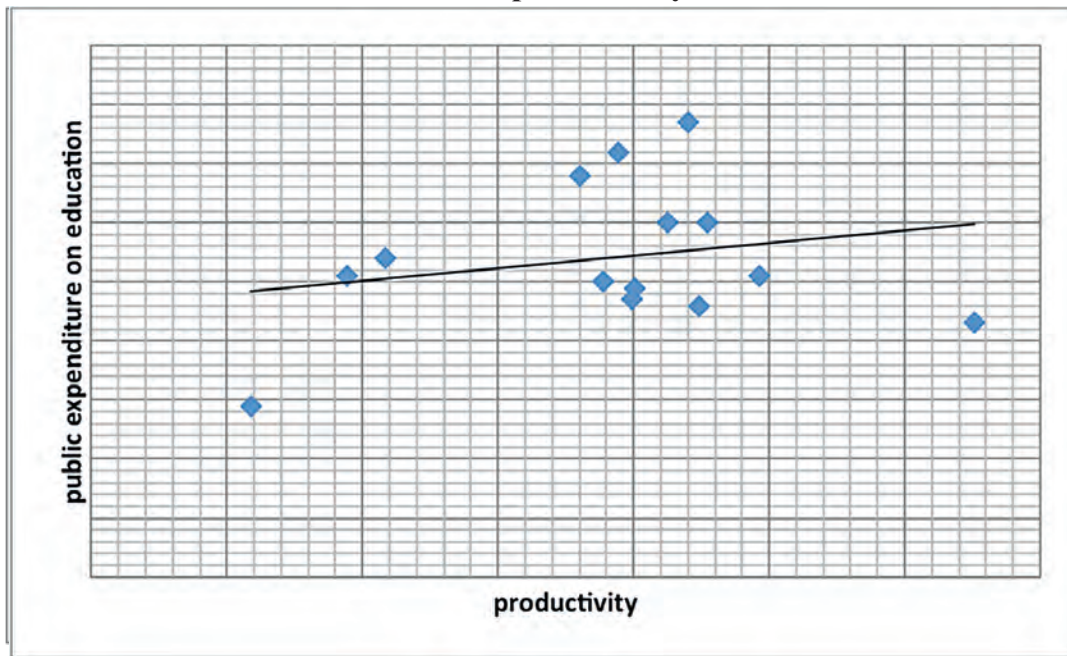
³⁷⁰ With the exception of Luxembourg and the UK and Denmark. The latter two should be judged differently since they are non-euro area Member States.

³⁷¹ On methodology it should be noted that the following discussion has a limited scope, merely aiming at providing some insights into correlations between variables. The approach taken does not include regression analysis and is not aimed at sorting out causality.

³⁷² Own analysis based on previous tables.

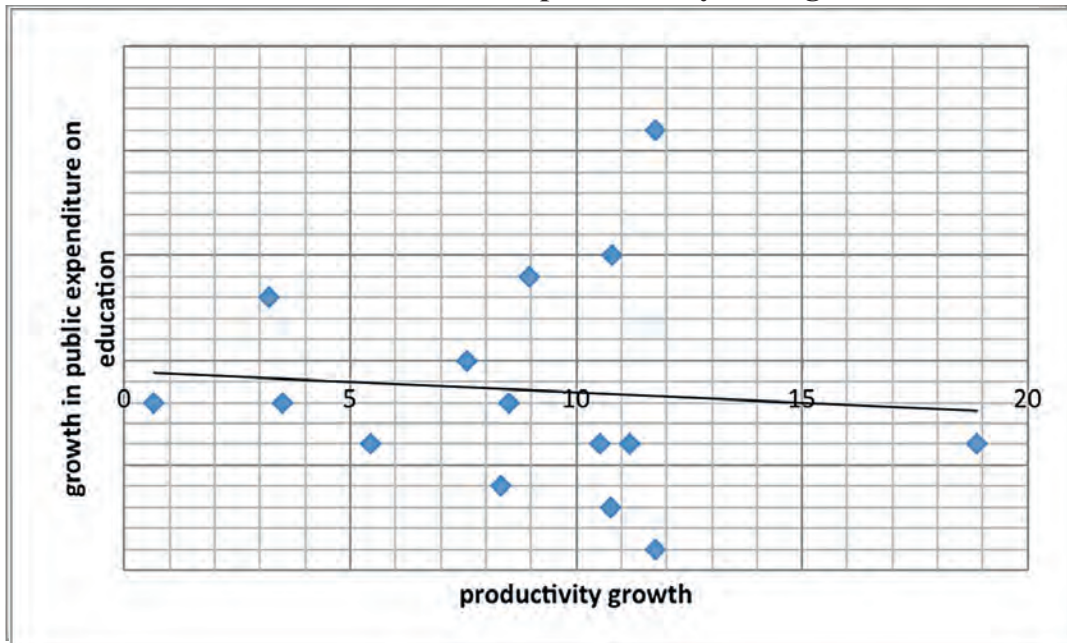
Graph 38

Education vs. productivity; initial level



Graph 39

Education vs. productivity; change



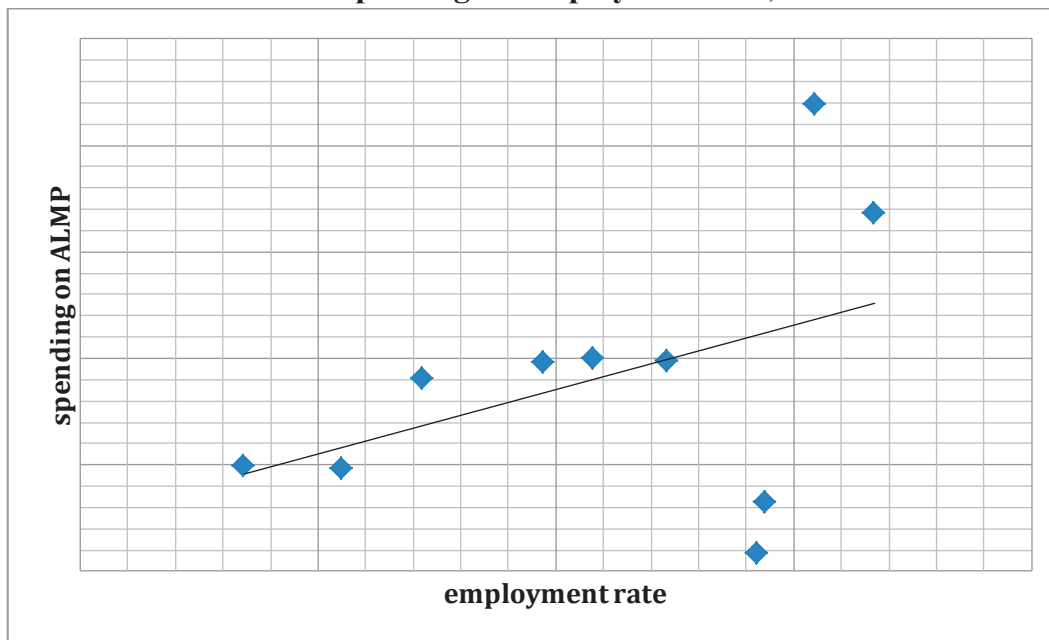
Efficiency and effectiveness apparently have an important role to play in this area as well. The same inconclusive results show up for the ALMP indicator. There seems to be a positive relationship with the employment rate as far as initial starting positions is concerned³⁷³, but this relationship is absent as far as developments in the period under consideration are concerned³⁷⁴.

³⁷³ See graph 40.

³⁷⁴ See graph 41.

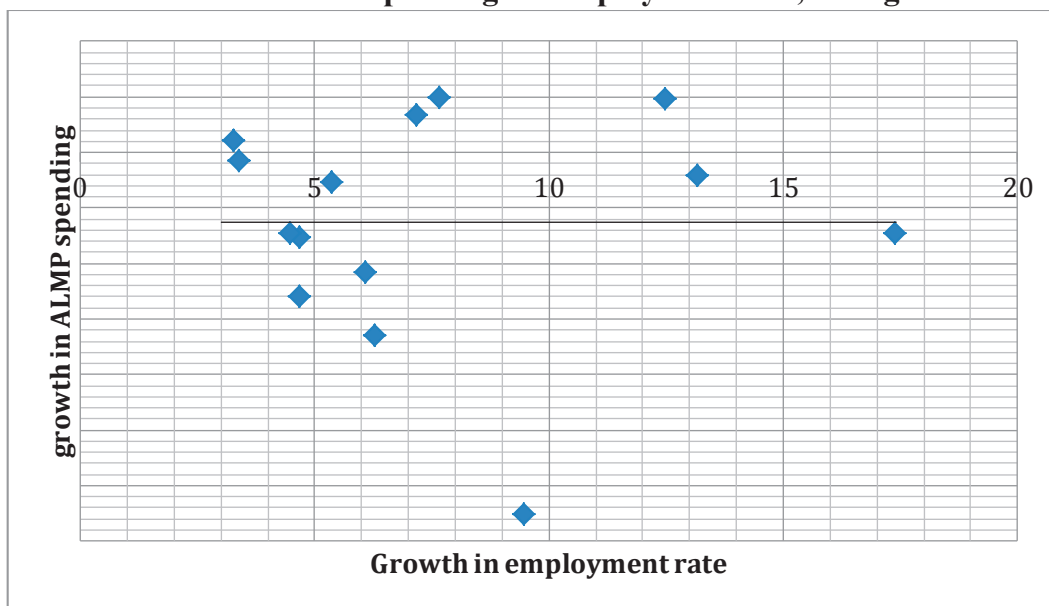
Graph 40

ALMP spending vs. employment rate; initial level



Graph 41

ALMP spending vs. employment rate; change



An increased focus on specific groups instead of general measures as well as increased efficiency of the measures could be important explanatory developments for this less than straightforward relation³⁷⁵. Looking at actual reform measures in high-spending countries, the counterintuitive results in this area, especially in Denmark and Sweden, can be explained by an increased emphasis on cost effective, more targeted

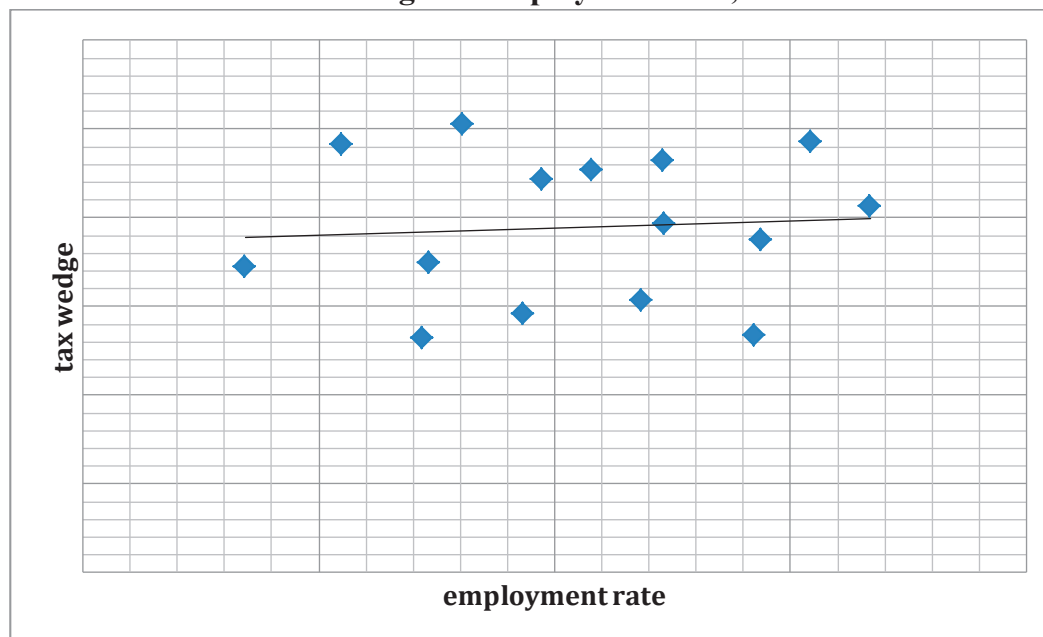
³⁷⁵ For some evidence on this see de la Porte, 'The European level development and national level influence of the open method of coordination: the cases of employment and social inclusion' (PhD study, Department of Social and Political Studies, European University Institute, Florence, 2008).

measures. The same goes for high-growth Finland, where significant cost reform efforts in the area of ALMP took place during the period under consideration, though not related to increased spending.

The point that broad policy indicators can hide specific reform efforts in Member States also applies to other indicators used in this section. The tax wedge is a good example here. Even though the general picture concerning the tax wedge roughly follows the theoretical predictions³⁷⁶ there are exceptions. For instance, the tax wedge for the Netherlands only shows medium growth rates. Further analysis of measures, however, highlights that reform efforts in this area have in fact been high, *but for specific target groups*³⁷⁷. This fits the theoretical and empirical picture painted in chapter 2, where it was emphasised that labour elasticities of wage and tax incentives differ between different labour groups.

Graph 42

Tax wedge vs. employment rate; initial level

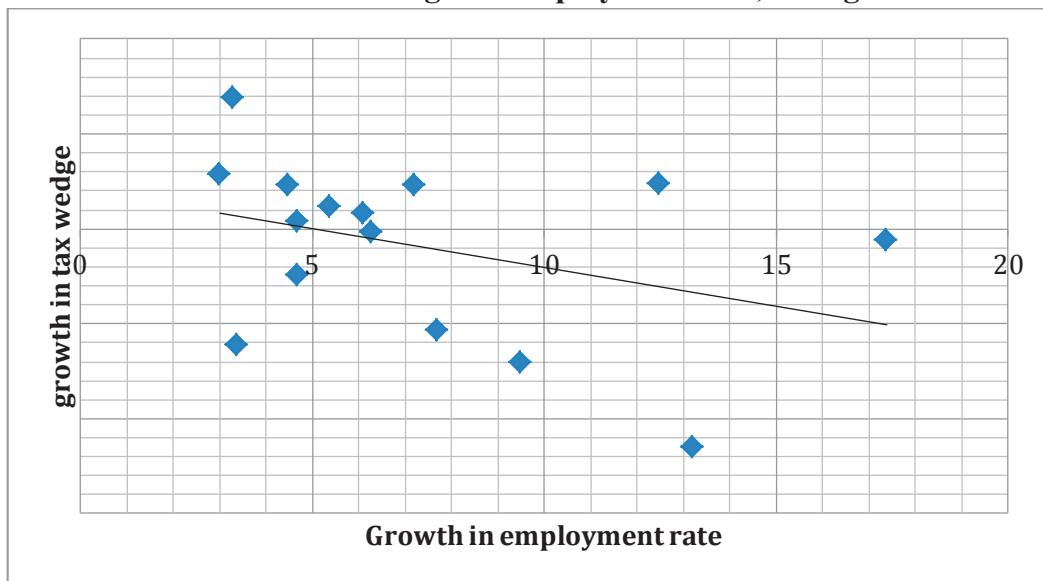


³⁷⁶ See graphs 42 and 43

³⁷⁷ OECD, *Taxing wages 2009-2010* (2011).

Graph 43

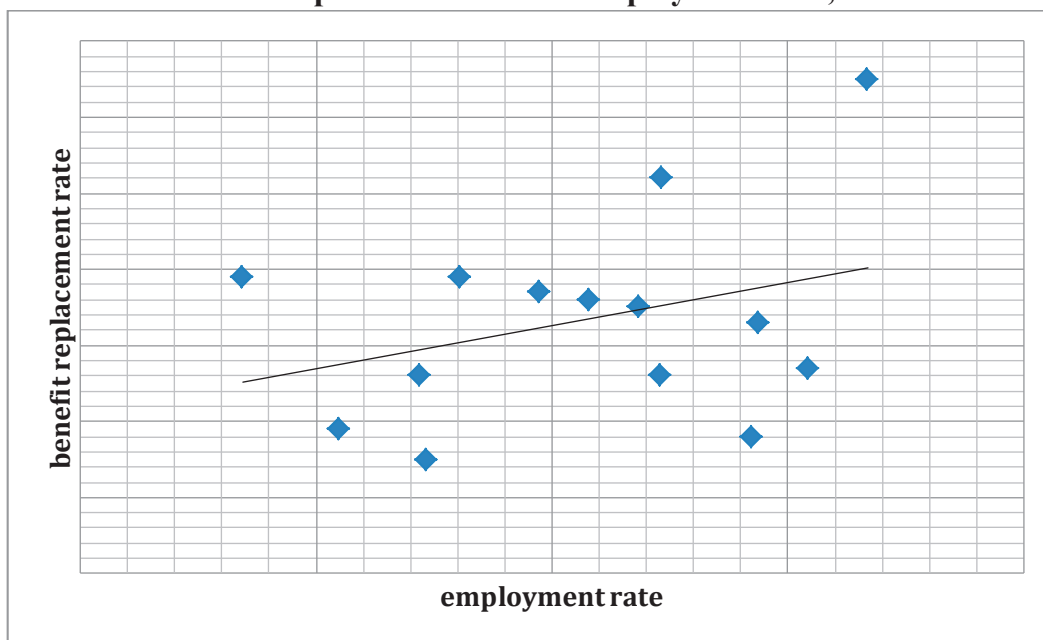
Tax wedge vs. employment rate; change



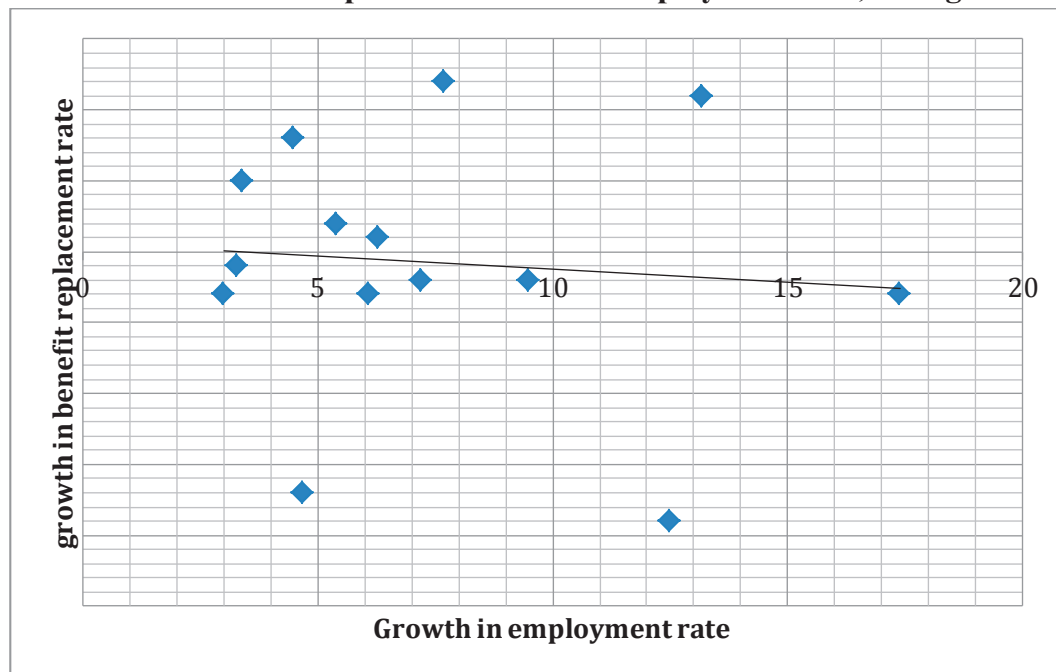
A similar argument can be made for the Benefit Replacement Rate as shown in graphs 44 and 45.

Graph 44

Benefit replacement rate vs. employment rate; initial level



Graph 45

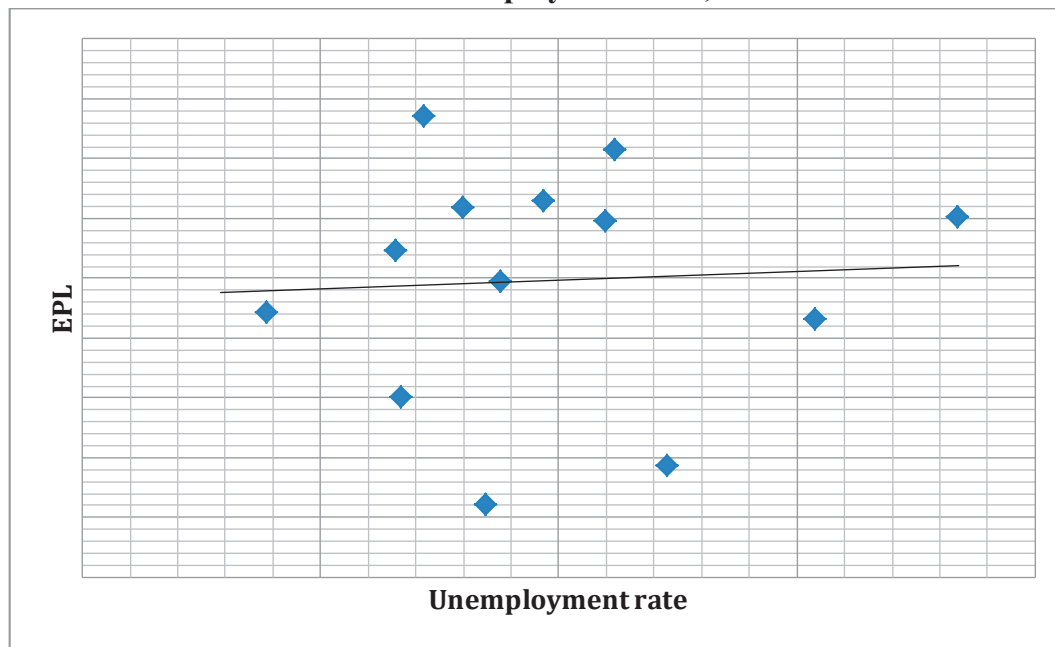
Benefit replacement rate vs. employment rate; change

There is no clear relationship between the policy indicators and the output indicator, with even a slightly positive relationship between level of benefit replacement ratio and employment. This fits the nuanced picture drawn in chapter 2 concerning the effects of the level of benefits, where other aspects of benefits systems, such as duration and complementary obligations, should be taken into account as well.

Finally, the relationship between Employment Protection Legislation and the various economic output variables can be observed. Examining the relationship between EPL and the unemployment rate, graphs 46 and 47 do not provide a conclusive picture. Developments here seem to match the complicated relationship as discussed in chapter 2, with EPL rather influencing the nature and duration of unemployment.

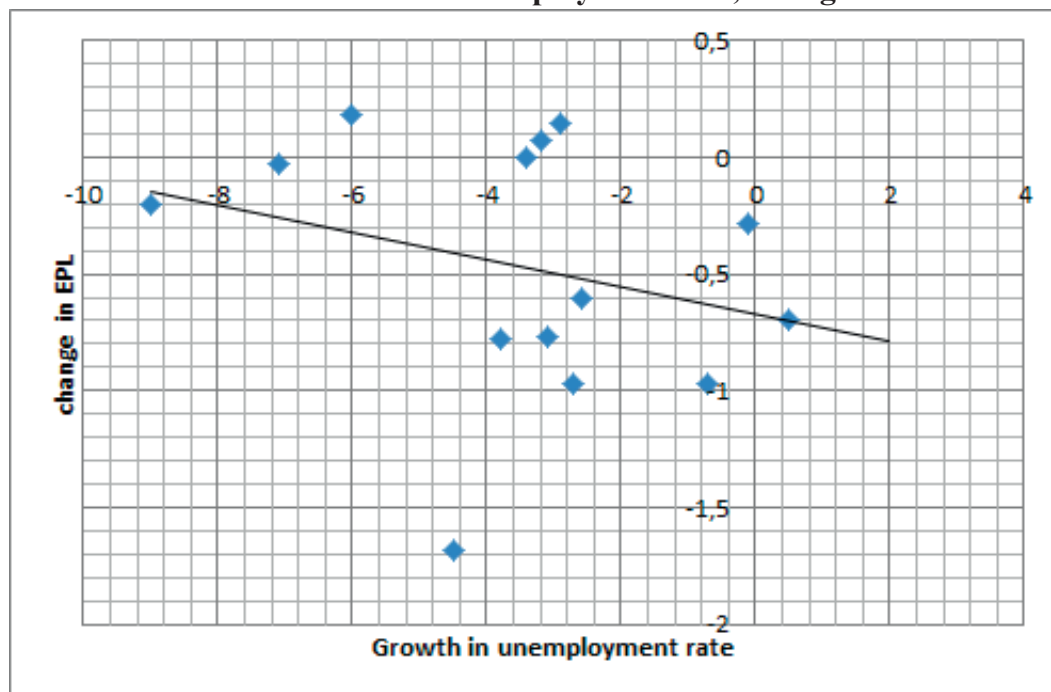
Graph 46

EPL vs. unemployment rate; initial level



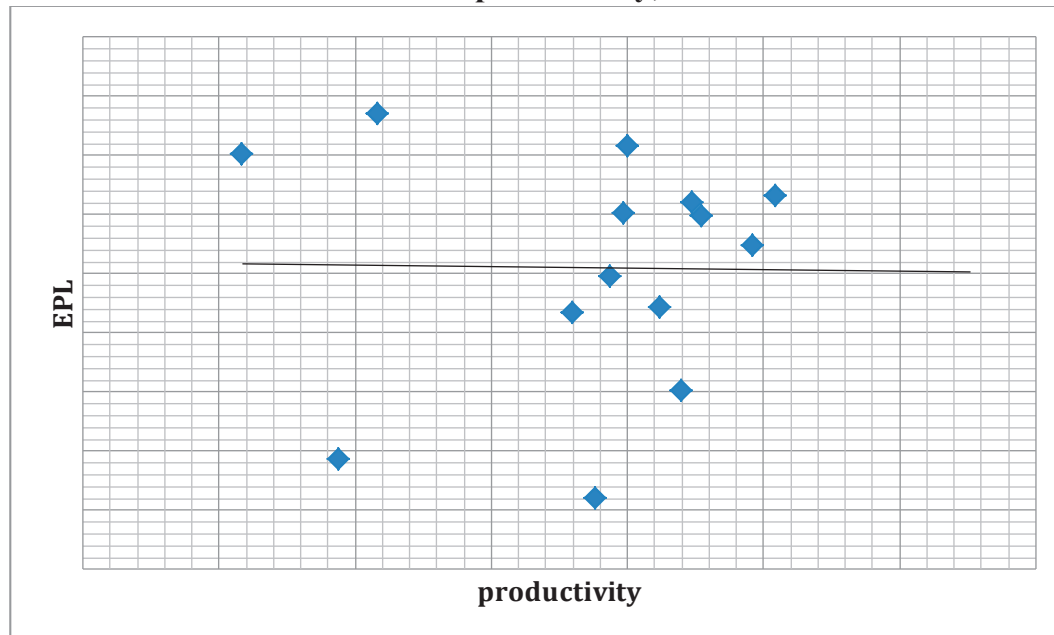
Graph 47

EPL vs. unemployment rate; change



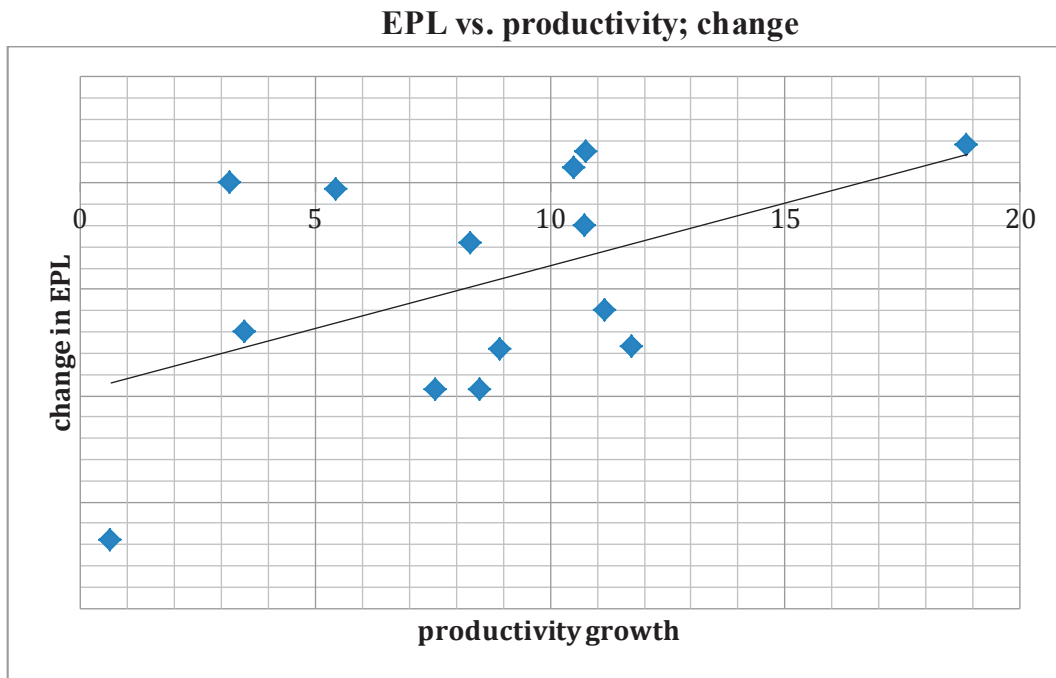
First, the top performers with regard to decreasing the unemployment rate (Ireland, Finland, Spain) only have a low to medium performance in this strictness of employment protection legislation in the same period. Both Italy and the Netherlands, who come shortly after these high performers, however, do combine a fall in unemployment rate with a significant drop in strictness of employment protection legislation.

As far as the link between EPL and productivity is concerned chapter 2 has highlighted that one would expect a negative relationship between the two. However, graphs 48 and 49 do not confirm this, with graph 49 actually depicting a positive relationship between an increase in EPL and productivity. It should be mentioned, however, that this negative relationship is solely based on outliers Italy and Ireland. Furthermore, there are numerous other elements influencing productivity growth³⁷⁸ in a country, which this simple scatter plot cannot take into account.

Graph 48**EPL vs. productivity; initial level**

³⁷⁸ Just a couple examples include innovation performance and product market functioning.

Graph 49



4.2.2 Employment policy coordination; impact on Member States' policies

The analysis in the previous section of economic output variables and the different policy elements in the EU 15 has given some insights on the actual developments of these policy and economic indicators during the period in which the instrument of employment policy coordination was active. The all-important question is then how the EU process of employment policy coordination has actually influenced the actions of national governments. Did the EU processes have a defining impact or were developments in Member States autonomous?

Providing a definite answer to this question is anything but straightforward. As has been observed before, there are several reasons why the impact of employment coordination is difficult to distinguish from other factors. In fact, in its evaluations the European Commission chooses to remain rather vague and anecdotal in its analysis of concrete effects of the strategy, while at the same time being very positive on its overall impact. In the Commission report on ten years of the European Employment Strategy in 2007, for instance, Employment Commissioner Spidla, after listing the stylised facts of employment creation in the preceding year, states:

“This success cannot all be attributed to the EES, but a substantial part can: employment performance is better because Member States can better enact their employment policies and learn from each other how to achieve common targets.”³⁷⁹

³⁷⁹ Commission, ‘Ten years of the European Employment Strategy’ (2007), 3.

There are a number of reasons that *prima facie* make such an appraisal seem valid. A good example of the fit between the employment coordination process and outcome and policy developments in Member States can be found in the area of stimulating employment. The largest gains in employment on average occurred in the 1990s and were mainly due to decreasing unemployment rates (the then centre of focus in this part of the coordination process). Since 2000 gains in employment are more evenly shared between participation and unemployment, also in accordance with the widening of scope of the coordination process. Finally, hours worked, which has been absent from the guidelines, has generally declined instead of the increase that would fit the economic objectives of chapter 2. The only actual conclusion that can be drawn in this regard is that the coordination process has been rather good in following or predicting current trends and developments in labour market policy in the Member States. This coincidence of developments should not be confused with actual impact of the process.³⁸⁰

The fact that clear causal effects are difficult to distil has not prevented the emergence of a large number of papers evaluating the actual effectiveness of the strategy in a more qualitative manner³⁸¹. Often on the basis of extensive case studies in Member States, authors have drawn conclusions on the manner in which the process influences national decision making. Results of these studies vary in their optimism, but the conclusion is mostly the same: the effect of the strategy differs between Member States and policy areas. What does appear to emerge as consensus is that there is limited evidence of direct policy transfer in case of mutual learning³⁸² or of direct instigation of reform through recommendations³⁸³. Ioannou and Stracca³⁸⁴ in this context find that the Lisbon Strategy at best has had no impact on the behaviour of real per capita GDP growth, employment growth and labour productivity growth. On the basis of qualitative research of policy developments in 14 Member States (EU 15 minus Luxembourg) De La Porte³⁸⁵ concluded that the EES has been used more as a

³⁸⁰ See also e.g. van Rie and Marx, 'The European Union at work? The European employment strategy from crisis to crisis', (Journal of Common Market Studies, vol 50, no 2, 2012).

³⁸¹ Just a couple of examples include Heidenreich and Zeitlin, *Changing european employment and welfare regimes, the influence of the open method of coordination on national reforms* (Routledge/EUI studies in the Political Economy of Welfare, 2009), Ashiagbor, *The European Employment Strategy, labour market regulation and new governance* (Oxford monographs on labour law, 2006), Begg, Erhal and Mortensen, *Medium term employment challenges* (Centre for European Policy Studies, 2010), de la Porte, 'The European level development and national level influence of the open method of coordination: the cases of employment and social inclusion' (PhD study, Department of Social and Political Studies, European University Institute, Florence, 2008).

³⁸² See e.g. Zeitlin, 'The Open Method of coordination in action: theoretical promise, empirical realities, reform strategy', in Zeitlin and Pochet, *The open method of coordination in action the European employment and social inclusion strategies* (P.I.E. Peter Lang S.A., 2005).

³⁸³ See e.g. Toulemonde, 'Evaluation of the integrated guideline package for growth and jobs' (Eureval/Rambol management, evaluation for the European Commission, 2008).

³⁸⁴ Ioannou and Stracca, 'Have Euro area and EU economic governance worked? Just the facts' (ECB working paper no 1344, 2011).

³⁸⁵ de la Porte, 'The European level development and national level influence of the open method of coordination: the cases of employment and social inclusion' (PhD study, Department of Social and

reporting device on what was already happening in Member States than as an input for actual policy development. She finds that the European Employment Strategy does not embody sufficient “European pressure” to engender change, no matter what the domestic landscape looks like. When used in domestic policy making it was often as a justification of the national reform agenda. De la Porte identifies Germany in this regard as a country where the EES has been used in such a manner, specifically in the so called Hartz reforms in the beginning/mid 2000s. Mailand³⁸⁶ takes a somewhat more optimistic view, stating on the basis of a comparative qualitative study of policy developments in four countries that “the EES has only to a limited extent had a direct impact on the employment policies of the Member States, but the impact varies between these Member States”. He finds a number of plausible variables explaining the difference in impact between countries, entailing level of compliance before entry into force of the EES, e.g. high in Denmark, which leads to low impact, level of agreement on policy, e.g. low in Spain, which leads to use of the EES as ammunition in policy dialogue, and level of economic dependence on EU, e.g. high in Spain which leads to higher impact. In this line of reasoning Graziano concludes from an in depth study of the French and Italian experiences with the European Employment Strategy that it did have an impact in both countries, but to a varying extent, with the Italian government being more willing to incorporate EES guidance into its policy domain partly due to the wish to present itself as a trustworthy European partner. Begg, Erhal and Mortensen³⁸⁷ conclude on the basis of surveys sent to Member States’ officials and stakeholders that the direct effect on national employment policies is somewhat limited, and that the EES is largely the preserve of a limited number of members of national policy “elites”. At the same time, they emphasise that there are different ways in which the EES exerts influence by widening horizons and increasing receptiveness of Member States to new policy ideas. The concept of flexicurity, now actively pursued in various Member States, is mentioned as an example here. Nedergaard³⁸⁸ also finds evidence for policy learning between Member States, as do Heidenreich and Zeitlin, who point to these types of indirect or second order learning as real and significant. On the basis of a number of different qualitative country studies they conclude that the OMC has “systematically (though neither deterministically nor uniformly) stimulated substantial changes in national policy agenda’s, cognitive paradigms, and (in some cases) programmes, as well as procedural shifts in governance and policy making processes, through a series of direct and indirect mechanisms, including but not confined to transnational learning and creative appropriation by domestic actors.”³⁸⁹

Political Studies, European University Institute, Florence, 2008).

³⁸⁶ Mailand, ‘The uneven impact of the European Employment Strategy on Member States employment policies: a comparative analysis’ (Journal of European Social Policy, vol 18, no 4, 2008).

³⁸⁷ Begg, Erhal and Mortensen, *Medium term employment challenges* (Centre for European Policy Studies, 2010).

³⁸⁸ Nedergaard, ‘Policy learning in the European Union; the case of the European Employment Strategy’ (Policy Studies, vol 27, no 4, 2006).

³⁸⁹ Heidenreich and Zeitlin, *Changing european employment and welfare regimes, the influence of the*

The last elaborate appraisal probably comes closest to an adequate summary of the actual influence of the employment coordination process on national employment policy. The fact that the direct effect has been limited can be attributed to the nature of the system, which at least until recently in essence has remained a broad and soft process without a real sanction mechanism. This makes its functioning dependent on the (political) will of Member States' participants in the process. Consequently, Member States will interpret, use and learn from the system to their benefit, and will take advantage of it when needed and dependent on their policy views. When they do not need it (think of the good starter countries) its impact will be very limited, and the actual will of a country can then depend on a range of sometimes surprising arguments³⁹⁰. Furthermore, the possibilities for a pick-and-choose approach in using the employment policy coordination process are increased by the fact that actual peer and public pressure as well as more general knowledge of the process amongst a broader civil society has been largely absent³⁹¹, also causing the role of the process in national policy debates in e.g. national parliaments to remain limited³⁹².

Some confirmation of this can also be seen in the stylised fact analysis of economic and policy variables, best illustrated by comparing two different aspects, namely the aspect of human capital and that of the functioning and flexibility of markets. Increasing human capital has been one of the main issues in the guidelines since the beginning of the process. This is reflected in the policy variables, where the education level (if not expenditure) has risen constantly over the period under consideration. This can be compared with the development in the area of Employment Protection Legislation. The largest positive developments in this area took place in the 1990s when the coordination process was at its softest and most unsophisticated and therefore should arguably have had the weakest impact. The attention for improving the functioning and flexibility of markets in the coordination process remained high in the years after 2000, but reform efforts diminished. This in turn was noted and lamented in the mid-term review of the Luxembourg process, the Kok report and the relaunch of the Lisbon strategy in 2005³⁹³. Only recently did this change the trend, when in some Member States the reform process in this area has picked up again, arguably due to the economic crisis, which put extra pressure on pursuing structural reform measures improving the functioning and flexibility of markets³⁹⁴.

Since reform efforts are based on national political preference and countries will pick

open method of coordination on national reforms (Routledge/EUI studies in the Political Economy of Welfare, 2009) 3.

³⁹⁰ Such as the "good European" rationale seen in Italy.

³⁹¹ See e.g. Begg, Erhal and Mortensen, *Medium term employment challenges* (Centre for European Policy Studies, 2010). iii.

³⁹² Except when countries have explicitly used the process as extra ammunition for discussion, for instance in the case of the Hartz reforms in Germany mentioned earlier.

³⁹³ See chapter 3.

³⁹⁴ See also Hoj et al., 'The political economy of structural reform; empirical evidence from OECD countries' (OECD economics department working papers, no 501, 2006), par 4.2.

and choose from the coordination process accordingly. Improving the education level in this context is politically a rather safe and therefore popular area of reform, which results in constant improvement. Increasing market flexibility by decreasing employment protection on the other hand arguably is one of the most difficult areas for labour market reform, since this will likely result in strong opposition from various groups of “insiders” in society, who see their own position weakened. Reform efforts in this area therefore pick up when real pressure arises: the reason for large reform efforts in the 1990s was the unprecedented large number of unemployed in the EU15. In the years after 2000 unemployment as a direct problem decreased significantly and was replaced by far less tangible problems such as ageing, which led to decreased domestic pressure and subsequently decreased reform efforts in this area. Finally, the current economic crisis, with its rising unemployment rates and debt levels, seem to have kick started the reform process once again, most notably in Greece and Portugal as part of their macroeconomic adjustment programme, but also in other countries, where e.g. in Spain and Italy significant labour market reform efforts have been implemented in recent years³⁹⁵.

4.3 Social employment policy

As has been highlighted in chapter 3, social employment policy as a separate instrument has started to develop since the Single European Act and the Treaty on European Union that gave legislative competence to the Union in a number of areas. In the last decade, this scope of legislative competence was added to by the instalment of the Open Method of Coordination process in the area of social protection and social inclusion. EU’s social employment policy as it stands today can be linked to the following policy objectives:

Table 13

Objective		Increasing incentives for work	Improving the functioning and flexibility of markets	Improving the human capital stock	Improving framework conditions	Short-term stabilization policy
<i>Instrument</i>						
<i>Social employment policy</i>	<i>legislation</i>				X	
	<i>coordination</i>	X		X	X	

Examining more closely the exact contents of the instrument at hand it can be observed that the full width of EU social employment policy goes beyond the economic objectives outlined above as EU social policy also encompasses broader

³⁹⁵ See e.g. OECD, *Going for Growth* (2012), box 1.2 and part I chapter 2.

issues than those relating to employment. EU social employment policy roughly consists of the following aspects³⁹⁶:

1. Vocational training
2. Equality between men and women
3. Improvement in the working environment and working conditions
4. Promotion of employment
5. Social protection and social inclusion

This section will discuss issues 2, 3 and 5, delving deeper into the relationship between policy instruments and policy objectives³⁹⁷.

The Commission in its “Strategy for equality between women and men 2010-2015”³⁹⁸, differentiates the actions to be taken under this subject into five different headings, which provides some foothold for further differentiating the subject as dealt with in EU policy making today. These five headings are “Equality in decision making”, “dignity, integrity and end to gender based violence”, “gender equality in external actions”, “equal pay for equal work of equal value” and “equal economic independence”. The first three aspects are topics that do not fit directly into the framework, since they do not concern the direct economic use of labour as a production factor in the EU. The last two do. Simple economic reasoning would make equal pay for equal work of equal value to be the natural and efficient outcome of the economic process. Removing obstacles that keep this from happening increases efficiency and therefore can be considered beneficial. Search theory, however, showed that even for workers with similar productivity differentiating wages could be the natural outcome of the economic process. This stemmed from the matching process and the nature of the search frictions involved. The crux of the matter therefore lies in the combination with the concept of discrimination on the basis of gender, which also in search theory is not an efficient reason for differentiation. EU policy fits this prescription, since this combination has been present in the EU approach to this subject from the start³⁹⁹, and therewith nicely fits under the heading

³⁹⁶ The aspects mentioned relate to EU social employment policy as laid down in or directly linked to the social chapter of the Treaty. Broader issues which could have a link with employment, like the general anti discrimination article present since the Treaty of Amsterdam (then art 13 TEC) will not be analysed.

³⁹⁷ Those aspects of social policy that go beyond the framework of employment will not be dealt with in this section. Furthermore, social employment policy in its focus has a large overlap with the process of employment policy coordination as discussed in the previous section. This section will therefore not go into the broad subject of stimulating employment, nor will it deal with the aspect of vocational training, which to a large extent overlaps with issue of education already discussed in the previous section.

³⁹⁸ Commission, ‘Strategy for equality between women and men 2010-2015’ COM(2010)491.

³⁹⁹ Note that this approach to gender equality is one that is based on equality of opportunities rather than equality of outcome. This therefore does not necessarily leads to e.g. an equal employment rate. An equality of outcome approach to gender equality could in fact lead to inefficient policies, forcing the underrepresented groups into positions where they would not have been if the decision would have been based solely on economic motives. Further on this distinction see also Chalmers et al., *European*

of improving framework conditions. The second aspect that fits into the economic framework, “equal economic independence”, is translated as far as EU social employment policy making is concerned in promoting labour market participation of women, something which has received special attention ever since the Lisbon strategy in 2000 and the specific goal to increase female employment rate to 60% in 2010. Being aimed at increasing incentives for work as well as by improving the human capital stock, this fits very neatly into the framework.

The second issue of social employment policy, the concept of improving the working environment and working conditions, breaks down in two distinct EU policy issues: health and safety of workers and organisation of working time. The general 1989 health and safety at work Directive⁴⁰⁰ set out a number of specific provisions improving safety on the work place, the working time Directive⁴⁰¹ gives minimum standards for maximum working hours and the fixed term⁴⁰², part time⁴⁰³ and temporary work⁴⁰⁴ Directives introduce minimum requirements and equal treatment provisions for employees in these specific situations. Relating both to economic theory, both can be linked to the heading of improving framework conditions. chapter 2 has shown that on the one hand this kind of legislation could enhance worker productivity as well as labour supply by improving framework conditions, e.g. by reducing the risk of injury of workers. Furthermore, the extra costs an employer has to make in case of an injury are reduced, improving competitiveness. On the other hand, employers have to make additional costs in meeting these conditions and see their administrative burdens increased and flexibility as far as possible business models are concerned reduced. Both aspects could decrease competitiveness and GDP per capita growth. The exact sign of these effects have been shown to depend on the specific situation and the level of protection implemented.

The last issue, social protection and social inclusion, was already discussed in the previous section for as far as it appeared in the employment guidelines. The concept of social protection and social inclusion, however, was also and in a broader manner operationalised in 2000 in a separate Open Method of Coordination for social protection and social inclusion⁴⁰⁵. The goal of this OMC process was to set a

Union law (2nd edition, Cambridge University Press, 2010).

⁴⁰⁰ Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183.

⁴⁰¹ Directive 93/104/EC of the Council of 8 February 1993 concerning certain aspects of the organisation of working time [1993] OJ L 38, modified in 2003 by Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299.

⁴⁰² Directive 99/70/EC of the Council of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L 175.

⁴⁰³ Directive 97/81/EC of the Council of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC [1998] OJ L 14.

⁴⁰⁴ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 327.

⁴⁰⁵ The issue of social protection could also be argued to include some EU legislative measures in the

framework for national strategy development as well as for policy coordination on issues relating to poverty and social exclusion, health care and long-term care as well as pensions⁴⁰⁶. There are a number of aspects of this strategy which do not directly fit into economic theory. Both health care/long term care and the reduction of poverty do not fall under the scope of the framework. Neither do social exclusion aspects related to the guaranteed access to certain goods and services and pension aspects related to an equitable sharing of pension burden between generations. However, the active inclusion of people to the labour market, especially vulnerable groups, increases incentives for work and therewith fits in nicely into the economic framework, as does the sustainability of pension systems, which relates to the fact that as the number of pensioners in Europe rises, and the relative number of people of working age declines, further reforms are needed, including creating incentives for people to work longer.

Having established the link between the instrument of EU social employment policy and the economic objectives the follow up question then is how this instrument relates to actual outcome and policy developments in the Member States. In distilling possible impact, however, the same difficulties are encountered as in the previous sections, specifically regarding the impact of the OMC social protection and social inclusion. When examining this OMC process therefore a similar method of analysis as used in the previous section is applied. The legislative aspects of gender equality and improving the working environment and working conditions, do not face the same problems since these more or less automatically lead to policy changes through shifts in legislation.

4.3.1 Equality between men and women; impact on Member States' policies

Relevant aspects of gender equality for further analysis are the concept of equal pay for work of equal value and the concept of equal economic independence. Starting with the first one, the development of equal pay for work of equal value can be approximated by examining the development of the so called gender wage gap. The gender wage gap is shown in graph 50, which gives the development of the percentage difference in median earnings of full time male and full time female employees for the period starting in 1980, a rough approximation of the coming into force of the two gender equality Directives⁴⁰⁷ from the mid 1970s⁴⁰⁸.

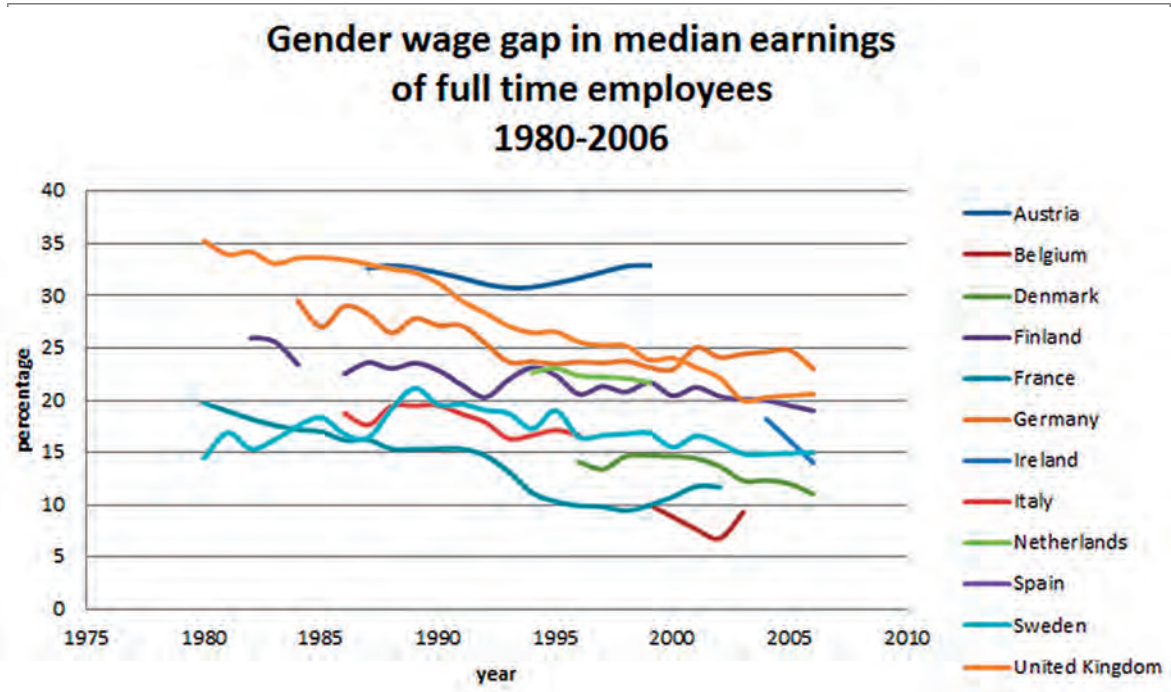
area of, for instance, worker protection in the case of insolvency, see Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer [1980] OJ L 283. Since this only has an indirect link with the economic framework of chapter 2 it will not be dealt with.

⁴⁰⁶ See <http://ec.europa.eu/social/main.jsp?catId=753&langId=en> last accessed 3 January 2013.

⁴⁰⁷ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L 045 and Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L 39.

⁴⁰⁸ This is also the central indicator used in the OMC process on this issue. Data availability is also an

Graph 50



Data source: OECD

The graph clearly shows a serious lack of data availability, with data available for several countries only after 1980 and large data gaps throughout the years. This having been said, however, large differences in starting position can be discerned, with the United Kingdom starting out with almost twice the gender pay gap of France. Furthermore, even though there is a general trend discernible towards a decrease in the gender pay gap, there are also large differences in development here. Sweden, for instance, remains fairly constant, though this is arguably due to the already small gender wage gap at the beginning of the period under consideration.

The lack of data is not the only reason why it is difficult to draw any conclusions from this graph as far as actual development of “equal pay for equal work of equal value” is concerned, which are presented by the Commission in its Strategy for equality between women and men 2010-2015⁴⁰⁹. First of all, even though educational attainment levels of men and women have converged, there still is a gap between men and women’s educational attainment and professional development (mostly reflecting family responsibilities). The causes of the pay gap also derive from segregation in the labour market as women and men tend to work in different sectors/jobs. Women and men are often over-represented in certain sectors, with ‘female’ jobs (mostly in health care, education and public administration) being in general less valued than typically male private sector professions like engineers, plant and machine operators and assemblers. Furthermore, even within the same sector or company the jobs done by women tend to be of lower value and less well paid. These are all factors negatively

issue in choosing 1980 as the starting year.

⁴⁰⁹ Commission, ‘Strategy for equality between women and men 2010-2015’ COM(2010)491.

influencing the gender pay gap without necessarily being inefficient and without having a direct relationship with the hard law measures on gender equality under evaluation here.

To gauge the effect of these hard law measures a more qualitative approach therefore needs to be taken. A number of studies have evaluated the implementation of the gender equality Directives in the Member States. Generally speaking, there seems to be a consensus that the Directives have had an impact on the reduction of gender inequality in the Member States, even though there are considerable differences between them. These include national differences in a variety of institutions, including legal machinery, political will and differences in the transposition of EU law⁴¹⁰. Caporaso and Jupille (2001⁴¹¹), for instance, analyse the domestic structural change in legislation, individual rights and institutional balance incurred as a response to the two gender equality Directives from the mid 1970s in the United Kingdom and France. They conclude that the effect of EU legislation in France was limited, mainly due to the fact that France already had similar legal provisions in place. In the United Kingdom, however, there was a larger misfit between the domestic system and the EU legislation imposed. So EU legislation led to significant domestic changes.

The second aspect of equality between men and women, the concept of “equal economic independence”, translated in specifically promoting labour market participation of women. Arguably, EU policy making in this area only really started with its mentioning in the first employment guidelines in 1997, as well as the start of the Lisbon strategy in 2000 with its target of 60% female employment⁴¹². Two output indicators are relevant in this regard. The first one is the female employment rate as a percentage of the male employment rate. The second is the number of hours worked by women, also as a percentage of the male hours worked. These two indicators are depicted in graphs 51 and 52.

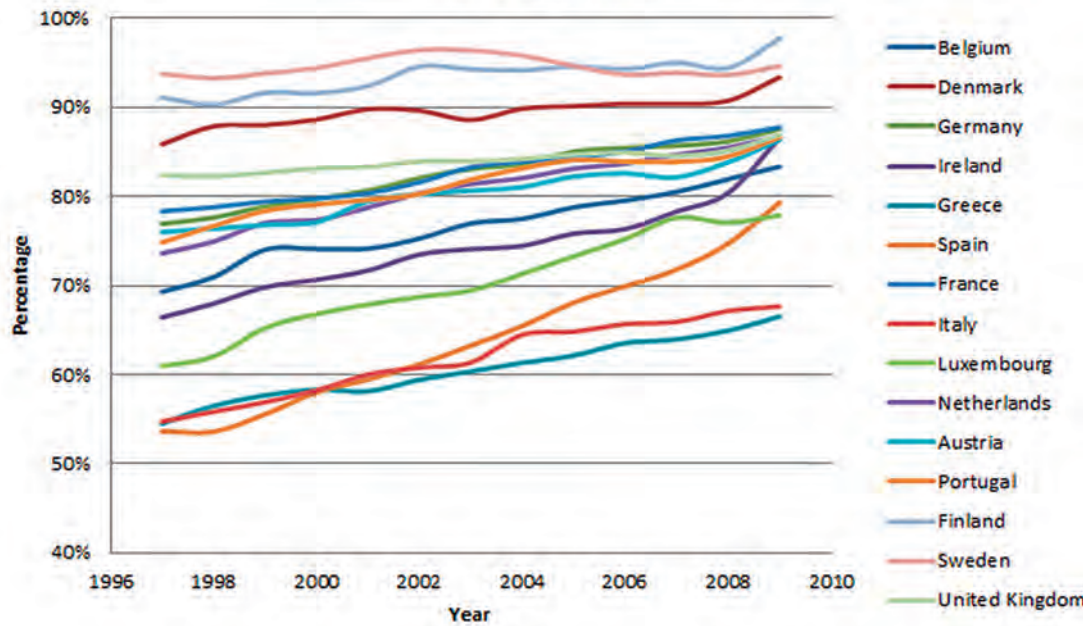
⁴¹⁰ See Walby, ‘The European Union and gender equality; emerging varieties of gender regime’ (Social Politics, vol 11, no 1, 2004) for an overview.

⁴¹¹ Caporaso and Jupille, ‘The Europeanisation of gender equality policy and domestic structural change’ in Green Cowles, Caporaso and Risse, *Transforming Europe* (Cornell University Press, 2001).

⁴¹² This is illustrated by the fact that the previously mentioned Delors white paper on growth, competitiveness and employment makes no reference to gender issues, see Commission, ‘White paper on Growth, competitiveness, employment the challenges and ways forward into the 21st century’, COM 93/700.

Graph 51

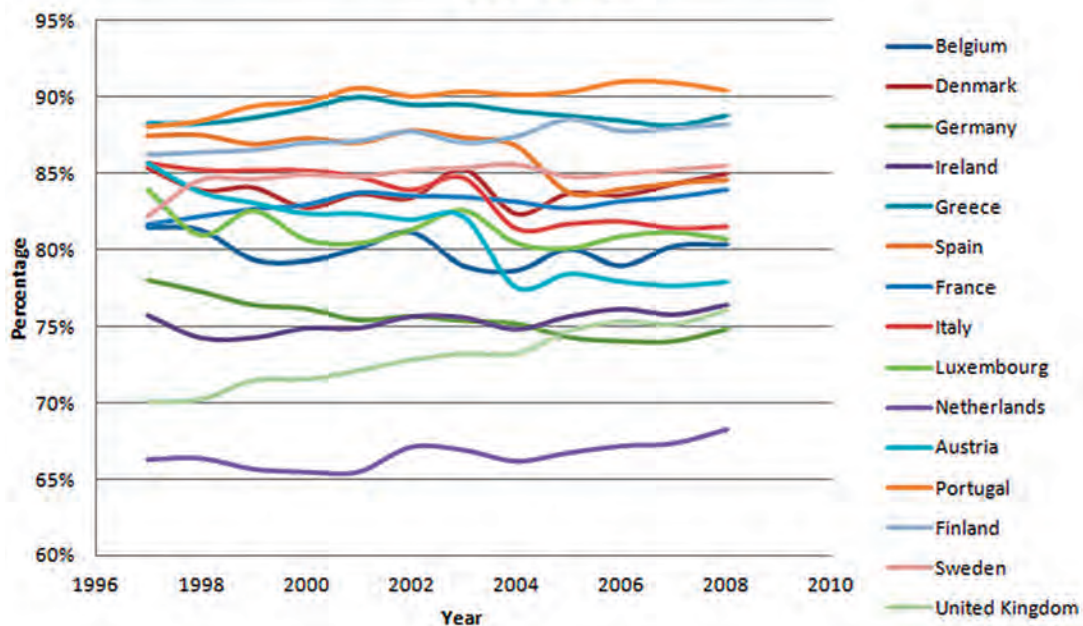
Female employment rate as a percentage of male employment rate (age 15-64) 1997-2009



Source: own calculations based on Eurostat data on male and female employment rate

Graph 52

Female average actual hours worked in main job as a percentage of male hours worked in main job 1997-2009



Source: own calculations based on Eurostat data on female and male hours worked

There is a large difference in starting position between the Member States. In general, there is a south, centre, north divide here, with southern EU 15 countries having



relatively unequal female/male employment rate with a percentage of around 55% (with the exception of Portugal), northern countries Sweden, Finland and Denmark having a highly equal employment rate of 85-95% and the other countries faring somewhere in the middle. As far as development is concerned a general upward tendency can be discerned, with convergence taking place and low- starting countries, especially Spain, as well as the Netherlands, Belgium and Ireland, growing more rapidly than the others.

As far as increasing labour participation is concerned, however, this picture gets more nuanced when looking at the average number of hours worked by females relative to males, as shown in graph 52. Sweden and Finland, countries with a highly equal employment rate, also have a highly equal number of hours worked. Southern countries Portugal, Spain, Greece and Italy combine a very unequal employment rate with a highly equal number of hours worked, meaning that if women work, they work a high number of hours. The Netherlands combines a high level of equality as far as employment is concerned with a high inequality in hours worked, which reflects the large number of part time jobs held by women in the Netherlands. There is no general trend visible as far as development over time is concerned, with the hours worked by women as a percentage of hours worked by men remaining roughly equal.

Moving closer towards the actual impact of the process, there are two central policy indicators mentioned in the employment guidelines whose developments warrant further analysis. These are the provision of affordable and high-quality child-care as well as the elimination of tax and benefit disincentives for female employment. The existence of affordable and high-quality child-care reduces the costs a person with children has when participating in the labour market, therewith increasing labour supply. Since 1998, the policy direction of Member States to ensure affordable and high-quality child-care has been part of the employment guidelines, with the Barcelona European Spring Council in 2002 even setting targets for the EU to child-care for at least 90% of children between 3 years and the mandatory school age and at least 33% of children under 3 years by 2010⁴¹³. These targets are set independent of the number of hours of child-care requested. Matching quantitative indicators for this target are, however, only available from 2005 onward. Since as far as a time series is concerned this is insufficient to say anything about the trend since the start of the OMC process in this area, the following table only gives an overview of the current differences between countries based on 2009 data⁴¹⁴ for both age groups.

⁴¹³ Presidency Conclusions of the Barcelona European Council of 15/16 March 2002.

⁴¹⁴ Data for Denmark are for 2008.

Table 14

Percentage of children in childcare, 2009					
	Children age 0-2 years			Children age 3 to min. compulsory school age	
	<i>percentage of children in formal childcare</i>	<i>average number of hours in formal health care</i>		<i>percentage of children in formal childcare</i>	<i>average number of hours in formal health care</i>
Denmark	73	34.00	Belgium	99.0	32.1
Sweden	63	29.2	Denmark	97.0	33.9
Netherlands	49	16.1	France	95.0	29.4
France	41	30.4	Sweden	94.0	32.9
Spain	36	27.4	Spain	94.0	29.5
Portugal	36	41.9	Italy	92.0	32.3
United Kingdom	35	12.4	United Kingdom	91.0	17.9
Luxembourg	34	25.3	Germany	89.0	26.9
Belgium	33	27.9	Netherlands	87.0	19.8
Finland	27	33.8	Ireland	87.0	21.7
Italy	25	30.4	Portugal	81	39.5
Ireland	20	19.1	Austria	80.0	24.4
Germany	19	29.7	Finland	78.0	33.4
Greece	11	31.0	Luxembourg	71	23.9
Austria	10	20.5	Greece	58.0	27.5

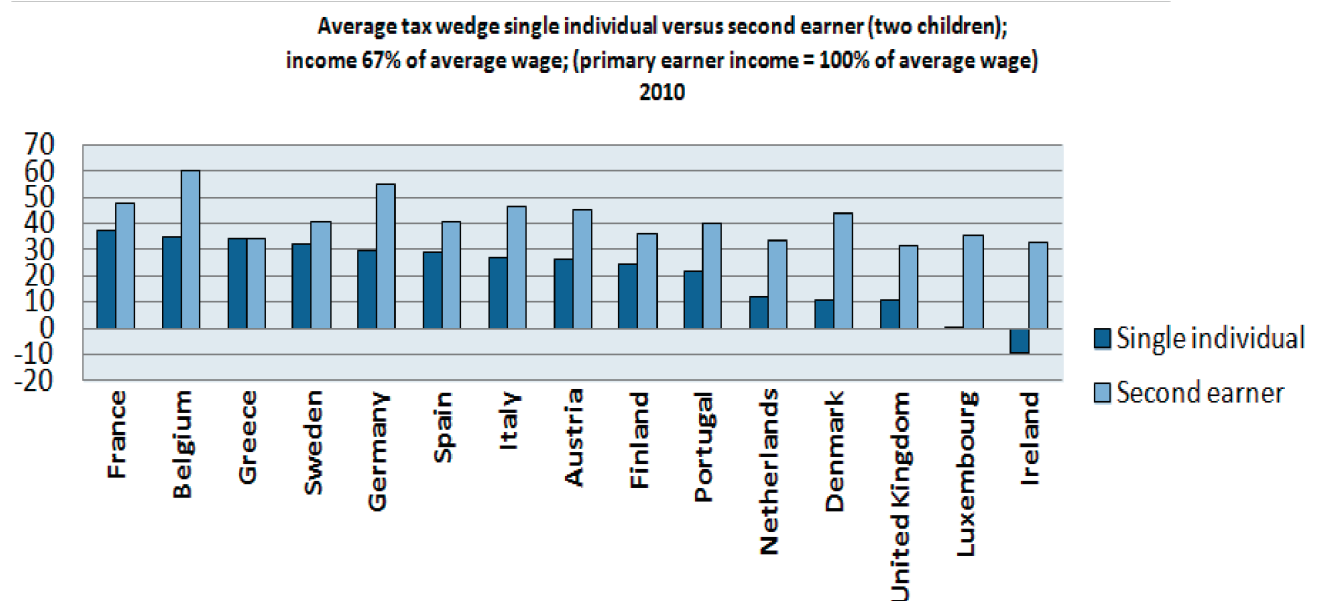
Data source: Eurostat

There is a very large degree of heterogeneity between the Member States as far as policy outcomes in the area of childcare is concerned. This especially applies to the age group of 0-2 year olds. Countries, such as Denmark and Sweden, which have a coverage of formal childcare in this area of around 70%, stand against countries, such as Greece and Austria with a coverage of only 10%. As far as the question of whether or not countries are using the policy variable of childcare in an effective manner, however, the policy indicator used as benchmark is insufficient. There is, for instance, the same lack of regard for number of hours of childcare seen with the number of hours of employment. Table 14 also includes number of hours of childcare, which is not incorporated in the target. Adding the number of hours significantly nuances the performance picture. Specifically, the United Kingdom and the Netherlands, which perform relatively well on the targets, combine high enrolment rates with a low number of average hours of childcare. Another critique of this target is that this does not include non-formal childcare, such as grandparents taking care of the children for a couple of days a week. As far as labour market outcomes is concerned this is relevant, because the manner of childcare does not make a difference for the economic model as far as labour market participation is concerned. Because policies

to stimulate formal childcare, for instance through subsidies, may meet the EU targets but at the same time they may cause a shift from non-formal to formal childcare and therewith have only limited effects on female labour market participation⁴¹⁵.

The second policy indicator concerns the elimination of tax and benefit disincentives for female employment. One of the conclusions of the analysis so far is that the elasticities differ between target groups. Women, especially second earners, were identified as having a high responsiveness to tax and benefit incentives. Any specific disincentives for second earners entering the labour market or increasing hours worked would therefore have a relatively large negative effect. Data availability unfortunately limits possibilities for analysing these incentives over time. However, for an indication of the existence of such disincentives graph 53 compares the average tax wedge faced by a single individual earning 67% of average earnings with the average tax wedge faced by a second earner also earning 67% of average earnings, whose partner earns 100% of average earnings. This indicator measures how much extra income tax, employer social security contributions and employee social security contribution the family will have to pay as a result of the second earner entering employment, as a proportion of the second earner's total income plus the employer social security contributions due on the second earner's income. As emphasised by OECD⁴¹⁶, this is the appropriate tax rate to measure the disincentive facing a second earner to participate in employment.

Graph 53



Data source: OECD

⁴¹⁵ For some evidence on this effect specifically for the case of the Netherlands see Netherlands Bureau for Economic Policy Analysis, *Macro Economische Verkenningen* (2008).

⁴¹⁶ OECD, 'Taxation and employment' (OECD tax policy studies no 21, 2011).

In all countries except Greece a second earner faces a higher average tax wedge than a single individual earning the same income. In most cases, the increase is caused by the loss of either family-based benefits/tax credits or a dependent spouse allowance as a result of the second earner entering employment. In a smaller number of countries, such as France, Germany, and Luxembourg, it is due to family-based taxation more generally. The presence of children further lowers the average tax wedge faced by single individuals in most countries as a result of substantial child-dependent benefits and/or tax credits, while tending to increase the average tax rate faced by second earners due to the income-based withdrawal of the same benefits and/or tax credits⁴¹⁷.

Considering these characteristics of the various Member States the question arises what the actual effect of EU policy making in the area of promoting female labour participation on Member States' policy actions has been. First of all, a large part of the general appraisal of the impact of the Open Method of Coordination in the area of employment on Member States' policies, discussed in the previous section, applies to the specific subject of female labour participation as well. Here too, outcome and policy indicators have largely moved in the appropriate directions, while the impact of the process is limited, and varies between Member States and policy areas. There have been some more specific studies on the impact of the Open Method of Coordination on gender equality issues which give some further insight into this relationship. Beveridge and Velluti (2008)⁴¹⁸, for instance, argue that there is a more than average difference in approach between Member States on the issue of gender equality in general, which leads to diminished possibilities for policy learning. These also make progress in policy making more dependent on national history and cultural development⁴¹⁹. Furthermore, the facts that the issue of gender equality is dealt with both in the OMC social inclusion as in the OMC employment and that there is a general lack of definition of gender equality leads to uncertainty and overlap, which means that Member States remain largely autonomous in the aspects they choose to incorporate. The authors also observe that the attention for gender equality has lessened since the start of the OMC, with gender equality taking a less central role in the process, a view which is substantiated by the position of gender equality in the employment guidelines. Combined with the before-mentioned uncertainty and overlap this was followed by decreased attention for these issues in Member States' national implementation reports⁴²⁰.

⁴¹⁷ OECD, 'Taxation and employment' (OECD tax policy studies no 21, 2011).

⁴¹⁸ Beveridge and Velluti, *Gender and the Open method of coordination, perspectives on law, governance and equality in the EU* (Ashgate Publishing, 2008).

⁴¹⁹ See for a comprehensive overview of developments in the specific area of childcare report from the European Commission's expert Group on gender and employment issues, 'The provision of childcare services, a comparative review of 30 European countries' (2009).

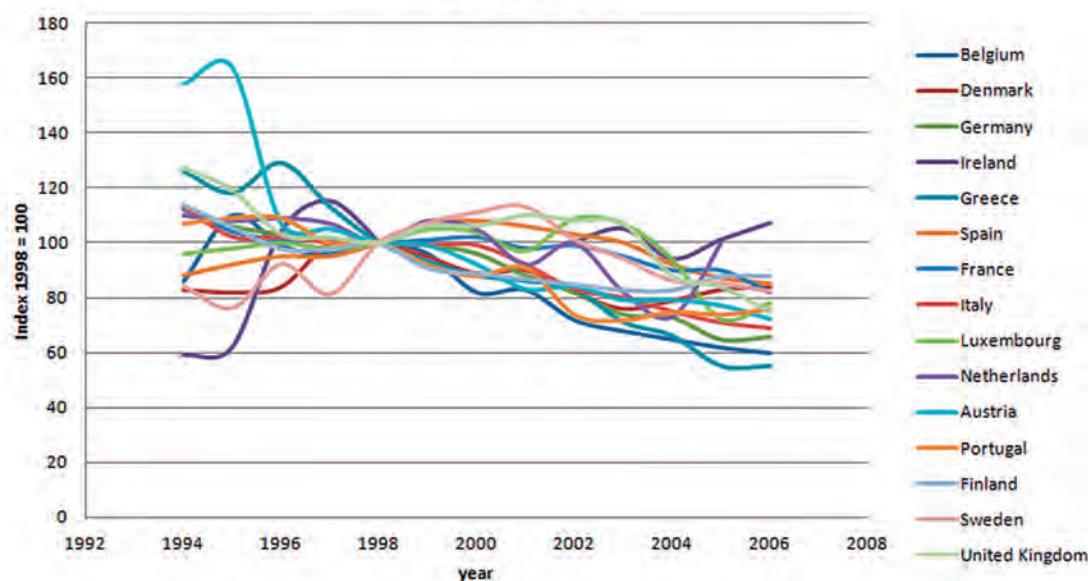
⁴²⁰ See e.g. O'Connor, 'The OMC and the European Employment Strategy: Broadening the possibilities for gender equality?' (Paper for presentation at ESPANET Conference, Vienna University of Economics and Business Administration, 2007) and Rubery et al., 'The ups and downs of European gender equality policy' (Industrial Relations Journal, vol 35, no 6, 2004).

4.3.2 Improvement in working environment and working conditions; impact on Member States' policies

The second aspect of EU social employment policy is the concept of improving the working environment and working conditions. This can be divided in a number of different aspects concerning health and safety of workers, the organisation of working time and equal treatment of employees in specific situations. The general health and safety Directive in 1989 and the following more specific health and safety Directives in this regard are expected to lead to a decrease in accident rates in the Member States. Graph 54 shows the development of this accident rate⁴²¹.

Graph 54

**Index of the number of serious accidents at work per 100
thousand persons in employment
1994-2006**



Data source: Eurostat

Except for Denmark, Sweden, the Netherlands, Spain and Ireland, in the Member States the number of serious accidents at work have decreased. Germany, Austria, Greece, Italy and the United Kingdom in particular managed to significantly decrease their rates of serious accidents at work in the period under consideration. Ireland is the most obvious exception here, nearly doubling its relative accident rate between 1994 and 2006.

⁴²¹ The index shows the evolution of the incidence rate of serious accidents at work in comparison to 1998 (= 100). The incidence rate = (number of accidents at work with more than 3 days' absence that occurred during the year/number of persons in employment in the reference population) x 100 000. An accident at work is a discrete occurrence in the course of work that leads to physical or mental harm. This includes accidents in the course of work outside the premises of his/her business, even if caused by a third party, and cases of acute poisoning. It excludes accidents on the way to or from work, occurrences having only a medical origin, and occupational diseases.

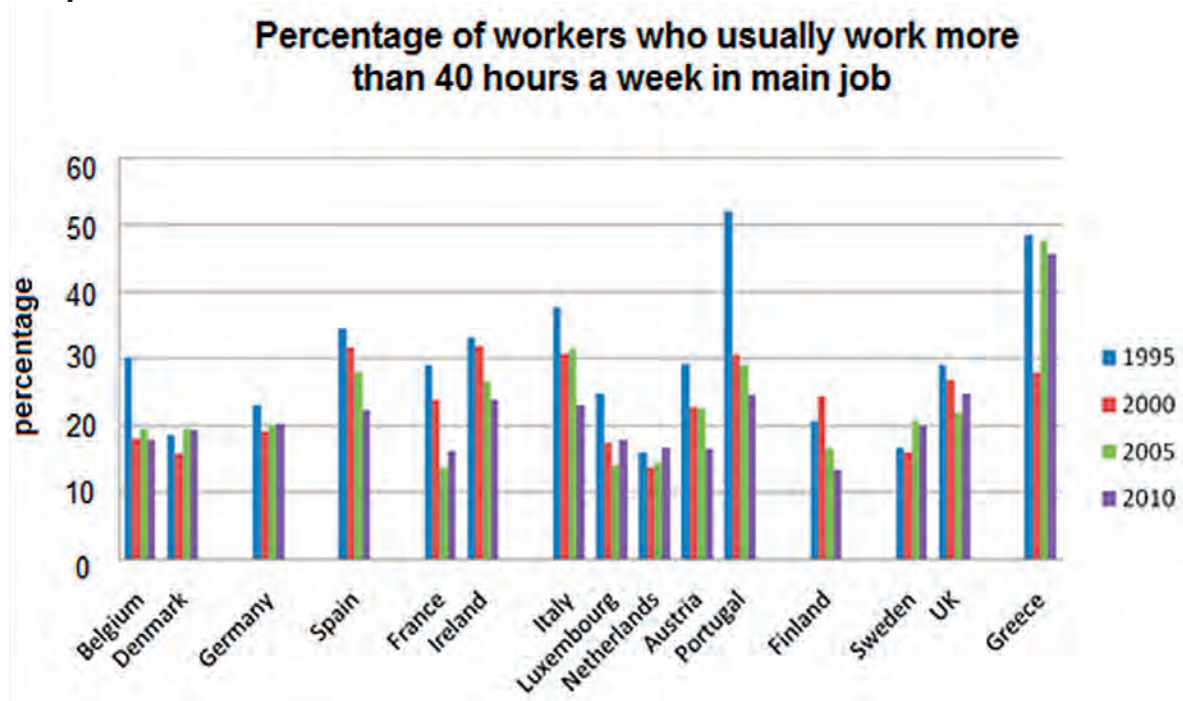
To make sense of the divergent developments in this field as well as the actual impact of the European health and safety Directives the differences between Member States as far as starting position and implementation record is concerned have to be observed more closely. In 2004, the European Commission published an extensive report on the practical implementation of the general health and safety Directive and the first five following more specific Directives based on this general Directive⁴²². It first analyses the legal impact of the Directives and large differences between countries. Remarks here concern the general tardiness of Member States in implementation, significant problems in all Member States in conformity of implementation, as well as practical implementation⁴²³. Denmark and Sweden are identified as countries where there was either no need for changes, or very limited ones, in the national framework, since these countries already had rules in this area in line with the requirements, which could explain the limited changes in the accident rate in these countries. On the contrary, Italy and Greece had to make very large adaptations to their national health and safety regulations, possibly offering an explanation for the large decrease in accidents in these countries. The results for the general impact of these Directives on employment, growth and competitiveness of companies are inconclusive, mostly due to lack of appropriate data. The Commission, thereafter, on the basis of several country and subject specific studies, as well as more qualitative approach from both Member States and companies, concludes that the general sentiment is that the Directives have had a positive effect in this regard⁴²⁴.

The other aspects of the improvement of the working environment and working conditions are that of the organisation of working time in the working time Directive and the equal treatment requirements in fixed term, part time and temporary work Directives. As far as output and economic impact is concerned, it has been highlighted that employment and productivity in the period under consideration have increased while hours worked decreased. This section will analyse the specific predicted effects of these Directives, namely the changes in percentage of workers with average long hours of work and the developments in the incidence of part time and fixed term work arrangements. Temporary work will be left out of the analysis, since the legislation in this area is too recent to have been able to generate any discernible effects. Starting with the incidence of long hours worked, and therewith the effect of the working time Directive, graph 55 shows the development of the percentage of workers who usually work more than 40 hours a week in their main job.

⁴²² Commission, 'On the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment)' COM(2004)62.

⁴²³ This led the Commission to open infringement proceedings against all Member States at some point in time.

⁴²⁴ Ignoring the views of Austria and Belgium, who state that costs just might have outweighed the benefits, because "no data is provided" backing up this position.

Graph 55⁴²⁵

Data source: EWCO working condition survey 2010.

There was a large divergence between countries in 1995 as regards the percentage of workers with long working hours. Especially Portugal, Greece, Italy and Spain had a relatively large number of workers making long weekly hours. In contrast, Denmark, Sweden, Finland and the Netherlands had a low percentage of workers falling under this definition. As far as development is concerned, there is a general trend towards decreasing the number of workers with long working hours, albeit to a varying extent. The coincidence of these developments with the introduction of the working time Directive, however, does not necessarily imply that the Directive had this result. The effect of the Directive is analysed in a study from Deloitte (2010)⁴²⁶, which at the request of the Commission, carried out a detailed analysis of the impact of the Directive in Member States and industries. On a macro level, by means of regression analysis the effects of the working time Directive on productivity developments are approximated. The problem with this analysis, which Deloitte confesses to straight away, is, however, the absence of a good proxy for the working time Directive. As best option, the reduction of average hours worked is used, therewith assuming the influence of the Directive on hours worked. Results come out inconclusive, with

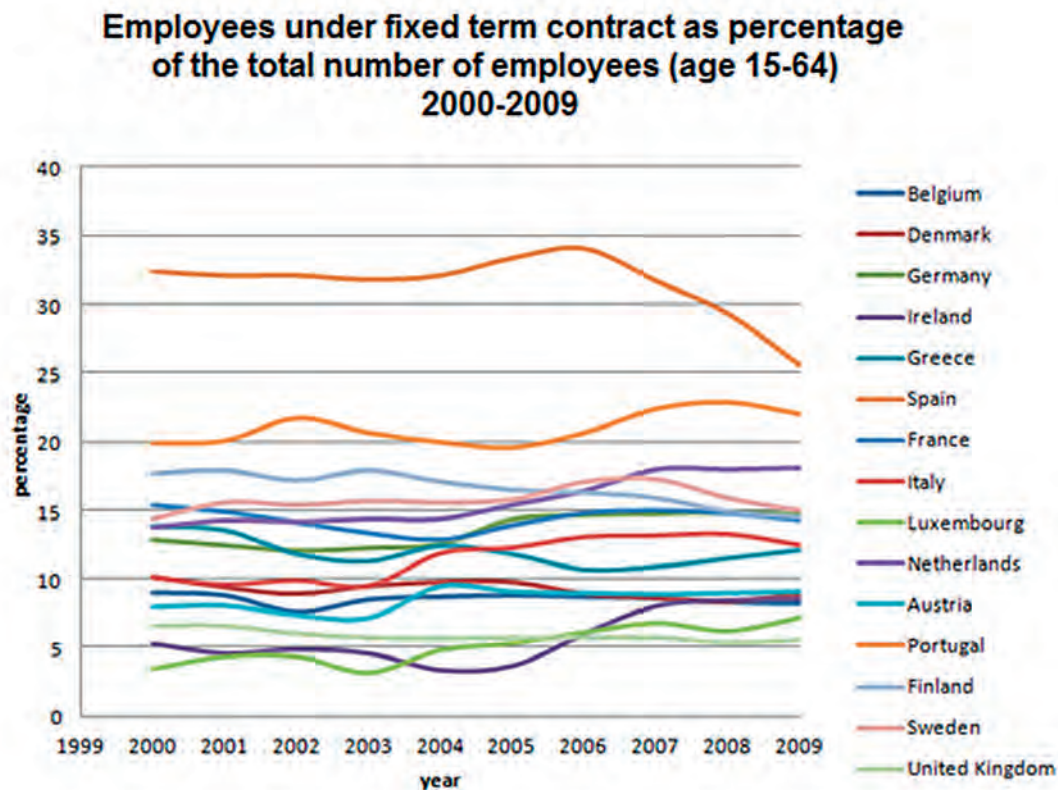
⁴²⁵ Due to data availability issues the quantitative indicator does not completely fit the requirements as set in the Directive, which sets a general maximum for workers of 48 hours per working week. For an accurate appraisal of the impact of the Directive we would have therefore had to check the percentage of people usually working over 48 hours a week and fall under the (stricter) definition of worker used in the Directive (the indicator shown also covers self employed). Although there is some data available on this issue at the International Labour Organisation it only covers 8 out of the 15 countries with varying definitions and age groups and was therefore deemed less appropriate for analysis.

⁴²⁶ Deloitte, 'Study to support an Impact Assessment on further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation' (report at the request of the European Commission, 2010).

effects on productivity varying between sectors and countries under consideration. Neither is there any conclusive micro level evidence on costs and benefits of the Directive to employers and employees. The European foundation for the improvement of living and working conditions in a recent publication, on the basis of qualitative research in Member States, concludes that “The EU Working Time Directive 93/104/EC that came into effect in 1993 (...) is judged to have raised the level of awareness and debate about working time issues in some countries, notably in Ireland and the United Kingdom. However, it is widely reported by other national correspondents as having had little or no effect in reducing working hours in practice. This view is held not only by those countries that had, or considered that they had, equivalent or superior legislation – the Benelux countries and Norway, in particular.”⁴²⁷

Examining the developments of non-standard forms of employment, graph 56 gives an overview of the incidence of temporary employment as percentage of total employment.

Graph 56



Data source: Eurostat

There is no general trend in this area, though Spain is a notable exception, with the percentage of fixed term contracts being almost twice the EU average. In this specific

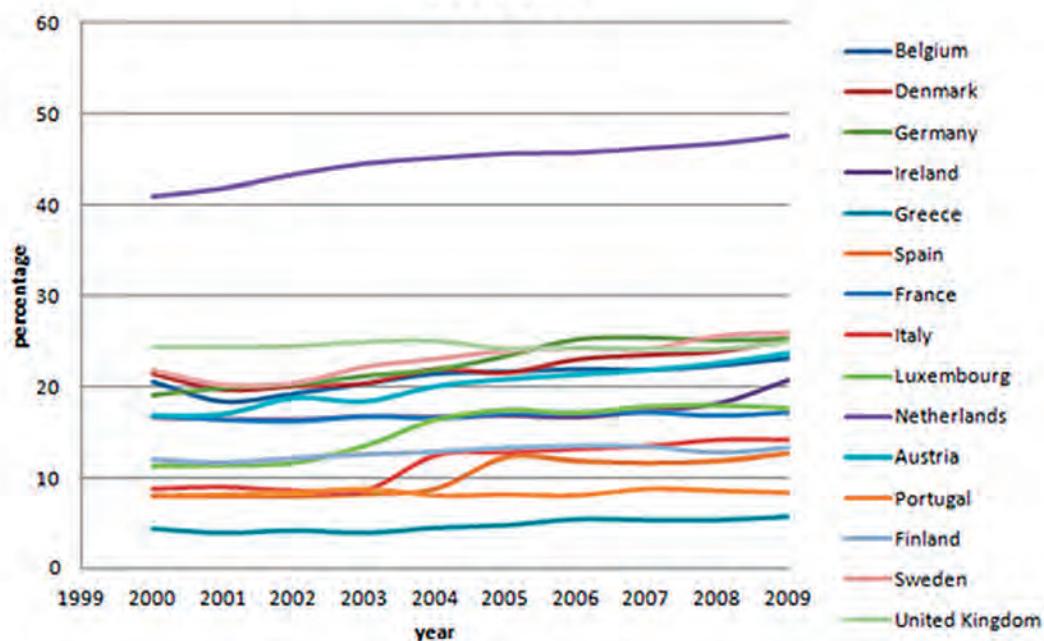
⁴²⁷ Morley and Sanoussi, ‘Comparative analysis of working time in the European Union’ (Eurofound paper, 2009), 12.

case this is arguably a demonstration of a highly segmented labour market, where since an important set of labour market reforms in the 1980s, permanent contracts offering a high degree of on-the-job protection have co-existed with temporary contracts with almost no restrictions on hiring and firing⁴²⁸.

Graph 57 shows the development of part time work as a share of total dependent employment.

Graph 57

Part-time employment as a percentage of total employment (age 15-64) 2000-2009



Data source: Eurostat

The incidence of part time work in the different countries remains stable or increases. This fits with the picture of the general decrease in hours worked shown in the previous section. The actual impact of the part time work Directive on this development, however, remains unclear. What can be stated on the basis of general OECD macro data is that the increase in incidence of part time work was a trend in the years before the coming into force of the Directive, suggesting a limited additional effect. There is some confirmation of this in analyses focusing on the adaptation of national systems in response to the Directive. The general conclusion deriving from this type of analysis is that the Directive had very limited impact on the actual legislative systems in the Member States. Davies and Freedland (2004⁴²⁹), for

⁴²⁸ For more information see Ayuso i Casals, 'Fixed term contracts in Spain, a mixed blessing' (ECFIN country focus, vol 1, issue 1, 2004).

⁴²⁹ Davies and Freedland, 'The role of EU employment law and policy in the de-marginalisation of

instance, on the basis of country specific analysis in France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom, conclude that the Directive was more reflexive in nature than standard setting, reflecting an already existing consensus present in Member States and not having a significant impact on already existing policy trajectories in Member States. Jeffery (1998⁴³⁰) points to a survey on national regulations on ‘atypical work’ present at the time of the creation of the Directive, in which it is concluded that the Directive is “unlikely to have a great impact in most countries”⁴³¹.

4.3.3 Social protection and social inclusion; impact on Member States’ policies

The last aspect of EU social employment policy the effects of which will have to be examined is social inclusion, as operationalised since the year 2000 in the Open Method of Coordination for social protection and social inclusion. There are two aspects which fit in the economic framework, namely the active inclusion of people to the labour market, especially vulnerable groups, and the issue of pensions reform and creating incentives for people to work longer. Since there is no general and constant definition given as to the concept of vulnerable groups, as far as economic output is concerned the general participation graphs and policy indicators in the previous section will serve as measures for active inclusion. As seen, there has been a general increase in labour force participation, with the increase varying between Member States.

The concept of pension reform is visualised as far as output is concerned by the employment rate of older workers in graph 58⁴³².

part-time work; a study in the interaction between EU regulation and Member State regulation’ in Sciarra, Davies and Freedland, *Employment policy and the regulation of part-time work in the European Union* (Cambridge University Press, 2004).

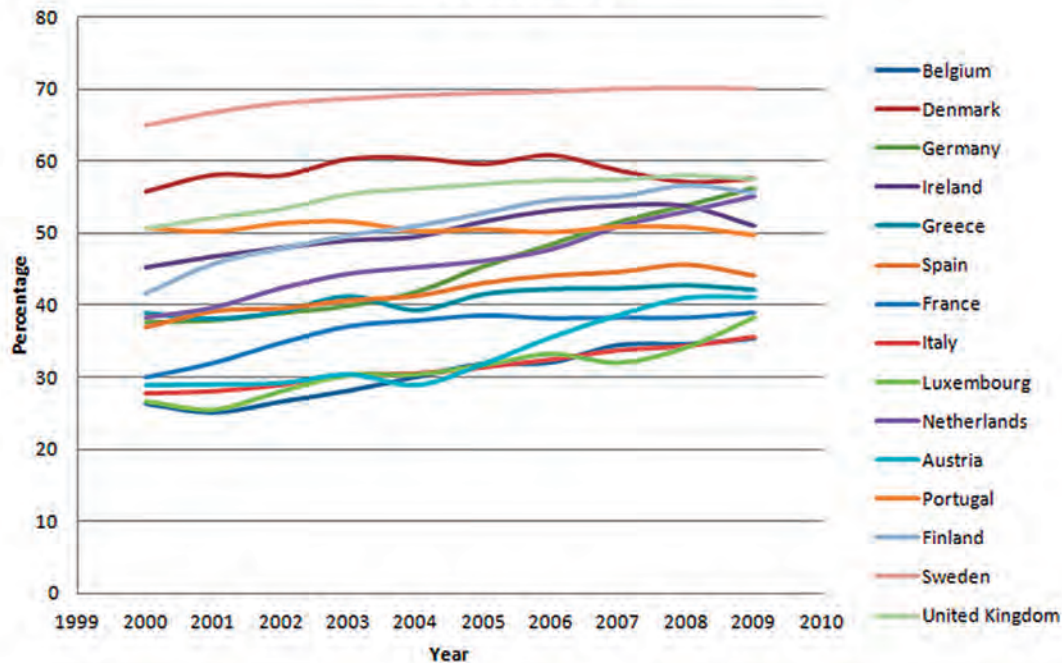
⁴³⁰ Jeffery, ‘Not Really Going to Work? Of the Directive on Part-Time Work, ‘Atypical Work’ and Attempts to Regulate It’ (Industrial Law Journal, vol 27, no 3, 1998).

⁴³¹ Not in the least because of an existing 1994 ILO convention no 175 which already had laid down similar and often stricter minimum requirements on part time work.

⁴³² Since this was also the main goal of the Lisbon strategy in this area this indicator seems most appropriate. An alternative output indicator is the average exit age from the labour force, which leads to similar results.

Graph 58

Employment rate of older workers (age 55-64) 2000-2009



Data Source: Eurostat

There are very large differences in initial starting positions between Member States: Sweden, Denmark, the United Kingdom and Portugal had an employment rate of over 50%, while Luxembourg, France, Austria, Italy and Belgium had employment rates of under 30%. There is a general increase in the employment rate of older workers. This can at least partly be attributed to a significant set of pension reforms in Member States in the past decade, for instance, in the area of abolishing or lessening early retirement schemes and increasing statutory pension ages, which is shown in an interim joint report on pensions of the Economic Policy Committee and the Social Protection committee. This report gives a comprehensive overview of pension reforms and their effects on labour force participation of older workers⁴³³. This does not necessarily imply, however, that this spur of reforms was initiated or stimulated by the OMC social protection and social inclusion. There are a number of qualitative studies on the impact of this OMC process, which come up with a rather negative assessment. De la Porte (2008⁴³⁴), for instance, on the basis of in depth country specific research, finds no significant impact on Member States' policy making in this area. She finds that the OMC due to its soft character does not embody sufficient 'European pressure' to engender change, no matter what the domestic landscape looks like and no matter where the respective policies are located among governmental

⁴³³ Economic Policy Committee and Social Protection Committee, 'Interim joint report on pensions' (2010).

⁴³⁴ De la Porte, 'The European level development and national level influence of the open method of coordination: the cases of employment and social inclusion' (PhD study, Department of Social and Political Studies, European University Institute, Florence, 2008).

priorities. Natali (2007⁴³⁵) emphasises the path dependence of pension reforms and the large differences in approach between Member States, using the developments in France and the Netherlands as an illustration. He finds little or no impact from the OMC process. The shared challenge of ageing has led to some convergence in national approaches, but the complexity and national rootedness of pension reforms both in structure and key actors in his view leaves little room for EU influence.

4.4 Internal market legislation

As seen in chapter 3, the internal market has been at the centre of EU policy making in the area of employment ever since the 1950s, when the establishment and functioning of the Common market was laid down in the Treaty establishing the European Economic Community as one of two main instruments in “improving the living and working conditions of its people”⁴³⁶. As has been highlighted in chapter 3, this policy instrument is linked to the following objectives:

Table 15

Objective	Increasing incentives for work	Improving the functioning and flexibility of markets	Improving the human capital stock	Improving framework conditions	Short-term stabilisation policy
<i>Instrument</i>					
Internal market legislation		X		X	

A gradual operationalising of the internal market in the area of employment in secondary legislation, with landmark developments in the 1970s in the area of coordination of social security systems, the 1970s and 1980s in the area of the recognition of professional qualifications, the 1990s in the area of posting of workers, and in recent years the elaboration and the implementation of the services Directive. These developments have left a system for free movement in the area of employment which core arguably consists of the often updated Directives in these four areas⁴³⁷ within the more general principles laid down in Regulations 2004/38/EC on European citizenship and 492/2011 on free movement of workers.

⁴³⁵ Natali, ‘Pensions OMC’s Influence on National Reforms’ (NEWGOV paper, 2007).

⁴³⁶ TEEC, recitals 2 and 3.

⁴³⁷ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255, Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284, Directive 96/71 of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18, Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376.

Unlike the previous sections on employment coordination and social employment policy, relating the further development in the employment related areas of the internal market to policy objectives is rather straightforward. All actions taken in this area can be interpreted as an elimination of search costs and frictions in the job search process. Economic theory has shown that on a macro level this will lead to more and better employment matches and therewith higher employment and productivity. An exception is the posting of workers Directive, which introduces a common floor of rights for workers posted to another EU Member State. This can have both positive effects by increasing productivity and negative effects by decreasing flexibility⁴³⁸.

4.4.1 *Internal market legislation; impact on Member States' policies*

To unravel the economic impact of internal market policy there are a number of steps needed. Like in previous sections, the output side is examined first. Output in this context consists of transnational flows within the EU of workers and the services they provide. Labour mobility would be stimulated by increases in market flexibility, which in turn would be induced by the hard law measures mentioned earlier.

In the first step already, however, data availability is problematic. There are no updated and consistently gathered data to examine labour migration in Europe⁴³⁹. Available data is scarce and measures stocks and flows of foreign population instead of (flows of) foreign labour⁴⁴⁰. Table 16 gives an overview of the number of foreigners in a selection of EU countries, with 'foreign' being defined as coming from another EU 15 country.

⁴³⁸ Generally, studies on migration focus at the national level analysing the economic effects of an influx of migration on the national labour market and often more specifically on native workers and sectors. From this perspective, labour migration can have a number of different effects than the one described above. However, these aspects will not be discussed here, since it does not fit the general set up of this study, which is focused on the maximisation of European GDP per capita from a macro perspective. National and sectoral effects are distributional effects and are therefore excluded. Furthermore, this study looks at the EU internal market, migration issues concerning migration from third countries are also excluded. For the interested reader; there are numerous, mostly country specific studies on the effects of labour migration in Europe. For a useful overview, see OECD, 'Migration in OECD countries; labour market impact and integration issues' (Economics department working papers no 562, 2007).

⁴³⁹ There are more reasons why it is difficult to study mobility in Europe. First, geographic mobility is low and difficult to observe. Second, international migration cannot be measured by country surveys which only capture individuals before or after migration. Transnational surveys are missing. Third, migrants are not followed across countries, so that repeat, circular and chain migration cannot be studied. Fourth, the definition of a migrant is not always clear. Official statistics may treat foreign nationals as migrants, ignoring naturalized individuals but including second generation immigrants who kept the citizenship of the country of origin. See Zaiceva and Zimmerman, 'Scale, diversity and determinants of labour migration in Europe' (IZA discussion paper 3595, 2008).

⁴⁴⁰ In general, population migration can be used as a proxy for labour migration but the difference should be kept in mind, see also Belot and Ederveen, 'Cultural and institutional barriers in migration between OECD countries' (Journal of Population economics, vol 25, no 3, 2012).

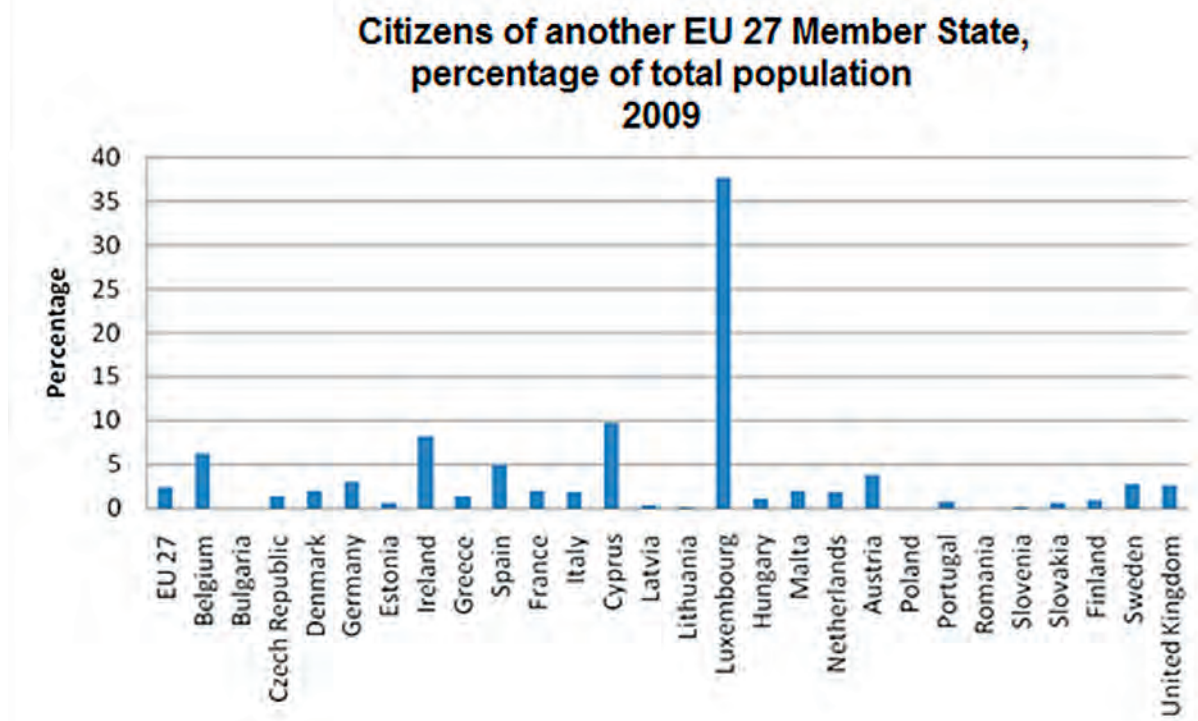
Table 16

**Inhabitants in EU-15 countries from another EU-15
Member State, thousands⁴⁴¹**

Country	Year			
	1990	1999	2002	2006
Austria			115	154
Belgium	551	534	567	585
Denmark	38	53	55	63
Finland		16	18	21
France	1312	1161		1187
Germany	1633	1856	1860	2183
Ireland			131	153
Italy	149	146	151	
Netherlands	174	196	211	211
Portugal	29	52	66	80
Spain		337	739	1538
United Kingdom	731	886	840	937

Data source: OECD

Graph 59



Data source: Eurostat

There is a general rise in the number of EU 15 nationals living in one of the other EU 15 countries. At the same time, however, as a percentage of the total population, the

⁴⁴¹ Blank cells due to unavailability of data.

total stock of people from EU 15 countries living in one of the EU 15 countries remains small. The same holds for the EU as a whole as show in graph 59 for 2009. With the exception of Luxembourg, the number of citizens coming from other EU Member States as a percentage of the total population is limited, with an average of 2.4% in the EU. This is confirmed by the European Commission's *Employment in Europe* report in 2006⁴⁴² which concludes that intra EU labour mobility has always been and remains low. That intra EU mobility is low gives a first indication of the effects of the EU measures taken in this area. To further elaborate on this, however, this analysis has to be expanded in two ways. First, an analysis of the factors influencing EU mobility and the size of the effect is needed. Second, these figures say nothing on the cross border provision of services and temporary migration, which will have to be considered separately.

Several studies have examined variables influencing intra EU mobility. One recent and comprehensive study is Bonin et al. (2008). They recall that in general the economic migration decision comes down to a comparison of the utility gained in moving minus the utility lost in moving plus the costs of moving. On the positive side they identify two main drivers of intra EU migration, namely wage differentials and unemployment differentials. Increased wages and a higher opportunity to find a job increase a person's propensity to enter the labour market of another country⁴⁴³. Both of these aspects are relatively high in Europe. As far as barriers are concerned, these authors identify eight possible 'key hurdles':⁴⁴⁴

1. Lack of language skills
2. Finding a job for oneself or for the partner
3. Access to child care, education, health care or other social benefits
4. Problems of having educational and professional skills recognised
5. Problems of transferring pension rights
6. Problems of finding suitable housing
7. Problems of obtaining a residence or work permit
8. Problems of adapting to a different culture

Hurdles 3, 4, 5 and 7 would be the hurdles that EU policy analysed in this section might alleviate. These hurdles, however, are exactly the one that in the regression analysis of Bonin et al. come out as not having a significant effect. Only language, job hurdles and culture come out significantly. The regression analysis, however, is based

⁴⁴² Commission, *Employment in Europe* (2006).

⁴⁴³ There is an important micro economic element here, which we will not go into that deeply. Simply put, both gains and costs of moving differ greatly between workers, depending on personal characteristics. This makes it possible to identify the workers most likely to migrate. High-skilled young people, not married, without children and without links to the home country, like home ownership and a permanent employment relationship are the most likely to move.

⁴⁴⁴ Bonin et al., 'Geographic Mobility in the European Union: Optimising its Economic and Social Benefits' (IZA working paper no 19, 2008), par 3.4.

on a person's intention to migrate as dependent variable, and 'perceived hurdles', which can only serve as a proxy of actual migration hurdles. Observing the determinants of actual migration flows between 22 OECD countries over the period 1990-2003, Belot and Ederveen⁴⁴⁵, however, confirm the results of Bonin et al., finding evidence of the importance of economic variables and the importance of cultural links between countries, including the presence of social networks in the country of destination⁴⁴⁶. They conclude that migration flows between countries with closely related languages are likely to be much larger than between countries with unrelated languages. Similarly, the proximity in religions and culture also stimulates migration. In earlier work, Belot and Ederveen⁴⁴⁷ do find some evidence of the importance of institutional barriers for migration. For instance, the portability of (supplementary) pension rights has a positive effect on migration. However, most of their results on institutional barriers are ambiguous.

Several studies have examined the effects of the various pieces of legislation. As has been highlighted in chapter 2, before being replaced by the 2005 professional qualifications Directive the general system for recognition of professional qualifications consisted of three Directives from the late 1980s and the 1990s⁴⁴⁸. In a report on the practical application of the 1992 Directive, the Commission gives an overview of the total of qualifications recognised by EU Member States under the Directives. In the period 1993-1998 the total number of recognition requests for the purpose of establishment in another Member State granted was 23,224, with 12,595 requests granted in the period 1993-1996 which indicates a significant rise in the last years. The Commission, however, is quick to emphasise that even though "this is the most complete figure available" it is not necessarily possible or appropriate to try to draw specific conclusions from the statistical information, partly because the Directives have been in application for a shorter period and so understanding of the

⁴⁴⁵ Belot and Ederveen, 'Cultural and institutional barriers in migration between OECD countries' (Journal of Population economics, vol 25, no 3, 2012).

⁴⁴⁶ The importance of this network effect is also shown in Pedersen, Pytlikova and Smith, 'Selection or Network Effects? Migration Flows into 27 OECD Countries, 1990-2000' (IZA discussion paper no 1104, 2004).

⁴⁴⁷ Belot and Ederveen, 'Cultural and institutional barriers in migration between OECD countries' (Journal of Population economics, vol 25, no 3, 2012).

⁴⁴⁸ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [1988] OJ L 19, Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [1992] OJ L 209 and European Parliament and Council Directive 99/42/EEC of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the General Systems for the recognition of qualifications [1999] OJ L 201. The 2005 Directive also simplifies and consolidates a large number of more specific Directives for the nineteen sixties, seventies and eighties on professional qualifications in the areas of craft commerce and industry, health professionals and architects.

availability and application of the rules and rights may still be growing⁴⁴⁹. This statement is given further body by the fact that a large number of Member States did not adhere to the implementation deadline of June 1994⁴⁵⁰. Experience with the new 2005 Directive has been limited due to similar implementation delays. Even though the Directive was to be transposed by October 2007 it was only in September 2010 that all Member States had fulfilled this obligation⁴⁵¹. However, in the meantime the number of qualifications granted under the system had increased further, from 24,966 in 2007 to 35,550 in 2008, quadrupling between 1997 and 2008⁴⁵². The recent economic crisis has diminished the number of qualifications, with 28,391 granted requests in 2009 and 16,867 in 2010⁴⁵³.

Concerning the issue of cross border application of social security schemes, as has been highlighted in chapter 2, the basic Regulations stem from the beginning of the 1970s⁴⁵⁴. Unfortunately, there is a lack of studies on the impact of this Regulation on the free movement of workers. The 2004 Regulation only entered into force in 2010, which means there is no data available yet. The economic effects of the services Directive and to a lesser extent, the posting of workers Directive, have been researched. The studies available concern *ex ante* impact assessments of the Directive⁴⁵⁵, most notable the studies of Copenhagen Economics in 2005⁴⁵⁶, and studies by the Netherlands Bureau for Economic Policy Analysis in 2004⁴⁵⁷ and 2006⁴⁵⁸. While the European Commission's original impact assessment⁴⁵⁹ due to methodological and data issues only gives a qualitative appraisal of effects on growth and employment (being positive), these studies point towards significant gains in

⁴⁴⁹ Commission, 'Report from the Commission to the Council and the European Parliament on the application of Directive 92/51/EEC in accordance with art 18 of Directive 92/51/EEC' COM 2000/17, 14.

⁴⁵⁰ Spain was approximately one year late, Ireland two years, Portugal and the United Kingdom two and a half years, Belgium three years and Greece four years late.

⁴⁵¹ Commission, 'Staff working document on the transposition and implementation of the professional qualifications Directive' SEC 2010/1292.

⁴⁵² Commission, 'Evaluation of the professional qualifications Directive' (2011).

⁴⁵³ Commission, 'Impact assessment accompanying the proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System' SEC(2011)1558.

⁴⁵⁴ Notably Regulation (EEC) 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L 149 and its Regulation (EEC) 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community [1972] OJ L 74.

⁴⁵⁵ Because the Directive has only entered into force at the end of 2009 it is too early for *ex post* impacts to be calculated.

⁴⁵⁶ Jensen *et al.*, 'Economic assessment of the barriers to the Internal Market for services' (Copenhagen economics, 2005).

⁴⁵⁷ Kox, Lejour and Montizaan, 'The free movement of services within the EU' (CPB document 69, 2004).

⁴⁵⁸ De Bruijn, Kox and Lejour, 'The trade induced effects of the services Directive and the country of origin principle' (CPB document 108, 2006).

⁴⁵⁹ Commission, 'Extended impact assessment of proposal for a Directive on services in the Internal market' SEC(2004)21.

terms of foreign direct investment, growth and job creation on a more quantitative basis. Both studies calculate indicators for barriers in services provision and/or heterogeneity in product market regulation between Member States, estimate the reduction in these indicators expected to occur by implementation of the services Directive and its effect on trade and FDI flows in services and/or price and competitiveness. Copenhagen Economics found that the Commission's proposal for the services Directive would lead to an expected increase of EU GDP, at a conservative estimate, by 0.8%-point, with positive growth rates in all Member States. Employment is expected to increase in the long term by 0.3%-point (up to 600,000 jobs). The Netherlands Bureau for Economic Policy Analysis in its most recent study found that EU wide economic gains of the Services Directive as agreed by the Council and European Parliament in the long term could range between 60-140 billion euros, representing a growth potential of 0.6-1.5% of GDP. Interestingly, in the analysis they also calculated the difference in effect between the original services Directive proposal from the Commission, including the country of origin principle, and the Directive agreed upon by Council and European Parliament. They find that the effect on services trade is diminished by 1/3 (from +30-60% to +20-40%) due to the exclusion of the country of origin principle.⁴⁶⁰

Finally, the posting of workers Directive entered into force in December 1999 and in essence defines the basic conditions of employment that must be guaranteed to EU workers posted in the territory of another EU member state. The economic effects of posting of workers have been extensively examined by IDEA and Ecorys in a 2011 study on behalf of the European Commission⁴⁶¹. Using a proxy for the number of posted workers⁴⁶² in the period 2005-2007, the study reports a little over a million postings in 2007 in the EU 27, or 18.5% as a percentage of total non-national EU 27 citizens in the labour force. The posting of workers is considered an important phenomenon in intra EU labour mobility flows, even more so since the number of postings seems to be growing rapidly⁴⁶³. This finding, however, has to be put in the context of the overall low mobility in the EU. According to the study, compared to the total active population in the EU, posted workers represent a relatively small group: 0.37% in EU 15 and 0.74% in EU 12⁴⁶⁴. Furthermore, the phenomenon seems limited

⁴⁶⁰ De Bruijn, Kox and Lejour, 'The trade induced effects of the services Directive and the country of origin principle' (CPB document 108, 2006), ii.

⁴⁶¹ IDEA consult and Ecorys Netherlands, 'Study on the economic and social effects of the phenomenon of posting of workers in the EU' (Study on behalf of the European Commission, 2011).

⁴⁶² As a proxy they use the number of E101 forms issued for posting to a specific Member States according to Regulation 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L 149. There are some serious drawbacks in using this data, for instance, the fact that this does not distinguish between self employed and employed postings (with the former not falling under the Posting of workers Directive) and that the number of forms concern the number of postings rather than the number of persons posted. However, data availability issues limit alternatives at this point.

⁴⁶³ At least it did in the period 2005-2007. Due to the economic crisis the number of postings dropped in 2008-2009.

⁴⁶⁴ Poland, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Latvia, Lithuania, Malta, Cyprus,

to certain Member States and sectors. Poland, France and Germany as sending countries together account for almost two thirds of total postings, and most postings seem concentrated in the construction and services sectors, in particularly financial intermediation, business activities and transport activities. On the actual effect of the posting of workers Directive on these flows, however, there is no information given⁴⁶⁵.

4.5 EU funds spending

As has been observed in chapter 3, there has been a role for EU funding in European employment policy since the beginning of the European integration process in the 1950s in the form of the European Social fund. Both the targets and size of this fund have increased and developed throughout the years, resulting in the following objectives:

Table 17

Objective	Increasing incentives for work	Improving the functioning and flexibility of markets	Improving the human capital stock	Improving framework conditions	Short term stabilisation policy
Instrument					
EU funds spending	X	X	X		X

There are a number of direct links between EU fund spending and policy objectives. In the 1950s the activities of the ESF inter alia were to “render the employment of workers easier and to increase their geographical and occupational mobility”⁴⁶⁶. Although broad in scope, this in principle fits nicely with the different channels of employment policy identified in economic theory, even more so since in practice in the early years the European Social Fund was mainly used to help workers in sectors that had to be restructured by providing them with retraining allowances. It also made available resettlement help for those out of work who left their region to seek jobs elsewhere. In its further development there are three interesting notions that will be further discussed. First, the scope of operation of the fund has been widened, especially in the 1980s and 1990s and thereafter its link with the Lisbon and European

Romania, Bulgaria.

⁴⁶⁵ See also Commission, ‘Staff working document executive summary of the impact assessment accompanying the document proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services’ SWD(2012)64 final.

⁴⁶⁶ Art 123 TEEC.

Employment Strategies. Second, there is increased attention for the issue of cohesion and the development of lesser-developed regions since the 1970s and especially the 1980s, including the set-up of the ERDF. The final one concerns the introduction of short-term stabilisation policy in the funds.

The number of activities and objectives eligible for EU funding from the European Social Fund was substantially extended with the Single European Act and the Treaty of Maastricht and translated in the Fund's objectives, among others by adding the issue of helping "the socially excluded". Furthermore, in the periods 2000-2006 and 2007-2013 explicit reference was made to the objectives of respectively the European Employment Strategy and the Lisbon strategy, with the Commission proposing even further linking of the funds with the Europe 2020 strategy for the period 2014-2020. The analysis of whether the goals of EU fund spending are in line with the economic rationale presented throughout this study therefore largely follows the analysis of the process of employment policy coordination. As has been highlighted before, for instance, the issue of social inclusion is not necessarily in line with the economic rationale developed in the previous chapter. However, as far as policy measures are concerned, the focus in both the European Employment Strategy and the Lisbon strategy, by keeping the promotion of more and better jobs as an overall objective, was largely in line with economic theory. This demarcation as far as the ESF is concerned is further enhanced by the fact that the legal basis of the European Social Fund largely prevents it from including these types of issues. Under article 162 TEU the overriding goal has been to improve employment opportunities for workers. The measures under the issue of helping the socially excluded therefore in theory at least fit into economic theory.

Concerning the second issue of cohesion and the development of lesser developed regions, since its start there has always been a *de facto* redistributive element to the functioning of the ESF, simply because in the early years there was a relatively large demand for ESF money in the then poor regions of the EU (Italy)⁴⁶⁷. Since the beginning of the 1970s, however, this redistributive element or cohesion element was institutionalised by the inclusion of a focus on structural unemployment in less developed regions as a goal in the ESF Regulation and an increased aid percentage allowed in these regions as well as the set up of the ERDF. Ever since, EU fund spending has always had a cohesion element. The prioritisation of spending of EU money on certain regions does not directly fit into the economic framework developed in chapter 2. From an economic point of view, spending should be aimed at those areas where its impact is greatest, meaning where there is the largest benefit for

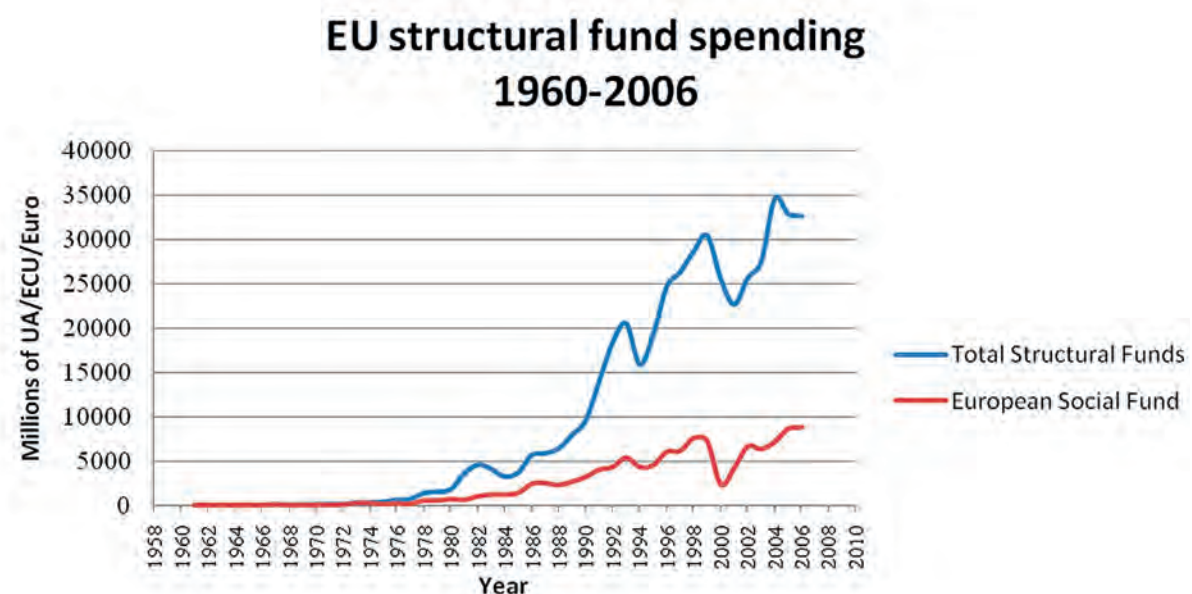
⁴⁶⁷ There was also a redistribute aspect to the funds stemming from the revenue side. Contributions of Member States were adjusted for redistributive purposes. In particular, a lower Italian and Dutch contribution to the European Social Fund was counterbalanced by larger shares for the other big Member States, see Neheider and Santos, 'Reframing the EU budget decision making process' (Journal of Common Market Studies, Vol 49, No 3, 2011).

increased employment and productivity. Theoretically, however, there is a case to be made for focus of EU spending to stimulate employment in the least developed regions, since these are usually the ones with the largest potential for improvement. When overlying objectives are in line with economic theory, which they are, this is mostly a question of effectiveness of spending, a point that will be dealt with more extensively in the next section. A similar effectiveness of spending argument can be followed for as far as the third issue of short term-stabilisation policy is concerned, something which has developed since the 1990s in various instances in the form of either easier access to EU funds and/or the availability of extra funding in a given period.

4.5.1 EU funds spending; impact on Member States' policies

Graph 60 provides an overview of the development of total EU Structural Fund expenditure (now mainly ESF and ERDF) in millions of UA/ECU/Euro⁴⁶⁸ since the 1960s, as well as the development of expenditure under the European Social Fund.

Graph 60



Data source: European Commission⁴⁶⁹

The total amount of EU structural spending has increased significantly throughout the years, especially since the mid 1970s⁴⁷⁰. As a percentage of EU GDP, spending is limited and relatively constant since the beginning of the 1990s at 0.3/0.4% or about

⁴⁶⁸ UA stands for Unit of Account, also known as European Unit of Account (EUA), a book-keeping device for recording the relative value of payments into and from EC accounts, replaced by the European currency unit (ECU), which has been replaced by the euro.

⁴⁶⁹ Commission, 'EU budget 2007 Financial Report' (2007).

⁴⁷⁰ The higher growth of total structural funds related to the ESF is mainly caused by the European Regional Development Fund. In 2006, for instance, the ERDF accounted for 14825 million Euro of spending.

0.7% of public national spending. In the period 2007-2013 the ESF makes up 8% of the total EU budget spending, or about 75 billion Euro. Furthermore, given the fact that projects under the ESF are co-financed by EU Member States, adding another 37 billion in this period⁴⁷¹, there is room for a significant impact on GDP per capita growth, the more so in specific (poorer) regions which receive relatively large shares of total funding.

There are numerous studies on the effects of EU funds spending on convergence and growth creation. Ederveen et al. (2003)⁴⁷² and Hagen and Moll⁴⁷³ give useful surveys of the results. Ederveen et al. (2003) give an extensive history of evaluation of cohesion policy. Their conclusion is that evaluation of effectiveness only really got started in the 1980s. Since then there has been a wide variety of research techniques (case studies, model simulations and econometric analysis) used with mixed results. In the words of Ederveen et al. (2003) “Researchers draw different conclusions from different studies, ranging from a dismal negative impact of cohesion policy on economic growth of lagging regions to wildly positive assessments of projects, yielding rates of return that are unheard of in the private sector”⁴⁷⁴. Hagen and Moll present an overview of 22 more recent econometric evaluations of the impact of European cohesion policy on economic growth and convergence. Their conclusion is that studies have provided mixed if not contradictory results. At the country level, the most that can be concluded from the empirical studies is that cohesion policy seems to be only conditionally effective. Referring to Ederveen, de Groot and Nahuis (2006⁴⁷⁵) and Bahr⁴⁷⁶ they conclude that given a good quality institutional set up or decentralised government structures cohesion policy has a positive impact on growth. There are a number of possible explanations why the impact of Cohesion expenditure on growth might be ambivalent. The first one concerns effectiveness. As has been highlighted in the previous section on employment policy coordination, the amount of money a country spends on employment related policy is not always a good indicator of ultimate outcomes, as becomes clear e.g. from the money spent on active labour market policies. Hagen and Moll in this context also point to the fact that the allocation of funds is at least partly determined by political-economic factors. Hence,

⁴⁷¹ European Commission website on the European Social Fund <http://ec.europa.eu/esf/> last accessed 3 January 2013.

⁴⁷² Ederveen et al, ‘Funds and games, the economics of European cohesion policy’ (ENEPRI occasional paper, no 3, 2003).

⁴⁷³ Hagen and Moll, ‘Econometric evaluation of EU cohesion policy, a survey – a survey’ (ZEW discussion paper no 09-052, 2009).

⁴⁷⁴ Ederveen et al., ‘Funds and games, the economics of European cohesion policy’ (ENEPRI occasional paper, no 3, 2003), 48.

⁴⁷⁵ Ederveen, de Groot and Nahuis, ‘Fertile soil for structural funds? A panel data analysis of the conditional effectiveness of European cohesion policy’ (Kyklos, vol 59, 2006).

⁴⁷⁶ Bahr, ‘How does sub-national autonomy affect the effectiveness of structural funds?’ (Kyklos, vol 61, 2008).

“there is room for political bargaining and/or side payments which might result in the funding of politically feasible, and less economically efficient, projects”⁴⁷⁷.

Related to this, is the concept of efficiency. There may be an efficiency argument in the distribution of EU money between countries and regions within the EU, with a euro spent in one region being less efficient in GDP per capita growth creation than the same EU money spent somewhere else. In a comprehensive study on EU spending on behalf of the European Commission, Ecorys, the Netherlands Bureau for Economic Policy Analysis (CPB) and the Institute for Economic Research (IFO)⁴⁷⁸ give some reasons for reconsideration of spending on employment and cohesion on the EU level. They are especially critical of the use of the EU budget for these types of projects in richer Member States. This entails both spending of convergence criteria money in poorer regions of richer Member States, as the full spending under the regional competitiveness and employment objective. The main reason is that these Member States have the financial capacity to finance these policies themselves, and they also have the institutional capacity to govern and monitor sponsored projects.

A second issue is that EU spending may not be purely additional, meaning that EU spending may replace domestic spending that would otherwise be used for the same project. Ederveen et al. (2003⁴⁷⁹) determine what the effect is of being a so-called “Objective 1 region” (relatively poor regions that get the bulk of Cohesion money) on the amount of national regional aid. They find that, at the margin, a region typically forgoes 50% of national regional aid once it becomes eligible for Objective 1 support. This boils down to an average crowding out of 0.17 euro of cohesion support per 1 euro of cohesion policy. Hagen and Moll (2009⁴⁸⁰) confirm the crowding out hypothesis. Using a 27 EU country dataset for the period 1982-2006, they show that EU Cohesion Policy payments do not seem to increase public investments in the EU countries. Given the obligatory co-financing that is involved in Cohesion policy, this indicates a crowding out process of national spending.

⁴⁷⁷ Hagen and Moll, ‘Econometric evaluation of EU cohesion policy, a survey – a survey’ (ZEW discussion paper no 09-052, 2009), 29.

⁴⁷⁸ ECORYS, CPB and IFO, ‘A study on EU spending’ (Commissioned by the European Commission, 2008).

⁴⁷⁹ Ederveen et al., ‘Funds and games, the economics of European cohesion policy’ (ENEPRI occasional paper, no 3, 2003).

⁴⁸⁰ Hagen and Moll, ‘How does EU Cohesion policy work? Evaluating its effects on fiscal outcome variables’ (ZEW discussion paper, no 09-051, 2009).

**The functioning of
EU employment
policy;
institutional issues**

5.1 Introduction

The previous chapter focussed on the relationship between the four EU employment policy instruments and the economic objectives that were derived in chapters 2 and 3. What has become apparent from this analysis is that there is a good, though not perfect, fit between the economic objectives of chapter 2 and the content of the various EU employment policy instruments. However, it has also become apparent that the fact that EU employment policy instruments are aimed at certain economic objectives does not necessarily mean that the instruments actually contribute in an optimal manner to achieving these objectives. Analysis in the previous chapter showed large differences between the EU employment policy instruments in this regard. Possible underlying reasons for this, however, have so far only briefly been examined.

This chapter will elaborate on these possible underlying reasons by focussing on a number of specific issues related to the institutional structure of EU employment policy that can have an impact on its effectiveness. From an institutional perspective, EU employment policy can be described as a complex multilevel model of governance, where decision-making competences are shared by actors at various levels of government, with mutually intertwined decision making processes⁴⁸¹. This is exacerbated by the fact that the nature of the vertical relationship between the Member States and the Union institutions as well as the nature of the horizontal inter-institutional relationship between Union institutions and bodies have been the subject of constant evolution⁴⁸². In general, arguments for assigning decision making powers in such a system with multi-level governments in a manner which leads to the greatest effectiveness in improving citizens' welfare are rooted in the theory of fiscal federalism. This theory, which finds its foundation in the work of Musgrave (1959)⁴⁸³, discusses the optimal level of centralisation of public economic functions. The theory identifies a trade-off between preference matching on the one hand, which would argue for decentralisation of power, and economies of scale and the internalisation of externalities on the other hand, which would argue for more centralisation⁴⁸⁴. Heterogeneity of preferences in different areas is a reason for decentralisation of policy making. This makes it possible to create a better fit between the preferences and policy implemented, which is welfare increasing. Economies of scale can be a

⁴⁸¹ See chapter 3 and following also Hooghe and Marks, *Multilevel Governance and European Integration* (Rowman and Littlefield publishers, Oxford, 2001) and Blanpain et al., *Employment policies and multilevel governance* (Kluwer Law International, 2009).

⁴⁸² See chapter 3. See also Amtenbrink, 'The multidimensional constitutional legal order of the European union – a successful case of cosmopolitan constitution building?' (Netherlands yearbook of international law, vol XXXIX, 2008).

⁴⁸³ Musgrave, *The theory of public finance* (McGraw-Hill, 1959).

⁴⁸⁴ This simple set up necessitates a large number of assumptions on government behavior. For elaboration on this as well as a more elaborate overview see Ederveen, Gelauff and Pelkmans, 'Assessing subsidiarity', in Gelauff, Grillo and Lejour, *Subsidiarity and economic reform in Europe* (Springer, 2008), section 2.2.

reason to combine resources and act at a centralised level, for instance, when policies are costly because of high fixed costs, which again leads to increases in welfare. Cross border externalities finally are a reason for centralisation when decentralised governments take insufficient account of the consequences (positive or negative) of their own policies for other government constituencies. Centralisation then leads to these effects being taken into account in decision making, which, again, is welfare increasing.

Placing these fiscal federalism considerations against the EU's institutional framework, one can see that they find their way in the setting and implementation of EU employment policy via the concepts of conferral, subsidiarity and proportionality. The limits of the Union's competences are governed by the principle of conferral, under which Member States have delegated competences to the EU level in the founding Treaties, while the actual use of these competences, where they are shared between the EU and the Member States, is governed by the principles of subsidiarity and proportionality⁴⁸⁵. The manner in which the distribution of power between the EU and national level has taken place in the area of employment policy and how this influences its functioning is the subject of discussion in section 5.2.⁴⁸⁶

Furthermore, the attribution and use of competences by actors in a multilevel environment calls for commensurate allocation of mechanism ensuring democratic legitimacy and accountability. Besides the relevance of such mechanisms from the point of view of fundamental democratic values⁴⁸⁷, the manner in which they are put in place influences the effectiveness of the instruments. That issues of democratic legitimacy and accountability can contribute to an effective functioning of employment policy instruments has been widely accepted, most so in the context of studies on the political economy of reform. First of all, effective democratic legitimacy and accountability can ensure that the setup of instruments takes place in a manner that is in line with citizen preference. Furthermore, a strong electoral mandate on the level where policy decisions are taken has been proven to be essential to ensure effective reform implementation⁴⁸⁸.

Placing these considerations of democratic legitimacy and accountability against the EU's institutional framework poses a number of difficulties. In fact, in ensuring democratic legitimacy and accountability, the EU has often been criticised as

⁴⁸⁵ Art 5 TFEU, in combination with the protocol on the application of the principles of subsidiarity and proportionality.

⁴⁸⁶ The approach will be limited to an analysis of the EU versus national level, which is readily acknowledged to be a large simplification of reality e.g. by not taking into account the regional dimension of this discussion.

⁴⁸⁷ This angle will not be dealt with in this study. Interested readers are referred to Amtenbrink, *The democratic accountability of Central Banks; a comparative study of the European Central Bank* (Hart Publishing, 1999).

⁴⁸⁸ See e.g. OECD, *The Political Economy of Reform; lessons from pensions, product markets and labour markets in ten OECD countries* (2009).

encompassing a general “democratic deficit”⁴⁸⁹. Difficulties stem from the fact that Europe does not constitute a state in the classic sense, but is rather a half-way house in which both the participating nation states as well as the supranational institutions function as sources for the democratic legitimation and the necessary mechanisms of democratic accountability⁴⁹⁰. Thus, the EU institutional framework rests on the twofold legitimacy of the citizens, directly represented at the Union level in the European Parliament, and the Member States as represented in the Council, themselves democratically accountable either to their national parliaments or to their citizens⁴⁹¹. Focussing on the role of the European Parliament and that of national parliaments, the extent to which the various instruments of EU employment policies are accompanied with effective mechanisms for democratic legitimacy and accountability is the subject of discussion in section 5.3⁴⁹².

Finally, given the complexity of the EU employment policy and the fact that various EU employment policy instruments are aimed at achieving the same economic objectives, the functioning of the instruments can be hindered by issues of coherence between the instruments as well as more practical problems in the application of the different instruments. The extent to which this is the case will be subject of discussion in section 5.4.

5.2 Distribution of power in the supranational legal order

5.2.1 Conferral

In the EU context, any discussion on distribution of power in the supranational legal order and the trade-offs identified in fiscal federalism necessarily starts with the question of whether it is in fact legally possible for the European Union to act. Under the principle of conferral, “the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein”⁴⁹³. Furthermore, “competences not conferred upon the

⁴⁸⁹ There is a vast amount of literature on this issue. Examples include Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999) and Moravcsik, ‘In Defence of the “Democratic Deficit”: Reassessing the Legitimacy of the European Union’ (Journal of Common Market Studies, Vol. 40, No. 4, 2002). For an overview of relevant literature see Craig, *The Lisbon Treaty, law, politics and Treaty reform* (Oxford University Press, 2010).

⁴⁹⁰ For an more detailed overview of this multilevel system, including explanation on the role played by the various institutional actors see Amtenbrink, ‘The multidimensional constitutional legal order of the European union – a successful case of cosmopolitan constitution building?’ (Netherlands yearbook of international law, vol XXXIX, 2008).

⁴⁹¹ Art 10 TFEU.

⁴⁹² It is readily acknowledged that this approach does not include all different manners in which democratic legitimacy and accountability can be ensured. The dialogue with representative associations and societies as well as the citizens initiative as laid down in art 11 TEU e.g. will not be dealt with, nor will the role played by the European Court of Justice and the national courts and tribunals in legitimizing the exercise of power at EU level.

⁴⁹³ Art 5(2) TEU.

Union by the Treaties remain with the Member States". . . This setup can put some boundaries on the extent to which effectiveness of EU employment policy can be ensured, with e.g. the possibility that optimal policy making is hindered by a lack of EU competence. In any case, the principle of conferral acts as a framework, or first hurdle to take, before the more substantial subsidiarity and proportionality considerations handled in the next sections come into play.

The Treaty on the Functioning of the EU includes the substantive articles concerned with competence⁴⁹⁴, listing the various specific subject matter areas and differentiating between various types of competence. Principal categories are where the EU's competence is exclusive⁴⁹⁵, where it is shared with the Member States⁴⁹⁶ and where the EU is limited to support, coordinate or supplement the actions of the Member States⁴⁹⁷. Also, special categories of competences are created for the Union to coordinate economic, employment and social policies⁴⁹⁸. The extent to which the Union is allowed to lay down legally binding acts under these competences is laid down in article 2 TFEU. Here, it is stated that only the Union is allowed to legislate and lay down legally binding acts in the areas of exclusive competence, where both the Union and the Member States may legislate and adopt legally binding acts in areas falling under shared competence, though the Member States shall only exercise their competence to the extent that the Union has not exercised its competence. Breach of these rules can lead to legally binding acts, or parts thereof, being declared void⁴⁹⁹.

Article 2(6) TFEU states that the specific scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area. While keeping the general notions laid down in articles 2-6 TFEU in mind, it is therefore the specific legal bases under the different headings in the TFEU that this section will use to analyse the extent to which action is in line with the principle of conferral⁵⁰⁰. It should be noted that the scope of these legal bases can vary considerably. Furthermore, the existence in parallel of broad cross-sector legal bases, like article 114 TFEU for harmonisation in the internal market⁵⁰¹, the residual legal basis of article 352 TFEU, and the implied powers doctrine developed by the Court of Justice of the European Union⁵⁰² give significant flexibility in this regard⁵⁰³.

⁴⁹⁴ Art 2-6 TFEU.

⁴⁹⁵ Art 3 TFEU.

⁴⁹⁶ Art 4 TFEU.

⁴⁹⁷ Art 6 TFEU.

⁴⁹⁸ Art 5 TFEU.

⁴⁹⁹ Art 264 and 267 jo 263 TFEU.

⁵⁰⁰ *Antenbrink and Vedder, Recht van de Europese Unie* (4th edition, Boom Juridische uitgevers, 2010).

⁵⁰¹ This development of the scope of this broad legal basis shows the large role the European Court of Justice has played in shaping EU competences, often ruling favorably in the identification of such competences. See e.g. Case C-300/89 *Commission v. Council* [1991] ECR I-2867. It is only in recent days the Court has been shown to take a bit more reluctant approach in its interpretation, see e.g. Case C-376/98 *Germany v. European Parliament and the Council* [2000] ECR I-8419.

⁵⁰² See e.g. Case 22/70, *Commission v. Council* [1971] ECR 263 par 16, where the Court ruled that the

The analysis of the principle of conferral as related to the employment policy instruments identified in the present study will be based on the following table that provides a more detailed overview of the various employment policy instruments currently in place.

Table 18

<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
		<i>legislation</i>	<i>coordination</i>	
<i>Europa 2020 strategy</i>	<i>Social security coordination</i>	<i>Gender equality</i>	<i>OMC social protection and inclusion</i>	<i>European Social Fund</i>
<i>Euro Plus Pact</i>	<i>Professional qualifications recognition</i>	<i>Working environment and working conditions</i>		<i>European Regional Development Fund</i>
<i>Macroeconomic imbalances procedure</i>	<i>Posting of workers</i>	<i>Social protection and social inclusion</i>		
	<i>Free movement of services</i>			
	<i>European citizenship</i>			
	<i>Freedom of movement of workers</i>			

Considering employment policy coordination; the Europe 2020 strategy is based on article 121 and 148 TFEU and laid down in sections 1a and 1aa of Regulation 1175/2011⁵⁰⁴. The Euro Plus Pact is an intergovernmental political process in which all EU Member States except the United Kingdom, Hungary, Czech Republic and Sweden commit themselves to specific reform efforts on a year by year basis, with yearly review of progress by Heads of State or Government, and the Macroeconomic

right for the Community to enter international agreements exists not only when such a right is expressly provided for by a specific Treaty provision, but may also *flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions.*

⁵⁰³ See e.g. Amtenbrink, ‘The multidimensional constitutional legal order of the European union – a successful case of cosmopolitan constitution building?’ (Netherlands yearbook of international law, vol XXXIX, 2008), ch 5, Craig, *The Lisbon Treaty, law, politics and Treaty reform* (Oxford University Press, 2010), ch 5 and Chalmers et al, *European Union law* (2nd edition, Cambridge University Press, 2010) ch 5 for further discussion on this issue.

⁵⁰⁴ Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306.

imbalances procedure is based on articles 121 and 136 TFEU and laid down in Regulation 1174/2011⁵⁰⁵ and Regulation 1176/2011⁵⁰⁶.

This set up raises some questions. First, Regulation 1175/2011 is based on article 121(6) TFEU, which is a legal basis for the Council and the European Parliament to adopt detailed rules for the multilateral surveillance procedure as far as it concerns articles 121(3) and 121(4) TFEU on economic policy. However, in its section 1a, Regulation 1175/2011 also includes procedural requirements as regards the formulation of employment guidelines and the issuing of country-specific recommendations under article 148 TFEU, something that does not fall under the relevant legal basis. Where from a fiscal federalism point of view it might be desirable for these additional rules to be laid down, it can therefore be doubted whether the principle of conferral in this specific setting actually allows for it.

Second, the Euro Plus Pact is not officially based on any Treaty provisions. Instead it was included in the Conclusions of the Spring European Council 2011 which state that the Pact is to be integrated into the regular framework of surveillance in the European semester⁵⁰⁷. Both article 121 TFEU and article 148 TFEU arguably allow Member States to voluntarily commit themselves and make these commitments public so as to make peer and public pressure possible e.g. through their obligation to “forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary” (article 121(3) TFEU) or in their “annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment” (article 148(3) TFEU). However, the formal relationship has (as of yet) not been incorporated, which leaves the Euro Plus Pact a purely political and intergovernmental process.

Lastly, the macroeconomic imbalances procedure can indeed be considered a more detailed interpretation of the monitoring systematic under article 121 TFEU, in accordance with legal bases 136 and 121(6) TFEU. Although, as the analysis under subsidiarity and proportionality will show, from an effectiveness point of view, the macroeconomic imbalances procedure incorporates desirable elements, it can be doubted whether the element of conferral actually allows such types of measures to be set up. Specifically, the two Regulations, and especially Regulation 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, introduce two novelties which deserve further consideration, namely the possibility of financial sanctions and the change in voting arrangements in the Council

⁵⁰⁵ Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306.

⁵⁰⁶ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306.

⁵⁰⁷ European Council conclusions, Brussels, 24/25 March 2011, annex 1.

in certain cases. The Lisbon Treaty, introduced a legal basis for this in article 136 TFEU which is now used in combination with article 121(6) TFEU to form the legal basis for Regulation 1174/2011. Whether the legal basis of article 136⁵⁰⁸ is sufficient to actually cover the inclusion of sanctions in the procedure on macroeconomic imbalances can be doubted. Article 136(1) (a) TFEU in this regard would arguably be the most logical choice, but even then it can be questioned whether the concept of “coordination and surveillance of budgetary discipline” covers the measure in question. Firstly, whether the concept of “surveillance” is wide enough to cover the installation of sanctions can be questioned. Secondly, it is doubtful whether the full width of the imbalances procedure, which as has been observed in chapter 3 also relates to issues like unemployment and competitiveness, can in fact fall under the concept of “budgetary surveillance”. Furthermore, whether stricter surveillance *in accordance with the procedure in article 121* can be interpreted as opening up the possibility to install financial sanctions in the multilaterals surveillance procedure is also open for debate. Similar questions can be raised as to the introduction of reversed qualified majority voting⁵⁰⁹. Also, whether the changes in institutional balance that this reversing of normal voting arrangements entails, increasing the power of the Commission to the detriment of the Council, can actually be said to be *in accordance with the procedure in article 121* can again be questioned⁵¹⁰, since it expressly deviates from the voting procedures as laid down in the Treaty. However, since this is a new step *in addition* to the procedural steps and the corresponding regular QMV voting laid down in primary Union law, and therefore does not expressly go against primary Union law, there arguably is some freedom in defining these arrangements.

Considering the instrument of internal market legislation, social security coordination is laid down in Regulation 883/2004⁵¹¹ and its implementing Regulation 987/2009⁵¹² on the coordination of social security systems, which are based on articles 48 and 352 TFEU⁵¹³. The recognition of professional qualifications is laid down in Directive

⁵⁰⁸ Art 136 TFEU states

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;
 (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

⁵⁰⁹ See e.g. Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306, art 3.

⁵¹⁰ See also Ruffert, ‘The European debt crisis and European Union law’ (Common Market Law Review 48, 2011).

⁵¹¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166.

⁵¹² Regulation 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284.

⁵¹³ Art 352 TFEU is also quoted, since the scope of the Regulations also includes persons who are not

2005/36/EC⁵¹⁴ on the recognition of professional qualifications, based on article 46 TFEU, covering workers, article 62 TFEU covering services and article 53(1) TFEU on establishment. The posting of workers is laid down in Directive 96/71/EC⁵¹⁵ concerning the posting of workers in the framework of the provisioning of services, based on articles 53(1) and 62 TFEU. Free movement of services is laid down in Directive 2006/123/EC⁵¹⁶ on services in the internal market, based on articles 53(1) and 62 TFEU. European citizenship is laid down in Regulation 2004/38/EC⁵¹⁷ on European citizenship, based on articles 18 and 21 TFEU on respectively non discrimination based on nationality and the right for EU citizens to move and reside freely within the territory of the Member States, 46 TFEU on free movement of workers, 50 TFEU on freedom of establishment as regards a particular activity and 59 TFEU on liberalisation of specific services. Finally, freedom of movement of workers, which is laid down in Regulation 492/2011⁵¹⁸ on freedom of movement of workers within the Union, is based on article 46 TFEU.

In general the above mentioned Treaty provisions can arguably be said to cover the substance of the various Directives. Free movement provisions in the area of workers, establishment and services are formulated to eliminate the type of barriers dealt with in most of the legislation under consideration. There are, however, some issues that deserve further consideration. Regulations 883/2004 and 987/2009 make arrangements to secure for workers in the area of social security aggregation of period under the laws of several countries and payment of benefits mentioned in article 48 TFEU in general and in more detail for specific benefits. The addition of the flexibility article 352 TFEU is necessary since the Directive applies to all persons residing in a Member State who are or have been subject to the legislation of one or more Member States⁵¹⁹, therewith encompassing more than just “employed persons”⁵²⁰. The fact that this “article of last resort” had to be used seems to have been remedied for future reference by the Treaty of Lisbon, which now includes

economically active and/or have not worked and therewith do not fall under art 48.

⁵¹⁴ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255.

⁵¹⁵ Directive 96/71 of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18.

⁵¹⁶ Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376.

⁵¹⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158.

⁵¹⁸ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L 141

⁵¹⁹ see Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166, art 2(1).

⁵²⁰ See Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166, recital 2.

paragraph 3 of article 21 TFEU⁵²¹. Article 21 TFEU clearly gives precedence to article 48 TFEU to be used first. To what extent this is possible however is somewhat unclear, as Article 48 TFEU includes the ambiguous term of “employed and self employed migrant workers”. This was probably meant to properly include self employed *persons* in the context of free movement of services and establishment in the legal basis next to persons in employment⁵²², while at the same time the confines experienced due to the inclusion of the provision in the Treaty chapter on free movement of workers lead to the contradictory term “self employed worker”. Arguably, however, in the practical application in future changes to the Regulations this will not lead to that much difficulties, since already in the current Regulations the term worker as such is not used and preference is given to the terminology of employed and self employed person as defined in national legislation⁵²³.

Directive 2006/123 on services in the internal market has also been cause of some debate as far as the issue of conferral is concerned, especially during the negotiations leading up to the Directive⁵²⁴. Reason was mainly its scope as regards the economic activities covered and as well as the requirements that are considered obstacles to services provision. The agreed Directive is limited in scope to the provision of services as defined in article 57 TFEU⁵²⁵ through establishment of cross border service provision. Although there is still some uncertainty, for instance, with regard to the difference between the concept of services and that of goods⁵²⁶, this arguably does not stand in the way of articles 53 and 62 TFEU being the proper legal bases for the Directive. The argument whether the requirements could be considered obstacles to free movement revolved around the question of whether the formulation of the services Directive would regulate requirements that were never meant to fall under EU free movement law. In this regard, the final Directive in article 4(7) had a very broad definition of requirements⁵²⁷ which could cover a variety of measures⁵²⁸.

⁵²¹ Which states:

“3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.”

⁵²² See Regulation (EEC) 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L 149, recital 2.

⁵²³ See Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166, article 1(a) and 1(b).

⁵²⁴ See e.g. Gekiere, ‘Towards a European Directive on services in the Internal Market; analysing the legal repercussions of the draft services Directive and its impact on national services regulations’ (Research report commissioned by the European Parliament, 2004).

⁵²⁵ See Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376, art 4(1) and Recital 33.

⁵²⁶ See Barnard, ‘Unravelling the services Directive’ (Common Market Law Review 45, 2008).

⁵²⁷ “any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organizations, adopted in the exercise of their legal autonomy”

⁵²⁸ Famous example here comes from the European Parliament, which questioned whether British

Recital 9 of the Directive tries to frame this definition of requirements further by excluding requirements not specifically regulating or affecting the service activity but have to be respected in general. Although the Directive still leaves room for interpretation⁵²⁹, the text itself arguably does not go explicitly beyond the definition of requirements linked to the legal bases and therefore does not preclude these as legal bases. In fact, arguably, the argument rather goes the other way around; given the uncertainty, the interpretation of the Directive will be streamlined because of this choice of legal basis to cover just these requirements that fall under its scope.

The last element that gives some cause for concern is the posting of workers Directive. The core of the Directive is the coordination of certain employment conditions between Member States by giving mandatory and permitted labour standards for a host Member State to apply to posted workers, mainly laid down in articles 3 of the Directive⁵³⁰. The difficulty here lies in the fact that to be in accordance with the legal basis, the coordination should be meant to make it easier to take up or pursue activities *for the service provider*. As far as the service provider is concerned, the Directive on the positive side increases legal certainty and facilitates

service providers could argue that the requirement to drive on the right side of the road restricted their freedom to provide services, see Barnard, ‘Unravelling the services Directive’ (Common Market Law Review 45, 2008).

⁵²⁹ Also because of the somewhat contradictory recital 59 of the Directive.

⁵³⁰ Which most relevantly states:

“1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in art 1(1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

- by law, regulation or administrative provision, and/or
 - by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:

- (a) maximum work periods and minimum rest periods;
- (b) minimum paid annual holidays;
- (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- (e) health, safety and hygiene at work;
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- (g) equality of treatment between men and women and other provisions on non-discrimination.

For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

.....
 7. paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers

10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertaking of other states, on a basis of equality of treatment of:
 - terms and conditions of employment on matters other than those referred to in the first subparagraphs of paragraph 1 in the case of public policy provisions”.

the identification of employment conditions applied to posted workers⁵³¹. On the down side, however, it installs the obligation for service providers to comply with two different systems of law when providing a service in the home and host state.

Contrary to promoting the free movement of services, this could actually hinder or render less attractive the cross border provision of services. Since the Directive does not harmonise but only coordinates relevant measures, the judgement of this will have to depend on the case-by-case application and interpretation of the Directive⁵³². In any case, theoretically, the application of the Directive could actually be considered to be in breach of the freedom to provide services⁵³³. Should this be considered the case, the principle of conferral in this regard could actually have a positive impact as far as fiscal federalism considerations are concerned, with the principle acting as a deterrent for policy measures to be taken that are not in line with its considerations.

Concerning social employment policy; gender equality has its legal basis in article 157 TFEU with the main legislative instruments of Directive 2006/54/EC⁵³⁴ on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and Directive 2010/41/EU⁵³⁵ on the application of the principle of equal treatment between men and women engaged in an activity in a self employed capacity. The improvement of the working environment and working conditions has its legal basis in article 153 TFEU and the main legislative instruments of Directive 89/391⁵³⁶ on the introduction of measures to encourage improvements in the safety and health of workers at work and Directive 2003/88/EC⁵³⁷ concerning certain aspects of the organisation of working time, as well as Directive 2008/104/EC⁵³⁸ on temporary agency work and the framework agreements on fixed term and part-time work based on article 155 TFEU of Directive 99/70/EC⁵³⁹ concerning the framework agreement on fixed-term work and Directive 97/81/EC⁵⁴⁰ concerning the Framework Agreement on part-time working. Finally, the

⁵³¹ See also Commission, 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers' COM(2007)304.

⁵³² Section 5.4 will handle case law concerning the posting of workers Directive.

⁵³³ See also Davies, 'Posted Workers: Single Market or Protection of National Labour Systems?' (Common Market Law Review 34, 1997).

⁵³⁴ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204.

⁵³⁵ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1.

⁵³⁶ Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183.

⁵³⁷ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299.

⁵³⁸ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 327.

⁵³⁹ Directive 99/70/EC of the Council of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L 175.

⁵⁴⁰ Directive 97/81/EC of the Council of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC [1998] OJ L 14.

Open Method of Coordination social protection and social inclusion lacks an explicit legal basis.

In general, the various legal bases can all be considered to cover the substance of the legal instruments under consideration. Although the OMC on social protection and social inclusion is not explicitly laid down in the Treaty, the monitoring process as developed can be based on articles 153(2), 156 and 160 TFEU and the competence these provisions vest upon the Council, European Parliament, Commission and Social Protection Committee to take measures inter alia to establish guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. Furthermore, additional measures taken in the various areas, for instance, in the context of the Community strategy on health and safety at work⁵⁴¹ and the strategy for equality between men and women⁵⁴², including the PROGRESS program⁵⁴³ also find an appropriate legal basis in article 153(2)(a) TFEU. If anything, due to the evolving nature of the Treaty, some of the measures could in the current form just as well be based on another legal basis present in the Treaty. The gender equality Directives, for instance, could just as easily find a basis in article 153 TFEU, which in paragraph 1 (i) also mentions “equality between men and women with regard to labour market opportunities and treatment at work”, and under the general non-discrimination article 19 TFEU, which incorporates a general non-discrimination clause, including specifically the aspect of discrimination based on gender.

Lastly, concerning the instrument of EU funds spending, general provisions regarding the EU Structural Funds in the programme period 2007-2013 are laid down in Regulations 1083/2006⁵⁴⁴ and its implementing Regulation 1828/2006⁵⁴⁵, based on article 177 TFEU. The specific Regulation 1081/2006⁵⁴⁶ on the European Social Fund, based on articles 164 TFEU linked, which are also to the specific Regulation on the European Regional Development Fund 1080/2006⁵⁴⁷ based on article 178 TFEU.

⁵⁴¹ Commission, ‘Improving quality and productivity at work: community strategy 2007-2012 on health and safety at work’ COM(2007)62.

⁵⁴² Commission, ‘Strategy for equality between men and women 2010-2015’ COM(2010/491).

⁵⁴³ Decision 1672/2006/EC of the European Parliament and the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress [2006] OJ L 315.

⁵⁴⁴ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210.

⁵⁴⁵ Commission Regulation 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund [2006] OJ L 371/1.

⁵⁴⁶ Regulation 1081/2006 of the European Parliament and the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999 [2006] OJ L 210.

⁵⁴⁷ Regulation 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund [2006] OJ L 371/1.

Here too there is no question that appropriate legal bases exist for the Structural Funds Regulations in general, and specifically the ESF and ERDF. This is even more so since the legal bases in fact require the set up of Regulations to define the tasks, priority objectives and the organisation of the Structural Funds as well as specific implementing Regulations for the ESF and ERDF.

5.2.2 *Subsidiarity*

If it is established that the European Union has a competence to act in a certain area it does not necessarily mean that the EU should use this competence. This decision is governed by the principle of subsidiarity as laid down in article 5(3) TEU and the Protocol on the application of the principles of subsidiarity and proportionality⁵⁴⁸. Article 5(3) TFEU states that the Union, where it does not have an exclusive competence, shall only act when the goals pursued cannot sufficiently be achieved by Member States but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The subsidiarity principle therefore goes to when the Union should intervene, something which is also captured in the Preamble to the Treaty on European Union, which states that Member States are resolved to “continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen”. Breaching these rules can again lead to legally binding acts, or parts thereof, being declared void⁵⁴⁹. Subsidiarity is linked to the effectiveness of implementation of policy in the sense that the principle of subsidiarity to a large extent embodies the trade-off identified in fiscal federalism theory for assigning the optimal level of centralisation of public economic functions, with both the preference matching argument and those on economies of scale and the internationalisation of externalities being part of the subsidiarity test. However, although similar in its considerations, the EU legal setup places important limitations as to the manner in which the subsidiarity test can fully include all of fiscal federalisms elements. These limitations relate both to the nature of EU competences and the role of the European Court of Justice.

EU competences tend to be defined in terms of objectives to be achieved, rather than areas of activity to be regulated. This means that subsidiarity in these cases is largely

⁵⁴⁸ For an overview of the historical development of the principle of subsidiarity and its inclusion in the Maastricht Treaty see Estella, *The EU principle of subsidiarity and its critique* (Oxford University Press, 2002).

⁵⁴⁹ Art 264 and 267 jo 263 TFEU. Furthermore, the protocol on the application of the principle of subsidiarity and proportionality lays down a procedure in which national parliaments can give reasoned opinions on draft legislative proposals and their conformity with the subsidiarity principle. If more than a third is of the opinion that a proposal is not in line with subsidiarity principle the Commission is obligated to review the proposal after which it may be decided to maintain, amend or withdraw the draft. Furthermore, a proposal under the ordinary legislative procedure can be stopped by a simple majority of national parliaments when a minimum of 55% of the members of the Council or a majority in the European Parliament is also of the opinion that a proposal is not line with the subsidiarity principle.

a test of the extent to which it achieves Community goals, something which from the perspective taken here can arguably render the subsidiarity principle largely useless⁵⁵⁰. A good example is the aim of harmonisation in the internal market of article 114 TFEU. For this functional competence it is very hard to argue that it could be better achieved at Member State level, since it is not the area of harmonisation that is put under scrutiny, but the actual function of harmonisation in the Internal Market in this area. This can be illustrated by the practice of the European Court of Justice, where the argument of the court in annulment cases seems to follow a repetitive pattern. First the complainant states that the act under review regulates an area of national competence (think of social security or health and safety), that Member States could just as well regulate this themselves and that therefore subsidiarity should prevent EU action. The measures, however, are pursuing one of the Community's functional competences, for instance the removing of obstacles to free movement, and not the regulation of the area of national competence per se. The Court therefore is left no other option than to reject the claim because it asks the wrong question⁵⁵¹. In general, the Court of Justice has so far taken a critical stance against appeals based on reasoning of Union action not being in line with the principle of subsidiarity⁵⁵². Annulment of a measure on the ground that it offends against subsidiarity is therefore generally considered to be likely to occur only in extreme circumstances⁵⁵³. Keeping these general limitations of the subsidiarity principle in mind, the remainder of this section will analyse the four instruments of EU employment policies.

EU measures in the area of employment policy coordination (i.e. the Europe 2020 strategy, the Euro Plus Pact and the macroeconomic imbalances procedure) are meant to set out arrangements for the coordination of economic and employment policies of Member States, in particular by defining (broad) guidelines for these policies⁵⁵⁴. Though these competences form a special category in the competence catalogue of the Treaty⁵⁵⁵, it is safe to argue that this was not meant to preclude any type of arrangement by the Member States themselves⁵⁵⁶. The competence therefore can be

⁵⁵⁰ See also in this regard Davies, 'Subsidiarity, the wrong idea, in the wrong place, at the wrong time' (Common Market Law Review 43, 2006).

⁵⁵¹ See e.g. Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079. See also Davies, 'Subsidiarity, the wrong idea, in the wrong place, at the wrong time' (Common Market Law Review 43, 2006).

⁵⁵² Amtenbrink and Vedder, *Recht van de Europese Unie* (4th edition, Boom Juridische uitgevers, 2010).

⁵⁵³ Chalmers et al, *European Union law* (2nd edition, Cambridge University Press, 2010). The mainly political nature of the principle is further underlined by the the aforementioned procedure for national parliaments.

⁵⁵⁴ Art 5(1) and 5(2) TFEU.

⁵⁵⁵ This can lead to some discussion on the width of Union competences in this regard See Craig, *The Lisbon Treaty, law, politics and Treaty reform* (Oxford University Press, 2010), ch 7 for an overview and historical development of this special category of competence.

⁵⁵⁶ See also Case C-370/12 *Thomas Pringle v Government of Ireland*, judgement of 27 November 2012, where the European Court of Justice makes a similar argument as regards the Member States' set up of the European Stability Mechanism. In any case, there are numerous other examples where two or more Member States have coordinated (parts of) their employment and economic policies, prominent case in point being the

deemed to not be of an exclusive nature, which makes subsidiarity apply. The coordination of economic and employment policies however, is a functional competence. Similar to the argument seen earlier with the harmonisation of the internal market, the coordination exercise *per se* is therefore something that can be quite easily justified as something better achieved at the Union level. The subsidiary principle in this sense therefore gives very little help in determining whether EU action in this area is set up in the most effective manner. To end discussion on subsidiarity on this note, however, would arguably be a too limited approach. The question that remains is what the *scope* of EU action should be. Because of the lack of definition in the Treaty of what economic and employment policies actually are there is room for debate; is there a necessity to create coordination mechanisms for the various employment related subjects under the Broad Economic Policy Guidelines and the employment guidelines?⁵⁵⁷ This does give us the room to analyse the aspects of fiscal federalism, or the manner in which possible economies of scale or externalities present in the areas subject of coordination weigh up against the heterogeneity between Member States in the areas under consideration. This sort of application of the principle of subsidiarity when related to the Open Method of Coordination has been extensively debated, especially at the start of the Lisbon strategy in 2000⁵⁵⁸ and its relaunch in 2005⁵⁵⁹, and first necessitates a further differentiation in the concept of “externalities”. Externalities can be both positive and negative. Positive externalities would e.g. entail that when one country takes measures that increases its output in these areas, this would lead to positive side effects in other countries as well. Another option is that simultaneous action by several countries leads to larger gains. In these cases, from a welfare enhancing perspective, coordinated action would increase the overall effectiveness of policies. There is, in general, very little evidence for these types of externalities in the area of employment policies⁵⁶⁰, and where they are identified they are very small⁵⁶¹. For instance, Lejour

recent Treaty on Stability, Coordination and Governance.

⁵⁵⁷ To recall, the most prominent output variables under the various policy coordination instruments are the headline targets of the Europe 2020 strategy (employment rate, the two education rate targets and the social inclusion target) and the competitiveness goals of the Euro Plus Pact and the macroeconomic imbalances procedure. The current employment guidelines are

- Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality
- Developing a skilled workforce responding to labour market needs and promoting lifelong learning
- Improving the quality and performance of education and training systems at all levels and increasing participation in tertiary or equivalent education
- Promoting social inclusion and combating poverty

Furthermore, the relevant Broad Economic Policy guidelines are

- Addressing macroeconomic imbalances
- Reducing imbalances within the Euro area.

See Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union [2010] OJ L 191 and Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 205

⁵⁵⁸ See e.g. Syrpis, ‘Legitimising European Governance; Taking Subsidiarity Seriously within the Open Method of Coordination’ (EUI working paper LAW, no 2002/10, 2002).

⁵⁵⁹ See e.g. Pisany-Ferry and Sapir, ‘Last exit to Lisbon’ (Bruegel policy contribution, 2006).

⁵⁶⁰ See e.g. Gelauff, Grillo and Lejour, *Subsidiarity and economic reform in Europe* (Springer, 2008)

and Rojas-Romagosa (2008)⁵⁶², in analysing the effects of simultaneously achieving the earlier Lisbon Strategy's 70% employment target and several targets in the area of skills, find that the externalities only accounts for around 6% of the total effect. Furthermore, there are large structural heterogeneities between Member States⁵⁶³, which would indicate that policy making is better left decentralised to cater for specific citizen preferences. This argument therewith leaves a weak case for EU action. However, again, to end discussion on subsidiarity on this note would arguably be a too limited approach. Positive externalities can also stem from the level of actual policy decisions rather than the level of policy outcome. Positive externalities in this regard could include better policy outcomes e.g. when coordination fosters learning from the experiences of others on what works and what does not work and therewith decreases the uncertainties on the effect of reforms⁵⁶⁴. From this point of view there is also a line of reasoning concerning some type of peer pressure in those cases where pressure from EU level "helps" Member States to improve and speed up national policy decisions. Although within the European Union there is a large level of policy heterogeneity in the areas under consideration⁵⁶⁵, externalities in this respect are more easily envisioned in the various areas mentioned above.

Contrary to positive externalities, negative externalities would mean that action, or the lack thereof, in one Member State would lead to negative effects in another Member State. This line of reasoning is particularly relevant for the countries that share the euro as common currency. With a common monetary policy from the European Central Bank and without the possibility of exchange rate fluctuations, the policies governments of those countries can pursue to increase their competitiveness vis-à-vis other countries as well as the manner in which they can deal with (asymmetric) shocks is limited⁵⁶⁶. This puts extra pressure on countries to pursue structural reforms to improve the functioning and flexibility of markets⁵⁶⁷. Not taking these kind of

and Tabellini and Wyplosz, 'Reformes structurelles et coordination en Europe' (Report to the Prime Minister of France, 2004). More specifically in the area of education see e.g. Thissen and Ederveen, 'Higher education, time for coordination on a European level?' (CPB discussion paper, no 68, 2006). The same goes for the existence of possible economies of scale.

⁵⁶¹ See Rosenbaum, 'Lisbon, Europe 2020, and the Case for Soft Coordination in EU Policymaking' (Intereconomics, vol 45, issue 5, 2010).

⁵⁶² Lejour and Rojas-Romagosa, 'International spillovers of domestic reforms: The joint application of the Lisbon Strategy in the EU' (CPB discussion paper, no 105, 2008).

⁵⁶³ See section 4.2. See also Tabellini and Wyplosz, 'Reformes structurelles et coordination en Europe' (Report to the Prime Minister of France, 2004).

⁵⁶⁴ Debrun and Pisany Ferry, 'Economic reforms in the euro area; is there a common agenda' (Bruegel Policy contribution, 2006).

⁵⁶⁵ See section 4.2.

⁵⁶⁶ These kind of issues relate to the Optimum Currency Area theory, as first set out by Mundell in 1961, see Mundell, 'A theory of Optimum Currency Areas' (American Economic Review, vol 51, no 4, 1961).

⁵⁶⁷ See also Bednarek-Sekunda, Jong-A-Pin and de Haan, 'The European Economic and Monetary Union and Labour Market Reform' (European Union Politics 11:3, 2010) who make a distinction between policy measures aimed at reform that enhances the capacity of an economy to adjust to economic shocks and reform that aims to increase long-run output, with the former applying to

measures not only increases the economic and fiscal policy vulnerability of the countries in question; given the externalities within the closely integrated euro-area markets, they are also a hazard for other Member States and, consequently, for the single currency area as a whole. Furthermore, the ensuing divergence within the euro area can impede the implementation of a uniform monetary policy that is geared to price stability. All these externalities further legitimate EU action, since coordination between Member States would internalise these externalities and therewith increase the effectiveness of policies⁵⁶⁸.

Taking the different aspects into account, some form of coordination of the various economic and employment policies mentioned in the Employment and Broad Economic Policy Guidelines is arguably in line with the subsidiarity principle. The negative externalities argument is most relevant for the issues related to macroeconomic imbalances and competitiveness, especially in the euro area. The positive political externalities argument can be relevant for all issues considered. Since the reasoning differs from subject to subject, this should also have effects on the specific kind of coordination that is installed, which will be dealt with under proportionality below.

The second instrument of EU employment policy, the internal market is an area of shared competence between the EU and the Member States⁵⁶⁹. Subsidiarity therefore applies. However, here too the functional manner of the competence makes EU action in this area easily justifiable, and therewith gives us little room to analyse the fiscal federalism balance. Since the various Directives and Regulations have as policy objectives to improve the functioning of the internal market and facilitate the free movement of workers, services and establishment, the cross border element is per definition present and can therefore not be sufficiently achieved by the Member States. Furthermore, specific provisions largely concern the objective of either “coordination”, “mutual recognition” or “aggregation” between Member States, again something that cannot be done sufficiently by Member States themselves⁵⁷⁰.

The third instrument of EU employment policy, social employment policy falls under

measures in the area of employment protection legislation, working time/part time work and wage formation and industrial relations.

⁵⁶⁸ Rosenbaum, ‘Lisbon, Europe 2020, and the Case for Soft Coordination in EU Policymaking’ (Intereconomics, vol 45, issue 5, 2010).

⁵⁶⁹ Art 4(2)(a) TFEU.

⁵⁷⁰ The fact that the subsidiarity test is quite easily passed in these kinds of measures is e.g. reflected in the Commission’s extended impact assessment on the proposal for the services Directive. In this it states “In accordance with the case law of the European Court of Justice, certain barriers may be justified in the absence of a Community instrument and therefore require co-ordination of national regimes, including through administrative cooperation, in order to remove them. In addition, Member States have failed to remove even those obstacles which have already been judged by the Court as incompatible with the Treaty. It is therefore clear that the policy objective cannot be met by unilateral action by Member States but requires action at Community level. The choice of a Directive therefore complies with the principle of subsidiarity.”

two different kinds of competences. First, the area of social policy for the aspects defined in the Treaty on the Functioning of the EU is an area of shared competence between the EU and the Member States⁵⁷¹. Second, the Union may take initiatives to ensure coordination of Member States' social policies⁵⁷². Since neither of these are exclusive competences, subsidiarity for the various aspects of social policy discussed here applies. The first competence concerns the areas of social policy that can be directly subject to the EU's social policy measures, meant to contribute to the goals of the social chapter in article 151 TFEU. The second competence concerns again a functional competence of coordination of Member States' policies, with conclusions largely coinciding with the analysis of the various employment policy coordination mechanisms. The coordination exercise *per se* is therewith quite easily justified as something better achieved at the Union level. However, and similar to the argument concerning economic and employment policy coordination, given the lack of a full definition of the social policies to be coordinated the question remains as to what the exact scope of EU action should be⁵⁷³. Keeping this distinction in mind, analysis of subsidiarity for all the measures calls for an analysis of the possible external and scale effects versus the heterogeneity between Member States on the various subjects. In general, this analysis makes it difficult to justify EU action in the various areas of EU social policy discussed here. As has been highlighted in chapter 4, there exists a large heterogeneity between Member States linked to e.g. cultural preferences and institutional set up. This would indicate that policy making is better left decentralised to cater for specific citizen preferences. Furthermore, as was already partly identified in the previous section, external, as well as scale effects are generally considered to be small⁵⁷⁴, even in those areas of labour market regulation were discussion in the 1980s and 1990s focussed on a possible "race to the bottom" due to increased openness to trade⁵⁷⁵. However, here too it has to be kept in mind that externalities can also be examined from the level of actual policy decisions rather than the level of policy outcome. Positive externalities in this regard could include better policy outcomes, e.g. when coordination fosters learning from the experiences of others, and therewith decreases the uncertainties on the effect of reforms⁵⁷⁶. Externalities in this respect are more easily envisioned in all the various areas mentioned above⁵⁷⁷. The political

⁵⁷¹ Art 4(2)(b) TFEU.

⁵⁷² Art 5(3) TFEU.

⁵⁷³ Gender equality based on art 157 TFEU is a bit of the odd one out in this division since it is not directly linked to art 151 TFEU and the measures taken concern measures that ensure the application of the principle of gender equality. However, subsidiarity can be applied in a similar manner.

⁵⁷⁴ See also e.g. Netherlands Bureau for Economic Policy Analysis, 'European outlook 1; social Europe' (CPB bijzondere publicaties 48, 2003).

⁵⁷⁵ See e.g. OECD, *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (1996). For a survey of literature on this issue see Brown, 'International Trade and Core Labor Standards A Survey of the Recent Literature' (OECD Labour Market and Social Policy Occasional Papers, no 43, 2000).

⁵⁷⁶ Debrun and Pisany Ferry, 'Economic reforms in the euro area; is there a common agenda' (Bruegel Policy contribution, 2006).

⁵⁷⁷ Next to these positive externalities one could imagine a line of reasoning based on negative externalities in the area of pensions related to public finances and the Stability and Growth Pact.

externalities argument therefore arguably justifies some form of action on EU level in the various areas under consideration.

Finally, concerning EU funds spending, both social policy, for the aspects defined in the Treaty, and economic, social and territorial cohesion are subjects of shared competence between the Union and the Member States⁵⁷⁸. Subsidiarity in analysing the EU funds therefore applies⁵⁷⁹. At the outset of this analysis, it should be noted that there are some specificities that stem from the combination of the legal basis as regards the exact purpose of the funds. The European Social Fund's goals are laid down in article 162 TFEU⁵⁸⁰, linking it to improving employment opportunities for workers in the internal market. The ESF as an instrument, however, is also placed under the umbrella of the EU Structural Funds, the goals of which are laid down in article 174 TFEU, which also covers the ERDF,⁵⁸¹ and concern reducing disparities between the regions.

In judging the subsidiarity aspects of the EU funds spending it should first be recalled that the various Regulations concern the elaboration and implementation of the Structural Funds. The actual existence of the funds has already been established in the Treaty. From this point of view it is rather obvious that this can only be achieved at EU level. However, to limit subsidiarity to this approach here too would arguably be a too limited point of view. The principle must be taken further to include the actual subjects covered by the various Regulations. In further analysing subsidiarity these subjects a distinction should be made between the different goals pursued. The overarching goal of cohesion, or reducing disparities between the different regions in Europe, can quite easily be justified from a subsidiarity point of view as something

Unsustainable pension systems in Member States could form a severe risk for Member States' public finances, which through negative externalities could call for stricter coordination. However, since this falls outside the scope of this study it will not be discussed here.

⁵⁷⁸ Art 4(2)(b) and 4(2)(c) TFEU

⁵⁷⁹ The European Social Fund has its own Title (XI) in the Treaty on the Functioning of the EU, which separates it from the other aspects of social policy in chapter X. It is therefore not completely clear whether the ESF can be considered as an aspect of social policy as defined in the Treaty under art 4(2)(b) TFEU. Arguably however, this is the case, since up until the Treaty of Lisbon the ESF was actually part of the Title on social policy in the EC Treaty. However, given the fact that it specifically deals with employment issues related to the internal market one could argue otherwise. Even then, however, subsidiarity would apply.

⁵⁸⁰ Art 162 TFEU states:

“In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.”

⁵⁸¹ Art 174 TFEU states:

“In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.....”

that can be better achieved at the EU level. However, whether this cannot be sufficiently achieved by Member States is something that can be questioned. This depends on the manner in which the EU funds have an added value to national policy measures, which chapter 4 demonstrated to depend on the specific situation at hand. The second goal, pursued specifically by the ESF, deals with improving employment opportunities for workers in the internal market. Subsidiarity assessment here coincides with the earlier appraisals of the employment policy coordination instruments and the instruments related to the internal market. Where this concerns measures that actually affect cross border mobility the subsidiarity test is quite easily passed. When the internal market is not directly in question, the lack of externalities makes it hard to justify EU action in the area of employment.

5.2.3 Proportionality

Once it is established that under the subsidiarity principle it is in fact warranted that some form of action on the EU level takes place, the question arises what type of action this should be. This is where the proportionality principle comes in. The proportionality principle was first laid down as a general principle of EU law by the European Court of Justice in the 1970s⁵⁸². In applying this principle, the European Court of Justice can be said to have taken two distinctly different approaches to the proportionality principle when, on the one hand, assessing Community measures (the so called horizontal dimension) and, on the other hand, national measures (the so called vertical dimension)⁵⁸³. Under the vertical dimension, the European Court of Justice takes a strict approach; the measures needs to be capable of achieving the envisaged aim and must not go further than what is strictly speaking necessary to achieve that legitimate aim⁵⁸⁴. This stands in contrast to the approach taken in the horizontal dimension, which is the proportionality as discussed in this section. Proportionality in this sense finds its basis in article 5(4) TEU and the protocol on the application of the principle of subsidiarity and proportionality, and states that “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”. This is added to by the specific provisions on the EU's legal acts and adoption procedures, notably articles 288 and 296 TFEU. Article 296 TFEU states that where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality. Article 288 in this regard gives an overview of measures available for exercising the Union's competences;

⁵⁸² Case 11/70 *Internationale Handelsgesellschaft v Einfuhr- und Vorratstelle für Getreide and Futtermittel* [1970] ECR 1125. The principle of proportionality finds its earlier origin in continental (particularly German) administrative law, see also Ellis, *the Principle of proportionality in the laws of Europe* (Oxford University Press, 1999).

⁵⁸³ See e.g. Tridimas, *The General Principles of EU Law* (2nd edition, Oxford University Press, 2006), ch 3 and 5.

⁵⁸⁴ See e.g. Case 104/75 *Officier van Justitie v De Peijper* [1976] ECR 613. See also Harbo, ‘The functioning of the proportionality principle in EU Law’ (European Law Journal, vol 16, issue 2, 2010).

regulations, directives, decisions, recommendations and opinions. A regulation e.g. can be generally considered to be the most onerous instrument, having general application, being binding in its entirety and directly applicable in all Member States. On the other hand, a directive e.g. shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

The Court of Justice in application of the proportionality principle has chosen a wide definition, which falls in three different parts. First, the measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question. Second, when there is a choice between several appropriate measures recourse must be had to the least onerous, and third, the disadvantages caused must not be excessive to the aims pursued⁵⁸⁵. Before the European Court of Justice the proportionality test has proven to be a weak one, with illegality of a measure only to follow once a measure is deemed manifestly inappropriate⁵⁸⁶. The test can therefore be considered more of a “law making” test for the relevant institutions to consider during this process⁵⁸⁷. With these characteristics, the principle of proportionality in fact gives a powerful tool for the fiscal federalism to come into play. Where we saw e.g. that the usefulness of the subsidiarity principle for functional competences is severely limited, proportionality can step in to make sure that measures taken keep the right balance between taking into account scale and externalities and heterogeneity of preferences. Keeping these general considerations in mind the remainder of this section will analyse the four different instruments of EU employment policy.

An analysis of the proportionality of measures taken in the areas of employment policy coordination has to start with an analysis of different possibilities for legal action that are possible under the legal bases. Article 121(6) TFEU lays down the possibility to adopt detailed rules for multilateral surveillance by means of Regulation, something that in fact has taken place. As was already briefly mentioned in the appraisal of the subsidiarity principle, within this framework the various reasons for coordination call for different forms of coordination measures. In improving the effectiveness of policy measures, those based on positive externalities would have to achieve the aim of facilitating policy learning and/or helping Member States in national decision making while giving enough space for differing preferences in Member States and refraining from imposing unnecessary costs and administrative burden. In general, observing the formulation of the broad economic

⁵⁸⁵ Case C-331/88 *The Queen v Minister of Agriculture, Fisheries and Food ex parte Fedesa* [1990] ECR I-4023.

⁵⁸⁶ See also Chalmers et al., *European Union law* (2nd edition, Cambridge University Press, 2010) and Graig, ‘Subsidiarity; a political and legal analysis’ (Journal of Common Market Studies, vol 50, no 51, 2012). For an alternative more ambitious view on possible use of the proportionality principle see Davies, ‘Subsidiarity, the wrong idea, in the wrong place, at the wrong time’ (Common Market Law Review 43, 2006).

⁵⁸⁷ For referral to the principle in this regards, see e.g. Commission, ‘Better Regulation for Growth and Jobs in the European Union’ COM(2005)97.

policy and employment guidelines and main targets in the area of employment, they leave ample room for Member States to adapt these to national circumstances. Rather, they create a common framework to streamline discussions on various subjects. Whether the current coordination and monitoring system under the Europe 2020 strategy, the European semester and the Euro Plus Pact, however, can be deemed to be “the least onerous” to achieve these objectives is questionable. Although only to a very limited extent laid down in a legally binding fashion⁵⁸⁸, the process developed in practice has an elaborate set up with yearly National Reform Programs that is difficult to justify. Furthermore, the issuing of country-specific recommendations would only seem justified as far as they are perceived as positive policy advice, assisting Member States in national reform efforts, something which is arguably not the current rationale in the choice and formulation of the recommendations⁵⁸⁹.

The presence of the negative externalities argument justifies a more stringent approach in coordination, where countries will more or less have to be forced to take into account the negative externalities of their action, or lack thereof. The current Regulations on the macroeconomic imbalances procedure install such a procedure, including the possibility of financial sanctions for euro area Member States. Arguably, and given the possibly large negative externalities of non-action in these areas, this can be deemed both appropriate and necessary in the areas of the functioning and flexibility of markets⁵⁹⁰. Whether the manner in which Member States will be forced to take the necessary policy actions is in line with proportionality considerations, however, is questionable and will largely depend on the conduct of the European Commission in implementing this rather new procedure. What constitutes a macroeconomic imbalance is hardly defined in the Regulations, and in practice solely demarcated by the broad indicators that form the imbalances scoreboard⁵⁹¹. As regards the labour market this means that imbalances are defined by, most relevantly, excessive unit labour costs development and high unemployment. Both indicators cover the relevant areas of labour market flexibility and competitiveness, but on their own are insufficient demarcations of the relevant policy areas⁵⁹². It is therefore up to the Commission in its alert mechanism report⁵⁹³, its in-depth studies⁵⁹⁴, policy

⁵⁸⁸ See Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306, sections 1a and 1aa.

⁵⁸⁹ For an overview of country specific recommendations adopted see http://ec.europa.eu/economy_finance/economic_governance/sgp/convergence/programmes/2011_en.htm

⁵⁹⁰ See section 5.2.2.

⁵⁹¹ See also section 3.6.

⁵⁹² For instance, unit labour cost as an indicator covers both productivity and wage costs elements, which means that in theory one could improve the score on this indicator without altering anything as regards labour market flexibility, for instance by taking a number of productivity enhancing measures.

⁵⁹³ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 3.

⁵⁹⁴ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the

recommendations⁵⁹⁵ and especially in its proposals for the start of an excessive imbalances procedure⁵⁹⁶, to further define this and make sure that emphasis is placed on the right areas. This is necessary but not sufficient. It will then depend on the Council to approve these demarcations. With the general tendency of the Council to favour more national room for a country to pick and choose specific policy measures the success of this is anything but guaranteed. The installation of Reversed Qualified Majority voting in the procedure does help to limit the influence of the Council in this regard. However, for a real impact, the principle enters too late in the procedure, since it only kicks in after the corrective action plan has been submitted and approved and the demarcation has already taken place.

Proportionality considerations as regards the choice of legal instruments in the case of internal market legislation are limited. As far as legal instruments are concerned for most of the measures there is no choice in the matter. Due to the legal bases Directive 2005/36 on recognition of professional qualifications had to be laid down in a Directive. The same goes for the Services Directive 2006/123, Directive 96/71 on posting of workers and Directive 2004/38 on European citizenship. The only two measures where there was a choice in the matter were Regulation 492/2011 on freedom of movement of workers and Regulation 883/2004 and its implementing Regulation 987/2009 on social security coordination. In these cases there was a choice between a Regulation and a Directive. In general, since coordination between national social security systems requires uniform rules and there is no room for divergence in the rights both Regulations inter on EU citizens, the choice of a Regulation seems justifiable. The question remains whether the chosen subjects in the various legal instruments are appropriate in improving internal market functioning. With the exception of the European citizens Directive all measures contain provisions on administrative cooperation between Member States, arguably an indispensable part in accurately implementing the free movement provisions. These add to the core of the various Regulation and Directives, which lay down a number of rights for the worker, self-employed or service provider in question, elaborating on the rights of European citizenship and free movement as laid down in the Treaty. As mirror image to this, the legal instruments also define what amounts to a barrier to free movement. Finally, most of the measures contain obligations for general information provision and/or administrative simplification, assisting the worker or service provider in finding the relevant information for the provision of his or her services.

Within this general set up there are some specific issues linked to the concept of proportionality that are worth highlighting. Concerning the services Directive, the

prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 5.

⁵⁹⁵ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 6.

⁵⁹⁶ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 7.

balance between effects on free movement and social protection has been heavily debated, as has been highlighted in the previous chapter. Furthermore, there can be no doubt that some of the measures installed in the services Directive are quite onerous in their content and have a profound impact on the Member States. Especially the fact that Member States were required by the Directive to identify specific types of requirements imposed on service providers, such as authorisation schemes, legal form requirements, tariffs, ownership restrictions, assess whether they are necessary, non-discriminatory and proportionate and amend them (if necessary), put a large burden on Member States⁵⁹⁷. The mere fact that this was a large task for Member States, however, does not make this disproportionate. For this the impact of such measures and possible alternatives have to be studied. Considering that the internal market for services was very poorly developed at the time, the welfare improving impact of these measures was large⁵⁹⁸. Seeking possible alternatives, the most logical option would be either harmonisation or leaving the responsibility for pulling down barriers fully at the Member State level, with ex post control and infringement proceedings by the Commission. Harmonisation of such a broad range of requirements arguably would have put an equally heavy burden on Member States, while respecting less the heterogeneity in legal systems present, which would not be in line with the fiscal federalism framework. Ex post control by the Commission would not have been a feasible alternative either. Given the extremely large amount of legal requirements governed this probably would have meant an explosion of infringement proceedings coming forth from the Directive. Therefore, even though this has put significant strains on Member States, the requirement in the Directive arguably is proportionate⁵⁹⁹.

The posting of workers Directive has also been heavily discussed under the third proportionality test, specifically the balance between the effects on free movement of workers and the effects on social protection. In the area of conferral, where it was already mentioned that it can be doubted whether the system of coordination installed (by identifying a set of fundamental rights applicable, varying dependent on the country where the service provider plans to post workers) is actually appropriate and necessary to achieve the objective of free movement pursued by the Directive. Since the stated objective is to “increase legal certainty and facilitate the identification of employment conditions applied to posted workers” one could argue that a less onerous system based on information provision, leaving more room for adaptation to country specific preferences, could be used as well.

Examining proportionality of EU action undertaken in the area of social employment policy, what stands out is that in general there is a large degree of freedom in choice

⁵⁹⁷ See Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376, art 39.

⁵⁹⁸ See section 4.4.

⁵⁹⁹ See also Commission, ‘Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive’ COM(2011)20.

of instruments. The aspect of gender equality is most limited, with article 157 TFEU explicitly prescribing legislative instruments for laying down the application of gender equality principles. In analysing the proportionality of the actual content of the Directives it is essential to keep the nature of this instrument in mind. The concept of equal pay for equal work or work of equal value as laid down in article 157 of the Treaty already in the 1970s was judged by the European Court of Justice to have direct effect⁶⁰⁰. As stated earlier, the Directives therefore explicitly concern the *application* of the principle. This means that measures proposed should be judged in the manner in which they actually increase clarity and ease of application of this concept in national circumstances. The Directives in this regard for the most part meet these requirements, largely laying down rules as interpreted earlier by the Court of Justice⁶⁰¹ and specifying specific legal rights and obligations⁶⁰².

The question that remains is whether it is also proportional for these Directives to be supplemented by other measures, which is optional, according to the various possible legal bases. The European Commission's strategy for equality between men and women⁶⁰³ gives two different categories for action under the framework; "equal pay for equal work of equal value" and "equal economic independence". Measures proposed mainly fall under the headings of coordination of female labour market participation measures in the framework of the Europe 2020 strategy and the OMC social inclusion (in various ways supported by the PROGRESS program). In general, this issue has been dealt with in the previous section, where it was concluded that despite absence of actual externalities there is still room for political externalities. This would call for a system aimed at stimulating best practices and assisting Member States in the national policy debate. The general appraisal of the system of employment policy coordination in the previous section is also valid for this specific subject.

With legal bases in articles 153(2)(a), 153(2)(b), 155 and 156 TFEU, possible EU action in the area of improvement of working environment and working conditions can take a number of different forms. Furthermore, EU action is explicitly optional,

⁶⁰⁰ Case C-43/75 *Defresne vs Sabena* [1976] ECR 455.

⁶⁰¹ For instance, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204, art 19 on burden of proof can be said to lay down rules as set out by the Court of justice in Case C-109/88 *Handels- og Kontorfunktionærernes Forbund i Danmark v Dansk Arbejdsgiverforening, agissant pour Danfoss* [1989] ECR 3199 and Case C-127/92 *Enderby v Frenchay Health Authority and Secretary of State for Health* [1992] ECR I-5535. See also Chalmers et al, *European Union law* (2nd edition, Cambridge University Press, 2010).

⁶⁰² Exception to this positive judgement can arguably be found in Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204, chapter III.2, obliging Member States to promote dialogue on equal treatment, something which from the point of view of the Directive's objectives seems an unnecessarily onerous obligation for Member States.

⁶⁰³ Commission, 'Strategy for equality between men and women 2010-2015' COM(2010/491).

and should in any case “support and complement the activities of the Member States in the following fields”⁶⁰⁴. If measures are taken they should be least onerous, or in other words, “light” and leave ample room for Member States to adapt the rules to their specific circumstances and citizen preferences. Given this set up it seems very hard to justify the legislative instruments that have developed in these areas. Since political externalities are the main issue here, a soft process, for instance in the form of an open method of coordination, where countries learn from each other on the basis of general principles and guidelines with common understandings on these issues could arguably achieve similar results in a less onerous manner. In fact, the Commission has been organising just these types of measures, but *in addition to* the legislative instruments, as can be seen in the Community strategy 2007-2012 on health and safety at work⁶⁰⁵. The same argument applies to the equal treatment and minimum requirement provisions for fixed term, part time and temporary agency workers, and the aspect of working time as part of health and safety of workers. If action is judged necessary at all, limited externalities and large heterogeneity between Member States would indicate that effectiveness of policy would be served by “light” EU action, with focus on political externalities and large room for manoeuvring for the Member States to adapt to national circumstances. Against the background of this assessment it is in particular very hard to justify the working time Directive, laying down detailed minimum requirements in the areas of rest period, maximum working time, reference periods as well as a whole list of possible derogations to the rules. A process based on common principles and exchange of best practices could arguably achieve similar results in a less onerous manner, leaving more room for to take heterogeneity of preferences into account.

The issues of pensions and social inclusion of vulnerable groups and the Open Method of Coordination process associated with these subjects on the other hand can in general be said to fit the proportionality principle. The various possible legal bases in articles 153(2)(a), 156 and 160 TFEU leave ample room to choose the measures most appropriate to achieve the objectives. Policy measures would have to be effective in facilitating policy learning while giving enough space for differing preferences in Member States. In general, looking at the OMC system that is set up with broad common objectives and the common indicators used to measure developments they arguably leave ample room for Member States to adapt these to national circumstances. Rather, they create a common framework to streamline discussions on various subjects. Furthermore, the flexible and light reporting for

⁶⁰⁴ Art 153 TFEU.

⁶⁰⁵ Commission, ‘Improving quality and productivity at work: community strategy 2007-2012 on health and safety at work’ COM(2007)62. Support for these types of measures is partly provided by the Progress program, see Decision 1672/2006/EC of the European Parliament and the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress [2006] OJ L 315.

Member States under the social OMC since the start of the Europe 2020 strategy⁶⁰⁶, provides additional room for Member States to exemplify this in the manner that they seem most useful.

Finally, considering proportionality for EU funds spending, the various legal bases explicitly require Regulations for implementing measures of the EU funds, therewith leaving no room for choice of legal instrument. Within these Regulations measures prescribed should, however, still be least onerous for Member States concerned. Furthermore, given the large heterogeneity between Member States in the areas under consideration, a welfare enhancing setup would call for large room for adapting to national circumstances. The current setting under the Structural Funds roughly fits this picture. The system allows for Community strategic guidelines on cohesion, which form a wide framework for intervention of the funds⁶⁰⁷. The adaptation to national circumstances takes place in the National Strategic Reference Frameworks⁶⁰⁸ in which Member States set thematic and territorial priorities and list the operational programmes to be funded by the EU funds. Also, proportionality is an explicit aspect of the system of measuring effectiveness, monitoring and control and reporting under the various programmes⁶⁰⁹. There are, however, some aspects here that seem unnecessarily onerous for Member States, which are mainly concerned with the level of control and EU influence in national programmes. Notably, the Commission is given an approving role as far as the setting of certain elements of the National Strategic Reference Frameworks is concerned as well as on the specific operational programmes, which seems unnecessary to achieve the aim of the funds. Likewise, in deciding on the operational programmes the Commission is also to analyse whether this fits in the National Strategic Reference Framework⁶¹⁰, something which could be just as well done by the Member States themselves. In the same vein, the extensive yearly reporting requirements for compliance and spending by the Member State to the Commission for each operational program appears disproportional to achieve the underlying policy objectives⁶¹¹.

⁶⁰⁶ See Social Protection Committee, ‘Opinion on reinvigorating the social OMC in the context of the Europe 2020 Strategy’ (2011) as endorsed by the Employment and Social Affairs Council of 17 June 2011.

⁶⁰⁷ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, Title II chapter I

⁶⁰⁸ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, Title II chapter II.

⁶⁰⁹ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, art 13, as well as e.g. Title IV ch 1 and art 74.

⁶¹⁰ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, art 30, art 32.

⁶¹¹ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the

Summarising the results of the analysis under the institutional aspect of distribution of power in the supranational legal, the following table can be drawn up.

Table 19

Instruments	<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>	<i>EU funds spending</i>
Institutional aspects				
Distribution of power in the supranational legal order				

The colours represent the way the instruments perform. Green means that the analysis has not identified serious issues that can influence the manner in which the instrument performs in achieving its economic objectives. Red on the other hand means that serious issues can be observed. Yellow stands for a medium performance, where the analysis has shown some issues that can be improved upon. As far as conferral is concerned there are generally no large issues identified. However, the element of conferral can put into question some aspects of the macroeconomic imbalances procedure, elements that, from the point of view of effectiveness of policy, are actually desirable. The opposite is the case with the posting of workers Directive, where conferral limits possibility for adverse policy action. Given the fact that a wide number of legal bases are available including the choice of legal instruments, the aspects of subsidiarity and proportionality become all the more relevant. From the point of view of effectiveness of policy, the analysis here revealed a number of issues, mainly related to proportionality of the measures taken. Main points here are the detailed legal instruments in the area of social employment policy, which do not seem justified. Neither do certain onerous aspects of employment policy coordination and EU fund spending, especially when not used for cohesion or internal market related issues.

5.3 Democratic legitimacy and accountability

This section analyses to what extent the various EU employment policy instruments are accompanied with effective mechanisms of democratic legitimacy and accountability. As stated before, effective mechanisms of democratic legitimacy and accountability can contribute to the effectiveness of policy by ensuring that the setup

Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, Title IV ch II.

of instruments takes place in a manner that is in line with citizen preference. Furthermore, a strong electoral mandate on the level where policy decisions are taken has been proven to be essential to ensure effective reform implementation⁶¹². In analysing democratic legitimacy and accountability, however, both aspects first need to be further defined. Discussion on democratic legitimacy is often divided into aspects regarding input and output legitimacy, a distinction originally set out by Scharpf (1999⁶¹³). According to Scharpf, on the input side democratic legitimacy requires mechanisms or procedures to link political decisions with citizens' preferences. In modern democracies these mechanisms are reflected in representative institutions in which political decision-makers can be held accountable by means of elections. At the same time Scharpf argues, democracy would be an 'empty ritual' if the democratic procedure was not able to produce effective outcomes, that is: 'achieving the goals that citizens collectively care about'. As to the extent to which the general setup of the EU calls for both input and output legitimacy Amttenbrink (2008⁶¹⁴) and Craig (2011⁶¹⁵) will be followed, who consider both to be of importance, while recognizing that especially on the input side there are structural reasons stemming from the nature of the EU that prevent it from being perfectly realised.

Democratic legitimacy is inextricably linked to democratic accountability. It becomes readily apparent, however, that the definition of accountability is not an easy task. As Bovens (2007)⁶¹⁶ states, accountability is one of those golden concepts that no one can be against and is increasingly used in political discourse and policy documents, because it conveys an image of transparency and trustworthiness. At the same time, it means different things to different people. Building on a long line of discussion on the subject⁶¹⁷, Bovens presents a narrow definition of accountability⁶¹⁸, entailing "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass

⁶¹² See e.g. OECD, *The Political Economy of Reform; lessons from pensions, product markets and labour markets in ten OECD countries* (2009).

⁶¹³ Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999).

⁶¹⁴ Amttenbrink, 'The multidimensional constitutional legal order of the European union – a successful case of cosmopolitan constitution building?' (Netherlands Yearbook of International Law, vol XXXIX, 2008).

⁶¹⁵ Craig, 'Integration, democracy and legitimacy' in Craig and de Burca, *The evolution of EU law* (Oxford University Press, 2011).

⁶¹⁶ Bovens, 'analyzing and assessing accountability: a conceptual framework' (European Law Journal, vol 13, no 4, 2007).

⁶¹⁷ See e.g. Vickers, 'Accountability' in Browder, *Emerging patterns of administrative accountability* (Mr Cutchan Publishing corp, 1971), Sartori *The theory of democracy revisited* (Chatham House Publishers, 1987) and Barnett, 'The creation of democracy' in Hirst and Khilnani *Reinventing democracy* (Blackwell Publishers, 1996). For an overview see also Amttenbrink, *The democratic accountability of Central Banks; a comparative study of the European Central Bank* (Hart Publishing, 1999) and Bovens, 'analyzing and assessing accountability: a conceptual framework' (European Law Journal, vol 13, no 4, 2007).

⁶¹⁸ See e.g. Day and Klein, *Accountabilities; five public services* (Tavistock publications, 1987),

judgement and the actor may face consequences"⁶¹⁹, which will be used in this section.

Relating the issues of democratic legitimacy and accountability to the EU legal setting, Title II of the Treaty on European Union lays down a number of democratic principles for the functioning of the European Union. Specifically, article 10 TEU states that the functioning of the Union shall be founded on representative democracy. Most importantly, in this regard it is stated in article 10(2) TFEU that “citizens are directly represented at Union level in the European Parliament”, that “Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.” Furthermore, in paragraph 3 of article 10 TFEU it is stated that “Decisions shall be taken as openly and as closely as possible to the citizen”⁶²⁰.

Before turning to the specific application of this system to the EU employment policy instruments, one should note a number of general difficulties stemming from this legal setting related to the various actors in the process. The indirect democratic legitimation of the Council by the national governments, which are accountable to their national parliaments, has severe limitations, notably in cases of qualified majority where the government has been outvoted. A collective accountability of the Council, beyond the judicial review of its acts by the European Court of Justice, does not exist. Also, the manner in which national parliaments are effectively able to fulfil their role in legitimising EU policy has its limitations in a generally strong position of national governments due to e.g. knowledge asymmetries between governments and national parliaments on EU negotiations, time and resource issues and limited possibilities for influencing the national government policy stance in EU policy⁶²¹. Furthermore, the Commission has a large degree of independence in its day-to-day promotion of the general interests of the Union⁶²², where the legitimation and accountability of the European Commission essentially rests on the European Parliament, which only has the right to adopt a motion of censure for the Commission as a whole⁶²³. Lastly, the statement that citizens are directly represented at the EU

⁶¹⁹ Bovens, ‘Analyzing and assessing accountability: a conceptual framework’ (European Law Journal, vol 13, no 4, 2007), 452.

⁶²⁰ The Treaty does include other democratic principles, mainly in art 11 TEU e.g. on consultations with representative associations and on the citizens initiative. These aspects however will not be discussed here.

⁶²¹ See also e.g. Auel, ‘Democratic accountability and national parliaments; redefining the impact of parliamentary scrutiny in EU affairs’ (European Law Journal, vol 13, no 4, 2007) and Bellamy and Kruger, ‘Domesticating the democratic deficit? The role of national parliaments and parties in the EU’s system of governance’ (Parliamentary Affairs, 2012).

⁶²² Art 17(1) TEU.

⁶²³ According to art 17(8) TEU and art 234 TFEU, the European Parliament has the power to adopt a motion of censure against the Commission as a whole. The power of censure means Parliament can exert democratic control in the European Union. To be admissible, a motion of censure must be tabled by at least one tenth of the MEPs. It must state the reasons for the motion. During the Commission’s

level in the European Parliament, needs to be qualified given e.g. the lack of a European ballot and a degressively proportionate allocation of seats in the European Parliament, a mixture of proportionate representation of the citizens and of the Member States. The European Parliament is therefore arguably not as representative as it could be⁶²⁴. Keeping these general considerations in mind, the remainder of this section will analyse EU employment policy instruments from the perspective of democratic legitimacy and accountability as set out above.

Concerning EU employment policy coordination, a logical starting point for discussion on democratic legitimacy and accountability in the EU setting is the identification of what exactly is the appropriate forum in which these elements should be ensured. In this context it should be kept in mind that legitimation and accountability concerns arise at the level at which public power is exercised, since from the point of view of effectiveness of policy this is the level where citizen preference should be taken into account and where a strong electoral mandate is essential to ensure effective implementation. Employment policy coordination concerns in essence national policy decisions. Whether the European Parliament in this case should play a role as a forum for legitimacy and accountability is dependent on the existence of a power exercised at the EU level. Or in other words, if Member States remain fully autonomous in their decision-making, then there is little need for accountability at the EU level, and national parliaments should take full responsibility. Given the current division of power between the EU and national level in employment policy coordination⁶²⁵, arguably the main role in ensuring democratic legitimacy and accountability does indeed remain with national parliaments. However, there are some limitations for Member States encompassed in the current setup of the process that legitimate a forum at the EU level. As has been noted, the economic and employment guidelines are broad, but entail a framework for what is considered “good” policy. Non-compliance with the guidelines under the European semester can lead to policy recommendations and warnings, which, though soft, entail some form of political limitations to the actions a Member State can take. In the macroeconomic imbalances procedure these limitations are more visible, with the possibility of sanctions when insufficient policy action is taken to mitigate or prevent macroeconomic imbalances. That this entails limits for Member States is also based on the voting arrangements in the Council, where a country cannot vote on recommendations which concern the country itself under article 121(4) TFEU, and that recommendations are decided upon by Qualified Majority.

term of office, Parliament has the power to dismiss the Commission by a two-thirds majority of the votes cast, representing a majority of the component Members of Parliament

⁶²⁴ See Amtenbrink, *Continuation or reorientation? What future for European integration* (Boom, 2007).

⁶²⁵ See section 5.2.

With this power exercised at EU level in the current system, the European Parliament should have a role in ensuring democratic legitimacy and accountability. As a matter of fact, the European Parliament has a number of different roles in the area of employment policy coordination that cover aspects of the framework set out in this section. In ensuring input legitimacy, the European Parliament has a limited role in the setting of the guidelines that form the basis of the whole economic and employment policy coordination process. Article 121(2) TFEU states that the European Parliament “shall be informed” of the setting of the guidelines. The employment guidelines of article 148 TFEU have a somewhat different process, with the European Parliament being “consulted” on draft guidelines. There is, however, no obligation for the Council to take the European Parliament’s views into account⁶²⁶. In ensuring democratic accountability and output legitimacy in the procedure that follows, including *inter alia* the yearly reporting and country specific recommendations, the Treaty gives the European Parliament no role to play, except in article 121(5) TFEU, where it is stated that “The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.” Concerning the *setting* of procedures, however, the EP, since the Treaty of Lisbon, has co-decision powers under article 121(6) TFEU, since the ordinary legislative procedure applies. This means that in the formulation of Regulation 1175/2011⁶²⁷ laying down the European semester and Regulations 1174/2011⁶²⁸ and 1176/2011⁶²⁹ laying down the macroeconomic imbalances procedure the European Parliament was a full negotiating partner. The European Parliament used this position to both increase possibilities for transparency in accountability and for input legitimacy. Examining the role of the European Parliament in the various Regulations, Regulation 1175/2011 lays down the obligation for the European Parliament to be duly involved in the European semester⁶³⁰ to “increase the transparency and ownership of, and accountability for decisions taken, in particular by means of the economic dialogue carried out pursuant to article 2-ab of

⁶²⁶ Although markedly different from the more mainstream method of Union method of policy making, which mostly takes place according to the normal legislative procedure of art. 294 TFEU with co-decision powers for the European Parliament, this limited involvement of the European Parliament in the setting of guidelines for Member State policy is not unique for the area of employment policy. Art. 173 and 181 TFEU for instance follow similar patterns for industry and research and technological development respectively.

⁶²⁷ Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306.

⁶²⁸ Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306.

⁶²⁹ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306.

⁶³⁰ Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306, art 2a(4).

this Regulation”. The economic dialogue described lays down the possibility for the European Parliament to invite the President of the Council, the Commission and where appropriate the President of the European Council or the President of the Eurogroup to discuss various aspects of the European semester. Regulation 1176/2011 entails the obligation for the Commission and the Council to inform the European Parliament in a large number of stages during the procedure. Furthermore, both this Regulation and Regulation 1174/2011 lay down similar economic dialogue as to the one in Regulation 1175/2011⁶³¹, also including the possibility for the European Parliament to offer a Member State the opportunity to engage in an exchange of views with the European Parliament when this Member State is in an excessive imbalances procedure. In addition to these requirements some aspects of input legitimacy as regards the setting of targets are created. Even though the European Parliament has no role to play in determining the overall targets set out in the economic and employment guidelines, it has influenced the goals of the macroeconomic imbalances procedure in the drafting of the Regulation. With the concept of imbalances being hardly defined, the content and the manner of setting of the scoreboard effectively delineates the scope for action in this area. Both Council and Commission strongly opposed the role the European Parliament claimed here, and after extensive discussions the compromise was that some general elements of the scoreboard were incorporated in the Regulation, but that the actual scoreboard would be set by the Commission “in close cooperation with the European Parliament and the Council”⁶³².

Assessing this system against the framework for democratic legitimacy and accountability as set out above it can be observed that the European Parliament is severely limited in its possibilities for ensuring input legitimacy, or playing its role in steering policy in line with citizen preference. Concerning elements for accountability there is a relationship between the actors (Commission and to some extent the Council) and the forum (EP), in which the actors are obliged to explain and justify their conduct, where the forum can pose questions and pass judgement. The various regulations for economic dialogue are numerous and open up a number of opportunities. There are, however, two issues here that severely limit effective accountability. The first one is the issue of complexity. Economic reform and analysis is a highly complex topic, which is even more so the case for the issue of macroeconomic imbalances. Given the large discretionary power of Commission and Council and, arguably, the knowledge asymmetry on this issue between especially the European Commission and the European Parliament a proper dialogue focussing on the ways to achieve the policy goals is not likely. Furthermore, the EP only has limited effective accountability mechanism or sanctions. The European Commission

⁶³¹ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 14 and Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306, art 6.

⁶³² Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 4 and recital 12.

is the only institution in the list of partners for economic dialogue directly accountable to the European Parliament, and even here in the day to day running of the procedure the European Parliament as seen only has the power to adopt a motion of censure against the Commission as a whole⁶³³, which, being an extremely harsh sanction, is arguably is not credible in this type of discussion. In general, in appraising the probable effectiveness of these accountability mechanism a parallel can be drawn with the monetary dialogue between the European Parliament and the European Central Bank. Amtenbrink and van Duin (2009) found that in such a set up serious doubts can be raised as to the extent to which this dialogue actually amounts to an effective review of performance⁶³⁴. This having been said, there is, however, an important difference with the system regarding ECB accountability in that the European Parliament in economic and employment policy coordination can change the various Regulations. All three Regulations carry similar review clauses⁶³⁵ that call for, where appropriate, changes to the legislation at the end of 2014 and every five years thereafter. The European Parliament could use its co-decision powers to alter the substance and process of the procedures. This is especially relevant for the macroeconomic imbalances procedure since the actual content and focus of the procedure is delineated in the Regulations itself.

As far as the role of national parliaments is concerned, their involvement mainly consists of controlling Member States in their actions in the Council and European Council at the first stages of the process, when the economic and employment guidelines are being set up, and in the last stages, in controlling the implementation of actual reform measures. In the stages in between there is virtually no role for national parliaments, even more so since in large parts of the process Member States themselves do not get to vote in the Council decision concerning their own country specific recommendations, implementation thereof and (possible) sanctions. As long as this concerns non-binding policy advice and possibilities for learning, this arguably only poses a problem to a limited extent, since governments remain free to choose their own behaviour. Moreover, parliament itself can use this to enrich national debate on reform measures (or ignore it at will). However, when EU decisions become

⁶³³ According to art 17(8) TEU and art 234 TFEU, the European Parliament has the power to adopt a motion of censure against the Commission as a whole. The power of censure means Parliament can exert democratic control in the European Union. To be admissible, a motion of censure must be tabled by at least one tenth of the MEPs. It must state the reasons for the motion. During the Commission's term of office, Parliament has the power to dismiss the Commission by a two-thirds majority of the votes cast, representing a majority of the component Members of Parliament.

⁶³⁴ Amtenbrink and van Duin, 'The European Central Bank Before the European Parliament: Theory and Practice After Ten Years of Monetary Dialogue' (European Law Review, No. 4, 2009).

⁶³⁵ Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306, art 7, Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306, art 12a and Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 16.

binding, democratic legitimacy and accountability issues can come into play, since then there is effective power wielded at the EU level. This is most prominently the case in the imbalances procedure. The role of national parliaments in this procedure is mentioned in the Regulations, where it is noted that in “applying this Regulation, the Council and the Commission should fully respect the role of national parliaments and social partners, as well as differences in national systems, such as the systems for wage formation”⁶³⁶. This general reminder of the important role of national parliaments does indeed seem warranted. Since a Member State is not in charge of its own recommendations, and the European Parliament does not fully play the legitimacy and accountability role in these instances, there is a risk of a legitimacy and accountability gap that national parliaments will have to fill to the best extent of their possibilities. How this will work out in practice however remains to be seen, since up to now there has been no country that has advanced to such stages of the macroeconomic imbalances procedure that severe limitations on national policy arise. In general the Commission and Council will have to place limitations on Member State reform measures that ensure that the imbalances procedure reaches its goals, namely the prevention and correction of harmful imbalances, while allowing national parliaments to ensure that national reform measures stay in line with national preferences. The current set up, with countries having to determine their own corrective action plans does seem to take these issues into account. How this will play out in practice, however, still remains to be seen.

For the various pieces of legislation concerning the internal market, the EU level is quite easily justifiable as being the “natural” level for action⁶³⁷. As regards institutional set up this would therefore make the European Parliament the central actor to provide democratic legitimacy and accountability in this area. As far as input legitimacy is concerned, almost all of the legislative instruments have been established using an ordinary legislative procedure⁶³⁸, where the European Parliament has full co-decision powers on equal footing with the Council. An exception is social security coordination, where the current Treaty on the Functioning of the EU entails the special legal bases seen earlier⁶³⁹. In general, the preferred position of Member States in this area still remains obvious, stemming from the sensitivity of the subject, which reaches the core of the national welfare systems. Concretely, differing from the normal legal procedure, article 48(3) TFEU installs an exception clause giving Member States an edge over the European Parliament in negotiations. However, comparing this situation to the one before the amendments introduced by the Treaty of Lisbon, this legal procedure in fact limits the ability of Member States to influence the situation, as decisions used to be taken in the Council by unanimity. This

⁶³⁶ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, recital 25.

⁶³⁷ See section 5.2.2

⁶³⁸ Art 294 TFEU.

⁶³⁹ See section 5.2.1.

unanimity in the Council is still present in article 21(3) TFEU introduced with the Treaty of Lisbon, which uses a special legislative procedure, calling for consultation of the European Parliament.

Actor in the present framework for democratic accountability is the Commission, which is responsible for suggesting improvements to the framework and for monitoring the Member States in proper implementation and application of the instruments. As for methods of accountability to the European Parliament, the various pieces of legislation mainly use the instrument of periodical reporting and review clauses. There is, however, a difference in the extent to which the European Parliament is actually involved. In the services Directive the role of the European Parliament is greatest, with reporting taking place both after the screening exercise mentioned earlier⁶⁴⁰ and regular comprehensive reporting on the application of the Directive on a three yearly basis⁶⁴¹. The European citizens Directive incorporates the obligation for the Commission to present a report to the European Parliament on the application of the Directive⁶⁴². The Professional Qualifications Directive also contains the obligation for the Commission to prepare every five years an implementation report, although there is no explicit mentioning of the European Parliament as a recipient of this report⁶⁴³. The Regulation on freedom of movement of workers has no such transparency mechanisms, nor have the Regulations on coordination of social security systems. The posting of workers Directive, finally, contains an obligatory review of the Directive by the Commission in 2001, with the view of proposing necessary amendments to the Council where appropriate⁶⁴⁴. The European Parliament is not mentioned. Missing the concept of implementation reports is a gap in the possibilities for the European Parliament to effectively monitor the functioning of the various Regulations and Directives, since the necessary transparency is missing⁶⁴⁵. This gap is added to by the general lack of data availability and evidence on the impact of the various pieces of legislation identified in chapter 4. Combined, these two elements make the use of the various accountability instruments the European Parliament has at its disposal, such as requesting the Commission to submit a proposal for legislation on the basis of article 225 TFEU, difficult to implement⁶⁴⁶,

⁶⁴⁰ Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376, art 39(4).

⁶⁴¹ Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376, art 41.

⁶⁴² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158, art 39.

⁶⁴³ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255., art 60.

⁶⁴⁴ Directive 96/71 of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18, art 8.

⁶⁴⁵ An issue already encountered in the previous chapter.

⁶⁴⁶ Other more soft instruments include, for instance, calling on the Commission to speed up

which puts questions on the European Parliament's ability to ensure policy implementation in line with citizen preferences.

Given the various instruments at play in the area of social employment policy there is no obvious single forum to ensure democratic legitimacy and accountability. In practice this has led to a system where for the same subject different level mechanisms are at play depending on the instrument used. Starting with the role of the European Parliament: it is the central forum for democratic legitimacy and accountability for as far as the various legal instruments are concerned. The European Parliament has a large role to play when it comes to the actions taken under articles 153 and 157 TFEU. Under article 157 TFEU, which covers the Directives on gender equality, the European Parliament is given full co-legislative powers. The same co-legislative powers are granted under article 153(2) TFEU, which covers the Directives in the area of working time and health and safety of workers, as well as the additional measures to encourage cooperation between the Member States, most prominently the PROGRESS programmes. Finally, concerning the agreements between management and labour on fixed term and part time work under article 155 TFEU the European Parliament plays only a limited role, with it being informed of the Council decision implementing the agreement.

As far as instruments of accountability are concerned, periodical reporting and review clauses are most frequently used. In general, the European Parliament may at any time invite the Commission to draw up reports on any particular problems concerning social conditions⁶⁴⁷. More specifically, the PROGRESS programme provides e.g. for annual activity reports to be drawn up by the Commission and forwarded to the European Parliament⁶⁴⁸. The working time Directive provides for five yearly reports from the Commission to the European Parliament on the practical implementation of the provisions of the Directive, indicating the viewpoints of the two sides of industry⁶⁴⁹. A similar provision is found in the health and safety of workers Directive⁶⁵⁰. Under the gender equality Directive, the Commission is obliged to provide a report on the application of the Directive to the European Parliament⁶⁵¹. A similar obligation is also found in the gender equality for self-employed activity Directive⁶⁵². Also, a five

infringement proceedings; see, for instance, Resolution of the European Parliament on the Internal Market Scoreboard (2011).

⁶⁴⁷ Art 161 TFEU.

⁶⁴⁸ Decision 1672/2006/EC of the European Parliament and the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress [2006] OJ L 315, art 19.

⁶⁴⁹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299, art 24.

⁶⁵⁰ Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183, art 18.

⁶⁵¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204., art 31(1).

⁶⁵² Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the

year review clause by the Commission is incorporated in the temporary agency Directive⁶⁵³. The Directives on fixed term and part time work finally are odd ones out here, since they concern the implementation of agreements by the social partners. There is in fact a five year review clause in both agreements, but this is to be done by the signatories of the agreement, without any mentioning of the European Parliament⁶⁵⁴. In general, in ensuring effective accountability and therewith policy implementation in line with citizen preferences, however, here too the European Parliament is limited by the lack of clarity on the impact of the various pieces of legislation identified in chapter 4 of this study.

In the open method of coordination that is used for social inclusion, pensions and gender equality there is very limited involvement of the European Parliament. In fact, article 156 TFEU in this regard merely states that “The European Parliament shall be kept fully informed”. Since this process in no definitive way limits Member States, the fact that democratic accountability stays with the national parliaments is justified, although the general concerns as to the extent that national parliaments can ensure effective democratic legitimacy and accountability mentioned earlier in this section need to be kept in mind.

Finally concerning the instrument of EU funds spending, given that the process on the Structural Fund spending entails both the setting of EU wide frameworks and national programs fit to specific circumstance, both the European Parliament and the national parliaments have a role in democratic legitimacy and accountability. Starting with the European Parliament, articles 164, 177 and 178 TFEU state that the Regulations on the Structural Funds are to be laid down using the normal legislative procedure. This gives the European Parliament full co-legislative powers. This role is further elaborated upon in article 177 TFEU, where it is stated that these Regulations “shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments shall also be defined by the same procedure.” Furthermore, the setting of the Community Strategic Guidelines follows the same procedure⁶⁵⁵.

application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1, Art 15.

⁶⁵³ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 327, art 12.

⁶⁵⁴ Directive 99/70/EC of the Council of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L 175 and Directive 97/81/EC of the Council of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC [1998] OJ L 14.

⁶⁵⁵ At the time of the setting of the Regulations for the period 2006-2013, the procedure in then article 161 was a different one, with however similar influence by the EP since the Community strategic reference framework was dependent on “assent” from the European Parliament.

The day to day running of the funds is left to the Commission. For the ESF this is made most apparent in article 163 TFEU, which states that the Fund shall be administered by the Commission, assisted by a Committee composed of representatives of governments, trade unions and employers' organisations. Approving and control of national efforts is also in the hands of the Commission. Democratic accountability to the European Parliament in the implementation of the Structural Funds process is mainly focussed on transparency of the process, combined with the general power the European Parliament has to choose whether or not to grant the Commission formal release for the year's budget on the basis of the European Court of Auditors annual statement of assurance on the reliability of the EU's accounts, which includes a specific chapter on Cohesion Policy in its Annual Report⁶⁵⁶. In primary Union law itself there is already a reporting requirement laid down in article 175 TFEU, which states that every three years the Commission shall submit a report to the European Parliament (amongst others) on the progress made towards achieving economic, social and territorial cohesion, if necessary, accompanied by appropriate proposals. More specific reporting requirements are laid down in the Structural Fund Regulations, where in the Commission is obliged to submit a strategic report in 2010 and 2013 summarising Member States' reports on progress⁶⁵⁷. The European Parliament is invited to hold a debate on this report. Furthermore, a general review clause is included in the various Regulations, obliging the European Parliament and the Council to review the obligations before the end of the programming period in 2013.

Although limited in their national priority-setting and decision-making by the controlling role of the European Commission, both the Regulations themselves and the Community strategic guidelines are still very broad and therewith leave ample room for Member States to pick and choose their own priorities. How to ensure democratic accountability at the national level is completely left to Member States. Noteworthy in this regard is that in the obligatory partnership with relevant stakeholders laid down in article 11 of Regulation 1083/2006 and more specifically articles 28 and 32 concerning the National Strategic Reference Framework and operational programmes there is no explicit mentioning of national parliaments. However, the obligatory national co-financing that takes place and the budgetary rights generally reserved for national parliaments are important elements in ensuring democratic legitimacy and accountability on this level.

Summarising the results of the analysis under the institutional aspect of democratic legitimacy and accountability is done in table 20.

⁶⁵⁶ Art 319 TFEU.

⁶⁵⁷ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, art 30.

Table 20

Instruments	<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>	<i>EU funds spending</i>
Institutional aspects				
Distribution of power in the supranational legal order	Yellow	Green	Red	Yellow
Democratic legitimacy and accountability	Yellow	Yellow	Yellow	Green

Green again means that the analysis has not identified serious issues that can influence the manner in which the instrument performs in achieving its economic objectives, while yellow again stands for a medium performance, where the analysis has shown that some issues can be improved upon. In general, the combination of actors and measures taken on different levels has proven to make for a set up in which democratic legitimacy and accountability, and therewith the ability for European Parliament and national parliaments to ensure effective policy implementation in line with citizen preferences, is not always optimally ensured. Problems in this regard both stem from the general EU institutional set up, which poses severe limitation in this regard, as well as from the specific provisions governing the four different EU employment policy instruments. The process of employment policy coordination knows limitations of the roles of both the European Parliament and national parliaments in effectively performing their controlling function. In the areas of Internal Market legislation and social employment policy there is a large variety in the manner in which transparency of implementation and application of the various pieces of legislation is actually ensured, ranging from extensive reporting requirements under the services Directive to a full absence of a reporting obligation on the posting of workers Directive. This, combined with the general problems in assessing the effects of these pieces of legislation in achieving the desired outcomes, puts additional limitations on effective democratic legitimacy and accountability since Parliaments are unable to determine whether policy is actually implemented in line with citizen preferences. The same argument is valid for the EU social employment policy instruments.

5.4 Coherence and practical application

Analysis under this third and last institutional aspect related to the effectiveness of the EU employment policy instruments will focus on two different elements including

coherence and practical application. That there is in fact an issue of coherence can be linked to the incremental building up of EU employment policy since the 1950s, which has resulted in a current setup of EU employment policy that consists of a wide variety of different instruments that influence and interrelate in different manners. This section examines how this interaction actually takes place and whether this leads to issues that can influence the manner in which EU employment policy instrument can contribute to achieving their economic objectives. The aspect of practical application refers to the manner in which the instruments have affected the real world, and examines whether there are, for instance, issues of complexity that hinder them from reaching the objectives.

To start the discussion on coherence, recall the table on the relationship between EU employment policy instruments and the economic objectives, which was developed in chapter 3 and reproduced for convenience below in table 21.

Table 21

Instruments Objectives	<i>Employment policy coordination</i> → <i>(more binding)</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>		<i>EU funds spending</i>
			<i>Legislation</i>	<i>Coordination</i>	
Increasing incentives for work	X			X	X
Improving the functioning and flexibility of markets	X	X			X
Improving the human capital stock	X			X	X
Improving framework conditions	X	X	X	X	
Short term stabilisation policy	X				X

Even though there are different instruments of EU employment policy, they partly share common economic objectives. In achieving these objectives the instruments overlap from time to time. Three main interlinkages can be identified⁶⁵⁸, which will

⁶⁵⁸ In general of course already on the basis of the Treaty there are certain cross-cutting objectives/principles that should be taken into account in all actions taken (e.g. art 8 and 9 TFEU which state this obligation for equality between men and women and e.g. the promotion of a high level of employment, as does, for the latter and quite superfluously, art 147(2) TFEU). In this section, however, we will take a bit more practical approach, analysing the actual legal instruments themselves and the interlinkages foreseen between them.

be discussed subsequently, namely the link between employment policy coordination and internal market legislation and EU funds spending, the link between social employment policy and employment policy coordination, and the link between internal market legislation and social employment policy.

The Broad Economic Policy Guidelines and the employment guidelines form the basis of employment policy coordination. Even though these are explicitly linked to the coordination of policies *of the Member States*, the guidelines also contain several explicit references to the EU funds, in general calling on Member States to make optimal use of the various funds. This is also reflected in primary Union law, where strengthening cohesion in article 175 TFEU is linked to coordination of economic policies, and made explicit in the EU Fund Regulations where the obligation is installed for assistance from the Funds to target the European Union priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs. More specifically, that 60% of expenditure for the Convergence objective and 75% of expenditure for the Regional competitiveness and employment objective is set for the abovementioned priorities⁶⁵⁹.

Since the EU funds discussed here are already limited as to their objectives by their respective legal bases the broad categories available for funding arguably do not impose strict additional limitations. Even more so, given the broadness of the categories one can wonder why the link with expenditure was only made for 75% and 60% of total expenditure. This combined with the large level of discretion for Member States to pick and choose the various categories arguably makes the practical link largely obsolete.

In contrast to the frequent mentioning of the EU funds, the current integrated guidelines under the Europe 2020 strategy make no explicit mentioning of the internal market⁶⁶⁰. Given the mentioning of EU action this could be seen as rather odd, even more so since the practical implementation and application of the rules that constitute the internal market are in fact the responsibility of the Member States. Explicit legal links between employment policy coordination and the internal market, are limited to a mentioning in the macroeconomic imbalances procedure, it is stated that “Achieving and maintaining a dynamic internal market should be considered an element of the

⁶⁵⁹ Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, art 9(3). The priorities are further defined in Annex IV, which refers to representing a wide area of possible expenditure categories, most relevantly in the area of the labour market concerning increasing adaptability of workers, improving access to employment, improving social inclusion of less-favoured persons and improving human capital.

⁶⁶⁰ This is a change of approach as regards to the last years of the Lisbon strategy, where extending and deepening the internal market was explicitly included as one of the guidelines.

proper and smooth functioning of the economic and monetary union”⁶⁶¹. There are, however, no operational conclusions linked to this statement. Since there is no reason why flexibility of labour markets as a prescription to prevent and correct imbalances is something that is only relevant for national labour markets, this can be considered an omission.

The processes of employment policy coordination and social employment policy have no formal legal links. Given the large overlap content wise, as well as the impact the two can have on one another this can be considered quite extraordinary. Though politically often combined, this lack of practical legal links poses a number of risks. A two-track approach between the two processes in general is one of them, as is lack of legal clarity. The former comes back in the non-inclusion of (aspects of) EU social legislation in the integrated guidelines. A similar reasoning for inclusion can be followed here as in the area of the internal market above, with concrete examples in the area of gender equality and health and safety of workers. The latter returns in the combination of the OMC process on social protection and social inclusion and the employment coordination processes. The integrated guidelines on promoting social inclusion and combating poverty *de facto* integrates the subjects from the OMC social inclusion in employment policy coordination. However, the possible legal bases of the OMC social inclusion propagate a system of best practices and do not foresee the issuing of country-specific recommendations. On which subject matters country-specific recommendations can be issued therewith is not clear.

Finally, the link between internal market legislation and social employment policy instruments. This link is already laid down in the Treaty itself, where article 151 TFEU explicitly links the goals of the social chapter to the development of the internal market, and construes social policy as *additional* to the internal market. Where the social employment legislation lays down minimum requirements per Directive, which become part of the national legal systems, the relationship between most internal market legislation, which for the most part guarantee equal treatment in various manners, and the social employment legislation is quite clear. Following this relationship in the concrete legal instruments, the services Directive and the posting of workers Directive are the ones that from the internal market point of view attract most interest. The services Directive is very explicit in stating that labour law in any context is not affected by the Directive⁶⁶². Since labour law in the context of provision of services is in fact covered by the posting of workers Directive, which is considered a *lex specialis* in article 3 of the Directive, and not the services Directive, from a legal point of view this statement is rather superfluous. The posting of workers Directive therefore is most relevant. The relationship between the posting of workers Directive

⁶⁶¹ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, recital 3.

⁶⁶² Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376, art 1(6).

and social employment legislation is made clear in article 3 of the Directive, more specifically articles 3(1)(a), 3(1)(e), 3(1)(g). These include the substance of working time, health and safety of workers and gender equality as terms and conditions of employment that should be guaranteed by the Member States to apply to posted workers⁶⁶³.

Moving to a more specific examination of the various measures taken in the area of employment policy coordination, there are a number of issues related to coherence and practical application that deserve further discussion. First of all, as regards the Treaty the economic policy coordination of article 121 TFEU and the employment policy coordination of article 148 TFEU display a large overlap. The inclusion of article 148 TFEU in Regulation 1175/2011 on the European semester as well as large employment related areas in the imbalances procedure further emphasises the process of employment policy coordination as an integral part of the wider economic policy coordination under article 121 TFEU. The same overlap exists for the various procedures based on these provisions, the Europe 2020 strategy/European semester, the Euro Plus Pact and the macroeconomic imbalances procedure. A further explicit integration of the Euro Plus Pact into the regular process of the European semester and the imbalances procedure would both increase transparency and improve focus, leaving the Europe 2020 strategy and the imbalances procedure. Even between these two instruments there is a large potential overlap. With issues of competitiveness and unemployment falling under the macroeconomic imbalances procedure the largest share of employment, education and social inclusion can be incorporated as well into the imbalances procedure if so decided. This at first will depend on the interpretation of the Commission, which given its relatively independent role in the imbalances procedure, has strong incentives to widen the scope of the imbalances procedure to the largest extent possible. First signs of this can already be seen in the Commission's first alert mechanism report published in February 2012⁶⁶⁴ in which the Commission identifies several countries possibly suffering from a wide range of imbalances. This would mean a diminishing of importance of the Europe 2020 strategy in general, and more specifically for the employment coordination process of article 148 TFEU, quite possibly making these processes largely obsolete. Whether from the point of view of the functioning of employment policy coordination instruments in practice this is a good or bad thing is open for discussion. On the one hand, this would increase possibilities for European pressure for reform efforts. On the other hand, this could decrease commitment within the Council for the imbalances procedure when issues

⁶⁶³ Conversely, the relationship between social employment legislation and the internal market is remarkably absent from the various pieces of social legislation, with only examples consisting of general negative sentiment in the recitals about e.g. workers health and safety "should not be subordinate to purely economic considerations" see e.g. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299, recital 4.

⁶⁶⁴ Commission, 'Alert mechanism report' COM(2012)68.

which are only very remotely linked to harmful imbalances are incorporated. Since the Council has the final say in this area effects therefore are uncertain.

In the area of internal market legislation there are a number of issues concerning coherence and practical application which are relevant for discussion. In general, the various pieces of legislation in this area form a complex set up with various rights and requirements applying to various types of people. Chart 3 makes an attempt at mapping at the different interrelationships.

Chart 3 ⁶⁶⁵⁶⁶⁶

Worker	Self employed person	Service provider
EU citizens directive		
Free movement of workers regulation	Services directive	
		Posting of workers directive
Social security coordination regulations		
Professional qualifications directive		

That this multi-layered system can lead to some confusion for the individual to which these free movement rights apply becomes most apparent when examining the issue of social security rights for migrant workers. There are in fact three different sets of rules applicable here, stemming from the European citizens Directive, the free

⁶⁶⁵ For simplicity's sake this table leaves non-active EU citizens out of the picture.

⁶⁶⁶ The EU citizens Directive here poses a general framework on equal treatment in art 24 of the Directive, subject to specific provisions laid down in the Treaty and secondary law. The free movement of workers Regulation therefore e.g. can be seen for instance as a *lex specialis* to the equal treatment principle specifically for workers. In its relationship with the social security coordination Regulations however, the free movement of workers Regulation again functions as a *lex generalis*, giving precedence to these other Regulations (see art 36(2)). The services Directive is a *lex specialis* as regards the EU citizens Directive, while at the same time, within its scope fills a similar *lex generalis* role as the citizens Directive, with the posting of workers Directive e.g. functioning as a *lex specialis* for posted workers in the context of service provision (see art 3(1)(a) and, rather superfluously, also art 17(2) of the services Directive). The services Directive also gives precedence over the social security coordination Regulations and the professional qualifications Directive (art 3(1)(b) and 3(1)(d) of the services Directive).

movement of workers Regulation and the social security coordination Regulations⁶⁶⁷. In general, at least some of the complexity of the system as a whole can be said to stem from the Treaty-based separation between workers, self-employed persons and service providers. Examining the general system, however, it becomes clear that within an economic context and from the point of view of the migrating person in question especially the distinction between employed and self-employed is superfluous. The only relevant distinction here is between permanent and temporary residence in the host country. Permanent residence in this regard covers both employed and self-employed persons, and comes with a “full” extent of rights and requirements. Temporary residence on the other hand falls under services linked to where appropriate posting of workers entailing more limited rights, but also more limited requirements. Legally, there is indeed some evidence on “converging” or parallel development of the freedom of movement of the employed and self-employed in recent decisions of the Court of Justice⁶⁶⁸, where, inspired by the concept of “European citizenship”, all market freedoms seem to form part of a general right for all Union citizens to pursue an economic activity in a cross border context⁶⁶⁹. In some of the legislation under consideration this approach can also already be seen. The EU citizens Directive provides the same rights to employed and self-employed persons. Furthermore, the social security coordination Regulations and the professional qualifications Directive, for instance, pay little attention to their legal basis and simply separate their application along the permanent/temporary division outlined above.

Complexity can also form a hurdle for effective application of European legislation by national administrations. In this regard, the various legislative instruments have significant overlap in the manner in which they provide for administrative cooperation between Member States. As stated, all instruments except for the European citizens Directive, contain provisions laying down processes for administrative cooperation, mainly aimed at information provision on migrating persons as well as national rights and requirements present in a Member State. Administrative cooperation, however, has developed independently within the context of each legal instrument, and therefore at the moment leads to parallel, different and therewith arguably inefficient systems. The European Commission’s recent Internal Market Information system initiative (IMI) in this regard is a step in the right direction. IMI is intended to digitalise and streamline the various ways in which competent authorities exchange information on internal market related issues⁶⁷⁰. The system at this moment is available for (part of) the services Directive and the professional qualifications

⁶⁶⁷ See e.g. Verschueren, ‘Free movement of persons in the European Union and social rights: an area of conflicting secondary law instruments?’ (ERA Forum, vol 12, no 2, 2011).

⁶⁶⁸ See e.g. Case C-464/02 *Commission v Denmark* [2005] ECR I- 7929.

⁶⁶⁹ See also Tryfonidou, ‘Further steps on the road to convergence among the market freedoms’ (European Law Review, vol 35, no 1, 2010) and Chalmers et al., *European Union law* (2nd edition, Cambridge University Press, 2010).

⁶⁷⁰ See Commission, ‘Proposal for a Regulation for administrative cooperation through the Internal Market Information System’ COM(2011)522.

Directive, with first results as far as effectiveness and ease of use promising. Plans are to increase the elements of the services Directive that fall under its scope and also include the posting of workers Directive under its scope. However, there is as of yet no mentioning of the free movement of workers Regulation and the social security coordination Regulations. Where the absence of the free movement of workers Regulation can be partly justified due to the different nature of administrative cooperation, cooperation under the social security coordination Regulations is so similar to especially the professional qualifications Directive that integration of these regulations in the IMI system could lead to significant benefits.

Finally, there are some issues concerning the practical application of the various individual legal instruments in the area of the Internal Market. First and foremost, the way in which the posting of workers Directive should be actually applied has remained unclear for a long time. Especially the manner in which article 3(1), 3(7) and 3(10) of the Directive allow Member States to impose labour standards on posted workers has given room to extensive discussion, but uncertainties have been largely eliminated in a number of recent judgements from the European Court of Justice, especially in *Laval*⁶⁷¹ and *Ruffert*⁶⁷². The Court in these cases effectively interpreted the Posting of workers Directive to be one of maximum harmonisation, meaning that the labour standards laid down in article 3(1) are effectively the only ones that Member States can impose on posted workers in the context of the provision of services. Any other interpretation in the eyes of the Court would rob the Directive of its “effect utile”⁶⁷³. In this interpretation, the Court has taken away most doubts on the appropriateness of the legal basis and proportionality mentioned earlier since it in its vision effectively follows the reasoning of the legal basis on free movement of services. The free provision of services therefore takes precedence, with the transparency for the service provider being the main goal of the Directive. Furthermore, as far as practical application is concerned, the most recent impact assessment linked to the recent Commission proposals in this area identified a number of areas for improvement, including improving administrative cooperation between Member States, improving monitoring and enforcement of the Directive and improving clarity and information provision regarding the definition of posting and the interpretation of the terms and conditions of employment in the Directive⁶⁷⁴.

⁶⁷¹ Case C-341/05 *Laval un Partneri* [2007] ECR I-00000.

⁶⁷² Case C-346/06 *Ruffert* [2008] IRLR 467.

⁶⁷³ Case C-341/05 *Laval un Partneri* [2007] ECR I-00000, par 80 and Case C-346/06 *Ruffert* [2008] IRLR 467, par 33. These judgements have both been welcomed and criticized in public and academic debate. For an overview of academic literature see <http://www.etui.org/Topics/Social-dialogue-collective-bargaining/Social-legislation/The-interpretation-by-the-European-Court-of-Justice/Reaction-to-the-judgements/Articles-in-academic-literature-on-the-judgements> last accessed 10 January 2013.

⁶⁷⁴ Commission, ‘staff working document executive summary of the impact assessment accompanying the document proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide

On practical application, the services Directive also raises a large number of questions, mainly based on vague and even contradictory texts in the Directive itself. Barnard (2008)⁶⁷⁵ extensively discusses the various inconsistencies and uncertainties of the Directive, which can largely be traced back to the extremely delicate political compromises and haste in (re-)drafting of the original text. Relevant issues here are e.g. the definition of the various exclusions, limitations and derogations as well as the exact interpretation of the various justifications for limitations to free movement. To overcome some of these issues the European Commission has provided extensive guidance in a “handbook” for Member States, providing for technical assistance in the actual implementation of the Directive⁶⁷⁶ by clarifying and explaining the Commission position on a number of the unclear issues identified. First results here (as revealed by the mutual evaluation exercise) indicate positive effects of the Directive to actually lower barriers for provision of services in the internal market⁶⁷⁷ by the identification and partial abolition of requirements for a wide range of services provided, although given the short period that has passed since the implementation of the Directive, its impact has yet to fully take shape, while it will eventually be the Court of Justice which will ultimately have to make sense of the Directive.

Questions arising from complexity have also been abundant as regards the professional qualifications Directive and the social security coordination Regulations, both of which went through a large-scale consolidation exercise aimed at increasing transparency and ease of application⁶⁷⁸. That not all issues have been sufficiently dealt with, however, can be seen from the Commission’s own evaluation of the new professional qualifications Directive in 2011⁶⁷⁹ and the yearly report of the training and reporting on social security network (trESS) on behalf of the European Commission on the implementation of the social security coordination Regulations⁶⁸⁰. The evaluation of the professional qualifications Directive, although positive on general impact of the Directive, points to important weaknesses. Main results include that under the general system the case-by-case assessment of each request for recognition is considered a burdensome exercise both for competent authorities and professionals. Furthermore, the provisions on services provision appear underutilised, with frequent calls for further administrative simplification in this area. Also a general call for more flexibility in the rules for the recognition of qualifications as well as a required update as regards minimum training requirements and classification of economic activities is identified. Although the new social security coordination Regulations had only been in force for a year, the trESS report on the implementation

services’ SWD(2012)64 final.

⁶⁷⁵ Barnard, ‘Unravelling the services Directive’ (Common Market Law Review 45, 2008).

⁶⁷⁶ Commission, ‘Handbook on implementation of the services Directive’ (2010).

⁶⁷⁷ For a full overview of the results of the mutual evaluation exercise see Commission, ‘The process of mutual evaluation of the services Directive’ SEC(2011)102.

⁶⁷⁸ See chapter 3.

⁶⁷⁹ Commission, ‘An evaluation of the professional qualifications Directive’ (2011).

⁶⁸⁰ Training and reporting on European social security (trESS), *European report 2011* (2011).

of these Regulations already gives important insights into their functioning in practice, and specifically the problems encountered. A couple of general cross cutting issues are identified concerning most prominently the changing national environment. This entails the changing national social security systems⁶⁸¹ as well as the changes occurring in the typical migrant worker⁶⁸², leading to problems in applying the Regulations and identifying responsible national authorities.

Concerning the third instrument of EU employment policy, that of social employment policy, possible problems stemming from a lack of coherence can only come into play to a limited extent, since the various aspects largely stand alone, each covering distinct elements. Concerning the practical application there are two main problems that apply to the majority of the various legislative instruments, namely that of complexity and that of adaptation to changing composition of labour markets, especially with regard to the role of self-employed and those on part time and fixed term contracts. Concerning complexity; with twelve compulsory minimum standards and fourteen exemptions and derogation possibilities, the working time Directive can rightfully said to be a very complex piece of legislation, contributing to sometimes complicated implementation and a relatively high degree of non-compliance, especially in specific countries and sectors⁶⁸³. The same holds true for the general health and safety at work framework Directive and its specific follow ups, where the Commission itself identifies serious shortcomings in the application of Community legislation, leading it to announce further simplification of the legislative framework and the drawing up of practical guidelines⁶⁸⁴. The gender equality Directives finally underwent a major overhaul leading to the 2006 Directive largely aimed at simplification and clarification of the current legal system⁶⁸⁵.

The adaptation of the various legislative instruments to changing composition of labour markets has taken place to a varying extent. The fixed term, part time and temporary agency work Directives incorporated equal treatment provisions for these types of workers. However, concerning e.g. gender equality, the issues of non-transparency of equal pay provisions with regard to fixed term and part time contracts is something that is still highlighted by the European Commission as an area where further improvement is needed⁶⁸⁶. Furthermore, specific aspects of gender equality in a self-employed capacity were reinvigorated by Directive 2010/18/EU, where the

⁶⁸¹ more decentralisation, different types of benefits, more use of additional activation measures linked to benefits

⁶⁸² mobile workers are highly fragmented and extremely mobile

⁶⁸³ See also Falkner, *Complying with Europe: harmonisation and soft law in the Member States* (Cambridge University Press, 2005) for a more comprehensive overview.

⁶⁸⁴ Commission, 'Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work' COM(2007)62.

⁶⁸⁵ Commission, 'Extended impact assessment on Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation' SEC(2004)482.

⁶⁸⁶ Commission, 'Strategy for equality between women and men 2010-2015' SEC(2010)1079.

original Directive 86/613 due to its very open formulation had proven to be insufficient⁶⁸⁷. As far as health and safety at work is concerned, self-employed persons in fact cannot fall under the scope of the general health and safety Directive and its specific follow up Directives, since the legal basis limits the scope to actual workers. Self-employed persons, however, have been an increasing part of the work place specifically also in “accident prone” sectors like construction. This has proven to be a significant gap in the Directive, with the Council having to resort to a recommendations on the basis of article 352 TFEU to encourage Member States to improve the health and safety at work of self-employed⁶⁸⁸. Furthermore, despite the existence of a separate Directive on measures to encourage improvements in the safety and health at work of workers with fixed term or temporary contracts⁶⁸⁹, these types of workers are comparatively more exposed to occupational health and safety risks than workers with other types of employment contracts⁶⁹⁰.

The changing composition of labour markets has given room for an intensive debate of the working time Directive. The European Commission in its 2010 communication on reviewing the working time Directive⁶⁹¹ spends ample time discussing the need to make working time rules more flexible in the light of changing labour market needs. Furthermore, the position of the self-employed in this regard also deserves special attention. Similar to the health and safety at work Directives, the working time Directive can not apply to self-employed persons due to its legal basis. However, looking at the incidence of long hours worked in the labour force it becomes clear that this is a group which is important. The European Working Conditions survey in this regard shows that about 15% of those in employment in the EU 27 work more than 48 hours a week. Overall, in the EU, over 50% of those working 48 hours a week or more are self-employed, even though they only account for 16% of total employment⁶⁹².

Finally, when discussing coherence and practical application issues concerning EU funds spending the logical place to start are the dual objectives of cohesion and employment in the Single Market and the relationship between the ESF and ERDF

⁶⁸⁷ Commission, ‘Extended impact assessment on Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation’ SEC(2004)482.

⁶⁸⁸ Council Recommendation of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers.

⁶⁸⁹ Council Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship [1991] OJ L 206.

⁶⁹⁰ See Commission, ‘Implementation by Member States of Council Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship’ SEC(2011)982.

⁶⁹¹ Commission, ‘Reviewing the working time Directive’ COM(2010)106.

⁶⁹² European foundation for the improvement of living and working conditions, *Comparative analysis of working time in the European Union* (2010).

funding. In general, as to the exact nature of the various projects there are provisions that deal with overlap. Operational Programmes, for instance, are explicitly to be linked to one fund only⁶⁹³. Content wise, there is some overlap to be seen between the ESF and ERDF. Article 4 of Regulation 1080/2006 which limits content to be dealt with by the ERDF under the convergence objective also includes education issues and job creation, although in the latter it is explicitly mentioned that this only counts for as far as it does not fall under the ESF Regulation⁶⁹⁴. Furthermore, tertiary education is also something that falls under the scope of the ERDF in the regional competitiveness and employment objective⁶⁹⁵. The combination of this overlap combined with the explicit rule of one program one fund can pose some inconvenience, since the same project could fall under both funds, but is not allowed to benefit from both⁶⁹⁶. Concerning the practical application there are a number of issues that can be highlighted related to additionality, effectiveness and efficiency of spending. In general, the concepts of additionality, effectiveness and efficiency of spending are all part of the Structural Fund Regulations. However, in practice these provisions have proven to function imperfectly. As has been highlighted in the previous chapter, studies on the additionality of spending find a significant replacement of national spending by EU money⁶⁹⁷. Furthermore, the effectiveness and efficiency is already below standard as far as simply preventing or detecting and correcting the reimbursement of overstated or ineligible costs, as also becomes apparent by the refusal year after year of the EU Court of Auditors to sign the EU accounts, partly because of the high error rate in cohesion policy. As shown in the previous chapter, actual effectiveness in reaching the foreseen policy objectives is even more difficult to determine.

Summarising the results of the analysis under the institutional aspect coherence and practical application, table 22 concludes this chapter.

⁶⁹³ There are some exceptions to this, see Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210, art 34.

⁶⁹⁴ Regulation 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund [2006] OJ L 371/1, art 4(3).

⁶⁹⁵ Regulation 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund [2006] OJ L 371/1, art 5(1)(b).

⁶⁹⁶ This inconvenience is of course even greater for the additionality between employment measures and other types of growth enhancing measures taken under the ERDF. However, since the focus of this study is employment policy this will not be discussed.

⁶⁹⁷ See section 4.5.

Table 22

Instruments Institutional aspects	<i>Employment policy coordination</i>	<i>Internal market legislation</i>	<i>Social employment policy</i>	<i>EU funds spending</i>
Distribution of power in the supranational legal order	Yellow	Green	Red	Yellow
Democratic legitimacy and accountability	Yellow	Yellow	Yellow	Green
Coherence and practical application	Yellow	Yellow	Yellow	Yellow

Yellow again stands for a medium performance, where the analysis has shown that some issues can be improved upon. That the various instruments are connected in a number of ways has become clear in the discussion of coherence and practical application of the instruments. The relationship within the four instruments is especially tight when looking at the internal market, where different pieces of legislation cover the same substance and similar modus operandi are developed in e.g. cross border cooperation. Large uncertainties and overlap have been shown to exist in the area of employment policy coordination, even more so when expanded with the OMC social protection and social inclusion. Finally, concerning practical application issues that come back throughout the different instruments are the complexity of the instruments themselves and problems in adjusting to changing labour markets, the latter of which comes back most prominently in distinguishing between workers and self employed.

Rethinking EU employment policy

This study has discussed the economic objectives of employment policy, the development over time of the four different EU instruments of employment policy, the focus and impact of these instruments and a number of elements related to the EU's institutional structure that influence the manner in which the instruments contribute to the achievement of the economic objectives. This final chapter draws conclusions and looks ahead, proposing improvements.

6.1 Main findings

The economic framework developed in this study has led to five different objectives governments can pursue in setting employment policy, all of which are linked in a number of different ways to increasing GDP per capita growth;

1. Increasing incentives for work
2. Improving the functioning and flexibility of markets
3. Improving the human capital stock
4. Improving framework conditions and
- 5 Short-term stabilisation policy⁶⁹⁸

In examining how these economic objectives for government policy relate to developments in the EU, this study has shown that the development of EU employment policy from the 1950s led to four different instruments of policy-making;

1. Employment policy coordination
2. Internal market legislation
3. Social employment policy and
4. EU funds spending⁶⁹⁹

The link between these EU instruments and the objectives stemming from the economic framework has been shown to be good, though far from perfect, something which became especially apparent when analysing social aspects of employment policy⁷⁰⁰. As to the manner in which EU employment policy instruments have contributed to achieving the economic objectives it was shown that this very much depends on the instrument in question, with especially questionable impact of the various open method of coordination processes. Furthermore, analysis of especially the legislative measures in the area of the internal market and social employment policy, was severely hampered by data availability issues, leading to largely inconclusive results⁷⁰¹. The distribution of power in the supranational legal order, democratic legitimacy and accountability and issues of coherence and practical application were all shown to be relevant institutional elements in explaining the questionable impact of the EU's instruments. Issues concerning the distribution of

⁶⁹⁸ See chapter 2.

⁶⁹⁹ See chapter 3.

⁷⁰⁰ See chapter 4.

⁷⁰¹ See chapter 4.

power in the supranational legal order were shown to mainly relate to the detailed legal instruments in the area of social employment policy, while also posing some problems in the areas of employment policy coordination and EU fund spending. Furthermore, effective democratic legitimacy and accountability has been shown to know significant limitations, notably in the areas of employment policy coordination, internal market legislation and social employment policies. Finally, coherence and practical application of the instruments has been shown to pose problems in all four of the instruments. Largest uncertainties and overlap have been shown to exist in the area of employment policy coordination, even more so when expanded with the OMC social protection and social inclusion, while concerns of practical application are notably related to the complexity of the instruments themselves and problems in adjusting to changing labour markets.

In general, the conclusion that can be drawn from the analysis of the previous chapters is therewith both positive and negative. The positive part of the conclusion is that, as far as the aims of the various instruments are concerned, they are largely in line with the policy prescriptions from the economic framework. The negative part of the conclusion is that all in all, EU employment policy is a complex system with large overlaps and risks of adverse policy action, combined with uncertain actual impact in the real world.

6.2 Rethinking EU employment policy

The general appraisal outlined above combined with the more detailed analysis of the previous chapters provides a solid basis to shift focus to the future, or to “rethink” EU employment policy. The remainder of this final chapter will be dedicated to this exercise and the development of concrete proposals for changes in the current EU employment policy set up. Logical starting point for such an exercise is the basic issue of pursuing policies that contribute to achieving the envisaged economic objectives. Relating this to the current set up of EU employment policy, the analysis in this study in this regard immediately gives rise to two suggestions for improvement.

- 1. Improve clarity and consistency of policy action*
- 2. Remove the risk of adverse policy action*

Both aspects for improvement ultimately stem from the current set up of the Treaty on the Functioning of the EU, which in turn is a result of the stepwise development of EU employment policy and the political priorities that have shifted over the years⁷⁰². This has led to a current set up of the TFEU with separate chapters on economic

⁷⁰² See chapter 3.

policy⁷⁰³, employment policy⁷⁰⁴ and social policy⁷⁰⁵. In the framework of analysis used throughout this study, however, this does not make sense, since all three aspects for so far as they relate to employment policy are aimed at the same economic objectives. That this is recognised in practice is something that can be clearly seen especially since the Lisbon strategy, where the economic and employment policy coordination cycles have become ever more intertwined. These interlinkages have become even more pronounced in the recent set up of the European semester, so much in fact that it could be argued that were it not for the political motivation that separate entities such as a Council formation (Employment and Social Affairs Council) and working group (Employment Committee) base their role in the process on this separate title of the Treaty, the employment title of the Treaty would have lost its meaning altogether. The practical process has indeed evolved to such an extent that the separate title on employment policy in the Treaty is mostly obsolete⁷⁰⁶, and is in fact largely ignored⁷⁰⁷. Clarity and consistency of action would therefore be served by removing Title IX from the Treaty, although political considerations will probably prevent such an event from taking place, as it were political considerations that led to its inclusion in the first place.

The relationship between the economic and employment titles of the Treaty and the social title of the Treaty is more complicated. Especially since the Europe 2020 strategy the relationship between the OMC social protection and social inclusion and the Europe 2020 strategy is unclear⁷⁰⁸. The elements of the OMC social protection and social inclusion which have been discussed in this study⁷⁰⁹ have explicitly been incorporated in the integrated guidelines which find their legal basis in articles 121 and 148 TFEU, which in fact make these elements part of employment and economic policy coordination. On the other hand, the OMC social protection and social inclusion still has its distinct process, something which has been emphasised time and time again⁷¹⁰. As far as clarity and consistency of action is concerned this situation should be improved. The inclusion of the issue of social inclusion in the most recent set of integrated economic and employment guidelines⁷¹¹ under articles 121 and 148 TFEU is a *prima facie* viable solution, but has been shown in this study to actually make things worse by blurring the lines of economic and employment guidelines to

⁷⁰³ Title VIII, chapter 1 TFEU.

⁷⁰⁴ Title IX TFEU.

⁷⁰⁵ Title X TFEU.

⁷⁰⁶ Measures taken on the basis of the articles of the employment title not directly related to the OMC process (147 and 149 TFEU) do not justify its existence either, since these could arguably just as well be based on other articles like 153 and 156 TFEU of the Social title.

⁷⁰⁷ See e.g. Regulation 1175/2011 based on art 121(6) TFEU which also “naturally” includes the art 148 process

⁷⁰⁸ See also Social Protection Committee, ‘Opinion on the Future of the Social Open Method of Coordination’ (2011).

⁷⁰⁹ Specifically social inclusion in the labour market, gender equality and pension systems

⁷¹⁰ See chapter 3.

⁷¹¹ See Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 308, guideline 10 and chapter 4.

possibly include measures that do not fit the economic objectives pursued. Arguably, within the context of this study there is no need for a separate and distinct approach to social employment related measures, something which has in fact been recognised from the change of approach of the social agenda in the mid 1990s, to lately the flexicurity principle⁷¹². This does not mean that the conclusion that the OMC process on social protection and social inclusion is superfluous is politically easy, arguably since the OMC process on social protection and social inclusion is largely considered among policy makers to be a face of *Social Europe*⁷¹³. However, streamlining could still be achieved by focussing the OMC social protection and social inclusion on those areas that do not fall directly under the economic objectives identified in this study (e.g. poverty and health care)⁷¹⁴.

The EU's social employment policy legislation has been identified in this study as the area where the risks of adverse policy action are greatest. In fact, it has been shown that from the point of view of achieving economic objectives it is questionable whether these types of arrangements should exist at all⁷¹⁵. Within the economic framework these should only exist for as far as they either prevent negative developments, e.g. in the form of a “race to the bottom”, or when the measures improve productivity at work. There is no evidence for negative externalities, or a race to the bottom in the areas handled here⁷¹⁶. This could of course be a result of the measures being in place actually preventing a race to the bottom from happening, but whether these measures have had such an effect can be highly questioned. In any case, there is a lack of data hindering effective analysis in this regard⁷¹⁷. The same goes for the effect measures have had in improving framework conditions, which remains largely unclear. This is harmful, since in the economic framework effects could run both ways and could even be detrimental for GDP per capita growth. In the absence of a solid factual basis what to do here is uncertain. What is known is that it should be more substantiated. Furthermore, whether it is in fact *the EU* that should perform such a role in these areas, as opposed to the Member States can be very much questioned.

In general, moving from the content of policy to the role of the EU gives rises to two additional suggestions for improvement.

⁷¹² See chapter 3. See in this regard also Barbier, 'Tracing the fate of EU "social policy": changes in political discourse from the "Lisbon Strategy" to "Europe 2020" (International Labour Review, vol 151, no 4, 2012).

⁷¹³ Social Protection Committee, 'Opinion on the Future of the Social Open Method of Coordination' (2011).

⁷¹⁴ See chapter 4.

⁷¹⁵ See chapter 2.

⁷¹⁶ See chapter 5.

⁷¹⁷ See chapter 4.

3. Streamline EU policy action

4. Differentiate EU policy instruments according to the rationale for EU policy action

Both questions relate to earlier discussion on the division of power in the supranational legal order, the concept of fiscal federalism and the EU's legal concepts of conferral, subsidiarity and proportionality⁷¹⁸. Given the fact that in virtually all of the aspects of employment policy heterogeneity between Member States is very large⁷¹⁹ relevant issues here are external and scale effects and whether policy could be achieved sufficiently by Member States themselves. From this point of view there are three different rationales for EU action in the area of employment policy⁷²⁰, which can provide a filter to streamline and differentiate EU policy action, namely 1) Promoting positive policy developments in the Member States 2) Promoting EU and especially euro area convergence, and 3) Improving the functioning of the internal market. Any EU policy action undertaken should be effective in reaching these objectives, while proportionality considerations dictate that this should be done in a manner that does not exceed what is necessary.

More specifically, the first rationale is linked to the argument of political externalities⁷²¹. Any EU action under this rationale should be aimed at promoting policy learning and assisting Member States in the formulation and implementation of policy measures. The second rationale is based on two types of externalities, namely that of efficiency of spending and that of prevention of harmful macroeconomic imbalances. Any EU action under this rationale should therefore aim at making the most of the money at hand in stimulating GDP per capita growth, as well as preventing and mitigating the existence of harmful macroeconomic imbalances, with the latter being especially relevant for the Member States of the euro area. Finally, the rationale of improving the functioning of the internal market is applicable to all measures in the area of improving the functioning and flexibility of markets that facilitate cross border employment.

Relating these three different rationales for EU employment policy to possible avenues for improvement of the current system one can envisage a streamlining and reshuffling of both the EU employment policy instruments themselves and the link between these instruments and the economic objectives, which can be portrayed in the following table.

⁷¹⁸ see chapter 5.

⁷¹⁹ See chapter 4.

⁷²⁰ Building on section 5.2.2.

⁷²¹ See chapter 5.

Table 23

<i>Rationale for EU action</i>	<i>Promoting positive policy developments in the Member States</i>	<i>Promoting EU and especially euro area convergence</i>		<i>Improving the functioning of the internal market</i>	
Instruments	<i>Employment policy coordination</i>	<i>Macro economic imbalances Procedure</i>	<i>EU funds spending</i>		<i>Internal market legislation</i>
			<i>Convergence</i>	<i>Internal market</i>	
Objectives					
Increasing incentives for work	X		X		
Improving the functioning and flexibility of markets	X	X	X	X	X
Improving the human capital stock	X		X		
Improving framework conditions	X		X		
Short term stabilisation policy	X		X		

As this table shows, in the new set up the rationale of promoting positive policy developments in the Member States is covered by the instrument of employment policy coordination. The instrument of the macroeconomic imbalances procedure is based on the rationale of promoting EU and especially euro area convergence, specifically on the aspect of preventing and mitigating the existence of harmful macroeconomic imbalances. The instrument of EU funds spending in turn is also partly aimed at promoting EU and especially euro area convergence, specifically on the aspect of increasing efficiency of spending. Furthermore, EU funds spending is partly aimed at improving the functioning of the internal market, as is the last instrument, that of internal market legislation.

In comparing table 23 with the current situation of EU employment policy as portrayed in table 21, there are a number of changes that stand out. Firstly, the macroeconomic imbalances procedure has been separated from the other elements of EU employment policy coordination and relabelled as a separate EU employment policy instrument. Although already partly the case in the current setting, here are two reasons why additional steps can be considered necessary. The first reason stems from the nature of the macroeconomic imbalances procedure itself and more specifically the lack of a strict definition on what harmful imbalances in the area of employment

actually are. To a certain extent this lack of a definition is unavoidable, since the large heterogeneity between EU Member States makes it very difficult to distil a one size fits all description in this area. Two issues should be central here, that of the development of competitiveness and that of the flexibility of markets, both elements that fall within the framework under the economic objective of “improving the functioning and flexibility of markets”⁷²². In this regard, the current definition of an imbalance as portrayed in the imbalances scoreboard can be improved upon. The inclusion of the unemployment rate as an additional indicator has made the scoreboard ambiguous, since this covers various issues not directly related to imbalances⁷²³. Furthermore, the flexibility of markets is not covered, since this not directly influences the level, as much as the duration and nature of unemployment. A strict delineation would therefore be better served by inclusion of an indicator that covers flexibility of markets. The indicator on employment protection legislation that was used in chapter 3 could have served this role. This process of revision of the scoreboard would have very limited legal consequences, in the sense that there is no need for revision of secondary legislation and/or the Treaty, but can be done by the Commission in close cooperation with the Council and the European Parliament⁷²⁴. Given the fact that the imbalances scoreboard has just been agreed upon, however, it is doubtful that this type of change will occur in the near future. In the meantime, it is therefore up to the Commission, and thereafter the Council to make the right demarcation in the practical application of the procedure. Unfortunately, as can be observed from the first set of recommendations under the imbalances procedure⁷²⁵, both the Commission and the Council are still seeking, meaning that success in this regard is as of yet not guaranteed⁷²⁶.

The second reason why the demarcation of the different rationales of employment policy coordination and the macroeconomic imbalances procedure has not fully taken place arguably lies in the political process of stimulating positive policy developments in Member States under the Europe 2020 strategy and the Euro Plus pact. As mirror image of the macroeconomic imbalances procedure, these processes suffer from a

⁷²² See chapter 2 and 4.

⁷²³ See chapter 2.

⁷²⁴ Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 4 and recital 12.

⁷²⁵ Issued under Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306, art 6.

⁷²⁶ Good examples in this regard are the country specific recommendations for Italy that were agreed in 2012. Country specific recommendation number four, which is set out below is linked to the macroeconomic imbalances procedure, but also includes measures that increase labour force participation by women, arguably as such not an aspect that should fall under the concept of macroeconomic imbalances.

“4. Adopt the labour market reform as a priority to tackle the segmentation of the labour market and establish an integrated unemployment benefit scheme. *Take further action to incentivize labour market participation of women, in particular through the provision of child and elderly care.* Monitor and if needed reinforce the implementation of the new wage setting framework in order to contribute to the alignment of wage growth and productivity at sector and company level. (emphasis added)”

perceived need for stronger intervention than can actually be justified on the basis of the political externalities argument that forms the basis for these procedures. Especially the Europe 2020 strategy with its elaborate system of National Reform Programmes and detailed country specific recommendations is overly burdensome for the Member States⁷²⁷. There is a large need for simplification and streamlining in this area. A process that includes more flexibility and opportunities for policy learning would fit the requirements better and would also make the distinction with the macro imbalances procedure easier to implement⁷²⁸. Also, there is no need for the Europe 2020 strategy and the Euro Plus pact to remain as separate entities, so an integration of the two seems warranted. Some of these issues of simplification and streamlining, like the removal of the obligatory National Reform programmes, would call for changes in the relevant secondary legislation⁷²⁹. Mostly, however, this could be done through changes in practical working methods. However, current developments are moving in the opposite direction, towards even stricter and intricate monitoring and reporting systems. Good examples here are the obligatory National Job Plans Member States have to set up since 2012, with the European Council of June 2012 calling on Member States to develop more ambitious and precise National Job Plans for the next European Semester⁷³⁰.

The second change in the set up of EU employment policy concerns the role of EU funds spending. EU funds spending in table 23 performs two distinct separate roles. The first one concerns promoting EU and especially euro area convergence, where the role of the EU funds is based on increasing effectiveness of spending. The second role that EU funds spending plays concerns stimulating internal market related cooperation which is something that can apply to all countries. Comparing this new setup with the current situation there are three important differences, all related to the envisaged role of EU funds in promoting EU and especially euro area convergence. The first one is that there is an explicit link with all five economic objectives, since all categories can benefit from more efficient spending. The second one is that the money should go to those countries where the expected return is greatest. This means that there is no rationale for EU funds spending in relatively wealthier and better developed EU regions, since this does not increase effectiveness of spending and additionality can be highly questioned⁷³¹. The third one is that EU funds spending under this heading should incorporate a general possibility for it to be used in the form of short term stabilisation policy to increase effectiveness of spending. This builds on the current system, where this possibility was incorporated for a number of

⁷²⁷ See chapter 5.

⁷²⁸ This process should also, were warranted by the country in question, maintain room for some sort of peer pressure, where this helps countries in actually implementing structural reforms.

⁷²⁹ See Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306, section 1a.

⁷³⁰ Conclusions of the European Council of 28/29 June 2012.

⁷³¹ See chapter 4.

specific countries.

A reshuffling of the tasks between the European Social Fund and the European Regional Development Fund could follow these lines of demarcation, changing the secondary legislation in place to link the ESF explicitly to the internal market and the ERDF to the issue of convergence. Because the ESF in this new setting would only be used for projects related to enhancing cross border mobility, clarity would be improved. Furthermore, this new setting would need to ensure additionality, effectiveness and efficiency of spending, while leaving sufficient room for Member States to choose their own policy priorities. This would call for EU Structural Funds based on increasing the efficiency of spending by transferring money between Member States, with an output based control system on EU level and project based control system on Member State level⁷³². Relating these considerations to the recent Commission proposals for the Structural Funds⁷³³ one can indeed see an elaborate system of *ex ante* conditionalities and control is set in place for Member States to incorporate in its strategic partnership contract, including expected results, milestones and targets, which should allow for a thorough output based control on EU level by the European Commission. Furthermore, a general possibility for Member States to request an increase of co-financing rates when they are in financial difficulties, incorporates the short term stabilisation objective. Main problems, however, in this proposal are similar to those under the current setting. First of all, a clear demarcation between funds is not present. Furthermore, in the new proposals, all Member States still receive funding from the various EU funds, which is not in line with the efficiency of spending rationale. Further elements of critique relate to aspects that seem unnecessarily onerous for Member States and are therefore not in line with the proportionality considerations as discussed in this study. These are mainly concerned with the level of control and EU influence in national programmes, which in instances go further than the output based control propagated here. The various proposals for instance include very specific subjects which Member States are required to incorporate in their partnership contracts and programmes, including e.g. an earmarking of 20% of ESF funding to be spent on the goal of “promoting social inclusion and combating poverty”, which unnecessarily limits Member State flexibility⁷³⁴. Furthermore, the Commission is given an approving role as far as the

⁷³² See chapter 5.

⁷³³ Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615 final.

⁷³⁴ Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006’ COM(2011)607 final, art 4(2).

setting of the Partnership contacts *and* the specific programmes that fall under this partnership contract⁷³⁵, which again seems unnecessarily onerous.

The third difference between table 23 and the current situation concerns internal market legislation. In the new framework, this is solely aimed at improving the functioning and flexibility of markets, removing the economic objective of improving framework conditions. That this rationale was incorporated in the current set up was due to the posting of workers Directive⁷³⁶, which lays down a basic floor of rights to be observed in cross border posting of workers. One could indeed argue that this limiting of scope of the posting of workers Directive has already taken place with the recent judgements by the Court of Justice, especially cases *Laval*⁷³⁷ and *Ruffert*⁷³⁸⁷³⁹. Furthermore, streamlining within the various pieces of internal market legislation can be along the lines of changing the directive and regulations to abolish the EU distinction between worker and self-employed, leaving this to the Member States. Notably, this would call for a removal of the free movement of workers Regulation⁷⁴⁰, or integrating this with e.g. the EU citizens Directive⁷⁴¹. Indeed, the equal treatment and employment provisions of the free movement of workers Regulation can be said to carry very little added value to the EU citizens Directive. The removal of this Regulation would still leave a complex system. However, it should be realised that due to the specific nature of the various elements covered this to some extent cannot be avoided. This is especially relevant for the professional qualifications Directive⁷⁴² and the social security coordination Regulations⁷⁴³. For these issues focus should lie on changing the secondary legislation to adapt to changing labour market circumstances, while improving transparency and information provision and

⁷³⁵ Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615 final, art15 and 25.

⁷³⁶ Directive 96/71 of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18.

⁷³⁷ Case C-341/05 *Laval un Partneri* [2007] ECR I-00000.

⁷³⁸ Case C-346/06 *Ruffert* [2008] IRLR 467.

⁷³⁹ See chapter 5.

⁷⁴⁰ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L 141.

⁷⁴¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158.

⁷⁴² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255.

⁷⁴³ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166 and Regulation 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284.

facilitating application on the ground. The recent Commission proposal on the professional qualifications Directive presented December 2011⁷⁴⁴ in this regard can be positively appreciated, e.g. concerning its ideas for the installation of a (voluntary) European professional card, mandatory application of the Internal Market Information (IMI) system and the installation of a screening exercise concerning the requirements present in the Member States, something which can pose significant benefits⁷⁴⁵. A similar positive appraisal can be given to the recent proposals on the posting of workers Directive, which are exactly aimed at improving administrative cooperation between Member States, improving monitoring and enforcement of the Directive and improving clarity and information provision regarding the definition of posting and the interpretation of the terms and conditions of employment in the Directive⁷⁴⁶.

Finally, the last and largest change to the current system is that the new set up removes social employment policy as a separate EU employment policy instrument. The framework of the division of power in the supranational legal order, fiscal federalism and the EU's legal considerations of conferral, subsidiarity and proportionality make an insufficient case for inclusion of social employment policy as a separate EU instrument to achieve the various economic objectives. There is a case to be made for EU action in these areas on the basis of political externalities related to the rationale of improving positive policy developments in the Member States⁷⁴⁷, however, as argued above, issues of coherence and transparency would have this be included as part of the employment policy coordination process. The legislative measures in this area would therefore be removed entirely from the EU policy setting, leaving legislation in these areas up to Member States.

Since under the Treaty on the Functioning of the EU in its various possible legal bases in title X⁷⁴⁸ secondary legislation is optional (with the exception of the issue of gender equality⁷⁴⁹), this can be to a great extent be achieved by removing the various Directives in this area. Even so, however, this proposal will inevitably face very large political and practical implementation issues, where given the political setting and vested interest it will be very difficult, if not impossible, to scratch these aspects of EU policy⁷⁵⁰. It is therefore worthwhile to further develop an alternative way forward,

⁷⁴⁴ Commission, 'Proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation [...] on administrative cooperation through the Internal Market Information System' COM(2011)883.

⁷⁴⁵ See chapter 5.

⁷⁴⁶ Commission, 'staff working document executive summary of the impact assessment accompanying the document proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services' SWD(2012)64 final.

⁷⁴⁷ See chapter 5.

⁷⁴⁸ Notable articles 153, 155, 156 and 160 TFEU.

⁷⁴⁹ Art 157 TFEU.

⁷⁵⁰ Furthermore, even from the point of view of achieving GDP per capita growth this may not be

based on changing the rationale of the existing social employment policy instruments to better fit the EU's role in employment policy. Since there is a large scale review process of the EU's social employment policy legislation going on at this moment there is some reason to be optimistic on the possibilities for creating momentum towards such a goal.

There are two non-mutually exclusive avenues for improvement that can be identified. The first one is to further align the pieces of legislation with the political externalities rationale of the employment policy coordination instrument. The second one is to improve the functioning and flexibility of markets objective in the various pieces of legislation. In taking such an approach one can build on the work of Scharpf (2002)⁷⁵¹. Scharpf sets out an avenue for improvement of the European social model by combining framework Directives with the Open Method of Coordination. Applying this to the various legislative measures examined in this study one can see that the underlying rationale of the various pieces of legislation is based on either equality of treatment⁷⁵² or minimum working conditions⁷⁵³. With the exception of equal treatment based on type of employment contracts, both these issues as far as fundamental rights are concerned are already laid down in the Charter of Fundamental Rights of the European Union⁷⁵⁴, which, since the Treaty of Lisbon, has the same legal status as the Treaty⁷⁵⁵. Combining these general principles with an OMC process built on political externalities would be a good way to improve the link with the political externalities rationale. However, the rights coming from the charter only apply to the Member States for as far as they are implementing EU law⁷⁵⁶. If it is therefore deemed necessary for these rights to be legally enforceable at the EU level, which arguably will be the case, either an integration in the Treaty or additional Directives remain necessary. One paragraph only pieces of secondary legislation seem a logical next step. However, such a system is only workable to a limited extent, as has been observed in the area of gender equality. Here the existence of a right enforceable on EU level enshrined in the Treaty led to interpretation of this right by the Commission and the Court of Justice, which built up until legal clarity, and a sense of ownership by the Council, called for additional legislation concerning the *application* of this right.

Keeping these caveats in mind, concrete changes to legislative instruments in the area of social employment policy that would make it fit better in the framework developed

altogether beneficial, since companies have in fact installed measures that count on this legislation. Consistency of policy as far as economic development is concerned is also of value in and of itself.

⁷⁵¹ Scharpf, 'The European Social Model: Coping with the challenges of diversity' (Journal of Common Market Studies, vol 40, no 4, 2002)

⁷⁵² Either based on gender or type of employment contract.

⁷⁵³ Either health and safety or working time.

⁷⁵⁴ art 23 and 31 of the charter

⁷⁵⁵ art 6 TFEU

⁷⁵⁶ art 51(1) of the charter

in this study can be envisioned around a number of lines. First, the various Directives should arguably consist of a definition of what the right in question actually entails, when it applies and how it should be applied. Furthermore, they should also to the largest extent possible stay away from differentiating between self-employed and employed workers, and between employed workers under different contract⁷⁵⁷. Both should leave as much room as possible for the Member States to fit into their own national preferences. This could for instance mean an EU definition of maximum hours of working time that does not include a concrete number of hours, while Member States are obliged to install a concrete definition in their national legal systems. Furthermore, these issues can be more explicitly linked to the functioning and flexibility of markets, something which would be in line with the current discourse on flexicurity. An obligation for the Member States could e.g. be included to ensure that the necessary implementing measures do not hinder the functioning of the internal market, or even help in promoting its functioning. The same obligation could be installed stating that the legislation should not in any way contribute to sustaining or creating harmful macroeconomic imbalances⁷⁵⁸. A mutual screening exercise, like the one seen used in the implementation of the services Directive⁷⁵⁹, could then be used to provide additional clarity on the various national systems. Where needed this could identify areas for additional action and in any case this could be the starting point for an OMC process in this area, which could take these results and stimulate political debate and possibilities for policy learning on the various issues.

Rebuilding EU employment policy along these lines would lead to a more streamlined and differentiated set of EU employment policy instruments. To then ensure that the EU instruments in practice also contribute to achieving the objectives there are two more suggestions for improvement.

⁷⁵⁷ Something which as we have seen will sometimes be made difficult due to wording of the legal bases, which can relate to workers and not the self-employed, see the Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183

⁷⁵⁸ Though for this a more concrete definition of a macroeconomic imbalance would arguably be necessary.

⁷⁵⁹ Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376, art 39.

5. Ensure proper links between EU employment policy instruments

6. Ensure effective democratic legitimacy and accountability at the level where power is exercised

As can be seen in table 23, in the system of EU employment policy that is propagated here, there are two different links between the EU employment policy instruments. The first link is that between the instrument of employment policy coordination and the EU funds in helping to achieve all five different economic objectives. The second revolves around the economic objective of improving the functioning and flexibility of markets, something that all four different instruments contribute to.

The link between EU employment policy coordination and EU funds spending will have to be incorporated in both instruments, more specifically in the integrated guidelines under article 121 and 148 TFEU and the Structural Funds Regulations. Looking ahead at the most recent Commission proposals for the Structural Funds Regulations for the period 2014-2020⁷⁶⁰, a number of different links are incorporated. First of all, the Commission proposes that the funds will be fully aimed at achieving the goals of the Europe 2020 strategy. Furthermore, Member States “shall concentrate support, in accordance with the Fund-specific rules, on actions bringing the greatest added value in relation to the Union strategy for smart, sustainable and inclusive growth”⁷⁶¹. The required link between the two instruments in the Commission proposal is therewith largely satisfactory taken into account. If anything, one element that could cause concern is the possibility that is installed in article 21 of the proposal for the Commission to request a Member State to review and propose changes to the partnership contract in line with the country specific recommendations that are issued under articles 121 and 148 TFEU to which a country has to respond. There is a valid case to be made for such a possibility since the country specific recommendations are aimed at the weakest points in Member States economic and employment policies. However, improvement in various areas does not necessarily always mean spending more money. Efficiency of spending could e.g. be more of an issue, or changes in legislation for instance in the area of employment protection legislation.

The second link between the EU employment policy instruments concerns the link

⁷⁶⁰ Most relevantly Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615 final.

⁷⁶¹ Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615 final, art 16.

between all the four EU employment policy instruments in the area of improving the functioning and flexibility of markets. The macroeconomic imbalances procedure would in this set up form a strict process for a limited number of countries, namely those where there is a (risk of) harmful economic imbalances occurring. This process is based on governing and stimulating efficient economic outcomes in the area of competitiveness and labour market flexibility, but would leave Member States free in choosing the exact manner of policy intervention. The instrument of employment policy coordination would add to this process by providing a forum for political externalities and policy learning to take place and would in fact be aimed at specific policy actions in all Member States. EU funds spending could then provide funds to implement policy measures in the area of improving the functioning and flexibility of markets when this is justified from an efficiency of spending rationale and when this concerns cross border projects. Internal market legislation could lastly provide for the implementation of policy measures in this area with a cross border element.

To ensure such coherence between the four different instruments there are a number of additional aspects to the system as it stands today that should be improved upon. First of all, whether or not the macroeconomic imbalances procedure will in fact limit itself to an output oriented approach is still uncertain and will depend on its application by the Commission and the Council⁷⁶². Also, that the internal market legislation has a function in improving the functioning and flexibility of markets and is therefore linked to both the macroeconomic imbalances procedure and the instrument of employment policy coordination is not incorporated in the current Regulations and integrated guidelines, an omission which should be remedied. Finally, EU funds spending should play a fully complementary role, a reasoning which goes partly against the current Commission proposals as far as the link with macroeconomic imbalances is concerned⁷⁶³. Specifically, these proposals incorporate two conditionality links⁷⁶⁴. First, the Commission can recommend Member States to review and propose changes to the Partnership contract and relevant programs provided that these amendments are deemed necessary to help correct the macroeconomic imbalances. This fits the role of EU funds spending, with especially the phrase “provided that these amendments are deemed necessary to help correct the

⁷⁶² See chapter 5.

⁷⁶³ Most relevantly Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615 final

⁷⁶⁴ relevantly Commission, ‘Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006’ COM(2011)615 final, art 21.

macroeconomic imbalances”, which provides for the necessary flexibility. However, in the same article it is also stated that the Commission shall suspend parts or all of the payments for the programs where the Member State does not act in accordance with some stages of the macroeconomic imbalances procedure. Though from an incentive point of view this possibility could be justified, such a method of sanctioning does not make sense. Even more so, the suspension of payments can lead to a further deterioration of the position of the Member State. Consideration should therefore be given to finding alternatives than suspending funding for projects which are in fact meant to assist in achieving the economic objective in question.

The final avenue for improvement of the EU employment policy setting relates to ensuring effective democratic legitimacy and control at the level where power is exercised. Concerning the newly set up and delineated instrument of employment policy coordination the most important element for improvement arguably lies in clearly laying responsibility for ensuring democratic legitimacy and accountability in the hands of national parliaments. In a process based on political externalities as propagated here, the limitations for Member States in implementing employment policy measures that fall under this heading are only present to a very limited extent. Therefore there is no justifiable role for a system of democratic legitimacy and accountability at EU level. Concretely, this would mean largely abolishing the role that the European Parliament has in the context of the European Semester, notably related to the scrutiny of the country specific recommendations, something which can be achieved by changing the relevant secondary legislation. This, however, runs contrary to the current developments, where the European Parliament in the European semester has been given an increasingly larger role⁷⁶⁵. Also, this would call for increased efforts in mitigating the general problems of legitimacy and accountability that national parliaments have in the EU multilevel setting⁷⁶⁶. Measures that could be envisaged include actively mitigating the knowledge asymmetries between governments and national parliaments on the EU process, increasing the possibilities for influencing the national government policy stance in this process EU policy combined with more mundane issues related to increasing time, interest and resources devoted to the subject in national parliaments.

Contrary to this proposal for a smaller role of the European Parliament in the area of employment policy coordination an increased role of the European Parliament in the macroeconomic imbalances is warranted. There are two roles that the European Parliament has to fulfil here. The first is ensuring input legitimacy in setting the definition of macroeconomic imbalances. This has to some extent taken place, but

⁷⁶⁵ See also Hallerberg, Marzinotto and Wolff, ‘How effective and legitimate is the European Semester? Increasing the role of the European Parliament’ (Bruegel working paper 2011/09, 2011) that comes to exactly the opposite conclusion, though this is based on broader issues than employment, including fiscal policy, where there arguably is a greater rationale for a role of the European Parliament in ensuring democratic legitimacy and accountability.

⁷⁶⁶ See chapter 5.

should be improved upon by changing the Regulation on the macroeconomic imbalances procedure to make the European Parliament a full partner in negotiating the scoreboard, instead of the current compromise where only part of the scoreboard is laid down in the Regulation itself. This arguably can even be done without removing the European Commission from the driver seat, for instance, by granting the Commission the power to lay down the macroeconomic imbalances scoreboard by delegated act⁷⁶⁷. The second role concerns ensuring democratic accountability of the European Commission in application of the procedure. Given a proper definition of a macroeconomic imbalance the establishment of whether a macroeconomic imbalance actually exist in a Member State and whether sufficient action is taken to mitigate or prevent this imbalance arguably becomes a technical exercise, best left in the hands of independent bureaucrats instead of politicians⁷⁶⁸. In the current setting, the entity closest to that of an independent bureaucrat is the European Commission, but as seen in the previous chapter an independent role for the Commission here is not present since it is still the Council that makes the ultimate decision, be it with reversed Qualified Majority Voting, while the reversed QMV only kicks in after the decision that establishes a possible excessive imbalance. In the framework a greater independent role of the Commission is therefore warranted⁷⁶⁹, which could be incorporated by changing the Regulations on the macroeconomic imbalances procedure to extend the use of reversed QMV. A more ambitious step would be to change the process to be based on Commission decisions instead of recommendations, or, alternatively, to set up a process where the Commission puts forward a proposal to the Council, which it may amend only by acting unanimously⁷⁷⁰. The latter however, may necessitate a change in article 121 TFEU, which will not only affect employment policy coordination, but also issues related to broader economic and fiscal policy which are not covered by this study. The role of the European Parliament should then be focussed on ensuring that the Commission plays its role in identifying macroeconomic imbalances and in controlling whether Member States take sufficient action, while ensuring democratic legitimacy and accountability concerning the concrete measures that are taken by the Member States remains the responsibility of national parliaments. The current requirements in the macro imbalances Regulations seem largely appropriate for this function, although several issues related to the general EU setting and position of the European Parliament therein as well as its specific role in this procedure can form a hurdle for an effective monitoring system in

⁷⁶⁷ Art 290 TFEU.

⁷⁶⁸ For an entertaining and enlightening display of the trade-off between placing decision making in the hands of politicians vs. the hands of independent bureaucrats see Alesina and Tabellini, 'Bureaucrats or politicians? Part 1; a single policy task' (American Economic Review, 2007) and Alesina and Tabellini, 'Bureaucrats vs. politicians? Part 2; multiple policy tasks' (Journal of Public Economics 92, 2008)

⁷⁶⁹ Arguably however this would run into trouble with the Treaty, since such an independent role would no longer be in accordance with the procedure of art 121 TFEU, which is needed for such action to take place under art 136 TFEU.

⁷⁷⁰ Art 293 TFEU.

this regard⁷⁷¹. Most notably, the complexity of the topic and knowledge asymmetry between the Commission and the European Parliament will arguably continue to hold back proper dialogue unless the European Parliament invests heavily in acquiring the necessary background knowledge and ensures proper focus in its inputs. Experiences in this regard in the area of monetary policy are not promising. Here attempts have been made to counter the existence of a knowledge asymmetry between the European Parliament and the ECB by the use of a Monetary Expert Panel, a group of monetary policy experts assisting the European Parliament in the preparation of the monetary dialogue. However, as Amtenbrink and van Duin (2009) show, input from this panel has only managed to deepen the debate to a very limited extent⁷⁷².

Concerning the instrument of the internal market in the current setting serious limits to effective democratic legitimacy and accountability have been shown to stem from the lack of data availability and limited possibilities in analysing the actual effectiveness of policy in influencing economic output variables⁷⁷³. Increasing transparency and, therewith, output legitimacy by improving evidence based policy making, with solid data on cross border flows and the effects of the measures in question should therefore be one of the first priorities. Next to Commission efforts in this regard, academia can play a large role here as well. Where such analysis is available, most notably for the services Directive, it was shown for instance that there are still significant gains to adjusting the Directive, for instance in the area of the country of origin principle. Furthermore, concerning reporting and review clauses, a large variety of different methods in the various pieces of internal market legislation were identified. The services Directive was considered best practice in this regard. Democratic legitimacy and accountability would therefore be served by implementing similar systems in the other pieces of legislation.

⁷⁷¹ See chapter 5.

⁷⁷² Amtenbrink and van Duin, 'The European Central Bank Before the European Parliament: Theory and Practice After Ten Years of Monetary Dialogue' (European Law Review, No. 4, 2009).

⁷⁷³ See chapter 4.

References

Books

Amttenbrink F, *The democratic accountability of Central Banks; a comparative study of the European Central Bank* (Hart Publishing, 1999).

Amttenbrink F, *Continuation or reorientation? What future for European integration* (Boom Juridische uitgevers, 2007).

Amttenbrink F and Vedder H, *Recht van de Europese Unie* (4th edition, Boom Juridische uitgevers, 2010).

Ashiagbor D, *The European Employment Strategy, labour market regulation and new governance* (Oxford monographs on labour law, 2006).

Baldwin R and Wyplosz C, *The economics of European Integration* (2nd edition, McGraw Hill, 2006).

Barents R, *Het verdrag van Amsterdam in werking* (Kluwer, 1999).

Begg I, Erhal C and Mortensen J, *Medium term employment challenges* (Centre for European Policy Studies, 2010).

Becker G, *Human capital; a theoretical and empirical analysis, with special reference to education* (National Bureau of economic research, Columbia University Press, 1964).

Beveridge F and Velluti S, *Gender and the Open method of coordination, perspectives on law, governance and equality in the EU* (Ashgate Publishing, 2008).

Beveridge W, *Full employment in a free society* (Allen and Unwin, 1944).

Blanpain R, *Labour law and industrial relations in the European Union* (Kluwer Law International, 1998).

Blanpain R et al, *Institutional changes and European social policies after the Treaty of Amsterdam* (Kluwer Law International, 1998).

Blanpain R, *European Labour law* (Kluwer Law International, 2006).

Blanpain R et al., *Employment policies and multilevel governance* (Kluwer Law International, 2009).

Burda M and Wyplosz C, *Macro economics, a European text* (4th edition, Oxford University Press, 2004).

Caporaso J and Jupille J, 'The Europeanisation of gender equality policy and domestic structural change' in Green Cowles M, Caporaso J and Risse T, *Transforming Europe* (Cornell University Press, 2001).

Chalmers D et al., *European Union law* (2nd edition, Cambridge University Press, 2010).

Corbett R, *The Treaty of Maastricht* (Cartermill International, 1993).

Craig P, *The Lisbon Treaty, law, politics and Treaty reform* (Oxford University Press, 2010).

Craig P, 'Integration, democracy and legitimacy' in Graig P and de Burca G, *The evolution of EU law* (Oxford University Press, 2011).

Davies P and Freedland M, 'The role of EU employment law and policy in the de-marginalisation of part-time work; a study in the interaction between EU regulation

- and Member State regulation' in Sciarra, Davies and Freedland, *Employment policy and the regulation of part-time work in the European Union* (Cambridge University Press, 2004).
- de Grauwe P, *Economics of Monetary Union* (4th edition, Oxford University Press, 2005).
- de la Porte C and Pochet P, 'A two fold assessment of employment policy coordination in the light of economic policy co-ordination', in Foden and Magnusson, *Five Years Experience of the Luxembourg Employment Strategy* (European Trade Union Institute, 2003).
- Ederveen E, Gelauff G and Pelkmans J, 'Assessing subsidiarity', in Gelauff, Grillo and Lejour, *Subsidiarity and economic reform in Europe* (Springer, 2008).
- Ellis E, *the Principle of proportionality in the laws of Europe* (Oxford University Press, 1999).
- Estella A, *The EU principle of subsidiarity and its critique* (Oxford University Press, 2002).
- Evans A, *EU structural funds* (Oxford University Press, 1999).
- Falkner G, *Complying with Europe; harmonisation and soft law in the Member States* (Cambridge University Press, 2005).
- Gelauff G, Grillo I and Lejour A, *Subsidiarity and economic reform in Europe* (Springer, 2008).
- Giavazzi F and Giovannini A, *Limiting Exchange Rate Flexibility: the European Monetary System* (MIT Press, Cambridge, 1989).
- Goetschy J, 'The European Employment Strategy, Multi-Level Governance, and Policy Coordination' in Zeitlin J and Trubek D, *Governing Work and Welfare in a New Economy: European and American Experiments* (Oxford University Press, 2003).
- Heidenreich M and Zeitlin J, *Changing european employment and welfare regimes, the influence of the open method of coordination on national reforms* (Routledge/EUI studies in the Political Economy of Welfare, 2009).
- Heijdra B and van der Ploeg F, *Modern Macro Economics* (Oxford University Press, 2009).
- Hooghe L and Marks G, *Multilevel Governance and European Integration* (Rowman and Littlefield publishers, 2001)
- Jacobsson K, 'Between Deliberation and Discipline: Soft Governance in EU Employment Policy' In Morth U, *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Edward Elgar, 2004).
- Kaufmann B and Hotchkiss J, *The economics of labour markets* (7th edition, Thomson/South Western, 2006).
- Kilpatrick C, 'New EU Employment Governance and Constitutionalism' in de Burca G and Scott J, *New Governance and Constitutionalism in the EU and the US* (Hart Publishing, 2006).
- Keely B, *Human Capital, how what you know shapes your life* (OECD, 2007).

- Kenner J, *EU employment law, from Rome to Amsterdam and beyond* (Hart Publishing, 2003).
- Lucas R and Sargent T, 'After Keynesian Macroeconomics', in Federal Bank of Boston, *After the Phillips Curve* (Conference Series, no 19, 1978)
- Mailand M, *Coalitions and Policy Coordination - Revision and Impact of the European Employment Strategy* (Kopenhagen Djoff Publishing, 2006).
- McCallum B, *Monetary economics; theory and policy* (MacMillan Publishing Company, 1989).
- McConnell C, Brue A and MacPherson L, *Contemporary labor economics* (7th edition, McGraw-Hill, 2008).
- Musgrave R, *The theory of public finance* (McGraw-Hill, 1959).
- Netherlands Bureau for Economic Policy analysis, *Macro Economische Verkenningen* (2008).
- OECD, *The OECD jobs study, facts, analysis, strategies* (1994).
- OECD, *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (1996).
- OECD, *Sources of economic growth in OECD countries* (2003).
- OECD, *Employment Outlook* (2007).
- OECD, *Going for growth* (2008).
- OECD, *The Political Economy of Reform; lessons from pensions, product markets and labour markets in ten oecd countries* (2009).
- OECD, *Economic Outlook* (volume 2010/1, 2010).
- OECD, *Employment Outlook* (2010).
- OECD, *Taxing wages 2009-2010* (2011).
- OECD, *Going for Growth* (2012).
- Pissarides C, *Equilibrium unemployment theory* (2nd edition, MIT Press ltd, 2000).
- Raveaud G, 'The European Employment Strategy: From Ends to Means?' in Salais R and Villeneuve R, *Europe and the Politics of Capabilities* (Cambridge University Press, 2004).
- Rutkowski J, *The minimum wage; curse or cure?* (World Bank, 2003).
- Scharpf F, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999).
- Senden L, *Soft Law in European Community law, its relationship to legislation* (Hart Publishing, 2003).
- Shimer R, *Labor markets and business cycles* (Princeton University Press, 2009).
- Swann D, *The Single European Market and beyond, a study of the wider implications of the Single European Act* (Routledge, 1992).
- Tridimas T, *The General Principles of EU Law* (2nd edition, Oxford University Press, 2006).

Trubek D and Mosher J, 'New Governance, Employment Policy, and the European Social Model' in Zeitlin J and Trubek D, *Governing Work and Welfare in a New Economy: European and American Experiments* (Oxford University Press, 2003).

Ungerer H, *A concise history of European monetary integration, from EPU to EMU* (Quorum Books, 1997).

van Riel B and Metten A, *De keuzes van Maastricht* (van Gorcum & Comp, 2000).

van Riel B and van der Meer M, 'The advocacy coalition for European employment policy – The European integration process after EMU' in Hegmann H and Neumarker B, *Die Europäische Union aus politökonomischer Perspektive* (Metropolis, 2002).

Walsh C, *Monetary theory and policy* (3rd edition, MIT Press, 2010).

Zeitlin J, 'The Open Method of coordination in action: theoretical promise, empirical realities, reform strategy', in Zeitlin J and Pochet P, *The open method of coordination in action the European employment and social inclusion strategies* (P.I.E. Peter Lang S.A., 2005).

Zeitlin J, 'Is the OMC an alternative to the community method' in Dehousse R, *The 'Community method' obstinate or obsolete* (Palgrave MacMillan, 2011).

Articles and papers

Acemoglu D and Shimer R, 'Productivity Gains from Unemployment Insurance' (European Economic Review 44, 2000).

Addison J and Siebert S, 'Recent developments in social policy in the new European Union' (Industrial and Labor Relations Review, vol 48, no 1, 1994).

Akerlof G, 'Labor Contracts as Partial Gift Exchange' (Quarterly Journal of Economics, XCVII, 1982)

Alesina A and Tabellini G, 'Bureacrats or politicians? Part 1; a single policy task' (American Economic Review, 2007)

Alesina A and Tabellini G, 'Bureaucrats vs politicians? Part 2; multiple policy tasks' (Journal of Public Economics 92, 2008)

Antenbrink F, 'The multidimensional constitutional legal order of the European union – a successful case of cosmopolitan constitution building?' (Netherlands Yearbook of International Law, vol XXXIX, 2008).

Antenbrink F and van Duin K, 'The European Central Bank Before the European Parliament: Theory and Practice After Ten Years of Monetary Dialogue' (European Law Review, no 4, 2009).

Auel K, 'democratic accountability and national parliaments; redefining the impact of parliamentary scrutiny in EU affairs' (European Law Journal, vol 13, no 4, 2007)

Bahr C, 'How does sub-national autonomy affect the effectiveness of structural funds?' (Kyklos, vol 61, 2008).

Ayuso i Casals J, 'Fixed term contracts in Spain, a mixed blessing' (ECFIN country focus, vol 1, issue 1, 2004).

- Ball L, Mankiw G and Romer D, 'The New Keynesian Economics and the Output-Inflation Trade-off' (Brookings Papers on Economic Activity, vol 19, no 1, 1988) 1-82.
- Ball L, 'Hysteresis in unemployment, old and new evidence' (NBER working paper 14818, 2009).
- Barbier J, 'Tracing the fate of EU "social policy": changes in political discourse from the "Lisbon Strategy" to "Europe 2020"' (International Labour Review, vol 151, no 4, 2012).
- Barnard C, 'Unravelling the services Directive' (Common Market Law Review 45, 2008).
- Bartelsman E, 'Searching for the sources of productivity, from macro to micro and back', (Industrial and Corporate Change, vol 19, no 6, 2010).
- Bartelsman E, Gautier P and de Wind J, 'Employment protection, technology choice and worker allocation', (IZA discussion paper, no 4895, 2010).
- Bassanini A and Duval R, 'Employment patterns in OECD countries, reassessing the role of policies and institutions' (OECD Economics department working papers, no 486, 2006).
- Bassanini A, Nunziata L and Venn D, 'Job protection legislation and productivity growth in OECD countries' (IZA discussion paper, no 3555, 2007).
- Bassanini A et al., 'Institutional Determinants of Worker Flows: A Cross-Country/Cross-Industry Approach' (OECD Social, Employment and Migration Working Papers, no 107, 2010).
- Bednarek-Sekunda E, Jong-A-Pin R and de Haan J, 'The European Economic and Monetary Union and Labour Market Reform' (European Union Politics 11:3, 2010)
- Behning U, 'Sozialstaatliches Policy-Making im europäischen Mehrebenensystem: Das Beispiel Hartz IV' (Paper prepared for the 23. wissenschaftlicher Kongress der Deutschen Vereinigung für Politikwissenschaft, Westfälischen Wilhelms-Universität Münster, 2006).
- Bell M, 'Combating Racial Discrimination Through The European Employment Strategy' (Cambridge Yearbook of European Legal Studies, vol 6, 2005).
- Bellamy R and Kruger S, 'domesticating the democratic deficit? The role of national parliaments and parties in the EU's system of governance' (Parliamentary Affairs, 2012)
- Benati L, 'Some empirical evidence on the discouraged worker effect' (Economics Letters, vol 70, issue 3, 2001).
- Belot M and Ederveen S, 'Cultural and institutional barriers in migration between OECD countries' (Journal of Population Economics, vol 25, no 3, 2012).
- Blanchard O and Gali J, 'Real wage rigidities and the new Keynesian model' (Journal of Money, Credit and Banking, Supplement to vol 39, no 1, 2007).
- Boarini R, Johansson A and Mira d'Ercole M, 'Alternative Measures of Well-Being' (OECD Economics Department Working Papers, no 476, 2006).
- Bonin H et al., 'Geographic Mobility in the European Union: Optimising its Economic and Social Benefits' (IZA working paper, no 19, 2008).

- Bovens M, 'analyzing and assessing accountability: a conceptional framework' (European Law Journal, vol 13, no 4, 2007).
- Broersma L, van Dijk J and van Wissen L, 'Making the Unused Labour force work: assessing the facts for the Netherlands' (CBS working paper, no 04008, 2004).
- Brown D, 'International Trade and Core Labor Standards A Survey of the Recent Literature' (OECD Labour Market and Social Policy Occasional Papers, no 43, 2000).
- Calmfors L and Driffil J, 'Bargaining Structure, Corporatism and Macroeconomic Performance' (Economic Policy, vol 3, no 6, 1988).
- Casey B and Gold M, 'Peer Review of Labour Market Policies in the European Union: What Can Countries Really Learn From One Another?' (Journal of European Public Policy, vol 12, no 1, 2005).
- Graig P, 'Subsidiarity; a political and legal analysis' (Journal of Common Market Studies, vol 50, no 51, 2012).
- Davies G, 'Subsidiarity, the wrong idea, in the wrong place, at the wrong time' (Common Market Law Review, vol 43, 2006).
- Davies P, 'Posted Workers: Single Market or Protection of National Labour Systems?' (Common Market Law Review, vol 34, 1997).
- De Bruijn R, Kox H and Lejour A, 'The trade induced effects of the services Directive and the country of origin principle' (CPB document 108, 2006).
- Debrun X and Pisany Ferry J, 'Economic reforms in the euro area; is there a common agenda' (Bruegel Policy contribution, 2006).
- Deganis I, 'The Politics Behind Consensus: Tracing the Role of the Commission within the European Employment Strategy' (Journal of Contemporary European Research 2 (1), 2006).
- de la Porte C and Pochet P, 'The European Employment Strategy: Existing Research and Remaining Questions' (Journal of European Social Policy 14(1), 2004).
- de la Porte C, 'The European level development and national level influence of the open method of coordination: the cases of employment and social inclusion' (PhD study, Department of Social and Political Studies, European University Institute, Florence, 2008).
- Dew-Becker I and Gordon R, 'The role of labour market changes in the slowdown of European productivity growth', (CEPR discussion paper, no 6722, 2008).
- Ederveen E et al., 'Funds and games, the economics of European cohesion policy' (ENEPRI occasional paper, no 3, 2003).
- Ederveen E, de Groot H and Nahuis R, 'Fertile soil for structural funds? A panel data analysis of the conditional effectiveness of European cohesion policy' (Kyklos, vol 59, 2006).
- Elmeskov J, Martin J and Scarpetta S, 'Key Lessons for Labour Market Reforms: Evidence from OECD Countries' Experiences' (Swedish Economic Policy Review, vol. 5, 1998).
- Evers M, de Mooij R and van Vuuren D, 'What explains the variation in estimates of labour supply elasticities?' (CESinfo working paper, no. 1633, 2005).

- Evers G and Wilthagen T, 'Arbeidsproductiviteit en arbeidsmarktdynamiek' (Organisatie voor strategisch arbeidsmarktonderzoek, 2006).
- Flanagan R, 'Macroeconomic Performance and Collective Bargaining: An International Perspective' (Journal of Economic Literature, vol 37, no 3, 1999).
- Friedman M, 'The Role of Monetary Policy' (American Economic Review 58, 1968).
- Furceri D. and Mourougane A, 'How Do Institutions Affect Structural Unemployment In Times Of Crises?' (OECD Economics Department Working Paper, no 730, 2009).
- Goetschy J, 'The European Employment Strategy, genesis and development' (European Journal of Industrial Relations, vol 5, no 2, 1999) 117-137.
- Hagen T and Moll P, 'Econometric evaluation of EU cohesion policy, a survey – a survey' (ZEW discussion paper, no 09-052, 2009).
- Hallerberg M, Marzinotto B and Wolff G, 'How effective and legitimate is the European Semester? Increasing the role of the European Parliament' (Bruegel working paper 2011/09, 2011)
- Harbo T, 'The functioning of the proportionality principle in EU Law' (European Law Journal, vol 16, issue 2, 2010).
- Hoj J et al., 'The political economy of structural reform; empirical evidence from OECD countries' (OECD Economics Department Working Papers, no 501, 2006).
- Inklaar R, Timmer M and van Ark B, 'Mind the gap! International comparisons of productivity in services and goods production', (German Economic Review, vol. 8, issue 2, 2007).
- Ioannou and Stracca, 'Have Euro area and EU economic governance worked? Just the facts' (ECB working paper no 1344, 2011).
- Jacobsson K, 'Soft Regulation and the Subtle Transformation of States: The Case of EU Employment Policy' (Journal of European Social Policy 14(4), 2004).
- Jeffery M, 'Not Really Going to Work? Of the Directive on Part-Time Work, 'Atypical Work' and Attempts to Regulate It' (Industrial Law Journal, vol 27, no 3, 1998).
- Kox H, Lejour A and Montizaan R, 'The free movement of services within the EU' (CPB document 69, 2004).
- Kugler A, 'Employee referrals and efficiency wages' (Labour Economics 10, 2003).
- Kydland F and Prescott E, 'Time to Build and Aggregate Fluctuations' (Econometrica 50, 1982).
- Lejour A and Rojas-Romagosa H, 'International spillovers of domestic reforms: The joint application of the Lisbon Strategy in the EU' (CPB discussion paper, no 105, 2008).
- Lopez-Santana M, 'The Domestic Implications of European Soft Law: Framing and Transmitting Change in Employment Policy' (Journal of European Public Policy 13(4), 2006).
- Mailand M, 'The uneven impact of the European Employment Strategy on Member States employment policies: a comparative analysis' (Journal of European Social Policy, vol 18, no 4, 2008).

- Mankiw N, 'Real Business cycles, a new Keynesian perspective' (Journal of Economic Perspectives, vol 3, no 3, 1989).
- Messenger J, 'Working time and workers' preferences in industrialized countries, finding the balance' (ILO publications, 2007).
- Moravcsik A, 'In Defence of the "Democratic Deficit": Reassessing the Legitimacy of the European Union' (Journal of Common Market Studies, vol 40, no 4, 2002).
- Morley J and Sanoussi F, 'Comparative analysis of working time in the European Union' (Eurofound paper, 2009).
- Mundell R, 'A theory of Optimum Currency Areas' (The American Economic Review, vol 51, no 4, 1961).
- Natali D, 'Pensions OMC's Influence on National Reforms' (NEWGOV paper, 2007).
- Nedergaard P, 'Which Countries Learn from Which? A Comparative Analysis of the Direction of Mutual Learning Processes within the Open Method of Coordination Committees of the European Union and among the Nordic Countries' (Journal of the Nordic International Studies Association 41(4), 2006).
- Nedergaard P, 'Policy learning in the European Union; the case of the European Employment Strategy' (Policy Studies, vol 27, no 4, 2006).
- Neheider S and Santos I, 'Reframing the EU budget decision making process' (Journal of Common Market Studies, vol 49, no 3, 2011).
- Netherlands Bureau for Economic Policy Analysis, 'European outlook 1; social Europe' (CPB bijzondere publicaties 48, 2003).
- Nickell S et al, 'The Beveridge Curve, Unemployment and Wages in the OECD from the 1960s to the 1990s' (London School of Economics and Political Science, 2001).
- O'Connor J, 'The OMC and the European Employment Strategy: Broadening the possibilities for gender equality?' (Paper for presentation at ESPANET Conference, Vienna University of Economics and Business Administration, 2007).
- OECD, 'Migration in OECD countries; labour market impact and integration issues' (OECD Economics Department Working Papers, no 562, 2007).
- OECD, 'Taxation and employment' (OECD Tax Policy Studies, no 21, 2011).
- Pedersen P, Pytlikova M and Smith N, 'Selection or Network Effects? Migration Flows into 27 OECD Countries, 1990-2000' (IZA discussion paper no 1104, 2004).
- A Phillips, 'The Relationship between Unemployment and the Rate of Change of Money Wages in the United Kingdom 1861-1957' (Economica 25, 1958).
- Pisany-Ferry J and Sapir A, 'last exit to Lisbon' (Bruegel policy contribution, 2006).
- Rogerson R, Shimer R and Wright R, 'Search theoretic models of the labor market, a survey' (Journal of Economic Literature, vol XLIII, 2005).
- Rosenbaum E, 'Lisbon, Europe 2020, and the Case for Soft Coordination in EU Policymaking' (Intereconomics, vol 45, issue 5, 2010).
- Rubery J, 'Gender mainstreaming and gender equality in the EU: the impact of the EU employment strategy' (Industrial Relations Journal 33(5), 2002).

- Rubery J et al., 'Gender Equality Still on the European Agenda - But for How Long?' (Industrial Relations Journal 34(5), 2003).
- Rubery. J et al., 'The ups and downs of European gender equality policy' (Industrial Relations Journal, vol 35, no 6, 2004).
- Ruffert M, 'the European debt crisis and European Union law' (Common Market Law Review 48, 2011).
- Scharpf F, 'The European Social Model: Coping with the challenges of diversity' (Journal of Common Market Studies, vol 40, no 4, 2002).
- Shapiro C and Stiglitz J, 'Equilibrium Unemployment as a Worker Discipline Device' (American Economic Review, LXXIV, 1984).
- Solow R, 'A contribution to the theory of economic growth' (Quarterly Journal of Economics, vol 70, no 1, 1956).
- Stephens M, 'Worker displacement and the added worker effect' (Journal of Labor Economics, 2002).
- Stiglitz J, 'Theories of wage rigidities' (NBER working paper, no 1442, 1986).
- Syrpis P, 'Legitimising European Governance; Taking Subsidiarity Seriously within the Open Method of Coordination' (EUI working paper LAW, no 10, 2002).
- Timmerman P, 'Legislating amidst public controversy; the services Directive' (Egmond Royal Institute for International Relations, Egmond paper 32, 2009).
- Thissen L and Ederveen E, 'higher education, time for coordination on a European level?' (CPB discussion paper no 68, 2006).
- Tryfonidou A, 'Further steps on the road to convergence among the market freedoms' (European Law Review, vol 35, no 1, 2010).
- Van der Horst A, Rojas-Romagosa H and Bettendorf L, 'Does employment affect productivity?', (CPB discussion paper, no 119, 2009).
- van Rie T and Marx I, 'The European Union at work? The European employment strategy from crisis to crisis', (Journal of Common Market Studies, vol 50, no 2, 2012).
- Venn D, 'Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators' (OECD social, employment and migration working papers 89, 2009)
- Verschueren H, 'Free movement of persons in the European Union and social rights: an area of conflicting secondary law instruments?' (ERA Forum, vol 12, no 2, 2011).
- Walby S, 'The European Union and gender equality; emerging varieties of gender regime' (Social Politics, vol 11, no 1, 2004).
- Watt A, 'Reform of the European Employment Strategy after Five Years: A Change of Course or Merely of Presentation?' (European Journal of Industrial Relations 10(2), 2004).
- Woodford M, 'Convergence in macro economics, elements of the new synthesis' (American Economic Journal, vol 1, issue 1, 2009).
- Werdinger M, 'Ageing and productivity growth: are there macro level cohort effects of human capital?' (CESINFO Working paper, no 2207, 2008).

Zaiceva A and Zimmerman K, 'Scale, diversity and determinants of labour migration in Europe' (IZA discussion paper 3595, 2008).

Zohlnhoefer R and Ostheim T, 'Paving the Way for Employment? The Impact of the Luxembourg Process on German Labour Market Policies' (European Integration 27(2), 2005).

Reports

Committee for the study of economic and monetary union, 'Report on Economic and Monetary Union in the European Community' (1989).

de La Fuente A and Ciccone A, 'Human Capital and Growth in a Global and Knowledge-based Economy' (report for the European Commission, 2003).

Deloitte, 'Study to support an Impact Assessment on further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation' (report at the request of the European Commission, 2010).

Economic Policy Committee and Social Protection Committee, 'Interim joint report on pensions' (2010).

ECORYS, CPB and IFO, 'A study on EU spending' (Commissioned by the European Commission, 2008).

Employment Taskforce, 'Jobs, Jobs, Jobs. Creating more employment in Europe' (2003).

European Commission's expert Group on gender and employment issues, 'The provision of childcare services, a comparative review of 30 European countries' (2009).

European foundation for the improvement of living and working conditions, 'Comparative analysis of working time in the European Union' (2010).

Gekiere W, 'Towards a European Directive on services in the Internal Market; analysing the legal repercussions of the draft services Directive and its impact on national services regulations' (Research report commissioned by the European Parliament, 2004).

High level Group chaired by Kok W, 'Facing the challenges; the Lisbon strategy for growth and employment' (2004).

IDEA consult and Ecorys Netherlands, 'Study on the economic and social effects of the phenomenon of posting of workers in the EU' (Study on behalf of the European Commission, 2011).

Intergovernmental Committee on European Integration, 'Rapport de chefs de delegation aux ministres des affaires etrangeres' (1956).

International Labour Office, 'Social aspects of European Economic co-operation' (1956).

Jensen J et al, 'Economic assessment of the barriers to the Internal Market for services' (Copenhagen economics, 2005).

Social Protection Committee, 'Opinion on the Future of the Social Open Method of Coordination' (2011).

Social Protection Committee, 'Opinion on reinvigorating the social OMC in the context of the Europe 2020 Strategy' (2011).

Ssee final report of the European expert group on flexicurity, 'Flexicurity pathways, turning hurdles into stepping stones' (2007).

Stiglitz J, Sen A and Fitoussi J, "Report by the Commission on the Measurement of Economic

Performance and Social Progress" (2009)

Tabellini G and Wyplosz C, 'reformes structurelles et coordination en Europe' (Report to the Prime Minister of France, 2004).

Toulemonde J, 'Evaluation of the integrated guideline package for growth and jobs' (Eureval/Rambol management, evaluation for the European Commission, 2008).

Training and reporting on European social security (trESS), 'European report 2011' (2011).

Werner P, 'Report to the Council and the Commission on the realization by stages of economic and monetary union in the community' [1970] OJ C 136.

European Commission Communications

Commission 'Social action program' COM(73)1600.

Commission, 'Communication on improving economic policy coordination' COM(80)101 final.

Commission, 'Completing the Internal Market', COM(85)310 final.

Commission, 'Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services' COM(91)230.

Commission, "From the Single Act to Maastricht and beyond", COM (92)2000.

Commission, 'Opinion on an equitable wage' COM(93)388.

Commission, 'Green paper on European social policy, options for the Union' COM (93) 551.

Commission, 'Communication concerning the application of the agreement on social policy' COM(93)600.

Commission, 'White paper on Growth, competitiveness, employment the challenges and ways forward into the 21st century' COM(93)700.

Commission, 'White paper on European social policy, a way forward for the Union' COM (94) 333.

Commission, 'Follow up to the Essen European Council on Employment' COM (95)74.

Commission, 'Communication on the medium term social action program 1995-1997' COM(95)134.

Commission, 'Action for employment in Europe; a confidence pact' COM (96)0485.

Commission, 'Communication on Community structural assistance and employment' COM (96) 109.

Commission, 'Communication to the European Council - Action plan for the single market' CSE 97/1 final.

Commission, 'Proposal for Guidelines for Member States Employment Policies 1998' COM (97) 497 final.

Commission 'Social action programme 1998-2000' COM(98)259.

Commission, 'The strategy for Europe's Internal Market' COM(1999)624.

Commission, 'Report from the Commission to the Council and the European Parliament on the application of Directive 92/51/EEC in accordance with article 18 of Directive 92/51/EEC' COM 2000/17.

Commission, 'Social policy agenda' COM(2000)379.

Commission, 'Joint Employment report' COM(2000)1688 final.

Commission, 'New European Labour Markets, Open to All, with Access for All' COM(2001)116.

Commission, 'A framework for investing in quality' COM(2001)313.

Commission, 'Taking stock of five years of the European Employment Strategy' COM(2002) 416.

Commission, 'Streamlining the annual economic and employment policy coordination cycles' COM(2002)487.

Commission 'Internal Market strategy, priorities 2003-2006' COM(2003)238.

Commission, 'Proposal for a Directive on services in the Internal Market' COM(2004)2.

Commission, 'On the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment)' COM(2004)62.

Commission, 'Strengthening the implementation of the European Employment Strategy' COM(2004)239.

Commission, 'Working together for growth and jobs; a new start for the Lisbon strategy' COM(2005)24.

Commission, 'Better Regulation for Growth and Jobs in the European Union' COM(2005)97.

Commission, 'Common actions for growth and employment, the Community Lisbon program' COM(2005)330.

Commission, "Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union" COM(2005)706.

Commission, 'Green paper on modernising labour law to meet the challenges of the 21st century' COM(2006)708.

Commission, 'Implementing the renewed Lisbon strategy for growth and jobs; a year of delivery' COM (2006)816.

Commission, 'Improving quality and productivity at work: community strategy 2007-2012 on health and safety at work' COM(2007)62.

Commission, 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers' COM(2007)304.

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

Commission, 'Outcome of the public consultation on the Commission's Green paper "Modernising labour law to meet the challenges of the 21st century' COM(2007)627.

Commission, 'A European Economic Recovery Plan' COM(2008)800.

Commission, 'GDP and beyond, measuring progress in a changing world', COM(2009)433final.

Commission, 'Reviewing the working time Directive' COM(2010)106.

Commission, 'Strategy for equality between women and men 2010-2015' COM(2010)491.

Commission, 'An agenda for new skills and jobs; a European contribution towards full employment' COM(2010)682.

Commission, 'European Platform against Poverty and social exclusion, a European framework for social and territorial cohesion' COM(2010)758.

Commission, 'Europe 2020, A European Strategy for smart sustainable and inclusive growth' COM(2010)2020.

Commission, 'Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive' COM(2011)20.

Commission, 'Single Market act, twelve levers to boost growth and strengthen confidence, "working together to create new growth"' COM(2011)206.

Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability', COM(2011)482.

Commission, 'Proposal for a Regulation for administrative cooperation through the Internal Market Information System' COM(2011)522.

Commission, 'Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006' COM(2011)607 final.

Commission, 'Proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006' COM(2011)615 final.

Commission, 'Proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation [...] on administrative cooperation through the Internal Market Information System' COM(2011)883.

Commission, 'Alert mechanism report' COM(2012)68.

Commission, 'Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services' COM(2012)130 final.

Commission, 'Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services' COM(2012)131 final.

Other documents of the European Commission

Commission, 'Draft fourth medium-term economic policy program' [1977] OJ C 012.

Commission, 'Guidelines concerning European Social Fund intervention in respect of action against long-term unemployment and occupational integration of young people ESF intervention' [1989] OJ C 45/6.

Commission, 'The European Social Fund, an overview of the programming period 1994-1999' (1997).

Commission, 'draft joint employment report' SEC(1998)1688.

Commission, 'Extended impact assessment of proposal for a Directive on services in the Internal market' SEC(2004)21.

Commission, 'Extended impact assessment on Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation' SEC(2004)482.

Commission Regulation 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund [2006] OJ L 371/1.

Commission, 'Employment in Europe' (2006).

Commission, 'Ten years of the European Employment Strategy' (2007).

Commission, 'EU budget 2007 Financial Report' (2007).

Commission, 'Employment in Europe' (2008).

Commission, 'Lisbon strategy evaluation document' SEC(2010)114.

Commission, 'Strategy for equality between women and men 2010-2015' SEC(2010)1079.

Commission, 'Staff working document on the transposition and implementation of the professional qualifications Directive' SEC 2010/1292.

Commission, 'Handbook on implementation of the services Directive' (2010).

Commission, 'The process of mutual evaluation of the services Directive' SEC(2011)102.

Commission, 'An evaluation of the professional qualifications Directive' (2011).

Commission, 'Implementation by Member States of Council Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship' SEC(2011)982.

Commission, 'Scoreboard for the surveillance of macro economic imbalances, envisaged design of the scoreboard' SEC(2011)1361.

Commission, 'Impact assessment accompanying the proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System' SEC(2011)1558.

Commission, 'staff working document executive summary of the impact assessment accompanying the document proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services' SWD(2012)64 final.

EU legislation

Regulation (EEC) 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257.

Regulation (EEC) 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1971] OJ L 149.

Regulation (EEC) 2396/71 of the Council of 8 November 1971 implementing the Council Decision of 1 February 1971 on the reform of the European Social Fund [1971] OJ L 249.

Regulation (EEC) 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community [1972] OJ L 74.

Directive 74/121/EEC of the Council of 18 February 1974 on stability, growth and full employment in the Community [1974] OJ L 63.

Directive 75/117/EEC of the Council of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L 045.

Directive 75/129/EEC of the Council of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [1975] OJ L 048.

Regulation (EEC) 724/75 of the Council of 18 March 1975 establishing a European Regional Development Fund [1975] OJ L 73.

Directive 76/207/EEC of the Council of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L 39.

Regulation 2893/77 of the Council of 20 December 1977 amending Council Regulation (EEC) 2396/71, implementing the Council Decision of 1 February 1971 on the reform of the European Social Fund [1977] OJ L 337.

Directive 80/987/EEC of the Council of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer [1980] OJ L 283.

Regulation 2052/88 of the Council of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the EIB and the other financial instruments [1988] OJ L185/9.

Regulation 4255/88 of the Council of 19 December 1988 laying down provisions for the implementing Regulation 2025/88 as regards the European Social Fund [1988] OJ L 374.

Directive 89/48/EEC of the Council of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [1988] OJ L 19.

Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183.

Directive 91/383/EC of the Council of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship [1991] OJ L 206.

Directive 92/51/EEC of the Council of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [1992] OJ L 209.

Directive 93/104/EC of the Council of 8 February 1993 concerning certain aspects of the organisation of working time [1993] OJ L 38.

Regulation no 2081/93 of the Council of 20 July 1993 amending Regulation (EEC) no 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments [1993] OJ L 193.

Regulation 2084/93 of the Council of 20 July 1993 amending Regulation (EEC) 4255/88 as regards the European Social Fund [1993] OJ L 193.

Directive 94/45/EC of the Council of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees [1994] OJ L 254.

Directive 96/71 of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18.

Directive 97/81/EC of the Council of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC [1998] OJ L 14.

Regulation 1466/97 of the Council of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [1997] OJ L 209.

Regulation 1467/97 of the Council of 7 July 197 on speeding up and clarifying the implementation of the excessive deficit procedure [1997] OJ L 209.

Directive 99/42/EEC of the European Parliament and the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the General Systems for the recognition of qualifications [1999] OJ L 201.

Directive 99/70/EC of the Council of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L 175.

Regulation 1260/1999 of the Council of 21 June 1999 laying down general provisions on the Structural Funds [1999] OJ L 161.

Regulation 1784/1999 of the European Parliament and the Council of 12 July 1999 on the European Social Fund [1999] OJ L 213.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299.

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166.

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [2005] OJ L 255.

Regulation (EC) 1055/2005 of the Council of 27 June 2005 amending Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2005] OJ L 174.

Regulation (EC) 1056/2005 of the Council of 27 June 2005 amending Regulation (EC) 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [2005] OJ L 174.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L 204.

Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the Internal Market [2006] OJ L 376.

Regulation 1081/2006 of the European Parliament and the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999 [2006] OJ L 210.

Regulation 1083/2006 of the European Parliament and the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 [2006] OJ L 210.

Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 327.

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284.

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1

Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L 141.

Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306.

Regulation (EU) 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306.

Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L 306.

EU treaties

Treaty establishing the European Economic Community [1957], OJ (C 340) 173.

Single European Act [1987] OJ L169/1.

Treaty on European Union [1992] OJ C 191.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Economic Communities and certain related acts [1997] OJ C 340/01.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306/01.

Other documents of the Council and European Council

Council Decision of 9 March 1960 on co-ordination of the conjunctural policies of the Member States [1960] OJ 31.

Council Decision of 15 April 1964 on the installation of a Medium term economic policy committee, [1964] OJ 64.

Council Decision 67/264/EEC concerning the Medium-term economic policy program 1966-70 [1967] OJ 79.

Council Decision 69/227/EEC of 17 July 1969 on co-ordination of the short-term economic policies of the Member States [1969] OJ L 183.

Council Decision 71/66/EEC of 1 February 1971 on the reform of the European Social Fund [1971] OJ L 28.

Council Resolution of 17 December 1973 on measures to be taken against rising prices and the maintenance of a high level of employment in the Community [1973] OJ C 116.

Council Decision 74/120/EEC of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community [1974] OJ L 63 .

Council Decision 74/122/EEC of 18 February 1974 setting up an Economic Policy Committee [1974] OJ L 63.

Decision of the Council and of the representatives of the Governments of the Member States 82/534/EEC meeting within the Council of 28 July 1982 adopting the fifth medium-term economic policy programme [1982] OJ L 236.

Council Decision 90/141/EEC of 12 March 1990 on the attainment of progressive

convergence of economic policies and performance during stage one of economic and monetary union [1997] OJ L 78.

Presidency conclusions of the European Council of 21/22 June 1993.

Presidency conclusions of the European Council in Brussels of 10 and 11 December 1993.

Council Recommendation 94/7/EC of 22 December 1993 on the broad guidelines of the economic policies of the Member States and of the Community [1994] OJ L 7.

Resolution of the Amsterdam European Council of 17 June 1997 on growth and employment.

Presidency conclusions of the Amsterdam summit of 16/17 June 1997.

Presidency conclusions of the extraordinary European council meeting on employment of 20 and 21 November 1997.

Council Decision 98/171/EC of 23 February 1998 on Community activities concerning analysis, research and cooperation in the field of employment and the labour market [1998] OJ L 63.

Council Decision 2000/98/EC of 24 January 2000 establishing the Employment Committee.

Council Recommendation 2000/164/EC of 14 February 2000 on the implementation of Member States' employment policies [2000] OJ L 052.

European Council conclusions 23/24 March 2000.

Council Recommendation 2001/483/EC of 15 June 2001 on the broad guidelines of the economic policies of the Member States and the Community [2001] OJ L 179.

Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001 [2001] OJ L 60.

Council Decision of 18 February 2002 on guidelines for Member States' employment policies for the year 2002 [2002] OJ L 60.

Presidency Conclusions of the Barcelona European Council of 15/16 March 2002.

Decision 1145/2002/EC of the European Parliament and of the Council of 10 June 2002 on Community incentive measures in the field of employment [2002] OJ L 170.

Council Recommendation of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers.

Presidency conclusions of the European Spring Council, Brussels, 22/23 March 2005.

Council Decision 2005/600/EC of 12 July 2005 on Guidelines for the employment policies of the Member States [2005] OJ L 205.

Decision 1672/2006/EC of the European Parliament and the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress [2006] OJ L 315.

Conclusions of the Employment and Social Affairs Council of 5/6 December 2007, 'Towards common principles of flexicurity'.

Presidency conclusions of the European Council of 14 December 2007.

Council recommendation 2008/390/EC of 14 May 2008 for the Broad Economic

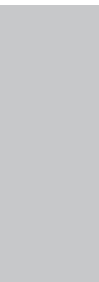
Policy Guidelines for the Member States and the Community [2008] OJ L 137.
European Council conclusions December, Brussels, 11/12 December 2008.
Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union [2010] OJ L 191 .
Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 308.
European Council conclusions, Brussels, 24/25 March 2011.
Conclusions of the European Council of 28/29 June 2012.

Other documents of the European Parliament

Resolution of the European Parliament on a coherent employment strategy for the European Union [1995] OJ C 249, 143.
Resolution of the European Parliament on the Internal Market Scoreboard (2011).

Judgments of the Court of Justice of the European Union

Case 22/70, *Commission v. Council* [1971] ECR 263.
Case C-43/75 *Defresne vs Sabena* [1976] ECR 455.
Case 104/75 *Officier van Justitie v De Peijper* [1976] ECR 613
Case C-109/88 *Handels- og Kontorfunktionærernes Forbund i Danmark v Dansk Arbejdsgiverforening, agissant pour Danfoss* [1989] ECR 3199.
Case C-331/88 *The Queen v Minister of Agriculture, Fisheries and Food ex parte Fedesa* [1990] ECR 1-4023.
Case C-300/89 *Commission v. Council* [1991] ECR I-2867.
Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079.
Case C-127/92 *Enderby v Frenchay Health Authority and Secretary of State for Health* [1992] ECR 1-5535.
Case C-464/02 *Commission v Denmark* [2005] ECR I- 7929.
Case C-341/05 *Laval un Partneri* [2007] ECR I-00000.
Case C-346/06 *Ruffert* [2008] IRLR 467.
Case C-370/12 *Thomas Pringle v Government of Ireland*, judgement of 27 November 2012.



Nederlandse samenvatting

Introductie

In een wereld waar het merendeel van de mensen het grootste deel van hun leven werkend doorbrengt kan de arbeidsmarkt terecht worden beschouwd als een van de kernonderdelen van de hedendaagse samenleving. Het inkomen dat wordt verdiend en het nut dat wordt verworven door het uitoefenen van de arbeid in kwestie beïnvloeden het welvaartsniveau van de samenleving op een fundamentele manier. Gegeven deze centrale rol van de arbeidsmarkt in het bepalen van de welvaart van burgers is het geen wonder dat overheden over de hele wereld proberen om het arbeidsmarktproces te beïnvloeden. Overheidsingrijpen gericht op het beïnvloeden van de uitkomsten van het arbeidsmarkt proces bestaat al eeuwen, en is gedurende die tijd uitgevoerd door alle verschillende niveaus van overheid, variërend van lokale en regionale tot nationale overheden. Meer recentelijk overschrijdt overheidsingrijpen in de arbeidsmarkt zelfs de grenzen van de natiestaat. De Europese Unie heeft sinds zijn ontstaan in de jaren vijftig van de vorige eeuw op een aantal verschillende terreinen beleid gevoerd gericht op het sturen van het arbeidsmarktproces. Dit betreft beleid gericht op het faciliteren van het vrij verkeer van werknemers, het neerleggen van gemeenschappelijke sociale minimumstandaarden, het spenderen van EU fondsen en het coördineren van het door de lidstaten zelf gevoerde arbeidsmarktbeleid. Het zijn deze Europese beleidsinspanningen en hun functioneren die het onderwerp van beschouwing zijn in deze studie. Specifiek stelt deze studie de volgende onderzoeksvraag

“Wat zijn de economische doelen van het werkgelegenheidsbeleid van de Europese Unie en hoe effectief is het beleid in het behalen van deze doelen?”

De studie behandelt deze onderzoeksvraag door allereerst de economische doelen van werkgelegenheidsbeleid ten algemene onder de loep te nemen en te categoriseren. Vervolgens bespreekt deze studie de ontwikkeling van de verschillende instrumenten die door de EU worden ingezet op dit terrein, de focus en impact van deze instrumenten en een aantal institutionele aspecten die het functioneren van de Europese werkgelegenheidsinstrumenten in praktijk kunnen beïnvloeden. Ten slotte worden conclusies getrokken en voorstellen gedaan voor verbetering.

Opzet van het boek

In hoofdstuk 2 wordt besproken welke doelen overheden vanuit economisch perspectief kunnen nastreven voor het voeren van werkgelegenheidsbeleid. Basis voor beschouwing is een zogenaamde "growth accounting" vergelijking, waarbij BBP per capita groei wordt bepaald als functie van de groei van hoeveelheid arbeid gebruikt en de arbeidsproductiviteit. Deze simpele vergelijking wordt in dit hoofdstuk verder uitgesplitst om de verschillende aspecten boven tafel te krijgen die bepalen hoe het BBP per capita zich ontwikkelt. Uiteindelijk leidt deze analyse tot vijf doelen die de overheid kan nastreven in het maken van werkgelegenheidsbeleid, namelijk het

vergroten van prikkels voor werk, het verbeteren van het functioneren en de flexibiliteit van markten, het vergroten van de hoeveelheid menselijk kapitaal, het verbeteren van raamwerkvoorwaarden en korte termijn stabiliseringsbeleid.

Hoofdstuk 3 zet uiteen welk type instrumenten op het gebied van het werkgelegenheidsbeleid zijn ontwikkeld op EU niveau sinds het ontstaan van de EU in de jaren vijftig. Naast een weergave van de ontwikkeling van deze instrumenten door de tijd relateert dit hoofdstuk deze instrumenten tevens tot de economische doelen zoals uiteengezet in hoofdstuk 2. De analyse maakt duidelijk dat de ontwikkeling van het EU werkgelegenheidsbeleid door de jaren heen heeft geleid tot vier verschillende beleidsinstrumenten, namelijk de coördinatie van nationaal werkgelegenheidsbeleid, wetgeving op het gebied van de Interne Markt, sociaal werkgelegenheidsbeleid en uitgaven uit EU fondsen.

Hoofdstuk 4 vervolgt deze beschouwing door een nadere blik te werpen op de koppeling tussen de economische doelen en de instrumenten van het EU werkgelegenheidsbeleid en de rol die deze instrumenten daadwerkelijk spelen in het beïnvloeden van de uitkomsten van het arbeidsmarktproces. Er wordt aangetoond dat de koppeling tussen de economische doelen en de instrumenten ten algemene goed is vormgegeven. Echter, deze is verre van perfect, iets wat met name duidelijk wordt in beschouwing van de sociale aspecten van het EU werkgelegenheidsbeleid. De analyse van de wijze waarop de instrumenten van het EU werkgelegenheidsbeleid hebben bijgedragen aan het verwezenlijken van de economische doelen van dit beleid toont voorts aan dat hier sprake is van een grote heterogeniteit tussen lidstaten. Dit betreft zowel de oorspronkelijke uitgangsposities van de lidstaten als de ontwikkeling van de relevante arbeidsmarktvariabelen door de tijd heen. Tevens bestaan er grote verschillen in effecten tussen de verschillende EU instrumenten.

Hoofdstuk 5 neemt de analyse van het functioneren van de instrumenten van het EU werkgelegenheidsbeleid een stap verder door het analyseren van drie verschillende institutionele aspecten van het beleid die een effect kunnen hebben op de wijze waarop de instrumenten bij (kunnen) dragen aan het behalen van de economische doelen gesteld. Deze drie aspecten betreffen de verdeling van macht in de supranationale rechtsorde, democratische legitimiteit en verantwoording en coherentie en praktische toepassing. Hier wordt duidelijk dat al deze aspecten helpen bij het verklaren van het succes, of gebrek daaraan, van de verschillende instrumenten.

Hoofdstuk 6 ten slotte geeft een aantal conclusies en doet aanbevelingen ter verbetering van het systeem. Ten algemene leidt de analyse in deze studie tot een gemengd beeld. Aan de ene kant zijn de doelen zoals nagestreefd door de instrumenten van het EU werkgelegenheidsbeleid grotendeels in lijn met de economische doelen zoals af te leiden uit de economische theorie. Aan de andere kant heeft het EU werkgelegenheidsbeleid zich door de jaren heen ontwikkeld tot een zeer complex systeem met grote overlap tussen instrumenten en vage terminologie met een

onzekere invloed op de reëel economische ontwikkelingen. Er is dan ook ruimte voor verbetering, waarvoor dit hoofdstuk dan ook concrete aanbevelingen doet onderverdeeld in zes thema's;

1. Verbeter de duidelijkheid en consistentie van gevoerd beleid.
2. Verwijder het risico van beleid dat ingaat tegen de gestelde economische doelen.
3. Stroomlijn het gevoerde beleid.
4. Differentieer de instrumenten van het EU werkgelegenheidsbeleid naar gelang de rationale voor handelen.
5. Verzeker afdoende verbindingen tussen de verschillende instrumenten.
6. Verzeker effectieve mechanismen van democratische legitimiteit en verantwoording op het niveau waarop macht wordt uitgeoefend.

About the author

Kees van Duin was born on the 18th of January 1982 in Leiden, the Netherlands. After graduating from College Leeuwenhorst in Noordwijkerhout in 2000 he studied International Economics and Business studies and International and European Law at Erasmus University Rotterdam. He obtained both degrees cum laude in 2004 and 2006 respectively. In 2006 he started his career at the Dutch Ministry of Economic Affairs, where he worked as a (senior) policy advisor at the department for European Integration and Strategy on issues related to the internal market, state aid and the European economy. In 2011 he became head of the European economy unit at the General Economic Affairs department of the same ministry, where he mainly worked on issues related to the euro-crisis and economic governance. In 2012 he was seconded to the European Commission, DG Economic and Financial Affairs, as an economic advisor in the policy coordination and strategic planning unit.

