

EPIC
PROJECT PROPOSAL

The implementation of the European Employment Strategy within the framework of globalisation and the European Economic and Monetary Union and in the context of the European differentiated integration process

1. Theory/ Model

A. Relevance

Empirical question or puzzle:

During the 1997 Special Jobs Summit in Luxembourg, the Council together with the Commission and the Member States decided to fast-track the implementation of the new Employment Chapter with the so-called “European Employment Strategy” (EES) before the entry into force of the Treaty of Amsterdam, which marks a significant turning point in the development of EU Social Policy *sensu lato*. In fact it provides a legal base on which EU Labour Law and Employment Policy can be built.

The main question is whether the EES as an “Open Method of Co-ordination” (Lisbon European Summit, Presidency Conclusions, 2000, paras. 6-7) represents a structural change in policy design and law making in the European Union (EU) and whether it constitutes an effective tool for combating unemployment and more generally for the creation of a “Social Europe.”

Historical, political and constitutional relevance

My thesis reviews EC Social Policy with particular regard to employment including issues on equal opportunities, social protection and the European Social Dialogue. It then analyses

the different elements of the EES and will offer an overall assessment by widening the discourse to globalisation, Economic and Monetary Union (EMU) and the Europeanisation process.

A major question addressed is how, compared to previous regulatory methods, the EES is likely to foster the creation of a “European Social Area” and also what lead to the changes of the 1990s. The predominant thesis is that there has been a significant political shift from the EC Institutions to the Member States acting within the parameters set by the European Council.

At the same time, however, the creation of the European System of Central Banks (ESCB) and the implementation of the EMU have deprived participating countries’ decisional making power in the field of monetary policy and brought constraints on their conduct of fiscal policy. This may well lead to friction losses that result from uncoordinated monetary and fiscal policies (Lastra, 1992 at p.479).

All this has a number of constitutional repercussions for the Member States and the EU as a whole.

Economic relevance

The spill-over effects that EMU has on EC Social and Employment Policies and on national labour and fiscal policies focus the attention on the issue of creating an “economic government.” The latter aims at achieving “real convergence”, i.e. long-term productivity, employment growth and a reasonable correlation of the business cycle among the euro-countries. The side effects mentioned above are part of the reasons underlying the creation of the EES. I thus analyse the various general policy mix theories potentially applicable to the euro-area that foster the achievement of “real convergence.”

This analysis is pivotal to the understanding of the EES.

Theoretical relevance & proposed alternative theoretical solution

Legal relevance

The new typology of acts, acronyms, institutions, actors and outcomes that the EES as an “Open Method of Co-ordination” has brought to social policy thinking adds a number of challenges to the traditional understanding that lawyers have of the legal and constitutional processes and structures of the EU.

The issue at stake is to see whether the instruments of soft law, with no legal sanction, can effectively lead to a sea change in the implementation of employment policies in the Member States.

The complexity of the issue raises questions of considerable interest for our understanding of the evolution of EU law. A review of the literature and applied research has revealed that very little has been reported on recent developments of soft law in the EU. Wellens and Borchardt (1989) study of soft law provides an excellent overview of the concept in International and European law but fails to provide detailed analysis of the new trends and dynamics.

Recent studies have focused on the use of soft law in various policy areas such as EC consumer law (Howells 2000) and EU state aid (Cini 2000). Kenner (1995; 1999) has analysed in detail the provisions of the new Title on Employment and the implementation of the EES as a soft law measure. However, the author says little about the rationale behind the decision to use soft law with a new approach in EU Employment Policy.

Thus the aim of the present study is twofold: firstly, I will show how the functional concept of soft law has recently changed. In fact since the 1990s the use of soft law in EC social policy has acquired a strong political element in becoming consensus building and by eliminating the reluctance that Member States have in adopting hard law provisions in such a controversial policy area. Secondly, I will look at the implementation side of the EES at the national level in order to assess its effectiveness.

Another question to be addressed from a legal perspective is the institutional role of the Social Partners at the European level and the nature and effectiveness of the framework or collective agreements stipulated by them.

In my thesis I describe the generalisation of the procedures and rules concerning the implementation of the European Social Dialogue as the application of the *principle of horizontal subsidiarity*, which is based on a binary scheme procedure. This procedure may lead to a strict co-operation of management and labour with the Commission and the Council or to a collective agreement. The latter agreements are a source of law subsidiary to the typical EU decision-making process and have relevant effects on the entire system of sources of EC Labour Law. Thus the contribution of my study is to further elucidate on the changes that the application of this principle has on the EU law system.

Economic and Political Relevance

Lawyers, political scientists, economists and policy makers have not only identified the issues at stake but also proposed well-grounded alternative solutions. (Beck, van der Maesen & Walker 1997, Weiler 1999, Bercusson 1995, Emerson et. al. 1992). And yet research and regulatory methods have often been biased by old preconceptions of economic and social theories or models of policy, which do not take into due account the different systems co-existing in Europe now days and the rapid pace with which changes occur in contemporary times. Moreover, very little has been said on intra-state, inter-regional or intra-regional socio-economic disparities. Finally, the benchmarking of best practices has only recently started to be enacted. The thesis therefore provides an interdisciplinary law, political and economics perspective taking into consideration the multi socio-economic realities.

B. Significance

Theoretical, historical & policy significance of the research

The contribution of my thesis is to analyse the new Employment chapter not only within the context of the EC Treaty and EC secondary law (Part A. *Relevance*) but also in the wider framework of globalisation, with particular regard to the dynamics and interactions between the different sub-systems inside the European system.

It must be kept in mind in fact that the EU system, which represents a supra-system *sui generis* can be sub-divided in two sub-systems, intergovernmental cooperation and a EU/EC Institutional-institutionalised system.

The two major sub-systems mentioned above are linked to other different sub-systems, not necessarily interrelated to one another, but which might be overlapping, in what I define as a “polycontexturalised dimension,” where the EC Institutions, the Member States and the various actors are all part of an ongoing multi-faceted process.

This is often described as a “multi-tiered” form of governance of the EU (Hay, Watson & Wincott 1999 at pp. 6 & 12). Globalisation has enhanced in a somewhat contradictory way a “bottom-to-top” process and increased a trans-national form of governance.

Moreover, EC Social policy has developed in the framework of what has been defined as “differentiated integration,” i.e. unification characterised by a strong differentiation between European countries.

My thesis uses existing legal research to describe these processes in which the EES is set.

In analysing the dynamic dimension of this new process my work is extremely original. Few lawyers have worked on the Luxembourg Process from this wider perspective.

2. Methodology

Research design, countries and time period

The methodology used is a combination of comparative and modelling methods applied to three groups of Member State on the basis of the different industrial relations system to which they pertain:

- a) Roman-Germanic system;
- b) Nordic system;
- c) Anglo-Irish system.

The Member States selected for group a) are Italy and Germany because they are currently confronted with similar social and economic problems but have different political, constitutional and economic structures. Finland for group b) and the United Kingdom for group c).

The study covers a period of time that goes from 1997 to 2002 and is undertaken with a diachronic approach, i.e. concerned with the historical development of the EES in order to understand the direction it is taking.

Data sources

The research is based on EC, IMF and OECD documents, industrial relations organisations' documents and reports, national documentation and legislation and the National Action Plans for Employment.

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Academic papers

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