

A European Work-First Welfare State?

Introductory remarks

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Increasing employability through activation policies

It has become a concern for most – if not all – European countries to increase the level of labour market participation within the population aged 16-65. In some countries, like the Nordic countries, this is a concern embedded in a familiar normative environment where the primacy of work has a long tradition; in other countries the perspective is more innovative from a historical perspective. What all European countries have in common, though, is a future where the sustainability of the welfare state (as we know it) is at stake as a decreasing share of the population face the challenge of financing the increasing costs of welfare. It is in this context that the elaboration of different *activation policies* has worked its way into most social policy agendas across Europe. It is also in this context that the European Union launched the Employment Strategy (EES) eleven years ago, in 1997.

The concept of “activation” in the *narrow* sense – as often used in the literature – involves developing tighter links between unemployment protection policies and active labour market policies. More broadly, activation is about increasing labour market entry and participation, and phasing out temporary labour market exit options for working age claimants (early retirement, disability and long-term sickness benefits).¹ In this volume, and for comparative reasons, the notion of “activation” is used in its broad sense.

The framing of this volume is strongly influenced by the awareness that the notion of “employability” and the demarcation between who is assessed to be sick, disabled or unemployed easily creates communication problems cross-nationally. For the purpose of the present project we approached this dilemma by disregarding these demarcations as functional boundaries and instead we choose a broader framework for our discussion: *Activation policies in general - increasing the employability of the sick, the disabled and the unemployed.*

¹ Clasen/Clegg, Beyond Activation: Reforming European unemployment protection systems in post-industrial labour markets, European Societies 2006: 527-553.

In the notion of *activation policies* we include such measures that have as an aim to turn recipients of social security cash benefits, through strategies for increased employability, into participants on the (open) labour market. We describe it more broadly as “*employment support*”, as this notion appears to more comprehensive than the word “activation”, which usually implies a conditionality of welfare rights on job seeking efforts. Examples for such activation policies in the broad sense/“employment support” are: quota-systems, vocational rehabilitation, anti-discrimination legislation, adaptation of workplaces and other different systems of incentives/disincentives focusing on employers as well as potential employees. The measures we are interested in could be aimed at increasing the employability of an individual or groups of individuals and they should be aimed at increasing employability through diminishing causes of incapacity and inability (be they internal or external in relation to the individual concerned).

The contributions made in this volume are describing and discussing *legal strategies* used to increase labour market participation from a national perspective. By *legal strategies* we refer to the legislator’s choice of method to implement a specific policy, e.g. the creation of rights, the choice between using hard law/soft law, public/private law, statutory law/collective bargaining etc.² The national analyses thus include reflections on legal strategies for implementing activation policies for persons being sick, disabled or unemployed.

The research question – activation and rehabilitation of whom? - Targeting the need for employment support in a cross national setting

The aim of this chapter is to provide a short introduction to the subject of the Göteborg-colloquium and hence the nexus of the questions, around which the chapters in this book circles. A main question was: Are different legal strategies for activating the sick or unemployed an attempt to solve the same problem?

The notion of *activation/employment support* used in this book includes, as mentioned above, such measures that have as an aim to turn recipients of social security cash benefits into participants on the (open) labour market, through strategies for increased employability. One of these measures is rehabilitation. Here, the focus is on “work-focused rehabilitation”. This notion, coming originally from the Swed-

² The concept of legal strategies is thus used to capture the way legal constructs (rules, principles, practises) are functioning as building blocs in the implementation of social policies, and how the different usage and combination of these will determine different modes of governance. Legal strategies are worked out and determined on different levels – locally, nationally, regionally and internationally. Thus, although national legislation (statutory law) would be a prime example of where to look for legal constructs, this is not an exclusive source. In the area of welfare law there is increasing awareness of the pluralistic elements of legal systems and the notion of legal strategies does not exclude such a perspective. Thus, legal strategies are not always coherent, they do not necessarily point in the same direction, not even on the ideal, normative, level.

ish social security system³, is used in our comparison to generally describe legal strategies with the aim to safeguard labour market participation for individuals who, if not working, would be dependent on some kind of health-related social security benefit. Defined this way, the “work-focused rehabilitation” is to be distinguished from the “rehabilitation” in a broad sense, where the primary aim is to respond to the medical or social needs of the individual. The desired outcome of “work-focused rehabilitation” is the (re-)integration to the labour market.

As regards Sweden, the long-term sick make up a considerable proportion of Swedens potentially employable population and they are needed on the labour market. Statistics in Sweden show that every day, 14 % of the population of working age (20-64 years) are either on sick leave or recipients of sickness compensation.⁴ This has been identified as a national problem and there is a political will to solve this. One strategy to be used in this process is work-focused rehabilitation, aiming to bring recipients of sickness benefits back to employment.

In other European countries the situation is often somewhat different and *unemployment* is instead identified as the main problem from where people should be “activated” or “rehabilitated”. There, the focus is rather on turning the unemployed to “active” members of the labour market instead of them being “passive” recipients of benefits.

In both cases, though, it is generally accepted that there is a need for some kind of “activation” or “employment support” in order to move the recipients of cash benefits into paid work again. The question here is if some *normative patterns*, common to all different measures of “employment support” can be identified.

Taking these considerations into account, an overarching question within the framework of this book concerns *the normative impact of different legal strategies in the field of “employment support”*. In this book the authors describe and evaluate different strategies in Sweden, Germany and the United Kingdom. These countries represent different welfare regimes⁵ as well as different legal families in currently used typologies. The intention is to explore the subject from a legal perspective, searching for knowledge in the legal traditions of Sweden, Germany and the United Kingdom that will allow us to further understand the role of “law” in the field of “employment support”.

Another important question dealt with at the colloquium was about the possible effects of the interplay between national and EU employment and welfare legisla-

³ Arbetslivsinriktad rehabilitering

⁴ Sw. sjukersättning, formerly disability pension.

⁵ Germany belongs to the conservative model according to the typology created by Esping-Anderson. The United Kingdom belongs to the liberal regime while Sweden belongs to the social democratic. The two latter are antipodes in the regime debate. However, it has been noted that Britain and Sweden at one time were quite similar in their welfare attributes. If comparing the British (Beveridge) system of the 50's with the yet undeveloped Scandinavian models – similarities seems to have been more striking than differences, see Esping-Andersen, 1999, p.87 and p. 173. Still, research made by Powell and Barrientos, taking into account the developments of the 1990s and adding new variables (in particular active labour market policies) to Esping-Andersen's typology, confirms the notion that Sweden and the United Kingdom have created different types of welfare systems. (Powell and Barrientos, 2004, *European Journal of political Research*, pp 83-105).

tion in Europe. Employment and re-employment has been identified as a key European problem and also since Amsterdam mentioned in the EC-treaty chapter VI on Employment (art 125 ff) and art 136-137.⁶ However, (almost) all law-making power in the area of social security takes place within the framework of a national legal environment. Reform in the area of employability, activation and rehabilitation is often concerned with *national solutions*.

Despite how different the solutions may be, the goals are common at the European level. During the Portuguese (2000) and Swedish presidency (2001) in the EU, the employment field was made an important part of the Lisbon process. The employment guidelines have fixed overarching and complementary objectives: One is the so-called *full employment* (70 % overall, more than 60 % for women, 50 % for older people, to be accomplished by 2010). Other objectives are *quality and productivity at work*, and *social cohesion and inclusion*. It is quite obvious that full employment and social inclusion are seen as complementary – employment is seen as the key element for social inclusion. The over-arching goals of Lisbon focus on employment as a pre-condition for welfare. Thus, it is important to look at the different national legal strategies under a European perspective, in order to see if (and how) different paths may lead to the same goal.

When looking at comparative statistics of labour market participation one is struck by the different patterns shown in different European countries. Only five countries have reached the goal of an employment rate over 70 %.⁷ Sweden is an example of a member state with high labour market participation (73,1 % in 2006), low unemployment (7,1)⁸ but high figures on absence from work due to sickness (appr. 4% of persons between 20-64) and also an increasing number of people standing outside the labour market as disabled, i.e. recipients of invalidity pension (appr. 10% of persons between 20-64).⁹ Other European countries have a different structure, e.g. Germany with (lower) labour market participation figures of 67,5%, comparatively low figures of sickness absence but higher rates of unemployment (9,8).¹⁰ This could be an example of how different legal strategies may lead to different results – whereas the main question still remains the same: how to bring as many people as possible (back) to employment.

⁶ Full employment and the fight against social exclusion are vital parts of the Lisbon strategy, see e.g. COM (2003) 6 final The future of the European Employment Strategy, and COM (2004) 239(01) Strengthening the implementation of the European Employment Strategy Proposal for a Council Decision On guidelines for the employment policies of the Member States Recommendation for a Council Recommendation On the implementation of Member States' employment policies in which Sweden is recommended to deal with its long-term sick in order to sustain labour supply. Also Jobs, Jobs, Jobs. Creating more employment in Europe, Report of the employment taskforce chaired by Wim Kok, November 2003. Joint report on social inclusion 2004, Employment and Social Affairs – Social Security and Social Integration, European Commission.

⁷ Denmark, Sweden, The Netherlands, Austria and the United Kingdom. Eurostat Yearbook 2008.

⁸ Eurostat Yearbook 2008, The Eurostat statistics refer to people between 15-74 years. According to Swedish official statistics Swedish labour market participation of the ages 20-64 was 81 % in 2007 and unemployment 5,4 % in 2006.

⁹ See government bill 2007/08:124, Från sjukersättning till arbete, p. 36 ff.

¹⁰ Eurostat, Eurostat Yearbook 2008.

The research framework

Research in the field of “activation” and activation policies in general is both numerous and profound. An overview of the most important publications on this field can be found at the ASPEN-site (<http://aspen.fss.uu.nl/en/index.php>).

Most *books* on activation policies describe the notion of activation and make typologies of the different activation concepts in Europe. Reflexions on the concept of “activation” and empirical observations from case studies of different active social policies in the EU can be found in Van Brekels/Hornemann Møllers’ publication “Active Social Policies in the EU”.¹¹ More recent publications focus on the individualisation¹² – or contractualism¹³ – in activation policies in the EU as a new form of welfare state governance. Another comparison book undertakes a typology of activation regimes in Europe¹⁴

This book is not just another study on different activation policies in Europe. Rather, our focus is on the normative implications of “employment support” and the different *legal* strategies in this field. Moreover, there is a different *perspective*: Despite the fact that “activation” is often broadly defined, the vast majority of comparative publications on activation is about the activation of the *unemployed* (or social assistance claimants). The present work, though, analyses the implications of “employment support” not only for the unemployed, but also for other groups of benefit recipients – such as recipients of sick or disablement benefits. Thus, rehabilitation measures and, more specifically, “work-focussed rehabilitation” are included here, as well. One could say that we look on the notion of “activation” from a different angle – encompassing a larger number of welfare recipients and including all strategies that increase employability diminishing causes of inability.

Outline of the book

The book consists of 12 chapters. Following on from the introduction, chapters two and three are concerned with Europe as a region and the ambitions to create a “Social Europe”. *Chapter Two* includes a legally based discussion on the impact of soft law regulation on national competence. In *Chapter Three* the European Employment Strategy, along with the chosen method of implementation (the Open Method of Coordination) as the basic European “soft law” instrument dealing with the activation paradigm, is presented and analysed.

¹¹ Rik van Brekel/Iver Hornemann Møller (Eds.), *Active Social Policies in the EU*, 2002.

¹² Rik van Brekel/Ben Valkenburg (Eds.), *Making it personal: Individualising activation services in the EU*, 2007.

¹³ Els Sol/Mies Westerveld (Eds.), *Contractualism in Employment Services*, 2005.

¹⁴ Amparo Serrano Pascual/Lars Magnusson (Eds.), *Reshaping Welfare States and Activation Regimes in Europe*, 2007.

The following chapters are devoted to detailed studies of how the aim of increasing employability through activation policies has been approached in Great Britain, Germany and Sweden respectively. The account of national strategies has been structured into three different sections, and each country is allocated two or three chapters.

The three British chapters provide a comprehensive overview of reforms in the field of activation. It is clear that although the calls for a more active welfare state now can be heard all over Europe, reforms implemented in Britain are marked by their distinctly national and historical characteristics and Europe is hardly mentioned. In *Chapter Four*, Neville Harris explains how the underlying ideologies and perceived social and economic imperatives have had impact on the developing legal and policy framework. He also highlights ways in which the policies that have been implemented, particularly in recent years, have interacted with long-standing principles within social security law, such as the notion of 'voluntary unemployment'. In the following chapter, *Chapter Five*, Simon Rahilly reviews the work activation requirements within benefits for people of working age who are unemployed or sick (and in receipt of either jobseeker's allowance or incapacity benefit). Rahilly claims that as many of these work activation provisions are supported by sanctions they also have the potential to further intensify the poverty of the benefit claimant. In *Chapter Six* Michael Adler concludes that developments in Great Britain have made it extremely difficult for anyone who is required to take part in welfare to work programs to complain about the advice and help they are given or about the sanctions they are subject to. At the macro level, the chapter explores the shift, from a contribution-based approach to a citizenship-based approach. At the micro level, the chapter explores the shift from a more bureaucratic and legalistic mode of decision making to a more professional and managerial one, and examines the implications of this shift for rights of redress.

The two German chapters both circle around the impact of the Hartz-reform on different core social security schemes, what has been gained and what might be at risk? In contrast to the British contributions, the analyses from Germany are much more profoundly embedded in a European context. In *Chapter Seven* Eberhard Eichenhofer describes some profound changes in the unemployment insurance and assistance scheme of Germany. The reforms were inspired by the ideal of the active welfare state, which is conceived as a means for self help to all those who risk social exclusion. The chapter tries to answer the question of whether the reform should be seen as a dismantling of the welfare state or the introduction of a new version of welfare.

In *Chapter Eight* Felix Welti explores different explanations for why the activation of disabled unemployed people in Germany often fails. Medical and vocational rehabilitation have a long tradition in German social policy and legislation as part of a work-focused activation strategy. "Rehabilitation not retirement" is the slogan that summarises this orientation. Still, years after the enforcement of SGB IX, there is a strong implementation deficit of the Rehabilitation and Participation Law. Vocational rehabilitation, in particular, has faced a crisis during the last years.

The two Swedish chapters bring to the fore the extensive interest that governments have shown during the last decades in increasing the employability of the sick and disabled. While active labour market policies been a longstanding landmark of the Swedish model, activation of new groups of benefit recipients is a more recent development. The chapters provide examples of different legal strategies evolved for this purpose.

In *Chapter Nine* Lotta Vahlne Westerhäll examines the legal position of the individual insured person and explores the individual's access to legal rights in connection to the rehabilitation process. The Swedish concept of work-focused rehabilitation covers all measures of a medical, psychological, social and occupational nature, which may assist those who have been ill or injured to regain maximum functional ability and restore the conditions required for a normal life. Different authorities, or principals, are responsible for the various areas. The main target group for work-focused rehabilitation is individuals who are sick-listed and receive sickness cash benefit.

In recent years an unquestionable shift towards disability anti-discrimination legislation can be observed in EC-law as well as in national legislation in many parts of the world. In *Chapter Ten* Andreas Inghammar argues that the anti-discrimination perspective will provide a shift of focus from the disabled as a group towards the disabled as individuals, and that this shift might change the perception of disability and disabled peoples' labour market integration, "from a given into a task". Disability anti-discrimination legislation in Great Britain, Sweden and Germany are examples of this development.

Chapter Eleven constitutes the comparative part of the book, exploring the normative implications of "employment support". It examines the normative impact of work-first welfare reforms in the three different European countries using the theory on basic normative patterns.

Finally, the concluding chapter summarises the legal questions and challenges of a "European Work-First Welfare State" and suggests legal strategies as a point of departure for future comparative studies.