

EU employment governance revisited

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Addendum of valorisation

The thesis represents a thought experiment to contribute to the discussion about what role the EU can (and should) play for the safeguarding and promotion of workers' rights in the context of globalised markets and structural unemployment. It adds value from a societal point of view, as it studies how EU level governance, given its advanced stage of market and monetary integration, addresses the three interrelated problems of non-standard employment, inequality and unemployment that public authorities are nowadays facing in the regulation of employment (relationships).

This research, too, is valuable from a scientific perspective because it explores the diverse instruments with which the Union exerts influence on employment regulation in the Member States based on an interdisciplinary approach. Given the complexity of the contemporary EU governance system, the study of its functioning and influence from merely one discipline can only deliver a limited understanding of certain aspects. This can, in turn, then only provide a partial perspective on proposals for change and policy recommendations.

The book aims to appeal not only to scholars and students, interested in European economic and social affairs, but also to policy-makers and public affairs professionals. On the one hand, based on its critical analysis, the thesis offers food for discussion as it provides relatively sombre conclusions regarding the current state of EU employment governance because of the dramatic changes that have occurred over the last decade. On the other hand, it should also offer some inspiration, since it highlights the EU's own capacity for innovation and learning, its propensity for actor empowerment and its facilitation of legal mobilisation and transnational cooperation. In that way, this study has already served as the basis for vivid discussion scholars from various disciplines and EU Commission officials.

With the aim of creating value from the knowledge gained through this thesis, we will briefly elaborate on these various aspects below.

Societal value

Today it is increasingly common that public policy-makers and the departments of public administration are charged with increasingly colourful portfolios to reflect cross-cutting policy objectives. For instance, among the Vice Presidents of the current college of European Commissioners we find the following portfolios dealing with (aspects of) employment regulation: "Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights" (Commissioner F. Timmermans), "the Euro and Social Dialogue, Financial Stability, Financial Services and Capital Markets Union" (Commissioner V. Dombrovskis), "Jobs, Growth, Investment and Competitiveness" (Commissioner J. Katainen) next to the Commissioner for "Employment, Social Affairs, Skills and Labour Mobility" (M. Thyssen).

Accordingly, there is a growing tendency to address policy problems in an integrated manner. This socio-legal study on EU employment governance examines the European practice of “integrated coordination” which today provides the pivot for socio-economic policy-making in the EU. It questions the corresponding trend of justifying European policy interventions with a functional rationale to meet seemingly objective efficiency standards.

It takes as point of departure labour law’s historical function of balancing social inequalities. Consequently, it confronts EU governance with the question whether the combined deployment of different forms of regulation does not require special care for preserving certain values (like human dignity and social justice). The labour law perspective reminds us that the safeguarding and promotion of worker protection is an essential ingredient for the democratic legitimation of any governing system. Market-driven policy approaches, so integral to EU governance, are conducive to creating more precarious employment (as the Commission has itself acknowledged in the framework of the European Semester). Thus, they seem to intensify today’s triple challenge of flexible employment, inequality and unemployment.

It is therefore important to deconstruct the rationales for designing hybrid policy solutions in order to fathom their potentially far-reaching effects and uncover underlying intentions. Such an endeavour helps to recognise the indispensable role of public regulation and State interventions for serving the common good. Especially considering the post-national context of the EU polity and its expanded socio-economic conditions, this role requires further development (and theoretical backing) in view of the multi-level and multi-polar nature of European governance and its diversified regulatory interventions.

The thesis thus provides a basis for future research that critically assesses EU level initiatives of strengthening employment and social performances in Europe. It attempts to provide a conceptual framework for examining what lies behind the often impenetrably progressive EU policy discourse and pierce the veil of seemingly reformist policy slogans like achieving a “social Triple A”. Accordingly, it has already served as a basis for submitting a critical contribution to the European Commission’s public consultation (December 2016) on the European Pillar of Social Rights.

Scientific value

Moreover, we live in an age of fast increasing specialisation. However, social ordering and societal organisation in globalised contexts make it imperative to maintain a common language between the different disciplines as a basis for mutual understanding and cooperation. In that sense, the study’s interdisciplinary set-up has been inspired by systems theory (Luhmann) and the idea of reflexive law (cf. Teubner, Rogowski, Wilthagen). The latter have helped the author’s understanding of different scientific fields as being “operationally closed and cognitively open”. Conducting interdisciplinary research accordingly represents the basic attempt of finding such a common language to produce scientific results for the common good.

As intimated in Chapter 1, to better understand and assess the workings of EU hybrid regulation (such as that occurring in EU employment governance), we aim to espouse a legal approach with the methodological insights from the social sciences. Whereas the latter helps to better understand and explain the complex institutional dynamics at European level, the legal perspective remains vital to construct and advance a normative argument.

Hence, this socio-legal study aims to add value in two ways. First, it draws attention to the fact that EU governance arrangements regarding employment regulation (even though they may have lost their “novelty”-appeal) are still very much alive. While, the employment field has provided fruitful examples for the study of New Governance in the past, more recently, attention seems to have been diverted towards exploring other issue areas. Still, we argue that due to their advanced degree of diversification, a thorough study of the means of EU employment governance and, especially, their interaction among themselves and with other fields, represents a valuable contribution to the “governance” literature because it allows us to discuss further the notion of “hybridity” and its transformative qualities in the light of current circumstances.

Second, we believe that this thesis will contribute also to the legal literature. Examples of how EU governance has served as a study object for theory development in European employment law may have been less frequent, but no less stimulating. We argue that considering the fundamental challenges that labour law is facing today – and, especially, the increasingly globalised nature of economic activity, individual States are not likely to be adequately equipped to provide appropriate regulatory responses on their own. At the same time, the EU – given the advanced stage of its development – also ought to have a certain responsibility to address these problems with common solutions.

The thesis furthermore makes a contribution to the long-standing debate on the need to find a better balance between the economic and the social realm at EU-level. It may do so in a circuitous way by building on a rather extensive review of the “Lisbon 2020”-architecture. These elaborations are, nonetheless, considered necessary to grasp the intricate (and often indirect) implications of the much-advanced system of EU economic policy coordination for European employment regulation. The study indicates that this impact is especially felt in the area of employment protection, where the Union’s limited competences seem to have the ambiguous effect of propelling the deregulation of standard employment protection and bolstering the protection of non-standard workers.

Accordingly, this research has already provided the basis for several conference papers and presentations, and the following two publications:

- N. Büttgen, Conference report on the Workshop ‘Socio-Economic Governance in the EU since the Crisis: The European Semester in Theory and Practice’ Amsterdam Centre for Contemporary European Studies (ACCESS EUROPE), 11–12 December 2015, 22 *Transfer* 2 (2016), p. 265-269; and
- N. Büttgen, ‘EU regulation on employment matters – there ain’t no splitting a coin in two’, 2 *European Journal of Social Law* (2013), p. 121-146.

The 2013 publication has received an international award (Levenbach Institute, 2014).

Equally, the thesis still provides plenty material and inspiration for further dissemination. It is planned to be used as a basis for more article publications in scientific journals (such as the European Labour Law Journal, the European Law Journal, the European Public Policy Journal). The author also intends to follow up on offers from the European Trade Union Institute (ETUI) and the European Social Observatory (OSE) to submit working papers and/or policy briefs based on this research within the next months.