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Experiences with Activation Schemes in Europe and the US

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Preface

Activation has become a major topic in European and US social and labour market policies, as increasing emphasis is put on integrating wider segments of the working-age population into the labour market – not only for economic or fiscal reasons, but also, and maybe even more importantly, for societal reasons. Yet, the process of activation, its achievements and shortcomings are not fully understood – and activation itself is a moving target, as many national experiences show. This volume aims at a comparative assessment of the logic and the outcomes of activation. To do this, it adopts a multi- or interdisciplinary perspective bringing together economists, social scientists and legal experts. Working together across borders is not an easy task, however, and in fact it is probably more challenging to trespass the boundaries of academic disciplines than it is to cross national borders.

Yet, with determined efforts from all sides, we have achieved a more or less integrated socio-economic and legal analysis of national activation strategies and a comparative assessment of these case studies. It is up to the reader to judge to what extent this has been a successful endeavour – at the very least, it has been a major adventure for all the participants. We are particularly indebted to the authors of the national chapters for taking up this idea and for working in pairs to come to an in-depth analysis of national cases and collaboration across the borders of the disciplines. The project would not have been possible without the financial and administrative support of the three partner institutes, the Institute for the Study of Labor (IZA), Bonn, the Institute for Employment Research (IAB), Nuremberg, and the Max Planck Institute for Foreign and International Social Law (MPI), Munich.

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Bringing the Jobless into Work? An Introduction to Activation Policies

W. Eichhorst, O. Kaufmann, R. Konle-Seidl, and H.-J. Reinhard

1 The broad shift towards activation

The general trend towards activation has been one of the major issues in recent welfare and labour market reforms in Europe and the US. In many of these countries this issue has dominated the socio-economic and legal debate. Despite considerable variation across national models with respect to the scope and intensity of activation, it is evident that redefining the link between social protection and labour market policies on the one hand and employment on the other has been a common issue in labour market reforms.

At first sight, activation is a compellingly simple idea. For people of working age, doing something useful – especially working – is much better than sitting out time on a public benefit, however generous or meagre it may be. This is certainly desirable for better social cohesion, solidarity and the long-term viability of welfare states and public budgets. It is probably this straight-forward normative idea that is responsible for the widespread appeal and success of policy measures introduced under the label of activation.

From an economic point of view, the shift to activating labour market policies is often portrayed as a necessary response to high levels of structural unemployment. However, such changes are more than a mere technical adjustment of welfare programmes to a changing economic climate. They represent new ideas about the goals of public policy and the social rights of citizenship reflecting a departure from the ideas and goals of the post-war welfare state (Cox 1998).

As of today, most mature welfare states have some sort of activation provision embodied in core systems of social benefits paid in case of non-employment such as unemployment insurance, various forms of non-contributory benefits (e.g. social assistance) or disability schemes. These provisions are designed to foster termination or reduction of benefit receipt by jobless individuals or households through, first, entering gainful employment and, second, encouraging upward mobility to better paid and more stable jobs. While in many European countries the major objective is the movement to employment by means of reducing generous benefits or tightening eligibility requirements, in an Anglo-Saxon setting policies are also designed to take up work by "making work pay," i.e. to top-up low-paid entry jobs and build bridges to self-sufficiency.

Activation does not necessarily imply benefit cuts or the introduction of new active labour market policy schemes, but crucial is the fact that benefit receipt is made more conditional upon job search activities, acceptance of available job offers or participation in active labour market policy schemes both in formal terms and actual implementation. First movers in the field of activation were the Anglo-Saxon welfare systems of the United States and the UK, followed by Denmark, the Netherlands, Switzerland and Germany. More recently, France and Sweden have been catching up. It thus seems fair to say that activation has now become a common orientation in labour market and social policies that not only spreads across countries but also covers more and more benefit schemes.

2 Objectives of activation policies

Activation policies have a dual aim: notwithstanding national peculiarities, on the individual level, they aim at bringing jobless people from unemployment or inactivity into work and – more indirectly – at moving from entry jobs towards better paid and more sustainable jobs. Hence, the overall objective of activation is to improve economic self-reliance and societal integration via gainful employment instead of joblessness and benefit receipt, which is often associated with poverty and social exclusion. A major instrument to achieve this goal is bringing individual capabilities in line with realistic options on the labour market and by enhancing the employability of jobless people.

On the macro level, the effect of activation policies is largely mediated through the labour market environment, but activation strategies are designed to lower unemployment or non-employment, raise overall employment and improve the fiscal balance of the welfare state at least in the long run. Hence, increasing labour market entry and participation is the major concern of activation policies, and for this purpose options of unconditional benefit receipt for the working-age population are to be closed.

Strategies to reduce labour supply by supporting inactivity e.g. through early retirement provisions or easy access to incapacity benefits have been applied in many countries to successfully reduce open unemployment. However, they are found to generate major problems regarding the fiscal sustainability of the welfare state and labour shortages in a situation of increased global competition and demographic ageing. Thus, activation policies mark a shift from a passive strategy of reducing labour supply to a policy approach aiming at higher employment through the mobilisation of the latent labour supply, moving people from benefits to employment and reducing benefit dependency experienced by the employed.

But ending unemployment or inactivity is an important goal not only in terms of income and earnings but also in terms of life satisfaction and well-being as unemployed people are in general more unhappy, less healthy and socially more isolated than employed people (Layard 2005; Clark and Oswald 1994).

Bringing more people back into work is also seen as the major instrument to combat poverty as for most families paid work remains by far the most important source of income, and the loss of a job generally results in a considerable decrease in income and, as a consequence, in a higher risk of being poor. Therefore, taking up a job reduces the poverty risk significantly (Förster and Mira d'Ercole 2005).

Through improving individual prospects on the labour market, activation aims at the aggregate level to make welfare states more sustainable and viable in the long run. By turning benefit recipients into gainfully employed members of the labour force, activation policies are supposed to reduce expenditure on benefits while at the same time increasing revenue from taxes and social security contributions. The larger the number of people participating full-time and part-time in the

labour market, the greater the contribution they make towards maintaining the affordability of adequate levels of social protection.

Through improving access to work or subsidised work opportunities, activation strategies can help strengthen societal cohesion and alleviate potential tensions between tax payers and benefit recipients. This implies a re-orientation of social citizenship, away from freedom from want towards freedom to act while continuing to guarantee a rich social minimum.

In the end, the overarching objective of activation is to achieve a change in individual behaviour that breaks with past policies and widely shared expectations of a social policy response to economic changes. In many European countries, the strategies of the 1980s and 1990s to counter structural changes in the economy by reducing labour supply and encouraging early exit from the labour market generated societal expectations. Exit options became part of the "normal perception" of working life. Activation policies result in a fundamental departure from this perspective and contribute to a broad shift of expectations as they signal that there is no longer an easy way out of the labour market via supported escape routes. This change implies e.g. a higher willingness to make concessions in case of job offers due to stricter availability criteria and/or the requirement of mandatory participation in employment or training schemes.

3 Defining activation

Activation is a tremendously versatile and thus extremely imprecise term. A definition is made even more difficult by the fact that the socio-economic approach differs substantially from the legal approach. Activation also has a multi-faceted notion both in policy discourse and empirical research.

One rarely receives a precise answer to the question what exactly is understood by activation. Instead, a set of measures is mentioned that are meant to integrate jobless people again or for the first time into the labour market. Paraphrasing the objectives to be achieved through activation of jobless people is an attempt to explain the term itself. But there is not even a consensus about the objectives of activation. Does activation aim at taking up work as fast as possible ("work first") in any occupation? Or does it aim at a sustainable integration into the labour market with the objective of a genuine "social" integration? What are the target groups of activation? Are all jobless people included in activation measures, or does activation predominantly aim at long-term unemployed or difficult-to-place individuals? Who is in charge of activation? Who finances activation and what are the financial resources?

In legal terms, activation is also highly ambiguous; in none of the investigated countries a legal definition exists. Most countries' legal regulations do not mention

the term activation at all with respect to "bringing into work," or they use it in a context that is very different from the notion being used here. Sometimes legislators try to give the concept a modern and innovative face by applying a smart designation based on the slogans of the advertising industry. For example, in Germany the term is used in the grounds of the law when describing activation remedies that offer low-level training measures for young people in order to prepare them for professional work. However, in the end the legislator does not answer the question what exactly is meant by activation.

The classical concept of unemployment insurance giving a legal entitlement to cash benefits connected with the disposition for work and the legal obligation to search for a new job is no longer sufficient. The reasons for unemployment have become manifold. The demand for work on the basis of a certain qualification often does not correspond with the vacancy. All in all, the group of unemployed has become more heterogeneous and the labour market more differentiated in its requirements. At the same time, activation challenges the traditional "male breadwinner model" of continental European countries. Parents bringing up children and carers who previously had been insured via the spouse or the family nowadays have to rely more often on own income from work – and this is mirrored increasingly by the expectation that these groups have to be available on the labour market.

Behind unemployment there are often legal or personal problems that have to be tackled with priority since otherwise a lasting integration into the labour market will be impossible. The increasing heterogeneity of the labour market and the stronger consideration of personal circumstances of job-seekers cannot be matched with a standard solution but requires an individual co-ordinated bundle of measures. Perhaps it is a consequence of this necessary individualisation that the term activation defies a consistent legal structure and demands a variety of very different legal regulations.

Legal norms generally comprise means of activation. They can be divided into obligations, sanctions and benefits. Concerning the obligations, the key question for the legal design is who has to comply with what sort of requirements. Is it up to the individual's self-responsibility to remedy the situation? Or does the legal norm also address an independent obligation to the state or administration in the sense of a "mutual obligation" that aims at bringing citizens back into the labour market as soon and efficiently as possible?

Notwithstanding differences in the activation concept stemming from national or disciplinary backgrounds, the core element of activation is the removal of options for labour market exit and unconditional benefit receipt by members of the working-age population. Through the conceptual and practical combination of demanding and enabling elements, activating labour market policies aim at overcoming individual barriers to employment such as lack of employability due to long-term unemployment, poor skills and personal problems.

Table 1. The two sides of activation

Demanding	Enabling
1. Duration and level of benefits • Lowering of insurance or assistance benefits • Reduction of maximum benefit duration 2. Stricter availability criteria and sanctioning clauses • More restrictive definition of suitable job offers • Punitive sanctions for non-compliance 3. Individual activity requirements • Integration contracts • Monitoring of individual job search effort • Mandatory participation in active labour market policy schemes (workfare)	1. "Classical" active labour market policies • Job search assistance and counselling • Job-related training schemes • Start-up grants • Subsidised employment • Mobility grants 2. Fiscal incentives/make work pay • Earnings disregard clauses • Wage supplements granted in case of taking up low-pay jobs ("in-work-benefits") 3. Social services • Case management, personalised support • Psychological and social assistance • Childcare support etc

Referring to the demanding elements first, activation policies address the criteria for access to and continued benefit receipt such as availability and suitability of job offers, i.e. the definition of valid reasons to reject available vacancies etc. (see Table 1). Beyond these criteria, demanding elements in activation policies can also imply cuts in benefit duration or levels, or more restrictive entitlement prescriptions. Besides demanding elements, enabling elements are also part of an activation package. They include job search assistance and counselling, employer subsidies, in-work benefits or training schemes (see Table 1).

Whereas most of these schemes are classical active labour market policy instruments, the provision of individualised services through case management is a relatively new feature of activation policies in some countries. Also, purely voluntary participation in active labour market support schemes has become a thing of the past as claiming benefits has become dependent on individual action and co-operation. Activation approaches can differ according to the relative importance of demanding or enabling policies. The balance between the two can vary in each individual case but also in the context of national policy-making.

The normative philosophy of recent labour market reforms is one of reciprocal obligations. Hence, participation in enabling schemes is made mandatory. This is the most important difference between pre-activation labour market policies and current settings. To establish a more formal link between demanding and enabling schemes as well as benefit entitlements, integration contracts between the individual and the public employment service have become more widespread. On the one hand, benefit recipients are obliged to accept employment options or training

schemes in order to receive benefits while, on the other hand, the state has the obligation to enhance the employability of benefit claimants.

With respect to sanctions, two legal concepts can be distinguished. A more repressive one focuses on imposing sanctions for non-compliance. The more rigid the sanctions, the greater the need for precise legal rules. Constitutionality requires that the unemployed must be informed in advance what sanctions will be imposed for non-compliance with certain prerequisites. In addition, there must be a possibility to verify in court the conformity of sanctions with legal norms. On the other hand, a supporting activation emphasises behavioural incentives. In this case sanctions are only the last resort. It is essential that courts can check these cases, too. However, legal action is less likely to be important in the case of activation by incentives than in the case of a more repressive activation.

Benefits may also differ and vary in legal construction. An entitlement to benefits provides the unemployed with more legal certainty and predictability. Discretionary benefits allow more flexibility but can result in unequal treatment. Furthermore, the legal arrangement depends on whether the focus of activation lies on benefits in kind, cash benefits, or supportive measures in the form of advice or custom-tailored measures.

From a comparative perspective, the combination of specific instruments and the intensity of actual application of different policy options can vary over time and across countries. Whereas integration contracts are a widely applied instrument in national activation policies, the prominence of enabling or demanding elements or the priority given to fiscal work incentives differs between countries and depends on the overall policy legacy.

4 Target groups of activation

Both narrow and wider concepts of activation are used in the academic and the policy-oriented debate. Narrow definitions point at the activation of particular target groups or benefit schemes whereas wider definitions point at modifications to the overall welfare state environment, which also implies larger target groups.

However, there are considerable country differences regarding the target groups and the scope of activation. Early stages of national activation policies have focused on specific benefit schemes such as unemployment insurance benefits or social assistance. More often than not, however, tighter activation in one field leads to a reshuffling of the recipients to other benefit programmes. Stricter activation of the unemployed or abolition of early retirement schemes e.g. resulted in a higher inflow to disability schemes. Hence, both from a policy perspective and from an analytical point of view, it is plausible to broaden the focus of policy action and analysis and to include all relevant benefit schemes available to the working-age population.

From the perspective of promoting labour market integration, improving the capacity of the employment system to generate additional jobs can also be perceived as a necessary element of activation strategies. Although reforms in employment protection or wage formation may not be part of the core elements of activation policies, they may constitute an important framework condition for the success of such a strategy.

From the legal point of view, it is crucial whether persons have an individual legal entitlement on activation, or whether benefits are granted only at the discretion of the administration or according to the "first-come, first-served" principle.

5 The economic view: Countering work disincentives

A key challenge for all developed political economies is to devise a welfare system that not only addresses "new" and "old" social risks adequately, but also helps reconcile societal security objectives with the demands of a dynamic and increasingly globalised economy. Established levels of out-of-work income from social benefits may pose the issue of weak or negative work incentives for persons whose earnings potential is limited as they suffer from a lack of formal skills or a depreciation of professional qualifications due to long-term unemployment or inactivity. Passive labour market policies associated with a certain level of benefits, long benefit durations and weak job search monitoring can result in reservation wages that are too high in comparison to realistic market wages. Hence, high reservation wages and low job search intensity are determined by the level and the duration of alternative income from social benefits leading to longer unemployment spells. The more generous the benefit system, the more pronounced these problems are likely to be.

To counter this, activating policies can be designed to combine two elements that are expected to bring individual expectations in line with realistic options on the labour market. On the one hand, policies to increase job search activity and the probability of accepting a job, even a low-paid one, can be implemented. On the other hand, policies to raise individual employability and productivity can be used to make job searchers more attractive to potential employers.

The first aspect implies more demand on individual behaviour in terms of mandatory job search obligations and potential sanctioning. Together with stricter availability criteria, this is expected to make benefit receipt less attractive, lower reservation wages and shorten unemployment duration.

Both demanding and enabling elements aim at lowering hurdles to employment, e.g. by replacing out-of-work benefits with in-work-benefits that depend on being active in (low-paid) employment. By topping up low wages ("make work

pay"), low earnings will be more acceptable. Subsidies paid to employers in order to compensate for low productivity, e.g. through lowering social security contributions, is a "work first" strategy aiming to improve the entry chances for weaker groups. An alternative to "work first" strategies for people with low earning capacities are investments in human capital to improve their employability in the longer run.

While demanding and enabling policies can strengthen individual job search efforts, the probability of accepting a job and improve employability, the success of activation also depends on the wider institutional framework of the labour market with respect to the potential of creating entry jobs for activated unemployed. Hence, a flexible labour market is a complementary element to activating labour market policies.

6 The welfare state perspective: Convergence and divergence across countries

The shift towards activation has direct implications for social rights or social citizenship and the acceptance of the welfare state. Post-war social policies in many European countries are characterised by more advanced entitlements and differing degrees of "de-commodification" (Esping-Andersen 1990). Hence, stressing "re-commodification" through emphasising the role of self-sufficiency and income through gainful employment instead of social benefits is a challenge to both the welfare state setup and its political economy. Turning to activation can be seen as a paradigm shift (Hall 1993) involving both a modification of policy instruments and policy goals.

This policy shift can build upon new or already existing, but dormant provisions in unemployment and social assistance schemes and related objectives. Activation tips the balance in favour of a more active and inclusive rather than passive and exclusive approach. Hence, activation means stronger intervention in spells of unemployment or inactivity periods and fewer acceptances of long-term benefit dependency and associated public expenditure. Traditional social policies are seen as part of the problem, less as a solution. In particular, transfer payments are perceived as having detrimental side-effects on individual employability and the overall performance of the labour market (Van Berkel and Hornemann Moller 2002).

Welfare state change, however, is difficult particularly if it involves retrenchment of well-established policies and societal expectations and therefore depends on particular explanatory factors (Pierson 1994, 2001). Analysing welfare state change has therefore been a major topic of comparative studies.

7 International and supranational influences

The shift towards activation has also been emphasised by transnational policy advice provided by international organisations like the OECD and supranational institutions like the EU. One triggering event in this respect has been the launch of the OECD Jobs Strategy dating back to 1993 (see also the revised one, OECD 2006, 2007). The OECD Jobs Strategy was one of the first broad reform catalogues emphasizing the role of work incentives and potential negative side effects of social benefits. Hence, in order to raise employment and bring down unemployment, the OECD recommended that member states increase the effectiveness of active labour market policies, improve work incentives within the unemployment benefit and tax system, increase wage setting flexibility and ease employment protection.

Increasing the level of labour participation is also one of the key objectives of the European Employment Strategy (EES) and the Lisbon agenda (Trubek and Mosher 2003). The activating agenda is encapsulated by the EES, which originally was concentrated on the activation of the unemployed, especially concerned with the issues of youth and long-term unemployment. Since 1997 the EES has been further developed. The Integrated Guidelines for Jobs and Growth adopted by EU-Member States in 2005 can be analysed in line with the "Adult Worker Model" (AWM) concept emerging as an EU-wide model where all adults are expected to take paid employment in order to secure economic independence. Implications for activating non-core workers in the AWM welfare state are the mobilisation of labour reserves by increasing employment rates as an indispensable condition to guarantee the viability of the welfare state, e.g. for women combining work and family life, a lifecycle approach to work (e.g. by discouraging early retirement and offering support for working conditions conducive to active ageing) and seeking to move not only those "willing and able" to take a job but also (un-willing) welfare claimants through workfare policies. The Lisbon strategy seeks to combine win-win solutions of both economic competitiveness and social progress (Hemerijck 2005) through a cumulative process of reforms improving upon the shortcomings of previous measures in one policy area after another.

Within the sphere of social protection, the changes in macro-economic management, wage policy and labour market conditions have resulted in a shift from passive policy priorities aimed at income maintenance towards a greater emphasis on reintegration, also captured by the shift from "out-of-work" benefits to "in-work" benefits. At the same time, policy makers in many countries have turned towards strengthening the minimum income protection function of the welfare state, coupled with strong activation and reintegration measures to ensure minimum standards of self-reliance.

Some observers argue that the supranational initiatives contributed to a remarkable process of "contingent convergence" of employment and social policy strategies, the adoption of increasingly similar policy initiatives, encouraged by the deepening of the EU economic regulation and social agenda, signalling a transition

from a passive welfare state to a more proactive social investment strategy (Hemerijck 2005).

Moving towards activation was also part of the "third way" policies implemented mainly by reform-oriented Social Democratic governments in Europe, in particular in the UK, Germany and the Scandinavian countries in the second half of the 1990s, which, in turn, also inspired the formulation of the EES and the Lisbon agenda (Green-Pedersen et al. 2001; Giddens 1998).

It seems fair to argue that common challenges in terms of benefit dependency and fiscal pressure within the welfare state, but also supranational recommendations and commonly shared "third way" ideas triggered and accelerated the shift towards activation and led to the diffusion of policy reforms aiming at stronger activation in formal and practical terms. Nevertheless, activation strategies still differ across countries with regard to underlying conceptual principles, instruments and intensity, the range of target groups covered and the interrelation with the labour market environment. From a comparative perspective a major focus of this volume is the issue of convergence or persistence of diverging activation regimes. Is there a "contingent convergence" of instruments, target groups and governance of activation?

The international as well as the supranational (i.e. European Community) law do not only promote the development of activating measures but set also certain legal limits. For example, the European Convention on Human Rights (ECHR) has to be mentioned here. Linked to the question of reasonable work, the discussion on forced labour revives again and again. The critics contend that it is a kind of forced labour if the unemployed has to accept any occupation at any salary as modest as it may be in order to avoid administrative sanctions. This point of view is discussed controversially, but at least the debate reveals the fear of the persons involved that they will be completely at the mercy of a liberalised labour market. More importance could inhere in the conventions of the International Labour Organisation (ILO). It is the task of the ILO to preserve the interests of the employed and to ensure sufficient protection.

Since the main objective of activation is the integration of the jobless into the labour market, defending the interests of the persons concerned would be a task of the ILO. However, due to its history, the ILO sees itself more as a lobbyist for people in work and less as a defender of the rights of unemployed or persons in activating measures. At least, the minimum standards stipulated in ILO Conventions can contribute to an improvement of the rights of people in the activation process. However, these ILO Conventions, contrary to the Convention on Human Rights, do not provide for an individual right to claim but are enforceable only in a relatively complex procedure on the political level.

The Law of the European Community can also play a role within the realm of activation. Apart from the European Employment Strategy already mentioned above, which forced the member states to reconsider their national employment strategies, the European law sets up general requirements via the interdiction of

discrimination. Activation rules must not be restricted to nationals but apply in the same manner to citizens of other member states and even to members of third countries legally living in the European Community.

8 The legal point of view: Implication for social rights

Activation changes the character of social rights once the respective schemes are "activated." Although provisions requiring some action by benefit recipients have been in place in most insurance-based benefit schemes, it seems fair to say that especially in countries with a job-related social protection tradition (the so-called "Bismarckian" type of social protection) they lay "dormant" before the shift towards activation occurred. This resulted not only in more precise and sometimes more restrictive conditions under which benefit could be claimed, but also in a more consistent implementation of these provisions.

As already stressed, activation implies – in its broad and also in a more narrow meaning – making established welfare rights more conditional on individual action and effort. This requires legal changes affecting many dimensions of social and labour market policies, from rules of eligibility and entitlements, behavioural conditions and sanctions to the range of activation measures available to the implementing agent, the organisation, competences and resources of local welfare offices, the distribution of competences between different layers of the state, and the question of funding. Moreover, it can affect fundamental constitutional rights such as free choice of occupation or the property guarantee. Contractual arrangements between the public employment services and the individual are also quite a new element in the governance of the welfare state. They redefine the relation between benefit claimants and the administration by introducing the concept of a contract between the individual and the state. However, the fit between activation policies and the legal tradition and institutions differs across countries. Hence, the room to manoeuvre for a recalibration of social rights and contractual agreements between the individual and the state will be defined by the degree of codification of social rights, the role of courts and the overall constitutional framework as well as by its interpretation through social and constitutional courts.

According to different legal traditions, the constitution can commit the state to provide an occupation for its citizens ("Right to Work"). As a rule, such constitutional principles normally have a mere programmatic character implying that the individual cannot deduce a direct entitlement. Still, these principles clarify that the integration into the labour market is not only the responsibility of the person concerned but that the creation of an adequate labour market is a duty of the state. Last but not least, sufficient job offerings are an essential prerequisite to a sustainable success of activation.

The constitution can also be interpreted as setting up limits for activation. In particular repressive activation implies the danger that sanctions go too far. The

protection of human dignity and granting a minimum livelihood are the lines that must not be crossed. A comparative study should therefore ask if there are constitutional constraints hampering the enactment of activation policies or if constitutional provision may even help legitimise such a policy shift.

9 How to implement activation policies? implications for the new welfare governance

An activating welfare state is not only a question of policy reforms leading to less de-commodification via retrenchment or workfare and the definition of the target groups, but it is also linked to changing forms of governance in welfare policies. How to implement activation policies is a core concern in understanding the full effects of labour market and welfare reforms. In the discussion of activation policies, it seems by now widely accepted that the success of activation policies is at least partly dependent on effective working relations between public actors implementing these policies in job centres or welfare offices, the local and regional community and the individuals that are to be activated. In order to implement the "demanding and enabling" or "rights and duties" principles, to reduce public expenditure, to increase the quality of public services and the responsiveness of the agencies delivering them, specific forms of "New Governance" are expected to contribute to the realisation of activation objectives.

In instrumental terms, tools of New Welfare Governance implemented in the present welfare state paradigm are quite similar across countries. They include processes of territorial or functional decentralisation and the introduction of a split between those who provide services and those who purchase or use them, which is organised through contractual arrangements, goal-oriented management and budgeting. The way activation policies are delivered also affects the definition of the relations between benefit recipients and case workers, the organisational setting in which case workers operate, and the relations between local welfare offices or job centres, regional governments, the federal administration and the national legislator. New forms of Governance, then, refer to a set of organisational or managerial forms and processes by reshaping relationships between various actors and institutions and by introducing new ways of steering and running public institutions.

Earlier studies (Clarke et al. 2000) have demonstrated that the way in which public policy is administered contributes significantly to the nature and effects of the welfare state, particularly to citizen-state relations. Thus, in promoting the success of social policies, the provision and delivery has to be considered in connection with the organisation and management of this process. It is therefore surprising that in the proliferation of comparative welfare studies, the implementation and governance side of welfare has only recently received more attention.

This is even more relevant given the fact that governance and implementation issues are crucial in the area of activation. On the one hand, national systems of protection against unemployment usually have a dual nature with a divide between responsibilities in administering and funding insurance-based and assistance-based benefit schemes, but also between the delivery of active and passive policies. Hence, co-operation or integration of responsible bodies have been on the agenda of national policy reforms and both OECD and EU recommendations. Re-arrangements of governance should help overcome institutional fragmentation between unemployment insurance and assistance schemes by establishing "single gateways" as well as between active and passive benefit administration ("one-stop shops") so that efficiency losses and problematic incentives to reshuffle beneficiaries are eliminated. Clear and consistent incentives for funding and administering parties are as important as are transparent structures of activation governance from the perspective of the client. Beyond administrative co-operation or integration, this is also a case for policy coordination aiming at a simultaneous or stepwise closure of escape routes and a "homogenisation of unemployment support" by setting up "single gateways" to benefit receipt (Clasen and Clegg 2006). However, effective governance is not achieved merely by organisational harmonisation. Successful implementation of activation policies also depends on the general acceptance of the activation paradigm in the organisations responsible for implementing it. This can be problematic given the paradigm shift or path departure from established social policies implied by this broad policy change (Meyers et al. 1998).

10 The specific contribution of this volume

The aim of this volume is to give a broader picture of the changing scope of activation both across countries and over time, as one of the major differences between national activation strategies is the definition and timing of activation for different target groups. Contrary to existing research, we do not limit the analysis to selected benefit schemes or categories of benefit recipients but aim at covering the major schemes available to jobless members of the working-age population. Hence, this volume provides an up-to-date analysis of activation policies across the working-age population on benefits in seven European countries: Germany, Denmark, Great Britain, France, the Netherlands, Sweden, Switzerland and the US.

When looking at national activation policies, we can see a clear tendency to widen the range of target groups and benefit schemes to be activated, but also a certain extent of convergence towards "work first" policies with less emphasis on human capital formation – even in the Scandinavian countries. Hence, looking only at unemployment insurance or social assistance would not provide a complete and comparable picture of current activation practices.

In contrast to existing work on activation, we also aim at a genuine interdisciplinary approach by bringing together economic, social or political science

perspectives and legal analysis. Given the fact that activation policies have rarely been analysed from a legal point of view, in isolation or in combination with other perspectives, this volume benefits from incorporating a systematic discussion of the legal implications of activation, in particular the role of constitutional provisions and limitations on the one hand and the court jurisdiction on the other hand. Therefore, a particular focus of this volume lies on the actual implementation of formal or legal activating provisions and on the governance reforms associated with the shift towards activation. Both implementation and governance have played only a minor role in comparative studies on activation in welfare states and economic research so far.

Does activation succeed in bringing the jobless into work? If so, under which conditions in terms of implementation, governance structures and labour market environment does activation work best? Is there a general or context-specific pattern of viable activation strategies? This volume tries to give answers to these research questions by bringing together country expertise with available empirical evidence on the outcomes of activation policies in real terms.

11 Outline of the volume and the country chapters

The volume provides a collection of country studies which represent different welfare state regimes and types of employment systems:

- Two Anglo-Saxon, liberal arrangements (United States, United Kingdom)
- Two Scandinavian welfare states (Denmark, Sweden)
- Two conservative, Continental European countries (France, Germany)
- Two "hybrid" systems (Switzerland, Netherlands).

The individual country chapters are structured in a way that allows for a systematic comparison of national experiences with activation but also provides some space for discretion regarding the selection of important issues from the national perspective. Hence, all country studies address the following issues:

1. The concept of activation in the national context
2. The political logic of the shift towards activation and its evolution over time, in particular regarding the question whether activation policies are part of a coherent and explicit transformation of the welfare state or take place only in some policy fields
3. Target groups of activation
4. Activation policies in terms of changes in benefits, conditionality and enabling schemes
5. Legal aspects such as social citizenship and the relation between rights and obligations
6. Governance reforms and the actual implementation process
7. Evidence on outcomes of activation in terms of labour market integration, benefit dependency, and public expenditure.

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Activation Policies in Germany: From Status Protection to Basic Income Support

W. Eichhorst, M. Grienberger-Zingerle, and R. Konle-Seidl

1 Introduction

Although Germany has a long-standing reputation as a passive welfare state with elaborate schemes of status-protecting income replacement through social insurance in case of unemployment and a full-blown system of active labour market policies, all benefit systems had formal elements of activation and work requirement – but they had not been enforced systematically.

In recent years, however, reforms of active and passive labour market policy were implemented in Germany in order to create a more activating labour market and social policy regime through awakening dormant activation principles. Changing the system of unemployment insurance benefits and basic income support as well as the repertoire of active labour market policy instruments and making benefit receipt more conditional upon job search and acceptance of job offers was a major issue on the political agenda. The reform of the benefit system also involved a major overhaul of the governance of labour market policy and has far-reaching implications for the logic of the German welfare state. All these reforms generated considerable public attention and interest from foreign observers. Yet, it remains to be seen to what extent activation is really implemented in practice and if the desired economic and societal objectives of activation could be achieved through the reforms adopted.

2 The shift towards activation

2.1 The legacy of a conservative European welfare state

The German welfare state is typically depicted as the prime example of the conservative welfare regime, for which the preservation of social status is central (Esping-Andersen 1990). It has also been prominently characterised as a “frozen welfare state” highly resistant to change (Manow and Seils 2000). Facing a difficult economic environment since the mid-1970s, policy makers and social partners used active and passive labour market policies to reduce labour supply by taking “surplus labour” out of the labour market and shifting the unemployed to benefit schemes and active labour market programmes that were not effectively oriented towards swift reintegration into the labour market. For some decades, active and passive labour market policies provided a “convenient” and “socially compatible” way of subsidising entrepreneurial adjustment to dynamic global markets and help stabilise competitiveness of manufacturing that was at the core of the German employment system (Streeck 1997) while at the same time facilitating a “social policy” approach to unemployment emphasising income protection and “benevolent” treatment through active policies.

Availability of rather generous insurance based social benefits related to labour market status in the tradition of the “Bismarckian” model helped limit income

inequality and wage dispersion. Rather than creating a flexible and more inclusive labour market, the institutional arrangement of the German labour market of the 1980s and 1990s was conducive to limiting low-wage employment and wage inequality. This model focusing on skilled labour was also stabilised by rather restrictive labour market regulation (Estevez-Abe et al. 2001).

Whereas this institutional pattern helped stabilise the core of the labour market, it also resulted in a strong segmentation of the labour market and high long-term unemployment. However, the German "high equality, low activity" equilibrium (Streeck 2001) resulted in an ever increasing burden of non-wage labour costs as a growing number of benefit recipients in the labour market directly translated into rising social security contributions and fiscal pressure on the state budget that was used to cover deficits in social insurance. Thus, the sustainability of the German "welfare state without work" (Esping-Andersen 1996) was at risk as it tended to erode its own financial basis in particular facing increasing pressure on wage costs stemming from more intense international competition (Manow and Seils 2000).

2.2 The old system of unemployment benefits

Prior to the Hartz reforms that came into force between 2002 and 2005, Germany had a three-tier system of income protection in case of unemployment:

1. Unemployment insurance benefit (UB, *Arbeitslosengeld*) provided earnings-related income replacement for a limited duration of up to 32 months if unemployed had been in employment covered by social insurance for at least 12 months. Unemployment insurance benefits were funded through employer and employee contributions and administered by the Federal Employment Agency, which was also in charge of implementing active labour market policies.
2. Unemployment assistance (UA, *Arbeitslosenhilfe*) was a system of means-tested but earnings-related benefits for long-term unemployed after the expiry of unemployment insurance benefits. Hence, it provided income support for unemployed that had some prior employment experience but had become long-term unemployed. Unemployment assistance was granted for an unlimited period and funded through the federal budget, i.e. by general taxation. This scheme was also implemented by the Federal Employment Agency, with recipients of unemployment assistance in principle having access to similar active labour market schemes.
3. Social assistance (SA, *Sozialhilfe*), finally, provided basic income protection on a means-tested and flat-rate basis for all German inhabitants – with or without employment experience – who could not rely on sufficient resources from earned income, other social benefits or family transfers. Thus, social assistance was the major protection system for unemployed with either no employment experience or unemployment insurance/unemployment assistance claims that did not match the guaranteed minimum income. Social

assistance was funded by the municipalities that were also responsible for reintegrating recipients into the labour market through specific active measures.

In comparison to the unemployment assistance scheme, means-testing was harsher in the social assistance scheme; moreover, any job was considered acceptable. For the labour market integration of employable social assistance recipients, a fairly rudimentary labour market policy, the "Help to Work" scheme, was available. It was operated by the municipalities with a considerable scope of discretion. There was no entitlement to integration measures by the PES.

All systems had formal elements of activation and work requirement, but this was not enforced systematically in practice. For example, "Help to Work Schemes" (*Hilfe zur Arbeit*) incorporated in the Social Assistance Act (§§ 18–20 BSHG) was based on the "rights and obligation" principle. The BSHG nevertheless failed to state specific provisions on the reasonability of job offers. Court rulings have tended to show that a protection of former occupational status no longer exists. Personal grounds are above all seen in age or sickness, while familial grounds mainly take account of a single parent's care of a child under the age of three. Despite the fact that the law on social assistance called for individual efforts to search for work in order to be able to become independent from public assistance, activating interventions were not implemented systematically. Some local authorities have been able to achieve remarkably good results in reintegrating assistance applicants under the "Help to Work" scheme. However, the intensity of activation differed strongly between municipalities, and many local authorities placed social assistance recipients in work opportunities that were covered by social insurance in order to create new entitlements to unemployment insurance benefits and unemployment benefits (Voges et al. 2000). This proved to be an effective way of shifting the burden of transfer payment to unemployment insurance. The fact that the two predecessor schemes of the current Unemployment Benefit II (*Arbeitslosengeld II*) were subject to different rules and administered by different administrations posed the described problems that hampered efficient activation of recipients.

Suitability criteria in unemployment insurance, however, were also tightened over the 1990s. The formal strictness of the unemployment protection regime was increased as legal provisions on benefits being conditional upon willingness to work and accept jobs not equivalent to prior qualification were reformulated in a more restrictive direction with occupational protection being revoked completely in 1997. The main motivation, however, was not effective activation, but short-term fiscal stabilisation. At the same time, access to benefits became slightly more difficult, and benefit generosity was reduced marginally. Nevertheless, a rather "permissive" and benefit-centred approach to unemployment was still dominant in practical implementation.

2.3 The Hartz reforms

With the number of recipients of UA and SA benefits steeply rising, largely due to a continuous increase in long-term unemployment, reforming these systems became a priority on the agenda of labour market and social policy. In the late 1990s, the problem of fiscal disincentives was more widely discussed, thus paving the way to some pilot projects on joint initiatives of local PES agencies and municipal social assistance offices to reintegrate the long-term unemployed into the labour market (the so-called "Mozart initiative"). This was followed by the JobAqtiv Act of late 2001 that aimed at a more coherent activation principle in German labour market policies for the first time. However, the moderate attempt of JobAqtiv was superposed by the PES placement scandal and the work of the Hartz commission, a government-initiated expert committee that presented its report in August 2002. This report formed the base for a package of reforms aiming at activating both short- and long-term unemployed, reforming the PES and the institutional repertoire of active schemes. Finally, with the Fourth Hartz Act (*Hartz IV*) coming into force in January 2005, unemployment assistance and social assistance were replaced by a single means-tested replacement scheme for persons in need and able to work (*Arbeitslosengeld II*, referred to as UB II below) not entitled to unemployment insurance benefit or after expiry of this contribution-based benefit (*Arbeitslosengeld I*, UB I).

Besides UB II, the new basic income scheme provides a social allowance (*Sozialgeld*) to persons who live together with needy persons capable of working in a joint household (a so-called *Bedarfsgemeinschaft*)[1]. The recipients of social allowance are normally children below the working age of 15 years. Those incapable of working receive social assistance according to SGB XII, which continues to be the responsibility of the municipalities (see Table 2).

Hartz IV radically changed the German system of wage-related welfare. The new Unemployment Benefit II scheme has a dual aim: on the one hand, it was designed to prevent poverty but not to secure previous living standards. Thus, for those having received social assistance before, the new legislation actually allows them to receive marginally more money and access to job employment services. For former recipients of a substantial amount of unemployment assistance, the level of transfer payment decreased.

[1] The notion of *Bedarfsgemeinschaft* includes: the needy persons capable to work; the parents living in the household, or the parent, respectively, of an under-age, unmarried employable child and this parent's partner living in the household; the not permanently separated spouse as partner of the employable person in need of assistance; the person living with the employable person in need of assistance as a cohabitant; the partner not permanently living apart from the employable person in need of assistance; the under-age unmarried children belonging to the household of the aforementioned persons to the extent that they are unable to procure their means of subsistence from their own income or assets.

Apart from its social policy objective, the aim of this reform was to lower unemployment but also to ease the burden of taxation and non-wage labour costs by reducing benefit dependency. The major lever to achieve this goal was the shortening of individual unemployment spells through accelerated job placement and more coherent activation of the beneficiaries of unemployment insurance benefits and unemployment or social assistance. Less generous benefits for long-term unemployed, stricter job suitability criteria and more effective job placement and active labour market schemes were the instruments to achieve this goal. However, as termination of need is the core objective, there is no formal labour market availability criterion. But benefit recipients can be demanded to take up any job and follow obligations stemming from integration agreements.

Table 2. The old and the new benefit system

Old System (until 2004)	New System (since 2005)
Arbeitslosengeld (unemployment insurance benefit): funded through contributions, earnings-related, limited duration	*Arbeitslosengeld I* (UB I): funded through contributions, earnings-related, limited duration
Arbeitslosenhilfe (earnings-related unemployment assistance): tax-funded, earnings-related, means-tested, infinite duration	*Grundsicherung* (Basic income scheme for needy jobseekers) Consisting of *Arbeitslosengeld II* (UB II): tax-funded, means-tested, flat rate, after expiry of UB I (and temporary supplement), infinite duration (integration of "Arbeitslosenhilfe" and "Sozialhilfe" for people capable of working) but stronger principle of activation *Sozialgeld* (social allowance) for children below the working age of 15 living in a household of an UB II recipient
Sozialhilfe (social assistance): tax-funded, means-tested, flat rate, infinite duration	*Grundsicherung für Erwerbsgeminderte und im Alter* (social assistance): means-tested, tax-funded for those working-age people not capable of working and for needy persons above 65 years

For activation to become an effective answer to benefit dependency, the labour market, however, must improve its capacities to create jobs (Eichhorst and Konle-Seidl 2006). Therefore, part of the Hartz package was devoted to a (limited) flexibilisation of the labour market (Jacobi and Kluve 2006; Eichhorst and Kaiser 2006). This was not right at the core of activating labour market policy, but should facilitate it.

The practical enforcement of "rights and duties", however, is the core element of the Hartz reforms. The activation strategy is implemented in virtually every element of the labour market policy framework. The Hartz reforms shifts priority

towards active measures that require proactive behaviour of the unemployed and promote their direct integration into regular employment. To this end, the reform re-designed integration subsidies, introduced new forms of wage subsidies, start-up subsidies and jobs with reduced social security contributions.

2.4 The political logic behind the policy shift

Germany's rather late, but broad and massive shift to activation or – more precisely – awakening of dormant activating principles was the direct result of a long period of reform gridlock and postponement in labour market policy. One explanation is German reunification. As a consequence of reunification in Germany, not the restructuring, but the expansion of traditional instruments of active labour market policies, particularly job creation schemes, but also passive income support was on the agenda in the beginning of the 1990s (Manow and Seils 2000). Another explanation refers to the strong role of social partner self-administration in the Public Employment Service (Trampusch 2002) that were interested in controlling resource allocation to favour their clientele, take "surplus labour" out of the labour market and shift it to active and passive labour market policies and other social benefit schemes while deficits in unemployment insurance were covered by the federal government or higher contributions.

Although this resulted in rising non-wage labour costs which in turn hampered employment creation. Despite the fact that rather critical evaluation studies on active labour market policies and employment disincentives in benefit systems, a more fundamental overhaul of active and passive labour market policies was virtually a non-issue in the German political economy until the early years of the current decade. Reforms in this area would have questioned the implicit "social treatment" of unemployment and implied a more prominent role of low-wage employment as a tool of labour market re-entry for the long-term unemployed as well as a more general flexibilisation of the labour market.

The Red-Green coalition that came into power in 1998 was divided on this issue, with the major fragmentation between different wings of the social democratic parties. On the one hand, the new government revoked some of the restrictive provisions of the prior Christian-Democratic/Liberal government and tried to stabilise the "social policy" approach to unemployment. On the other hand, it tried to develop a more coherent normative framework for labour market and welfare state reforms referring to the concept of the "activating state," which was mainly inspired by New Labour and "third way" approaches formulated in the United Kingdom (Giddens 1999).

The concept of the "activating state" would have meant focusing public interventions on "enabling" programs that could help individuals take their own responsibility. In labour market policy, this implied stressing the conditionality of benefits upon individual efforts and cooperation, thus emphasising the fundamental symmetry of "rights and obligations." As it would also mean a break

with the tradition of a status-protecting and occupation-oriented welfare state, this concept met only limited acceptance and strong opposition from major fractions within the Social Democrats. Perhaps the best example for this reluctance is the rejection of the alleged "neo-liberal" Schröder and Blair paper in 1999. Hence, activation could not become a more systematic point of reference or an elaborated concept in the early years of the Red-Green coalition.

Reform stalemate could only be overcome in the face of the window of opportunity of the "placement scandal" and the subsequent Hartz report in 2002 with an expert commission legitimising further reforms of labour market policy and regulation, changing the role of social partner tripartism in BA and national policy-making, thus paving the way for more determined government action (Eichhorst and Kaiser 2006; Streeck and Trampusch 2005).

Activation was reintroduced by the report of the Hartz Commission who made references to good practices at the national levels, e.g. models of effective cooperation between BA and municipalities in selected "Mozart" projects, as well as international "best practices" and benchmarking of labour market performance and policies. Hence, the Hartz reforms focus was inspired by activating policies for the unemployed in other European countries that were perceived to be more successful in lowering unemployment such as the United Kingdom, the Netherlands or Denmark (Bruttel and Kemmerling 2006; Eichhorst et al. 2001; Fleckenstein 2004).

Government's willingness to implement the Hartz proposals in a comprehensive way implied further clarification of crucial issues such as the level of the unified benefit for long-term unemployed that was to replace unemployment assistance and social assistance for people capable of working (*erwerbsfähig*). With the "Agenda 2010" announced in March 2003 in a situation of high and rising unemployment and considerable political pressure, it became clear that the government would opt for a flat-rate benefit with about the same level as social assistance, thus effectively severing the link with prior earnings. This was to be implemented with the Fourth Hartz Act (Hartz IV) in January 2005. In addition, the government announced that it would shorten unemployment insurance benefit duration for older workers from 32 to 18 months and cut dismissal protection and other elements of labour market regulation (Jantz 2004).

This sequence of rather "harsh" reforms that were perceived as a break with the traditional social policy approach to labour market problems provoked broad public unrest, which eventually resulted in a significant decline in political support for the Red-Green coalition, in particular the Social Democrats, the emergence of a new left-wing party and the electoral defeat of Red-Green in autumn 2005 (Eichhorst and Sesselmeier 2006)[2].

[2] This was also due to the fact that Hartz IV led to a change in unemployment statistics. As the reform changed the rules for eligibility criteria for unemployment benefits, requiring

Opposition was strongest in the eastern part of Germany (Rucht and Yang 2004). There, long-term unemployed could rely on relatively high and unlimited payments of unemployment assistance due to widespread full-time employment of both men and women in the former GDR. Hence, abolishing earnings-related benefits, replacing them with flat-rate benefits and introducing a stricter activation policy was perceived as a threat to individual well–being, in particular given the poor labour market perspectives in eastern Germany.

Therefore, Hartz IV was perceived as a "social cruelty" that would result in severe benefit cuts, increasing poverty, strict supervision of jobseekers and forcing people in low-wage jobs, thus leading to a growing number of "working poor" and a tacit "Americanisation" of the German labour market, something that had to be avoided by any means in the past. Thus, Hartz IV became the symbol for a policy that was seen as a break with the principle of "the social insurance state" of providing status-oriented benefits while imposing only limited demands on the unemployed.

Even to date, there is no societal consensus on policy objectives in labour market policies. Hence, the paradigm shift to activation is not yet complete. Moreover, there is a dominating sense of injustice. It is fair to argue that the broad rejection of the Hartz IV reform is due to a fundamental deficit of legitimising the "hidden" or silent shift from a social insurance state to a welfare state dominated by basic income support and stronger activation.

2.5 The silent change of the welfare state logic: From Bismarck to Beveridge?

Despite ongoing reforms since the mid-1990s, it is frequently argued that the Hartz IV law marks a critical juncture resulting in the departure from a conservative welfare state securing the acquired standard of living and a move towards an Anglo-Saxon welfare state relying on means-tested welfare and securing only basic needs. In fact, the Hartz IV reform is part of gradual shift from "Bismarck" to "Beveridge" in that it weakened the principle of status protection and contribution-equivalence in unemployment benefits for the long-term unemployed and strengthened the role of means-tested flat-rate benefits providing a minimum income floor only. However, stricter means-testing and flat-rate benefits imply a higher degree of interpersonal redistribution. Table 3 shows the relationship between recipients of contribution-based and means-tested flat-rate benefits in 2006.

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all recipients of former social assistance "capable of working at least 3 h a day" to register as unemployed, the number of registered unemployed exceeded 5 million for the first time in January 2005. Although this was only a statistical effect and did not mean a substantial increase in non-employment or broad unemployment, it was perceived as a major policy failure and the proof of the fact that the Hartz reforms did not work.

Table 3. Contribution-based and means-tested unemployment benefits (2006)

Type of benefit	Number of recipients	In percent of working-age population (%)	Number of unemployed (in percent of all recipients)
Insurance scheme (UB I)	1,445,200	2.7	1,123,100 (78)
Means-tested scheme (UB II)	5,392,100	9.8	2,823,200 (52)
Total UB I and UB II	6,837,300	12.5	3,820,400 (57)

Source: Bundesagentur für Arbeit

To secure social status and the acquired standard of living, the unemployment benefit and the previous unemployment assistance referred to the former income. The duration of the unemployment benefit varied strongly according to age. Until early 2006, drawing benefits for up to 32 months was possible for older workers, thus stressing a widely perceived "savings account logic" of unemployment insurance. In the old system, a person becoming unemployed was entitled to unemployment insurance benefits for a certain period if he/she had an employment record of at least 1 year during the past few years. This benefit initially amounted to more than two thirds of the previous income with a built-in ceiling in accordance to the "equivalence principle," and thus "rewarded" prior earnings and effort. The higher an individual's achievements during his or her employment career, the higher the benefits. Older workers with a longer employment record could rely on extended unemployment insurance benefits.

When unemployment benefits were exhausted, the unemployed could apply for unemployment assistance which was still related to previous earnings but on a lower level. Although unemployment assistance was tax-funded, it was seen as a prolongation of unemployment insurance benefit (Karl et al. 2002). The "equivalence principle" was complemented by the principle of "occupational protection" that defined the "suitable job" an unemployed person had to accept as more or less adequate to the position held before becoming unemployed. Last but not least, persons relying on unemployment insurance benefits could also benefit from heavy investment in "enabling" active labour market policy schemes. These programs were not primarily used as a work-test but as instruments to stabilise human capital and restore benefit claims.

Hence, removing occupational protection (as early as in 1997), but more specifically, shortening benefit duration in unemployment insurance for older workers and abolishing earnings-related unemployment assistance means a departure from status protection and the strong reliance on the insurance principle and the equivalence of contributions and benefits. Abolishing longer benefit durations for older unemployed and earnings-related unemployment assistance was seen as an "expropriation." As the reform interfered with widely accepted principles of "social justice" embodied in an insurance-based system, this change was perceived as "unfair," particularly given the fear of increased economic pressure not only due to lower and less sufficient benefits but also due to the announcement of stricter activation and placement even in low-wage jobs. While such prospects are well established and generally accepted in countries like the United States or

the UK, they mean an overhaul of established notions of the German social model, which strongly rests on what could be called "social security citizenship" (Ludwig-Mayerhofer 2005) . This uneasiness with Hartz IV and the shortened UB I benefit period paved the way for the most recent steps to soften the impact of activation-oriented reforms through extending maximum UB I duration for older unemployed from 18 to 24 months again and a renaissance of public job creation schemes. In particular, the announcement of having longer UB I benefit periods for older workers has proven to be highly popular given the widely shared perception of a "savings account logic" embedded in this scheme.

Labour market policies in Germany helped to create and sustain the illusion that the "implicit contract" of rewarding previous contributions of the unemployed to the German economy – through benefits and labour market measures – was still intact. In fact, this contract had been undermined to a considerable degree for an increasing number of long-term unemployed who, in addition to their often meagre *Arbeitslosenhilfe*, had to rely on *Sozialhilfe* payments, thus receiving financial support that was only related to "need" and not to previous labour market achievement.

3 Activating labour market policy today

3.1 The general framework

The first and foremost objective of activating labour market policy in Germany is the reduction of individual unemployment duration by bringing unemployed persons, in particularly the long-term unemployed, back to work.

The basic principle of activating labour market policy in Germany is "*Fördern und Fordern*", i.e. enabling or supporting the jobseekers on the one hand, and demanding individual effort on the other. The recent reforms are in fact a recalibration of the Janus-faced nature of the German welfare state emphasising both the role of demanding provisions (*Fordern*) and the enabling or empowering elements of social and labour market policy (*Fördern*). While these principles have been in place for some time under former social assistance and in the well established active labour market policy framework, what is new is a tighter conceptual and practical linkage of promoting and demanding elements (*Fördern durch Fordern*). These general orientations were explicitly fixed in the new SGB II (Second Book of the German Social Security Act, *Sozialgesetzbuch II*).

The concept of individual "co-production" for needy persons "capable of work" replaces the former paternalistic model. As participation in the labour market is assumed to be the high road to societal integration, taking up work is superior to receiving passive benefits only. Formal terms defining the basic orientation of German activating labour market policy, however, open up ample space for divergent interpretations that are crucial for actual implementation.

Complementary to activating instruments in a more narrow sense, SGB II comprises enabling schemes such as labour market policy programs (§ 16 (1) SGB II) and other social services like child care provision or help in case of social problems like drug abuse, debt or housing (§ 16(2) SGB II) that have been conceived in order to facilitate labour market integration of employable benefit recipients, but do not reinforce benefit conditionality.

3.2 Target groups

Activating measures address foremost the target group of unemployed persons – both UB I and UB II recipients. To avoid long-term unemployment, which begins after 12 months according to both the German and the European definition, these persons have to register promptly with the local employment offices as soon as unemployment is foreseeable.

The medical definition of "capability to work" (not "employability") – with 3 h a day in the foreseeable future under the usual conditions of the labour market – results in a rather broad demarcation of the target groups which exceeds the focus of activation in many other European countries. This contributes to higher figures of open (registered) unemployment while in other countries a narrow definition of capability of working means fewer people registered as unemployed but assigned to passive schemes such as disability benefits (Konle-Seidl and Lang 2006).

The "capability of working" (*Erwerbsfähigkeit*) features prominently as the overall concept of this approach. The individual working ability is evaluated purely from a medical standpoint. It is decided by the institution responsible for the safety net, i.e. usually the local employment office.

Certain sub-groups of persons "capable of working" are exempted from the availability criterion under the unemployment insurance regime (UB I), and the conditional job search requirement under basic income support (UB II). This holds for sick people and for persons who care for children less than 3 years old or care for family members, as well as for older persons who can opt out from activation and availability for work without endangering their UB I or UB II benefit claims if they enter the pension system as early as possible (the so-called *58er-Regelung*). However, there is a contradictory approach regarding to older persons with some enabling schemes on the one hand (wage subsidies and wage insurance) and the clause exempting them from the obligation to be available for work. Accordingly, these persons receive public support but are not obliged to seek or accept employment – nor are they recorded as unemployed in the statistics. These arrangements are in principle of temporary nature, but have been extended repeatedly.

Persons with disabilities form an additional group at the core of the legislators' activating strategy. These persons are not subject to the same requirements as other unemployed persons, in particular their rights to support are less tightly linked to duties. The prime objective for many years, however, is to promote participation in working life. The principle of supporting rehabilitation measures instead of

paying passive income support for disabled people has been a basic feature of German active labour market policy also for many years now. Furthermore, access to passive schemes like disability allowance is rather restrictive and not seen as an attractive "escape route" like in most other European countries (Konle-Seidl and Lang 2006)[3].

3.3 Demanding and promoting under SGB III (unemployment insurance)

The role of demanding and promoting elements (*Fördern und Fordern*) differ with respect to individual rights and obligations between unemployment insurance (Third Book of the Social Security Act, SGB III) and basic income support (Second Book of the Social Security Act, SGB II).

The claim to unemployment benefit under § 118(1) SGB III arises in the event of unemployment and further vocational training. Workers entitled to unemployment benefit must be unemployed and registered with the employment office and must have fulfilled the qualifying period.

Unemployed persons pursuant to § 119(1) SGB III are persons without work who seek to end their unemployment (personal efforts) and are available for the placement efforts of the Employment Agency (availability). Persons are considered to be without work if they do not work at all or if they work less than 15 h per week. To be available, the unemployed person must be capable of work and be prepared to work, i.e. have the subjective will to work.

An important aspect of job-seeking is that unemployed persons need only accept and search for work that can be reasonably expected of them (§§ 119(5) no. 1, 121 SGB III). The extent of this restriction on the seeking of reasonable work is largely influenced by the courts, which interpret it on the basis of individual case decisions.

The amount of unemployment benefit is regulated in § 129 SGB III and depends on family status, wage-tax bracket and weekly remuneration. Accordingly, insured persons with at least one child are entitled to 67% or, without children, to 60% of net remuneration fixed as a lump sum. Unemployment insurance claims are based on an employment record and provide for benefits proportional to prior earnings in the reference period. It does not take individual means or need into account.

Unemployed persons must through their own personal efforts utilise all possibilities available for their occupational integration (§ 119(4) SGB III). These

[3] This means that the share of recipients registered as unemployed and included in mandatory job search activities or activation programmes is higher in Germany (12.5% of working-age population) while that of "inactive" recipients of passive welfare benefit schemes (3.1% of working-age population) is lower than in other countries.

efforts include the performance of duties set forth in the integration agreement, participation in third-party placement services and the use of self-information facilities provided by the Employment Agencies.

The concept of personal effort bears activating features in that the search for employment is a precondition for the receipt of unemployment benefit. The nearest sanction for lack of personal effort is the imposition of a disqualification period. Unemployed are deemed available for the placement efforts if, *inter alia*, they are capable of and allowed to exercise an occupation which can be reasonably expected of them under the usual conditions of the labour market, and which is subject to compulsory insurance and comprises a weekly working time of no less than 15 h. An important criterion of this definition is "suitability," which is detailed in § 121 SGB III and purports that an unemployed person can be expected to perform all occupations conforming to his or her working capabilities to the extent that general or personal grounds do not oppose the reasonability of an employment.

However, in contrast to basic income protection, not all jobs are considered suitable for unemployment insurance beneficiaries. There is not only a minimum threshold of 15 h per week, but also a minimum level of earnings to be achieved that related to prior wages and to the benefit levels. In earlier times, the protection of an acquired earnings level and occupation was even stronger. But the principle of occupational protection had been eroded to a considerable degree in 1997 when new legislation stipulated that after 6 months of unemployment any job was suitable that provides earnings at least equivalent to unemployment compensation.

Nevertheless, until 1998 it was possible to stabilise and renew claims for unemployment insurance benefits through participation in publicly funded training programs and until 2003 in direct public job creation. These possibilities are cut now, and additionally the Hartz legislation strengthened availability criteria by defining removal as reasonable and just in case of single unemployed persons and by shifting the burden of proof in case of rejection of job offers to the unemployed. Last but not least, the cut in maximum benefit duration from 32 to 18 months for unemployed aged 55 and over (effective since 1 February 2006) means that older unemployed move to means-tested basic income support earlier in their unemployment spell.

3.4 Demanding and promoting principles under SGB II (basic income scheme)

Basic income support for needy jobseekers *(Grundsicherung für Arbeitsuchende)* has the double aim of providing sufficient minimum resources to ensure a decent standard of living in order to avoid poverty ending benefit dependency through reintegration into gainful employment Basic income support for jobseekers is awarded under § 7 SGB II to persons who have attained the age of 15 but are still under 65, are capable of gainful employment, in need of assistance and have their customary place of abode in the Federal Republic of Germany.

According to § 1(1) SGB II "people capable of working" should overcome neediness through their own efforts and their own means. An individual is needy if he/she is unable to earn a living for him- or herself and for the other family members living together in one household. The individual in question is required to take on an acceptable job and use his own income and (certain) assets as well as that of his/her partner. Legislation on basic income support (SGB II) pursues fore-most social objectives. It provides a needs-oriented income so that all needy persons in Germany have sufficient means of subsistence.

Although basic income support for needy jobseekers is foremost a genuine social policy programme to avoid poverty, it has a strong focus on the labour market. With Hartz IV the interface of social and labour market policy has been redefined and the traditional divide between both policy areas eroded. It focuses on need (not on unemployment as such) and on interventions to reduce need – with attempts at labour market integration featuring prominently as a promising way to end up benefit dependency.

Thus, the new regime of basic income points at personal responsibility and at enabling and supporting interventions in order to enhance individual capacities to overcome need. Labour market availability and willingness to take up any job – even below wages set by collective agreements or public employment opportunities – are therefore crucial elements of activation addressing recipients of basic income support as long as they are capable of work. At the same time, however, UB II recipients can keep their benefit if they take up low-wage jobs that fit into the earnings disregard clause. The current provision stipulated that the first EUR 100 of monthly earnings are not taken into account when benefits are calculated whereas between EUR 100 and 800 20% remain with the beneficiaries as is true for 10% of earnings between EUR 800 and EUR 1,200 for singles or EUR 1,500 for UB II recipients with children (§ 30 SGB II).

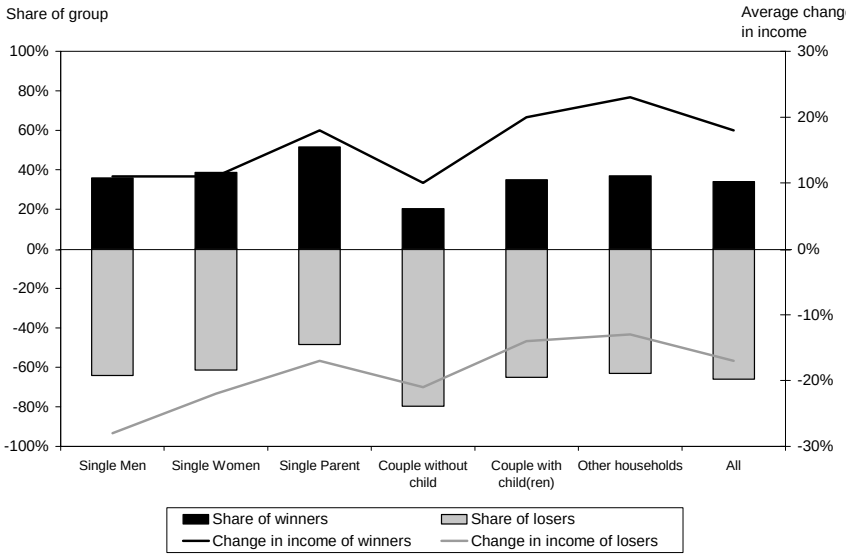
Pursuant to § 19 SGB II, UB II consists of benefits to secure subsistence, including reasonable costs of accommodation and heating, and a fixed-term supplementary allowance under § 24 SGB II, which is to cushion the transition from unemployment assistance to UB II. It provides two thirds of the difference between UB I and UB II for 12 months and one third for an additional year.

The normal benefit under § 20(2) and (4) SGB II is a lump-sum amount that is supposed to cover all living expenses. From 1 July 2008, this amount has been fixed at a standard rate of EUR 351 throughout the federal territory. Benefits for accommodation and heating are specified in § 22 SGB II. Their amount is equivalent to the actual expenses, provided these are reasonable.

This standard payment is higher than the social assistance benefit (EUR 295 since July 2004). For children the standard payments are lower. Nevertheless, SA benefits included more additional payments than UB II. In comparison to former unemployment assistance (on average EUR 550 in 2003 in Western Germany), UB II is less generous. This should result in pressure on the jobless to take on work. However, it should be taken into account that, whereas the recipients of UB

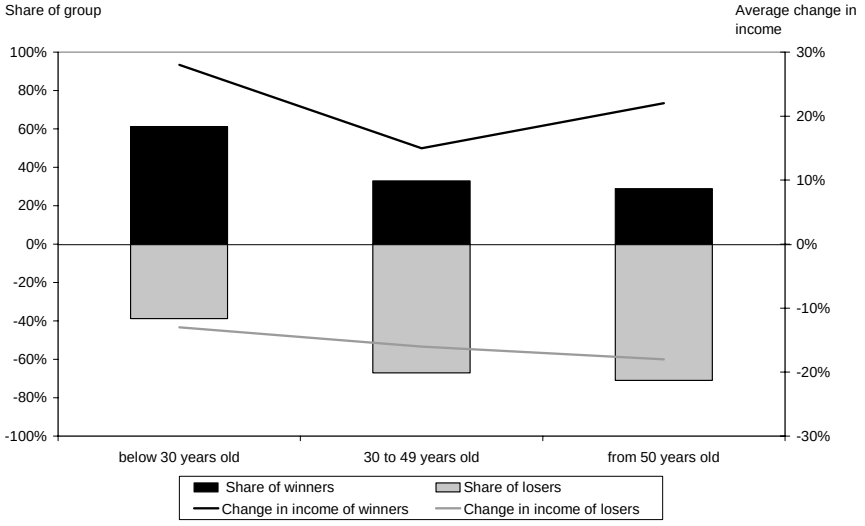
II receive payments for housing and heating, the former UA recipients could only qualify for supplementary housing and social assistance if they fulfilled special conditions.

Hence, contrary to widespread beliefs, the new UB II is not in general lower than prior benefits. This holds for virtually all former social assistance beneficiaries, but also for a relevant share of former unemployment assistance recipients. Simulation studies show that about one sixth of them lost its benefit entitlement due to the stricter consideration of wealth or earned income. Of the remaining persons with continued benefit claims, about 47% receive higher benefits, and about 53% have net losses (Blos and Rudolph 2005). Former unemployment assistance beneficiaries are affected unequally, however, with net gains concentrated among the young and the lone parents while older beneficiaries and couples with relatively high benefits under earnings-related unemployment assistance suffered from considerable cuts. This is mainly true for East Germany (65% losers), where long-term unemployed with a substantial employment record in the former GDR and subsequent receipt of higher unemployment assistance are now transferred to flat-rate UB II (Becker and Hauser 2006; Blos and Rudolph 2005, see Figs. 1 and 2). Empirical information from individual panel data on changes in transfer income due to Hartz IV broadly confirms this picture. Analysing both former social assistance and unemployment assistance beneficiaries, about 51% now receive lower benefits while 34% receive higher benefits. Lower transfer income is concentrated among couples without children and single adults; relative winners are mostly lone parents (Goebel and Richter 2007).



Source: Becker and Hauser (2006)

Fig. 1. Change in benefit levels due to Hartz IV reform, former unemployment assistance recipients, by household type



Source: Becker and Hauser (2006)

Fig. 2. Change in benefit levels due to Hartz IV reform, former unemployment assistance recipients, by age group

Basic income can also be received in all cases of need where resources from work and other income are not sufficient to pass the threshold income set by law. Hence, basic income support does not only focus on registered unemployed without entitlements to unemployment insurance benefits, but also on people in school and training or in dependent employment if they pass the means test. The same holds for the self-employed. In contrast to former social assistance, UB II recipients are covered by both statutory health insurance and old-age pension insurance, which also means that the self-employed can receive health insurance coverage at a low premium under UB II.

Although the legislator defined the prerequisite for UB II receipt – capability of working – in a legally unequivocal manner, two problematic issues quickly emerged: For one thing, unequivocal assignment is not a question of law; rather, whether a person can work for at least 3 h daily is a factual problem that is certain to raise dispute. The term "capable of working" is a criterion of delimitation vis-à-vis social assistance, since only persons capable of gainful employment can be expected to earn their living consistently and primarily through their own work. Consequently, there is a need for the various benefit institutions to reach a uniform decision on this issue. The essential aim of consistently placing persons able to work for at least 3 h a day as well as members of their *Bedarfsgemeinschaft* under a single regime (either SGB II or SGB XII) has been judicially confirmed, and the relevant decisions have found approval in the literature (SG (Social Court) Oldenburg, ruling of 10 January 2005 – S 2 SO 3/05 ER, annotated by Berlit (2006); SG Oldenburg, ruling of 18 January 2005 – S 46 AS 24/05 ER.

In January 2005, more than 90% of former social assistance have been assessed as "capable of working" and consequently transferred from municipal responsibility to the new basic income support scheme financed out of taxes at the federal level. However, first analyses by the BA regarding the structure of long-term unemployed recipients of UB II show that about half of all UB II beneficiaries have a considerable distance to the labour market. This holds in particular for long-term unemployed without vocational training, over 50 years of age, with severe health problems or a migration background especially in regions with high unemployment. About 400,000–600,000 people assessed as capable of working obviously have severe barriers to labour market integration.

Eligibility criteria are detailed in § 10 SGB II and regulate what kind of work jobseekers can reject without risking curtailment of UB II. In principle, the person capable of working but in need of assistance can reasonably be expected to accept any kind of work. Nevertheless, there are exemptions designed to ensure the regulation's due conformity with basic rights. Thus a job is unreasonable if the jobseeker is mentally or emotionally not in a position to perform the specific work, or if performance of the work would substantially impede the future pursuit of his or her previous vocation. Moreover, priority is given to the raising of the jobseeker's own child or the partner's child. The care of a child who has reached the age of three is, as a rule, ensured in a day-care facility or in some other way, and is thus to be worked towards by the competent local authorities. The same applies to the care of dependants. Besides that, an omnibus clause comes to bear if some other important ground prevents the performance of the work in question.

The construct of the eligibility rule is important for understanding the new concept of placing demands on the recipients of basic security for jobseekers. Other than in the case of unemployment assistance, this regulation has deliberately been decoupled from the eligibility criteria under § 121 SGB III. The legislator justifies this by pointing out that demands on basic security recipients must be more stringent than those adopted in the insurance system because the burden on the general public resulting from the neediness of individual persons must be kept as low as possible.

In sum, the grounds of unreasonable hardship under § 10 SGB II are much more narrowly defined than those under the Third Book of the Social Code SGB III and, in part, have even been tightened vis-à-vis antecedent regulations on social assistance. At present, there is no evidence to suggest that established administrative practice or court rulings undermine the activating function of strict eligibility rules.

3.5 The personal integration agreement

The results from an individual profiling process at the employment offices are set out in a binding integration agreement. This written agreement states both the services that will be provided to the jobseeker as well as the jobseeker's obligation

regarding job search activities and programme participation, where required. An unemployed individual will be threatened by sanctions if he or she deviates from the integration agreement or does not cooperate appropriately.

Integration agreements pursuant to § 35(4) SGB III for UB I recipients are not a precondition for participating in active measures. Rather they are regarded as an instrument for improving the placement procedure. Under the insurance scheme integration agreements have a limited significance. They are linked only to active measures, but not to passive benefit receipt. The agreement therefore cannot be used to sanction unemployed persons. As a consequence, integration agreements are scarcely applied within the legal ambit of SGB III. The agreement's mere restriction to the acquisition of more comprehensive information for the unilateral decision on active employment promotion measures fails to do adequate justice to the potential inherent in agreed strategies. In contrast to integration agreements for UB II claimants, the merits of negotiated strategies under the insurance scheme mainly lie in the psychological sphere.

In contrast to the insurance scheme, personal agreements for UB II claimants are mandatory pursuant to §§ 2(1) sent. 2 and 15 SGB II. The two parts have to conclude an integration agreement stipulating the necessary services and obligations. This duty is not a duty in the legal sense, but a so-called incidental obligation, meaning its fulfilment is not legally enforceable. But it is indirectly "compelled" through the imposition of a financial sanction. Jobseekers face financial disadvantages if they refuse to enter into an integration agreement (§ 31(1) SGB II).

3.6 Sanctions

According to § 144 SGB III benefit receipt could be suspended temporarily if a UB I recipient

- refuses suitable work or a suitable activation measure
- resigns work without good reason
- shows insufficient effort to look for a new job
- fails to notify the employment office of a dismissal.

The sanction consists in the imposition of a disqualification period of normally 12 weeks.

A key element has been introduced through a reversal of the onus of proof in respect of the "good reason" which can justify a disqualification period. Now it is the unemployed person who must prove the facts within his or her sphere of activity and scope of responsibility – and not the administrative authority, which only bears the burden of proof under the general rules of evidence.

In contrast to unemployment insurance, however, basic income support (UB II) cannot be suspended completely in case of lack of willingness to work or to participate in reintegration programs, but only reduced to a certain extent as minimum resources needed for physical existence cannot be withdrawn even if the behaviour

of the recipient violates general principles of activation. In extreme cases, benefits in kind can replace cash benefits.

The sanction regulation under § 31(1) sent. 1 no. 1c SGB II implies that the duty to take up reasonable work is not a legal duty, but a mere incidental obligation. This is because the regulation makes clear that work need not actually be taken up for the receipt of benefits under SGB II, but that the refusal to accept reasonable work has financial consequences for the jobseeker. The subsequent provisions of § 31 SGB II moreover do not entail a complete denial of all benefits under SGB II in case of the beneficiary's persisting unwillingness to work, but instead specify the sanctions to be adopted.

The possible curtailment of UB II and its ultimate withdrawal as provided under § 31 SGB II constitute important enforcement measures. UB II recipients are obliged to accept any offer of suitable work. The definition of suitable work was broadened. Both the beneficiary's refusal to conclude an integration agreement and his or her non-compliance with agreed duties, but also the rejection of a reasonable job offer, an immediate offer or a public employment opportunity without a valid reason lead to a 30% reduction of benefits upon first breach of duty. A second breach of duty results in a 60% reduction, followed by the complete withdrawal of benefit if another breach occurs within a year. To ensure the constitutionally guaranteed subsistence minimum, the provision of in-kind benefits is left to the duty-bound discretion of the institution granting basic security – § 31(3) SGB II (Wunder and Diehm 2006). These refined sanctioning provisions addressing UB II claimants are a result of legal fine-tuning effective as of August 2006 and January 2007 after an unexpected increase in numbers of beneficiaries. This also led to stricter sanctioning clauses for beneficiaries under 25 that stipulated that after the first incidence of misconduct, benefits can be restricted to benefits in kind. However, the duration of sanctions can be reduced from twelve to six weeks.

3.7 Activation measures for unemployment insurance benefit recipients

Active employment promotion include a variety of measures stipulated under § 3(1) SGB III. Examples of active employment measures are: counselling and career guidance, job placement, job creation schemes, wage subsidies, training measures to improve integration prospects, and the defrayal of retraining costs during participation in further vocational training.

In the early days of labour market policies, as expressed in the Federal Employment Promotion Act (*Arbeitsförderungsgesetz*) of 1969, not only the unemployed but also persons with insufficient training were entitled to long-range training measures, receiving generous support during these measures and even for 6 months afterwards if they did not immediately find a job. Thus, active labour market policies offered possibilities of upgrading the labour force, both to the benefit

of the individual (upwards mobility) and the collective (maintaining a well-trained labour force). Soon after the first labour market crisis in the mid-1970s, the entitlements of the individuals to training measures – and to the accompanying payments – were severely curtailed.

With the Hartz reforms a number of new instruments were created that aim at a more effective re-integration of the unemployed although they are not "activating" in a narrow sense, i.e. used to enforce benefit conditionality. These innovative instruments comprise different forms of flexible and subsidised employment apart from "classical" employer-oriented wage subsidies:

1. Temporary agency work for the unemployment provided by specific agencies associated with the PES (*Personal-Service-Agenturen*)
2. Part-time work up to EUR 400 per month exempt from employees' contributions to social insurance and taxes (*Minijobs*) replacing older models of minor employment (*geringfügige Beschäftigung*) with a lower earnings threshold
3. Jobs between EUR 400 and 800 per month with employees' social insurance contributions increasing proportionally with earnings (*Midijobs*)
4. Start-up grants for small business providing subsidies for up to 3 years In 2006 former start-up schemes have been replaced by a grant (*Gründungszuschuss*) with a maximum duration of 15 months.

Additionally, preventive measures like "job-to-job placement" have been enforced. Pursuant to § 37b SGB III, persons whose employment or training relationship is due to end are obliged to report personally as jobseekers to the local employment office no later than 3 months prior to the termination of that relationship. Non-compliance with this reporting obligation entails a disqualification period of one week. It is hoped that early reporting will permit the Employment Agencies to become active faster, and thus more successfully, than in the past. The financial loss set by law for late reporting has met opposition and has therefore become a matter for the courts[4]. In the highest instance, the Federal Social Court (*Bundessozialgericht*) came to the conclusion that unemployment insurance benefits could only be reduced on account of belated reporting if the jobseeker was to blame for this.

3.8 Activation measures for basic income support recipients

Provision of services is based on individual need for assistance. UB II recipients are no longer excluded from most of the instruments of active labour market policies provided by SGB III. The implementing institutions (*Arbeitsgemeinschaften*, ARGEs, or *Optionskommunen*, municipalities) are in principle entitled, as set forth in § 16(1)

[4] Despite the meanwhile mitigated version of the sanction regulation, court rulings remain relevant: BSG (Federal Social Court), ruling of 25 May 2005, SGb 2006, 49 ff.; BSG, ruling of 18 August 2005.

SGB II, to apply all the instruments available for UB I recipients by reference to the relevant provisions of SGB III. Moreover, SGB II has introduced additional measures specifically designed for welfare recipients and their particular barriers to employment like debt, abuse of alcohol or other drugs, socio-psychological counselling and child care services stipulated in § 16(2) sent. 2 SGB II which allows for considerable discretion or in-work benefits and start-up allowances pursuant to the flexible provision of § 29 SGB II. The promotion of re-integration measures is regulated in § 14 SGB II, meaning the institutions responsible for providing basic security to jobseekers primarily become active with the aim of reintegrating needy persons capable of working into the labour market.

In a recent amendment of 20 July 2006, § 15a SGB II now provides that persons capable of working who within the past 2 years have not received cash benefits under either SGB II or SGB III are immediately to be offered benefits for integration into work upon applying for benefits pursuant to SGB II. This "immediate offer" is part of a "work first" strategy to prevent the need of assistance and to test the applicant's readiness to accept employment. It is particularly targeted at young people.

If needy persons capable of working find no job, public employment opportunities are to be created on their behalf (§ 16(3) SGB II). Prerequisites governing the admissibility of job opportunities will not be discussed further here. Important is much rather how the legislator's conceptions are put into practice.

The legislative intent was that the provision of time-limited job opportunities (so-called "One-Euro Jobs") would avoid the emergence of a subsidised, state-financed "third" labour market, as was the case with the largely unsuccessful public job creation measures in the 1990s. Activation programmes should be applied only if they avoid, eliminate, shorten or reduce benefit dependency through integration into a regular job.

As of October 2007, labour market schemes in SGB II were supplemented with a programme providing subsidised employment (with option of permanence) for long-term unemployed with severe deficits who could not be integrated into the labour market despite strong activation efforts and will most likely not be able to enter regular employment within the next 2 years (*Beschäftigungszuschuss*, § 16a SGB II). These subsidised jobs are paid according to collectively agreed or local standard wages.

Integration benefits come under the reservation of § 3 SGB II, which permits them only if they are required to avoid or eliminate, shorten or reduce the need of assistance for integration (into the primary labour market). The activating effect of job opportunities is seen in re-accustoming jobless persons to activities with a steady work rhythm, punctuality, and so forth, and, hence, to improve their integration prospects ("work-pedagogic objective") (Bieritz-Harder 2005). The foremost aim is always to achieve integration into the regular labour market, possibly also to regain fully-fledged employment in the wake of such job opportunities. The approach of regarding these additional jobs as a *quid pro quo* for the receipt

of Unemployment Benefit II does not conform to the enacted text, nor can this be inferred from the judgments so far delivered in respect of § 16(3) SGB II.

4 Constitutional constraints to activation

From a legal point of view, there are three problem areas of activation policy. The first one involves the "constitutional guarantee of a subsistence minimum." The second problem concerns the "constitutional guarantee of property" concerning insurance benefit claims and the third one "workfare" (public work) as a possible infringement of the "constitutional guarantee of occupational freedom."

4.1 Constitutional guarantee of a subsistence minimum

Basic income support refers to Art. 1(1) GG Abs. 1 on "human dignity" and to the "social state principle" (*Sozialstaatsprinzip*) of Germany as mentioned in Art. 20(1) GG and Art. 28(1) GG. In contrast to other constitutions in Europe, the German Basic Law (*Grundgesetz*) does not proclaim fundamental social rights, nor does it lay down programmatic social guidelines. The "social state principle," however, comprises duties and mandates for state action only when legal, political and/or societal reality diverges on too great a scale from constitutional objectives.

The "constitutional guarantee of a subsistence minimum" seems to be the lynchpin for the admissibility of employment promotion benefits and for the provision of basic security to jobseekers or, alternatively, for the possibility of reducing these benefits as a sanction.

To date, the Federal Constitutional Court as the highest court in constitutional matters has delivered no decision on the interpretation of the Basic Law in this question. Yet a number of its decisions seem to imply that the right to human dignity in conjunction with the social state principle establishes a positive duty of the state to secure minimum conditions for a life worthy of human beings, thus correlating with a negative duty to prevent state intervention in the subsistence minimum.

Originally, this duty took the form of police measures on behalf of indigent persons, notably to avoid any breach of the peace (Zacher 2004). In the 1970s, the Federal Constitutional Court finally acknowledged the duty of the state to secure "minimum conditions for a dignified existence" (BVerfGE 40, 121 (133); 45, 187 (228). However, the Federal Constitutional Court made clear that the stipulation of an amount in figures representing the positive duty of the legislator to deliver benefits could not be inferred from the constitution. Consequently, the Federal Social Court ruled on 23 November 2006 that the level of UB II conforms with constitutional requirements as Parliament has ample room to define a concrete monetary amount (BSG Judgment, AZ B 11b AS 1/06 R).

Hence, neither the state guarantees regarding "human dignity" nor the "social state principle" provide the basis for a definition of the level of basic income support as a minimum level of resources (*soziokulturelles Existenzminimum*) needed in order to safeguard existence and participation in society. It is the responsibility of parliament to define this standard in accordance with constitutional principles. This refers to the principle of "demanding" (*Fordern*) stipulated in § 2 SGB II. Need for help is defined in § 9 SGB II and is only given if life cannot be sustained by individual effort and resources, in particular if there is not sufficient income from suitable jobs.

Not to be forgotten in the discourse over the "amount of subsistence minimum" is the fact that assistance-induced social stigmatisation and social exclusion against the background of hidden poverty can weigh more heavily than any increase in financial assistance granted. The further discussion on activating measures must account for the aspect that a dignified life without work can be financed through state support, but that the aim of helping people to help themselves might then be neglected.

As the social state principle also implies the concept of the social state founded on the basic rights of freedom (*freiheitlicher Sozialstaat*), the state holds no "monopoly on social affairs." Hence, the social state principle epitomises the "basic formula of self-responsibility," which also underlies all activating measures of employment promotion.

4.2 The property guarantee

Claims to unemployment benefit are protected against interventions in existing positions through the guarantee of property (BVerfGE 72, 9 ff.; 74, 9 ff.; 74, 203 ff.; 92, 365 ff., see also Papier 2003). This concerns claims which have been acquired through employee and employer contributions and which serve to secure existence on account of their function as wage replacement benefits. Amendments of law are thus admissible either if they leave vested legal positions unaffected, i.e. apply only to the future, or if they are cushioned with the help of transitional provisions. The legislator must submit grounds to legitimate any intervention.

Moreover, positions protected as property rights can be modified by way of admissible provisions governing their content and limits – Art 14(1) sent. 2 GG. This means in particular that grounds of public interest with due regard for the principle of proportionality can justify an intervention in a safeguarded position. Regarding the cut in maximum benefit duration of UB I from 32 to 18 months for older workers, conformity to constitutional requirements is safeguarded as a sufficient transition period between legal changes in 2003, and an effective application on newly unemployed elapsed in early 2006. Cuts in benefit duration of unemployment insurance are possible to the extent that the principle of protection of confidence for a limited period of time for both the insured and the current beneficiaries is observed.

From these arguments it may be inferred that basic security benefits do not come under the property guarantee of Art. 14 GG. They are not based on substantial personal contributions because they are granted from tax revenues in the form of welfare benefits, irrespective of any previously paid contributions. This was confirmed by the most recent judgment of the Federal Social Court. It was made clear that earnings-related unemployment assistance could be replaced by flat-rate UB II. As both benefits are means-tested and tax-funded, the property guarantee of social insurance does not apply.

4.3 Constitutional guarantee of free choice of occupation

Regarding activating labour market policies, one might raise the question whether demanding participation in community work ("workfare") is feasible given the constitutional requirements.

Under Art. 12(1) GG, all Germans have the right to freely choose their occupation or profession, their place of work, and their place of training. Important here is that Art. 12(1) GG is a purely defensive right, and not a right to any financial security on behalf of negative occupational freedom. Persons who freely decide never to work enjoy the constitutional protection of this freedom, but are not entitled to demand money from the state to enable them to live a life without working. This means that the linking of state financial assistance in the event of unemployment to the basic willingness to accept reasonable employment is not inherently an infringement of Art. 12(1) GG.

Also to be noted in this connection is Art. 12(2) GG, whereby no one may be required to perform work of a particular kind except within the framework of a traditional duty of community service that applies generally and equally to all. Moreover, forced labour may be imposed only on persons deprived of their liberty by a court judgment (Art. 12(3) GG). To date, encroachments on these rights through SGB III and SGB II regulations have been denied on the grounds that, in light of the historical origin of this provision, only forced labour in the sense of a direct coercive measure is prohibited. Measures with an (indirect) coercive character, such as the suspension, reduction or discontinuation of financial benefits upon rejection of a reasonable employment offer, are not open to question as long as the security system of social assistance ensures that the essential means of subsistence are guaranteed (Gagel, § 121 para. 29, 2005).

The subject matter of judicial decisions was whether the proposition of a job opportunity constitutes an administrative act and, hence, can be deemed an independent regulation that may be contested by jobseekers through a protest procedure and subsequent legal action. The decisions rendered to date have denied these effects of the proposition. The courts have in this way conceded greater leeway to the Employment Agencies, instructing jobseekers to first await a sanction notice, which will only be issued if they refuse to accept the proposed job opportunity. Only following this notice must the legality of the proposition be reviewed on the

basis of the prerequisites set out in § 16(3) SGB II (SG Social Court Hamburg, ruling of 7 June 2005 – S 62 AS 434/05 ER; SG Berlin, ruling of 18 July 2005 – S 37 AS 4801/05 ER).

In general, the provisions of SGB II regarding the obligation to accept a "One-Euro Job" if integration into the regular labour market is not possible in the foreseeable future do not contradict the principle of free choice of occupation or profession. The main objective of this intervention is not forced labour but helping benefit recipients re-enter (or at least prepare them for) the labour market so that need can be eliminated (Sachverständigenrat 2006).

A possible infringement of contractual freedom protected under Art. 2(1) GG could be derived by the duty to conclude a personal integration agreement. However, the conclusion of the agreement is only indirectly "compelled" via the imposition of a financial sanction, so that there is no direct obligation to contract and no direct intervention in the jobseeker's contractual freedom. Court decisions deli-vered to date have been geared to the lack of a direct coercive measure and therefore deny any infringement of a basic right.

5 Governance and implementation

5.1 Distribution of competences

The Federal Employment Agency (*Bundesagentur für Arbeit*) as the unemployment insurance agency is responsible for UB I payment as well as for the implementation of active labour market policy laid down in the Third Book of the Social Code SGB III. The BA is a corporation under public law (§ 367(1) SGB III).

Whereas the institutions of the social insurance are in principle administered as federal corporations under public law (Art. 87(2) GG), the distribution of competence for basic income support of jobseekers (*Grundsicherung*) is less clear. It was disputed for a long time. The optional assignment of competence to the local authorities is the result of negotiations between the federal and the *Länder* governments.

Basic income for needy jobseekers ensues from the concurrent legislative power in respect of "public welfare" under Art. 74(1) no. 7 GG. In the case of persons "capable of working," this basic security for jobseekers supersedes both the public welfare benefit of unemployment assistance and that of social assistance. The uniform federal regulation is deemed necessary both for the establishment of equal living conditions and for the maintenance of legal and economic unity.

The obligatory establishment of joint offices (*ARGEs*) under § 44b SGB II is highly problematic from a constitutional point of view. In particular, the administrative districts (*Landkreise*) saw the joint administration with the BA as an infringement of their constitutional guarantee of the municipalities' autonomous

self-governance. The ARGE model involves a form of mixed administration that was ruled inadmissible by the Federal Constitutional Court on 20 December 2007. This judgment stipulated that a new organisational setup has to be in force by 31 December 2010 which safeguards the municipalities' right to self-governance and provides for a clearer distribution of competences and resources. This poses a threat to the principles governing the autonomous performance of functions and the clear assignment of responsibility.

5.2 Changes in the organisational setting

The Hartz reforms changed the general framework in which the delivery of employment services operates. Hartz III (2004) and Hartz IV (2005) entailed big changes in the realm of employment services. In the past, and especially after the already mentioned "placement scandal," the PES (*Bundesagentur für Arbeit*, BA) were accused of operating inefficiently and customer-unfriendly. The aim of Hartz III was therefore to improve the performance by streamlining public employment services. At the beginning of 2004, changes concerning the organisational structure of the BA became effective (Hartz III).

But nearly simultaneously – with the merger of unemployment and social assistance schemes – an external reorganisation of employment services took place. Joint agencies combining former local PES and municipal social assistance (ARGEs) for recipients of the basic income support were set up by Hartz IV in 2005. The current ARGE model can be seen as an interim arrangement that will have to be modified until 2010 according to the Federal Constitutional Court's judgment.

The parallel internal and external re-organisation of employment services created a more fragmented structure. Instead of implementing one-stop shops for all jobseekers – an explicit objective of the Hartz commission – a two-tier or even three-tier system was created: 178 local PES agencies are responsible for the short-term unemployed and 356 ARGEs for the long-term unemployed and other claimants of the basic security benefit. The institutional setting is even more complicated by considering the 19 districts, where the long-term unemployed are dealt with separately by municipalities and local PES offices, and 69 municipalities (*Optionskommunen*) which could opt out of taking over the re-integration of the new UB II benefit recipients without PES participation. This new structure of administrative bodies – a result of protracted federal negotiations – created serious governance problems.

5.3 Federal employment agency job centres for the short-term unemployed

The local PES offices are foremost responsible for the unemployment insurance benefit (UB I) recipients. Within this regime the Federal Employment Service (BA)

has a unified structure with the three main services – placement, active labour market policy and unemployment insurance benefit (UB I) payments – being steered by one public body with administrative autonomy. UB I is mainly financed by compulsory social insurance contributions, which are raised from wage and salary employment covered by unemployment insurance and formally split up between employers and employees. The unemployment insurance is a self-governing para-fiscal agency with codetermination rights by the social partners. Although contributions and benefits are defined by legislation, it has a far-reaching autonomy with regard to the regulation of implementation. The proper provision of labour market programmes, however, was always conducted by third parties, mostly by non-profit third sector organisations and – to a minor extent – by for-profit organisations. Most recent reforms have withdrawn the influence of the social partners with respect to the regulation of labour market services. Since 2003, tripartite codetermination of the BA is limited to the administrative council, which only has a controlling function, while the executive committee is set up for a limited time.

The BA was modernised along the lines of the New Public Management. In accordance with a goal-oriented labour market policy, the former management-by-directives approach has been replaced by a management-by-objectives approach. Now quantitative goals are set for each local office taking into account the special circumstances in their local labour market. The formerly hierarchically organised employment offices were converted into customer-oriented job centres (*Kundenzentren*).

The main objectives of the new BA are the effective and efficient use of the measures provided by the Third Book of the Social Code (SGB III) as well as transparency about how and with which results unemployment insurance funds are spent. Cost-effectiveness in the specific context of each regional labour office is the key criterion when choosing programme contents and participants. Improved targeting of active measures and the allocation of measures and resources opened up a wider scope for fitting clients to measures more individually. Provision of services has been decentralised with the aim of bringing BA activities closer to the specific individual needs of the BA clients. The caseload is to be reduced and each jobseeker is assigned to a specific caseworker.

The use of market mechanisms by outsourcing placement services to external providers through placement vouchers or via subsidised temporary work (PSA) has been implemented as a complementary option to improve efficiency and effectiveness of core employment services (Konle-Seidl 2005a). The need for more individualised services for hard-to-place unemployed persons, however, opens up broader options for contracting out employment and welfare service provision. In this sense the BA started a new pilot in July 2007 to test "successful context criteria" for a better involvement of private agencies. The step to a further "privatisation" of the German PES takes the British "Employment Zones" as an example.

Profiling of jobseekers constitutes an essential element in the BA reform process. It has been applied since 2005. Beyond the diagnostic function, profiling in

the German PES serves as a tool for customer segmentation and the determination of individual assistance and – last but not least – as an instrument for the allocation of resources. The unemployed jobseekers are segmented into four categories:

1. "Market clients" are considered to be job ready and to have the best chance of finding employment
2. "Clients for counselling and activation" mainly need to be activated in their job search or need minor adjustments of skills through short training
3. "Clients for counselling and qualification" need more attention and will likely be assigned to training programmes and other measures to increase mobility or flexibility
4. "Intensive assistance clients" require special attention since they face the poorest re-employment prospects and are at risk of becoming long-term unemployed.

The assignment to one of the four categories determines future treatment. Based on the individual profiling result, tailor-made action programmes (*Handlungsprogramme*) for each client group are developed. The action programmes determine resource allocation. Personal resources and active measures should be allocated in an effective and efficient way. Six different action programmes have been developed:

- Quick and sustainable placement for group (1)
- Change of perspective for group (2)
- Reduction of employment barriers and qualification measures for group (3)
- Preservation of marketability and case management for group (4).

At the end of the intake interview, the caseworker and the jobseeker agree on an action plan specifying individual "integration objectives" and resources.

Within the comprehensive scientific evaluation of the Hartz reforms on behalf of the government, the results of Hartz III focus on the effectiveness of placement services after the reorganisation of the local employment offices. The study by WZB and infas using a conditional difference-in-difference analysis exploits the fact that the new customer-oriented one-stop centres have been introduced at different points in time. The results indicate positive effects of customer centres on the integration into regular employment (Bundesregierung 2006).

Beyond the econometrically measured effects on the individual reintegration chances, the monitoring results from the BA controlling system provide information on the achievement of the Agency's operational goals. The strict outcome-oriented performance management shows positive results after 4 years of fundamental and ongoing reforms and in the context of a favourable development on the labour market since 2006. The transition rate from unemployment to employment (promoted by active measures as well as "merely" by placement without extra financial resources) could be improved. Especially the increased number of job-to-job integrations and the early intervention measures to avoid long-term unemployment contributed to lowering the stock of UB I recipients (Bundesagentur für Arbeit

2006a). As an early intervention approach the obligation to register at the local employment office right after getting the notice of separation was introduced by law (§ 37b SGB III) in 2003. The aim is to enhance the transition to a new job before becoming unemployed (job-to-job integration).

Consequently, the "penalty tax" to be paid by the Agency if it is unable to integrate its clients into work during the regular UB I entitlement period was 30% lower than expected in 2006. However, the most visible success seems to be the spectacular cost reduction and the surplus of EUR 11 billion in 2006 and about 8 billion in 2007 despite the fact that the unemployment insurance contribution was lowered. For more than one decade, the financial balance of the contribution-based receipts and expenditures of the BA was deficient. Efficiency gains from the BA reform are assessed by the Agency to contribute one third of the surplus, with one-time effects and the positive influence of an improved business cycle accounting for the other two thirds (Bundesagentur für Arbeit 2006a). In combination with an increase in VAT, this paved the way towards lower unemployment insurance contributions rates, which went down from 6.5% in 2006 to 4.2% in 2007 and 3.3% in 2008[5].

However, the strict cost-benefit logic of the Agency also had undesired consequences, especially as it worsened the treatment perspectives of the hard-to-place client group. During participation in long-lasting programmes for intensive assistance clients, a transition into employment before exhausting the UB I claim (i.e. currently after 12–18 or – in the future – 24 months for older unemployed) is rather unlikely. Hence, the BA has to pay the "penalty tax" in addition to the programme costs. As a consequence, the incentives for the BA to "park" the hard-to-place clients are strong. Due to strong criticism of the "parking trends," the "penalty tax" will be phased out in 2008.

5.4 ARGE job centres and municipal agencies for the long-term unemployed

The original idea to create joint customer centres, which was supposed to end the different treatment of recipients of unemployment insurance benefits and unemployment assistance (dealt with by BA) on the one hand and social assistance (administered by the municipalities) on the other, did not work for political reasons. A major goal of combining UA and SA benefits in one single means-tested income replacement scheme for persons who are able to work was therefore to reduce the administrative overhead inherent in the old system and to arrive

[5] The legislation on longer UB I benefit payment and additional active labour market schemes will, however, lead to future extra-expenditure, in particular during an economic downturn. Given the fact that the BA deficit will no longer be covered by the federal budget, this will most probably translate into higher contribution rates again.

at more coherent activation strategies for all welfare recipients who are able to work. However, financing and decision powers with respect to employment policies remain dispersed in important respects.

The introduction of Unemployment Benefit II in 2005 was combined with the creation of joint bodies of BA and the municipalities – the ARGE consortia – that are now in charge of administrating ALG II and designing employment services for benefit recipients in all districts except for regions where the municipalities opted for taking over the complete responsibility and for the districts with continued division of responsibilities.

But despite the joint framework, the financial responsibilities as well as the decision powers within the ARGEs are divided. The local authorities are responsible for reimbursement of accommodation, heating and one-time costs for e.g. initial furnishing and clothes, child care services, as well as debt, drug and socio-psychological counselling according § 16 (2) sent.1 SGB II. The BA agencies are responsible for the payment of UB II as well as for all activation measures (SGB III and SGB II). Funding for these services is provided out of the federal budget. Additionally, about one third of the housing and heating costs is also financed out of the federal budget.

While the federal burden of funding of ALG II, related employment services and housing costs went up, municipal responsibility for the implementation of labour market policy increased. The municipalities can free-ride in their decisions at the expense of the state budget. As the municipalities maintain the financial responsibility for income support for persons who are not able to work (social assistance), the municipalities have an incentive to shift costs by classifying persons as being able to work who would otherwise obtain municipal social assistance. Indeed, in 2005 more than 90% of the former SA recipients were assessed to be "capable of working" and therefore transferred to the federal funded ALG II system.

Many administrational problems of the ARGEs arise from unclear regulation of organisational competences. Also, the ARGEs staff remains employed by different public sector entities – the BA and the respective municipality – with differing contractual employment conditions regarding working time and salaries. This has led to frictions in the administration of the ARGEs. Difficulties in harmonising activation targets across regions became apparent when the municipalities complained that the BA would hamper efficient job placement by centralistic ordinances. In response, an agreement was reached in October 2005 between the federal government, the BA and the municipalities that leave the determination of operational targets for the ARGE to their governing council. However, the agreement has so far been unable to solve the fundamental governance problems often described as a "clash of cultures" between a more centralistic BA staff and the municipal staff accustomed to decision-making with a greater discretional leeway.

The division of responsibilities between national and local governments is one reason for increased compensation by the federal government due to benefit overrun for the ALG II scheme. The incongruence between spending and decision

powers at the different layers of government inhibits a more efficient management of employment policies for the long-term unemployed. With the "option clause" available until 2010, 69 municipalities have been temporarily given exclusive competence for administering the new system, which has further aggravated the segmentation of employment services (Konle-Seidl 2005b).

A comparative quasi-experimental evaluation of the two different implementation systems required by federal law is under way. The evaluation results will partly determine the further assignment of employment services to the municipalities or a strengthening of decision rights of the BA within the ARGE. Nevertheless, if responsibilities for UB II related policies are assigned to municipalities, this should be accompanied by a financing mechanism providing incentives for the municipalities to engage in efficient job placement (Table 4).

Table 4. Institutional responsibilities

Regime	Unemployment insurance	Basic income support
Regulation	Third Book of the Social Security Code (SGB III)	Second Book of the Social Security Code (SGB II)
Target groups	Short-term unemployed	Needy persons capable of working; partners and dependants
Benefits	Unemployment Insurance Benefit (Arbeitslosengeld I, UB I)	Basic Income (Arbeitslosengeld II, UB II and Sozialgeld)
Funding	Compulsory social insurance contributions and deficit coverage by federal government	General taxes at Federal level (income support and activation measures and 1/3 of housing and heating costs) and municipalities (2/3 of housing and heating costs)
Administration	Bundesagentur für Arbeit (BA); regional and local employment offices	ARGEs (joint bodies by BA and municipalities), municipalities opting out (Optionskommunen) or divided structures (reorganisation due by 2010)

5.5 Implementation

The binding element between legal provisions concerning activation policy and the effects of such a policy on an individual level is the implementation by local agencies. Concerning the demanding part of activation, this means foremost stricter monitoring of job search efforts and programme participation and the practice of imposing sanctions in case of an infringement of the rules.

The Hartz reforms tightened benefit conditionality with respect to availability for work and programme participation. They also introduced more flexibility in sanctioning. The objective of a stricter regulation rests on the fact that hardly any sanctions were imposed under the former law or were not asserted with the necessary intensity. Although sanctioning via temporary suspension of UB payments

had been possible even before the reforms, available information indicates that counsellors of the local employment offices rarely decided to impose sanctions, and the advocated sanctions were often not enforced (Wilke 2003).

More recently, the rate of sanctioning has slightly increased, but the dispersion in the application of sanctions between local employment offices appears to have been large and increasing (Oschmiansky and Müller 2005). This means that although the legal provisions in principle allow no margin of discretion, in practice there is a "tough" and "soft" interpretation by employment offices.

Table 5 shows the sanctioning of UB I and UB II recipients in 2006. In general, however, sanction intensity is still rather low in Germany, in particular with respect to UB II.

Table 5. UB I and UB II sanction rates

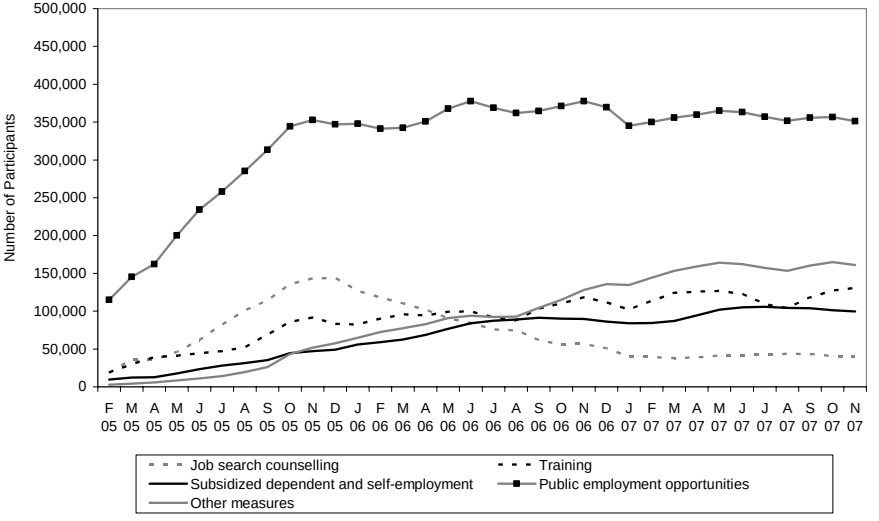
UB I	2006[a]	UB II	Oct. 2006[b]
Total sanctions	526,900[c]	Total sanctions	131,000
As a percentage of all sanctions			
Specific sanctions for missing early registration requirements and job search interviews (*Meldeversäumnis*)	29.0		50.0
Voluntary quits	34.0	Refusal to conclude personal integration agreement	18.0
Refusal of suitable job offer	4.0		22.0
Refusal of participation or quit of ALMP	3.0		5.0
Others			4.0
As a percentage of the total inflow of unemployment insurance benefit recipients	17%	As a percentage of unemployed UB II recipients in 10/2006	2.4%

[a]Figure covers only 7 months (May–December)
[b]Stock data for 1 month (October 2006)
[c]On average 5% of all imposed sanctions (benefit stops) were lifted after successful legal action
Source: Bundesagentur für Arbeit

Criticism was raised about the requirement of "public interest" concerning public work. "One-Euro Jobs" are a good example to demonstrate the still insufficient implementation of the *Fördern und Fordern* principles of activation. On the one hand, these jobs have been designed to promote the employability of unemployed persons with poor prospects of a quick integration into the regular labour market. On the other hand, these jobs serve as a work-test for individuals with good prospects but low search efforts. At the same time, earning an additional EUR 1.00–1.50 for every hour worked in public employment for 6–9 months at 30 h a week while full benefit receipt is continued may reduce search intensity and lead to a lock-in effect (Cichorek et al. 2005).

Results from a survey of case managers carried out in fall 2005 show that One-Euro Jobs are partially implemented as a work-test, however in most cases they are offered on a voluntary, i.e. consensual, basis. Case managers see their prime objective in re-establishing or stabilising employability and in strengthening societal integration through structuring daily life, improved self-confidence and additional resources for dept redemption. Immediate reintegration into the labour market is not a principal objective of this scheme (Wolff and Hohmeyer 2006).

One-Euro Jobs are by far the most frequently used activation scheme in SGB II active labour market policy (Fig. 3). In autumn 2007, about 15% of all UB II recipients participated in active schemes, approximately half of them in One-Euro Jobs.



Source: Bundesagentur für Arbeit

Fig. 3. Activating interventions under SGB II, 2005–2007

However, there is so far only anecdotal evidence on the actual service delivery process and the transactions between caseworkers and clients at the front line. Little is known about keeping the promise to provide modern services tailored to the clients' individual needs. Equally little is known about the view of personal advisers on their role under an activation regime. They normally see themselves as helping professionals rather than government agents aiming at altering the personal behaviour of their clients. Advisers and case managers are convinced that due to high long-term unemployment there are very limited job opportunities on the regular labour market for their clientele. Stricter monitoring of availability criteria and job search as well as sanctioning in case of non-compliance is therefore not perceived as very helpful. In this context, the availability of One-Euro Jobs is a very useful tool for advisers to provide time-limited job opportunities for the large group of hard-to-place UB II recipients.

The possible failure to fully implement reforms on the front line also has implications for equity in service provision. One aim of the SGB II is to give more discretion to local employment offices and to provide more cooperative instruments in order to permit necessary adjustments to the individual case while handing back unemployed individuals the necessary responsibility for their lives. The strong codification (*Verrechtlichung*) of the status of individuals under German employment promotion law (SGB III) was often deplored and assessed as stabilising a status quo that is more or less resistant to reform. However, strong fears are raised that the way in which the new system is configured, i.e. providing less enforceable claims and judicial controls of the labour administration, implies a weaker legal position of the individual. However, the greater degree of flexibility of activation at the local level does not mean that UB II beneficiaries do not have access to legal advice or the right to file a lawsuit.

6 Outcomes of activation: A preliminary assessment

It is still quite early to assess the effects of the policy shift towards activation on employment, unemployment or distributional outcomes with empirical data. At this stage, there are no empirical studies on the micro-level regarding changes in the duration of unemployment spells, the return to employment, the quality of subsequent employment and the effects of activating interventions within UB II, but some empirical evaluation studies will become available within the next months. However, evidence on the microeconomic effects of active labour market policies for UB I beneficiaries is more comprehensive, and points at positive integration effects of public training, wage subsidies, placement vouchers and start-up grants comparing participants with similar non-participants (Bundesregierung 2006; Eichhorst and Zimmermann 2007). Preliminary evidence shows similar results for comparable schemes addressing UB II recipients. Less conclusive is the macroeconomic evidence taking into account potential substitution and displacement effects as well as tackling the issue of cost efficiency.

Although it is difficult to assess causal effects at this point in time, there are some findings based on simulation studies and on comparisons between benefit levels and equivalent market wages.

6.1 Unemployment and employment

The peak in registered unemployment in early 2005 with more than five million unemployed, an all-time high, is largely due to the combination of seasonal effects and the statistical effect of (capable of working) former social assistance recipients and their partners being registered as unemployed for the first time after Hartz IV came into force. This explains an increase in unemployment of about 350,000–400,000. In that sense, Hartz IV contributed to more open unemployment by providing greater transparency in German labour market statistics as former social

assistance recipients capable of working are now more "visible." At the same time, hidden unemployment decreased so that broad unemployment remained stable (see Table 6).

Table 6. Broad unemployment in Germany (1,000 persons)

	1998	2004	2005	2006
Registered unemployment	4,281	4,381	4,861	4,487
Participants in active labour market schemes	695	845	677	688
Public job creation (SGB III)	323	285	127	80
Public employment opportunities (SGB II)	54	121	270	277
Hidden Unemployment (Stille Reserve)	1,276	935	738	747
Total	6,629	6,564	6,673	6,279

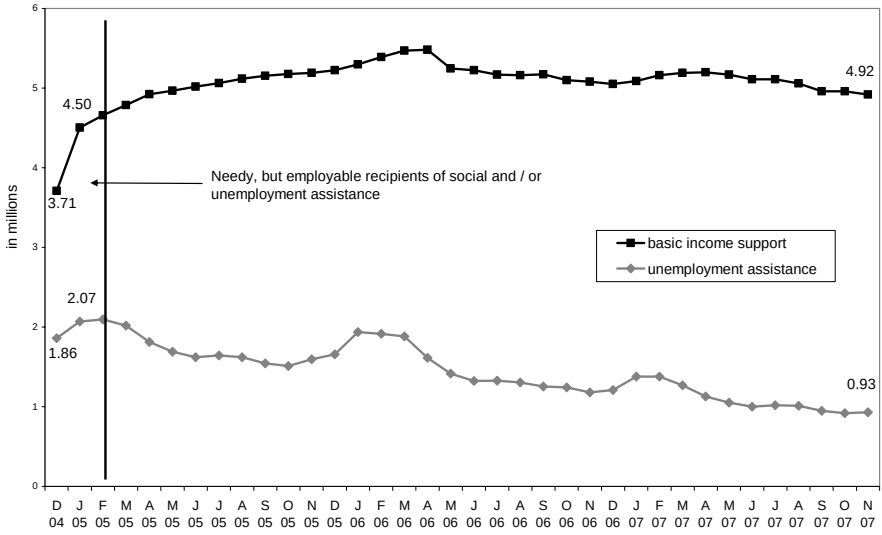
Source: BA and calculations of the IAB

The recent decline in registered unemployment to less than 3.4 millions in November 2007, however, can in part be explained by a positive economic environment with strong labour demand. Nevertheless, it is plausible to argue that more efficient placement and activation activities have also contributed to this development. There may be some "motivation" or threat effect of Hartz IV on the unemployed in the sense that the eventual transfer to means-tested and flat-rate UB II increases search intensity and reduces reservation wages during the receipt of UB I and later on. Some evidence from an employer survey points in this direction (Kettner and Rebien 2007). However, simulation studies show only marginal effects on labour supply (Arntz et al. 2007). At the same time, incentives to move from benefit receipt to work are still limited for long-term unemployed persons as are their chances on the labour market.

6.2 Benefit receipt

On the other hand, recent data on the number of beneficiaries show that there is a divergent development of transfer receipt in UB I and UB II. While figures of UB I receipt, i.e. short-term unemployment, have declined, the number of UB II beneficiaries has increased considerably over the last 24 months. This means that the coverage of the unemployed by insurance benefits declines whereas reliance on basic income becomes more important. The relation is now approximately four fifths on UB II and one fifth on UB I (Fig. 4). If we restrict the comparison to registered unemployed persons, in November 2007 there were 650,000 in UB I and 2.37 million in UB II.

Hence, basic income is of growing relevance regarding the structure of benefits in the German welfare state. Compared to unemployment insurance benefits, means-tested basic income is now the more important welfare scheme. However, recent figures also show some moderate decline in UB II.



Source: BA

Fig. 4. Recipients of unemployment benefits I and II, 2004–2007

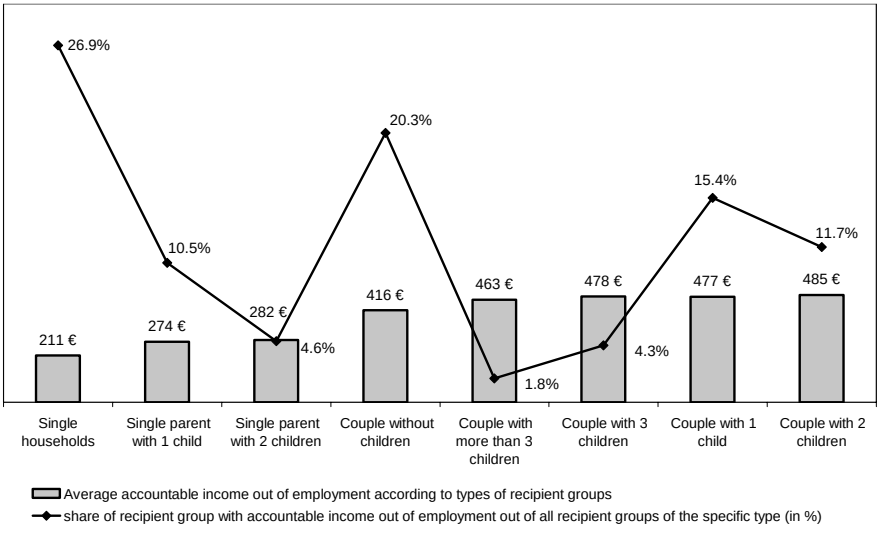
While the number of UB II beneficiaries increased strongly, data on individual benefit spells in 2005 show that there is considerable mobility in and out of UB II (Graf and Rudolph 2006; Graf 2007). About 74% of all households in need in January 2005 depended on benefits throughout the year while 26% were able to leave UB II. Households entering UB II later in 2005 had a higher chance of leaving basic income support within 12 months (43%). Continued benefit dependency over 12 months was most frequent with lone parents who could opt for an exemption from the job search requirement.

6.3 Earnings

However, UB II is not only received by long-term unemployed, but also by people entering the labour force and by employees or self-employed without sufficient earnings to pass the threshold of guaranteed basic income. In this respect it is most notable to see that about 1.3 million UB II recipients have income from earnings, i.e. more than one fifth of all UB II beneficiaries are employed on either low hours or low wages (Bundesagentur für Arbeit 2006b, 2007). This number has increased from about 900,000 in 2005 to 1.3 million in 2007. Only a smaller share of UB II recipients, however, works full-time (see Figs. 5 and 6). But due to current earnings disregard clauses, there are strong incentives to work part-time and top up low earnings from low hours by UB II (*Aufstocker*). Through this arrangement, UB beneficiaries can earn EUR 160 on top of their benefit through part-time work, in particular with the *Minijob* arrangement that provides for flexible jobs with an earnings ceiling of EUR 400 per month exempt from employees' social insurance

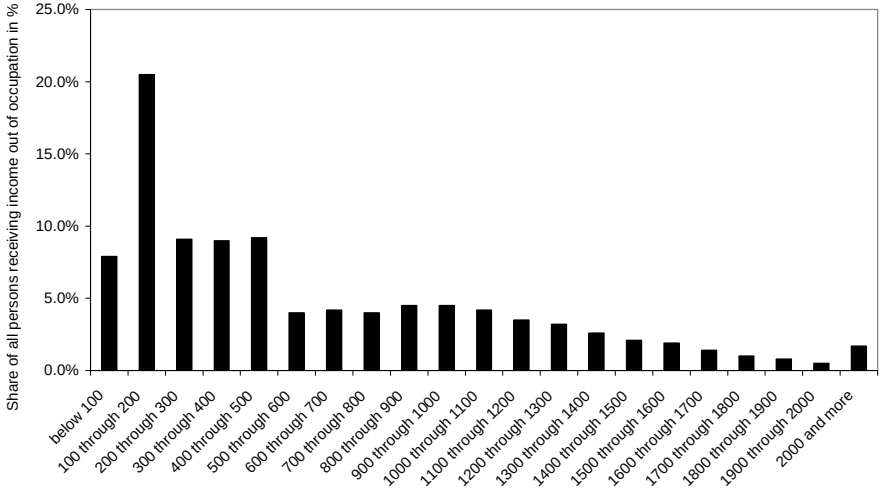
contributions and taxes. This concerns about 500,000 people. They can hardly improve their net income by moving to longer working hours as additional earnings lead to benefit withdrawal. Hence, Hartz IV provides for a general und unlimited in-work benefit and strong part-time incentives. This also means that benefit recipients are relatively indifferent when faced with wage cuts imposed by employers in sectors not covered by collective agreements. In that respect it comes as no surprise that working UB II recipients are overrepresented among low-wage earners. Based on individual panel data for 2005, only 3% of all full-time workers earned less than EUR 6.00 gross per hour, while this was true for 33% of all working unemployed (Brenke and Eichhorst 2007). Available evidence shows that the mobility out of this in-work benefit is most pronounced for full-time workers whereas there is a tendency towards longer benefit dependency among persons only partially attached to the labour market. The same is true for low-wage earners with full-time jobs and a dependent partner and/or children (Bruckmeier et al. 2007).

The part-time incentive is particularly relevant with respect to needy households with dependent children, where realistic equivalent market wages to be earned when moving from long-term unemployment to regular jobs with low qualification requirements in the private service sector are close to or even lower than the benefit level (Boss et al. 2005; Brenke 2006; Cichorek et al. 2005, see Table 7). Employment disincentives are more significant in these cases, and part-time work will provide for an additional earnings top-up. This does not only hold for earnings from regular part-time but also for One-Euro Jobs that provide approximately EUR 1.00–1.50 per hour in addition to full benefits.



Source: BA

Fig. 5. Earnings combined with UB II receipt by January 2007



Source: BA

Fig. 6. Distribution of UB II recipients' income from work, by January 2007

Table 7. Benefit levels and equivalent market wages

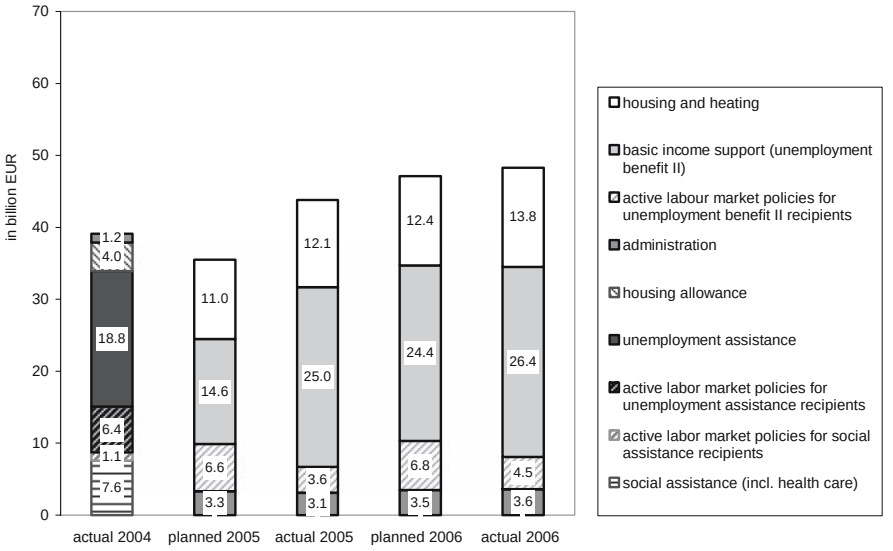
	Net benefits from UB II + social allowance for dependents + housing/heating benefit (+ temporary supplement)	*Equivalent wages*		UB II + compensation for public employment opportunity of EUR 1.50 at 30 h per week	*Equivalent wages*	
		Net hourly wage (40 h per week)	*Gross hourly wage (40 h per week)*		*Net hourly wage (40 h per week)*	*Gross hourly wage (40 h per week)*
	in EUR per month					
Single	662–822	3.10–4.40	3.70–5.65	857–1,017	4.70–5.90	6.10–8.10
Single parent, one child	1,090–1,310	3.35–4.95	4.20–6.30	1,285–1,505	4.75–7.00	5.95–9.95
Married, single earner	1,034–1,354	5.65–7.80	7.10–9.80	1,229–1,549	7.10–8.95	8.90–11.50
Married, single earner, two children	1,574–2,014	3.80–7.35	4.80–9.25	1,769–2,209	5.30–8.55	6.35–10.90

Net hourly wages include child benefit, child supplement for low-wage earners and housing benefit
Source: IAB (Cichorek et al. 2005)

6.4 Public expenditure

Regarding public expenditures, the implementation of Hartz IV in 2005 led to higher rather than lower public expenditure and to an increase rather than a

decline in the number of benefit recipients as compared to 2004. This has not only to do with over-optimistic prior estimates (due to unreliable statistics) but also with some legal provisions that allow for individual benefit receipt by young unemployed, migrants and fake single households, but also to the unintended emergence of a broad in-work benefit scheme. For 2006, planned expenditures for UB II, housing and active schemes amounted to EUR 47 billion (Fig. 7). However, actual expenditure reached more than EUR 48 billion, which is approximately EUR 10 billion more than expected at the outset. At the same time, however, unemployment insurance ran a surplus of about EUR 11 billion. Expenditure increases in UB II and related active labour market policies reflect the shift from unemployment insurance to basic income, which also means a shift from contribution-based to tax-funded passive and active labour market policy schemes (Kaltenborn and Schiwarov 2006a, b; Kaltenborn et al. 2006).



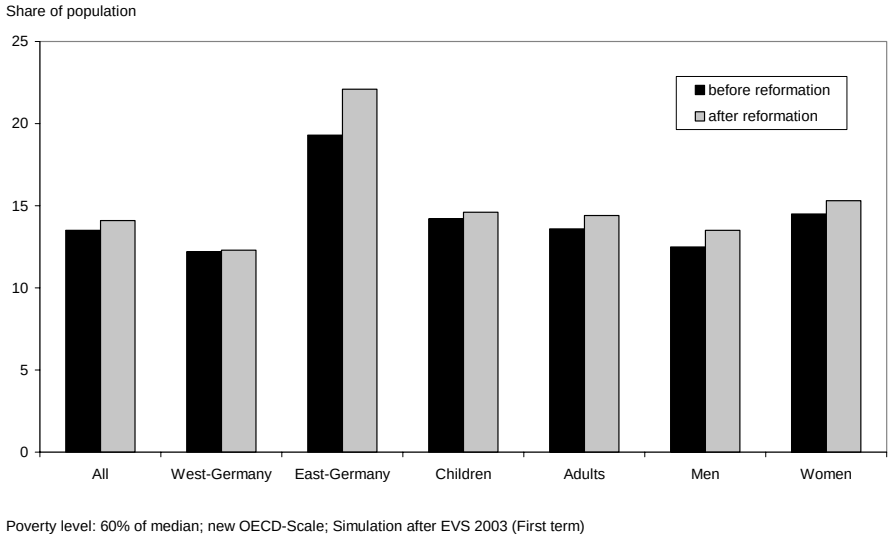
Source: BMAS, Kaltenborn and Schiwarov (2006a, b)

Fig. 7. Expenditure for active and passive labor market policies in assistance schemes before and after the reform

6.5 Poverty

There is no systematic information so far on the effects of the shift towards activation in Germany on unemployment duration or on stability and quality of subsequent employment. Recent administrative data, however, shows that about 50% of all persons leaving UB II return within 1 year. Evidence-based impacts on wage dispersion and inequality before and after taxes and benefits will only become available later. However, a simulation study (Becker and Hauser 2006, see Fig. 8)

points at a slight increase in poverty due to Hartz IV although this study does not take into account potential dynamic effects on reemployment. As with changes in benefit generosity, the effect on poverty is assumed to be most pronounced in East Germany. A second simulation study by Arntz et al. (2007) on distributional and labour supply effects of Hartz IV shows a decline in poverty due to income gains experienced by households at the bottom. Panel data show that the merger of social and unemployment assistance contributed to a rise in the share of poor recipients of basic income support from 52 to 67% after the reform so that the overall poverty rate rose by about 1.5 percentage points to 19% (Goebel and Richter 2007). This is reflected in some concerns that Hartz IV does only provide insufficient benefits to avoid poverty. However, in a dynamic perspective, higher probabilities of employment can counter this effect.



Source: Becker and Hauser (2006)

Fig. 8. Poverty before and after Hartz IV

6.6 Overall assessment

Although it is rather early for a preliminary assessment of the outcomes of the shift towards activation in Germany, empirical information available so far suggests a differentiated judgment. On the one hand, empirical evidence shows a remarkable shift to a more goal- and efficiency-oriented approach within contribution-based active schemes administered by the BA. Interim results on the evaluation of BA reorganisation also show positive results (Bundesregierung 2006) as do empirical studies on matching efficiency, yet some of the evaluation studies on specific active labour market programmes within unemployment insurance are rather inconclusive (Bundesregierung 2006; Jacobi and Kluve 2006; Eichhorst

and Zimmermann 2007). Stronger profiling and goal orientation in the assignment of active schemes to short-term unemployed helps explain the savings in contribution-based active and passive labour market policies, even though actual sanctioning is moderate.

The situation is different, however, with respect to activation of the long-term unemployment under SGB II, i.e. recipients of UB II. Effects on benefit levels are highly differentiated with respect to household composition and prior earnings. Yet, rather than a bold cut in benefit generosity, there has even been some expansion. At the same time, current benefits are equal or even superior to equivalent market wages for people with a low earnings potential in the private sector. In such a system, activation crucially depends on frontline implementation of demanding and enabling schemes and the actual application of benefit conditionality. But anecdotal evidence and some partial empirical data suggest a moderate approach towards activation in actual practice, i.e. regarding use of integration agreements, work test or sanctions.

The moderate level of activation in practice may be explained by several factors: disincentives embodied in the existing funding and governance arrangements in particular with regard to effective activation of potential long-term unemployed; a high level of legal codification which, together with a lack of a coherent normative framework and ambiguous institutional incentives, may lead to reluctant implementation in local agencies and by frontline staff. In addition, the perceived, but also the actual lack of jobs for the low-skilled may hamper activation through job offers and inhibit entry into gainful employment.

This is not only to be explained by weak labour demand due to unfavourable business cycle conditions in 2005 and early 2006, but also by institutional preconditions limiting labour market flexibility and wage dispersion while at same time creating strong incentives to combine benefit receipt with partial labour market attachment only. The difficulty of entering the German labour market is largely due to the fact that policies create specific compartments or segments of low-wage and flexible employment such as benefit top-up and *Minijobs*, subsidised employment and One-Euro Jobs with transitions to higher wages or more stable employment being rather problematic.

A partial liberalisation of dismissal protection, the easing of restrictions on temporary agency work and product market regulations such as the lifting of the requirement of a master craftman's diploma (*Meisterbrief*) in some crafts sectors was certainly not sufficient in this respect. It was not possible to implement more far-reaching reforms that could stimulate labour demand and increase the supply of entry-level jobs.

On the other side of the coin, however, wage dispersion has increased in Germany (Brenke 2006; Dustmann et al. 2007). This cannot be explained by low hourly wages paid to working unemployed and reservation wages declining after Hartz IV alone, as it is a much broader phenomenon. Yet, the widely shared perception is that the move towards activation has increased wage dispersion and the

risk of low-wage employment and "working poor." As a consequence, calls for the introduction of minimum wages and a more "social" approach to the labour market have become stronger.

7 Summary and outlook

Germany embarked on the shift towards activation much later that its European neighbours, but this policy change was in many respects more fundamental and comprehensive as it implied a major break with the welfare state tradition which had been characterised by the social insurance logic of a "Bismarckian" system. Passive, status-protecting benefits had been used in the past to buffer economic adjustment. Against this background, policy change from status and occupational orientation in favour of basic income support for the long-term unemployed in combination with stricter formulation and potential enforcement of "sleeping" demanding elements is a major element of "path departure" and recalibration of rights and obligations in the German welfare state. This also implied a major overhaul of active labour market policy schemes and governance. But the shift towards activation is not just a "technical" issue and an example of implementing New Public Management principles in Germany.

The late, but fundamental change in Germany is most notable in comparison with other European countries such as the UK, Denmark, the Netherlands or Sweden as the German approach to activation is relatively broad and ambitious. Since "capability of working" is defined mainly in a medical sense, the number of people to be activated is much higher than elsewhere, in particular given the fact that alternative escape routes do not play a prominent role in Germany these days (i.e. disability benefits) or are being closed gradually (e.g. early retirement). This dramatically increases transparency regarding non-employment and leads to high open (registered) unemployment at the beginning of the activation of the long-term unemployed with the Hartz IV reform.

Contrary to widespread perceptions, however, stronger activation is not associated with a general decline in benefit levels – not even for the long-term unemployed – as Hartz IV is not only activation, but also a social policy reform widening access to benefits and assistance. Rather, the severance of the link between benefits for the long-term unemployed and prior earnings changed the perception of benefit generosity. This may – in conjunction with more demanding interventions by administrative bodies – change job search effort (Kettner and Rebien 2007) due to increased fears of downward mobility in case of longer unemployment spells (Eichhorst and Sesselmeier 2006).

This has more fundamental consequences as it signals the departure from status protection and a "benevolent" welfare state to a more basic, means-tested system of social protection and stricter "workfare." This is not only a result of the abolition of earnings-related unemployment assistance but also due to the associated cut in maximum duration of unemployment insurance benefits for older workers.

In empirical terms, this becomes evident in the diminishing role of contribution-based and earnings-related unemployment insurance benefits relative to the number of beneficiaries of means-tested basic income schemes.

Basic income for jobseekers, but also means-tested earnings top-up for low-wage earners, are now far more important benefit schemes than unemployment insurance for short-term unemployed with sufficient prior employment record. These new arrangements question the status of lifetime achievement and occupational orientation that was characteristic for the German model of industrial production in the past. On the one hand, this may reduce incentives to pursue professional careers as acquired rights in the social insurance system depreciate more quickly than in the past, and after (accelerated) expiry of unemployment insurance benefits, virtually all jobs are suitable. On the other hand, however, reduced benefit generosity in case of long-term unemployment and even the threat of being transferred to means-tested flat-rate basic income may lead to higher individual effort in order not to lose track of the regular labour market and raise individual job search intensity in case of unemployment. This may even have positive effects on human capital investment. At any rate, the reform reinforces individual responsibility and reduces the possibility to rely on status-oriented benefits and human capital enhancing labour market policies.

Given this broad paradigm shift, acceptance deficits come as no surprise. Cuts in UB I duration, replacing earnings-related unemployment assistance with a flat-rate benefit for the long-term unemployed and fears of "enforced" low-wage employment as a result of stricter activation motivated major public unrest before and after the Hartz IV reform came into effect. However, despite a broad public controversy, the long-term implications of this institutional change remain rather implicit. Part of the acceptance deficit can be explained by the lack of a general normative framework developed in order to explain the necessity of these changes and to emphasise the potential of this reform. This may also be partly responsible for reluctant implementation in practice as the implicit normative assumptions are not shared by all actors charged with implementation. By the same token, the widely shared perception of a lack of "social justice" and strong downward pressure not only on the unemployed, but also on the wider labour force, has triggered reforms softening the impact of the Hartz package such as the extension of UB I from 18 to 24 months for older workers, the introduction of generally binding minimum wages in a growing number of sectors and a more prominent role of publicly supported employment as a "social" or "secondary" labour market.

The difficulties experienced with the politics and the implementation of activation in Germany points at more fundamental issues as both policy makers and the general public are very reluctant with regard to a complementary liberalisation of the labour market and higher wage dispersion which would help strengthen the supply of entry jobs for the activated. The concept of "work first" may be embodied in current German legislation, yet the idea of "any job is better than no job" still raises widespread opposition. Hence, the question whether a higher degree of inequality is inevitable in the general labour market in order to overcome benefit

dependency is still unsolved. Being accustomed to a "high equality, low activity" arrangement, activation of the long-term unemployed and the low-skilled implies a major paradigm shift. However, at the same time, trying to avoid low-wage employment means tacit acceptance not only of inequality, but also poverty outside the labour market and of inequality between the core and the margin of the labour market.

In the foreseeable future, the German activation regime will most probably not be a stable one. One more coherent policy solution implying a general lowering of basic income is virtually ruled out, which is why there is no prominent role for strong in-work benefits (see e.g. Sachverständigenrat 2006).

This is also true for a broad flexibilisation of the labour market that would be complementary to this approach inspired by the Anglo-Saxon experience. Both the public and policy makers are highly reserved with regard to these issues. Social justice considerations might rather result in attempts at stabilising wages through the introduction of a statutory minimum wage even if this might be detrimental to the labour market integration of the long-term unemployed. Policy makers may even try to resort to a more limited definition of "capability of working" and assign part of the hard-to-place to public sector employment.

Given the widely shared perception that activation may have "gone too far" in Germany, a country which feels uneasy with respect to the impertinences of the market mechanism, it comes at no surprise that we witness steps to "soften" some elements of the reforms and reintroduce a more "social" element into the labour market at a time when, ironically enough, some of the more "cruel" reforms seem to have substantial effects on labour market dynamics. However, this strategy of a partial return to the older social policy approach might be popular in the short run, but it will certainly not contribute to the solution of Germany's labour market problems and help reintegrate the target groups of activation into employment.

List of abbreviations

Abbreviation	German	English
Abs.	Absatz	Paragraph
AG	Arbeitsgericht	Labour court
ALG	Arbeitslosengeld	Unemployment Benefit
ALMP	Aktive Arbeitsmarktpolitik	Active Labour Market Policy
ARGE	Arbeitsgemeinschaft	Joint office of BA and municipalities
Art.	Artikel	Article
BA	Bundesagentur für Arbeit	Federal Employment Agency
BSG	Bundessozialgericht	Federal Social Court
BSHG	Bundessozialhilfegesetz	Federal Law on Social Assistance
BVerfGE	Bundesverfassungsgerichts-Entscheidung	Decision of the Federal Constitutional Court
GG	Grundgesetz	Basic Law (Constitution)
PES	Arbeitsverwaltung	Public Employment Service
SA	Sozialhilfe	Social Assistance
SG	Sozialgericht	Social Court
SGB II	Sozialgesetzbuch II	Second Book of the German Social Security Act
SGB III	Sozialgesetzbuch III	Third Book of the German Social Security Act
UA	Arbeitslosenhilfe	Unemployment Assistance
UB I	Arbeitslosengeld I	Unemployment Benefit I (Unemployment Insurance)
UB II	Arbeitslosengeld II	Unemployment Benefit II (Basic Income Support)

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The French Strategy against Unemployment: Innovative but Inconsistent

J.-C. Barbier and O. Kaufmann

1 "Activation" in France: An overall perspective

"Activation" has not been a very commonly used concept in France – except, of course, for the small group of scholars and administrators who are directly concerned with it, and those who have learnt from the Europeanised vocabulary. Very often, even within this small epistemic community, the term will be applied to a varying and fuzzy group of programmes, according to the normative judgments of the concept's users: some will separate "social activation" from other activation strategies, while others prefer "workfare" as an equivalent. Thus, as "activation" is not a legal term, French legal doctrine makes no reference to it in the field of (un)employment and ignores the meaning it has retained in this context. The term is nevertheless used by legal specialists in the sense of activation of financial resources (*activation de moyens financiers*): in this context it refers to the use of funds that have other initial objectives for fostering employment.[1] Hence, activation exists, but not as a legal concept; nevertheless, legal rules do in fact initiate, influence and govern "activation." 'Activation' in the perspective of the transformation of a particular sector, but more broadly, the spotting of cross-sectoral dynamics affecting the whole system of social protection, is not only about the limited area of social protection and labour law catering for the unemployed and especially the 'long-term unemployed;' it can be considered as a one among many dimensions of the restructuring tendency affecting all parts of the systems of social protection with varying incidence according to clusters of the 'welfare regimes' but also to specific areas of social protection.[2] But, in taking a legal approach, it is important to realise that various branches of law are directly or indirectly concerned, ranging from labour and social law to tax law and even family law (see below). Yet, in using the term 'activation', we have generally made a clear distinction between labour law flexibilisation, on the one hand, and reform of benefits on the other.

This is how the term is used here for the presentation of activation in France and this has a main consequence: the French activation strategy is seen as a nexus of reforms reaching far out. To be sure, these reforms were not implemented as part of a clear-cut and conscious political strategy: France in the last 20 years and until 2007 has certainly not been a country where clear-cut plans and open discussion have presided over the reforms conducted. However, considered with hindsight, the reforms are part of a global overhaul of the system of social protection, among which the unemployment insurance is only a piece. It is interesting to note that this "reconstructed" strategy belies the very often held belief that the French system is "frozen" (Palier 2004; Levy 2000; Esping-Andersen 1996). Yet,

[1] Art. 79 LOI n° 2005-32 du 18 janvier 2005 de programmation pour la cohésion sociale, (J.O n° 15 du 19 janvier 2005, 864), refers to mesures de réactivation des bassins d'emploi.

[2] Overall, these various forms are consistent with Pierson's (2001) categories (re-commodification, cost-containment and recalibration).

when seen in the light of the recent history, this picture is really inadequate (Barbier and Théret 2004). With respect to activation, France certainly is not to be classified as a laggard (Barbier and Ludwig-Mayerhofer 2004; Barbier and Fargion 2004). Structural reform and flexibilisation of the French labour market have also taken place on a very significant scale from the late 1980s. 'Activation' obviously does not happen without motives; its main rationale is economic, in the context of globalisation and of the flexibilisation of the labour market (Barbier and Nadel 2000, 2002). In most countries, so in France, labour and employment flexibility has resulted in the concentration of the detrimental effects of flexibility on some categories of the workforce, who have only access to second-rate social protection. Activation strategies have displayed very diffrent consequences as to the substance of social rights and of obligations, but also as to the types and quality of jobs they foster, which can be more or less instable, or seen as 'precarious' (Barbier 2004c).

This is where the legal aspects of the policies and programmes that are implemented to realise 'activation' – without making explicit reference to it – are important. When studies started to be conducted about activation (Lødemel and Trickey 2000), the focus was more on the formal change of discourse and on the rewording of rights and obligations. It rapidly emerged that 'activation' or 'workfare' strategies were often publicised but that, on the ground, the effective substance of rights and obligations changed only marginally.

In a nutshell, the French activation strategy in a broad acceptance is a hybrid combination of five features, marrying different nordic social democratic and liberal influences with idiosyncratic national elements:

- While activation measures were implemented from the late 1980s – an exception is the emergence of the French innovation of *insertion*, which dates back to the mid-1970s – unemployment insurance and various solidarity-based social benefits deriving from this protection scheme (*régime de solidarité*, 'assistance') and based also on other legal foundations have recently been at the forefront of the public debate, and reforms have tended to target remaining regulations leading to possible 'inactivity traps,' especially for minimum income benefits' recipients
- A sector of employment programmes, well established, mostly wage-based (and not assistance-based), certainly amounts to significant activation; these were implemented through the creation of special contracts, which took on different labels but basically implemented the 'employer of last resort' logic to only a portion of the potential population in need of jobs, including the potential 'insertion' target groups mentioned above
- The gradual decrease of employers' social contributions' has taken the leading role in the activation dynamics, and it was 'embedded' into the working time reduction process, along with emerging tax credits – a conjunction of reforms which, in terms of the contribution burden, have thoroughly altered the traditional French principle of funding social protection via social contributions levied on both social partners; although the working time

reduction was later abandoned, the principle of shifting the cost of contributions from employers to the budget has been maintained
- Large sectors of social protection (social services, family and housing benefits) have so far been spared any particular linkage to work 'incentivising'. In this respect, unlike the liberal type of activation and closer to the universalistic model, there seems to remain a significant – although decreasing – room for manoeuvre for 'traditional' social policy – most notable within family policy
- Finally, the introduction of a consistent activation strategy has yet to materialise in the domain of 'active ageing.' A more detailed survey of particular areas of social policy helps illustrate this situation

These five basic elements of the strategy have been implemented alongside an uneven process of labour law reforming: indeed, the element pertaining to labour law did only figure high on the agenda when the conservative government came to power in 2002 and it has figured since.

In the following text, we intend to illustrate the specific French activation strategy along these lines. Because it is however written from a cross-disciplinary perspective (political sociology and law), the text will not only endeavour to provide key empirical insight into this strategy, but it will also describe and analyse in detail the basic legal notions and instruments which are used by French public authorities to implement this overall strategy. As will be seen, basically, these legal instruments include two types: (1) the first one encompasses the key measures featuring in the overall activation strategy – such as, for instance, the mainstream contract *Contrat emploi solidarité* (CES), on the one hand, and the mainstream strategy for decreasing employers' social contributions and *prime pour l'emploi*; (2) the second one encompasses instruments which, in quantitative impact, can be considered as minor, or sometimes marginal – such as, for instance some training measures or "*contrat adultes-relais*" (see below).

2 The legal foundations of "activation measures"

Any form of "activation" – whether in the sense of a comprehensive "strategy" (and its ultimate *acceptance*), or the implementation of a bundle of measures (motivated by *social* policy) or individual measures – aimed at creating specific preconditions for employment promotion, as well as the concrete realisation of these aims, will be subject to overall legal requirements.

Legal framework conditions can have national and international origins but also be of a supranational nature, e.g. the EU law. This is because international and, above all, supranational legal norms are often transposed into national French law (see also general Introduction). In French law, the specific national regulatory framework consists of various levels. All the national and international legal norms bear fundamental reference to constitutional norms, unless prior-ranking

supranational (European Community) law should become directly applicable, that is, also to 'activation.' Moreover, the legal dimension of what is diversely called 'activation' in different countries does not take the same salience.

2.1 Constitutional principles and foundations governing "activation measures"

In France, "activation measures" as such are not specified in legal provisions, but their sphere of influence is often, but not exclusively linked to social security (*sécurité sociale*), which thus often forms the reference point in viewing constitutional requirements. Even so, legal norms from other fields of law, notably labour law, can also be of significance.

The so-called constitutionality block (*bloc de constitutionnalité*) is the uppermost level of legal norms within French law, and is elaborated through the case-law of the *Conseil constitutionnel* (Constitutional Council) in its interpretation of the diverse texts.

This "constitutional norm level" comprises the Constitution of the 5th Republic, the Declaration of Human Rights of 1789 (*Déclaration des droits de l'Homme et du Citoyen de 1789*), the Preamble to the Constitution of 1946, the fundamental principles set out in the laws of the Republic,[3] and finally the principles and rules that have been assigned constitutional rank.

2.1.1 Constitutional principles, social security and labour law

The Constitution of 1958 does not specifically mention the term "social security" (*sécurité sociale*).[4] Nor does the Constitution itself lay down any social principles, aside from the proclamation in Article 1 that "La France est une République indivisible, laïque, démocratique et *sociale*" ("France is a … social republic"). Social and economic principles are declared in a highly generalised manner in the Preamble of 1946, which enjoys constitutional status and speaks of a certain extent of social security for all, without stating specific groups of persons or citizenship. Hence, the difficulty is to determine the reach of socially embedded "rights to claim" (*droits de créance*), which differ from the classic rights of personal liberty and the basic rights (*libertés et droits fondamentaux*). This has been the dilemma facing the *Conseil constitutionnel* in many of its decisions.

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[3] Principes fondamentaux reconnus par les lois de la République.

[4] Art. 34 regulates the competences of the legislature and the executive with a view to fundamental rights (droits fondamentaux), including the social security system; the term "social security" itself is not mentioned.

The generalised nature of the reference to social security also makes foreigners eligible for social benefits. The question, however, is whether or not foreigners are entitled to equal treatment and, if so, whether a distinction is made between access to contributory and non-contributory social benefits.

Section 5 of the Preamble subjects everyone to the duty to work and postulates the right to employment: "Everyone is under the obligation to work and has the right to obtain an employment."[5] At the same time, this objective is expressly underscored by the prohibition of discrimination in exercising the right to work.[6] This right is not, however, comprehensive – full employment[7] is not a constitutional goal – and so the legislator or the government, respectively, is under the obligation to grant persons who have lost their employment or are unable to take up work a compensatory social benefit in the event of unemployment.

This constitutional right to employment is thus one of the basic principles of employment policy and of providing security in the event of unemployment, with the legislature and the executive called upon to establish the corresponding regulatory framework. However, the existence of this mention in the preamble never implied, of course, that the state was legally obliged to provide jobs to all the unemployed.

Sections 10 and 11 of the Preamble proclaim the aim of the *Nation* to ensure the development and security of individuals and of the family.[8] In addition to other rights, express mention is made of the right to protection on behalf of persons who are incapable of work owing to their age, physical or mental condition, and their economic situation. In such cases, the individual is entitled to claim reasonable means of subsistence (*moyens convenables d'existence*) from the community. The scope of this right to claim is defined by the legislature.

The *Conseil constitutionnel* has decided that in determining reasonable subsistence benefits the legislator is to be conceded a wide margin of discretion, but that legal guarantees must conform to this constitutional obligation.[9] As regards the

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[5] Chacun a le devoir de travailler et le droit d'obtenir un emploi.

[6] Nul ne peut être lésé, dans son travail ou son emploi, en raison de ses origines, de ses opinions ou de ses croyances.

[7] President Sarkozy campaigned for a society with full employment, which he equated with an unemployment rate of approximately 5%. The term "full employment" has undergone changes; see the short overview by Barbier (2006c).

[8] (10) La nation assure à l'individu et à la famille les conditions nécessaires à leur développement. (11) Elle garantit à tous, notamment à l'enfant, à la mère et aux vieux travailleurs, la protection de la santé, la sécurité matérielle, le repos et les loisirs. Tout être humain qui, en raison de son age, de son état physique ou mental, de la situation économique, se trouve dans l'incapacité de travailler a le droit d'obtenir de la collectivité des moyens convenables d'existence.

[9] Décision n° 86-225 DC du 23 janvier 1987, Droit social 1987, 345, note Prétot. Décision n° 2003-487 DC du 18 décembre 2003, Droit social 2004, 245 note Prétot.

right to employment, the *Conseil* has confirmed the power of the legislature to adopt measures to enable the employment of individuals.[10] In another of its earlier decisions,[11] the *Conseil* held that the constitutional rank of the right to employment does not curtail the legislator's power to limit job accumulation and the receipt of old-age pension within the scope of its employment policy (and to impose additional contributions on those concerned, as long as the equal treatment of payments under public law is ensured).

Another decision also made it clear that the right to employment does not imply a (renewed) integration of employees – provided, again, that the equal treatment principle is observed.[12] In particular the right to social benefits in the event of unemployment is, according to the *Conseil*, the corollary (*corollaire*) to the right to employment, and is thus constitutionally protected.[13] In this context, the *Conseil* notes that the abolition of unemployment benefit would be unconstitutional, although certain conditions governing benefit receipt could be imposed upon the unemployed.

2.1.2 Constitutional case law and "droit formateur" (right to alter a legal relationship)

Alongside "benefit rights" (rights to claim, *droits de créance*), the right to alter a legal relationship plays an important role for social security within its broader meaning. Here, the case law of the *Conseil constitutionnel* gives the legislature a great deal of leeway in structuring institutional arrangements as well as in defining the benefit rights of insured persons. Even if amendments to social benefit legislation and their scope can be subject to constitutional requirements, as is shown by the above-cited case law on unemployment benefits, the legislature cannot be obliged through a restrictive interpretation of constitutional rules to irrevocably commit itself to the future choice of system organisation or to maintain hitherto recognised, alterable rights (to benefits). In particular, the legislator is allowed to impose additional conditions on the receipt of social benefits.[14] The *Conseil* above all refuses to place vested contribution-based social rights on an equal footing with property rights, as this would make it impossible to enact any changes.[15] Hence,

[10] Décision n° 81-134 DC du 5 janvier 1982, Rec. p. 15; Droit social 1984, 159 note Hannou.

[11] Décision n° 86-225 DC du 23 janvier 1987, préc.

[12] Décision n° 88-244 DC du 20 juillet 1988 and 89-258 DC du 8 juillet 1989.

[13] Décision n° 94-357 DC du 25 janvier 1995.

[14] Décision n° 86-225 cit.

[15] Décision n° 85-200 DC du 16 janvier 1986.

the legislator can alter the prerequisites for benefit receipt during the period of contributory gainful employment.[16] Even running social benefits are not constitutionally protected.[17]

The possibility of altering existing rights is nevertheless subject to limitations in that declarations under constitutional law must not lack a legal guarantee – that is, their "erosion" would be incompatible with the constitution.

Finally, a cornerstone of the entire social security system is the solidarity principle, which distinguishes it from other non-solidarity-based protection forms, although these can be installed to provide additional security.

2.1.3 The equal treatment principle

The equal treatment principle naturally applies not only to the social sphere, but to society as a whole. Yet, the solidarity precept inherent in social security makes equal treatment especially important here.

In its more general form, the principle is embodied in Article 2 of the Constitution,[18] as well as in Articles 1 and 6 of the Declaration of Human and Civil Rights of 1789,[19] but also in the Preamble of 1946. The principle's intent and purpose is to prohibit discrimination – that is, unequal treatment not permitted on the basis of the prevailing situation.

The previous case law of the *Conseil constitutionnel* on equal treatment was chiefly concerned with the receipt of social benefits by non-nationals.

The *Conseil* has made it clear that the legislator remains *free* to configure the organisation and administration of social security institutions, or to delegate these tasks to specific bodies, on the condition that due justice is done to the equal treatment principle.

2.2 Social security and labour relations: Legal framework

As noted above, several legal fields become relevant for "activation" because different legal rules exist within its sphere of influence and play a role for its enforcement. For instance, some of the provisions laid down in the *code de la*

[16] Décision n° 93-325 DC du 13 août 1993.

[17] Décision n° 94-348 DC du 3 août 1994.

[18] (4) La devise de la République est "Liberté, Egalité, Fraternité". (4) The Republic's motto is "Freedom, Equality, Fraternity".

[19] Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune. (Human beings are born and remain free and equal in their rights. Social distinctions can only be based on the common good).

santé publique and the *Code de l'action sociale et des familles* are of import. Also provisions of administrative law impact nearly all other branches of law, while civil law mainly affects labour relations. Nevertheless, it is labour and social law that plays a decisive role for activation, so that the prime focus will be on the general legal bases of these two legal fields. Yet it must always be borne in mind that both branches of law are interwoven with each other and thus interdependent.

2.2.1 General remarks

Social security in its broad meaning is largely organised through state-enacted law and autonomous by-laws. The legislator is responsible for providing implementing regulations and framework legislation on the basis of higher-ranking law. This legislative competence extends to general legislation, on the one hand, and social security financial planning, on the other. The executive implements legal requirements mainly by way of ordinances. These implementing rules, which affect social security in broad terms, are of an "*ordre public*" nature. Alongside state-enacted law, there are also the regulations deriving from various institutions of social security. The latter can be adopted unilaterally or take effect on the basis of conventions agreed between the different actors involved.

Labour relations generally come under "*droit commun*" (general civil law),[20] while the code du travail stipulates the special provisions governing these relations.

2.2.2 Social security system, labour law and unemployment insurance

Sécurité sociale, introduced in 1945, includes the traditional branches of social insurance (*assurance sociale*), and thus forms the core area of the French social protection system (Barjot et al. 2004). It was largely conceived on the basis of the social insurance principle, but simultaneously shaped by universalistic principles of coverage for the entire population. With the introduction of universal health insurance, *couverture maladie universelle* (CMU), the latter notion was put into effect for this branch of insurance. The formerly envisaged aim to incorporate under one regime (*régime général*) all individual protection schemes which existed at the time *sécurité sociale* was established was never achieved. Hence, the social security system continues to be characterised by both diversity and disparity.

Sécurité sociale does not specifically organise non-contributory, solidarity-based assistance schemes, nor does it include social benefits generally financed by the local authorities (they are marginal actually). These, however, are integral

[20] Art. L.121-1 Code du travail: Le contrat de travail est soumis aux règles du droit commun.

components of social protection (*protection sociale*), which in turn encompasses *sécurité sociale* (Barbier and Theret 2004).

As the unemployment risk was not to be covered through "assistance", nor was another social insurance branch to be added to the *régime général*, the social partners established an autonomous unemployment insurance scheme in 1958. It was based on a convention in the style of the existing system of supplementary old-age protection. Unemployment insurance has since been reformed on several occasions by means of supporting conventions concluded between the social partners (see below). Yet these conventions have to be ratified by the government. The major statutory provisions governing unemployment insurance law and thus forming the basis of these conventions are laid down in the labour code, the *code du travail*. The latter also comprises the regulations on other measures of employment programmes.

2.2.3 Coordination of different social protection schemes

If unemployment is to be combated effectively at all, the effectiveness of social protection granted in that event will depend decisively on the coordination of miscellaneous social protection mechanisms. Yet this coordinative aspect gives rise to major problems in practice because the competence of the individual protection schemes, and hence their scope, cannot in all cases be demarcated from that of others. Such uncertainty in the definition of scope might even be politically desirable in some instances, when it serves to privilege a certain scheme or, vice versa, prevents one scheme from being accessed excessively. At any rate, the choice of a particular sector of social protection – in this context, primarily unemployment and invalidity insurance – also has considerable financial consequences, which will come into play if the overall social protection system is divided into distinct autonomous or at least financially separate branches. Precisely the unemployment risk is in some cases covered extraneously by other protection sectors and is thus, as it were, masked, so that cause and effect are not directly associated with this risk. And that above all puts a strain on the pension system and invalidity insurance (which in France comes under health insurance). Sectoral allocation and the resultant absorption of social benefit costs impacts both on the beneficiary and the respective scheme. The funding of extraneous benefits might even cause the sector in question to curtail the benefits awarded for primary risk coverage. It follows that the consequences are chiefly of an economic and financial nature. The beneficiary in turn may have an overriding interest in being assigned to a particular scheme owing to the benefit catalogue it offers. Apart from such not actually intended interaction between different sectors of social protection, certain forms of system-compatible coordination likewise exist. Thus, for example, the unemployment risk is covered by unemployment insurance only if certain requirements are met. If these are no longer fulfilled or eligibility criteria have expired, the unemployed person is referred to another scheme that will generally bear a resemblance to social assistance or, in any event, be of a non-contributory nature. In France, minimum

income benefits or MS (*minima sociaux*) and especially the minimum income scheme RMI (*revenu minimum d'insertion*) play a major role here.

3 Minimum income benefits and other assistance benefits

3.1 Overview

Programmes introduced from 1975 under the banner of *insertion* should be seen as precursors to activation reforms later (Barbier 2004a). Yet, when they were introduced for the disabled and the young unskilled, their justification was to 'activate' these groups in a very specific sense: exactly at the opposite of a punishment or as the only way out from presumed 'dependency', work was here promoted as a positive channel for integration into society and accessing full political citizenship. Originating in civil society initiatives, the French doctrine of *insertion* was at a second stage only appropriated by the State, which designed fully-fledged 'insertion policies', with a dominant 'assistance' flavour. In the initial solidaristic *insertion* philosophy, 'social integration' was never meant primarily in terms of constraining people to take jobs on the market. In fact, due to the particularly low rate of job creation in France at that period, many programmes entailed the opposite function of keeping people in 'welfare' rather than transferring them over to work which did not exist (Barbier and Théret 2001). We must first deal with *"minima sociaux"*[21] (MS, minimum income benefits), a kind of benefit that is relatively new. A fresh reform of MS is being promoted at the time of writing (autumn 2007).

'Assistance' is a convenient word to present French programmes in a comparative perspective. However, the French distinction between 'assistance' (it would rather be "*aide et action sociales*" outside unemployment insurance and *régime de solidarité* within) and social insurance, i.e. social security, is not functionally the equivalent of the distinctions in other countries. We will, however, use it by way of simplification, in full knowledge that systems cannot be understood only on the face of universalistic simplifications.

3.2 Various minimum income benefits

Roughly, MSs for working-age people were introduced in 'three generations.'

In the first period, they acted as complements for categories which were not covered adequately, within a dynamics that was still marked by the expansion of social protection; they included benefits for lone parents (API, *Allocation de parent isolé*, from 1976); benefits for the disabled (AAH, *Allocation d'adulte handicapé*,

[21] We will limit our study to the "minima sociaux" for people of working age.

from 1975). There was no particular 'activation' dimension in this introduction of new benefits. API was designed as catering for the need of lone mothers for a transitory period where having very young children (up to the age of three) was an impediment to mothers being employed. AAH was introduced in order to allow disabled persons to fully integrate in society. Note that, with effect from 1 January 2006, a new act was introduced for persons with disabilities, the intention being to reinforce the protection of these persons.[22] This new regulation, which has essentially contributed to the recognition of personal handicaps as obstacles to normal participation in societal life and reformed benefit, has not changed the previous logic that disabled persons should be seen as beneficiaries of special protective measures to access employment when they so desire.

At a second stage,[23] the French system encountered mass unemployment and *Allocation de solidarité spécifique* (ASS) ("unemployment assistance") was introduced in a major reform of the insurance system from 1982, for beneficiaries who had exhausted their insurance rights (see below, *regime de solidarité*).

In a third stage, the RMI (*revenu minimum d'insertion*) appeared in 1988 as a totally new benefit (a universal minimum income for all those not entitled to any of the others). Its main innovation lay in the introduction of a '*contrat d'insertion*', defining a '*projet d'insertion*' (plan) which described the scheduling of actions the benefit's recipient was supposed to undertake. Later on, from 2003, RMA (*revenu minimum d'activité*) was grafted on RMI as a variant: in cross-national comparative terms, it should be considered as a benefit different from RMI, but in French terms, as it is coupled with a special contract, it is generally considered as a special contract for which MS recipients are eligible (see Sect. 5).

Minimum vieillesse (minimum protection in old age), the *allocation supplémentaire d'invalidité* (supplementary assistance to disability pension recipients) and the *allocation équivalent retraite, AER* (unemployment assistance to older workers) are MSs on behalf of target groups facing particular difficulties in the labour market or of persons no longer available to the labour market. These latter MS are *de facto* targeted at non-working age individuals and they are not part of 'activation.'

Because from autumn 2007, a reform movement has started anew, a fourth stage for the minimum income programmes might be organised from 2008.

3.2.1 Minimum income benefit for 'integration into society': revenu minimum d'insertion (RMI)

RMI refers to an independent, tax-funded minimum income scheme which can be accessed by persons who are over the age of 25 and fulfil the relevant

[22] Loi n° 2005-102 sur le handicap du 11 février 2005, JO 12 février.

[23] A special benefit was also added, Allocation d'insertion, for the young. It has been a marginal and declining benefit since 1993.

requirements. The RMI benefit was enacted in 1988; numerous implementing provisions regulate eligibility requirements and benefit receipt.[24] The unique feature of this (in comparative cross-national terms, 'social-assistance-like') benefit is that the payment of a certain sum of money in the event of poverty is balanced with the beneficiary's attempt at economic and social integration (*insertion*). Hence, RMI consists of a cash benefit flanked by (re)integration efforts of a social and occupational nature. These efforts, which can take a number of different forms, distinguish RMI from traditional French social assistance. Only if RMI recipients enter into an (in theory, mandatory[25]) integration contract, which normally enables them to participate in working life, are they entitled to social protection beyond the coverage of sickness and invalidity risks. Notably, they then make provisions for retirement age by contributing to pension insurance. This statutory requirement, however, is seldom met. The RMI scheme is of particular importance to long-term unemployed persons who are no longer, or have never been, entitled to claim benefits under the insurance or solidarity-based system. RMI beneficiaries are thus included in the social insurance system for a limited period of time.

Activities proposed to RMI beneficiaries are in the areas of health, housing, various forms of counselling and, last but not least, employment and training: in a way, RMI was a harbinger in the 'invention' of the French activation. However, at that stage, the obligation to look for work and to register with the public employment service (PES) was never included in the conditions for claiming it.[26] It is only later that RMA (*revenu minimum d'activité*) was added to the five working-age MSs. The official initial introduction of RMA was 2002,[27] when the right-wing government came to power; yet, even after 5 years and various reforms, RMA has remained a marginal contractual variant for RMI (and other MS) recipients; eligibility to the contract has been mainstreamed for other MS recipients in 2005 (*Loi de cohésion sociale*).

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[24] Loi n° 88-1088 dated 1 December 1988, JO 3 Dec. (Kaufmann 1990; Bouchoux et al. 2006).

[25] 2007 statistics show that the mean rate of effective conclusion of insertion contracts is about 40% (DREES 2007).

[26] Indeed, successive 1988 and 1992 RMI Acts established RMI as an unconditional citizenship right. Article 2 of the RMI Act reads as follows: "Every person residing in France whose income (...) does not reach the amount of the minimum income (..) and who is at least 25 or is in charge of one or several child(ren) (..) and who accepts participation in the activities, determined with him/her, that are necessary for his/her social or labour market integration, has a right to RMI" (1988, 1992 amended, Acts).

[27] In May 2003, the Raffarin government introduced updated legislation for RMI recipients after 2 years of eligibility. These individuals were supposed to be transferred to a new benefit (revenu minimum d'activité, RMA), which was supposed to entail enhanced employment obligations for a target of 100,000 contracts. However, the reform was met with considerable opposition from various actors and had to be postponed.

3.2.2 The integration contract: minimum income benefit to promote employment (contrat d'insertion: revenu minimum d'activité)

RMA was initially conceived as an instrument of labour market integration on behalf of persons who, prior to applying for this benefit, had been in receipt of RMI for 2 years and faced particular hardships in seeking employment.[28] RMA comes under the exclusive competence of the "départements," which are also responsible for financing the benefit.

RMA recipients are expected to perform part-time work of 20 or more hours per week. The RMA benefit supplements RMI and thus offers an enhanced financial incentive for the activation of this group of beneficiaries. In contrast to RMI, benefit receipt then becomes conditional upon the acceptance of employment. The payment of RMA is adjusted to the statutory minimum hourly wage (*salaire minimum interprofessionnel de croissance*), with one part conforming to the RMI benefit and an additional part covered by the employer. The evolution of the recipients of various working-age MSs is shown in Tables 8 and 9.

Table 8. Benefit recipients

	1990	1995	2000	2004	2005
RMI	510,100	946,000	965,200	1,083,880	1,134,000
Of which RMA with RMI				1,000	4,000
AAH	538,700	615,600	689,000	760,100	774,200
API	151,000	163,600	156,000	175,648	182,300
ASS	330,200	481,100	429,700	344,100	374,500
Total (including AI and AER)	1,530,000	2,206,300	2,240,700	2,410,928	2,542,000

Source: DREES (mainland France, November 2006)

Table 9. Beneficiaries including members of households

	1990	1995	2000	2005
RMI	1,072,000	1,876,400	1,891,800	2,223,300
AAH	861,900	984,900	1,075,000	1,207,900
API	398,300	431,500	426,400	498,000
ASS	825,400	1,202,400	1,032,800	900,000
Total	3,157,600	4,495,200	4,426,000	4, 829,200

[a]Own estimate

Source: DREES (mainland France)

[28] At the end of 2005, there were about 10,000 such contracts of whom around 4,000 for RMI recipients.

3.2.3 Incentivisation

More generally, political and economic pressures have fostered reforms aiming at eliminating possible disincentive effects of MSs. This rationale has actually presided over the reform of minimum income benefits from the late 1990s, in line with the overall influence of the 'activation' political discourse but also with the political discourse of the EU co-ordinations (Barbier 2004b). Yet AAH has never entailed problems of inactivity. As for API, it was 'activated' from the start, because served only for the period when the children were under three.[29]

On the opposite, for ASS, although in theory rules similar to the unemployment insurance have always applied, the majority of its older recipients have tended to be exempted from active job search, thus resembling early retirees on the dole. From 2002, the new conservative government introduced a reform of ASS in order to limit the duration of eligibility to 2 years. However, after their defeat in the regional elections in 2004, the French government scrapped the reform.

Overall, the insistence of the government has been steadily increased on the argument – for various solidaristic reasons – that MS recipients had an interest in finding jobs, albeit part-time jobs and reforms aimed at dismantling possible disincentives to take jobs for these recipients (the 'make-work-pay' route). The ministry for social affairs has systematically monitored the number of MS recipients who are to an extent, engaged in some form of activation or incentivisation, i.e. mixing the perception of one of the MSs and income from work (Table 10), despite the limited success.

Table 10. Share of selected MS recipients mixing MS and income from work

Date	RMI	API	ASS
End 2000	13.5	5.1	13.9
End 2001	12.2	5.1	12.9
End 2002	13.3	5.6	13.2
End 2003	12.5	5.2	13.3
End 2004	12.2	5.7	13.6
End 2005	12.1	6.0	14.7

Source: DREES (November 2006)

With the arrival of the new government in May 2007, a new benefit is currently being experimented with in a minority of departments, the *Revenu de solidarité active* (RSA).

[29] Presently, 40% of API recipients receive it for less than 1 year, and 40% of them are also active.

4 Unemployment insurance and assistance (régime d'assurance chômage)

4.1 Organisation

The French unemployment protection system consists of three separate domains, each of which comes under the competence of different institutions. As was seen in Sect. 3, minimum income benefits have come to serve as one of the channels of unemployment income compensation, although this was not their original objective.

This multi-division attests to the complexity of unemployment insurance and is apt to impede a specific evaluation of dysfunctions in cases of high unemployment. Nevertheless, the convoluted structure mirrors a French tradition, namely the division of competence between the joint administration on the part of employer and employee representatives, on the one hand, and the state administration on the other.

Unemployment insurance is regulated on the basis of agreements or so-called *conventions*[30] concluded between the social partners, who in turn assign the various insurance tasks to special institutions governed by private law.[31] Every convention requires the consent of the competent minister. The benefit agencies, ASSEDICs (*Associations pour l'emploi dans l'industrie et le commerce*), manage the insured's accounts as well as the collection of contributions and the award of benefits. The jointly administered UNEDIC (*Union nationale interprofessionnelle pour l'emploi dans l'industrie et le commerce*), which has the authority to issue directives to the ASSEDICs, is responsible for financial equalisation and, quite generally, for the system's operability. The labour administration entrusts the ANPE (*Agence nationale pour l'emploi*), which only involves the social partners on its board, but with a minor actual role so far,[32] with the chief task of reviewing the fulfilment of benefit prerequisites.[33] Alongside other organisations, ANPE exercises a job placement function and thus plays a key role in the recruitment and reintegration of unemployed persons. In this capacity, ANPE also implements specific employment programmes and is therefore in charge of a significant proportion of activation in this sense.

[30] The system in force until mid-2001 was based on Ordonnance no. 84-198, dated 21 March 1984. See Art. L. 351-1 ff. Code du travail.

[31] Art. L. 351-8, art. L. 351-21 Code du travail.

[32] At the end of 2007, a fresh process of reform has been started along the new president's promise to merge ANPE and the ASSEDIC system. The two institutions UNEDIC (including the ASSEDIC) and ANPE merged meanwhile in a sole one (Loi n° 2008-126 du 13 Février 2008 on the reform of the public employment service, JO n° 38 du 14 Février 2008).

[33] These prerequisites notably include proof of the fact that the insured is available for placement.

Moreover, an aim which has not yet been fully realised in combating unemployment more efficiently has been to offer jobseekers a *guichet unique* (single contact point). The development of this system in previous years, along with the rules applicable since 2006, has had the result that unemployment insurance facilities do not only act on behalf of and in accordance with the *service public*, but have more or less tended to become an integral part of it, despite the preservation of their legal status.[34]

In the mid-1980s, the French insurance fund was innovated with the provision of more active support to the insured unemployed: AFR (*allocation formation reclassement*) allowed for an extension of the compensation period and additional support for training periods. Since then, the philosophy has been both to activate unemployment compensation by giving the unemployed better opportunities to improve their employability and, more marginally, to influence employers' decisions to hire long term unemployed people.

4.2 The contribution-based protection regime (régime contributif)

All in all, the French picture of activation which emerges from this period is a mix of state-led initiatives to introduce more universal coverage, under the justification of Republican solidarity and, on the other hand, an early adjustment to increasingly active compensation of the unemployed in the insurance sector, which culminated in 2001 with the introduction of PARE's 'new activation' as the standard provision for all insured unemployed. Along with the introduction of a more activation-oriented political discourse, the collapse of the reforms of assistance (RMA, ASS) after the 2004 regional elections should be interpreted as a clear sign that the solidaristic element of the French policy cannot easily be dispensed with, even by conservative governments.

In the area of unemployment insurance, activation was present from the start (in the form of the obligation to seek work), and the clause to "actively seek" employment has never been mere rhetoric for recipients. The conventions concluded in 2001 and 2004 led to significant changes in unemployment insurance. In particular, the insured are required to a much greater extent than before to become active in striving for their reintegration into the labour market because of the introduction of the PARE system. This tendency also clearly goes in the direction of tightening prerequisites for entitlement to unemployment benefits. It is therefore necessary to depict the rules in force prior to the convention of 31 December 2005 because they, on the one hand, provide the fundamental points of reference and, on the

[34] The term service public is a special feature of welfare benefit administration under French public law, comprising more than the usual concept of "public service". See previous note for the ongoing reform.

other, continue to govern eligibility criteria as well as benefits for certain categories of unemployed persons (see below). Hence, the old and the new rules subsist alongside each other, but no longer apply in their entirety to the same persons.

4.2.1 Unemployment insurance benefits and eligibility

Essential areas of unemployment insurance, which is funded in unequal shares by employers and employees,[35] were amended some years ago on account of financial difficulties.[36] The overall unemployment protection system in its previous form, valid until June 2001, provided two different types of security mechanisms. The first took the form of unemployment insurance which, after a qualifying period, awarded a contribution-based cash benefit. Depending on employment duration and period of receipt as well as the insured's age, this benefit was scaled back by a fixed reduction rate as from a specific point in time commencing with 122 days (*allocation unique dégressive*, AUD).[37] The full amount of unemployment benefit was calculated according to a percentage of the reference wage[38] and to a fixed amount or, if more favourable, according to a specific percentage of daily pay. Both a minimum and a maximum amount were stipulated. Beneficiaries who met certain prerequisites were entitled to a retraining allowance (*allocation de formation reclassement*) if they agreed to enrol with the appropriate programmes on offer.

A non-contributory solidarity benefit was paid as a second security mechanism in the form of an integration allowance (*allocation d'insertion*) to unemployed persons lacking sufficient entitlement to unemployment benefit, but able to fulfil certain other requirements (these were mainly young people, but the benefit was abolished for them in the early nineties). Those whose claims to a contribution-based benefit had expired or who were no longer eligible for insurance benefits

[35] On 1 January 2001, the contribution rate was lowered from 6.18 to 5.80%. Further reductions were planned (see below). Up to the contribution assessment limit, the employer contribution was set at 3.70% and that of employees at 2.10%. The amount in excess of the assessment limit, up to its quadruple, was subject to an additional levy of 0.50%; however, this partial contribution was to be abolished as per July 2001. Moreover, employers paid a sole contribution of 0.15% in support of the régime d'assurance des créances des salariés (wage guarantee). In 2007, employers' and employees' contributions are at respectively 4.0 and 2.4%.

[36] The regulation in force until 1 January 2001 was the (amended) convention du 1er janvier 1997 relative à l'assurance chômage et règlement annexé (which was also amended several times).

[37] Benefit eligibility required proof of a certain employment or insurance period within a specific timeframe (between 122 days or 676 h during the previous 8 months, and up to 821 days or 4,563 h during the previous 36 months). The period of receipt depended on the duration of insurance or employment as well as the insurant's age; it was set at a minimum of 122 days and could be prolonged up to 1,825 days.

[38] The reference wage, salaire de référence, is computed on the basis of gross pay received in the preceding 12 months.

on other grounds were entitled to an *allocation de solidarité spécifique* (ASS), the mainstream unemployment assistance benefit (see also Sect. 3). This solidarity allowance was only partially[39] based on prior contributions and funded by the state.

The temporal limitation of insurance-related benefits was to underscore their prime function as a tide-over until the beneficiary found a new job.

The convention introducing essential amendments to unemployment insurance was initially not supported by the social partners because a number of trade unions had refused to sign it.[40] The key note of the scheme established on 1 January 2001[41] was to set the course for re-entry into employment. Along quite general lines, the objective was, as in the past, to adopt suitable measures for the creation of jobs. The new convention nonetheless entailed a change in the concept of unemployment insurance insofar as the previous system, based exclusively on income replacement benefits, was now to be supplemented by other types and forms of benefits, and above all by the imposition of additional duties on the insured. The highly contested aim proposed by the employer side would have been to modify the legal-claim-based compensation scheme in the form of income replacement benefits by introducing further preconditions for the continued receipt of benefits once unemployment had occurred, and by threatening insurants with disadvantages in case of their non-compliance with specified requirements.

Different from the former regime, the amended provisions sought to gear the income replacement benefit to the newly conceived reintegration assistance. This interlinkage between insurance benefits and jobseeker duties was the fundamental – yet not revolutionising – novelty characterising the new unemployment insurance scheme. The pertinent convention provided interim regulations until 30 June 2001 to facilitate the transition from the old regime to the new.

In contrast to the former regime, the new rules moreover introduced novel contractual conditions and basic parameters for framing cooperation between the various actors involved. In that way, a relationship was to be built up between jobseekers and UNEDIC, on the one hand, and ANPE on the other. These contractual relations also had implications at an institutional-organisational level as regards cooperation between UNEDIC and ANPE, as well as between UNEDIC and the State.

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[39] Under the condition of having contributed for 5 years out of the preceding ten.

[40] It was referred to as the convention du 1er janvier 2001, but had already been resolved on 19 October 2000 and approved on 4 December 2000. J.O. 6 décembre 2000.

[41] Its term ended on 31 December 2003.

4.2.2 PARE and its first legacy

Hence, activation featured high in the long and conflictual process of reforming unemployment insurance in 2001, when PARE – *plan d'aide au retour à l'emploi*, (back-to-work support plan) was introduced. In October 2000, employers' organisations and only three of the five French representative trade unions agreed on the reform. But it was eventually only implemented from July 2001, after more than a year of conflict among unions and between unions and employers' associations and the government.

A contractual agreement then regulated the respective duties of both jobseekers and the unemployment insurance. To that end, the back-to-work support plan PARE details wage replacement benefits as well as measures to re-attain employment, thus merging both these components of unemployment insurance.

PARE furnished the framework within which jobseekers undertake commitments in the form of personal action projects. In the initial stages such a *projet d'action personnalisé*, PAP,[42] constituted an agreement between jobseeker and ANPE, covering a number of different aspects. On the one hand, jobseekers are obliged to help draw up a personal profile outlining their school and occupational background and skills. To that end, they are to collaborate in the evaluation of their occupational capabilities and moreover be prepared to engage in regular discussions of their situation, in order to enable the adoption of personal accompanying measures. On the other hand, jobseekers must undertake to become active in a particular way to re-attain employment. They are therefore expected to participate in measures detailed in PAP and aimed particularly at job-specific further training and retraining. In addition, they are required to take an active part in the effective search for employment.

The PAP agreement is forwarded to the competent ASSEDIC for countersignature. ASSEDIC's task is to accompany PAP initiation and, if necessary, to take appropriate measures to adapt the project to new circumstances where these arise in specific cases.

The new convention eliminated the degressive unemployment benefit in favour of the insured unemployed who received benefits according to the PARE principle. As a result, these persons were no longer subject to benefit reductions if they did not succeed in finding employment within a certain period (that did not yet apply to all unemployed persons at the time). A provision was that the social partners could agree on new specific solutions in the event of unexpected funding difficulties. In any case, the total duration of benefit receipt remained unchanged and the insured status was upheld as the prerequisite for entitlement. One change was that now the insured had to furnish proof of an effective employment duration of at least 4 months within the past 18 months. The former convention had set the

[42] In practice, different labels have been used since to describe these projects.

timeframe for a minimum duration of employment at merely 8 months. The extension of this time-span was introduced with the declared aim of improving the situation of persons in precarious employment, since especially this group was often unable to fulfil minimum eligibility requirements owing to the specific configuration of their work contracts. A new benefit was the mobility allowance granted to beneficiaries who are prepared to move to a region with better job prospects.

On 1 July 2001, i.e. when the comprehensive application of the new convention took effect, the specific support awarded for training periods, the *allocation formation reclassement*, was cancelled without substitution. The *allocation chômeurs âgés* for older insured unemployed was no longer granted to new applicants from 2002 and, hence, likewise repealed.

Over the same period, significant management reforms occurred in the Public Employment Service (PES, see below). The latest period of the implementation of the PARE, now the mainstream benefit and form of 'activation', has also seen a very significant increase of sanctions for the unemployed, while a new decrease of the benefit, decided in December 2002 and to be implemented fully in 2004, was eventually cancelled after the conservative government lost the 2004 regional elections.

4.2.3 Recent contractual provisions under unemployment insurance 2006–2007

The current unemployment protection regime rests on several different legal bases,[43] which were enacted in late 2005 and early 2006. The executive adopted an *arrêté* (ordinance) providing the necessary legal foundations for the practical application of the conventions and collective agreements concluded by the social partners.[44] In this form, the rules have been in force since 2006, thus updating the convention of 1 January 2004, which expired at the end of 2005. The current term should expire in 2008. A new regulation had become inevitable owing to the high level of unemployment and the substantial unemployment insurance deficit, both of which were expected to rise even further if the unemployment insurance regime remained unchanged.[45] The new regime is nevertheless in line with the reform process initiated in 2001 and continued in 2004,[46] and basically comprises only modifications of little consequence. The comprehensive body of legislation, in its

[43] Accord national interprofessionnel du 22 décembre 2005; convention collective nationale d'assurance chômage; règlement annexé du 18 janvier 2006; accords d'application; convention Etat-ANPE-UNEDIC du 5 mai 2006.

[44] A. 23 février 2006, JO 2 mars 2006.

[45] At the end of 2005, the deficit amounted to EUR 14 billion.

[46] Introduction of PARE and repeal of the degressive unemployment benefit.

many parts, notably contains provisions governing entitlement prerequisites; the calculation of the reference wage, which serves as the basis for the assessment of unemployment benefit; the possibilities for cumulating income replacement benefits and a pension; seasonal unemployment; financial assistance to employers; and many more. In order to avoid procedures such as the *affaire des reclaculés*,[47] the social partners have framed corresponding implementation rules. This is the reason for the concurrent validity of both the old and the new rules. The latter apply to persons who have lost their jobs from 1 January 2006. In the meantime, however, the *Cour de cassation* has decided with respect to PARE that ASSEDICs are not contractually obliged to make benefit payments to the unemployed for a specific period of time, but that the duration of benefit receipt derives from the un-employment insurance regulations (*règlement annexé à la convention*).[48] This judgment has now made it clear that solely the latter regulations are binding on benefit receipt. The two fundamental tasks of unemployment insurance nonetheless remain unchanged, the one being the payment of income replacement benefits, the other focussing on the integration of the unemployed through the activation of passive expenditure, i.e. for the purpose of job maintenance. The consequent incorporation of the unemployment protection regime into the system of employment promotion/subsidisation (*droit d'aides à l'emploi)* is moreover an aim of the *loi de cohésion sociale* of 2005 (Willmann 2005). Unemployment insurance thus takes part in the measures to promote the hiring of unemployed persons and to sustain jobs.

The most important savings no doubt result from the raising of contributions and from changes to the computation of benefits, affecting both their total amount (on account of the altered period of receipt) and their assessment basis (computation reference period; employment duration).

As regards actual job-seeking, an individual assessment is performed with the help of the ASSEDIC, taking account of a variety of circumstances and applying to all but those unemployed persons over the age of 57½ or, on certain conditions, 55. The first evaluation is to provide differentiated options for seeking and taking up employment. This process also involves the ANPE and other institutions such as APEC. The jobseeker's range of capabilities can be ascertained with the help of their work history, as well as the VAE (*validation des acquis de l'expérience*: recognition of occupational experience; see below). In especially difficult placement cases, UNEDIC, with the support of ANPE, can conclude specific agreements with private organisations. A plan is arranged according to the resultant findings

[47] During the term of the convention on unemployment insurance, UNEDIC had modified the assessment basis of unemployment benefit. Unemployed persons who were disadvantaged by this alteration took the matter to court and prevailed. TGI Marseille, 1ère chambre civ., 15 avril 2004, TPS 2004, comm. 199; TGI 11 mai 2004, RJS 2004, 946. See for instance Supiot 2004.

[48] Cass. soc. 31 janvier 2007, n° 04-19.464S.

and states the potential types of occupation as well as the jobseeker's preferences. As in the former case of PARE, great importance is attached to the active and effective efforts of the unemployed. After a period of 6 months without employment, the plan is updated and modified accordingly. After 12 months, a renewed orientation is undertaken, possibly leading to a successive reduction of subsidies to the employer. If no measure is ultimately successful, the unemployed person receives unemployment benefit ARE until the expiry of legal entitlement.

Even into 2007, no comprehensive evaluation of PARE has been delivered either by the government or by UNEDIC. A first evaluation was scheduled at the end of 2004 but was never published. Fresh reforms implemented via the *Loi de cohesion sociale*, including the introduction of PES reforms and the "maisons de l'emploi," were implemented without taking stock of the existing situation: this has been a major feature of the fragmented management of policies and programmes both in the sector of MS and in the PES.

4.2.4 Unemployment insurance benefits

The unemployed are entitled both to a wage replacement benefit and to multifarious and differently emphasised forms of integration.

Unemployment benefit (ARE)

ARE (*allocation de retour à l'emploi)* is based on a variety of assessment periods governing its amount and duration.[49] To become eligible for the respective period (*filière*), the unemployed person must provide evidence of a specific term of insurance (from 6 to 16 months) within a specific timeframe (from 22 to 26 months), on the basis of which the claim to ARE is computed for a certain duration (from 7 to 23 months). Older unemployed persons are subject to special provisions.[50]

Retraining assistance (aides au reclassement)

The different forms of integration support are set forth in the *règlement* and the *accord d'application* governing unemployment insurance. It is in this fairly new area of activity that unemployment insurance has assumed activation tasks.

On the one hand, support is provided towards the "recognition of occupational experience" (*validation des acquis de l'expérience*, VAE)[51] for the attainment of a

[49] Circulaire UNEDIC n° 2006-14 du 21 juillet 2006.

[50] In 2007, for persons over 50 with 27 out of 36 months previous employment, the benefit can be served up to 36 months.

[51] The Law on social modernisation of 17 January 2002 provides for the recognition of work experience as a means of ensuring better qualifications for employees. The law

diploma. This assistance is primarily designed for unemployed persons who have worked for over 20 years or for those who are older than 45, or for jobseekers who can obtain recognition of their occupational qualifications through VAE, enabling them to exercise an occupation of their preference. The assistance is substantiated through the refund of costs incurred for the recognition of occupational qualification.

On the other hand, support takes the form of educational and further training support or contracts to promote professionalisation (*aides incitatives au contrat de professionnalisation)*. These subsidies can be claimed, for example, after a successful VAE and cover certain expenses; they are limited in terms of amount. Unemployment insurance pays the employer a flat-rate subsidy during the training period. For instance, UNEDIC can top up the employer's wage by up to 120% of ARE during the period of receipt as an incentive for the conclusion of a professionalisation contract. Initially, the goal was to create 80,000 of these contracts annually in order to meet the contribution of unemployment insurance to employment promotion, as targeted in the *loi de cohésion sociale*.

Employees with fixed-term contracts are entitled to assistance towards the initiation of permanent employment (*aide à l'insertion durable des salariés en contrat à durée déterminée et des travailleurs saisonniers).*

The hiring of unemployed persons who encounter particular placement difficulties may entitle the employer concerned to apply for a special subsidy. This possibility, which was introduced in 2004, has been modified such that it now applies to jobseekers over 50 who are engaged by an enterprise other than the one with which they were previously employed for longer than 12 months. The subsidy must not exceed the amount of ARE and is degressive. Finally, unemployed persons who wish to become self-employed can also apply for a special subsidy.

4.3 Unemployment insurance (régime de solidarité)

The following four benefits come under the unemployment insurance regime but, in contrast to contribution-based benefits, are not funded by the social partners via contributions; rather, they are funded by the state budget (*régime de solidarité)*. These solidarity-based benefits are granted to unemployed persons whose entitlement to contributory unemployment insurance benefits has expired. All of them

supplements similar regulations of the past. Specific work experience and the resultant skills are to enable employees to achieve occupational advancement, also without diplomas. Moreover, diplomas or other forms of certification can be obtained exclusively through the VAE. Work experience is also taken into account for an initial apprenticeship (apprentissage). Referral to specific work experience can also be made against the wishes of the employee concerned.

are flat-rate and income-tested, with older unemployed persons approaching retirement entitled to special benefits (see below). The mainstream unemployment assistance benefit is ASS (see also Sect. 3), the other benefits being minor ones.[52]

4.3.1 Special unemployment assistance (Allocation de solidarité spécifique, ASS)

Following the term of contributory unemployment benefit receipt, long-term unemployed persons no longer entitled to this benefit or to the *allocation de fin de formation* (see below) are eligible for ASS (Art. L. 351- 10 ff. *Code du travail*). If the applicant fulfils certain age prerequisites, ASS can also be paid in lieu of ARE if the latter is less advantageous for the beneficiary. Although the aggregation of ASS and earnings from employment is planned, the pertinent implementing rules have not yet been enacted.[53] ASS recipients (like other MS recipients) are entitled to a special benefit called *prime de retour à l'emploi* if they take up employment. A monthly flat-rate payment, the *prime mensuelle forfaitaire*, can likewise be granted if the engagement is not within the frame of a *contrat d'avenir* or a CI-RMA.

ASS was an 'activated' benefit from the start, because requirements about job search were roughly the same as for the mainstream unemployment insurance benefit. It is only much later in the late 1990s that a majority of ASS recipients were seen in the light of their prevailing absence of labour market participation because of their age.

4.3.2 Allocation temporaire d'attente (ATA)

ATA has been paid out since November 2006 in place of the *allocation d'insertion* (integration allowance; unemployment assistance), but only for certain unemployed persons, notably asylum seekers and other persons with specific backgrounds, who fail to meet the requirements under insurance law governing the receipt of contributory unemployment benefit (*allocation d'assurance*), but otherwise fulfil the conditions stipulated in the *Code du travail* are entitled to this solidarity-based benefit (Art. L. 351-9; R. 351-10 Code du travail).

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52 At the end of 2005, there were around 375,000 ASS recipients (see Table 8 in section III above). In August 2007, Unedic statistics displayed a number of 340,000 ASS recipients. Other benefits described in this section have a much smaller number of recipients. AER has the largest with 68,000 people in August 2007.

53 Loi n° 2006-339 du 23 mars 2006, JO 24 mars. Unemployed persons who prior to the entry into force of this law received earnings from employment in addition to ASS are subject to the former aggregation rule. It is geared to the minimum wage and, after a certain period, provides for a degressive reduction of the aggregation of income with ASS.

4.3.3 Unemployment assistance for older employees (Allocation équivalent retraite, AER)

This solidarity-based benefit introduced in 2002 was conceived on behalf of unemployed persons who are able to evidence 160 insurance quarter-years prior to the age of 60, and who either receive ASS or another solidarity-based benefit such as RMI, or who are ARE recipients (Art. L. 351-10-1 Code du travail). In the first case, AER replaces the formerly granted benefit (*AER de remplacement)*; in the second, the ARE benefit is topped up by AER, i.e. the benefits are aggregated (*AER de complément).* AER has taken the place of the *allocation spécifique d 'attente*, ASA, and guarantees a minimum monthly income to unemployed persons approaching retirement who can provide proof of sufficient insurance periods, but have not yet attained the minimum pensionable age. This measure can be of considerable importance as the job opportunities for older persons are exceedingly slim.[54]

4.3.4 Allocation de fin de formation (AFF)

The AFF is intended for cases in which the duration of training exceeds that of ARE receipt. To be entitled to AFF, the jobseeker must have had a claim to ARE for at least 7 months. In that case, the right to receive AFF is maintained for four additional months. If the jobseeker is engaged in training for a job considered difficult to obtain, he or she can in exceptional cases receive AFF (*à titre dérogatoire*). The precondition here is that the training lasts longer than 4 months and the claim to ARE exceeds 7 months.

5 The public employment service and employment programmes

5.1 Overview

The fact that France over the last 20 years failed to achieve full employment and saw its unemployed population grow is very well documented. Hence, governments were confronted with the 'employer of last resort' question, the state being expected to provide temporary (or 'secondary market') jobs when the market failed to deliver them. As a result, a significant proportion of GDP – although never reaching levels observable in Sweden and Denmark –has been constantly devoted to employment expenditure (Barbier and Gautié 1998).

[54] If the other requirements have been fulfilled, notably that of the qualifying period, a claim to the full rate of old-age pension can be filed from the age of 60.

Actually, in France, from the 1980s, *politiques publiques de l'emploi* have gradually emerged as a new, significant and consistent policy area for social protection (Barbier and Théret 2003, 2004). In a first period, from the late 1980s, extensive programmes were introduced.[55] The corresponding expenditure went from 0.9 to more than 4.0%[56] of GDP from 1973 to 1995, a considerable expansion, which has only slightly been slowed recently.[57] Programmes have encompassed: training schemes for the unemployed; temporary subsidised employment in the public and non profit sectors; and subsidised contracts in the market sector for certain hard-to-place groups. Except for training programmes, almost all participants enjoyed an employee status (*statut de salarié*) and, consequently, were entitled to standard social protection rights (nevertheless, there has been a clear relationship between these schemes and the emergence of a 'working poor' stratum in France). The number of participants in the various employment programmes increased to about 10% of the active population in the late 1990s (a stock of 2.5 million in 2000, but 1.9 in the early years 2000).[58] Over the 1990s and early 2000s, this figure has constantly included a stock of between 300,000 and 500,000 places for the temporary subsidised jobs in the public and non-profit sector, among which the CES (*Contrats emploi solidarité*) have been the typical contract, even under the *new labels* introduced in 2005 (see later CAE and CA contracts).[59] As a result, during the period, all governments – despite obvious reluctance from the more liberal ones – have stuck to the logic of the *state as an employer of last resort* to a certain degree, for fear of being confronted with even higher unemployment figures and with recurrent social demonstrations, as those which occurred in 1995 and 1997. In 2007, however, the situation is presently uncertain about the continuation and reform of these contracts.

Globally, over the period, these programmes nevertheless have failed to actually provide hard-to-place people (and the unemployed more generally) with

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[55] In a second stage (see next section), the very notion of what was considered 'active labour market policy' in France was to be transformed through the introduction of the systematic decreasing of employers' social contributions.

[56] This figure includes so-called 'passive benefits'.

[57] If one takes into account expenditures linked to the mainstream reduction of social contributions (see below), the overall percentage however has only changed slightly. Yet, its structure was transformed: in 2007, total "activation" expenditure in this sense amounts to around 3.8% of the French GDP, of which 0.8 for active programmes; 1.0 for social contributions' reductions and 2.0 for so-called "passive measures" (DARES 2006, 2007 a, b).

[58] If one includes (see last section) participants in early retirement schemes, i.e. a constant stock over the period of 400–500,000 persons, the total figure is between 2.3 million (2004) and 3.0 (2000) (DARES 2006).

[59] Contrats d'avenir; contrats d'accompagnement dans l'emploi; contrats d'insertion RMA (CI-RMA). CI-RMA is a much more marginal contract and is described in relation to RMI in section III of the present text (DARES 2007b).

effective transitions to conventional market jobs. Only a minority of CES participants succeeded in gaining such access. Other forms of temporary subsidised jobs, like the *emplois jeunes*,[60] have nevertheless brought positive outcomes for participants (although net effects are controversial). Accordingly, subsidies targeted on contracts for the long-term unemployed or RMI beneficiaries in the private sector have proved effective. The overall French policy appears as implemented only half way, because of limited funding and quality. Hence, a significant proportion of employment programmes could certainly not be viewed as effective paths to activation but, like in many other countries, have certainly acted as ways of decreasing 'open unemployment.'[61]

5.1.1 The public employment service (service public de l'emploi, SPE)

Dated 18 January 2005, the *Loi de cohésion sociale* (Social Cohesion Act, alias 'Borloo Act', from the minister's name), was aimed particularly at better co-ordination among institutions and actors in charge of employment, through the consolidation of job placement, unemployment insurance benefits, (re-)integration as well as basic and advanced training, and the accompaniment of jobseekers.

The state, the employment service ANPE, the AFPA,[62] UNEDIC and the ASSEDICs thereby stand for the *service public* and constitute the first 'level' of the SPE. This service may be supported by the territorial authorities (*collectivités territoriales*). Together, they were supposed to form the *maisons d'emploi*, which are set up in employment pools (*bassins d'emploi*).[63] These two components of the SPE are backed by public institutions, but also by private-sector organisations that participate in SPE and support occupational reintegration activities.

The law provides for the conclusion of agreements between the state, ANPE and UNEDIC, with the cooperation of AFPA, in pursuit of a twofold objective:

- To stipulate the main conditions of SPE and outline cooperation between its participants

[60] The emplois-jeunes (or nouveaux services-emplois jeunes, NSEJ) programme was one of two flagship programmes introduced by the Jospin government in 1997, along with the reduction of the working time. NSEJ were 5-year temporary contracts, signed by young people under 25 in associations and in the public sector. The programme – cancelled by the Raffarin government – however has still more than 100,000 participants at the end of 2004 and 38,000 in summer 2006.

[61] It must be stressed that similar discussions developed even in the most successful countries, including Denmark (Jørgensen 2002).

[62] AFPA, Association nationale pour la formation professionnelle des adultes, is an institution for the (advanced) training of adults; its mission is to promote the reintegration of unemployed persons into working life.

[63] Art. L. 312-1 Code du travail.

– To set the terms for the creation of an individualised jobseeker's file that is accessible to all actors involved in SPE (Art. L. 311-1 al. 4 *Code du travail*), the intent being to establish a *guichet unique*, a single contact point for the unemployed.

The 'Borloo Act', the *loi de cohésion sociale*, abolished the placement monopoly of the ANPE and allowed for private placement agencies, which had already existed de facto for a very long time (Art. L. 312-1 *Code du travail*).

5.1.2 Governance: Decentralisation and out-contracting

In the complex French system, the overwhelming majority of buyers and producers of services are still public and are organisations such as the ANPE (under close government control); the local authorities; 'private' organisations submitted to strict governmental control and legal requirements, such as UNEDIC and the ASSEDICs; or the unemployment insurance system,[64] which also delivers assistance benefits. Even the ANPE's recent diversification of resources does not amount to privatisation comparable to countries like the United Kingdom or the Netherlands.[65]

At the time of writing (2007), however, a major reform initiative is being pushed forward by the new government, involving the consultation of social partners and it is not possible to anticipate what the future outcome will be.

5.2 Subsidised employment contracts (contrats aidés)

For some years now, the state has sought to guide employment policy by reducing the cost of labour and by providing assistance to companies (and administrations) in pursuit of this goal.

5.2.1 General remarks

Contrats de travail aidés refer to employment contracts and forms of employment which are subsidised, or for which tax breaks are granted. Subsidised contracts for the target groups of employment policy all entail lower social contributions on the part of employers. Aside from such financial incentives, subsidised employment contracts as well as the novel form of "first hiring contract" (*contrat nouvelle*

64 The social partners' decisions (conventions) cannot be enforced in the absence of legal approval by the government. This principle applies to rules and benefit levels.

65 Resources, which in the past exclusively came from the central government, now also include UNEDIC's contribution (the social-partners-managed fund is financed through legal payroll contributions) as well as subsidies or the purchase of services from regional and local authorities. The possibility of having the ANPE sell services to firms has been under examination recently (2003).

embauche, CNE), which enjoys a kind of special status (see below), rely on special legislation. For example, persons employed under subsidised contracts are not counted towards staff size, and CNEs entail specific protection against dismissal rules (infra). But the CNE is a permanent or open-ended employment contract (*contrats à durée indéterminée*).

Subsidized contracts have represented one of the major areas of the French activation strategy for the last two decades. Despite the fact that their reform is widely debated for 2007–2008, they nevertheless remain one of the basic pillars of this strategy.[66]

The CNE, of which some common characteristics were just touched upon, is of a completely different nature in terms of the activation logic: subsidised contracts such as the *Contrat emploi solidarité* and the *contrat emploi-jeune*, and now the *contrat d'accompagnement dans l'emploi*, are heavily subsidized contracts in the public and non-profit sectors. *Contrat initiative emploi* and SEJE (*soutien des jeunes dans l'entreprise*) contracts are also heavily subsidized contracts, this time in the private sector. However, the CNE was never considered to be a subsidised contract: from the start, it was considered as a measure introduced to enhance the flexibility of the labour market and to be inserted into *the mainstream ordinary employment relationships*, for the small firms. For this reason, CNEs are not at the core of our definition of activation (see introduction): they are rather a part of the flexibilisation strategy, alongside the activation of the various sectors of social protection.

Nevertheless, because, from the debates since 2005 in France, employment policy has tended to include both the activation of social protection and the flexibilisation of the labour market, areas which were before taken separately, it is necessary to present very briefly the case of the CNE. Indeed this is all the more important at this point of our text because in 2007, after the presidential election, a new government has started an overall review of labour law. It is of course too early to address the consequences of this innovation. However, one might anticipate that, if new legislation is passed, the very articulation of the French activation strategy gradually designed from the mid-1980s, will meet with a potential important crossroads. This is all the more probable than, in January 2008, a new overarching collective agreement was passed between the unions (however not signed by CGT) and the employers' associations. At the time of writing, this has still to be transposed into formal legislation.

[66] Additional employment creation schemes can be implemented at regional levels and, like their national counterparts, may be targeted at either jobseekers or employers.

5.2.2 Objective and scope of application of these employment contracts

Subsidised employment contracts form an integral part of the overall programme to foster employment and are thus an instrument for combating unemployment. Generally, these contracts are reserved for persons with particular integration difficulties and have been conceived accordingly. Initially, their main target group consisted of unemployed young people with specific difficulties on the labour market, including low-skilled young persons. Later on, this group was supplemented by that of older unemployed persons. Even if some of these contracts only address certain age groups, the age of potential beneficiaries no longer plays a leading role today.

5.2.3 Categories of subsidised employment contracts

Not all *contrats aidés* have the same practical significance in terms of employment promotion; they also differ in their points of emphasis. Two main categories can be distinguished:[67]

The chief aim is to foster employment. This is primarily accomplished by exempting employers from the payment of social insurance contributions. This category of subsidised contracts also *de facto* comprises the so-called service voucher introduced in 2006 (*chèque emploi-service universel*, Cesu), although in the French context this voucher is always treated separately. The application of the principle of decreased social contributions has become a key feature of the French activation strategy.

The second category seeks to create incentives for the employment of certain groups of jobseekers, in particular the long-term unemployed or older jobless persons, but also workers with disabilities and young people who are disadvantaged owing to a lack of training. The most important contracts emphasising these aspects are the *contrat initiative emploi* and the *contrat d'accompagnement dans l'emploi*. Other measures, however, are targeted at situations displaying specific features, for example assistance towards the project-related recruitment of executive employees (*cadres*) in mid-sized enterprises (*aide au recrutement de cadres dans l'industrie*, ARC).

5.2.4 General features and basic preconditions

Most subsidised employment contracts can be concluded for both an unlimited and a limited duration. In case of the latter, however, there may be individual provisions governing minimum or maximum contract periods or prolongation thereof,

[67] As a third category, there are contracts that aim to create compensatory forms of engagement, as in the case of part-time employment under early retirement schemes.

depending on the type of contract.[68] Options between full- or part-time employment are also possible.

At least formally, all subsidised employment contracts are subject to a mainstream maximum duration of 24 months and – in the absence of other provisions – may be prolonged by no more than 2 months within this period. Certain contracts may also be conditional on a minimum duration

The conclusion of a subsidised employment contract is inadmissible if a notice of dismissal on economic grounds (*licenciement pour motif économique*) was given within the preceding 6 months. The new hiring must not be in any way related to the dismissal of a permanently employed worker; social insurance contributions and other taxes must have been paid.

Finally, an agreement between the employer and the public employment service (ANPE) must be concluded prior to or, at the latest, concurrently with the engagement of an unemployed person as a prerequisite for the granting of state support and payment exemptions. The period of such an agreement must not exceed the duration of a fixed-term subsidised contract; in the case of a permanent subsidised contract, it generally may not last longer than 24 months.

5.2.5 Subsidised employment contracts in the for-profit and the non-profit sector

The "employment initiative" contract (contrat initiative emploi, CIE)

The provisions on the CIE entered into force on 1 May 2005.[69] A CIE enables the undersigned employer to claim various subsidies, depending on the given situation.

The contract can be concluded on a permanent basis or limited for a maximum duration of 24 months; it may also take the form of the CNE, whose distinctive provisions will then apply.[70]

CIEs are directed at private-sector employers who have registered with the UNEDIC (see above), that is, unemployment insurance. But state-owned enterprises (*entreprises nationales*) as well as employer associations set up for the purpose of reintegration are permitted to conclude such contracts.

All unemployed persons with social and vocational difficulties of any kind are allowed to conclude CIEs if they meet the general eligibility requirements. It is thereby irrelevant whether or not they are registered with ANPE.

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[68] In part, special provisions apply to overseas regions.

[69] Art. 323-8-4 Code du travail; Loi n° 2005-32 du 18 janvier 2005.

[70] See below (Sect. 5.3).

The conclusion of a CIE is subject to the generally valid conditions regulating subsidised employment contracts. Hence, the CIE is conditional upon an agreement between the employer and ANPE prior to or, at the latest, concurrently with the engagement of a jobseeker (Art. R 322-16, *Code du travail*). The term of that agreement must not exceed the duration of a fixed-term CIE, and may not last any longer than 24 months if the CIE is concluded for an unlimited period.

CIEs aim to foster employment, although they produce enormous windfall effects, in the range of 80% of cases. CIE arrangements thus often mention measures of vocational training, retraining and further training as well as on the "recognition of occupational experience" (*validation des acquis de l'expérience*, VAE). Such measures are voluntary, but in certain circumstances, especially if the CIE is concluded for a fixed term, the employer may be obliged to adopt them.[71] Generally, the conventional company-specific vocational training measures provided for under labour law will be implemented in any case.[72]

CIE employees have the same rights and duties as the rest of a company's staff; from the seventh month of employment, they are likewise entitled to any collectively agreed benefits.[73] Their remuneration must be at least as high as the minimum wage.

As with other forms of subsidized contracts, CIE employees are not taken into consideration for the calculation of the threshold beyond which some legal rules become applicable.[74] These employees, moreover, are not entitled to any specific compensation (*indemnité de précarité*) upon termination of a fixed-term CIE (Art. 122-4-8 *Code du travail*). In keeping with the legal provisions governing working time, a CIE employee may be allowed to pursue an additional paid employment.

State subsidies to employers are intended to cover the costs of placement and of diverse training measures.[75] In addition, the employer is exempt from social insurance contributions.

The employment contract for young people in enterprises (contrat jeune en entreprise)

This employment contract (also referred to as *Soutien des jeunes en entreprise*, SEJE) pursues the aim of finding employment for young people between the age of 16 and 25 whose level of education is below that of a secondary school diploma. This contract was introduced in 2003 as the flagship programme of the

[71] Circulaire DGEFP 2005/11, dated 21 March 2005.

[72] Droit individuel à la formation, congé individuel à la formation, CIF, période de professionnalisation.

[73] Cass. Soc. 31. mai 2005, RPDS 2005, n° 723.

[74] This exception does not apply to rules about occupational injury.

[75] The maximum amount is equivalent to 47% of the minimum wage per hour worked.

new Raffarin government, which described it as in radical contrast to the *contrats emploi-jeunes* of the previous Socialist government: SEJE contracts,[76] as a matter of fact, were focused for the new government on "real jobs" on the market, whereas *emploi-jeunes* were in the public and non-profit sectors.

For youths in so-called sensitive urban zones, the conclusion of a SEJE does not require any diploma. Such a contract can also be concluded by persons who have entered into a *contrat d'insertion dans la vie sociale*.[77]

SEJE contracts are initiated by the employer – generally, a non-profit organisation – who must report to the competent benefit agency (ASSEDIC) within 1 month of an employee's engagement. Apart from the general contract terms (see above), an additional prerequisite is that a prior employer-employee relationship did not exist in the preceding 32 months, unless this was a fixed-term employment contract or the employee was engaged with a temporary employment agency

In any case, this type of contract is concluded for an unlimited duration, but can also pertain to part-time work for at least half the regular working hours. The contract is entitled to a state subsidy of EUR 150–300, which is granted for the duration of 2 years.[78]

5.2.6 Subsidised employment contracts aimed at vocational training for the young

The apprenticeship contract (contrat d'apprentissage)

The subsidised apprenticeship contract makes it possible for young trainees to run through a dual course of school and practical training. It is targeted at young people between the ages of 16 and 25. Age-related exceptions can be made both for older apprentices and for youths from the age of 14. In the latter case, the contracts are referred to as "junior apprenticeship contracts" (*contrats d'apprentissage junior*), which are characterised by special features.[79]

The apprenticeship contract is limited in time and is normally concluded for the duration of 1–3 years. The attendance of courses outside the firm is regarded as

[76] In mid-2007, there was a stock of around 100,000 such contracts, a figure comparable to the 100,000 CIE contracts at the same date.

[77] Meant here are young people who have concluded with specific organisations a contract on "information and integration into social life".

[78] The Loi no 2006-457 of 21 April 2006 has shortened the period of subsidisation from three to 2 years. There are plans to raise the subsidy to EUR 400 for the first contract year and to halve it for the second. The adoption of such measures is subject to statutory regulation.

[79] The first year of training takes place in a vocational school or training centre for apprentices (centre de formation des apprentis, CFA), and is followed by conventional training in the second year.

working time during the contract period. Financial allowances are granted in addition to the usual state subsidies or social insurance benefits.[80]

The vocational training contract (contrat de professionnalisation)

This fixed-term employment contract, which replaced other forms of *contrat aidé*,[81] allows persons under the age of 26 to obtain vocational qualifications in addition to their primary training, with the aim of fostering career entry. Qualification measures are geared to the employee's level of education and depend on the actual training requirements. Training phases are normally scheduled for periods of 6–12 months, but can also be fixed for twice that length of time. Progress evaluations are conducted within the course of the qualification process.

5.2.7 Subsidised employment contracts in the "non-profit" sector (secteur non marchand)

The three types of employment contract listed below are encountered exclusively in the public sector and the non-profit sector (*secteur associatif*), which includes societies and charities, but also other specific associations active in this sector. They can be offered by the following employers: regional and/or local authorities and their associations, as well as other public law entities; non-profit establishments under private law, notably social insurance organisations, mutual benefit societies, foundations, works committees (*comités d'entreprise*), and the like; private law entities entrusted with the performance of public functions (*personnes chargées de la gestion d'un service public*), e.g. medical facilities; and specific bodies for the provision of integration assistance.

The common basis of all three contract types is an agreement with the state.[82] Such contracts can be concluded with persons who face particular difficulties in striving for occupational integration. The activities offered to them are of a communal nature and cannot be carried out by the for-profit sector.

The 'Borloo Act' reshuffled the responsibilities and administration of subsidised contracts, between the *départements* and the public employment service. Instead of the previously existing mainstream *Contrats emploi-solidarité*, the Act introduced a distinction according to what public authority was in charge of administering them. The two main contracts have been, since then, the *Contrat d'accompagnement dans l'emploi* – CAE, administered by ANPE, the public

[80] In mid-2007, about 400,000 apprenticeship contracts were funded by the state.

[81] Contrat de qualification; contrat d'adaptation et d'orientation.

[82] The contrat d'accompagnement dans l'emploi is concluded with ASSEDIC.

employment service, and *Contrat d'avenir* – CA, administered by the *départements.*[83]

Contract for the integration into employment (contrat d'accompagnement dans l'emploi, CAE)

This form of subsidised employment contract[84] has likewise come to replace hitherto existing contract types.[85] It is a private law contract concluded for a term of at least 6 months and can be prolonged twice within 24 months. The minimum weekly working time must amount to at least 20 h, unless the agreement between the employer and the State has stipulated special conditions for individual cases.

Intermediary contracts (contrat adultes-relais)

These contracts are targeted at persons over the age of 30 who are either unemployed or have concluded a specific form of subsidised employment contract.[86] In the latter case, the existing contract is replaced by the *contrat adultes-relais*. In quantitative terms, they are a minor instrument. An essential requirement for the conclusion of this contract is that its performance must be aimed at activities in heavily exposed and socially sensitive (*sensibles*) urban zones in order to foster relations between public-sector institutions and the inhabitants of such precarious urban districts. Hence, the employee is faced with the task of acting as a mediator in social and cultural matters between vulnerable population groups and the public sector. If the contract is concluded for a limited duration, its term may not exceed 3 years; however, it may be prolonged once. The contracting association is entitled to an annual subsidy.

Contract for a future (contrat d'avenir, CA)

This contract seeks to reemploy persons who in the preceding 12 months have claimed minimum income benefits for a duration of at least 6 months.[87]

The *contrat d'avenir* does not constitute a full-time employment contract. It is generally concluded for a term of 24 months, with an option for its prolongation by an additional 12 months.[88] The average weekly working time is 26 h.

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[83] In mid-2007, there were respectively a stock of (1) 179,000 CAE contracts; (2) 84,000 CA contracts; (3) the former CES and emploi-jeunes contracts gradually decreased from 2004 – where they amounted altogether to a stock of more than 300,000 (DARES 2007b).

[84] Loi no 2005-32, dated 18 January 2005.

[85] Contrat emploi-solidarité; contrat emploi-consolidé.

[86] A contrat d'accompagnement dans l'emploi or a contrat d'avenir.

[87] RMI; allocation spécifique de solidarité (ASS); allocation de parent isolé (API); allocation aux adultes handicapés (AAH).

In addition to their wage, employees under this contract continue to receive, if applicable, a part of the state support previously awarded to them; they are moreover exempt from the payment of social insurance contributions. An extra one-off allowance is likewise provided under certain conditions.

5.3 New type of employment contract with short dismissal periods

Alongside subsidised employment contracts, two novel employment contracts, the *contrat première embauche* (CPE – first hiring contract) (Morvan 2006) and the *contract nouvelles embauches* (CNE – contract for new hiring) (Morvan 2005), i.e. two new types of contract for permanent or open-ended employment, were introduced in France in 2005 and 2006, respectively. Their purported objective was to foster employment, not through financial incentives, but with the help of special regulations on the right to terminate employment, thus amounting to the abrogation of ordinary statutory protection against dismissal.

These novel types of contract were to pave the way for changes to individual employment relations. They represented the initial phase in an intended process of amendment to labour law in general and employment relations in particular – a goal that was pursued by the de Villepin government. This process was brought to a halt by the failure of the same government to implement the second phase of its project: the meanwhile repealed *contrat première embauche* for young employees (see below). The CPE has been replaced with a law on young people's access to working life in enterprises (*accès des jeunes à la vie active en entreprise*),[89] whereas the CNE has remained in force and is being applied more and more marginally. In November 2007, actually, the ILO eventually *de facto* ruled that CNE's provisions did not abide by the international standards, especially as to the duration of the 2-year probationary period. This decision is generally considered as the death knell for the CNE. A gradual discarding of CNE is now programmed. The January 2008 agreement over the labour market, dubbed "flexi-sécurité" has opened new perspectives for labour law reform, including "contrats aides". It will have to be translated into formal legislation in the year 2008.[90]

5.3.1 The CNE: a harbinger of future labour law reforms?

The CNE is not only an additional model for the many forms of employment contract. Thus it does not merely complement fixed-term and permanent employment contracts; nor is it a subsidised employment contract (*contrat de travail aidé*).

[88] For persons with disabilities and persons over the age of 50, a 36-month term of contract can be agreed from the outset.

[89] Loi n° 2006-457 du 21 avril 2006 sur l'accès des jeunes à la vie active en entreprise. JO 22 avril 2006, 5993.

[90] Ordonnance n° 2005-893 du 2 août 2005, JO 3 août 2005, 12689; Kaufmann 2007.

Rather, it provides a new type of labour contract and is aimed at combating unemployment and achieving permanent employment.

The CNE differs from the traditional employment contract on account of the possibility for mutual termination within a 2-year period during which the specific protection provisions governing termination are suspended. All private-sector employers or enterprises (industry and commerce, self-employed professionals and farmers) are allowed to conclude CNEs. Mixed enterprises, corporations under public law, sheltered workshops and private persons acting as employers are precluded. CNEs are designed exclusively for enterprises with up to 20 employees and do not provide for any age limits.

CNEs are ruled out for seasonal work and for employment in industries that normally conclude fixed-term contracts (Art. L. 122-1-1 *Code du travail*).

Apart from the exceptional provisions applying during the first 2 years of employment,[91] during which notice can be given without statement of grounds, labour law provisions apply without restriction to the CNE.[92] The very long 2-year trial phase serves the purpose of consolidating the employment relationship and is therefore referred to as "consolidation phase." Following this period, there is no longer any difference to normal permanent contracts. CNE regulations nevertheless also grant employees certain rights, for example to vocational training and retraining.[93]

5.3.2 Termination of contract

Employees can at any time terminate the employment relationship under a CNE without statement of grounds. If employment is terminated by the employer, a 14-day notice period becomes effective after an employment duration of 1 month, and is extended to 1 month after 6 months' employment. This contract thus dispenses with the essential protection against (unfair) dismissal provision that demands the statement of a "real and serious cause" (*cause réelle et sérieuse*).[94]

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[91] The 2-year period is merely established, but not legally defined, in the statutory ordinance on the CNE.

[92] The exceptional provisions are listed in the Ordonnance as follows: Art. L122-4 to L 122-11, L 122-13 to L 122-14-14, L 321-1 to L 321-17 Code du travail. They mainly, but not only, pertain to protection against (unfair) dismissal.

[93] Vocational training is set forth in Arts. L 931-13 ff. Code du travail.

[94] To be effective, an employer's dismissal must state a "real and serious cause." The real cause (cause réelle) must

- Be objective, hence expressible and verifiable
- Really have occurred, with alleged reproaches backed by evidence
- Be the actual ground for the dismissal, i.e. the alleged ground must not be stated under the pretence of masking the real cause.

After an employment duration of at least 4 months, dismissed employees are entitled to a flat-rate cash benefit from the solidarity-based system of unemployment insurance.[95]

5.3.3 Court rulings on the CNE

The CNE met with great resistance on the part of trade unions; numerous *conseils de prud'hommes* (labour courts of first instance) were therefore called upon to adjudicate on disputes concerning the CNE. One of the main arguments put forward by these courts in pronouncing the CNE invalid was the alleged infringement of international, higher-ranking law (i.e. ILO Convention No. 158)[96] on account of the very long 2-year trial phase ("consolidation period").[97] In confirming one of these judgements, an appellate court (*Cour d'appel*)[98] concluded that the provisions of the *Ordonnance* on the CNE are not in conformity with the purport of the special exception set out in ILO Convention No. 158. Nevertheless, both the *Conseil d'Etat* and the *Conseil constitutionnel* held the statutory foundations of the CNE to be constitutional.[99]

Be that as it may, in the second half of 2007, the new government started consultations with the social partners on a new reform of employment contracts. The CNE was abolished in summer 2008 by the law on modernisation of the labour market.[100] Since then, the CNE which have been in force are commuted in fixed term contracts, the probation period is determined by common agreement or by application of Art. L. 1221-19 code du travil.

The serious cause (cause sérieuse) must result from a grave situation. Slight negligence is not a cause for dismissal; nor, however, is gross negligence necessary to justify a dismissal. To suffice, a serious cause need not involve the employee's misconduct. A cause for dismissal can be, e.g., age, longer periods of absence, or unsatisfactory relations to customers or work colleagues.

[95] Allocation forfaitaire du régime de solidarité; Art. L 351-9 Code du travail.

[96] Cass. soc. 29 mars 2006, Juris-Data 2006-032939.

[97] Article 2(2) of the Convention No. 158 states: …

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention: …

b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration …

[98] Arrêt Cour d'appel de Paris, 18ième chambre E, 6 juillet 2007.

[99] For details on this court ruling, cf. Kaufmann (2007).

[100] Loi n° 2008-596 du 25 juin 2008 "portant modernisation du marché du travail", JO du 26 juin 2008, 10224.

6 Controls and sanctions

Although under unemployment insurance eligibility requirements have been tightened in the past, sanctions for non-compliance have always been modest in cross-national comparison (Barbier 2006a–c). Any sanctions introduced were always of a limited nature; only recently have they started to increase significantly, although statistical documentation of their actual implementation has remained very sketchy.

In the area of minimum income benefits, the situation is completely different and this section will not deal with this question (see Sect. 3): the main reason for the basic distinction is that, contrary to what happens in many European countries, no mainstream obligation to look for a job applies to minimum income benefit recipients – apart from the ASS.

We have shown that, from the 1980s on, activation measures (i.e. the AFR) were gradually introduced in the unemployment insurance legislation, with the reluctance of unions.

Further reforms (see above sections) strengthened obligations on unemployed benefit recipients with the aim of inducing them to become active in a certain way, thus easing sanctions or, at the least, increasing behavioural requirements, including for minimum income recipients (see Sect. 3). In the unemployment insurance sector, such obligations are chiefly based on the conventions mentioned above, that demand of these beneficiaries the performance of reinforced duties. Accordingly, a 2005 Act provided for further regulations to control job search obligations. Its consequences in terms of sanctions are still not precisely documented at the moment of writing. As discussed in Barbier (2006a–c), the cross-national comparison of sanctions is very tricky. In the French case, the 2005 Act has opened new possibilities for sanctions and, as will be seen here in more detail, it has also specified the implementation of sanctions.

However, to understand the French system of sanctions, one has to bear in mind the following elements: (1) not all registered unemployed have access to a benefit (either mainstream insurance ARE or ASS) – indeed the coverage rate has been under 60% for the greater part of the last decade; (2) minimum income benefit recipients have no statutory obligation to look for work; and (3) the process of sanctioning is, as will be seen now, divided between different institutions so that "sanctions" statistics emanating for instance from ANPE are not directly comparable to the statistics of benefit suspension (or cancelling), and, finally to sanctions effectively taken by the employment administration (*département* administration). For this latter dimension of their quantitative assessment, a further complication

stems from the existing legal possibilities of recipients to contest the sanctions before they turn effective.[101]

Hence, up to 2007, and contrary to what has happened in other European countries like the United Kingdom at certain times, sanctions were never a prominent tool for the French activation strategy.

6.1 Sanctions imposed on beneficiaries for non-compliance with duties

From 2002 on, and the introduction of PARE, the new employment individual plans, the fundamental novelty of French unemployment insurance was its linking of supposedly enhanced service provision with reinforced activation obligations.

The initial demand on the part of employers to concede extensive sanction competences to the ASSEDICs was rejected by the government, who had also refused to accept the earlier version of the convention for the same reason, among others. In doing so, the government successfully opposed a faction of the social partners who had thus sought to enhance their scope of action. Fundamentally, the sanctions *already stipulated* in the labour code for contractual infringements are still imposed in cases of misconduct.[102] The ASSEDICs have been empowered to report to the supervisory authorities if in doubt about compliance by relevant provisions, and to propose a cessation of benefit payments. If beneficiaries fail to submit certain documents or refuse to answer a summons to appear for assessment, the ASSEDICs can temporarily suspend benefits. However the final decision still rests with the local state employment administration representative (*directeur départemental du travail*).

In the wake of more recent reforms, the receipt of benefits is however made to depend increasingly on the fulfilment of specific demands. In particular, the 'Borloo Act', incorporated into the labour code[103] was a step in the direction of increased demand on the part of the unemployed. This Act, while reaffirming the duty of unemployed persons to actively seek employment, has formulated sanctions in a renewed manner.

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[101] In September 2007, an official report of the government (Rapport sur les methodes statistiques d'estimation du chômage, joint report by Inspection générale des finances and Inspection générale des affaires sociales) acknowledged the recent increase of ANPE de-registrations. However, it said it was impossible to get precise data as to the real rate of sanctioning, which it estimated at less than 2% (p. 16).

[102] Règlement annexe Art.19; Art. L. 351-17, R. 351-17, R. 35128 code du travail.

[103] Loi de programmation de la cohésion sociale, n° 2005-32 du 18 janvier 2005, J.O. 19 janvier. Notably, Décret n° 2005-915 du 2 août 2005, J.O. 5 août p. 12806, on the monitoring of unemployed persons; décret n° 2005-1054 du 29 août 2005, J.O. 30 août 2005 p. 14029, on subsidies to promote employment.

6.2 De-registration of claimants

Up to the age of 55, or 57 in certain circumstances, all unemployment insurance and ASS beneficiaries are legally obliged to become active on their own initiative or at the recommendation of the employment administration (taking up work, or establishing or acquiring an enterprise) (Art. L. 351-16 *Code du travail*). All unemployed persons, regardless whether or not they are eligible for benefits (i.e. insofar as they are registered), are obliged to seek employment and be available for placement measures. Moreover, they are required to demonstrate this to the benefit agency (ASSEDIC) as well as to the public employment service (ANPE). Persons recognised as unemployed who fail to comply with these statutory duties can have their registration as unemployed cancelled (Art. L. 351-17 *Code du travail*). De-registration is also possible if these persons refuse to accept a reasonable job offer, whether for fixed-term or permanent employment. A job offer is reasonable if it is compatible with their occupation and vocational training, their capacity to be mobile, in the context of their family obligations. In the French context, in 2007, the debate is still going on as to whether the legal definition of an "acceptable job" should be more precise.[104]

A further cause for de-registration arises upon rejection of the offer to conclude a training or specialisation agreement, to engage in vocational training or integration measures, or to enter into a subsidised employment contract (*contrat de travail aidé*; see above). Unemployed persons can also be barred if they fail to comply with the registration requirements of the labour authorities or with the request to undergo medical examination for the purpose of ascertaining the capacity to work or exercise certain occupations, or if they make false statements in this regard. De-registration precludes re-entry for the duration of 15 days to 12 months, but no longer than the period for which a suspension of wage replacement (minimum income) benefits for active-age persons was, if applicable, resolved (see below). After the sanction period, the unemployed person is re-entitled to benefits for the duration of the remaining term of receipt.

6.3 Sanctions affecting benefits

From the implementation of the new 2005 legislation, a 20% reduction of the benefit amount is possible, for the duration of 2–6 months if beneficiaries fail to furnish proof of personal efforts to find employment, or if they reject a job or training offer of the labour authorities (see above). Upon repeated disregard of this incidental obligation, the (income replacement) benefit may be halved for the

[104] The present definition in French is that the unemployed should not refuse: "sauf motif légitime de refus, un emploi compatible avec leur spécialité ou leur formation, leurs possibilités de mobilité géographique, compte tenu de leur situation personnelle et familiale et des aides à la mobilité qui leur sont proposes."

same duration and subsequently withdrawn altogether.[105] Unemployed persons who fail to respond to a citatory letter issued by the labour authorities are liable to have their (income replacement) benefit suspended for 2 months. If they furnish false information in order to obtain a benefit surreptitiously, they will receive no further benefits. Claims to acquired but not exhausted rights to benefits are lost. If in such case the unemployed person has taken up a very brief (*très brève*) non-registered job, the (income replacement) benefit is suspended for the duration of 2–6 months.

6.4 Competences, procedures and legal protection

While various institutions are competent for the administration of sanctions, the *département* branches of the employment ministry (*ministère chargé de l'emploi*), under the normal hierarchy of the *Préfet*, are the ultimate responsible authority for controls and sanctions. What the new 2005 legislation introduced was that this competence is now shared with ASSEDIC; however, the final say remains with the state. Decisions concerning a reduction, suspension or cancellation of (income replacement) benefits are incumbent on the *Préfet* after consulting with a committee in which ASSEDIC and ANPE are represented (Art. L. 351-18, R. 351-28 *Code du travail*).

Decisions on prospective sanctions are subject to a prior procedure defined by law in which the affected beneficiaries are heard (Art. L. 351-18 *Code du travail*). Beneficiary rights have thus been reinforced through the aforementioned provisions on social cohesion. At the time of writing, the precise outcome of these measures implemented fully only in 2005 is still not documented.

7 The second leg of the strategy: Reforming the funding of social protection/labour law and fostering employment creation

7.1 Activating the funding of social protection

Another policy area for activation stands in-between social and tax policies. In comparative terms, the French social protection system is still dominantly funded by social contributions to the level of about 66% of the total bill in 2005 (Barbier and Théret 2004). However, in the 1990s it was agreed that indirect labour costs

[105] A circular letter details the provisions of the decree of 5 September 2005, stating that the second instance of misconduct entails a benefit reduction by half, and the third the discontinuation of the benefit, unless special circumstances come to bear in the individual case (Circulaire DGEFP n° 2005-33, dated 5 September 2005).

were completely employment-unfriendly, and that the solution lay in the decreasing of social contributions paid by employers, in order to foster job creation. This element of the activation strategy was deliberately implemented from the late 1980s and has resulted in a fundamental overhaul of the funding of social protection. The creation of a special contribution (*contribution sociale généralisée*, CSG[106]) represented a major universalistic, 'Beveridgean' innovation (Barbier and Théret 2003, 2004). This shifting of previous employers' social contributions over to the budget is demand-oriented, aiming at fostering job creation rather than at 'incentivising' people to take jobs. Yet, the French government has also introduced a tax credit, the *prime pour l'emploi*, which, albeit still marginal, has represented an additional shift in labour market thinking. Decisive successive reforms were implemented from 1993 and from 1998 (the reduction of the working time, RWT). With the return of a conservative government in May 2002, the previous RWT logic has been reversed, but the reduction of employers' social contributions has again been extended. Altogether, state budget expenditure for compensating reduced contributions soared from 1993: while the aggregated outlays for unemployment insurance and traditional 'active' programmes has remained roughly unchanged, the amount spent on this compensation has multiplied by almost 6 over 7 years. The present proportion of the workforce affected by the reduction (around 60%) is bound to increase further in the coming years, which means that this most important feature in the French activation strategy has become permanent. As a result, France emerged as very different from the other 'continental' countries. Its originality lies in the combination of radical reform of the funding of social security and subsidies to labour demand, in a context of flexibilisation of the labour market through the introduction of atypical contracts, the latter strategy being introduced 'by stealth': in Spain and Italy, only the flexibilisation element was introduced.[107]

7.2 Social contribution reductions and tax credits: From targeting to a gradual mainstreaming

As a further substantiation of the intrinsic limits of the 'welfare regime' approach, alone or first within the continental cluster, France has embarked on this consistent structural transformation of its social protection both on the side of funding (the significant increase of the funding by tax and special new contributions to the state budget) and on the labour market side (reductions of social contributions for employers). This has resulted in a rather clear strategy to 'liberalise' the system, mainly stressing the demand side of the labour market, and less importantly the supply-side and individual incentives. From the current evaluation studies, the

[106] CSG was invented when M. Rocard was prime minister in 1990.

[107] On this, see Barbier and Fargion (2004). In this respect, the introduction of the CNE reinforces the "Latin" dimension of the reform of the labour market in the recent years (Barbier 2006b).

overall impact in terms of employment creation actually appears controversial. But gradually, unions, parties and the employers have been at least partly convinced of the strategy of funding reforms, as linked to the reduction of labour costs, and coupled with the 'solidaristic' policy of the employment schemes (see Sects. 3 and 5).

A short sighted view of the "activation" dynamics presently developing across EU countries would miss the connection between so-called 'workfare' elements and much wider ranging reforms of the 'tax and benefit' systems. Here again the French rationale of reform has been mixed, in the sense that it has used methods and measures pertaining to the two main strategies, the universalistic and the liberal (Barbier 2006a). Clearly drawing on the liberal side as well as the Beveridgean legacy already present within the French system (Barbier and Théret 2004), the activation dynamics has been implemented through wide encompassing reduction of labour costs, and, only recently, emerging tax credits.

On the reduction of social contributions side, there has been a gradual move from initially targeted measures (linked to the type of special contracts that are reviewed here in Sect. 5) to their 'quasi-generalisation' accompanying the reduction of the working time.[108] This generalisation was implemented only half-heartedly, but the principle of the reduction has remained. First implemented for all lower wages up to 1.8 SMIC, it was implemented to 1.3 and then to 1.6 SMIC from 2005. At this time, it was expected to apply to about 11 million employees, on top of the general reduction already in place (Dayan 2002). Levels of reductions have varied in time, but they were the highest at SMIC level (at around 30% of gross labour costs). It was estimated that the resulting decrease in labour costs was among the highest in Europe. As for the permanent scope of this reduction, there is little doubt as to whether the principle of reducing social contributions will be challenged in the future. So it will appear as one of the key features of the activation dynamics in France, targeting the costs, and not targeting the individuals, or decreasing employees' contributions. Debates and controversies exist over the estimated outcome of the eventual outcome of the protracted reduction of indirect labour costs.[109]

The French case is difficult to compare in terms of the share of working-age people receiving benefits or tax credits because of its highly complex and institutional fragmentation. One of the reasons why it is not easy to calculate an equivalent especially to the 'Anglo-Saxon' welfare caseloads is that the French system is a 'continental' one, where the notion of a 'tax and benefit' system does not really fit in. Moreover, in the French case, the overall picture is blurred because of the

[108] This feature clearly distinguishes countries in the 'continental' cluster. Italy and France are closer on this dimension versus Germany.

[109] The employment ministry quoted estimates between 210,000 and 280,000 jobs created, in a 5 year perspective.

central role of the family benefit system. The complex structure of the French system has been complicated further with the introduction of PPE (*Prime pour l'emploi*), a tax credit. PPE is not substitutive of other benefits.[110]

In short, PPE is (by now) a relatively marginal tax credit with a very wide population of recipients,[111] a population not strictly targeted on poor households, contrary to the UK and US systems. The paradox of it is that, while bearing all the appearances of a redistributive mechanism, it is focused on lower median income earners and it has demonstrated little capacity to act as a 'work incentive' for the assisted or as a redistributive mechanism for the poorest. Given its present design, consequently, it is improbable that PPE could effectively act as a significant support 'activating' mechanism for employees. However, PPE has been the object of much controversy, because some see it as a Trojan horse brought into the French social protection system. For them, it is likely to foster the growth of low paid employment, in the liberal type of activation. PPE's underlying theory is wrong, they add: it is not the social protection of 'employment precariousness' that acts as a disincentive, but the poor quality of jobs. The implicit philosophy that people "on welfare" are mainly moved by financial interests is also a mooted point, as extensive literature vindicates. PPE is strongly advocated on the ground of its combating so-called 'inactivity traps.' It met strong resistance on the unions' side as well as within the Left coalition.

7.3 Family benefits are unlikely candidates to activation

Family policy in France has only been marginally influenced by the activation dynamics. Three elements are of importance here.

A significant reform was introduced (under a right-wing government) in 1995 with regard to the rules governing eligibility to APE (*Allocation parentale d'éducation*). Before 1995, the benefit was only served to families having a third child until this child was three. Notably in line with the (never completely disappeared) underlying "natalistic" tendency[112] within French family policies (and obviously linked to the enduring existence of 'familialist' lobbies), the conservative government extended APE's eligibility to families with two children.[113] Whether

[110] In 2001, one in four households was eligible to it.

[111] The maximum tax credit was 800 euros (for one person) in 2007. More than nine million households are eligible to the tax credit, which is now paid monthly.

[112] Although no convincing data exist to vindicate any actual and consistent natalistic outcome, the natalistic ideology has persisted; interest groups exist – although their influence is decreasing – that also promote, under various justifications, the "right" of women to leave the labour market in order to rear their children.

[113] Unlike for instance UK or German rules, conditions of previous employment history have been attached to the benefit from its inception, which were later relaxed (presently

or not implicit purposes were attached to the new provision, aiming at promoting the withdrawal of an increased number of women from the labour market remains a moot point. But it is clear that the implementation of the new rules has been associated with a very significant decline of labour market participation (more than 14 points for mothers of two) (Bonnet and Labbé 2000). Notwithstanding the windfall effect of the eligibility extension, it seems that mothers in couples with a husband in stable employment have been induced to leave paid work for the duration of the benefit (3 years). Because this family policy measure ran directly opposite to the current activation dynamics – and on top of that, contrary to the European Union's equal opportunities policy orientation – the benefit was later reformed and is now only available for families of three young children, when the mother stops working or is employed part-time. Other benefits have been introduced that allow temporary leave for caring for children in case they are severely sick.

All in all, the main core of family benefits has also remained outside the influence of the activation principle. Moreover, the family benefit system *de facto* allows many young people to remain inactive,[114] and France is one of the EU countries with the lowest participation and employment rates among the 16–25 year-olds. During the period under review, eligibility for family benefits has been extended to all families of at least two children – 'children' being considered as such until age 20, provided that they are inactive. The age of children was initially supposed to be raised to 22, but this reform has not been implemented so far. Housing benefits are also at a significant level for students[115] not living with their parents,[116] and they certainly do not foster job search or labour market participation. The combined effect of high participation in education and family-linked benefits can be envisaged as a pattern which directly contradicts or hinders the extension of the activation dynamics for the young.[117]

Nevertheless, in the 'family policy' area, reforms that pertain to the dynamics of activation have been implemented in the last years, albeit of limited scope. Apart from the modification of API's disregard rules already mentioned (see Sect. 3), the reform mainly entailed new calculation rules designed to smooth out the discrepancies of benefit amounts for housing benefits recipients, whether they were on minimum income benefits or employed.

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at least 2 years out of the last 5 years before the claim – and the birth of the second child – or out of 10 years for the birth of a third child).

[114] At least dominantly inactive: a growing proportion of them combine paid work and education or training.

[115] Currently, 500,000 students are entitled to a housing benefit.

[116] Irrespective of the parents' income, but linked to their personal income.

[117] The main activation area is apprenticeships and training contracts for the young (see above).

8 Exit or activation for early retirees and disabled people?

A last important area of social policy susceptible to be affected by activation strategies encompasses pensions, early retirement programmes and disability benefits. In France, governments have resorted extensively, from the late 1970s and into the 1990s, to early exit schemes, but they have been trying to reverse this tendency for the last years, with limited success so far.

Early retirement was particularly used to remove older and redundant workers from the labour market, their early retirement benefits being funded by the state budget. This mechanism became very palatable both to employers and to unions because it allowed for a 'socialisation' of individual consequences and it allowed employers to avoid devising old-workers-friendly conditions of employment (Guillemard 1986): this very well-known prerequisite of active ageing strategies has only recently started to surface again in the public debate, although with considerable hesitation (Guillemard 2003). Resorting to such arrangements was at its highest in heavy industries and large firms in the 1980s. It then started to decrease significantly; however, new, more targeted schemes were introduced, of which only some were actually 'activated' in the sense that the older left the labour market in exchange for the recruitment of young people. In 1994, the statistics showed a stock figure of participants in various early retirement schemes at about 210,000 people. At the same time, 284,000 older assisted unemployed were allowed not to seek jobs. In 2005, the corresponding figures were at 128,000 and 400,000. These figures point to a persistent inability to turn away from inherited practice. Individual instruments will be reviewed below.

In the face of population ageing and the trend towards early retirement, there is a need to promote better employment opportunities for older people. Recommendations of the OECD in this regard include the demand to offer older workers a greater degree of choice when contemplating retirement. This involves the following: reducing the possibilities for early retirement; reforming exemptions from job-seeking requirements; adjusting retirement age to demographic trends; making gradual retirement attractive and accessible to all. All these reforms pertain to the overall logic of activation of social protection (Barbier 2006a).

The latest pension reform (2003) must be seen in the light of the general demographic trend and attempts at better coping with financial constraints. Even if the reform primarily concerns persons who have reached retirement age, it also affects age cohorts approaching retirement as well as younger persons on account of altered insurance prerequisites (Kaufmann 2004).

Although the now explicitly adopted goal is to curb early retirement development, several measures were adopted to provide financial security to older

employees approaching retirement and, while their availability has been reduced, they have not been cancelled.

The *allocation spéciale du FNE (AS-FNE*; benefits provided from a solidarity fund) renders financial assistance to employees who are older than 57 and have been dismissed for economic reasons (in some instances, it also applies to younger persons) and who are not yet entitled to a full old-age pension due to insufficient periods of coverage. The *allocation de préretraite progressive* (PRP; gradual early retirement benefit) has been conceived for employees over 55 whose employment relationship has been altered from full- to part-time. The *allocation complémentaire* (A.Co; complementary benefit) can be granted to persons who have received a contribution- or solidarity-based income replacement benefit from unemployment insurance and are able to evidence 160 quarter-years of old-age insurance coverage, but who nevertheless are not eligible for a full old-age pension. The *cessation anticipée d'activité* (Cats; early termination of employment) is reserved to employees who fulfil certain criteria concerning type of former employment or disability.

From the mid-2000s, and especially since 2003, under pressure coming from the European Employment Strategy co-ordination (the so-called Lisbon objectives for increasing the effective age of retirement), the French government has devised new action plans with the purpose of increasing employment rates of people over 50. However, as the Table 11 shows, these efforts have not yet shown clear outcomes.

Table 11. Employment rates for older employees in the year 2000s (%)

Source: EU indicators	2000	2003	2006
People from 55 to 59	48.1	54.1	53.9
People from 55 to 64	29.4	36.2	37.6

As in other countries, jobseekers aged 50 often find it hard to obtain employment and employees over 55 face increased threats of dismissal, especially on economic grounds. The average effective retirement age of currently about 58 is lower than the age from which (under the *régime général*) an old-age pension is granted at the full rate.

The *plan national* 2006–2010 sets forth five objectives comprising a total of 31 different action measures, a prime aim being to increase older workers' labour market participation. The plan promotes the idea of cooperation between the state and the social partners and sets quantitative objectives.

The second field of action involves concrete measures to prevent early retirement, calling for special efforts by the social partners since they are responsible, for example by collective agreement, for developing early retirement models – a trend that is to be counteracted. Older persons are moreover to be given the opportunity

to re-access the labour market; to that end, existing social and labour legislation was amended,[118] including initiatives for the creation of new forms of work. In this context, *contrats aidés* and subsidies to employers remain important. An additional field of action is devoted to older employees' stepwise withdrawal from working life, which could be realised with the help of gradual or partial retirement.

It is however doubtful that these measures will constitute a really innovative strategy of activation, inasmuch as institutional mechanisms are not reformed in other sectors (conditions of work, labour market contracts, etc.). This is of course one of the stakes of the coming 2008 new pension reform.

[118] Two main initiatives were the suppression of special contributions (Contribution Delalande) deemed to foster early dismissals and the creation of a special fixed-term contract for the persons aged over 55.

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The Swiss Road to Activation: Legal Aspects, Implementation and Outcomes

F. Bertozzi, G. Bonoli, and F. Ross

1 Introduction

1.1 General observations on activation in Switzerland

Activation is a relatively recent development in the decade-long process of welfare state building in Switzerland. Traditionally, like in most other continental European countries, social polices have been of a compensatory nature. Based on the social insurance framework, Swiss social protection has provided replacement income to those unable to work. Its coverage includes the key traditional social risks: old age, invalidity, industrial injury, sickness, long-term care and unemployment, which makes the Swiss welfare state a standard continental European social protection system[1].

At the same time, Swiss social protection displays some unique features, which contribute to defining the context in which activation takes place. First, Switzerland is a federal country, where the territorial units – the Cantons – have maintained substantial powers in many areas of public policy, including social assistance. In addition, the Cantons are often responsible for the implementation of federal schemes, such as the unemployment insurance scheme. Second, income security is provided mostly through standard social insurance schemes, but private insurance plays a bigger role than in most other continental European countries, especially in the fields of old age and invalidity pensions and sickness insurance. A third important difference between Switzerland and the surrounding countries lies in its labour market regime, which is considerably more liberal and more reminiscent of the labour markets found in Anglo-Saxon countries. Swiss dismissals protection legislation, in particular, is very limited. For Swiss employers, hiring and firing is easier than for employers in most other continental European countries (see Sect. 4.1; Bonoli and Mach 2000).

These three peculiarities of the Swiss welfare and labour market regime are crucial to the analysis of activation in that country. Federalism and the large role played by private sector insurers are obstacles to a coherent activation policy for some categories of non-working individuals which are catered for by regimes obeying different masters.

A liberal labour market regime is also an important feature of the context in which activation takes place. Little regulation means that during expansionist cycles, job creation is stronger, also in the low-skill service sector. Job creation in the low-skill service sector is further facilitated by relatively low non-wage labour costs and a very low VAT rate, currently set at 7.6% for most goods and services

[1] Using Esping-Andersen's regime typology (Esping-Andersen 1990), Switzerland can be classified as a liberal-conservative welfare state. Its liberal traits concern the important role played by the private sector and the low degree of labour market regulation, its conservative nature is visible in the income maintenance orientation of most policies and in the assumption of traditional gender roles (see Bonoli 2007; Armingeon 2001).

(see Scharpf 2000 for the argument). The abundance of low-skill jobs is good news for activation policies. In fact, the vast majority of activation clients are low-skill individuals (those with skills tend to be able to find jobs on their own). For activation to succeed, many low-skill jobs must be available.

Activation was introduced in Swiss social policy in the early 1990s, after a quick and impressive rise in the unemployment rate. Initially, this instrument was applied to unemployment insurance only, but the idea has since spread to other areas of the Swiss welfare state, most importantly social assistance and invalidity insurance. As will be shown below, these two schemes have seen their caseload increase dramatically over the last decade. The rise reflected what had happened with the unemployment rate, but with a 2–3 year time lag, suggesting that some fundamental transformation of the labour market has occurred (see Fig. 9 below).

1.2 The legal concept of activation

Activation as a term is not encountered in Swiss law. Neither the pertinent federal social insurance legislation or cantonal social assistance/unemployment assistance laws, nor the Federal Constitution or the canton constitutions make any mention of it. If, in keeping with the "back to work" formula, activation is seen as the expression of responsibility taken by the government for its citizens beyond the rendering of passive financial support to persons without work or gainful earnings, in that the government adopts active measures to integrate the unemployed into the labour market and demands their own personal initiative to that end, nuances of or even a few direct references to this concept can be discovered in the Swiss legal system.

Thus, Article 6 of the Federal Constitution (BV/CF) requires individuals to accept responsibility for themselves (Riemer-Kafka 2005: 143-145). The Federal Constitution moreover lays down the subsidiarity principle in the Article on assistance in distressed circumstances (Art. 12 BV/CF), meaning that precedence is given to personal responsibility over benefits granted in the event of exigency. The relevant statutory laws likewise pay tribute to this concept. For example, the Federal Act on Obligatory Unemployment Insurance and Insolvency Compensation (AVIG/LACI; also see Sect. 4.3.1) obliges individuals to act on their own initiative under the provisions regulating benefits and sanctions. The social assistance legislation of the cantons also acknowledges explicit, or at least implicit, duties of the individual to be proactive (Pärli 2005: 97-103; Tschudi 2005: 121-129). Similar provisions are found in the unemployment assistance laws of some of the cantons. And finally, the principle of damage mitigation applies to all social insurance branches (Kieser 2003: 17-18): it obliges social insurance beneficiaries to refrain as far as possible from encumbering the social insurance community, notably in that insured individuals make every reasonable effort to avoid unemployment or shorten its duration (Locher 2003: 268-271).

As regards governmental obligations to initiate measures for integration into working life, the Federal Constitution entrusts the (federal) government with the task of adopting measures to prevent and combat unemployment with a view to unemployment insurance (Art. 114 BV/CF). This obligation is given concrete substance in Article 1a AVIG/LACI ("[to] promote long-term integration into the employment market"). This postulate is also declared in other individual statutes, such as the Invalidity Insurance Act (e.g. Art. 10 IVG/LAI). Indeed, the constitutionally proclaimed social objectives (Art. 41 BV/CF) are not intended to confer individual benefit claims deriving from the task of the Federation and the cantons to assist all persons capable of gainful employment in making a living through appropriate work (Bigler-Eggenberger 2002: paras. 13-18). Nevertheless, the government's duty to provide integration benefits can be inferred from the case law of of the Federal Insurance Court (EVG/TFA), as will be outlined further below.

On the whole, it can be said that the Swiss legal system certainly incorporates demands that call for both individual initiative and government programmes to promote integration. As far as labour market integration is concerned, a change within the legal regime has been observed. Whereas during the economic boom of the 1980s the existing unemployment insurance system, for example, was still described as the strongest social insurance scheme of that kind by international com parison (Gerhards 1996: 1), a paradigm shift had occurred in the 1990s. Thus, the Second Partial Revision of 1995 and, in particular, the 2002/2003 Revision redefined the ranking of benefit objectives to such an extent that the earnings replacement criterion receded into the background and was replaced by the dominant role of labour market measures (LMMs).

2 The context of activation

2.1 The Swiss welfare state

The Swiss welfare state can be described as a multi-tiered welfare state. The bulk of social expenditure is controlled by the federal level and assigned to core social programmes such as old age and invalidity pension and unemployment insurance. The Cantons and the municipalities, however, have kept substantial powers in some important fields of social policy, including family policy, and – most importantly as far as activation is concerned – social assistance (see Obinger 1998; Armingeon et al. 2002).

Social assistance is thus entirely managed and controlled at the cantonal level. In addition, some cantons allow large room for manoeuvre to the municipalities, making the scheme extremely diverse in different parts of the country. This is especially the case in the German-speaking part of the country, where decisions concerning eligibility are sometimes still taken by "social assistance commissions"

composed of citizens of the municipality[2]. There are only two factors that provide some degree of unity. First, the Federal constitution entitles every resident to a minimum subsistence income, which *de facto* forces cantons to run social assistance schemes. Second, an intercantonal coordination body – the Swiss Conference for Social Assistance (SKOS/CSIAS) – publishes guidelines on how to run social assistance, including the appropriate benefit levels. Those guidelines are not binding, but they are generally followed more or less strictly by a majority of the cantons (see Sect. 4.3.3).

The private sector also plays an important role in the provision of social security. First, income replacement sickness insurance is provided by the private sector on a voluntary basis. In many cases, collective agreements include this sort of coverage. Alternatively, it can be bought by individual employers or by the workers themselves. The private sector also plays an important role in invalidity pensions. The invalidity protection mirrors the pension system and is structured around two main pillars: the first one is a federal social insurance scheme providing subsistence level benefits (IVG/LAI), the second one is a component of the compulsory system of occupational pensions (see Bonoli 2005; Ross 2007). An important aspect of invalidity coverage is the fact that all decisions concerning eligibility are made in the context of the basic social insurance scheme, but are legally binding also for occupational provision. This apparently reasonable procedural simplification creates a paradox, as in many cases the bulk of the income package received by those on invalidity benefit comes from their occupational pension, which has no role in the decision concerning eligibility. Private companies and foundations involved in the provision of occupational pensions are sometimes active *ex post*, by offering beneficiaries activation opportunities but also by monitoring abuse.

The fragmentation of the social security system and the presence of different actors whose interests are not always compatible constitute an obstacle to the development of a coherent activation policy. The biggest difficulty lies in the coordination of four schemes that are at the core of activation: unemployment insurance, social assistance, invalidity insurance and sickness insurance.

The cantons (and the municipalities, where applicable) certainly have an interest in leading social assistance recipients back into employment, but a second best option for them is to have them relying on a federal income replacement scheme: unemployment or invalidity insurance.[3] Regional placement offices, responsible for

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[2] Outsourcing public administration tasks to committees of (elected or co-opted) citizens is a standard and traditional practice in Switzerland, since the early days of the federal state (founded in 1848). It has been explained with reference to the weakness of the state at the time of its creation (see Katzenstein 1984). The system is referred to as a "militia administration" (*Milizverwaltung*).

[3] In some cantons, social assistance recipients are offered labour market programmes in the shape of contribution-paying temporary jobs, which last just enough (1 year) to open

the implementation of unemployment insurance, are evaluated according to a number of quantitative indicators, including how quickly they manage to reintegrate the unemployed. As a result, they do not have a strong incentive to keep "difficult" cases on their rolls. They are thus likely to "push" them either toward invalidity insurance or social assistance. Invalidity insurance, finally, is going through a major financial and image crisis, and is therefore under pressure to limit the number of new recipients. The result of this peculiar institutional configuration is the presence of a relatively large number of individuals who are literally shuffled between schemes, with very negative consequences for their chances to re-enter the labour market.

The presence of a private sector actor (sickness insurance) further complicates this problem because its involvement in joint-decision eligibility procedures between the different actors raises data protection issues.

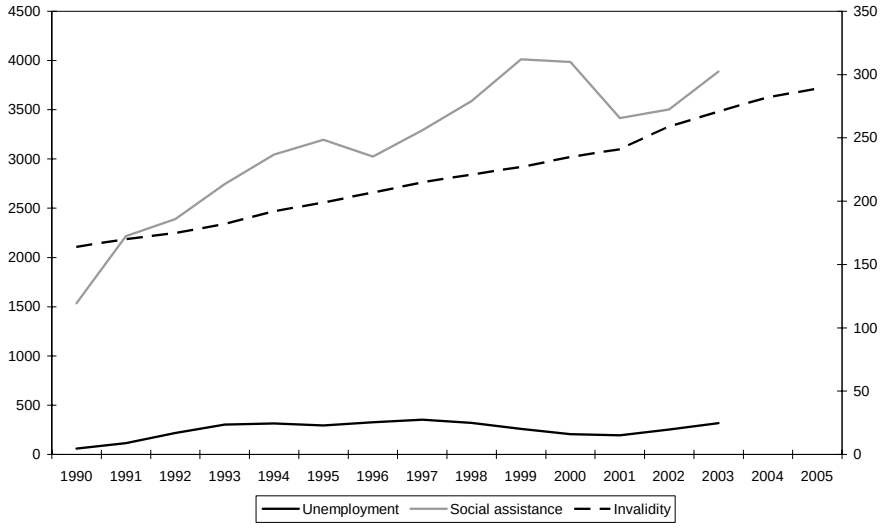
The lack of coordination between these different actors is currently considered a major obstacle to the development of a coherent and effective activation policy in Switzerland. A number of pilot projects are being tested in order to improve the quality of the collaboration between the relevant actors.[4]

2.2 The socio-economic context of activation

Activation in Switzerland develops in the context of a rapidly deteriorating labour market in the 1990s and of increasing financial problems for social insurance and assistance schemes. Between 1990 and 1993–1995, Switzerland was confronted with the most severe employment crisis since the end of World War II, whereas, in spite of major job losses, the recessions of the 1970s did not result in open unemployment, as labour supply was adjusted through the non-renewal of work permits for temporary foreign workers (see Bonoli and Mach 2000). The unemployment rate rose from 0.5% in 1990 to 1.9 in 1991 and 3.8 in 1993. The first consequence of this development was felt in the finances of the unemployment insurance scheme: from a surplus of some CHF 300 million in 1990, the balance of the scheme sharply deteriorated and started running large deficits: CHF 2.6 billion in 1992 and CHF 2.4 billion in 1993 (*Securité sociale*, various issues).

eligibility to federal unemployment insurance. The federal authorities regularly complain against these practices but find it difficult to stop them.

[4] In September 2006 a high-profile policy pilot was launched in 16 Cantons (out of 26) know by the acronym "MAMAC" (*Medizinisch-Arbeitsmarktliche Assessments mit Case-Management*). In this pilot, "unclear" cases are referred to a new outfit, the MAMAC Office, which arranges a joint assessment by representatives of unemployment insurance, of invalidity insurance and of social assistance. The decision taken in the joint assessment is binding for all three actors.



Source: OFAS, Statistiques des assurances sociales, Various issues

Fig. 9. Developments in unemployment insurance ('000 of beneficiaries, right axis); invalidity insurance ('000 of beneficiaries, right axis); and social assistance (spending, million CHF)

Subsequently, the consequences of the worsening of the labour market situation spilled over into other areas of the welfare state, most notably invalidity insurance and social assistance. Invalidity insurance had seen its caseload increasing for some years before the 1990s, but the last decade of the twentieth century saw an accelerated rise in the number of invalidity benefit recipients (see Fig. 9). The immediate consequence of this development was a dramatic worsening of the invalidity insurance scheme budget, which remained in the red throughout the 1990s and 2000s. But, of course, both the increase in caseload and the rise in expenditure caused great concern among policy-makers, as the suspicion was strong that invalidity insurance was being misused as a tool to manage (reduce) labour supply in difficult times. The fact that the incidence of psychological problems as the cause of invalidity increased throughout those years may prove these suspicions right.

Invalidity insurance is not the only scheme that has suffered because of rising unemployment. Social assistance numbers were also on the increase throughout the 1990s. Since the fragmentation of social assistance is also problematic for data collection, throughout the 1990s there was no monitoring of developments in the caseload of social assistance at the national level, but cantons and cities periodically published data showing rapid increases in the numbers of social assistance recipients. The newcomers to social assistance tended to be younger than in the past, and, increasingly, to have a (low paid) job and a family. Data on social assistance caseload are currently available on a national basis only since 2004, when about 3% of the resident population was on social assistance. The evolution during the 1990s can only be illustrated by the sharp rise in the cost of social assistance, as shown in Fig. 9.

3 The development of activation

The employment crisis of the early 1990s created a sense of urgency in the country, which prompted the Federal Government to take swift action. In 1993, emergency legislation, which can enter into force before the end of the lengthy law-making process, was used to cut benefits from 80 to 70% of insured earnings,[5] to introduce a stricter definition of "suitable employment," and to extend the duration of unemployment insurance coverage from 250 to 400 days (Bonoli and Mach 2000). The objective of using emergency legislation is to give the authorities some time to prepare a more thoughtful and fundamental reform.

At the same time, in fact, the government was preparing a real reform, which was presented in Parliament at the end of 1993. The proposal basically reflected the measures contained in the emergency decree adopted, without putting much emphasis on activation. The absence of activation measures was met with disappointment by the Parliamentary committee responsible for social security matters, which *de facto* took the lead in the formulation of the unemployment insurance reform. It set up a working group including trade union leaders and employer representatives, which came up with a new proposal. This time substantial new funds for active labour market policies were part of the reform. At the same time, however, it was decided that time spent in labour market programmes cannot be counted as a contribution period, opening the right to a new term on unemployment insurance. The first element of the compromise reflected the priorities of the left and the unions; the second one was a long standing request of the employers. In addition, a temporary increase in contribution rates would restore a balanced budget. The new proposal, backed by employers and the unions, was politically unbeatable and thus adopted by Parliament in 1995. Unlike most social policy reforms of the 1990s and 2000s, it was not challenged by a referendum. It entered into force in two stages in 1996 and 1997 (Giriens and Stauffer 1999).

An important innovation of the 1995 law was the introduction of a network of regional placement offices (RAV/ORP), which are responsible for the implementation of the new law. They process unemployment benefit claims, monitor job search activities, provide access to active labour market polices and can enforce sanctions upon non-cooperative recipients. Regional placement offices were set up by the cantons, but financed essentially by the federal unemployment insurance scheme. As will be shown below (see Sect. 5), this resulted in some important differences in the activation practice across cantons.

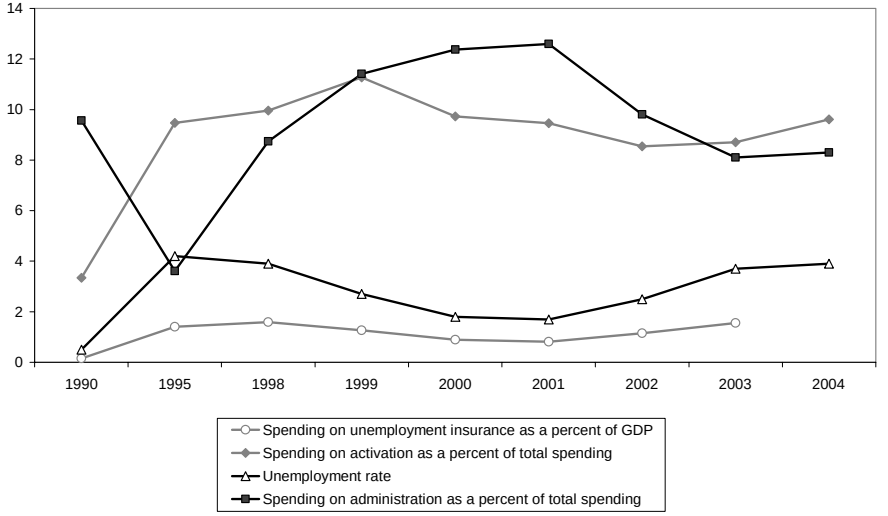
Throughout the 1990s and early 2000s, unemployment insurance remained the main point of activation for non-working individuals. However, the sharp increase in social assistance and invalidity benefit beneficiaries prompted developments also in these two areas. Initially, these took the shape of experiments or pilot

[5] Insured persons who are financially responsible for children are exempted from this measure.

programmes in some cities or cantons. In the early 2000s, however, the issue of rising social assistance and invalidity benefit costs gained prominence, and action was taken in these two fields.

3.1 Trends in activation within the unemployment insurance scheme

The second reform of the unemployment insurance scheme (AVIG/LACI), in force since 1996, brought substantial additional funds for ALMPs into the unemployment compensation system. Additional funds were made available especially in order to set up a network of over 100 regional placement offices (RAV/ORP), with the task of proactively managing re-entry into the labour market for unemployed individuals. This innovation is reflected in a substantial increase in the administrative costs of the unemployment insurance between 1995 and 1998. Spending on activation measures did increase after the adoption of the 2nd AVIG/LACI reform, but not so dramatically, suggesting that activation measures were being used before in response to the rise in the unemployment rate. By introducing regional placement offices, the main objective of the reform was to better and more efficiently organise the implementation of ALMPs (Fig. 10).



Source: OFAS 2005

Fig. 10. Unemployment rate, total spending on unemployment and spending on ALMPs, 1990–2004

Spending on ALMPs as a proportion of total spending on unemployment insurance remained stable at around 9% in subsequent years. In absolute terms, of course, it reflects trends in the unemployment rate. This suggests that the system is capable of adapting quickly enough to changes in the rate of unemployment and hence in demand for ALMPs.

3.2 Developing activation in social assistance and unemployment assistance programmes

With regard to social assistance, cantonal legislations laws had been gradually adapted to the new context throughout the 1990s, by including some form of activation such as incentives for those who accept participation in training programmes. In many cases (in French-speaking cantons), the objective of these activation programmes is not labour market participation, but "social reinsertion." An important development is the adoption, in 2005, of a new set of guidelines by the influential SKOS-CSIAS. The new guidelines explicitly encourage cantons to introduce activation measures in their social assistance legislation. These include employment incentives in the shape of an earnings disregard, as well as "activation supplements" as incentives to participate in training or labour market programmes. At the same time, the recommended benefit levels are reduced, so that in order to obtain the previous benefit level, recipients have to accept activation programmes. There are few exceptions to this rule, such as lone mothers of children below the age of three, who are entitled to the activation supplement regardless of participation in a programme.

The new set of guidelines is, as mentioned before, not legally binding and has no direct effect on the implementation of social assistance programmes. Its adoption has proved rather controversial, with the strongest resistance coming from the French-speaking cantons. The guidelines are nonetheless being adopted in a growing number of cantons, as cantonal social assistance laws are reformed (see Sect. 4.3.3).

3.3 Activating disabled people

Invalidity insurance has also come under pressure over the last few years. The consequence of a growing caseload has been a deterioration of its finances. The deficit of the scheme has been growing since 1993, and the image of invalidity insurance has been shattered by media reports of abuses.[6] A profound reform of the invali-dity insurance scheme has been adopted by parliament in 2006 (5th IVG/LAI revision). Its main aim is to improve the prospects of labour market participation for individuals with health impairments to work. It entails a variety of measures including an early detection system for workers who are experiencing health problems which could lead to invalidity, or new measures aimed at facilitating labour market re-entry. In order to achieve the goal of reducing the number of new beneficiaries by 20%, new funds were made available. Because of its emphasis on work and the lack of requirements on the employers' side, the reform has been heavily criticised by the left and by some disabled people's associations. One of

[6] One example of those reports was a series of articles published by the daily tabloid "*Der Blick*" on the lives of Swiss invalidity benefit recipients who live in Thailand and display no sign of physical or psychological impairment to work (see *Der Blick*, 18.05.2006).

them succeeded in collecting the 50,000 signatures needed to call a referendum, and a vote took place on 16 June 2007. The law was finally accepted by 59.1% of voters.

4 The legal aspects of activation

On approaching the subject of labour market activation in Switzerland, it is necessary to address its legal aspects. Even as a legal concept (see Sect. 1.2), the points of reference for activation are easily recognised. On the one hand, there are the duties and rights of those who are to be activated; on the other, there are the duties of the community – that is, the polity – to create the preconditions necessary for the labour market integration of the unemployed, while at the same time establishing the general conditions enabling social benefit recipients to earn, as far as possible, an adequate livelihood on their own. The government's obligations to foster labour market integration and to render support to the individual in finding adequate means of subsistence correlate with the framework it creates by stipulating how the individual can obtain employment or possibly be protected against the loss of existing employment. Hence, national labour law certainly affects the conditions of activation, thus playing a role that is not to be underestimated. Therefore, it is necessary to take a brief look at the aforementioned basic conditions underlying Swiss labour law (Sect. 4.1).

Both angles of activation – from the perspective of the rights and duties of the individual as well as from that of the government and its obligations – would be incomplete without first identifying the groups at which the activation concept is targeted. Thus, it seems necessary to clarify who can in fact be subject to activation (Sect. 4.2) and, proceeding from there, to depict the legal schemes of activation (Sect. 4.3). In the case of the latter, the prime focus will be on the unemployment insurance system (Sect. 4.3.1), although the other activation schemes aimed at labour market integration should not be left out of the picture (Sects. 4.3.2–4.3.4). Generally, the sections on legal schemes of activation will centre on activation per se, thereby illuminating its systemic organisation as well as its implementation, and above all the relevant case law.

4.1 The impact of labour law

The law of contract of employment is highly flexible as far as the entering into contract is concerned. Alongside the indefinite employment contract, labour law also recognises fixed-term contracts. Owing to the almost complete freedom of contract in this context, fixed terms of almost any duration are feasible. The only requirement is that the contract itself indicates how the minimum duration was determined. Several successive time limitations are moreover permitted, so that not every multiple employment relationship need necessarily evolve into an indefinite contract (Rehbinder 2002: paras. 299-301; Vischer 2005: 228-229).

Protection against (unfair) dismissal is not extensively regulated in Switzerland. Apart from the provisions on the point in time when and the reasons why notice of termination is given or takes effect, there are also provisions that declare dismissals unlawful. Such unlawful dismissals do not, however, result in a guaranteed continuation of the given employment relationship, but give rise to compensation for damages (Vischer 2005: 236 et seqq. and 248 et seqq.). Labour law thus tends to strive for compensation of loss rather than avoidance of loss. Fixed-term employment relationships can like-wise be terminated by way of routine dismissal, although protection of the term of contract is generally more pronounced here (Rehbinder 2002: para. 300).

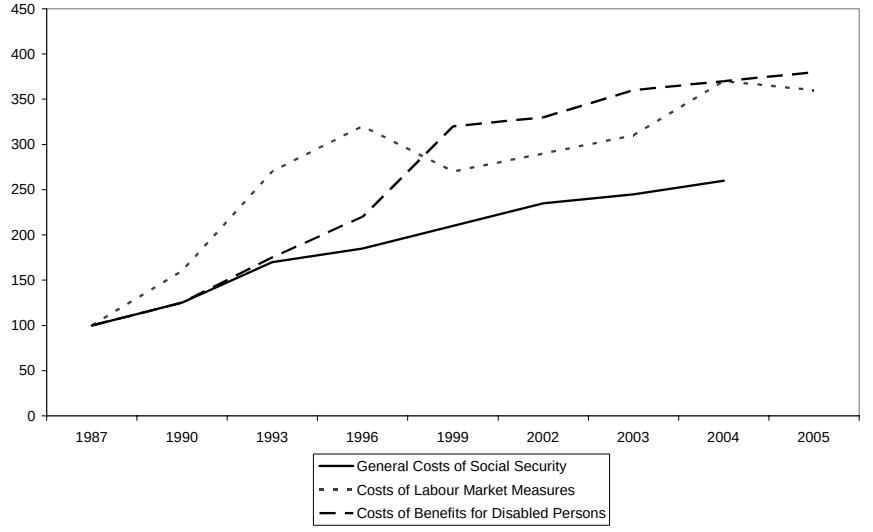
All in all, labour law does not impede employment such that it would obstruct the implementation of structural options, thus excessively binding the employer. Nevertheless, the release from obligations under the employment contract is regulated in an equally flexible way, so that grandfathering arrangements are not ensured.

4.2 Target group of activation

At first glance, unemployed persons constitute the sole target group of labour market integration by means of increased emphasis on personal initiative and promotional measures. The relevant provisions of the AVIG/LACI and the corresponding implementing regulation (AVIV/OACI; see more detailed Sect. 4.3.1) thus lay down the duties and rights of the unemployed. It would be too short-sighted, however, to focus only on this group under the motto of "back to work" and in terms of the concept of labour market integration. Rather, in Switzerland, additional categories of persons come within the reach of this kind of integration goal. Specifically, one such category comprises disqualified persons – those who withdraw from the unemployment insurance system at the end of the benefit period and who as persons without gainful earnings are entitled, depending on their income and asset situation, to cantonal social assistance or, if provided, to cantonal unemployment assistance. Another category refers, in principle, to all persons who are reliant on social assistance and are considered capable of work or gainful activity within the limits imposed by the law. Beyond that, persons who, owing to their personal attributes, are members of the invalidity insurance system are to be re-integrated into working life on the basis of benefits awarded under the Invalidity Insurance Act (IVG/LAI).

There are three important reasons why all the aforementioned persons should be included in the legal investigation. First, all systems in Switzerland, namely social and unemployment assistance as well as invalidity insurance, recognise beneficiaries' duties to act on their own initiative and cooperate, alongside their rights to participate in integration measures. Hence, given the various legal requirements targeted at the one goal, the legal subject of labour market integration addresses the rights and duties of all those who are not available in the labour market, but ought to be according to constitutional provisions.

Second, it can be ascertained in point of legal fact that, given a more or less steady rate of unemployment, the labour market integration of those who receive earnings replacement benefits under unemployment insurance seems to function and, hence, does not pose the actual problem. The more problematic issue, rather, appears to be the labour market integration of the remaining beneficiaries. This is reflected, on the one hand, by the trend in overall social security expenditure, specifically in the expenditure on labour market measures and invalidity benefits (Fig. 11):

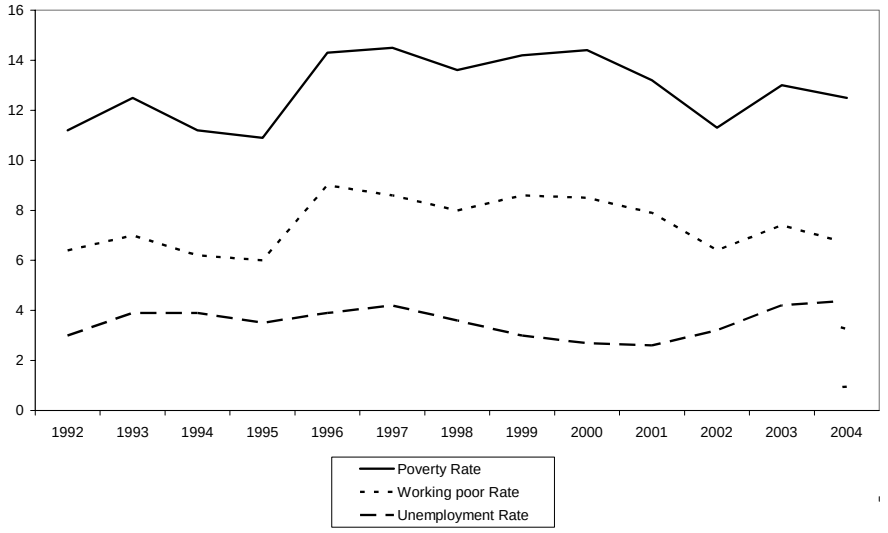


Source: OFAS, Statistiques des assurances sociales, Various issues

Fig. 11. Development of annual social security costs (Index 100 = 1987)

On the other hand, the insufficient labour market integration of the other groups has led to a variety of legal notions on how best to link and regulate integration beyond the limits of the individual benefit schemes, for instance through inter-institutional cooperation (IIZ; Gächter 2006). All in all, it would hardly be justifiable from a legal point of view to reduce activation to the sole category of unemployment insurance beneficiaries.

The third reason, which is closely connected to the second, is that interrelations between the benefit schemes are so pronounced that an isolated scrutiny would scarcely be worthwhile. Especially disqualified persons' ties to unemployment insurance remain quite close, and the rising numbers of invalidity insurance beneficiaries give reason to assume a certain degree of migration into invalidity. Beyond that, there is also a close linkage between "successful" labour market integration under unemployment insurance, the rise in the working poor and the concomitant increases in benefit expenditure on the part of cantonal social assistance institutions. The narrow correlation, especially between the last two figures,



Source: OFAS, Statistiques des assurances sociales, various issues

Fig. 12. Development of poverty/working poor/unemployment rates

becomes manifest when comparing the unemployment rate with the working poor rate in Switzerland (Fig. 12)

In light of these three reasons, a legal examination of the rights and duties of unemployment insurance beneficiaries must include the neighbouring schemes and related groups. For, in the end, it all comes down to the constitutional issue of equal treatment and interventions in the freedom of citizens deriving from the division of responsibility and governmental measures, as well as to the operative mechanisms of social benefit schemes based on different legal frameworks.

4.3 Legal schemes of activation

As stated above, the various target groups of activation are not subject to a uniform statutory regime; rather, every specific group comes under a separate body of legal rules. This fact is underscored in the following sections, and, where applicable, references to the relevant provisions governing coordination are depicted.

4.3.1 Unemployment insurance

Pursuant to Article 114 BV/CF, the Federation lays down the legal provisions governing unemployment insurance. The article reads as follows:

1. The Federation shall enact provisions on unemployment insurance.
2. It shall thereby observe the following principles:

a. The insurance grants appropriate earnings replacement and supports measures to prevent and combat unemployment.
b. Membership is obligatory for employees; exceptions can be stipulated by law.
c. Self-employed persons can insure themselves voluntarily.

3. The insurance shall be financed through contributions of the insurants, with half of the contributions to be paid by the employers on behalf of their employees.
4. In exceptional circumstances, Federation and cantons shall render financial support.
5. The Federation can enact provisions on unemployment assistance.

Although the Federation has been entrusted with concurrent legislative powers on the basis of these principles, the BV/CF is nevertheless silent on how an unemployment insurance scheme is to be structured in terms of its legal organisation (Mader 2002: para. 3). Hence, the Federation is free in its organisation of the concrete administration of unemployment insurance beyond the aforementioned principles – that is to say, it is subject to only a minimum of legal obligations in this respect. On the other hand, the principles under Article 114 BV/CF define the content of unemployment insurance, albeit along general lines (Mader 2002: para. 4 et seqq.).

Under the Federal Act of 25 June 1982 on Obligatory Unemployment Insurance and Insolvency Compensation (AVIG/LACI), the Federation fulfilled its legislative duty and enacted a detailed statute in terms of both procedural and substantive law. Over and above that, the Federation supplemented this act by three additional major regulations on unemployment insurance law: the Regulation of 31 August 1983 on Obligatory Unemployment Insurance and Insolvency Compensation (AVIV/OACI), the Regulation of 24 January 1996 on Accident Insurance for Unemployed Persons (UVAVV) and the Regulation of 3 March 1997 on Obligatory Occupational Pension Schemes on Behalf of Unemployed Persons (BVAVV).

Organisation of unemployment insurance

The organisation of unemployment insurance under Articles 76-87a AVIG/LACI and Articles 103-121b AVIV/OACI is characterised by a dual division of competences. The actual administration of unemployment insurance is thereby performed by the cantonal public funds and, as a residual feature from the historical development of unemployment insurance, by the association funds of employee and employer organisations at national, regional or cantonal level (Arts. 77-78 AVIG/LACI). These unemployment funds are responsible for the alignment of benefits, notably unemployment compensation and labour market measures. This function is supported by the regional job placement centres (RAV/ORP), which are set up by the cantons (Art. 85b AVIG/LACI). The cantons confer duties upon the RAV/ORP, consisting specifically in the counselling of jobseekers, the furnishing of information on vacancies, and the mediation of appropriate training courses and other measures on behalf of the unemployed (Widmer 2005: 246; Bollier 2005: 234).

In doing so, the cantons also control the jobseeking efforts undertaken by the beneficiaries. Thus, it follows that the paying out of benefits and the placement of labour are separated in terms of their organisation. This division is the result of reforms to unemployment insurance during the 1990s and is supposed to ensure the effective implementation of the government's obligations.

The entry into force in 2005 of the third AVIG/LACI Revision established the statutory requirements for inter-cantonal and inter-institutional cooperation. Thus, on the one hand, the cantons have been authorised under Article 85e AVIG/LACI to operate joint institutions, notably the RAV/ORP. On the other hand, their cooperation with the bodies of other social security systems, in particular social assistance agencies and IV/AI offices, are now permitted under Articles 85f AVIG/LACI. These forms of cooperation are likewise intended to make the unemployment insurance system more efficient and to counteract the previous rigidity of the labour market integration framework (Nussbaumer 2007: 2461-2462).

Risks and persons covered

Pursuant to Article 1a AVIG/LACI, unemployment insurance covers the following risks: unemployment, including impending unemployment; short-time work; bad weather in certain industries, i.e. unreasonable outdoor work; and insolvency of the employer. Although the last three risks are not at all insignificant, their coverage constitutes a specific form of precaution against financial loss, whereas the risk of unemployment is of fundamental societal and, hence, legal relevance, and is therefore to be dealt with exclusively in the following.

Contributions and benefits

In Switzerland, all employees are compulsorily insured (Art. 2 AVIG/LACI). They contribute, together with their employers on a fifty-fifty basis, 1% of their gross earnings from employment (Art. 3 AVIG/LACI). The upper limit of insured earnings is approximately CHF 110,000.

Insurants are entitled to daily unemployment benefits if they meet the following preconditions in their entirety (Art. 8 AVIG/LACI): are fully or partially unemployed; suffer a loss of earnings on at least two working days per month; are residents of Switzerland (nevertheless under due observance of bilateral agreements); have completed compulsory schooling, but have not reached retirement age; have fulfilled the contribution requirement or been exempt therefrom; and are employable.

A claim to unemployment insurance benefits exists if the contribution requirement has been fulfilled. Accordingly, the insurant must have pursued an activity liable to contribution for at least 12 months within the previous 2 years (Art. 9 in conj. with Art. 13 AVIG/LACI). A special regulation applies to persons who do not receive unemployment insurance benefits and have taken up self-employment.

In their case, the time frame is prolonged by 2 years, but no longer than for the duration of self-employment (Art. 9a AVIG/LACI). An extension of the time frame from 2 to 4 years is also granted to parents who must care for a child under age ten at the time of their registration with unemployment insurance. This term is prolonged by an additional 2 years for every new-born child (Art. 9b AVIG/LACI).

Unemployment compensation is set at 80% of insured earnings; however, persons without child support obligations are entitled to only 70% (Art. 22 AVIG/LACI). In principle, the maximum claim is 400 daily allowances. Unemployed persons over the age of 55 are eligible for 520 daily allowances, provided they can prove a contribution period of at least 18 months; the same number of daily allowances is awarded to the recipients of accident or invalidity pensions if they likewise exhibit 18 months of contribution payment (Art. 27 AVIG/LACI). Apart from that, the Swiss Federal Council (*Bundesrat*/*Conseil fédéral*) has increased the daily allowances by 120 for persons who become unemployed in the last 4 years prior to reaching the retirement age (Art. 41b AVIV/OACI). Further, the Federation has accorded cantons with above-average rates of unemployment the right to pay out 120 daily allowances in addition to the 400 if the canton agrees to bear 20% of the cost and if the total measure – to be approved by the Federation, either for the entire canton or a sub-area – does not exceed the duration of 6 months (Art. 27(5) AVIG/LACI in conj. with Art. 41c AVIV/OACI).

One of the main criteria governing claims to benefits is employability. According to Article 15(1) AVIG/LACI, any person "is employable who is ready, able and qualified to accept reasonable work and to participate in integration measures." Hence, the statutory definition comprises four elements needed for successful placement: readiness to accept employment, working ability, qualification and reasonable work (Nussbaumer 2007: 2257). Especially the subjective criterion of being ready to accept a placement offer has often been contested before court. The EVG/TFA initially held that a mere declaration of readiness does not suffice; the unemployed person must also be available for the acceptance of work and must take the initiative in seeking employment (BGE 122 V 266; 120 V 390). Such readiness moreover involves the jobseeker's participation in measures aimed at his or her swift integration into the labour market. Even so, a merely inadequate job search may not be declared as "non-readiness," thus resulting in a loss of unemployment compensation. This, rather, is seen as non-fulfilment of the damage mitigation duty (EVG/TFA ARV 1986 No. 26). An ascertainment of non-readiness is subject to additional qualifying circumstances such as, for example, the fact that the unemployed person made no effort to seek work over a prolonged period of time (Nussbaumer 2007: 2262).

Of a similarly broad nature is the term "reasonable work." Here, however, the legislator has, by way of casuistry, provided points of reference for the appraisal of reasonability in Article 16 AVIG/LACI. These criteria have ultimately been confirmed, also in their details, by the EVG/TFA (Nussbaumer 2007: 2268-2271) and include the following: the conditions of employment of the new position must be customary in terms of occupation and location; the new position must be

appropriate to the jobseeker's capabilities and previous activity; the acceptance of the new position must not substantially impede the jobseeker's return to his or her previous occupation; the new position must be appropriate to the insurant's age, personal circumstances and state of health; the work must not be performed in an enterprise in which collective labour disputes prevent the normal performance of work; the time for commuting to work must not take longer than 4 h; the worker's on-call duty must be in keeping with the overall scope of the employment relationship; the position must not have become available on account of dismissals aimed at the re-engagement of workers under inferior conditions; the new wage must not be less than 70% of the insured earnings, although in exceptional cases lower earnings can be considered reasonable.

Labour market measures

Only beneficiaries under the AVIG/LACI are in principle eligible for labour market measures (LMMs). The fact that these entitlements constitute legal claims has been confirmed by the EVG/TFA in its consistent practice (BGE 150 V 122). LMMs thus do not only obligate the unemployed, but also entitle them to claims against the labour administration. The 6th chapter of the AVIG is devoted to LMMs in Articles 59-71d. Individual LMMs include the following:

Articles 60-62 AVIG/LACI – training measures: Training measures mainly consist in retraining courses, advanced training or integration, as well as learning in practice workplaces and internships. In addition to their daily allowances, insurants who participate in training measures are also entitled to a refund of out-of-pocket expenses (course fees, learning material, travel expenses, allowances for room and board at the training location). But also persons who have not met the minimum contribution obligation or have been exempt therefrom may claim reimbursement of expenses for a period of no longer than 260 days within 2 years; they are not, however, entitled to unemployment compensation (cf. Leu 2006: 69-98).

Articles 64a-64b AVIG/LACI – employment measures: Employment measures mainly comprise temporary jobs offered under programmes organised by public or private non-profit enterprises. They also include on-the-job training in companies and in the administration, as well as motivation semesters for insurants who have completed schooling. These semesters can also be attended by persons who have neither met their minimum contribution obligation nor been exempt therefrom (cf. Leu 2006: 99-122).

Articles 65, 66 AVIG/LACI – vocational adjustment benefits: Employees who are difficult to place may be eligible for benefits in support of their initial adjustment to a new job at a reduced wage. Their thus earned pay must correspond to their work performance; after the adjustment phase, they can expect to be engaged under the conditions that are customary in the particular location and trade. The adjustment benefits themselves are equivalent to the difference between the insurant's actual earnings and the wage which he or she may expect upon completion of the

adjustment phase. The insurance benefit must not exceed 60% of the normal wage. Special conditions apply to older unemployed persons (cf. Leu 2006: 124-134).

Articles 66a, 66c AVIG/LACI – training allowances: Insurants who are at least 30 years old are entitled to take part in a training programme of no longer than 3 years if they lack a vocational education or have poor prospects of continuing work in their original occupation. The training allowances correspond to the difference between the actual monthly wage and a maximum amount fixed by the Swiss Federal Council (cf. Leu 2006: 135-142).

Additional LMMs include: *contributions towards commuter expenses and weekday stays* – Articles 68-70 AVIG/LACI; *promotion of self-employment* – Articles 71a–71b AVIG/LACI; and, closely connected with the latter, *daily planning allowances* – Article 71d AVIG/LACI, simply meaning the payment of daily allowances during the phase of planning self-employment, subject to a maximum limit of 90 daily allowances.

Sanctions

The above section shows that, apart from earnings replacement, the unemployment insurance system focuses on personal initiative and LMMs. The implementation mechanisms reflecting these focal points bear promotional and repressive elements. The promotional aspect is seen in income replacement and LMMs *per se*, while the repressive elements serve to restrict these two forms of promotion. In other words, the system creates conditions governing benefit receipt. If the conditions are met, promotion follows – if not, such promotion is fully or partially denied. Consequently, the implementation of conditions of benefit receipt must be regarded from a legal standpoint. Of prime importance here are the prerequisites for benefit reductions and benefit withdrawal under the AVIG/LACI, but also the denial of benefits owing to personal blame in failing to comply with placement requirements.

The AVIG stipulates sanctions for unemployed persons who fail to comply with specific requirements. The list of grounds in the law is exhaustive (Art. 30 AVIG/LACI): unemployment through the insurant's own fault; renunciation of claims arising from the employment relationship; insufficient personal efforts in finding reasonable work; non-compliance with instructions of the competent authorities, notably because a labour market measure was not accepted; as well as misrepresentation and non-disclosure. The sanctions are progressive and depend on the nature of the fault, thus commencing with zero to twelve days' suspension of benefits for a slight degree of fault, followed by 13–25 days for a medium degree of fault, and 26–60 days for gross fault. Repeated cases of medium- or heavy-degree fault always entail a minimum of 45 days' suspension (Art. 45 AVIV/OACI).

According to the generally held view, sanctions under the AVIG/LACI do not have a penal character and, hence, can be imposed more than once without any

problems in terms of constitutional law (BGE 123 V 151 E. 1c). Moreover, a violation of international law, assumed in some of the literature on the basis of ILO Convention No. 168 concerning Employment Promotion and Protection Against Unemployment (Chopard 1995), has been dismissed by the EVG/TFA in its relevant rulings (BGE 124 V 225; 124 V 234). Nevertheless, this ILO Convention as well as a few others had the effect that sanctions must be imposed by progressive stages in order to comply with international law. According to this and the constitutional principle of proportionality, the level of sanctions must therefore be in proportion to individual fault. The legislator has followed this line of reasoning by forming sanction categories (Art. 45 AVIV/OACI). When reviewing sanctions, the courts are required to consider such categorisation as a decisive criterion for the interpretation of the individual case. Even so, the question remains how the courts, in particular the EVG/TFA, assess the degree of fault assumed by the sanctioning authority.

In a most recent decision of the EVG/TFA (C 10/2006), the deliberations with a view to Article 45(3) AVIV/OACI centred on what kind of condonable reasons are deemed relevant to serious fault regarding the rejection of a reasonable job offer. Two aspects of this decision are worthy of note. First of all, the EVG/TFA postulated that without a cogent reason, the court is not allowed to deviate from the discretionary decision of the sanctioning authority by substituting its own discretion for that of the authority. Thus the EVG/TFA, in assessing the level of sanctions, must confine itself to reviewing merely the grounds of discretion exercised by the authority. Secondly, the EVG/TFA approved the authority's allocation of the misconduct to the highest category of sanctions because, within that category, the authority remained at the lower end of the sanctioning scale. The course thus mapped out by the EVG/TFA has the consequence that the court itself does not without good reason undertake to assess discretion, but makes it clear to the authorities that in using their discretion they must in case of doubt construe the proportionality principle in favour of the sanctioned party.

This court ruling is relevant because it illustrates a close connection between the "if" and the "how" of sanctions. Although the AVIG/LACI and the AVIV/OACI make a strict distinction in defining if and how sanctions are imposed, the practical handling of the matter tends to show smooth transitions. Undoubtedly, it should be noted that on a quite general level – detached from the individual case – the question if sanctions are allowed under unemployment insurance is regarded as unobjectionable in terms of Swiss constitutional law. Articles 6 and 41 BV/CF provide the necessary framework here because in the Swiss understanding of constitutional principles, the individual is committed to self-responsibility. With specific reference to the individual case, the question if sanctions should generally be allowed under unemployment insurance is based on the fact that a suspension of benefits is seen as a sanction in terms of insurance law, whereby a reasonable portion of the damage to the insurance scheme is assigned to the insurant who naturally and adequately caused it through his or her breach of duty (BGE 122 V 40 E. 4c/aa; cf. Stauffer 1998: para. 1 on art. 30).

Infringements of property rights – in view of the personal payment of insurance contributions and any subsequent denial of benefit payment upon risk occurrence – are not assumed. This appraisal is not only a result of the above constitutional commitment to personal responsibility and the dominating principle of damage mitigation under social insurance law, but is also due to the fact that such a property guarantee is not implied in Article 26 BV (Vallender 2002: paras. 14-23). Correspondingly, Switzerland has not transposed the 1st Additional Protocol to the European Human Rights Convention into national law, meaning that the rulings of the ECtHR concerning property-like positions of social insurance contributories are not taken into consideration.

The prerequisites governing sanctions have so far not been investigated in the literature in any great detail. Individual case judgments, particularly by the EVG/TFA, nevertheless indicate that the reasons stipulated in Article 30 AVIG/LACI have been both extended and restricted beyond the intentions of the legislature in light of the Constitution and statutory law (Nussbaumer 2007: 2434-2437).

4.3.2 Unemployment assistance

All unemployed persons who, owing to lapse of time or other circumstances, do not (any longer) receive unemployment insurance benefits and thus in principle remain debarred from labour market measures under the AVIG/LACI, have access only to the benefit schemes of the public welfare authorities for securing their basic subsistence and for their participation in labour market integration measures. A uniform federal system of unemployment assistance does not exist. Although Article 114(5) BV/CF (see Sect. 4.3.1) enables the Federation to enact rules on unemployment assistance, the Federation has not made use of this possibility. This is harshly criticised in some of the literature (Greber: para. 42), above all with a view to Article 41 BV/CF whose social objectives are considered to impose a special duty on the Federation to look after the long-term unemployed. For all that, Article 114(5) BV/CF does not place the Federation under a mandate to legislate, but only establishes its concurrent legislative competence. In other words, as long as the cantons grant sufficient social assistance benefits, the Federation is under no duty to legislate (Mader 2002: paras. 13-14).

Hence, the concurrent legislative power in the domain of unemployment assistance continues to rest with the cantons. About half of all the cantons made use of this authority in one way or another in the past, mainly to prevent the benefit level on behalf of the long-term unemployed from dropping abruptly to that of (other) social assistance recipients. However, the 1997 reforms to the AVIG/LACI, notably the prolonged receipt of unemployment compensation, have resulted in the fact that today only eight cantons (Geneva, Jura, Neuchâtel, Schaffhausen, Ticino, Uri, Vaud and Zug) still operate unemployment assistance schemes (Bundesamt für Statisitik 2006, 22–23). On the other hand, the canton Uri did not establish such a scheme until after the 1997 reform (Gesamtschau bedarfsabhängige Sozialleistungen in der

Schweiz 2005, p. 117). In all the other cantons, the social assistance scheme is directly applicable (see Sect. 4.3.3).

The legislative competence of the cantons has resulted in differing unemployment assistance schemes, which are otherwise comparable only in that they are need-based. Thus, the cantons Zug and Ticino have maintained passive benefits, meaning they grant 90 to a maximum of 150 follow-up daily allowances, which are geared to the unemployment compensation received under the AVIG/LACI and amount to 80% thereof. The canton Zug additionally provides a refund of expenses for advanced training and retraining courses. The cantons Jura, Neuchâtel, Schaffhausen and Uri award so-called social wages, consisting in benefits modelled on labour market measures under the AVIG/LACI. The precondition for the receipt of social wages in the form of vocational adjustment benefits, training allowances, promotion of self-employment and employment programmes is expressed by the reciprocal duty to participate in labour market measures and to comply with instructions and conditions. Integration income, granted in the cantons Vaud and Geneva on the basis of contract models, is similarly structured (Bedarfsabhängige Sozialleistungen in der Schweiz 2006, pp. 24–25).

Common to all theses schemes is that they provide for sanctions and, hence, for the suspension of benefits. Moreover, the schemes in place in Neuchâtel and Ticino acknowledge a nexus between present and past misconduct: a previous sanction imposed during the receipt of unemployment compensation under the AVIG/LACI entails a full or partial loss of entitlement to unemployment assistance (Art. 13 R-rilocc; Art. 24 RMCC).

4.3.3 Social assistance

Social assistance is of greater Swiss-wide importance to labour market integration than unemployment assistance. The cantons are responsible for the establishment of their respective systems, while the Federation is entrusted only with the regulation of issues mainly concerning local competence, as laid down in the Act on Competence Issues (ZUG/LAS). Cantonal legislative competence has thus brought forth a variety of regulations and concomitant schemes. The cantons' constitutional provisions and, in particular, the federal constitutional norm under Article 12 BV/CF have nonetheless – if not cemented – limited the scope of benefits awarded under social assistance. For this reason, but also to prevent the migration of beneficiaries from one canton to another, the cantons have largely sought to develop similar social assistance structures. To that end, the Swiss Conference for Social Assistance (SKOS/CSIAS) has adopted common guidelines, which are not binding as such, but serve as an orientation guide to most of the cantons. And a few of the cantons, for example Zurich, have even incorporated the SKOS/CSIAS guidelines into their respective social assistance laws (Art. 51 SHG-ZH).

The social assistance laws of Switzerland share two inherent features, the one being that benefits are based on need, the other reflecting the attempt to reintegrate needy persons into the labour market. Even so, both the regulations governing

neediness and the implementation of labour market integration continue to differ from one canton to the next, despite the SKOS/CSIAS guidelines and the ZUG/LAS provisions (Bundesamt für Statistik 2005: 210-211; 215-225). As far as labour market integration is concerned, nearly all regimes offer counselling and placement services (Bundesamt für Statistik 2005: 217-219). Only about half of the social assistance schemes place any emphasis on the instrument of so-called activating social assistance (Bundesamt für Statistik 2005: 219-224), in the sense of a strict linkage of benefits with occupational integration measures. More and more cantons, however, are opting, for the inclusion of this criterion in their legislation. Nevertheless, in enacting the relevant provisions, legislators tend to focus only on the duties of social assistance recipients, as most cantons do not recognise a right to integration measures – exceptions here being the cantons of Basle-City (Art. 2 SHG-BS) and Ticino (Art. 31a LSAS-TT), since 2002.

Nearly all cantons have made provisions for sanctions. Beneficiaries who fail to comply with conditions and instructions, especially those concerning occupational integration measures, are subject to a curtailment of their benefits in most cantons, going as far as the suspension of all benefits in only a few cantons (Bundesamt für Statistik 2005: 229-234). Appenzell Inner Rhodes, Geneva and Valais are the only cantons that make no mention of sanctions at statutory level (SHG-AI; LSAS-GE: LSA-VS). Whether social assistance benefits are at all allowed to be curtailed, let alone suspended, is highly disputed in light of the federal constitutional provisions enshrined in Article 12 BV/CF (Tschudi 2005; Uebersax 2005). In initial judgments since the introduction of Article 12 BV/CF, the Federal Court has taken the stance that anyone who fails to meet his or her personal responsibility by refusing to comply, say, with a given measure is deemed not to be in a state of distress and thus forfeits his or her fundamental right (BGE 130 I 71). The implications of this judgment for the framing of new social assistance legislation cannot yet be foreseen (Pärli 2005: 112-113).

4.3.4 Invalidity insurance

Alongside unemployment insurance, unemployment assistance and social assistance, invalidity insurance plays an important role in the field of labour market integration (see Sect. 4.2). It differs from the other schemes mainly in that it involves a different group of beneficiaries, since entitlement is based on existing or impending invalidity, whose consequence – but not whose precondition – is often non-employment. In addition, and in contrast to unemployment assistance and social assistance, invalidity insurance generally does not take neediness into account. This is because the benefits awarded under the Federal Act of 19 June 1959 on Invalidity Insurance (IVG/LAI) constitute insurance benefits which the insured has a right to claim upon occurrence of the contingency risk. The IVG/LAI is applicable throughout Switzerland and in principle provides coverage to the entire resident population of working age (Art. 1b IVG/LAI). Contributions to this social insurance scheme are borne by the insured; employees share these contribution payments with their employers (Arts. 2 and 3 IVG/LAI).

The invalidity insurance benefit regime is guided by the maxim of "integration has priority over pensions" (Bollier 2005: 180-181), which is already inherent in the general principle of damage mitigation under social insurance law (Duc 2007: 1416-1418), and is specified in Articles 1a and 8 IVG/LAI. Accordingly, the insurant must have made every reasonable effort to prevent, minimise or remedy his or her invalidity before a claim to pensions arises. Insurance benefits for reintegration include medical and social measures and, of particular significance to our subject, occupational measures. While receiving these measures, the beneficiary is entitled to daily allowances, which are basically geared to (previous) earnings (Arts. 22-25 IVG/LAI). Occupational measures mainly consist in occupational counselling (Art. 15 IVG/LAI), initial vocational training (Art. 16 IVG/LAI), retraining (Art. 17 IVG/LAI), job placement (Art. 18(1) IVG/LAI) and the promotion of self-employment (Art. 18(2) IVG/LAI). The 5th Revision to the IVG/LAI introduces a number of new regulations (see below), including the following additional occupational measures: early intervention measures (Art. 7c IVG/LAI), notably to sustain employment by making adjustments and providing further training; measures to prepare for occupational integration (Art. 14a IVG/LAI), notably on behalf of social-occupational rehabilitation; as well as vocational adjustment benefits for initial on-the-job training (Art. 18a(3)-(5) IVG/LAI).

Claims to occupational measures are conditional on the duty to cooperate and, specifically, to participate in the given measure (Art. 7(1) IVG/LAI). Infringements of this duty can lead to a curtailment of benefits or even their full suspension. However, sanctions under the IVG/LAI, as distinguished from the AVIG/ LACI, are subject to the general sanctioning regime set out in the Act on the General Part of Social Insurance Law (ATSG/LPGA), which contains specifications that differ from the sanctioning mechanisms under unemployment insurance law. Thus, Article 21 ATSG/LPGA provides that slight fault, such as negligence, does not suffice for the imposition of a sanction; rather, a deliberate action is additionally required (Kieser 2007: 254). Moreover, Article 21(4) ATSG/LPGA defines the concept of reasonability of integration much more narrowly than the AVIG/LACI, so that the practical significance of this sanction rule has remained rather small (Kieser 2007: 255). Correspondingly, due process of law is required to enforce registration deadlines and respites, even in cases where the insurant has acted deliberately and the integration offer is deemed reasonable (EVG/TFA I 605/04; EVG/TFA I 152/ 05), meaning that infringements do not automatically entail sanctions. It follows that any curtailments or refusals can only affect the given measure, but not the payment of daily allowances (Art. 7(2) IVG/LAI).

The considerable increase in invalidity insurance beneficiaries and, hence, in the costs sustained by this branch of social insurance over the past decade (see Sect. 4.2) can be explained only partly by migration into this system on account of more favourable benefits (especially vis-à-vis social assistance benefits) and by its more lenient sanctioning regime. Even so, a correlation is evident. The federal legislator has therefore introduced extensive amendments (5th IVG/LAI Revision). The main emphasis of these new rules, apart from changes to the cash benefit scheme for the purpose of eliminating certain incentives, has now been placed on

the sanctioning mechanisms. Although the daily allowances remain exempt from any curtailments, the deadline and respite procedure has been revoked for breaches of registration duties (Art. 7b IVG/LAI), the reasonability criteria have been re-defined (Art. 7a IVG/LAI), and the catalogue of duties (Art. 7 IVG/LAI) has been extended, also with a view to the newly introduced occupational measures (Duc 2007: 1523).

In framing the 5th IVG/LAI Revision, the federal legislature has, in keeping with its constitutional mandate, sought to meet its organisational obligation to enhance labour market integration (see Sect. 1.2). So far, the individual integration schemes have tended to lead a life of their own, rather than strive for cooperation and coordination. In terms of invalidity insurance and its burdens, but also with regard to the other integration schemes, this has been a fault of the government in failing to ensure the effective organisation of labour market integration. Under the new Article 68bis IVG/LAI, an attempt has been made to strengthen inter-institutional cooperation (IIZ), notably between the IV offices and regional job placement agencies. Yet there still remains the constitutional problem that although the federal government is responsible for social insurance, it has only limited competence in social assistance matters (see Sect. 4.3.3) and does not want to exercise its competence in unemployment assistance matters (see Sect. 4.3.2). Cooperation and coordination in the sphere of labour market integration will therefore continue to be fragmented, with the government fulfilling only a part of its organisational duties. Consequently, additional forms of closer cooperation, for instance on the part of social insurance institutions with cantonal and local authorities in matters of relevance to labour market policy, lack legal foundations, but are based on inter-institutional agreements (e.g. IIZ-Plus and IIZ-MAMAC). Such an approach is highly questionable in terms of the rule of law. Nevertheless, IIZ-MAMAC cooperation in particular is expected to render successful policy outcomes, as the respective agreements provide for the joint establishment of assessment centres by the relevant institutions, who will thus collaborate in the handling of cases, thereby seeking to avoid so-called revolving-door effects for those concerned (Gächter 2006: 596-600).

5 The implementation and the governance of activation

5.1 The implementation of activation

The Swiss federal law on unemployment insurance (AVIG/LACI) and the related implementing regulation (AVIV/OACI) provide general guidelines on how to implement activation instruments. However, since they are responsible for the management of the local employment offices (RAV/ORP), Swiss cantons have some room of manoeuvre in the real implementation of those instruments. In other terms, whereas the unemployment insurance legislation is federal, the implementation of the scheme – including both the unemployment compensation benefits

and the active labour market measures – is to a large extent delegated to the cantonal level. In 1998 a proposal aiming at centralising the management of the local RAV/ORP at the federal level (*Motion Bonny*) has been addressed to the Federal government, but it was finally decided to improve the performance of the RAV/ORP by implementing a peer review mechanism instead of centralising the management (Engler 1996). This results in important implementation differences among cantons, which are also partly related to different local labour market conditions. For instance, while the average national unemployment rate in 2006 was 3.3%, at the cantonal level this rate went from 1.1 (Appenzell Inner Rhodes and Uri) to 7.0% (Geneva) (SECO 2007).

As already mentioned, the role of the cantons is even more important in the area of unemployment assistance and social assistance, where no federal schemes exist, and cantons thus enjoy a large autonomy in the design of their local schemes and the management of activation. Once again, differences in local socio-economic situation and their impact on local schemes must not be underestimated. For example, the share of population on social assistance in 2004 ranged between 0.6 (Appenzell Inner Rhodes) and 6.5% (Basel-City) (OFS 2006).

Going back to the implementation of the federal unemployment insurance scheme, data on the workload of the staff working in the RAV/ORP clearly illustrate the differences among cantons. For instance, according to the Swiss legislation (Art. 22 AVIV/OACI), local employment offices have to perform at least one interview every month with each registered unemployed person in order to check their situation and advise them about the opportunities they have. Data on the cantonal situation in 2005 show that there are important differences. Whereas the national average is situated at 1.03 interviews with each unemployed person per month, cantonal situations ranged from 0.73 to 1.54 interviews per month (SECO 2006a). Differences among cantons are thus significant.

The same is true for the time lapse preceding the first interview after registration of the unemployed at the local employment office. The law prescribes that this first interview should take place during the first 15 days after registration (Art. 22 AVIV/OACI). Once again, the national average – 16 days in 2005 – almost complies with the federal legal requirement. However, cantonal performances are very different, ranging from 4.5 days to almost 26 days (SECO 2006a). Both these examples show that some cantons are not in line with the legal prescriptions of the federal law.

It is difficult to find a single explanation to these variations. Factors such as differences in the local socio-economic situation and differences in the local management styles of the RAV/ORP certainly play a role. In any case, it must not be underestimated that the situation and the workload for local employment officers vary among cantons. Two important variables can be highlighted to illustrate these differences. First of all, the wages for exactly the same job – e.g. local employment office advisor – vary from one canton to another and can have an impact on the status of staff. Second, the number of unemployed persons that a single advisor has to coach can change from canton to canton. In fact, in 2005, depending on

the canton, each advisor had to coach between 100 and 158 unemployed, the national average being 116 (SECO 2006a).[7]

Compared to other western countries, the average incidence of unemployment benefit sanctions during benefit period is especially high in Switzerland (OECD 2000).[8] However, the sanctioning policy is very different across Swiss cantons, both in terms of incidence and strictness. In fact, the rate of unemployed having experienced at least one sanction during the year 2005 ranged from 2.4 to 29% depending on the canton. The severity of the cantonal sanctions – measured by the average number of days of cessation of the payment of the unemployment benefit – went from 7.8 to 18.2 (SECO 2006a). As concluded by a recent evaluation study, the probability of experiencing benefit sanctions because of inappropriate behaviour is not the same all over the country (Egger, Dreher and Partner 2006).

Up to now, local employment officers can decide on which ALMPs to rely in order to "activate" the unemployed persons. The result of this is that Swiss cantons rely differently on different types of active measures. For instance, the share of training measures compared to all ALMPs – measured by the number of yearly places – can vary from 10 to 71% depending on the selected canton (SECO 2006a). This means that the local policy mixes between employment and training measures implemented by the RAV/ORP are very different.

It has to be mentioned that some evaluations suggest that the effectiveness of ALMPs in Switzerland might be enhanced by improving this process of allocation of unemployed to programmes. It has been highlighted that the decisions taken by the advisors of the local employment offices do not always maximise the program-induced changes in the employment probabilities of the participants (Lechner and Smith 2003). This is the reason why a statistical targeting system – Statistical Assistance for Programme Selection (SAPS) – has recently been developed and implemented in a pilot study[9] in Switzerland in 2005 and 2006 (Behncke et al. 2006). Three hundred local employment officers working in 21 different RAV/OPR in five cantons (Basle-City, Bern, Geneva, St Gall and Zurich) took part in an experimental evaluation testing SAPS. Fifty per cent of them were relying on SAPS, thus using this instrument to decide which measure is more appropriate for the unemployed they coach, and the other half were not. The performances of the two groups have been compared, and the usefulness of this system has been evaluated in 2007 (Behncke et al. 2007). The result of this evaluation is that SAPS has

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[7] Giuliano Bonoli and Fabio Bertozzi would like to thank Thomas Ragni of the State Secretariat for Economic Affairs (SECO), for providing them with information and access to reports on the evaluation of activation measures.

[8] Among the thirteen countries included in the OECD statistics on unemployment benefit sanctions, only the United States experience a higher incidence of sanctions during the benefit period than Switzerland (OECD 2000).

[9] According to Art. 75a of the AVIG/LACI it is possible to fund pilot projects in the framework of the federal unemployment insurance.

no significant impact both either on the choice of the measures by the local employment officers or on the employment probabilities of the unemployed. According to the evaluation, one of the main factors explaining these results is that employment officers have consulted SAPS predictions but have not modified their choice of the measures. As a consequence, the federal administration decided to definitively abandon this pilot instrument.

Finally, a recent evaluation study suggests a typology of the RAV/ORP across the country according to their activation policy style (Egger, Dreher and Partner 2006). A distinction is made between three types of RAV/ORP:

- The "skills oriented" offices, which mainly focus on training measures and voluntary participation and rarely make use of sanctions
- The "strict activators" offices, which intensively rely on temporary employment measures and often make use of sanctions to put pressure on the unemployed
- The "less strict activators" offices, which also prevalently rely on temporary employment measures but do not systematically make use of sanctions.

According to this study, the different orientations of the RAV/ORP are mainly the result of the management philosophy adopted by each RAV/ORP director. This analysis shows that differences in the local implementation of the federal unemployment insurance instruments exist also among RAV/ORP in the same canton, depending on the orientations of the directors of the RAV/ORP.

5.2 The governance of activation

While it is true that the cantons and even the single RAV/ORP offices enjoy a room of manoeuvre in their implementation of the AVIG/LACI instruments, the performances are regularly monitored at the federal level. In fact, since the year 2000 a peer reviewing mechanism has been implemented at the federal level to compare cantonal implementation performances. A management by objectives agreement is therefore signed by the Federal state, represented by the Federal Department of Economic Affairs (FDEA), and the cantons each 3–4 years: the first agreement covered the years 2000–2002, the second one the years 2003–2005 and the third one the years 2006–2009. Originally, it was foreseen to link this peer reviewing mechanism with financial incentives and penalties for best and worse practice cantons, but this system has been abandoned at the end of 2002 because of implementation problems and resistance on the side of the cantons (OECD 2005; Engler 2006).

The cantonal performances are analysed and compared yearly by the State Secretariat for Economic Affairs (SECO) according to four main indicators:

1. Quickness of the reintegration into the labour market, measured by the average duration of unemployment with benefit entitlement (weighting 50%)

2. Prevention of long-term unemployment, measured by the share of unemployed since more than 1 year on total number of unemployed (weighting 20%)
3. Prevention of benefit exhaustion, measured by the share of unemployed no more entitled to federal unemployment benefits on total number of unemployed (weighting 20%)
4. Prevention of re-inscription to the unemployment insurance, measured by the share of earlier unemployed having reintegrated in the labour market which apply again for unemployment benefits during 4 months after having left the unemployment insurance (weighting 10%).

The different socio-economic cantonal situations are taken into account when performing this comparison, and cantonal data are weighted accordingly.

The cantons that repeatedly show below average performances, or that in a single year show a performance which is far below the average, can be submitted to an in-depth single canton performance evaluation by the SECO. This evaluation aims at looking for precise solutions to the lack of performance. One of the main ideas behind this overall evaluation mechanism is that regular reviewing will improve the implementation of the AVIG/LACI at the cantonal level and that cantons with above average performances can provide best practice examples for cantons with implementation difficulties.

Another element to be mentioned concerning the governance of activation is that according to Article 119c^{bis} AVIV/OACI the Swiss cantons can decide whether and to what extent cantonal RAV/ORP can collaborate with private placement agencies in order to outsource counselling and placement activities. In the cantons where this is allowed, private agencies can be funded by the unemployment insurance fund for the tasks they fulfil. Data show that some collaboration between private agencies and public employment offices takes place. In fact, on national average the placement of 2.6 unemployed out of 1,000 is contracted out by the PES to private employment offices. The collaboration is thus limited. Once again, cantonal policies are very different: depending on the canton, between 0 and 7.7‰ of placements are contracted out (SECO 2006a).

6 The outcomes of activation

6.1 Activation and labour market conditions

In many respects, Switzerland can be expected to provide an ideal terrain for successful activation polices. First, its labour market is rather unregulated. In international comparison of employment protection legislation, Switzerland is always classified together with Anglo-Saxon countries rather than with Continental

Europe (see e.g. Nickell 2003). This means that job creation, especially in the low-skill sector, is relatively more successful. Low-skill jobs are entry jobs for low-skill unemployed people, who like in other countries are overrepresented among the jobless, and the low-skill employment rate in Switzerland is comparatively high. It should be noted, however, that over the last 10–15 years, employment in most low-skill sectors has stagnated (retail sales, catering and tourism). Second, the Swiss welfare state has traditionally been a rather passive welfare state, more in line here with the continental tradition. As a result, one can expect that activation, by changing the incentive and opportunity structure of unemployed people, will deliver good results from an early stage. Third, the labour market situation, though it has deteriorated over the last two decades, remains rather favourable in international comparisons, with relatively low unemployment and long-term unemployment rates and relatively little development of social exclusion. This means that the Swiss unemployed are probably less detached from the labour market than their European counterparts. In addition, comparatively good labour market conditions should also help ALMPs fulfil their objective.

If the overall labour market conditions seem rather promising, the lack of a tradition in activation may also mean that the adoption of a truly activation-oriented policy for non-working people will take time before it is adopted and can deploy its impact. This may be one key reason why, in spite of the overall favourable conditions, the performance of those activation polices that have so far been evaluated is at best mixed. Our hypothesis is that activation has been introduced half-heartedly so far, often more in response to the political need "to do something" about unemployment rather than with a clear employment maximisation objective. This is probably more the case in activation measures developed within the social assistance system or, in those cantons where such programmes exist, in unemployment assistance programmes (see Sect. 4.3.2 and Bonoli and Bertozzi 2007).

6.2 Evaluation of activation within the unemployment insurance scheme

Since the entry into force of the 2nd AVIG/LACI reform in 1996, activation measures have been subject to thorough evaluation. Generally, evaluation was carried out by external researchers contracted by the State Secretariat for Economic Affairs (SECO), but some studies were also financed by the Swiss national science foundation. The SECO contracted two waves of evaluation studies: the first wave was based on the observation of the 1997–1999 period and the second one used data from 1999 to 2002/2003. Within these two waves of evaluation studies, it is possible to distinguish between three types of analyses: microeconomic impact evaluation of ALMPs; evaluation of the performance of regional placement offices; and evaluation of the macroeconomic effects of ALMPs. The key results of these studies are discussed next.

6.2.1 Impact evaluations (micro-level)

Microeconomic impact evaluation studies were carried out in the first wave of studies, shortly after the second revision entered into force. Using data from 1997 to 1999, several researchers came to slightly different but overall compatible conclusions with regard to the effects of active labour market polices. These were not too flattering for the newly introduced activation system. The most robust finding coming out of the various projects was that the best results in terms of labour market re-entry were obtained by those beneficiaries who were able to partly or temporarily remain in the labour market while on unemployment benefit (with a temporary wage subsidy, see below) and by those who did not enter any of the activation measures. All the remaining activation measures, including various types of training courses and employment programmes, turned out to have negative effects on the beneficiaries' chances to re-enter the labour market. This not so encouraging finding may have something to do with the short time period under scrutiny (never more than 2 years), while ALMPs need time to deploy their effects.

More variation in outcomes, and sometimes more encouraging results, were found in individual studies. Lalive d'Epinay and Zweimüller (2000) distinguish between two types of effects: system effects and participation effects. The former refers to the change in the incentive structure facing unemployed people resulting from the adoption of a pro-activation orientation. It is hypothesised that some unemployed people will intensify their efforts to find a job towards the end of the entitlement period or in order to avoid compulsory participation in labour market programmes. Programme effects, instead, refer to increases in the chances of re-entering the labour market as a result of programme participation. Using a longitudinal approach (timing-of-events), where the chances of labour market re-entry are estimated at different points in time in relation to a series of independent variables such as programme participation and time left in the entitlement period, these authors are able to pinpoint a number system and programme effects.

System effects are stronger, especially at the end of the entitlement period, with the chances of re-entering the labour market increasing significantly in the last 2 months of the entitlement period. Programme effects were more mixed. For the duration of the programme, the impact of participation in an activation measure on the probability of re-entering the labour market is generally negative. After participation, training courses have a positive effect for women, especially Swiss women. Effects on other groups are generally positive but not statistically significant. Participation in employment programmes, i.e. placements with public or private employers outside the regular labour market, produces the most consistent effects, with a positive significant impact on all groups except Swiss males, for whom the effect is positive but not significant.

Using the same data but a quasi-experimental research design based on propensity scores matching, Gerfin and Lechner (2000) found rather different results. First, in addition to training and employment programmes, they also include "temporary wage subsidies" (*Zwischenverdienst* / *gain intermédiaire*) among the

activation measures assessed. Temporary wage supplements are paid to unemployment insurance recipients who accept a temporary job. The incentive structure is very favourable to accepting these temporary jobs, including when they are paid less than the unemployment benefit. In fact, the recipients can keep part of their benefits so that their final income increases in comparison with relying on the benefit only. In addition, every day spent in temporary employment is added to the duration of the entitlement period. In 1998 some 20% of registered unemployed were involved in temporary paid work and receiving supplements from the unemployment insurance scheme.

This measure was not included among the activation measures in the previously mentioned study, which actually considered it as an instance of exit from the unemployment insurance scheme. In fact, the true status of temporary wage subsidies is unclear. Rather than activation instruments, they resemble more "make work pay" measures, such as tax credits, with the only difference that they are limited in time (to the duration of the entitlement period). This view is confirmed by the fact that in most cases (over 80% according to Bauer et al. 1999) the temporary job is found by the recipient without help from the placement officer. This notwithstanding, Gerfin and Lechner include "temporary wage subsidies" in the repertoire of active labour market measures, and find that it is by far the most effective one.

More generally, they find that employment programmes perform rather poorly, except for women in public employment programmes. The results are more mixed, but not exactly encouraging, for training. The only measure that consistently produces positive effects is temporary wage supplements.

6.2.2 Evaluation of the efficiency of the regional placement offices (implementation)

Since their introduction in 1996–1997, regional placement offices have been subject to more or less constant scrutiny and evaluation. Their performance in terms of their capacity to reduce unemployment lines has been monitored throughout their existence, and the information thus collected used to develop incentive systems that are supposed to improve their overall efficiency.

The first wave of evaluation studies (late 1990s), emphasised the existence of important differences in terms of the regional placement offices' success in bringing people back to work. The first important study, carried out by the consultancy firm Atag, Ernst and Young (1999), assessed the performance of regional placement offices on the basis of three indicators: mean duration of unemployment, entries into long-term unemployment (>1 year), and the proportion of beneficiaries re-entering unemployment after a spell in the labour market. Note that these three indicators provided the basis for the incentive system set up in 2000, for which a fourth indicator, number of beneficiaries reaching the end of the entitlement period, was added.

The study found major differences in regional placement offices' performances on the basis of each of the three indicators. For instance, the average duration of unemployment varied between 120 and 360 days between the best and the worst performer. Of course, not all of this difference can be ascribed to variation in performance, as regional placement offices operate in different labour market and economic contexts. However, (smaller) differences in performance are found in multivariate analyses after controlling for the most important exogenous variables, including gender, age, nationality or skill levels of beneficiaries and local labour market conditions indicators (Atag Ernst and Young 1999).

On the basis of the econometric analysis and of a qualitative study of a small number of regional placement offices, it was also possible to identify key features that are more or less systematically related to an above-average performance. These include: assigning only one objective (favouring re-entry into the labour market) to case workers; using instruments in an appropriate manner; having professionally and socially skilled case workers; up-to-date knowledge of vacancies; case workers should be given more room for manoeuvre; promotion of a "culture of activation." The report concluded with the recommendation that an appropriate incentive system was needed in order to encourage regional placement offices to improve their performance.

Variation in regional placement offices' performance was confirmed by subsequent studies, using more sophisticated econometric techniques, such as data envelopment analysis (Sheldon 2003; Vassiliev et al. 2006). Attempts at linking variation in performance to differences in practices were less conclusive in these studies. Vassiliev et al. (2006), found no significant correlation between the use of given instruments, including sanctions, and efficiency. The same result was obtained by Sheldon (2003). The latter only found two negative effects, related to the size of the regional placement office and to the use made of training programmes.

6.2.3 Evaluation of the macro-economic impact of ALMPs

The second wave of studies focused on the macro-economic impact of ALMPs. Using the same data (1999–2002/2003) but different methodologies, two projects were commissioned. In both studies, the overall impact of ALMPs is assessed positively, however, the results related to individual measures are somewhat mixed and somewhat inconsistent with those produced in previous evaluations. Employment programmes seem to work better than in the past, since they now have a negative impact on the unemployment rate. Training has a mixed impact and temporary and wage supplements have a negative impact on the unemployment rate, which is consistent with the results obtained in the microeconomic impact evaluations of the first wave, but they have a positive effect on the number of jobseekers. The researchers conclude that this must be due to the existence of substitution effects and deadweight losses. The positive impact of employment programmes found at the macroeconomic level only, may reflect changes in the

use of this instrument, which is now applied more as a threat in case of weak cooperation than in the past. One possible hypothesis is that where employment programmes are widely used, unemployed people make bigger efforts to find a job in order to avoid such programmes (SECO 2006b).

7 Conclusions

The employment crisis of the 1990s, the first experienced in post-war Switzerland, turned out to be the catalyst of a major reorientation of the Swiss welfare state. While in the past its main aim was to guarantee a reasonable income to those who for various reasons were unable to work, today social policy increasingly aims at putting people (back) into the labour market. First in unemployment insurance, then in invalidity insurance and in social assistance, we have seen a clear development: incentives are being redrawn and new tools are being adopted with the overall aim of promoting labour market participation.

This reorientation is not, however, the result of a consensual and uncontroversial change in elite and public opinion on the role of social policy. On the contrary, each reform generates big debates and controversies. The ambivalence of activation, a process that can be seen as a reduction in people's social entitlements or as an emancipatory device that goes beyond the mere guarantee of a poverty-free existence, is partly responsible for this. The Swiss political system, being based on consensual decision-making, has had to accommodate these different views, and this has resulted in what we define as a half-hearted approach to activation. Activation seems to be everywhere, but if one looks at the details of legislation, one still finds many exceptions and obstacles to a coherent and effective activation policy.

But things may be changing. In the second half of the 2000s, the supporters of the activation approach have gained the upper hand in the public debate, both at the cantonal and at the federal level. The (controversial) adoption of new social assistance guidelines by the SKOS/CSIAS that emphasise activation is a case in point. Although the real extent of activation remains limited, this event signals the success of the new paradigm in social and labour market policy. The recent adoption of the 5th IV/AI revision by a majority of Swiss voters also confirms this trend towards more activation in more social policy areas.

List of abbreviations

Abbreviation	English	German/French
ALMP	Active Labour Market Policy	
ARV		Zeitschrift für Arbeitsrecht und Arbeitslosenversicherung/Revue de droit du travail et d'assurance-chômage
ATSG/LPGA	Act on the General Part of Social Insurance Law	Gesetz über den Allgemeinen Teil des Sozialversicherungsrechts/Loi sur la partie générale du droit des assurances sociales
AVIG/LACI	Federal law on unemployment insurance	Arbeitslosenversicherungsgesetz/ Loi sur l'assurance-chômage
AVIV/OACI	Regulation on the federal unemployment insurance law	Arbeitslosenversicherungsverordnung/ Ordonnance sur l'assurance-chômage
BGE		Amtliche Sammlung der Entscheidungen des Schweizerischen Bundesgerichts/Recueil officiel des arrêts du Tribunal fédéral suisse
BV/CF	Federal constitution	Bundesverfassung/Constitution fédérale
BVAVV	Obligatory Occupational Pension Schemes Regulation on Behalf of Unemployed Persons	Verordnung über die obligatorische berufliche Vorsorge von arbeitslosen Personen/ Ordonnance sur la prévoyance professionnelle obligatoire des chômeurs
ECHR	European Court of Human Rights	
EVG/TFA	Federal Insurance Court	Eidgenössisches Versicherungsgericht/ Tribunal fédéral des assurances
ILO	International Labour Office	
IIZ	Inter-institutional cooperation	Interinstitutionelle Zusammenarbeit/Collaboration interinstitutionnelle
IVG/LAI	Federal law on invalidity insurance	Bundesgesetz über die Invalidenversicherung/ Loi fédérale sur l'assurance-invalidité
L-riloc	Unemployment Assistance Law of the canton Ticino	Arbeitslosenhilfegesetz des Kantons Tessin/ Legge sul rilancio dell'occupazione e sul sostegno ai disoccupati de Ticino
LSAS-GE	Social Assistance Law of the canton of Geneva	Sozialhilfegesetz des Kantons Genf/Loi sur l'aide sociale du canton de Genéve
LSAS-TI	Social Assistance Law of the canton of Ticino	Sozialhilfegesetz des Kantons Tessin/Loi sur l'aide sociale du canton du Tessin
LSA-VS	Social Assistance Law of the canton of Valais	Sozialhilfegesetz des Kantons Wallis/Loi sur l'aide sociale du canton du Valais
RAV/ORP	Regional placement offices	Regionale Arbeitsvermittlungszentren/ Offices régionaux de placement
RMCC	Regulation to introduce measures in relation to the crisis of the canton of Neuchâtel	Verordnung zur Einführung von Massnahmen in Beziehung auf die Krise im Kanton Neuenburg/Règlement concernant les mesures de crise cantonales de canton de Neuchâtel
SAPS	Statistical Assistance for Programme Selection	

SECO	State Secretariat for Economic Affairs	Staatssekretariat für Wirtschaft/Secrétariat d'Etat à l'économie
SHG-BS	Social Assistance Law of the canton of Basel-City	Sozialhilfegesetz des Kantons Basel-Stadt/ Loi sur l'aide sociale du canton de Bâle-Ville
SHG-AL	Social Assistance Law of the canton of Appenzell Inner Rhodes	Sozialhilfegesetz des Kantons Appenzell Innerrhoden/Loi sur I' aide sociale du canton de Appenzell Rhodes-Intérieures
SHG-ZH	Social Assistance Law of the canton of Zurich	Sozialhilfegesetz des Kantons Zürich/Loi sur l'aide sociale du canton de Zurich
SKOS/CSIAS	Swiss Conference for Social Assistance	Schweizerische Konferenz für Sozialhilfe/ Conférence suisse des institutions d'action sociale
ZUG/LAS	Law on Competence Issues in the assistance to needy people	Bundesgesetz über die Zuständigkeit für die Unterstützung Bedürftiger /Loi fédérale sur la compétence en matière d'assistance des personnes dans le besoin
UVAVV	Regulation on Accident Insurance for Unemployed Persons	Verordnung über die Unfallversicherung von arbeitslosen Personen/Ordonnance sur l'assurance-accidents des personnes au chômage

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Activation as a Socio-Economic and Legal Concept: Laboratorium the Netherlands

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1 Introduction

As a famous expression by Johan Cruijff – European soccer player of the century and Dutch icon – goes, "each con has its pro." In the case of welfare for the Netherlands, the con was what was called 'The Dutch disease.' The pro was that the disease prompted the Dutch government to engage in creative new employment policies and, more relevant for this book, an early switch from rather passive modes to what came to be known as activation policies. As a result, the Netherlands have achieved a forerunner position amongst continental European countries as 'activating-welfare-state' in activation policy as well as in the legal conceptualisation of activation.

Where did this move come from? In the 1980s, relatively generous unemployment benefits cushioned most unemployed from poverty. But people received only limited help from the government in their search for employment, and job search requirements were relatively lax. The government budget was running a major deficit, largely due to the fact that disablement benefits rose to a figure of almost one million people. This situation of high disablement figures masking unemployment was at the time referred to as the 'Dutch disease' (Visser and Hemerijck 1997). The relatively large number of disability pensioners was a legacy of previous policies, which encouraged employers to shift mature-age workers with moderate disabilities from their payrolls to the public disability pension system, which was integrated with workers compensation. Due to a serious recession, the number of unemployed was also running high. In the 1980s, the chosen approach to counter the hitherto unknown increase in the demand for and costs of social security had been cost control through retrenchment. Although this led to stabilisation of the expenditure, it did not reduce long-term unemployment and disability. There were concerns that a generous social security system could not be sustained unless the level of joblessness fell (Oorschot 2002).

Currently the Netherlands is regarded as one of the European Union's leaders in employment policy as well as activation policy. According to the Central Planning Office, the unemployment rate in 2006 was 5.5% (CPB 2007). Long-term unemployment and welfare numbers have also fallen dramatically. The proportion of people of workforce age who were employed was 73% in 2004, well above the OECD average of 66%. Restraint in wage growth together with a loosening of previous controls on part-time and temp work, have been key ingredients in the Dutch labour market success story. The Government has set a target to raise overall workforce participation among people of workforce age from around 65% now to 70% by 2010. In order to raise participation among mature-age people, the Government has recently abolished early retirement schemes and set a target of 50% of 55–65 year-olds in employment. To raise the total of people at work, the amount of jobs and working hours of part-timers, policies are now focused on the 55–65-year-olds and the low-skilled.

Greater engagement with the labour market by individual income support recipients as well as by the social security and welfare bodies who are stimulated by

new incentives to provide more help to overcome barriers, in short activation policies, is the other side to the story. It is this side that will be explored in this chapter from a social and legal point of view. In the concept of activation policies we meet with the heart of the current Dutch welfare reform. The Dutch Government has placed increasing emphasis on improving work incentives for jobless people and has started conceptualising activation in legal terms, changing the focus in unemployment protection from its function of safeguarding income towards activation, also in legal terms. The Dutch 'activating-welfare-state' manifests a fundamental change in social protection philosophy, in stating that the provision of income from work is seen as a first and better means than providing income from benefit. In this philosophy, benefit dependency should be prevented, but if unavoidable, beneficiaries should be stimulated and supported in re-entering the labour market. If paid employment is not possible, the long-term unemployed should be stimulated towards other socially valuable activities, in order to avoid their social isolation and exclusion.

Most Dutch recipients of income support – except parents with young children and people with severe disabilities – are now expected to more actively engage with the labour market and participate in employment and workfare programs.[1] Under the new regime each citizen is made personally responsible for his or her return to the labour market. The new arrangements entail that one has to find work as soon as possible. Individual contracts between the state and the citizen are created as the expression of the mutuality of obligations. Currently all three major Dutch benefit schemes – the social security system for the unemployed, for the disabled and welfare recipients – introduced arrangements wherein work is required one way or the other to maintain eligibility for the continued receipt of the benefit. For people on welfare the obligations stretch further as they are obliged to accept *any* work. Employment assistance for the most disadvantaged jobseekers are decentralised and contracted out to private and community organisations, which are paid mainly according to employment outcomes. The switch has been accompanied by progressive abolition of previous national employment programmes, including public sector jobs for jobless people and vocational training programmes.

It is not yet common among researchers to look at Dutch activation as a socio-economic *and* legally designed concept. But in our view this can be helpful to understand how activation works. 'Activation' is not yet well known as a legally designed concept.[2] Nonetheless, features and underlying principles of social security law obviously are determined by social security functions. After previously stressing

[1] As will be discussed later, other than for Anglo-Saxon countries the term workfare does not properly cover the Dutch arrangements, they are referred to as Work First (see Sect. 4.1.3).

[2] The "activating welfare state within the law" as a legal concept is rarely examined; cf. for Germany (Luthe 2003; Pitschas 2004).

the "safeguarding function" (*waarborgfunctie*) of social security – nowadays the well-identified additional function of social security to activate (*activeringsfunctie*) is incorporated in the legal point of view (Noordam 2005b, 2006b; van der Aa and van Berkel 2002). Hence, the shift in focus towards (more) activating social security goes hand in hand with a development towards what can be called '*activating social security law'*. This type of law strengthens the underlying and legally recognised principle of self-responsibility (Noordam 2004a–c) and readjusts the principle in view of the solidly united community's task to account for the social security of its members. Self-responsibility relies on individual skills and efforts, but also on external help in promoting such skills and personal efforts. It is in this respect that the concepts of (re-)integration and activation are closely linked with each other, however not always clearly marked out in the Netherlands.[3] Noordam, a social security lawyer, was one of the first to take a separate and distinct look at the legal framework of "work" – next to the management of the *risks* of unemployment, disability and need of assistance – and focuses on shaping the legal perspective of (*arbeids-*)*activering*. Following Noordam, this chapter focuses on identifying building blocks of activating social security law and thereby on how activation is legally formed. So far the legal notion of activation has predominantly comprised of techniques (instruments) in aid of reintegration and/or activation policies. The Dutch legal view acknowledges that activation is targeted both at *preventing* exclusion and at promoting (re-)*integration into paid work*, and that this goal is to be achieved in support of those with a disadvantaged position in the labour market such as persons with disabilities, the long-term unemployed, women newly entering the labour market, younger and elder jobseekers, and migrants. Moreover, this legal notion makes a distinction between "activation for work" (*arbeidsactivering*) and – as a first step (*eerste stap*) – social activation (s*ociale activering*). And finally, to ensure activation, it confers the appropriate responsibilities on municipalities, the benefit agency for Employee Benefit Schemes (*Uitvoeringsinstituut Werknemersverzekeringen, UWV*), and also on employers (Noordam 2006a).

This chapter is organised as follows. In the next paragraph the general principles and aims of activation will be discussed as well as the legal notion and conceptualization of activation, including the legal framework of activation. The third paragraph goes into the design of the benefit regimes for unemployed, disabled and welfare recipients and deals with changes in benefits, benefit conditionality and eligibility requirements. Paragraph 4 deals with the change in governance and

[3] This is clearly reflected, however, by the legislative intent of the recently enacted "Law Amending the Unemployment Insurance System" (Wet wijziging WW-stelsel, June 2006): "By virtue of a good balance between income protection and activation, the Werkloosheidswet stimulates career mobility and thus the effective allocation of labour. This requires activating insurance terms and conditions, as well as effective prevention and re-integration policies". (authors' translation) Memorie van Toelichting, Parliamentary Papers II 2005–2006, 30 370, sub. 2.1.

the actual implementation of activation. As the content and organisation of the activation policies of the unemployed and disabled is delegated to the UWV and for those on welfare to the municipalities respectively, we will report on the developments in design and implementation for municipalities and UWV separately. To highlight the organization of activation by the UWV agency for unemployed and disabled we focus on one element, being the relationship between reintegration by tender and by personal budget. For the municipalities, we present the case of Work First and some info on a case study from three northern municipalities. Municipalities regard their Work First strategy as most successful in prevention of benefit and return to regular work. This part is based on a recent benchmark research using 49 municipal Work First projects (Sol et al. 2007). In this research project some very powerful success determinants in terms of design and organisation of activation could be determined. The legal perspective of implementation will be reflected by issues of applying "sanctioning law" and the emerging approaches of "activating contract law". In order to draw near an assessment outcomes of activation are highlighted (paragraph 5), followed by concluding remarks on activation in law in policy.

2 Transformations towards an activating welfare state

2.1 Social notion of activation

The making of the notion of activation and thereby the Dutch activation welfare state can be described in the following five transformations:

Paradigm shift: from security net towards trampoline (1)

Since the nineties the dominant perspective of the mature Dutch welfare state changed, which is best expressed as the rediscovery of paid labour. Such changes reflect adaptations in political practices and assumptions. Going at the core of the activation policy debate, the Dutch debate started in 1990 when Hans Adriaansen, the author of a report on the topic by the Dutch Scientific think tank for the Government (WRR 1990), promoted a paradigm shift to the Dutch public using the word 'activating regime' (*activerend stelsel*) with two images: the status quo was represented as a security net in which the client had become entrapped; but in the new activation system the same net would suddenly act as a trampoline in which the same citizen on benefit was rapidly propelled back up into the labour market. In fact, the upward speed of the citizen, called job seeker, is so powerful in that picture makes you fear he will soon go into orbit around our planet. No longer should all attention be focused on unwilling unemployment, but on the enormous amount of people unwillingly inactive. Not unemployment but labour participation should be the prime goal of social economic policy. The notion that a full societal participation could also be accomplished outside the sphere of paid labour, for

example by voluntary work, was rejected as an illusion. The image is crystal-clear: policy-oriented scientists and politicians try to sell social security reforms and scale backs with the promise of successful labour market integration. To quote a past Philips slogan: 'let's make things better'. In German labour market policies terms: fordern. This version of activation focuses on using social funds for activating employment services such as reintegration (training etc) and job brokerage instead of passive income supports.

As part of the transformation of the Dutch welfare state, this notion of activation policies landed at the right time, which coincided with a western wind from the States and the UK. It brought the ideological concern that work is the single most important solution to a range of social and economic problems. In reducing welfare dependency and social exclusion it came to dominate Dutch policy thinking, under several left-right wing ('purple') cabinets (cabinet Kok I 1994–1998 and Kok II 1998–2002), captured by the above mentioned slogan 'Work above Income' an equivalent for the UK slogan 'work first ' and the catchword 'Work, work, work'. More people at work is regarded as the key to the solution of many societal problems.

Recently in 2007 the current Christian- Social Democratic cabinet makes a subtle distinction between target groups. For some paid labour on the regular labour market is seen as no (longer) attainable and other activities can accomplish societal commitment and integration. New is that this it is recognized as a fact and also that work is not the only option for integration in society.

Shift towards individualization comes with more fierceful forms of activation: quid pro quo (2)

In response to growing costs of social assistance and unemployment compensation systems, neo-classical liberal thoughts became popular and gradually a new concept of activation was introduced with increasing levels of 'activation', using more fierceful elements such as a combination of sticks and carrots and stretching the concept of suitable labour (Bruttel and Sol 2006). Unemployment and disability were no longer primarily a consequence of social and economic problems but seen as a result of use of the social security system by individuals (employers, employees and benefit recipients) for their own benefit (businesses, employer and employee organisations and administrative agencies). The government opted for fundamental changes on many levels. The labour market policy system was to be reinforced and the social security system was to be made more flexible and with a focus on activation and monitoring. The aims of controllability and manageability set the tone for restructuring the social security and welfare system in the first years after the millennium. Contracts – not standard legislation – became the carrier, the ultimate steering instrument for the activation policy, as *the* image of reciprocity, with mutual obligations for the state as well as the client. The client no longer was undergoing his fate but supposedly actively involved by signing an individual agreement containing his action plan. The social protectionist ethic was giving way to an ethic of self-responsibility (Baumann 1993; Rose 1999; Sol and

Hoogtanders 2005). Subsequently the concept of activation also started to be built in social security law (see Sect. 2.3).

A shift from ALMP to activation policies (3)

Activation policies superseded social security and indeed around the turn of the century also took the place of active labour market policies (ALMP). A shift took place from ALMP's targeted at (short term) unemployed and employers towards more in general people currently outside the labour market, but mainly on benefit. There were several reasons: firstly, the need for increase in labour supply through reductions in inactivity to support economic growth against the background of an ageing society; secondly, as noted above, the preoccupation of the Dutch government with reducing public expenditure on benefits. With the activation policies a strong emphasis was laid on supply-side measures within the ALMP portfolio, neglecting demand side interventions such as job creation programmes.

Work First as the ultimate activation concept (4)

By the early nineties, another more severe version of activation cropped up that became popular amongst Dutch municipalities, called workfare. Imported from the American state of Wisconsin, where Republican Governor Tommy Thompson was successfully punching his ticket into a subsequent federal administration by implementing a series of reforms resulting in a radical W2 programme, which was implemented state wide in 1997. Dutch welfare administrators travelled across the sea and came back inspired by the Work First programme that was the direct forerunner to W2. In fact, in the Dutch policy discourse Work First has remained the label for such policies. While W2 and its forerunners also included all kinds of training and other types of help, their most important claim to fame is a most (for old European standards) radical approach to activation: clients have duties, and benefits are a trade off for clients' own efforts. In German: fördern.

While the Netherlands have never gone to the folly of limiting welfare rights to a number of years, over the last decade there has been a marked shift from a rights-centred approach towards an exchange-centred approach to welfare benefits inspired many. The Wisconsin example, the new Deal (UK) and Farum in Denmark were one source for this change, another was a changing public opinion and perception of the benefit system, fuelled amongst others by some newspaper reports over extreme welfare benefit fraud and a rise of an undercurrent of political opportunism in the Dutch political landscape.

A central notion in the Dutch activation policy is Work First. Work First is not the same as workfare. Workfare is a type of activating policy which is associated with a negative image in continental Europe, and should be seen as an ideal-type of policy which specifically emphasises the use of negative incentives (the threat of sanctions) (Handler and Hasenfield 2006). On the other hand, Work First as used in the Netherlands differentiates itself from the Workfare concept since it does not only work with negative incentives (sanctions), but with a combination

of positive and negative incentives. This is because Work First combines work-activities with employability activities and services, such as training and job-search assistance (Bruttel and Sol 2006). Nevertheless, there exists no consensus on the definition of both Work First and Workfare (Handler and Hasenfeld 2006). Internationally, and also within the Netherlands, different definitions of Work First are being used. In some cases Work First is seen as a vision on activation, sometimes it is rather seen as an instrument, or a process, a method or even as a specific project/service. The importance of Work First varies greatly between the Dutch municipalities who are responsible for welfare benefits and activation of welfare claimants. In its broadest form, all activation activities of the municipality are set up following a Work First approach, where a quick return to the regular market is the emphasis of all programmes.

In any case, Work First concentrates on not only the improvement of the willingness to work, but also the ability of the welfare claimant to work. In fact, by increasing the willingness to work, Work First will lower the reservation wage the individual is ready to accept, and by increasing the ability to work its productivity will be increased and thus also its wage-ratio, possibly above the unemployment trap. The Work and Income Act of 2004 has created the necessary conditions to be able to work on these two aspects. First, the ability to work is stretched through the introduction of the concept of "generally accepted work" where everyone is expected to accept any type of work, regardless of their qualifications (which was impossible under the previous act, where the concept of "suitable work" was used). Second, the willingness to work is influenced through giving the municipalities a wide range of options concerning the services and sanctions they may use. In a recent study "Work First Works, Towards Evidence Based Work First" (Sol et al. 2007) is Work First defined as follows:

A *policy-strategy*, aimed at preventing that welfare claimants do not want or cannot work, by the use of a combination of on one hand in-work *activities* and employability *services*, and on the other hand *sanctions* on benefits.

The effects of Work First are directed towards two main goals: first, the prevention of entry into the welfare system, and second, the return to the labour market of the participants. Combining these effects will thus have a positive impact on the number of welfare claimants who will return to the labour market due to Work First. Nevertheless, Work First spurred some heated debates in the Netherlands since its introduction, mainly concerning its preventive effect. Many questions were raised concerning those individuals who chose not to make a welfare claim due to their obligatory participation in a Work First programme. However, these concerns were partially contained by the inclusion of employability services in the projects, so that projects would not only focus on the threat-effects they create, but also on their positive incentives side.

A new notion of implementation strategy: from state to the market (5)

Until the 1990's the Netherlands had implemented corporatist, pillarised steering and organisation, in which the emphasis was on the benefit policy, with an active labour market policy of limited significance, implemented in a lenient and friendly way. The changes in principles influenced all these features. Parallel to the shift towards what is called an activating system ('activerend stelsel'), a switch was made introducing the ideology of New Public Management with new a structure and organisation. The relationships between government, organised interests, businesses and administrative agencies were reviewed, and financial incentives were introduced as a steering instrument in the relationship between central and local government, the agencies and citizens. This strategy resulted in privatisation, 'agentification' and decentralisation accompanied by an increase in steering and control.

In four steps a market system arrangement was introduced, replacing the traditional hierarchically structured employment services, embracing ideas of contestability and marketability (see paragraph 3).

Chronologically the concept of activation policies was first utilized for the unemployed (unemployment insurance benefit), followed by the people on welfare, only to be recently followed (WIA Act) by the people on disability or incapacity benefits.

2.2 Definition of activation

The definition used in this book for activation is a policy that aims at mobilizing joint action by the unemployed together with public administration, in order to improve labour market participation, shorten benefit periods and thereby reduce benefit dependency (see Chap. 1). In practice in the Netherlands the terms activation and reintegration are often used in a jumble, but in fact should be taken apart. Activation is a broader term which entails social activation as well as labour market activation. Social activation is only indirectly related to the labour market while, while labour (market) activation is directly related to the labour market (Hoff 2002).

2.3 Legal notion of activation

Activation is not primarily a legally designed concept. But, features and principles underlying social security law are shaped by social security functions. From a legal point of view, the focus is now shifting too from social security as a safeguarding function (*waarborgfunctie*) towards social security as an activation function (*activeringsfunctie*) (Noordam 2005b, 2006b; van der Aa and van Berkel 2002). The development towards a (more) activating social security is followed by a parallel

development of what can be called 'activating social security law'. A central notion for activating social security law is self-responsibility (Noordam 2004b). Self-responsibility relies on individual skills and efforts, but also on external help in promoting such skills and personal efforts. Here, (re-) integration and activation are closely linked with each other.

So far, the legal notion of activation (Sichert 2006b) predominantly comprises of techniques (instruments) used in reintegration and activation policies (Noordam 2006a). Such a legal view acknowledges that activation is targeted both at prevention of exclusion and at promoting (re-) integration into paid work,[4] and that these goals have to be achieved for the disadvantaged in the labour market such as disabled, long-term unemployed, women newly entering the labour market, younger and elder jobseekers, and migrants.[5] The legal notion makes a distinction between "activation for work" (*arbeidsactivering*) and social activation (*sociale activering*), and sees social activation as a stepping stone towards labour (market) activation. And to ensure activation, it confers the appropriate responsibilities on municipalities, the Institute for Employee Benefit Schemes (*Uitvoeringsinstituut Werknemersverzekeringen, UWV*), and also on employers. *Noordam* was one of the first in the Netherlands to incorporate in the legal social security framework 'labour', alongside the management of the risks of unemployment, disability and need of assistance, and focuses on shaping the legal perspective of (*arbeids-*) *activering* (Noordam 2006a).

An analysis of the accompanying reasons of the Act on Structure Implementation on Work and Income – SUWI (Parliamentary papers II 2000–2001, 27,588), the Work and Welfare act 'Wet Werk en Bijstand' – WWB (Parliamentary papers II 2002–2003, 28,870) and the disability act 'Wet werk en Inkomen naar Arbeidsvermogen'-WIA Act (Parliamentary papers II 2004–2005, 30,034.) as well as the laws changing the Unemployment Act (particularly the law abolishing the follow-up benefit [December 2003], the Law of 30 March 2006[6] and the *Wet wijziging*

[4] Following "a good balance between income protection and activation".

[5] See "Law Amending the Unemployment Insurance System" (Wet wijziging WW-stelsel, June 2006): "By virtue of a good balance between income protection and activation, the Werkloosheidswet stimulates career mobility and thus the effective allocation of labour. This requires activating insurance terms and conditions, as well as effective prevention and reintegration policies" Memorie van Toelichting, Parliamentary papers II 2005–2006, 20 730, sub. 2.1.).

[6] Wet wijziging onder meer WW in verband met aanscherping wekeneis (Law Amending amongst others the Unemployment Insurance Act together with aggravating time-related criteria for unemployment benefits), Stb. 2006, 167; Memorie van Toelichting, Parliamentary papers II 2003–2004, 29 738; the law entered into force on 1 April (Art. VI of the law, royal decision of 30 March 2006, Stb. 2006, 168).

[7] Wet wijziging WW-stelsel, Quotation title (Art. XIV of the law), Stb. 2006, 303; the law entered into force on 1 October 2006, irrespective of deviating terms for certain provisions (Art. XIII of the law, royal decision of 28 June 2006, Stb. 2006, 304).

WW-Stelsel[7]) all show the legislator's perception of what is *"activating"*. One of the overall goals of the SUWI Act of 2001 is to build an activating *system*. This "activating system" is also evoked in the accompanying reasons of the WWB and all aforementioned laws amending the *WW*, just like the "activating character" (WIA Act [2x]; Law of December 2003). The term predominantly used is the "activating effect/impact" (*activerende werking*) of the law (WWB [2x], WIA Act, WW).

Activation is one of four objectives of the unemployment benefit (WW), now followed by the *Wet wijziging WW-stelsel* (2006), directed towards "leaving the benefit for paid work" (Parliamentary papers 2005–2006). According to the Memorie van Toelichting – the accompanying reasons of the law – the law in direct terms and principally calls upon the activating function of *insurance terms and conditions* (*polisvoorwaarden*).[8]

We will learn more about targeting and operation if we look at the term *"activation"* (*activering*), which, according to the *Memorie van Toelichting*, is dealt with quite often (SUWI [20x], WWB [16x], WIA Act [26x]). First of all, it was the *SUWI Act of 2001* on reorganising employment service that broadly reflected the notion of activation as already intended by the coalition agreement of 1998. According to the *SUWI Act*, activation and control (*activering en controle*), which were particularly designed and assigned to the UWV and to municipalities, served as a major leading intention, aiming at and "directed to activation by which work takes priority" (Parliamentary papers II 2001–2002). By contrast to "social activation" the task to activate and control had been acknowledged also with respect to "clients with a minor distance to the labour market (phase 1)" on location of the Centres for Work and Income (CWIs) but to be carried out by municipality staff members.[9] The "other clients" (*overige cliënten*; responsible: municipality) as well as people entitled to unemployment benefits (*uitkeringsgerechtigde*; responsible: UWV) are mentioned as target groups, too (Parliamentary papers II 2001–2002). Even if not dealt with explicitly in the law, activation is also addressed to with respect to the cooperation duty of socially responsible bodies (see Art. 8 SUWI), the activation budget (formerly) provided by the WiW, "activation talks" administrated by the CWIs and the municipalities' extended responsibilities. For people released and those on benefits, the case manager shall take care that activation and control take place in close coordination with placement activities of the CWI offices, reintegration providers and other agents.[10]

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[8] "Activerende (werking van de) polisvoorwaarden", Memorie van Toelichting (op cit.), sub. 2.1., 2.3.

[9] Parliamentary papers II 2001–2002, sub Hoofdstuk III, III.2./2.1.a). Activation in this sense is not a task of the CWI, but is implemented in close connection with CWI tasks, Hoofdstuk III. 2.1.

[10] Memorie van Toelichting (SUWI ACT), Parliamentary papers II 2001–2002, 27 588, sub Hoofdstuk IV. 4. b).

It is within the prescribed solidified competences and activation tasks that a framework for a wide-ranging activation policy (*activeringsbeleid*)[11] of the municipalities is particularly established under the Work and Welfare Act (2004). This policy shall be directed towards outflow of benefits into work (Parliamentary papers II 2002–2003). In the light of Art. 8, 10 and 18, WWB municipalities have a wide-ranging power and the task to determine an activation policy, to choose the corresponding instruments and also the way to insert these instruments (Noordam 2004c). Finally, the overall objective according to the WIA Act (2005) is activation of *working ability* (*"activering van arbeidsgeschiktheid"* [9x]). The individuals concerned are addressed, too: Within the legislative intent the government followed the approach that "activation of partially disabled" is a central issue (Parliamentary papers II 2004–2005).

All these connotations also served as the background for the legally determined discussion on ensuring the durability (*Toekomstbestendigheid*) of the Unemployment Insurance Act. The necessity of activating the "WW regime" serves as a central aspect of reform policy and had already been stressed by the advice of the Social and Economic Council (*Sociaal-Economische Raad, SER*) of April 2005[12] preceding the law(s) that have finally been enacted in 2006. The balance between income protection and activation as expressed by the *Wet wijziging WW-stelsel* has now been redesigned in favour of strengthening the activating function of insurance terms and conditions in order to serve the aforementioned objective of streaming out of the WW into paid work.[13] Emphasis is not only put on personal encouragement like schooling, training, reintegration service, sanctioning etc. A broader steering effect in the field of unemployment insurance law (WW) is now aimed at in general (insurance) terms which comprises staged benefit levels (that are income related now), sharpening entitlement conditions, reducing benefit categories and reducing the duration of paying benefits (within the remaining category).

A last legal element that comprises observations as to the systematic approach of activation of the new WIA Act is important in this context. The WIA keeps the quite unique position of Dutch disablement law (Noordam 2004a) according to which there is no distinction based the on the cause of disability, hence covers both the *risque social* and the *risque professionel*.[14]

The WIA Act, which came into force on 29 December 2005, applies to those who would have been protected under the WAO formerly but who became disabled after

[11] Cf. "Newsletter current information around municipality activation (Wsw, WWB)" by Kluwer, supplement to Sociale voorzieningen.

[12] SER, advies 5/05, Toekomstbestendigheid Werkloosheidswet, The Hague 2005a, p. 37.

[13] Memorie van toelichting, Kammerstukken II 2005–2006, 30 370, sub 2.1 and 2.3.

[14] Du Perron and van Boomi 2003. Due to the lack of distinction between different causes of disability the Dutch system is qualified as a "final" rather than a "causal" system (Pabst 2002).

1 January 2004.[15] With respect to the activating effect of the WIA Act, the question is not what a person is incapable of doing any longer but what s/he is still capable to do (Barentsen 2006). Accordingly, the status of partially disabled – positively mentioned as partially *capable* of work (*gedeeltelijk arbeidsgeschikten*) – is particularly dealt with. Since these people henceforth only receive benefits provided by the WIA Act and no more additional WW benefits, the WIA Act contains an "unemployment" element, combining unemployment and disability benefits (Wildeboer 2005). In accordance with laying the focus (just) on people partially capable of working, particularly with respect to reintegration (cf. Art. 29, 34 WIA Act), it becomes obvious that the target group of activation does not comprise people fully and permanently incapable of work.

2.4 Legal framework and constitutional basis for activation

First of all, Dutch law does not only provide particular instruments to implement and enforce activation, but also more general rules and regulations. The Dutch constitution, *Grondwet* (*Gw*), establishes a basic constitutional framework that positively demands the creation of a social order. The *Grondwet* enjoys a higher rank than acts of Parliament, and the legislature is bound by the constitution[16] even if – in contrast to other countries (Sichert 2006a) – the constitutionality of acts of Parliament (and treaties) is not reviewed by the courts (Art. 120 Gw).[17] By-laws may be reviewed, however.[18] The constitutional task to provide for a social order notably refers to "work" (*werkgelegenheid*; Art. 19 Gw) and "subsistence" (*bestaanszekerheid*; Art. 20[1] Gw). According to Art. 20(3) Gw, however, (only) those Dutch nationals resident in the Netherlands "who are unable to provide for themselves" should have a (financially determined) "social" right to aid from the authorities (a sub-category of Art. 20[1] GW) (Noordam 2004a). What is implied here is that authorities may first call upon claimants to exercise self-responsibility. Hence, shaping social security law for people in particular need situations corresponds to the conceptualisation of legal self-responsibility on a basis of a pre-legal state of personal responsibility. At the same time, the "division" of responsibilities is commensurate with the dignity of the individual in a society

[15] See, enlightening the background of tying up to employer's obligation to continue to pay wages (Barentsen 2006).

[16] The legislative division of the Council of State (Raad van State) examines, among other issues, whether draft legislation is compatible with the constitution; see Art. 73(1) Gw.

[17] See also Art. 94 Gw. The ban under Art. 120 Gw has been extended to apply to the Charter of the Kingdom as a standard of constitutionality, Hoge Raad 14 April 1989, Nederlandse Jurisprudentie 1989, 469; van der Pot (2006). The Charter in turn takes priority over the constitution, Belinfante and de Reede (2005). The prohibition of testing the constitutionality (toetsingsverbod) is questioned from time to time, see Bax (2000); Asscher (2003).

[18] See, for instance Bax (2000).

granting basic rights of freedom. And with respect to the "Minimum Threshold" (*drempel*) model, citizens above this level may progressively actualise their social rights themselves (Vlemminx 2000).

According to Art. 19(1) Gw,[19] "it shall be the concern of the authorities to promote sufficient employment," and also, under Art. 20(1) Gw, "to secure the means of subsistence of the population and to achieve the distribution of wealth." As indicated above, the socio-economic fundamental right of subsistence is broader than those rights which it comprises and grants additionally, i.e. the rights to social security (Art. 20[2] Gw) and to assistance (Art. 20[3] Gw) (Noordam 2006a). All these provisions are (systematically) designed as fundamental social rights. Unlike the "classical" fundamental rights (for non-interference), fundamental *social* rights do not contain enforceable claims, but are substantially targeted at the legislator and government. Yet the value of differentiating between "classical" and "social" rights is sometimes limited, as the reasonability of this classification is increasingly questioned and its categories are further developed (van Bijsterveld 2000; Belinfante and de Reede 2005). Art. 20(3) Gw (assistance) is nonetheless regarded as a "subjective right," although the additional impact of this classification is rather small (Noordam 2004b). It may, however, become directly operational in cases where the legislature fails to fulfil its duties.

Hence, it is decisive that by imposing specific tasks on public authorities, the aforementioned provisions predominantly operate as instruction norms (*instructienormen*) (De Ruiter et al. 1992; Noordam 2006b); cf. Arts. 19(2), 20(2) and (3) Gw. The legislator indeed enjoys a wide (political) scope of formative power (*beleidsvrijheid*) and, hence, is quite free to transform activating labour market policy into law – notwithstanding the fact that such a policy is sometimes authoritatively disputed.[20] Constitutional guidelines are thereby taken into account; for instance, Art. 20(3) Gw was specifically addressed in formulating the legislative intent of the Work and Welfare Act (*Wet Werk en Bijstand*, WWB) (Parliamentary Papers II 2002–2003) and, accordingly, was satisfied by Art. 11(1) WWB.

International conventions, too, have a significant impact on social security law (Pennings 2006b). In the Netherlands, they almost seem more important than constitutional standards (Sichert 2006b). Unlike the testing of constitutionality (of laws), the review of domestic statutes with respect to provisions of international law is permissible to the extent that these provisions are binding on everyone, and therefore have direct effect (Art. 93 Gw). International law *then* prevails and domestic law

[19] According to Art. 19(3) "the right of every Dutch national to a free choice of work shall be recognized, without prejudice to the restrictions laid down by or pursuant to an act of parliament." There is, however, no right to work, see van der Pot (2006).

[20] See SER, Ontslagpraktijk en Werkloosheidswet, Advies 06/05 of 15 April (2005b), p. 40: "With respect to the improvement of the activating function of the WW as intended by the Cabinet, crediting dismissal compensation against is not necessary, not preferable and doubtful by outcome" (authors' translation).

is not applied (Art. 94 GW). Consequently, sanctioning fines (*boeten*) related to the beneficiary's failure to give information under the unemployment insurance scheme (WW) may be tested, for example, with respect to the proportionality criterion, which can be effectively invoked via Art. 6 of the European Convention on Human Rights (ECHR) (Noordam 2006a). Conversely, provisions that strictly impose measures (*maatregelen*) on the beneficiary to sanction infringements of personal duties cannot be reviewed as such, since – unlike fines – they are not qualified as criminal charges.[21] In view of positive claims, a right to a hearing may be derived from international law when sanctioning the beneficiary. Thus it is often difficult to draw a clear line in determining whether international standards, particularly ILO Conventions, serve as positive requirements or as limits on lawmaking (Sichert 2006b). This is mainly a question of practical effect, perspective and procedural stage. In practice, and this is especially true for developed countries, they tend rather to serve as limits, which cannot be dealt with here (Sichert 2006a).

3 Instruments: Changes in benefits, benefit conditionality and enabling schemes

Insurance terms and conditions, as such, are legally designed to achieve a broad steering effect in order to activate the unemployed by effectively promoting their efforts to escape unemployment and by preventing long-term unemployment. Yet to obtain the real picture, it is also important to perceive the relevant rights and duties in terms of both the conditionality between labour market capacity and benefits, and between the obligation to work and benefits. In order to pay regard to such interplay, it seems expedient to take a separate look at unemployment insurance law (WW), the Work and Welfare Act (WWB), and the Act on Employment and Income Depending on Working Capacity (WIA Act), which combines WAO and WW elements.

In this context, the term "benefits" first of all refers to monetary benefits that replace or supplement income, since their entitlement criteria have the most conspicuous activation impact, also with a view to the related sanctions. But particularly in terms of activation, we should keep in mind that benefits, by nature, are not restricted to payouts. Especially of late, they have increasingly been conceptualised as a "right to (re)integration" or support, though not necessarily characterised by "specific performance". This descriptive and operational use of the term is thus a major issue in the field of "benefits in services" (cf. 1.). The terms and

[21] CRvB 5 April 2000, RSV 2000/152; see also Pennings (2006a). Many details, however, are disputed, see Noordam (2006b), critically stressing that according to legal doctrine, Art. 6 ECHR is nonetheless applicable insofar as the "civil rights and duties" it deals with also cover social security benefits, without differentiating whether they are insurance-based or not.

conditions governing monetary benefits that actually serve the *waarborgfunctie* (cf. 1I), however, tend to have indirect steering effects. Nevertheless, a curtailment of benefit duration (or benefit levels) as well as the tightening of insurance terms and conditions also lead to "re-individualization" (Kötter 2006a), which in turn calls for (more) self-responsibility. Whereas activating insurance terms and conditions (*activerende polisvoorwaarden*) have recently been (further) developed with a specific view to unemployment insurance law, obligations and sanctions are largely understood as activating instruments that directly address the persons concerned (*aansprekende activeringsinstrumenten*).[22]

3.1 Unemployment Insurance Law (Werkloosheidswet, WW)

3.1.1 Benefits

Unemployment insurance benefit law has been reshaped significantly under the *Wet wijziging WW-stelsel*, which predominantly came into effect on 1 October 2006 (however, with many distinctions for various [sets of] provisions).[23] Irrespective of transitional provisions,[24] the WW now recognises only *one kind of allowance*, which is income-related. The term "income-related" (*loongerelateerd*) in its former use has been abolished in order to stress the singular nature of the new benefit, thus dispensing with the need for any further distinction. The former short-term benefits (*kortdurende uitkering*; ex Arts. 52a–52g WW) that were granted for 6 months on the basis of 70% of the minimum wage have likewise been abolished. They were paid to claimants who had been employed for at least 26 of the 39 weeks immediately preceding the first day of unemployment (ex Art. 52b[1] WW). *Kortdurende uitkering* did not necessitate the fulfilment of the "four-out-of-five" condition ("*vier-uit-vijf-eis*") additionally required for income-related benefits, i.e. benefits to employees who received wages for at least 52 days within a period of at least four out of 5 years prior to the year when unemployment occurred (ex Art. 17 lit. b no. 1 WW). *Nor* did short-term benefit receipt require the fulfilment of the criteria set out in ex Art. 17 lit. b no. 2 WW governing entitlement to certain disability benefits. Additional follow-up benefits (*vervolgfuitkering*; ex Arts. 48–52 WW) had already been abolished in 2004.[25] They were formerly granted to unemployed persons whose entitlement to wage-related benefits had terminated

[22] WV (ed.), 1e kwartaal 2006, "Handhaving".

[23] Art. XIII Wet wijziging WW-stelsel; decision of 28 June 2006, Stb. 2006, 304.

[24] E.g. leaving certain provisions unchanged in case unemployment occurred on or before the stipulated date (= 1 October 2006), Art. I J effectively tightens the basic weeks condition (Art. 17 WW); see Art. I VV (concerning Art. 130o WW) of the Wet wijziging WW-stelsel.

[25] "Wet van 19 December 2003 wijziging WW in Verband met afschffaing verfolguitkering", Stb. 2003, p. 547. For transitional law, see Art. 130h WW.

(Art. 48). The level of follow-up benefits was 70% of the statutory minimum wage or – if this amount was less (e.g. for part-time workers) – 70% of the actual (daily) wage (ex Arts. 51 et seq. WW). The maximum duration of receipt was 2 years; this term was extended to 3½ years for persons aged 57½ years or older on the first day of unemployment.

3.1.2 Duration and level of the new (income-related) benefit

Compared to the former income-related benefit, the maximum duration of entitlement to the new benefit has been shortened (as of October 2006): from 5 years, based on an employment record of 40 years, to 3 years and 2 months (38 months; Art. 42[2] lit. b WW), based on an employment record of 38 years. In so far, qualifying periods (*referte-eisen*) and the duration of benefit entitlement are – again – closely interrelated. However, all unemployed persons who were employed for a period of at least 26 out of 36 (formerly 39) weeks immediately prior to becoming unemployed ("*wekeneis*"; Art. 17 WW) are now entitled to unemployment benefit for 3 months. This is now the basic and general qualifying criterion for unemployment benefit. For those who also comply with the "four-out-of-five" criterion (see above), the duration of benefit entitlement has been extended by 1 month for each legal year that the unemployment record exceeds a period of 3 years (Art. 42[2] lit. a WW). A similar extension is also granted to those who were entitled to disability benefit prior to becoming unemployed (Art. 42[2] lit. b WW).

The level of income-related benefits for the first 2 months of unemployment (within the initial period of 3 months) has been increased to 75% of the last (daily) wages; this amount is reduced to 70% in the third month (Art. 47[1] WW). Nevertheless, the ceiling for maximum daily wages has recently been raised (from EUR 170.33 [1 July – 31 December 2006] to EUR 172.48 [2007]).[26] For "partially unemployed" workers, an unemployment factor is ascertained by dividing the loss of working hours by the number of prior working hours, in order to determine the relevant income to which the benefit calculation rate is applied (Art. 47[2] WW). If the calculated amount proves less than the statutory minimum wage, i.e. EUR 60.78 per day or EUR 1,317.00 per month (gross) as fixed per 1 July 2007,[27]

[26] As to the old ceiling, see Art. 1 of the Tijdelike regeling vaststelling maximumdagloon 2006 (Stcrt. 2006, 125), based on Art. 49 of the Invoeringswet Wet financiering sociale verzekeringen, IWfsv (Stb. 2005, 37), deviating from Art. 22 of the Besluit dogloonregels werknemersverzekeringen (Stb. 2005, 546). The Coordination Act that formerly fixed the maximum of daily wages to be taken into account (Art. 9) has been abolished/ replaced since 1 January 2006 (see Art. 48 III IWfsv). For the new ceiling, cf. again Art. 22 of the "Besluit" in conjunction with Art. 17 of the Wfsv and Art. 9 of the Regeling vaststelling premiepercentages werknemersverzekeringen en volksverzekeringen 2007 (Stcrt. 2006, 226).

[27] Cf. Regulation of 10 mei 2007 (Art. 1), Stcrt. 2007, 97 (wettelijk minimumloon per 1 juli 2007) in conjunction with Wet minimumloon en minimumvakatiebijslag (WML) of 27 November 1968.

the Supplementary Benefit Act (*Toeslagenwet*)[28] provides for benefits to cover (most of) the difference; cf. Art. 2.8 *Toeslagenwet*. Finally, additional income from minor employment is taken into account at a rate of 70% (Art. 35 WW).

3.1.3 Entitlement conditions (in terms of lost employment and availability)

Entitled persons must have been previously employed (Art. 3 WW) or similarly engaged on a voluntarily insured basis (Arts. 53 ff. WW). Apart from complying with the conditions governing past employment, notably the aforementioned qualifying periods, claimants must be unemployed. This means, firstly, that they must face a relevant loss of "working hours" (Pennings 2003), i.e. either a loss of at least 5 h or 50% of working hours (Art. 16[1] lit. a WW).[29] Secondly, claimants must also suffer from a loss of wage entitlement for the hours concerned, e.g. by collective agreement or individual contract (Art. 16[1] lit. a WW). Severance payments are treated analogously (Art. 16[3] WW), irrespective of the ground for termination. Such compensation payments, however, are only taken into account to the extent that they do not exceed wages paid until due notice of termination has been given. In cases where the contract is terminated without (a period of) notice, e.g. by mutual agreement, a fictitious period of notice is applied (Heusden 2000). Supplementary payouts are generally not taken into account (see also Art. 34[5] lit. a WW). As a matter or principle, it is important to distinguish between a relevant loss of entitlement constituting the right to WW benefits and a possible reduction geared to a – generally acknowledged – benefit claim. To be stressed here is that the Cabinet's plans to more extensively credit dismissal compensation against unemployment benefits as a means of "activation" to reduce the influx into the WW[30] were not implemented on the advice of the *SER*.[31]

Pursuant to Art. 16(1) lit. b WW, a person's status as unemployed further requires his or her availability (*beschikbaarheid*) for the labour market – that is, an unemployed person must be capable of working and prepared to accept work. The Central Court of Appeal (*Centrale Raad van Beroep, CRvB*) has held that facts

[28] Of 6 November 1986, Stb. 198, 562, last revised on 22 December 2005, Stb. 2005, 709.

[29] The Wet wijziging WW-stelsel introduced a new paragraph 9 (of Art. 16) according to which a person may also be unemployed – irrespective of Art. 16(1) lit. a WW – within a particular situation of employer insolvency.

[30] As to the content of this conception according to Cabinet documents available, see SER 2005; it was planned to exempt one monthly salary for each year of employment. As far as discernible, no information is available on a draft bill providing for the crediting of dismissal compensation against unemployment benefits; see also SER 2005, o. 21. As to the reaction of the Government, see Tweede Kamer 2004–2005.

[31] SER 2005, pp. 43 et seqq.

and circumstances of the individual case are to be taken into account,[32] thereby construing a number of subtle distinctions (Kooijman 1991; Pennings 2003). Irrespective of these constructs, it is neither required that the unemployed person be available as an employee, nor that s/he is available for a particular number of hours. Only if certain minimum requirements are not fulfilled can the right to benefits be terminated pursuant to Art. 20 (3)–(5) *WW*, where the term "available" is used nearly identically (Pennings 2002, 2003, 2006b). Except for these cases, "restricted availability" does not affect benefit entitlement.[33] This is also true as regards type of occupation or profession (reasonableness). There is (still) no two-way legal nexus to benefit entitlement, this being consistent with the insurance principle. On the other hand, lacking or restricted availability attributed to the claimant's behaviour may be taken into account to impose sanctions [cf. 3.1.4]. In cases of doubt, it is up to the administration to prove that the claimant is not available.

The final entitlement criterion is the absence of grounds for exclusion. These grounds are specified in Art. 19 WW;[34] most of them refer to ("overriding") entitlement by virtue of other social security laws. Such grounds can prevent a claim from arising, but can also cause a current claim to expire. In cases where particular circumstances preclude availability and also serve as grounds for exclusion, the worker is deemed "not unemployed" (Noordam 2006b).

3.1.4 Duties and sanctions

(a) Claimants must comply with numerous duties (Arts. 24–26 WW); their failure to do so leads to sanctions. Thus claimants must avoid unemployment on grounds for which they may be held responsible (Art. 24[1] lit. a WW). Accordingly, they must seek to prevent their – ongoing – unemployment owing to: insufficient efforts to find suitable work (Art. 24(1) lit. b no. 1 WW), the refusal to accept suitable work, or the evasion of such work on account of their own conduct (no. 2), the failure to maintain suitable work on account of their own conduct (no. 3), or the raising of objections against the work offered, thus preventing them from taking up or obtaining work (no. 4). Moreover, claimants are required to inform the UWV on request or on their own initiative about all facts and circumstances which – from their own perspective – may affect the right, level or duration of benefits (Art. 25 WW). Numerous additional obligations, the majority of which are set out in Art. 26 WW, demand, for instance, that jobseekers register as unemployed with

[32] CRvB 24 April 1990, RSV 1990/224; see recently Rechtbank Groningen, 27 June 2006 (AWB 03/1034 WW HOB), available sub www.rechtspraak.nl.

[33] Systematically speaking, a distinction is made – in Chapter II WW, as amended, under § 1 and § 2 respectively – between the requirements for the right to benefits and the invoking of this right.

[34] Ex Art. 19(1) lit. e WW was abolished by the Wet wijziging WW-stelsel.

the benefit administration office, claim benefits in time, follow directives, participate in counselling interviews (screening), contribute to reaching a reintegration conclusion and the arrangement of a reintegration plan, and fulfil the corresponding requirements (cf. Art. 26[1] lit. k and l WW; Art. 30a Wet SUWI), etc.

In the light of activation, two observations stand out. The first ties in with a major amendment under the *Wet wijziging WW-stelsel* that affects the first-mentioned set of obligations concerning the prevention of unemployment through blameworthy conduct. Here again, two legally established categories have been redefined. Formerly, claimants were held responsible for becoming unemployed if they "behaved in such a way that it could be reasonably expected of them to understand that such behaviour would lead to the termination of the employment relationship" (Pennings 2006a) (ex Art. 24[2] lit. a WW). Now, as from October 2006, it is no longer the manner of behaviour that counts, but rather the reasons why the relationship has been terminated. The claimant thus has been disburdened in that blameworthy conduct now requires the statement of a compelling reason pursuant to Art. 678 Book 7 of the Civil Code (*Burgerlijk Wetboek*); this reason must form the basis of unemployment and the claimant must be accused of misconduct. Accordingly, the second category pursuant to Art. 24[2] lit. b WW[35] has also been amended: blameworthy conduct can also exist where the employment relationship has been ended by or on request of the claimant (new WW) whereas there were (old WW: "are") no objections connected with the situation of the employment relationship which provided grounds that continuation of employment could not be expected of the claimant. A lack of resistance against the employer's conduct is not deemed a neglect of duty by the claimant (Art. 24[6] WW). These amendments will ease administrative burdens for employers as well as for the CWI and the courts. Formal legal proceedings, previously required in numerous cases to accomplish unemployment benefit entitlements,[36] will often no longer be necessary. Consequently, lower costs[37] and smoother dismissal procedures are expected. More importantly, however, this amendment will shift the sanctioning emphasis of the WW towards reintegration (Boot 2006).

The second observation proceeds on the assumption that since activation is closely related to the flexible consideration of individual case circumstances, the

[35] The claimant was also held responsible where "the employment relationship ended whereas there are no objections connected with the situation of the employment relationship which make that continuation could not be expected from the claimant," as translated by Pennings (2002).

[36] Indicative is "verwijtbaar werkloos" sub "www.rechtspraak.nl" between 1 January 2006 and 1 January 2007 in the field of social security law which matches a score of 151 decisions, predominantly in conjunction with the refusal of WW benefits.

[37] According to the Ministry, "The bill will result in savings, which will rise to 254 million euros in 2011. For employers the bill will mean a saving of 92 million euros in 2007 and a structural saving of 98 million euros from 2009 onwards." See www.szw.nl (english/news/Jun-28-2006).

definition of "suitable work" (*passende arbeid*) has acquired an important dimension. In view of Art. 24(1) lit. b WW, the concept of suitable work constitutes a core element when referring to the finding, obtaining or acceptance of work. Numerous procedures involve the definition of suitable work, in particular those with respect to sanctioning (see [b] below). Although the law itself provides for a definition of the term (Art. 24[3] WW, as amended),[38] this "operationalization" is rather general and led to a large number of court decisions. The case law of the past was summarised under the Suitable Work Directive (*Richtlijn passende arbeid*)[39] and has also had an impact on subsequent legislation. The (intrastate) directive is not, however, binding on the benefit administration owing to its legal nature (Noordam 2006b). Hence, judges are still busy interpreting this term from points of view that are as manifold as industrial life itself, e.g. with respect to the acceptability of flexible wage components.[40] In the sphere of target group activation, however, it was (and still is) essential court practice to hold that "the longer the claimant is unemployed, the broader is the range of activities for which he or she must be available" (Pennings 2006a). This standing is enhanced by progressive stages of 6 months (Richtlijn [Stcrt. 1990, 60], sub. 5.a). Another precedent concerns school-leavers and academics, whereby the gaining of experience takes priority over high-level job entry.[41]

(b) The imposition of sanctions requires a distinction between measures and fines. Moreover, the UWC may enunciate a written warning (Art. 27[7] {[6] as from May 2007}[42]; Art. 27a[3] WW) if the claimant has failed to comply, either in due form or time, with information duties (cf. Art. 25 WW; Arts. 28[2], 29[1] SUWI Act), provided this has not (yet) led to unwarranted benefit payout. Since 1996, measures entailing a refusal of benefits may not only suspend benefit payments, but also affect the right to benefits in terms of their consumption (Pennings 2003). Such measures can be either temporally limited or permanent, and the UWV may refuse payment either completely or partially. The UWV is obliged to impose sanctions and may only refrain from doing so for compelling reasons (Art 27[8] WW). If a measure and a fine coincide, the latter prevails (Art. 27[9] WW).

In cases of severe misconduct, the UWV is obliged to impose measures in the form of a total and constant refusal of benefits. This occurs if claimants are to blame for being/having become unemployed with respect to their duties laid down in Art. 24(1) lit. a or b no. 3 WW (Art. 27[1] 1 WW). Only where the claimant is

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[38] Ex Art. 24 III WW, cf. Art. R no. 3 of the Wet wijziging WW-stelsel.

[39] Decision of the Secretary of State of 19 March 1996, Stcrt. 1996, 60.

[40] Cf. CRvB 22 February 2006, 04/5234 WW, available sub www.rechtspraak.nl.

[41] See Art. 4 of Besluit passende arbeid schoolverlaters en academici of 1 December 1995, Stb. 1995, 604.

[42] Former Art. 27(5) and (6) respectively, see Verzamelwet Sociale Verzekeringen 2007, Stb. 2006, 704, Art. III Da.; Decision of 28 June 2006, Inwerktreding Wet wijziging WW-stelsel, Stb. 2006, 304, only Article V.

held responsible to a minor extent (not predominantly) will the UWV refuse merely a partial payment of benefits by cutting the payout percentage to 35% for the whole period of entitlement, but for no longer than 26 weeks (Art. 27[1] 2 WW [since October 2006]). This curtailment applies regardless whether the claiimant is actually entitled to a payout of 75 or 70%. With respect to the aforementioned amendments under Art. 24[2] WW, however, less sanctioning is to be expected owing to the reduced burden on the unemployment administration, which in 2005 imposed 14,227 sanctions on claimants who were held responsible for their unemployment (Boot 2006).

Fines are not to be discussed in depth here. They are imposed in cases where claimants fail to fulfil their obligations to inform (Art. 27a[1] WW).[43] A fine must not exceed EUR 2,269. Details must be fixed by way of sub-regulation (*bij algemene maatregel van bestuur*),[44] which also takes account of proportionality and criteria concerning the relevant circumstances of the individual case (Art. 27a[1], [2], [7] WW). According to the regulation governing fines (*Boetebesluit Sociale Zekerheidswetten*), the "standard fine" is 10% of the more "disadvantageous" amount – either gross benefits or reintegration support paid without statement of legal grounds – but at least EUR 45 (Art. 2[1]; Art. 1 r *Boetebesluit*).

3.2 The Work and Welfare Act (Wet Werk en Bijstand, WWB)

3.2.1 Benefits

The WWB entered into force on 1 January 2004, and replaced the National Assistance Act (Abw). In 2004, 337,600 people (cf. 16.3 million inhabitants; Centraal Bureau voor de Statistiek) were entitled to "general assistance" (2005: 335,100; October 2006: 307,500; August 2007: 287,00),[45] with a continuing trend of decline. The WWB has maintained the Abw approach of distinguishing between "basic assistance" (*algemene bijstand*; Art. 19 WWB) and particular forms of assistance (*bijzondere bjistand*; Art. 35 WWB). The particular forms are granted in special situations where necessary expenses exceed general benefits. The municipality may refuse to pay *bijzondere bijstand* up to a retention of EUR 115 (Art. 35[2] WWB).

Whereas particular assistance is individualised by nature, a prominent characteristic of the WWB is its application of the principle of individualisation (*individualiseringsbeginsel*; Art. 18 WWB) as regards the personal scope or personal

[43] Again in conjunction with Art. 25 WW, Arts. 28(2), 29(1) SUWI Act.

[44] Due to the word "direct" (bij), further sub-delegation is not permitted, cf. de Haan et al. (2001).

[45] "Bijstandsuitkeringen; jonger dan 65 jaar"; Source: CBS.

issues of basic assistance. Nevertheless, a uniform basis and high level of objectification are assured. Thus the state, at its main national level (*Rijk*), legally defines a minimum level of general assistance. Entitlement and actual benefit amounts are subject to means-testing as determined by income and property (*middelen*) (Arts. 19[1], 31 et seqq. WWB). Public and prior personal responsibility are thereby delimited, this being in accordance with the *individualiseringsbeginsel*. Even so, exempting a certain amount of "income" may have an activating effect. Two main categories of exemption are important here:[46] first, an activation premium (up to EUR 2,133 per year [July 2007]) is provided for reintegration (Art. 31[2] lit. j WWB); second, a maximum of 25% of income (up to EUR 179 per month) is provided for a period of 6 months for work that serves the purpose of integration. Property is exempt up to the amount of EUR 5,245 for singles, and EUR 10,490 for both single parents and married couples (together) (Art. 34[3] WWB).

The benefit level is determined by the basic tariff (Arts. 20 et seqq. WWB), which is reduced or increased by the municipalities according to different categories (Arts. 25 et seqq. WWB; "twofold system") (Noordam 2004c). The basic tariff is aligned with the minimum statutory wage: 100% of the latter is granted to (married) couples, 70% to single parents, and 50% to singles.[47] In monetary terms, the monthly benefit level (including leave pay) for persons between 21 and 65 years of age is EUR 1,246.19 for (married) couples, EUR 872.33 for single parents, and EUR 623.10 for singles (Art. 21 WWB [July 2007]);[48] younger people receive much less (Art. 20 WWB). The maximum supplement that can be awarded by municipalities is EUR 249.24 per month (Art. 25[2] WWB). Unlike the Abw, the WWB recognises a third type of monetary allowance, the so-called long-term supplement (*langdurigheidstoeslag*; Art. 36 WWB). It is paid to persons (up to the age of 65) who have received benefits or an income below this level for 60 months, and amounts to EUR 478, 430 and 336, respectively, for the aforementioned groups.

3.2.2 Duties and sanctions

In the field of duties and sanctions, a threefold change (Willems-Dijkstra 2006) of concept underscores the notion of activating unemployed persons.

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[46] For the figures as from July 2007 see Bekendmaking van 14 juni 2007, Herziening Bedragen WWB per 1 juli 2007, Stcrt. 2007, 118.

[47] For people older than 65, the level corresponds to the benefits (net) under the Pension Act (Algemene Ouderdomswet) of 31 May 1956, Stb. 1956, 281.

[48] For people older than 65, the respective benefit levels are EUR 1,295.10, 1,163.67 and 944.86; Art. 22 WWB. For younger people, see Art. 20 WWB.

From "suitable" to "generally accepted" work

Art. 113(1) lit. c, (3) Abw formerly required that the claimant take up "suitable" work (*passende arbeid*). The Abw circumscription matched the (current) one stipulated in the WW (Art. 24 [1] lit. b), with the Suitable Work Directive (*Richtlijn passende arbeid*; see above) exercising an equitable influence. Although this duty was only one of a set, it appeared to be very important and was dealt with in many lawsuits (particularly with a view to sanctioning by virtue of Art. 14 Abw). The WWB, by contrast, followed a new approach by establishing a basic obligation to work in conjunction with "generally accepted" work (*algemeen geaccepteerde arbeid*; Art. 9 WWB). This not only marked a change of concept as expressed by the different terms; claimants have now also been obliged to actively seek generally accepted work. Moreover, this substantive amendment was flanked by the incorporation of the phrase "obtaining generally accepted work" into the general definition of reintegration into paid work (Art. 6 lit. b WWB). Unlike "suitable work," however, the notion of "generally accepted work" itself is not defined by law. This is indeed striking since Dutch social security laws generally commence with a broad set of defining legal terms. Hence, even if crucial limits as to what jobs still qualify as "generally accepted work" are clear (i.e. prohibition of illegal work; remuneration below statutory minimum wage level), many problems may arise. The Ministry has stressed that such work includes "(almost) all kinds of work… that is regarded as normal by almost everybody" (2003). Finally, in light of the above *individualiseringsbeginsel,* it will – to some extent – be up to the municipalities to give further concrete substance to the concept of generally accepted work (Noordam 2004b).

From a diversity of duties to a basic obligation

As mentioned, the obligation under Art. 9 WWB is a basic one, both in a substantive sense and with respect to the persons covered. It is – with but very few exceptions – applicable to every person in need of assistance. Under the Abw, various target groups or claimants had been released from numerous obligations according to a sophisticated exemption regime (Noordam 2004b) (cf. also Art. 107 Abw). By contrast, the WWB now requires that persons older than 57½ also have to apply for jobs; "if you can, you have to work" (Ministry of Social Affairs and Employment 2003). Whereas a release from duties was linked to categories under the Abw, exemption (save for Art. 9[4] WWB) has now been individualised and, if applicable, is granted temporarily (Art. 9[2] WWB). The basic obligation to work figures prominently in the introduction to Chap. 2, vis-à-vis the (new subjective) right to reintegration (Art. 10 WWB). In this way, a clear nexus between obligations and rights has been introduced.[49] Yet this linkage cannot be understood in the

[49] Sijtema (2004) even speaks of "two sides of the same coin."

sense of "real" mutuality (cf. Art. 48[1] WWB: "not in return for"/"*om niet*"), which is not compatible with the underlying intent of social assistance. "Individualisation" is also expressed by Art. 55 WWB, whereby the municipalities may impose additional obligations in individual cases with respect to reintegration. Both of these last-mentioned aspects and the "fleshing out" of (new) obligations, however, make it necessary to ensure that the linkage of rights and duties ("*daaraan verbonden*", Art. 18[1] WWB) is not seen as a contradiction.

From strict national rules to a subordinated flexible sanctioning regime

The aforementioned closer nexus is also expressed by the "sanctioning" regime. The legal framework for sanctioning policy has changed considerably. First of all, it is no longer possible to impose fines as largely specified under the Abw (Art. 14 lit. a–f). Second, true sanctioning, e.g. by way of partially or totally refusing (*weigeren*) payout, has been replaced by "adjusting" benefit amounts according to particular case circumstances (*afstemming*; Art. 18(2) WWB). Unlike Art. 14(1) Abw, it is not the measure that has to be adjusted; rather the benefits themselves are taken as the relevant object. As least from this perspective, it is worth deliberating whether the use of the term "measure" (*maatregel*)[50] is appropriate here. These changes make municipalities much more flexible in reacting to misconduct, although the criteria governing the approach taken need to be defined in the municipal bylaws (Art. 8[1] lit. b WWB) (Willems-Dijkstra 2006). Flexibility is not only achieved in laying down consequences, but also in pre-determining – according to the present opinion of the authorities – which forms of behaviour "evince adequate awareness of the responsibility to exercise foresight in securing one's livelihood" (alongside the other obligations). Hence a "direct nexus" between rights and duties is also identified with respect to Art. 18(2) WWB.

3.3 The Act on Employment and Income Depending on Working Capacity (Wet Werk en Inkomen naar Arbeidsvermogen, WIA Act)

3.3.1 Benefits and entitlement conditions

Questions relating to working capacity are regulated in the WIA Act. Its major parts entered into force on 29 December 2005. Like the Disablement Benefits Act (WAO),[51] the personal scope of the WIA Act mainly refers to compulsorily insured employees (Art. 7[1] WIA Act), providing benefits and (other) rights and duties applicable to persons who have become disabled after 1 January 2004. In so far,

[50] Cf. Noordam (2004b), despite pointing out that the term is not used in the law.

[51] Wet op de arbeidsongeschiktheidsverzekering of 18 February 1966, Stb. 1966. 84.

the WIA Act has come to replace the WAO. The Law on (re-)integration of handicapped workers (*Wet REA*)[52] has been repealed[53] because the WIA Act itself regulates integration (for partially employable persons). Self-employed workers may apply for voluntary insurance (cf. Art. 18[1] lit. c, f WIA Act). Until the end of July 2004 (cf. Art. 3[1] WIA Act), they were covered by the Self-employed Persons Disablement Benefits Act (WAZ),[54] under which 53,000 benefits were paid out in 2005, and 47,000 in 2006 (total estimate for 2007: 42,000).[55] Access to the WAZ was closed by law on 6 July 2004.[56] By contrast, the application of the Disablement Benefits Act for Young People (*Wajong*)[57], under which 147,000 benefits were paid out in 2005, and 156,000 in 2006 (total estimate for 2007: 161,000), has not been restricted.

As regards the personal scope of benefits and the right to reintegration under the WIA Act, it is necessary to make a distinction in accordance with the WIA intra-law system. The latter comprises two legal regimes (sets of substantively classified provisions): the regulation concerning the (re)employment of partially employable persons (WGA) and the regulation on income protection for persons with a full and long-term occupational disability (IVA). Within the first year (2006), the number of WGA benefits paid under the WIA Act had reached a total of 15,000 (total estimate for 2007: 30,000), while 4,000 IVA payouts had been granted (total estimate for 2007: 11,000).[58] At the same time, the number of WAO benefits, which had declined by 63,000 from 2004 to 2005, further decreased from 703,000 (2005) to 639,900 (2006 total estimate for 2007: 588,000). It is important to mention that "disability," the predominant criterion of benefit entitlement, is an economic term by nature (Noordam 2006b), and requires that "due to direct and objective, medically determined consequences of illness or infirmity, a person is incapable of earning through generally accepted work an income which a healthy person with comparable qualifications and work experience is able to earn" (cf. Art. 18[1] WAO) (Art. 2(1) WAZ/Wajong). The degree of disability necessary for eligibility was formerly fixed at 15% (Art. 21[2] WAO) (WAZ and Wajong: 25%; Art. 8 WAO; Art. 9(1) Wajong). Among a wider range of reasons for the high disability figures in the Netherlands, this rather low threshold is certainly one of them (Pennings 2006a).

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[52] Wet op de (re)integratie arbeidsgehandicapten of 23 April 1998, Stb. 1988, 290.

[53] As of 29 November 2005, cf. Art. 2.10 of the Wet invoering en financiering wet Wia of 10 November 2005, Stb. 2005, 573; Decision of 13 December 2005, Stb. 2005, 659.

[54] Wet arbeidsongeschiktheidsverzekering zelfstandigen of 24 April 1997, Stb. 1997, 176.

[55] Source for the figures: UWV.

[56] Wet einde toegang verzekering WAZ of 6 July 2004, Stab. 2004, 324.

[57] Wet arbeidsongeschiktheidsvoorziening jonggehandicapten of 24 April 1997, Stb. 1997, 177.

[58] It is estimated that benefits recipients will total 180,000 in 2010 (Noordam 2006).

By contrast, the minimum criterion for entitlement to WGA benefits is now set at 35% of incapacity (*e contrario* Art. 5 WIA Act); these beneficiaries are likewise employable persons whose complete incapacity is only occasional (Wildeboer 2005). Compared to the WAO, benefits under the WIA Act (WGA) are now granted exclusively and may not be combined with additional WW payments. The waiting period under both the WAO (Art. 19[1]) and the WIA Act (Art. 23[1]) is 104 weeks. An income-related benefit under the WIA Act is, however, granted only to claimants who fulfil an additional "weeks criterion" that requires them to have actually worked for at least 39 weeks prior to the "end" of the waiting period; the weeks of incapacity owing to disability are not taken into account (Art. 58[1] lit. a, [2] WIA). Here, the inherent connection to the WW becomes obvious, and has formed a genuine integrative approach since the weeks criterion was tightened under the law of 30 March 2006 for both the WW and the WIA (already effective), henceforth requiring 26 weeks of work within a period of 36 weeks.[59] Claimants who comply with the weeks criterion (and further requirements like the absence of exemption causes) have a right to income-related benefits (*loongerelateerde WGA-uitkering*), which amount to 70% of the difference between the last wage and the new (lower) wage (Art. 61 WIA Act). If the right to income-related benefits accrues before 1 January 2008, the duration of benefits will depend on the claimant's age (Art. 127 WIA Act); after this date, entitlement will be based on the claimant's employment record (Art. 59 WIA Act). Art. 59 WIA Act has nevertheless been re-amended to the effect that, as from 1 January 2008, the duration of income-related benefits will be 3 months, with this period to be extended by 1 month for each full calendar year of the employment record exceeding the duration of 3 years; however, the total duration of benefits may not exceed 38 months.[60] Similarly, and also from 1 January 2008, the percentage will be increased to 75% for the first 2 months (Art. 61[1] lit. a WIA Act),[61] thus synchronizing the WW and WIA Act conception of income-related benefits.

The above claimants are further entitled to follow-up benefits (*vevfolguitkering*) or a wage supplement (*loonaanvullingsuitkering*) after the income-related allowance has expired (cf. Art. 54[3] WIA Act). Also partially employable persons who failed to meet the weeks criterion for income-related benefits are entitled to either of these payments (Art. 54[4]). A distinction between these two types of additional payment was not made under the WAO. But now again, the objective is to enhance activation: If these partially employable persons do not work, or earn less than half of the income determined by degree of disability, they are entitled to follow-up benefits based on a percentage of statutory minimum wage in accordance with the degree

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[59] Art. I A and Art. III I of the Wet wijziging oder mer WW in verband met aanscherping wekeneis, Stb. 2006, 167.

[60] Art. III C of the Wet wijziging WW-stelsel, Stb. 2006, 303, decision of 28 June 2006, Stb. 2006, 304, Only Article I (VI.).

[61] Art. III D of the Wet wijziging WW-stelsel, Stb. 2006, 303, decision of 28 June 2006, Stb. 2006, 304, Only Article I (VI.).

of disability (Arts. 61[6], 62[1] WIA Act). If, however, these partially employable persons utilise at least 50% of their remaining earning capacity, they are entitled to an – activating – additional wage supplement of 70% of the difference between their former wage and their income based on residual earning capacity (Art. 61[4] WIA Act).

3.3.2 Duties and sanctions

The regime of duties and sanctions has been aligned with the findings that the WGA regime under the WIA Act provides an integrated approach, combining WAO and WW elements, and – irrespective of this – is similar to the WAO regime (Arts. 23–28 WAO). We need only mention here that the notable synchronization of WW and the WIA Act is particularly expressed by the duties related to obtaining suitable work. In so far, Art. 30(1) lit. a and b WIA Act (regulating the duty to perform and the duty to accept employment, respectively) "derives" from Art. 24(1) lit. a and b WW (cf. supra), just as Art. 30(1) lit. c WIA Act (duty not to aggravate conditions preventing the taking up or obtaining of work) derives from Art. 24(1) lit. b no. 4 WW (Barentsen 2006). Moreover, the amendments of Art. 24(2) WW under the *Wet wijziging WW-stelsel* impacted the amendment of Art. 30(3) WIA Act, which, until October 2006, had required that all conduct to prevent the loss of suitable work be geared to blameworthy conduct. Now employees are required to refrain from blameworthy conduct that serves as the basis of "compelling reasons" for dismissal (Art. 30[3] lit. a WIA Act), and to prevent termination of employment by or on their own request failing objections connected with the employment situation as a result of which a continuation of that employment cannot be expected of them (Art. 30 III lit. b WIA Act). Here again, a lack of resistance against the employer is not deemed a neglect of duty by the claimant (Art. 30[5] WIA Act, as amended; cf. Art. 24[6] WW).

In brief, further duties are: to inform the administration and to cooperate accordingly (Art. 27(1) and (2) WIA Act); to prevent the occurrence and persistence of WIA benefit entitlement (Art. 28); to extend work possibilities/contribute to reintegration (Art. 29). In this context, too, it is important to note that from 2007 onwards, all employers will be able to choose between their own coverage of the disability risk (*eigen risicodrager*; Arts. 1, 82 et seqq.), or taking out insurance with the UWV or a private insurance company. Hence, the duty to inform, for instance, will also apply to the beneficiary vis-à-vis the *eigen risicodrager* (Art. 27 [6] WIA Act; for further duties, see Art. 89 WIA Act). Insofar as the *eigen risicodrager* functionally acts as an administrative body, however, a number of problems (e.g. control) may arise (Roozendaal 2006).

The sanctioning system is similar to the WW regime and is regulated in Arts. 88 et seqq. WIA Act. The UWV may, for instance, reduce benefits either wholly or partially, and/or permanently or temporarily if claimants fail to fulfil their duties

under Arts. 27(2)-(4), 28–30 (Art. 88[1] lit. a) WIA Act. Such a sanctioning measure must correspond to the seriousness of misbehaviour (Art. 90[1] WIA Act). The same is true for any measure that may be taken by an *eigen risicodrager* (Art. 89 WIA Act). In case of an infringement of the information duty, a fine of up to EUR 2,269 can be imposed (Art. 91 WIA Act).

4 Governance and actual implementation process

4.1 Governance in a bird's eye view

In the 1990's a continual stream of labour market reforms changed the governance completely. The relationships between government, organised interests, businesses, administrative agencies and their relationships towards the individual on benefit were reviewed and financial incentives were introduced as a steering instrument in the relationship between central and local government, the agencies and the citizens on benefit. This strategy resulted in privatisation, agentification and decentralisation and was accompanied by an increase in steering and control (see Table 12). In five steps activation polices were created in a market system arrangement.

Table 12. Chronological overview of the main reforms in governance 1990–2006

	Law	Main features
1990	Arbeidsvoorzieningswet (Act on Public Employment Services)	Tripartism Demonopolisation PES Decentralisation of employment offices
1996	Nieuwe Arbeidsvoorzieningswet (Act on Public Employment Services)	Revision of tripartism Centralisation
1995–1998	Cooperation on Work and Income (SWI)	Bottom up cooperation between benefit agencies
2001	Structuur Uitvoering Werk en Inkomen (Structure Inplementation Work and Income, SUWI)	Foundation of one unemployment benefit Agency (UWV) Foundation of one-stop shops (CWI) Abolition of PES, foundation of Kliq Obligation to tender all employment services Introduction of a market with for profit providers
2004	Wet Werk en Bijstand (Work and Welfare Act)	Decentralisation of welfare towards municipalities on a budget based system
2006	Wet Werk en inkomen naar Arbeidsvermogen (Act on work and Income according to labour capacity)	Obligation of employers to offer employment services to disabled

The first step was a decoupling of policy and implementation of PES. The decoupling fitted in with the ideological trend of reducing the size of top-down civil service; by separating the policymaking civil servants from privatised job service providers, the number of state civil servants was reduced by 7,000. Due to poor results of tripartite PES, the Dutch government implemented a second reform to win back the decreasing legitimacy of the public organisation. The second step entailed a purchaser/provider split. Demand and supply were separated by creating purchasing relationships between the public principal and the contractor. Until 2000 purchasers were obliged to purchase services from PES, but as of 2000 this obligation was lifted, which resulted in a painful loss of market share for the PES. Step three was the introduction of an open tendering system as part of a larger reform. The government decided to reform the implementation structure, to abandon the public employment offices, and to nationalise the implementation of unemployment benefits and occupational disability benefits. All these reforms were enacted through the Act on Structure Implementation Work and Income (*Structuur Uitvoering Werk en Inkomen – SUWI*).

SUWI was the answer to criticism of the national employment programmes that the programme determines the form of help offered rather than the needs of individual jobseekers, 'case management' was reduced to a system of referral of people to programmes rather than a tool to assist them to secure jobs in the mainstream labour market. This leads to inefficient expenditure on employment assistance. Programme-based funding relies on governments to accurately predict in advance the needs of disadvantaged jobseekers. In response to these concerns, the Act on Structure Implementation Work and Income of 2001 (SUWI) was introduced in 2002. Paring back the functions of the PES (now styled 'Centres for Work and Income' or CWI) to a 'gateway' role in employment assistance, including job brokerage, assessment of labour market disadvantage, and referral to the municipalities or the social insurance agency (UWV) for those who needed more intensive employment assistance (including all long-term unemployed recipients and people with major disabilities). The CWI do not administer benefits. This function remains with municipalities and the UWV. SUWI also required the UWV to contract out employment assistance for long-term and disadvantaged benefit recipients through an open and transparent 'reintegration market', and encouraging municipalities to do so. Contractors in the 'reintegration market' are private and non-governmental agencies. The national Ministry for Social Affairs, which ultimately funds most benefits and employment assistance, no longer specifies in detail the form or content of these contracts. Consistent with the results-oriented framework, it negotiates performance targets (including the overall proportions of jobseekers who complete a programme and obtain jobs) with Municipalities and the UWV.

In order to further the goals of social assistance take-up and to realise the implementation of activation, a fourth step new statute on social assistance was enacted in 2004 (*Wet Werk en Bijstand*). With this statute the government increased the regulatory freedom of the municipalities and decentralised all activation policies to the municipalities. In order to give them a proper financial incentive, they were made fully financially responsible for social assistance benefits. Their financial

interest has now become one of decreasing the inflow of claimants and increasing the outflow of claimants into the labour market. The national government provides two bundles of funding to municipalities to assist jobless people – a fund for income support based on projected demographic and economic trends and a fund for employment assistance. Although national legislation still prescribes benefit entitlements, the government no longer prescribes how the municipalities should spend their employment assistance funds. First there was a requirement to contract out these services, but this obligation was removed in 2006. Municipalities can choose to provide employment assistance in-house or contract out. In practice, one fourth (25%) do so (Sol et al. 2007). The fifth step followed in 2006 when the WIA Act changed the definition of being disabled and created – next to the public reintegration market – a private reintegration market. Employers are now obliged to provide sick and disabled with employment services to help them regain employment after their sickness leaves. The policy is called *reintegratie tweede spoor*, a second track reintegration.

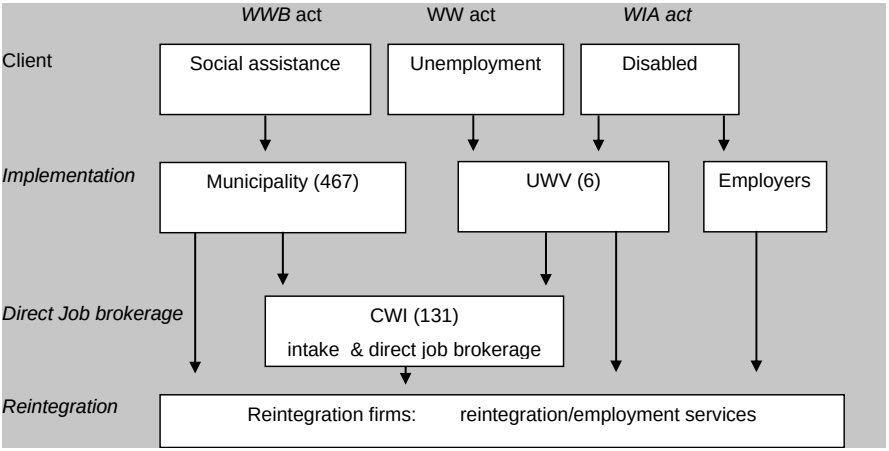
To give an impression of the amount of money involved for the three target groups, Table 13 shows the budget for purchasing services.

The resulting institutional framework for employment assistance in the Netherlands is a very complex and decentralised one (see Fig. 13).

Table 13. Budget for purchasing reintegration/employment services 2000–2005 in Euro

	2000	2001	2002	2003	2004	2005
Unemployed	63	60	75	65	80	80
Disabled	124	180	222	237	209	161
Welfare	323	316	389	393		

Source: SZW (2006)



Source: Bruttel and Sol (2006)

Fig. 13. Structure of welfare-to-work services in the Netherlands

A single national ministry, the Ministry of Work and Income, has policy responsibility for income support and employment assistance programmes for people of workforce age. However, the delivery of income support and employment assistance is divided among a number of agencies. Income support is divided between the UWV (social insurance agency), the body that administers social insurance, and the 500 municipalities, who administer social assistance. The benefit rules and rates of payment are to a large extent legislated by the National Government. These agencies, along with the 130 CWI (Centres for Work and Income) also provide a basic level of employment assistance for shorter-term unemployed people, administer the activity requirements, and act as an assessment gateway to more intensive support. Most UWV clients are people with disabilities without an employment contract, though a substantial minority receive unemployment insurance. The municipalities mainly provide employment assistance for the people on welfare.

Jobseekers are represented by local and national client councils, which together form the National Client Council (LCR). The LCR is a statutory body whose main function is to represent the views of clients to the Minister, as part of a wider tripartite consultative mechanism, the RWI. The LCR has had success in advocating individual client accounts for employment assistance (IROs) and a network of independent advisors to assist clients to locate and negotiate with a reintegration provider of their choice. The RWI is responsible for a public databank on provider quality and outcomes called the 'reintegration monitor'.

The main features of activation policies under new and old governance are shown in Table 14.

Table 14. Differences between old and new governance

Old governance	New governance
Passive	Active
Unconditional benefit	Conditional benefit
Top down	Mutual obligation
Group based	Focus on individual
Sanctions low, Services low	Sanctions high ► Carrots and sticks
Public	Public + Private

4.1.1 The system for the insured: Unemployed and disabled

The UWV is the benefit agency responsible for the shaping of tenders and contracts to get unemployed and disabled from benefit to work. Since 2001 the UWV has gained experience in tendering, thus overcoming its teething troubles. The key payable outcome for providers is retention in unsubsidised employment for at least 6 months. Providers are either paid on a 'no cure, less pay' or a 'no cure, no pay' basis. In practice, employment fees comprise 20% of total fees in the former case and 50% in the latter, the remainder being payments for service inputs. Contracts were first for 12 months only, but later extended to 24 months (Sol 2003;

De Koning 2004; Sol and Westerveld 2005). A major criticism against the contracts under the tenders is the 'one size fit all' services. Some 40% of the clients are placed in regular jobs. Contractors complain because in their view the UWV is not paying enough to come to deliver more than minimal quality services.

The SUWI Act had three mains goals: efficiency, effectiveness and a greater emphasis on client satisfaction with employment services (client orientation), as distinct from the enforcement of benefit obligations. In 2004, the government introduced a secondary reintegration market in the form of Individual Reintegration Agreements (IRO) between individual clients and reintegration providers, following complaints by client organisations and politicians in parliament. The introduction was strongly supported by the National Client's Council as a means of better engaging clients in welfare to work activities and giving them greater control over the process. IRO clients 'purchase' their own reintegration services directly from providers using public funds that are slightly higher (per client) than the fees that would normally be paid by the UWV directly to providers. IROs can be negotiated to a maximum price of EUR 5,000 each, but must be approved by the funding body. All IROs are funded by the UWV, comprising 50% of UWV reintegration contracts – and still growing. The IRO has become such a huge success that it endangers the whole tendering system. For this reason UWV is currently working on a new – yet unknown- system incorporating IRO's in their regular tenders in 2008. The concept of the client as customer has been much slower to develop for social assistance clients in the municipalities market (around 5% of contracts). They have led to a dramatic expansion of the number of small providers in the market. Although there are concerns about the quality of the services provided, the IROs do appear to have achieved their objectives of motivating clients and given them greater control over employment assistance.

4.1.2 The system for the municipalities

There are three main points we would like to emphasise about the new playing field created by the WWB (*Wet Werk en Bijstand*) from a policy point of view. First, the sharp turn the WWB presents from centuries of centralisation in welfare assistance. From voluntarily help for the poor in the middle ages emerged national welfare legislation which was locally administered, but with only limited local discretion and negligible local financial risk. Now – in line with the general tide of incentive-creating legislation, incentive-based policy development and incentive-based thinking that pervades our country over the past decade – the WWB, which redefines the relation between national government and municipality in two basic ways: less national regulation, more local financial incentives and risks. The funding mechanism has changed from a declaration-based system to a budget-based system.

Box 1. Policy in practice: An example of three northern municipalities (1)

To get a better picture of the differences in policy that can arise amongst municipalities van Lieshout and Koning undertook a small exploratory study in three municipalities (Koning and Polstra 2008). The target group was the same in all three, directed at the inflow and the young (sometimes very young), but the way the benefit and job placement function was organised differed. A common pattern for all three municipalities was observed, as the initial focus for new and revised local activation policies seemed to lie on *fördern*. Work Work First policies found themselves in the spotlight of political and public attention; and the local staff and clients themselves did generally seem modera-moderately positive about their initial experiences with these policies. Subsequently and recently, the focus on *fordern* is increasing in these municipalities. The current economic improvement will probably speed up that shift.

In the interviews a number of dilemmas that currently face both local policymakers and the street-level bureaucrats under the new Welfare law were made explicit:

Generally acceptable work vs. sustainable re-employment
The obligation to apply for older unemployed vs. a realistic assessment of employment chances
An inclusive policy vs. own responsibility of the individual client
Training investment costs vs. limited returns to these investments in terms of increased employment
Focusing on the top of the crop and having success vs. struggling with the disadvantaged
Generally acceptable work for unemployed university graduates vs. combating the crowding out of low-skilled groups
Motivating policies vs. sanctioning policies
Prescribing expected behaviour vs. combating socially desirable posturing by clients
Supply-side vs. demand-side policy approaches

According to a certain formula, municipalities receive a fixed budget for a given year. If municipalities have higher expenditures, they have to pay for them from their own funds – thus having less money for other public investments. If they accomplish a rapid decrease in welfare expenditures, they have money to spare and spend – on for example lower local taxes. As previous national governments chose to spend money on lowering taxes and improving the national debt status during the economic upturn of the late 1990s, there have been serious cutbacks on activation budgets since 2001, a period when they were needed more than in preceding years.

Secondly, the creation of a sponsored market for reintegration services specifically aimed to stimulate reintegration firms to develop their own methods, coming from the idea that the best method would survive. Indeed it is better to have

alternatives in a market over a monopoly, and the aim should be to develop a reintegration market based on quality competition. Unfortunately, what we have seen in the early stages are mostly indications of a price competition market.

Next to decentralisation (to municipalities) and the creation of a reintegration market (mostly private), the third element worth emphasising is the introduction of Individual Reintegration Agreements (IRO's). Clients can choose their own provider and their own action plan. IRO's are very popular, even to the point of endangering the regular tenders. More than 50% of the clients choose an IRO. These are 1.3 (disabled) to 1.1 (unemployed) times more effective than tenders in getting people back into the labour market (APE 2007) Other than for unemployment benefits the individual accounts for welfare recipients lagged behind, apparently due to reluctance amongst municipal frontline workers to give the clients a free hand, although there is no research confirming this tendency.

Box 2. Implementation: the frontline worker in Northern Netherlands (2)

In order to analyse the extent of differentiation in decentralised local activation policies, a second small exploratory study, a situation analysis, in the three above mentioned Dutch municipalities was carried out by Koning. Vignettes were used amongst frontline workers to get an indication of current Dutch evolving activation policy regarding welfare clients, and the extent to which differences between municipalities arise (Koning 2006, van Lieshout and Koning 2005).

Three individual employment/welfare counsellors in each municipality were presented with nine different fictional clients applying for welfare benefits. The fictional clients were represented by a half-page text description outlining their history and their preferences. The fictional cases were chosen to reflect the diversity of people that may apply for welfare in terms of (un) employment history, qualifications, age and sex. With some vignettes, differences between the nine counsellors were not very substantial, but in other 'situations' we observed differences which could not be found previously.

The most clear-cut example of these differences was triggered by the following vignette:

Mrs. Lianne Dik has just turned 40. She is a single mom to Roef (4) and Erna (2). Lianne says that, over time, she would like to pick up her old occupation: administrative clerk. While she doesn't have the educational credentials, she always liked the work. As the conversation continues, you learn that Lianne lives separated from her partner, and that her divorce will be finalised by the first of next month. She would like her alimony to be supplemented by the welfare agency up to the welfare level. In addition, she wants to be relieved of the obligation to actively look for employment because of her tasks at home, taking care of the children. She is now alone in facing this task. She finds it difficult to deal with the situation psychologically. And that affects the children.

Not one of the three counsellors of the largest municipality finds a reason in this card to grant her request to be relieved from her duties to apply for jobs. But in another municipality, the same request would be granted for a period of up to a year. The third municipality finds itself somewhere in the middle, along the lines of allowing for a small adaptation period, to begin activation thereafter. Afterwards, discussing this situational card, the staff concerned thought the different conclusions of the counsellors between the municipalities were in line with local policy/implementation differences, and not some particular personal deviation.

With other cards, distinct differences between different counsellors appeared that did not seem to reflect underlying municipal differences. Take the case of a 52-year-old woman who has worked in a publicly subsidised additional employment assistant job in education until the programme was abolished, and whose subsequent unemployment insurance benefits have run out. She can expect one of the following advices:

- Require to actively apply for jobs plus job brokering
- Provide with an internship to explore if she prefers voluntary or paid employment
- Look for volunteer work
- Motivate for paid employment in health care (she has a vocational diploma as a senior citizen helper from 15 years ago)
- Publicly subsidised employment at a school

While none of the advices, in and by themselves, seems outrageous, this vignette unintentionally proves the fact that we have yet to figure out what to do with older unemployed with few chances on the labour market. For, as logical as each of the options may be when considered on its own merits: the fact that nine experts give at least five very different advices that differ fundamentally in terms of hope (give up on paid unemployment vs. you have to find it, just look harder) and direction (look for paid employment in the sector with the 15 year old credential vs. look for a subsidised job in the sector where you previously held a dead-end subsidised job that was abolished vs. look for volunteer work) is too much.

4.1.3 Work First

At the outset of this radical restructure of employment assistance, the policy and practice of the municipalities emphasised a ‘Work First’ approach which was influenced by overseas – especially the US, UK and Danish experience. In practice, this meant that more resources were devoted to intensive employment counselling and job search support (a weakness of the Dutch employment assistance system at the time) and that clients were placed under greater pressure to ‘help themselves’ by searching for work. At a time when unemployment was rising due to a recession, the focus of public policy shifted from reduction of long-term joblessness

towards encouraging people to move from income support to employment at an early stage in the unemployment spell. Reintegration contracts generally did not offer providers sufficient funds to invest in relatively costly forms of employment assistance such as wage subsidies and training. As a result, for many clients the nature of reintegration services shifted from help to overcome barriers to work towards (less expensive) help to search for work more efficiently.

Work First policies are based on a number of hypotheses which will be presented below. In recent research we were able to test some of these hypotheses. As Work first is very successful in the Netherlands, we will give it relatively much attention.

First, an important element found in many evaluations to be of great impact on the success of Work First is the *type of work activities* performed. When the activities are in a private work environment, the participants face the same conditions as they would in a real job. This real work environment influences the results of Work First projects significantly more than when the activities are taking place in a simulated work environment which is run publicly. Additionally, this real work environment should facilitate the contact with a network of potential employers. According to network theory, informal weak ties can be very productive (Granovetter 1974). Ochel (2005) showed that the skills learned in a private (real) work environment were much more valued by future employers than the skills learned in public work environment. The future employer perceives the participant as more productive and is therefore more quickly willing to hire him or her. Furthermore, Ochel also mentions that the threat effect of private work environment is larger, since the participants are more likely to consider the working conditions harsher than they would be in a public programme. This makes them more prone to accept a real job when in a private work environment, since the difference between these two options is much smaller. Thus, by offering a private work-environment, both a learning effect and a threat effect are created by the Work First programme.

Second, the *type of rewards* given to the participants is thought to make a difference for the willingness of the participants to take part in the project. The type of reward given for the work activities will influence the costs of taking up employment. When rewarding with a regular salary, benefits are already given up as well as income from tax and social contribution. Also, giving a salary in return for the work can be much more rewarding for the participants and take much of the stigma attached to the social assistance claimant status. This positive signal can also increase the employability of the participants towards potential employers.

The third determinant of success which was looked at when analysing the Dutch projects is the *type of sanctions* being used. Recent Dutch social assistance legislation (WWB Act 2004) has left room for the municipalities to choose from a broad range of sanctions which they can apply. This means that the different projects will be using different sanctioning instruments in their projects, which gwill thus have different impacts on the results. Naturally, harsher sanctions are thought to have a

positive influence on the results since this will act strongly on the participants' willingness to work.

Fourth, the type of *prime contractor* is also thought to have an influence on the results of workfare projects. Since 2002 the legislator has made it possible for Dutch municipalities to make use of private actors for the delivery of activation services. The reason for this was the claim that the private providers would be much more efficient than the government at delivering the services, partially due to their more performance-driven culture and also from the increased level of competition coming from privatisation. Some municipalities, however, still chose to act themselves as the head contractor of the project and only contract-out some parts of the project. Due to assumptions on government inefficiencies we can expect that these municipalities will thus be less effective than the private providers. Furthermore, Sheltered Workplace companies are also implementing Work First projects. These companies are not the most appropriate for Work First projects since they are designed for a target group which is at a much farther distance to the labour market than most Work First participants. This would mean that these sheltered workplace companies will not be expected to perform well.

The fifth and last determinant of success which is relevant and researched in the Dutch workfare projects is the *target group*. These can be split into two different groups, one based on the age of the participant and another based on their claimant status. First, projects which are solely targeting the young are expected to have better results since young people, with their skills less likely to be outdated, are much closer to the labour market. Second, projects can also be targeted at only the new claimants who are not yet inside the benefit system. This would make the project much more of a "gate-keeper" type of programme, where the focus is much more on the prevention of entry and also on the prevention of loss of capacity and willingness to work due to staying in the benefit for a long time. Projects which target only new claimants are thus also expected to have better results since these participants are much closer to the labour market than participants who have been inactive for a longer period of time.

In the light of these conclusions, it is favourable then to design Work First in such a way that it is initially restricted to the easiest target groups, and gradually move towards more difficult ones. One argument for this is that the type of services needed for those groups are different, and by targeting only one group the project can better suit the needs of the participants. Also, this allows the projects to increase their complexity in time, since the first groups will require a less intense intervention than the more difficult group. When Work First has successfully been applied to members of the easy-to-reintegrate group, almost all of them will have left the welfare system. Then the project can concentrate its efforts on the more difficult group.

Table 15. Determinants of success in Dutch Work first projects "a"[62]

Determinant of success	Frequencies	Exit-to-work[b]	Prevention-of-entry[c]
Work environment			
- Public/simulated	30%	42.0%	41.9%*
- Private/real	70%	49.4%	27.8%
Type of reward			
- Social Assistance benefit	76%	44.5%	37.9%**
- Regular salary	24%	44.5%	20.0%**
Sanctions			
- Partial reduction of benefit	56%	50.8%**	29.3%
- Refusal or suspension of benefit	44%	36.3%**	37.0%
Prime-contractor			
- Municipality	25%	53.5%	43.7%**
- Private provider	33%	45.8%	26.8%**
- Sheltered Workplace	22%	35.4%	11.0%**
- Others	20%	n.a.	n.a.
Target group (age)			
- Young only (<27 years old)	18%	52.6%	49.0%**
- Mixed young and old	82%	42.5%	27.5%**
Target group (status)			
- New claimants only	49%	51.2%**	37.4%
- Mixed new and current claimants	51%	38.5%**	28.8%

[a]Source E. Sol, J. Castongyay, H. van Lindert, Y. van Amstel 2007

[b]Number of participants who had found a (non-subsidised) job at the end of the programme as a percentage of the total number of participants who completed the Work First programme

[c]Number of Social Assistance claimants who withdrew their benefit claim after being directed to a mandatory Work First programme as a percentage of the total Social Assistance claimants who were eligible for a mandatory Work First programme

*p < 0.10, **p < 0.05

Micro and macro goals and effects of Work First

Table 15 presents in the second column the frequencies of the aforementioned supposedly determinants of success in the Work First projects. The next question to be answered is whether the presence of these determinants of success really has had a positive impact on the results of the projects. These results were measured using two performance indicators, the exit-to-work percentage and the prevention-of-entry percentage. The *exit-to-work percentage* was calculating by using only the number of participants who had completed the project, and looking at how many of them had found a job either before the end of the project or after completion of the project. The *prevention-of-entry* percentage was calculated by looking at the number of participants who were eligible for a mandatory Work First project at the time they claimed a social assistance benefit, and how many of them

[62] Percentages calculated with projects for which the data is available. Not all 49 projects provided data for all four indicators.

withdrew their claim due to the mandatory participation in Work First. This is not a perfect measure of the threat effect of Work First since other elements could have made the claimant withdraw their claim, but it is the best proxy available. A regular regression analysis was thus performed in order to see how the results of the projects were influenced by the different determinants of success. Table 15 also shows the results of the regression.

4.2 Major features regarding the application of legal provisions

From a legal point of view, it is important to distinguish between a broader sociological observation of law in relation to social work practice (Braye and Preston-Shoot 2006), and the examination of how administrative bodies and courts make (frequent) use of, and control, the exercise of strict competence or discretionary power legally conferred upon them. Even the last-mentioned dimension, which is of particular interest for us, cannot be discerned by an in-depth analysis here, given the wide scope of the three (main) social security schemes, including recent developments and the need for consistency with international and constitutional law. Therefore, apart from specific issues dealt with in situ, we shall focus on some figures that shed light on (the frequency of) administrative and judiciary actions.

4.2.1 Unemployment Insurance Law (Werkloosheidswet)

The "strictness of activation" is often assessed by how stringently fines or measures (Arts. 27 et seq. WW) are imposed. With respect to the WW regime, however, there is no specific administrative power for the autonomous or discretionary exercise of competences in terms of the evaluation of proportionality in cases of misconduct.[63] The relevant valuation criteria have already been framed through legislation and subordinated regulation. Nonetheless, the frequency of sanctions may provide a clue to (the need of) enforcing obligations. As reported for 2004, the UWV imposed about 16,000 fines, 113,000 measures and 70,000 warnings in that year (Noordam 2004a; 2006b). This seems quite a bit if we consider that the number of benefits enduring at year-end amounted to 323,400 in 2004 (2005: 305,140;[64] 2006: 249,000)[65] – all the more so if one takes into account that a person may receive more than one type of benefit. Put into the real context: the number of persons receiving benefits amounted to 307,000 in 2004[66] (2005: 291,000; 2006:

[63] *CRvB*, 27 april 2005, uitspraak 03/5920 WW.

[64] Source: Centraal Bureau voor de Statistiek. Differing slightly, the number of payouts for 2004 amounted to 322,000, and for 2005 to 307,000, according to the UWV. Whereas in 2005 (year-end recording) the number of *benefits paid for longer than 1 year grew by 5,000*, the figures on payouts for up to 6 months/for 6 months to 1 year decreased considerably (cf. statlin.cb.nl).

[65] Cijfers en trends: UWV. The total number of payments for 2007 is estimated at 209,000.

[66] Cijfers en trends UWV, Oktober 2006.

236,100, 2007 [estimation]: 210,000).[67] Even so, the decrease in sanctions in connection with the claimant's own responsibility for unemployment is greater: whereas 19,516 sanctions related to such misconduct in 2002, this figure successively dropped to 18,450, 16,316 and finally 14,277 in the years 2003, 2004 and 2005, respectively (Boot 2006). The amended Art. 24(2) WW (which defines blameworthy conduct leading to unemployment) is a reason, both for this steady decline and for the fact that the trend marking a shift from sanctioning towards reintegration will continue. Court practice shows that there was a genuine need for procedure simplification and the facilitated assessment of blameworthy conduct. Countless decisions of the *CRvB* alone deal with (questioning) the refusal of benefits due to blameworthy conduct as a cause of unemployment.[68] In this context, however, the term "suitable work" (*passende arbeid*) is still disputed, although it was the subject of very many lawsuits and law reports.[69] Fines are frequently contested as well.[70]

4.2.2 The Work and Welfare Act (Wet Werk en Bijstand, WWB)

Formerly, 65% of claimants under the Abw had been freed from obligations to seek and be available for – formerly "suitable" – work by way of sub-regulation (Noordam 2004b). This was one of the reasons for the amendment of the law. The sanctioning mechanisms on behalf of the new/extended (basic) obligation(s) under the WWB now make it difficult to identify a "common approach" on the part of municipalities in framing bylaws to regulate benefit adjustments in the case of misconduct by claimants (Arts. 18[2], 8[1] lit. b WWB). A uniform application of the law in respect of "generally accepted" work is not (yet) discernible.[71] This might be because the new term is much broader than "suitable" work. On the other hand, the bottom line (e.g. illegality) is usually clear.

Of course, a common approach to "sanctioning" is actually not favoured in view of decentralisation efforts. On the other hand, a need is seen to support municipalities in the development of policies, as the model bylaws show. It has been criticised that these model bylaws, to some extent, adhere to the old sanctioning regime, one

[67] UWV, Cijfers en trends UWV juli 2007.

[68] Cf., for instance and just recently CRvB 17-05-2006 (05/2225 WW); 24-05-2006 (05/3416 WW); 24-05-2006 (05/4699 WW).

[69] CRvB 19-04-2006 (05/2066 WW); 10-05-2006 (05/3469 WW); 12-07-2006 (05/5193 WW).

[70] CRvB 05-04-2006 (05/1141 WW, 05/ 1143 WW et al.); 19-07-2006 (04/6762 WW and 5803 WW).

[71] In this respect, there is often no real dispute, cf. CRvB, 9 August 2005 (05/3937 WWB-VV and 0/3918 WWB).

question being whether they may introduce the concept of "warning" as a form of "measure" (Sijtema 2004; Noordam 2004a–c). Some municipalities have exercised an alleged discretionary power in predefining an exemption from the need to align or weigh up the payout with the severity of misconduct in cases of fraud. In one such case, however, the district court[72] (*rechtbank*) of Maastricht decided that the municipality in question was wrong in doing so, and was bound by the proportionality criterion under general administrative law (Art. 3:4 *Algemene wet bestuursrecht* [Abw]).[73] The cases of fraud fell from 39,190 (ABW/WW, general) and 1140 (ABW/WWB, special grant) in 2004 to 32,370 (690) in 2005 (2006 [provisional]: 33,080 [1,220]). Moreover, the *CRvB* ruled that municipalities have no power of discretion to newly assess an infringement in each single case – irrespective of a lack of clarity where the phrase "according to the conviction of the municipality" (Art. 18[2] WWB) also refers to all of the infringed duties. Therefore, the court must "comprehensively" test a municipality's assessment (*CRvB*, 6 December 2005 [05/356 WWB].

In 2005, the district courts were called upon to adjudicate 7,900 cases concerning the WWB (2004: 3,400), and 300 concerning the Abw (2004: 2,700).[74] All in all, 8,300 cases on welfare assistance were reported for 2005, compared with a total of 6,300 for 2004. The *CRvB* received 1,100 new cases (2005) and settled 1,400 (2004: 900/1,200 and 2003: 900/1,000).

4.2.3 The Act on Employment and Income Depending on Working Capacity (Wet Werk en inkomen naar arbeitsvermogen, WIA Act)

Given that the WIA Act entered into force just before the beginning of 2006, it is not yet possible to discern lines of administrative action, or even legal procedure. In 2005, 9,200 cases involving disability laws were filed with the district courts, compared to a total of 20,100 social security cases (welfare assistance not included);[75] the *CRvB* handled 5,100 social security law cases (with disability laws not specifically declared).

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[72] For the system of adjudication (rechtsbescherming), which cannot be dealt with here, see Noordam (2006b), and Pennings (2006a). With particular respect to the WWB Noordam (2004b).

[73] Voorzieningenrechter Rechtbank Maastricht, 7 December 2005 (ABW 05/24 WWB VV).

[74] For this figure and the following, see Centraal Bureau voor de Statistiek (ed.), Rechtspraak in Nederland 2003 (2005), pp. 54 et seq., 60; and Rechtspraak in Nederland 2004 (2006), pp. 36 et seq., 42; Rechtspraak in Nederland 2005 (2006), pp. 44 et seq. and 50; all available sub www.cbs.nl.

[75] Rechtspraak in Nederland 2004 (2006), pp. 36 et seq., 42; www.cbs.nl.

4.3 Legal issues of contracting out and reintegration services

Activation is connected with the assignment of responsibility and its fulfilment (as well as its steering) – not only in terms of strengthening self-responsibility vis-à-vis the solidarity principle, but also in relying on specifically empowered actors to implement activation strategies. Here we have to distinguish between public and private actors, and also between various legal forms of action (sub-regulation, decision, contract, informal agreements, etc.). Hence, an important legal feature of implementation, where terms and conditions governing the operation of law become decisive,[76] is determined by the legal position of, and relations between, the actors involved.

4.3.1 The right to integration

The first and foremost responsibility is to achieve reintegration – this being a task for both authorities and providers and, under the more recent concept, a subjective right of the claimant, predominantly as a right to support. A certain kind of "reciprocity" is thereby perceived. At the same time, rights or claims of the beneficiary are particularly linked to self-responsibility (Sijtema 2004), as also expressed by the interconnection of rights and duties. In so far, "reciprocity" is strengthened not only by the manner in which the claimant's duty or performance impacts the receipt of benefits, but also by the way in which integration – taking the overall aim into account – is achieved as a common task. The right to reintegration and support is similarly embedded in all the main laws discussed here, thus shaping a two-sided relationship of the beneficiary vis-à-vis the responsible bodies, mainly those under the WWB (Arts. 9 and 10) and the WIA (Arts. 29 and 34, referring exclusively to partially disabled persons). This right is also valid with respect to Art. 72 WW.

The client, however, is very often not (yet) really aware of these rights. As shown by a survey by UWV, the notion of rights is mainly related to "benefits," and spontaneous knowledge of rights has proven "almost null."[77] From this perspective, it becomes clear that the inclusion of the client (Arts. 10–13 SUWI Act) in conceptualising, negotiating or even contracting for reintegration (services) is a task that is both challenging and sophisticated in light of certain imbalances inherent in consensual approaches.

[76] As to the use of the term "implementation" in a legal context, see Schwarze et al. (1993).

[77] Uitvoeringsinstituut Werknemersverzekeringen, UWV Verkenningen 1e Kwartaal (2006), Bijlage 4, p. 55.

4.3.2 Conceptualising the (re)integration level on a personal basis and contracting (out)

As our focus is on the legal perspective, we shall not deal with the general aspects of conceptualising activation policy. Such general issues would include comprehensive municipal reintegration policy[78] set forth in bylaws (Art. 8 WWB), cooperation between municipalities and UWV, supervision (SUWI Act), etc. Nor is it possible to simply give an overview of the whole set of reintegration instruments.[79] Instead, the focus is on individual-related reintegration activities like schooling or placement. The SUWI Act and the *Besluit* SUWI Act (of 20 December 2001, Stb. 2001, 688), have extended the autonomous status of the municipalities and their (former) obligation to buy reintegration services, and, with respect to the WIA Act, have introduced third-party contracting for reintegration services and their implementation (i.e. through private providers). Of particular interest here are market-based service provider contracts, which notably serve as steering mechanisms and impact the implementation and performance of services.[80] The conceptualisation of contractual relations is, legally speaking, still in motion. And, as far as this is discernible, there is hardly any jurisprudence on the subject so far.

4.3.3 Contracts for the purchase of reintegration services: The "superior level"

First, it is necessary to look at municipalities and the UWV (a legal person) in their role as contractors. It would go too far, however, to deal also with the broad aspect of competition (to be) established under the WIA Act, whereby the UWV, employers who are (fully) responsible for partially disabled employees (*eigen risicodragers*), and private insurance companies compete with each other (Barentsen 2006). Whereas this private market has not yet been developed, an existing reintegration services market – on the provider side – is already active, but still somewhat unstable (Verveen et al. 2006). The services market is most likely to be of importance to trans-national competition as well. Thus, for example, in a case involving the KG Holding N.V. (Kliq Holding), the European Commission asked the interested parties (competitors) to comment on its intention to initiate a procedure (cf. Art. 88[2] EC Treaty) concerning a government allowance (of about EUR 46 million) granted to the Holding for restructuring purposes (Official Journal of the European Union 2005, 12-11-2005, C 280/2). The Commission held that

[78] "Best Practices Reïntegratieverordening" is documented by Kluwer, Sociale voorzieningen 01, Wet Werk en Bijstand, Artikel 8 Aantekening 5. (5.1. Amsterdam; 5.2.5.2. Noord-Limburg, 5.3. Utrecht.) On the case Amsterdam Sol and Hoogtanders 2005. Moreover – particularly regarding Tilburg and Soest – see Willems-Dijkstra 2006.

[79] See, for instance, with respect to the WWB, Bruere 2005/2006

[80] As to both governance regimes and the emergence of contractualism: Mosley and Sol 2005; Sol and Hoogtanders 2005.

such state aid may affect competition and interfere with EU interstate commerce, since it does not conform to one of the exemptions set out in the Treaty (cf. Art. 87[2] or [3] EC Treaty). On 19 July 2006, the Commission decided that owing to the Holding's insolvency, the capacity to re-attain profitability as a condition for grant approval had become impossible, and hence, the already paid portion of the government allowance (EUR 9.25 million) was unlawful and had to be refunded.[81]

Moreover, and irrespective of all problems relating to the application of tender law in the field of social security, tender provisions under EC law generally apply (Eichenhofer and Westerveld 2005). This has led to highly complex tendering procedures (Struyven and Steurs 2003).

As regards provider contracts, it is possible to distinguish between standard contracts, designed specifically for standardized reintegration procedures, and contracts for individual reintegration options in favour of a single person. Particularly the latter raise the question whether the beneficiary is party to such a contract, or at least involved in it. The so-called client is sometimes denoted as the "object" of the contract (Westerveld 2002), and the contract is only concluded in his or her favour. Nevertheless, by far the most reintegration services purchased constitute standardised programmes (for particular target groups – "*doelgroepen*"). Although an (additional) public regulatory scheme for reintegration contracts exists, much speaks for the private law nature of most contracts.

Municipalities as purchasers

In providing services, municipalities rely on "third parties", notably reintegration companies. According to the former version of Art. 7 IV WWB, which was repealed on 1 January 2006,[82] municipalities were obliged to demand these services on the private market (Stb. 2003, 375). Now, the legislator assumes that there is a functioning reintegration market, thus no longer explicitly necessitating their obligatory participation. Indeed, municipalities frequently act as purchasers (Struyven and Steurs 2003). About 400 municipalities buy some 75,000 reintegration programmes per year. In 2005, 650 providers operated as reintegration companies, and municipalities spent EUR 1.6 billion on the reintegration market (Bruere 2005/ 2006). Municipalities specifically act on the basis of personal reintegration budgets, which – in principle – may be used both as a subsidy and to buy services. The legal framework of personal reintegration budgets was originally attuned to the Wet Rea (Act on the Reintegration of Handicapped Workers), as provided in the decision on the SUWI Act (§ 4.3. *Besluit* SUWI Act of 20 December 2001, Stb. 2001, 688). Nonetheless, as the municipalities were given wide-ranging autonomy

[81] Decision of 19 July 2006, Official Gazette No. L 366/40; cf. also Press Release IP/06/1036.

[82] By law of 1 December 2005, Stb. 2005, 625; in force since 1 January 2006: Stb. 2005, 716.

under the WWB, these budgets became a frequent instrument here (as well). And in contrast to municipal bylaws, a nationwide regulation (which does not exist) would have been regarded as contrary to this approach of decentralisation and discretionary power.[83]

The UWV as purchaser

The UWV is the body responsible for buying services on behalf of those entitled to reintegration under the WW and the WIA Act. Unlike municipalities, the UWV is subject to a more detailed public regulatory scheme (§ 4.1.–§ 4.3.3. *Besluit* SUWI Act and, where appropriate, the *Besluit [2006]*[84] on the assessment of individual reintegration agreements). The programme set forth by the UWV, regarding both the requisitions of reintegration companies and a list of general contract terms and conditions, applies nationwide. Both criteria are frequently adjusted.[85] The "*programma*" determines target groups, and defines the services and conditions offered. The list of general conditions for reintegration contracts stipulates contractual terms as well as further requirements to be met by the reintegration company. A model concept for contracts concluded by the UWV as a legal person contains 14 articles, two of which detail information duties for the provider, and the mode of financing by results and bonuses.

4.3.4 The client's perspective: A "quasi" contractual partner

General aspects

At least in terms of "contract law", the position of the claimant is rather weak. Under the comprehensive public regime determining rights and duties, "clients" primarily have no legal capacity to "create" rights and duties, given that they do not pay for the services rendered. Thus, to speak about a genuine contractual partnership, or even "freedom of contract," is ultimately impossible. The claimant's rights and duties are conceptualised by social security law, and beneficiaries are not free to conclude contracts. Irrespective of this, several issues must be distinguished in the legal conceptualisation of client contracting:

First, one could think of such contracts as tripartite agreements that establish a contractual relationship to either the municipality/UWV or the provider, or both. Second, when focussing on the beneficiary's legal declaration, it is necessary to

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[83] Cf. Kluwer, Sociale voorzieningen 01, Wet werk en bijstand, Artikel 8 Aantekening 5.4.8.; Artikel 9, Aantekening 4.4.

[84] Of 20 December 2005, Stcrt. 2006, 5.

[85] See the Algemene voorwaarden (re-integatiecontracten) 2007 UWV (September 2006), and the Programma van eisen re-integratiecontracten (-trajecten ontslagwerklozen) 2007 UWV (September 2006), both available sub www.uwv.nl.

distinguish whether he or she signs ("only") the reintegration plan or (another) "agreement", as explicitly demanded in the case of the "individual reintegration agreement" [IRO, b)]. Third, it is possible in this context that different specifications apply to different types of "agreements", e.g. for the "individually orientated reintegration budget by contract" (§ 4.3.3. *Besluit SUWI Act* [in contrast to a subsidy]) or the IRO. A more detailed account cannot be given here.

As regards the relationship between client and municipality (Sol and Hoogtanders 2005), the agreed procedure plan might serve as a contract insofar as it either constitutes or reinforces rights (also see Art. 55 WWB). Such a plan's status as a genuine contract is nevertheless often contested because, among other reasons, it is not deemed a real (private law) contract. At the same time, it is worth deliberating whether the general administrative law theory on "agreements" could cope with these particularities (Damen et al. 2005; van Wijk et al. 2005). Even so, there have hardly been any attempts to conceptualise "social law agreements" within or through this field of law.

The reintegration plan agreed by the client and the reintegration company, with the latter framing most of its provisions, is not part of the procedure plan (Sol and Hoogtanders 2005). Nonetheless, it is here that one may actually expect to find a private law relationship (Westerveld 2002), with much depending on the design or construction of this contract. As Westerveld and Faber state in their analysis, this relationship scarcely has any mutually binding force since the reintegration plan is mainly conceptualised "on behalf" of the client (Westerveld and Faber 2005).

The "Individual Reintegration Agreement" (individuele reïntegratieovereenkomst, IRO)

In most cases, persons who are entitled to *WW* (here: after 6 months) or are partially disabled are offered a standardised reintegration option by reintegration companies.[86] However, beneficiaries may want to pursue an individually conceptualised integration plan or turn to a specialised reintegration service. For these purposes, the aforementioned target groups can agree on an IRO, the "youngest shoot on the contractualism tree" (Westerveld and Faber 2005). This agreement, however, is not concluded by the individual client, but by a reintegration company and the UWV in favour ("*ten behoeve*") of the client (Art. 4.2. Besluit SUWI of 20 December 2001, Stb. 2001, 688). This course of action has been available since 14 July 2004, to persons entitled under the WW or partially disabled. Clients sign the agreement to indicate (only) that they have "seen" it.[87] This signature, which is

[86] Annex, A Besluit beoordelingskader individuele reïntegratieovereenkomst 2006, 20 December 2005, Stcrt. 2006, 5.

[87] Annex, E Besluit beoordelingskader individuele reïntegratieovereenkomst 2006, 20 December 2005, Stcrt. 2006, 5.

doubtful in its purport,[88] does not allow tripartite contract negotiations because the client has no substantive capacity in the last resort, the law (*besluit*) being quite clear on this point (Barentsen 2006). Moreover, the UWV must examine if it is better for the beneficiary to take part in a standardised option; if so, it will not permit the conclusion of an IRO.[89] Thus the beneficiary must first apply to the UWV.[90] If such an "application" is rejected, the beneficiary may file an appeal against this decision.[91] On the other hand, if an IRO is deemed admissible, some form of "cooperation" is required (Parliamentary Papers II 2004–2005). After the UWV has generally approved the conclusion of an IRO, the beneficiary must choose a reintegration provider. Subsequently, both sides agree on a reintegration plan outlining the course of action and the attendant steps to be taken. The beneficiary then formally applies to the UWV for an IRO, and the assigned reintegration coach or expert reviews the plan. If the latter is approved, reintegration can be started, with the UWV assuming payments during the term of the agreement. The service provider must inform the UWV about the beneficiary's progress and fulfil all conditions stipulated in the *Besluit beoordelingskader individuele reïntegratie-overeenkomst 2006* (Annex B). A sum of EUR 5,000 is paid by the UWV for the implementation of an IRO.[92] Prices are also regulated in the *Besluit* (Annex D); the basic principle here is goal-oriented payment: "no success, less pay."

The IRO has largely replaced the former personal reintegration budget (*persoonsgebonden re-integratiebudget*) in this field, but a few experimental forms for partially disabled persons still exist in three regions. These trial forms provide much more freedom and the possibility for clients to contract themselves,[93] as well as separate financial administration (financial support: EUR 3,630). Until May 2005, 14,525 requests for IROs had been submitted, with the launch of 14,426 reintegration projects reported in August 2005 (Van den Hauten et al. 2005). By the middle of 2005, IRO contracts had been concluded with about 800 reintegration companies (Verveen et al. 2006). Taking both WW claimants and the partially disabled

[88] E.g. in terms of the contract, insofar as failing to sign alone may not serve as a substantive breach with a view to sanctioning and to the fact that the nature of the relationship is determined by public administrative law, where the obligations are actually fixed; see Westerveld (2002).

[89] Annex, A Besluit beoordelingskader individuele reïntegratieovereenkomst 2006, 20 December 2005, Stcrt. 2006, 5.

[90] On procedural steps in practice UWV (ed.), information brochure "Ik wil weer aan het werk met een individuele re-integratieovereenkomst" (June 2006), available sub www.uwv.nl.

[91] See also Ministry of Social Affairs and Employment sub www.szw.nl.

[92] Annex, D no. I Besluit beoordelingskader individuelle reïntegratieovereenkomst 2006, 20 December 2005, Stcrt. 2006, 5.

[93] See van den Hauten and al. 2005 with respect to the municipalities and the period between 1998 and 2003 Bosselaar and Prins (2004).

into account, 27,000 IROs were awarded in 2005,[94] 7,195 in the first quarter of 2006 (UWV 1e kwartaal 2006, p. 13, loc. cit.), and 20,500 in the first three quarters of 2006 (UWV 1e drie kwartalen verslag 2006, p. 13, loc. cit). The IRO may help claimants to ride the crest of a wave by utilizing their rights and knowing about their duties (Westerveld 2002).

5 Outcomes: Activation works, or does it?

The proof of the pudding is in the eating. In this respect, the Netherlands do not have a good track record for activation policies. There is not such a strong evaluation culture as in the Anglo-Saxon countries. Knowledge of what works is scarce, and research that relates process to outcome even scarcer. In line with New Public Management, and following criticism by the OECD of lacking information on results ('emperor's clothes'), the Dutch government has recently started to commission evaluation research more often. In 2006 the effectiveness of the new organisational structure (SUWI) has been under evaluation, and for 2007 evaluation research of activation policies under the Welfare Act of 2004 (WWB) is underway. A lot of the evaluation research comes with contradictory results, which are now under discussion amongst Dutch researchers. This discussion will be presented in Sect. 6. First we choose to present some interesting outcomes of reintegration policies for the three major benefit groups as well as for the two promising new instruments that have been discussed in the last chapter, the IRO and Work First. In the previous chapter we already presented the effects of Work First in relation to its goals. In this chapter we will relate the Work First outcomes to the results of other programmes.

5.1 Effects of employment services for return to work

In a 2006 research commissioned by the peak body of providers in the Netherlands (Boaborea), the effectiveness of employment services ('trajectories') as well as the costs and benefits have been calculated.[95] This research shows effectiveness of employment services and points at the importance of the right moment to start offering these services ('trajectories'). Interestingly, the moment turns out to differ depending on the target group involved. Early intervention for example pays of for people on social assistance, but not for short term unemployed (see Table 16). The optimal intervention moment for disabled is earlier than for unemployed.

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[94] UWV jaarsverlag 2005, p. 23; available sub www.uwv.nl.

[95] SEO, 2006, Kosten en baten van reintegratie. Amsterdam: SEO; see also SEO, 2006, De weg naar werk. Amsterdam: SEO.

Table 16. Percentages of people returned to work, with and without employment services by moment of intervention, by benefit group

	No trajectory	Early intervention	After 6 months	After 1 year
Social assistance (after 2 years)	21	28	26	23
WW (after 5 years)	68	68	89	92
WAO (after 3 years)	2.8	8.2	13.9	5.5

Source: Kok et al. (2006)

5.1.1 Welfare recipients

For people on welfare trajectories turn out to increase substantially the chances to get a job, especially when the services start immediately. A so-called trajectory that starts immediately after entrance of benefit increases a person's chances by seven percentage points to 28%. When the employment services start after 6 months, the increase is only five percent points. This means that after 2 years 26% will have gotten a job. With services starting after 1 year, results are no more than two percentage points, adding up to 23% (see Table 16).

5.1.2 Unemployed benefit recipients

Exit figures for unemployment benefit recipients are historically high. After 1 year 68% have already returned to a job. So offering trajectories can hardly raise the exit chances. It turns out that a trajectory starting immediately even increases the duration of benefit due to lock-in effects. Apparently there is a large deadweight loss of employment services offered immediately. Normally, a person becoming unemployed does not really need help to return to the labour market. For this target group, trajectories after 1 year of unemployment turn out to be the most effective, with chances increasing from 68 to 89%. After 5 years 92% of the recipients have a job.

5.1.3 Disability benefits

For (fully) disabled who no longer have an employment contract it is next to impossible in the Netherlands to return to the labour market. When a person starts to receive a disability benefit, he or she is already 2 years out of their job. Without employment services, after 3 years only 2.3% get a job. Starting services immediately increases these chances by 8%, after 6 months by 14% and after 1 year by 6%. Following these figures it is better to start services earlier than in the case of the unemployed.

The figures presented above deliver gross effectiveness. We define gross effectiveness as the percentage of people on benefit that received employment services and are working after a certain period of time. Net effectiveness is defined as the increase in chance to get back to work, specifically as a result of the employment services. Of course, if the unemployed who find work due to employment services displace other unemployed, benefits are smaller. In general this is unlikely as the labour market will adapt to a larger labour supply caused by employment services. However, in times of unemployment displacement is likely to occur.

5.2 Costs and benefits of employment services

The same study analysed the costs and benefits of employment services for different target groups. It was estimated that the total benefits of these services for unemployed, disabled and welfare recipients including employed on sick leave are estimated to 1.8 billion a year. The benefits per trajectory were multiplied by the total amount of trajectories on a yearly basis. According to the study, the societal benefit amounted to EUR 1.1 billion or 164% of the costs (see Table 17). The calculation is very much influenced by the definition of cost and benefit elements.

Table 17. Societal return of activation by employment services in 2006

	Social Assistance	WW	WAO	Sickness	Total
Annual amount of trajectories	90.000	50.000	33.000	50.000	223.000
Cost in mln Euro	340	138	107	113	697
Benefits in mln Euro	463	254	362	760	1839

Source: Kok et al. (2006)

5.3 Unemployment benefit: Individual reintegration agreements

First research results on the effectiveness by type of contract for the unemployed (UWV population) are available. And the results for the IROs are favourable. In percentage of WW benefit recipients IROs are a factor 1.2–1.8 and for disabled WAO benefit recipients 1.1–1.4 times better performing than employment services delivered by tender. The researchers warn for too much optimism because as these first results might be biased by first users.[96] In 2008 the Dutch government plans to have a final evaluation, incorporating factors like motivation and costs.

[96] APE 2006, Derde voortgangsrapportage IRO. Den Haag: APE.

5.4 Social assistance: Work First

It is evident that since the WWB Act of 2004 the number of people on welfare has dropped, despite an unfavourable labour market situation. By the end of 2005 the total of people on welfare amounted to 328,000, 11.000 less than the year before. In almost half of the municipalities the volume dropped by 7.6%.[97] In a survey municipalities ascribe this success to their Work First policies, including their enforcement. Currently no less than 85% of the municipalities use a Work First approach. Workfare in the format of Work First jobs is regarded by Dutch municipalities as their most successful instrument in getting welfare numbers down (Divosa 2007). Comparing the results of regular activating paths with Work First indeed shows much better micro effects for Work First (see Table 18). As for macro effects, there are no data available at present.

Table 18. Exit-to-work of employment programme participants and Work First participant, in percentage of total participants

	Total welfare claimants	Welfare claimants with employment programme	Work First Benchmark projects
No exit	71	57	36
Exit other than work	14	25	31
Exit to work	8	18	32
Of which: subsidised work	1	0	5
Of which: regular work	7	18	29

Source: Sol et al. (2007)

5.5 Discussion[98]

Amongst policymakers and researchers in the domain of activation/reintegration policies, there is a growing interest in the question of effectiveness of all kind of public and private interventions. For an answer, researchers point at the approach of 'evidence-based' policy. Regarding the best approach to evaluation they have consensus (Wielers and De Beer 2005). A proper evaluation should, if possible, be based on an experimental design, in which a group that has been in contact with a policy is being compared to a group that has not been in contact with that policy. The difference in both treatments determines the net effectiveness. One controls for observable differences in background characteristics like age, education, ethnicity, unemployment duration etc. and, if feasible, also for non-observed characteristics

[97] Ministry of Social Affairs, WWB in figures, April 2006.

[98] Based on Sol 2007.

like motivation. Indeed, if participants are generally more motivated than non-participants, the effect of the instrument is overestimated (selection problem). In order to come to a truly correct estimate of an instrument, one should correct for the non-observed heterogeneity. This net effectiveness is calculated by deducting the gross effectiveness.

However, the major part of the evaluation studies conducted in the Netherlands do not satisfy these control criteria and thereby are not regarded as fit to decide on the effectiveness of the instruments used (De Beer 2001). Most of the studies rely on the reach of an instrument. For example, the effectiveness of 'trajectories' is measured by the extent to which they contribute to diminishing the amount of people on benefit. However, this can lead to serious confusion. One approach can be effective for a certain group under certain circumstances, but lose its effect in a larger group or in a different context.

This lack of univocal approach (*eenduidigheid*) is visible in the research reports which try to get a grip on the effectiveness of activation/reintegration service delivery. Many have lately been produced for the government, e.g. under the banner of the evaluation programme of the SUWI structure (PWC 2006). While some studies find a positive effect, others are much more negative about the effectiveness of the service delivery. For example, the SEO report '*Kosten en baten van re-integratie*' (2006) concludes that the societal benefits of the trajectories amount to 1.1 billion a year or 164% of the costs (see Sect. 6.3). Also the SEO rapport '*De weg naar werk, onderzoek naar de doorstroom tussen WW, bijstand en werk, voor en na de SUWI-operatie'* (2006) is in general positive on the reforms. The same positive picture shows the report by the Inspectorate on Work and Income (IWI) '*De burger aan zet, onderzoek naar de invloed van herbeoordeelde WAO-gerechtigden op hun re-integratie*' (2007). The latter report concludes that the employment services made a major contribution to the return of the disabled to work. But there are also studies that are a lot less positive on these SUWI reforms. For example the same SEO concludes in the report '*Werkt de re-integratiemarkt?*' (2006) that the chance for a person on benefit to find a job is hardly any larger when attending the employment services program. In general the effects are small, according to this report.

Also in the SEO report '*De weg terug, onderzoek naar netto-effectiviteit van re-integratiedienstverlening bij (gedeeltelijk) goedgekeurde niet-werkende arbeidsongeschikten 2002–2004*' it is concluded that participating in employment services hardly raises the chances of a partial disabled to return to the labour market. Finally, the Amsterdam Audit Office in its study '*Re-integratie, begeleiding van bijstand naar werk*' (2007) also comes to the conclusion that the effectiveness of the reintegration policy is meagre.

In general, one has to conclude that at least the results of the research on the effectiveness lead to confusion. Despite the large amount of studies in this area there are still many questions. A major weakness in these studies is that the context which can work in favour or against an instrument or certain policy is not taken in consideration.

A small amount of studies try to solve this problem by taking the context factors that might obscure a proper estimation into consideration (De Koning 2005; Koning 2005). However, purifying for (non-) observed heterogeneity does not take these away, but merely reduces them. In fact, taking them away is a mission impossible as success or failure are indissolubly connected to the 'be willing' mechanism. Eliminating the human factor in the process between measure and 'outcome' reduces the relation between cause and effect to a mechanical process.

6 Concluding remarks: Activation law and policy

In this chapter we painted a picture of the content as well as major socioeconomic and legal steering processes behind activation in the Netherlands. Activation – or reintegration – policy in the Netherlands has its strong and weak aspects. In general, we conclude from what we have learned in this chapter that activation works, at least for some. The number of people on benefit has gone down, and new instruments like Work First and the IRO do contribute to get people back in jobs. The privatisation and decentralisation that accompany activation policies show mixed results. This reflects the tension between the flexibility and cost-efficiency of outcome-based funding and the need to ensure that most disadvantaged in the labour market receive the substantial help they need, even if this is relatively costly and does not yield immediate employment outcomes. Furthermore, monitoring and evaluation is not very well developed, whereas amongst researchers discussion has started on the type of evaluation research needed. Only limited high-quality information is available to assess activation policies in terms of process and employment outcome. Due to highly decentralised systems of income support and employment assistance, policymakers and researchers lack sufficient centrally collected data. The high degree of discretion of municipalities and of the reintegration providers makes it difficult to draw clear national policy conclusions from local evaluation studies, although the NPM instrument of benchmarking does help, as the study on Work First showed. It is evident more in general that with the new Public Management steering framework of the new activation policies, politics changed. For one, politicians have become more sensitive towards individual cases. As an illustration, a major newspaper ('Telegraaf') reported this summer on its front page an individual case of a blind person who complained about his (lack of) treatment by UWV, which immediately led to questions in Parliament. A conclusion can also be made on the self-cleaning capacity of the system. Individual Reintegration Contracts (IROs) are an excellent example of effective *bottom-up* reaction to the New Public management created by the SUWI Act. Where all other arrangements followed the usual *top-down* policymaking process, the IRO started with questions in parliament and an amendment by Saskia Noorman-den Uijl – former MP of the social democrats – after complaints by citizens.[99] A major consequence of this

[99] Involving a legal provision of delegation.

'client's voice' is more marketisation, leading to a reintegration market with no less than 1,200 providers.

As regards conclusions on the emergence of a legal doctrine of activation – apart from work done by Noordam – we entered *terra incognita* in terms of analysis. This is why we finish the chapter with some legal insights.

Dutch social security law both directs and follows social security's functional shift towards activation with the prime aim of (re)integrating unemployed jobseekers, in a twofold manner: by reintegrating people into the labour market and by the process of (conceptualising) employment promotion. Activation is linked to the assignment and fulfilment of responsibility on the part of either individuals or the state and its administrative bodies, or in terms of reintegration tasks. The overall legal picture is not, however, merely restricted to the perception of rights and duties of the individual vis-à-vis the unemployment administration. Dutch employment promotion law constitutes a multi-level legal system of shared and specifically allocated responsibilities to either develop, work out, or implement activation strategies with the active involvement of the unemployed. It is multi-level in terms of both its inclination towards decentralisation or "outsourcing," and its assignment of legal autonomy and contractual power as a means of generating (sub-) regulations and (contractual) arrangements. The implementation of activation by sub-regulation has become more important, particularly with respect to the responsibility of municipalities. This will impact claimant rights and may – from a national perspective – lead to problems of uncertainty as well as inequality. Nonetheless, the municipalities' need to frame bylaws will make municipal policy more consistent within the respective communities and, hence, more secure in that respect, thus ultimately enhancing consistency with the equality principle (Art. 1 Gw). At the same time, again with respect to the WWB, there has been a shift in focus "from a legal claim to basic social assistance towards the discretionary award of entitlements to social services" (Kötter 2006a, b). This leads to a specific kind of flexibility, with the principle of individualisation now underlying the WWB as its striking example.

The individual's legal position is, first of all, affected where Dutch unemployment insurance law aims to prevent unemployment or to help insurants escape that situation by framing general insurance terms and conditions. This approach, which is rather indirect in its operation, relies on transitional and introductory law. An acquired legal position will remain unaffected owing to constitutional and, particularly, international law standards; insurance procedures in progress likewise enjoy protection. Apart from these individual legal positions, however, legal amendments are very frequent. Stability – or, more precisely, persistence – cannot be considered a characteristic of the more recent Dutch employment promotion law, even if one concedes that social law reforms are usually more frequent than reforms in other fields of law. Constitutional and international law standards greatly influence the reform of social security law. The impact of international law is particularly striking in the Netherlands, and can be explained by the constitutionally

established testing of formal laws as regards their compliance with ratified international standards.

6.1 Mutual obligations

We have come across a trend towards a "mutualisation" of legal relations, though not exactly in terms of "*do ut des*" (give and take). It is the individual situation that is above all taken into account, either through the sanctioning of misconduct in the area of benefit entitlement, or through the individual's (more) active involvement in the employment promotion procedure, e.g. via contributions to the "conceptualisation" of reintegration plans under the IRO scheme. The sanctioning regime of the WWB is flexible and thus determined by the individual's conduct, which in turn affects the "adjustment" of payouts. Rights and duties have been more strongly interlinked, with the duties to obtain and apply for "generally accepted" work reinforced in the process. At the same time, a shift of stress from sanctioning to reintegration is particularly acknowledged with respect to the amendment of Art 24(2) WW. Here, but not only here, the interactive – or, more precisely, integrative – approach under WW and the WIA Act is a notable accompaniment: the WIA Act has in some ways developed into a specific "branch of WW," at least with a view to partially disabled claimants. Quite a few problems may, however, arise in determining the legal relationship between *WGA* beneficiaries and '*eigen risicodragers*' (e.g. in terms of sanctioning).

6.2 Right to integration

Only recently have beneficiaries been granted subjective rights to integration and support, which, however, have to be made concrete. Against the background of organisational reforms to third-party contracting, these rights become operational by way of reintegration options that are "bought on the market." The attendant legal contracting procedure establishes a market that serves both private and public interests. Contracts can also lead to the creation of new duties. Together with municipal sub-regulations, these forms of flexible legal steering make it possible to adjust policies to precarious individual or collective situations. Yet there is also some danger of the exact purport of rights being left open. From the perspective of the individual beneficiaries, the trend towards "contractualism" does not make them real 'lawful partners', nor does this provide them with the substantive capacity to elaborate their rights or duties. They may nonetheless "be activated by becoming involved." Nor can the IRO yet be deemed an instrument for placing the individual on an equal footing with the other parties in the process of contractual employment promotion. However, it may prove successful in providing jobseekers with the *factual* capacity to contemplate their situation through active planning, while achieving legally approved results. Spirited interest on the part of clients can underscore this aspect.

6.3 A legal doctrine?

All in all, a proper "legal doctrine of activation" has not (yet) emerged. For now, legal and socio-economic steering approaches interact with each other. Thus, on the one hand, various concepts and instruments of law flexibly serve socio-economic concepts of activation. At the same time, of course, law is influenced and reshaped by activation policy, and new legal structures are framed to accompany its development. On the other hand, activation policy concepts are bound by solid legal standards, and are likewise reshaped in the process of their feasible legal implementation. But even if an integrated legal concept of activation is not to be expected in the near future, significant core elements of such a concept have indeed been observed, building on elements as the particular legal relationships under activation, the right to integration, decentralised legislation on activation, reintegration contract law, reintegration market law and social law on private sanctioning (*eigen risicodrager*).

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Making All Persons Work: Modern Danish Labour Market Policies

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1 Introduction

A better understanding of the types and effects of labour market policies is high on political and academic research agendas. Globalisation requires flexible labour markets, and ageing populations stress the need for more labour supply. Both factors highlight the role of labour market policies in reducing unemployment and increasing employment. How can we design and implement labour market policies so they work as best they can? This paper presents the Danish situation and some of the experiences made in the 1990s and 2000s.

Existing research has vastly contributed to our knowledge. Micro-based evaluation studies have shown that effects vary depending on the type of activation programme and the persons participating. Macro-based comparative studies have shown that the environment, in which activation takes place, not least the economic situation, is important for the effects of activation. What is lacking, however, are systematic reviews of how specific policies work in differing economic contexts for various target groups.

Since the start in 1978 labour market policies in Denmark have undergone several transformations, and experiences of the effects on different labour market policies have been made. Due to the high quality and availability of relevant data, Danish evaluation studies provide ample knowledge of activation. The Danish case is also interesting for political reasons. The OECD and the EU often make activation in Denmark a model of best practice that other countries may learn from (OECD 2006, Madsen 2003).

This paper contributes to a better understanding of the changing nature of Danish labour market policies and experiences made. The paper sets out the Danish situation of the political ideas of activation (Sect. 2), changing target groups (Sect. 3), labour law (Sect. 4), unemployment insurance (Sect. 5), activation (Sect. 6), and their outcomes (Sect. 7).

2 General orientation of the political ideas of Danish activation: activation as a concept

Activation can be seen as both very old and fairly new. If activation encapsulates the idea of “something for something,” it is as old as the first poverty laws which in Denmark date back to the nineteenth century. At that time the idea of mandatory activities in exchange for benefits dominated. Poverty relief went hand in hand with relief work institutionalised by workhouses in many local parishes and bigger towns. Much of the development of the welfare state has been about dismantling activation in this version of reciprocity. The expansion of social rights sought to remove the punitive sanctions and stigma often associated with social assistance as forced labour.

But activation has had a revival of more recent origins. In the US activation blossomed under the title of workfare with the Welfare Act of 1996, although workfare was already prevalent in many states several years before 1996. In Sweden active labour market policies were part and parcel of the Swedish welfare state package, the so-called Rehn-Meidner model from the 1930s that offered the unemployed cash benefits and job offers, training and education. With the evolution of the welfare state after the Second World War, Denmark enacted active labour market policy to boost employment and fight unemployment, not least inspired by Sweden.

In Denmark the ideas of workfare and active labour market policies slowly made an impression as politicians realised that the problems sparked off by the first oil crisis were of a more permanent nature and that these problems could not be solved with conventional Keynesian demand-side policy.

In Denmark activation started modestly in 1978, but the golden age of activation has been from 1993 and onwards, as Sect. 2 demonstrates. Most importantly, the labour market reform of 1994 introduced a principle of "right and obligation." The idea was that the unemployed after a period of receiving passive benefits reached an "active period" where they not only have the right to get an offer to participate in an active labour market programme, but also an obligation to accept and participate in the offered programme. The principle serves to qualify the unemployed to re-enter into ordinary work and to motivate the unemployed to seek work actively.

"Workfare" from the US and "active labour market policies" from Sweden were translated into Danish "activation" (*aktivering*), but the content of activation policy was translated into something that differs from the practice in the US. This meant that activation was not only relief work meant to keep a watch on moral hazard among claimants, but also an important step towards a more inclusive society by lifting qualifications. In other words, the intention of activation was to increase the productivity and the mobility of the jobless and at the same time test their availability, capability and willingness to work. By making benefits conditional on the acceptance of job offers as well as participation in activation, Denmark has attempted to cope with the moral hazard of benefit recipients in a system with generous benefits for low income earners in terms of accessibility, replacement rates and duration.

In Denmark activation aims to contribute towards an inclusive and socially cohesive society. Whereas poverty alleviation and decreasing social inequalities were the chief objectives of state interventions in the economies of the 19th and 20th centuries, it is perhaps now combating social exclusion in the twenty-first century. The vision is a socially inclusive society in terms of (almost) everybody participating in the labour market, irrespective of gender, age, ethnicity, health, qualifications, family responsibilities, etc. The inclusive society entails that every resident is able to materialise his or her potential capacities. Labour market participation is seen as salient to the individual's welfare and to the welfare of the collective by paying taxes. In order to achieve these things, activation is perhaps the most important policy.

Activation also serves to legitimise this relatively generous welfare system. The work test polices moral hazard and ensures that (almost) nobody cheats or lives off the system and in that way secures the system's broad support in the population, including of those who are not themselves likely to become unemployed and subject to activation.

During the 1990s there was gradually still more focus directed towards availability and flexibility in order to prevent lack of labour supply and avoid bottlenecks on the labour market.

Most recently, activation has become an important part of integration policies and vice versa. On the one hand, activation is seen as an instrument to get more persons from ethnic minorities integrated into the labour market. On the other hand, integration policy is perceived as salient to increase the number of persons in the workforce, i.e. by getting larger shares of non- and unemployed persons from ethnic minorities into work.

3 Changing target groups

Encompassing everybody is, in principle, the vision of activation. In practice, young claimants of social assistance were the first to be targeted by activation in 1978. In the 1990s the insured unemployed and sick-listed persons became targets of activation and most recently this is also the case for persons with handicap and persons from ethnic minorities.

The number of persons in different types of potential and actual target groups has changed significantly over the years since 1990. Today there are fewer people living on traditional unemployment benefits and more people on other non-employment benefits. The number of unemployed insurance claimants was more than halved from its peak of 273,000 persons in 1993, just before the labour market reform, to 132,000 persons in 2005 (see Table 19). In the same period, the number of people receiving social assistance dropped by 60%. However, the same positive development cannot be noticed for the voluntary early retirement and the disability pension. With around 250,000 claimants, the disability pension has become the largest scheme for managing elder people out of work.

A significant share of the population (7% of the population aged 18–67) is not in employment and lives off social security. To the share of non-employed or "hidden" unemployed, one could add people of working age who have withdrawn temporarily or permanently from the labour market on leave schemes or voluntary early retirement pay, respectively. This equals a share of 12% of the people of working age in receipt of either disability pension, voluntary early retirement pay or leave schemes.

Table 19 also shows the changing nature of Danish policies towards unemployment and employment. Leave schemes were first introduced and then gradually

Table 19. Full-time recipients of social security and social assistance, aged 18–67, 1,000 persons, 1990–2005

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Disability pension	245	249	251	260	261	267	264	268	267	264	258	255	259	259	258	247
Voluntary early retirement	87	91	94	99	104	136	166	169	184	178	179	179	181	186	190	168
Unemployment insurance	210	229	241	273	264	231	194	172	145	125	124	120	117	144	149	132
Social assistance	115	144	150	158	123	102	98	96	92	87	89	91	94	93	102	96
Rehabilitation	22	13	16	18	15	17	18	20	22	28	28	26	25	25	23	21
Municipal activation	0	0	0	0	32	38	41	41	42	45	46	48	48	47	32	30
AF activation	0	0	0	0	0	14	26	30	23	27	24	28	29	18	14	14
Sickness benefits	42	37	36	38	38	42	47	50	50	49	54	59	62	66	67	69
Maternity benefits	32	32	34	34	35	36	35	36	35	35	34	34	35	51	54	55
Leave benefits	0	0	0	0	0	79	62	43	36	32	24	22	18	4	3	4
Unemployment allowance	0	0	0	0	0	0	0	0	0	0	0	1	2	5	8	10
Total	753	795	822	880	873	963	951	925	895	868	860	862	869	897	900	845

Note: Full-time residents in Denmark, 31 December in the given year, i.e. excluding dead and migrants in the year. Activation is exclusive of wage subsidy schemes and voluntary early retirement. It includes the transitional allowance from 1994 onwards.
Source: Statistics Denmark (2007), own calculations

phased out. In 1995 79,000 persons claimed leave benefits and contributed in this way to reduce the number of unemployed. Today only 4,000 persons are claiming leave benefits. Partly due to changes to the benefit in 1998, the rapid increase of the voluntary early retirement claimants has stopped. The level of 168,000 claimants in 2005 is back to the level in 1996, yet still 70% higher than in 1993. Seen together with the emphasis on activation, the development from the improved possibilities of receiving leave benefits and early exit benefits to the benefits' gradual abolition and curtailment, respectively, illustrates how the Danish strategy shifted from mixing labour supply reduction and labour supply stimulation measures to focus more on labour stimulation alone.

Nevertheless, the share of benefit claimants has remained more stable than the development in the particular schemes. In 2005 the population share of claimants was 7% lower than in 1993, but 7% higher than in 1990. About one out of four Danes of working age receives social security, social assistance or activation benefits at any given point in time. Measured in this way, the employment policies since the 1990s have not been particularly successful. Indeed, the permanence of total numbers bears witness to the difficulty of getting everyone to become self-supporting.

But totals mask underlying important changes between and within benefit schemes. Besides the above changes, Table 19 shows how the number of sickness beneficiaries has gone up from 38,000 persons in 1993 to 69,000 persons in 2005, reflecting not only that the labour force has grown but also that this growth is in part made up by people who are more frail and thus more likely to become sick and reliant on sickness benefits than the people in the previous labour force. In other words, to achieve a successful increase in the employment rate, one must accept that sickness absenteeism is also likely to increase.

Finally, Table 19 shows that from 1994, when 32,000 persons were in full-time activation, the number increased to over 77,000 persons in 2002 and fell again to 44,000 persons in 2005. These ups and downs in the number of activated people can in part be explained by changes in the policies and their implementation, and in part by the economic cycle.

The target group for the active labour market policy in Denmark is thus both wide and large in number. In general, it includes people of working age who are without work or cannot obtain work on ordinary terms. Most of the persons in the target group receive some form of public transfer income.

But activation policy also includes persons in work who need to change jobs or working conditions because of physical or psychological health problems.

As a result, active labour market policy is designed to increase employment among persons with very different types of unemployment problems. More precisely the specific target groups are:

- Unemployment benefit claimants
- Social assistance claimants
- Sickness benefit claimants
- Persons whose working abilities are changed or reduced, but who are expected to regain total or partial working abilities (through rehabilitation programmes)
- Persons with permanently reduced working abilities, but still with sufficient capacity to work
- Persons who receive early retirement benefits (and are therefore estimated to have rather low working abilities).

Although the target group of what we today call active labour market policy has changed during the last 20 years, there is certain stability in the core group. While rehabilitation for employed workers who experience changed or reduced working abilities has been offered since the 1960s, offers of activation for insured and non-insured unemployed on unemployment benefits and social assistance, respectively, have been provided since the late 1970s. However, the inclusion of persons with a permanent reduction in working ability started in the late 1990s and is thus a fairly new element of active labour market policy.

The target group has changed over time and so has the specification of the unemployment groups that are eligible for activation.

Today claimants of unemployment benefits under the age of 30 have the right and the duty to get an activation offer after 6 months of unemployment while claimants over the age of 30 have the right and duty to activation after 9 months of unemployment. The so-called passive period without the right to activation has been reduced during the 1990s and 2000s from 4 years in 1990 to 6–9 months in 2007.

Social assistance claimants can be divided into two groups. One group consists of persons who have no other problems than lack of work. Persons in the other group have problems in addition to unemployment such as social problems, health problems, or abuse of alcohol or narcotics. In general, the local authority has the right to decide on whom to activate and for how long a period, but certain minimum standards have to be met. Recipients under the age of 30 must receive an offer before 13 weeks of unemployment while recipients over 30 years receive an offer after 9 months of unemployment, the same offer as unemployment benefit recipients receive. These offers of activation apply to both groups of social assistance claimants. Specifications of the target group for activation of social assistance recipients have not changed since 1998, when activation for this group became mandatory with the Act on Active Social Policy. The types of offers for social assistance claimants have in practice undergone minor changes over time.

Since the late 1980s, when unemployment was very high among the youngest on the labour market, there has been a special focus on this group in the activation policy. The Youth Allowance Scheme of 1990 introduced obligatory activation of 18–19 year-olds and in 1992 the group was extended to include 18–24 year-olds. The labour market reform in 1994 did not bring major changes for young non-insured unemployed, but in 1998 a "Youth Package" was introduced cutting the duration of unemployment benefits for the young (under 25) unskilled unemployed down to 6 months. In spring 2006, under negotiations of the so-called Welfare Reform, the Liberal-Conservative Government tried to extend the youth group by 5 years to include 30 year-old persons, but without success.

4 General labour laws in Denmark

To understand a country's diverse measures of labour market policy, one must be familiar with its labour law framework within which such measures take effect. The Danish Constitution (*Grundlov*) contains in § 75 para 1 and 2 a vague but important provision,

- (1) In order to advance the public interest, efforts shall be made to guarantee work for every able-bodied citizen on terms that will secure his existence
- (2) Any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by statute in such respect.

because this provision has been implemented in a large number of acts of Parliament dealing with e. g. unemployment benefits (Rehof 2002). But in any case it is not the *Grundlov* that guarantees social security benefits as a matter of rights, but the specific acts of the Government. Analogical § 75 para 1 gives no "Right to Work." It reflects a problem of the social law of unemployment in general, i.e. the interrelation between the abstract possibility of work and the concrete reasonability for the unemployed to accept an offered job.[1] In other words, § 75 *Grundlov* is not the legal basis for the Danish active labour market policies.

4.1 Labour law: Enacted law alongside collective bargaining law

Denmark does not have a cohesive "labour code." The regulations governing labour relations[2] rest on "heterogeneous and fragmented legal foundations." Great importance is thereby attached to the agreements concluded between the labour market parties, whose traditional roots extend way back into the nineteenth century. After a long phase of labour dispute, employers and trade unions reached a historical compromise in 1899, referred to as the "September Conciliation" (*Septemberforliget*): workers were given the right to form associations and conduct collective negotiations, while the employers' authority to give operational directions was accepted by the unions. In 1910, a special court was established for the settlement of disputes arising from the now recognised collective labour legislation. It was given the name "Labour Court" (*Arbejdsret*) in 1964 and has had jurisdiction in such matters ever since.

The important role of collectively agreed regulations for labour law nevertheless did not make state legislation superfluous.

In this context, it is first of all necessary to point out the *Tjenestemændslov*, which was enacted in 1919 to regulate the remuneration and conditions of service on behalf of civil servants and public-sector employees. Since that time, this public service legislation – similar to the legal situation in Germany – has formed a part of administrative law, not labour law. It applies to state employees in particular positions (i.e. in the judiciary, the police force, etc.), church officials and elementary school teachers. Municipal public servants are essentially put on a par with state civil servants under municipal law. Notable elements here are: the service relationship cannot be terminated by the employer; an employee's removal from office is only possible as a result of a severe disciplinary offence followed by a judicial procedure under "civil service law;" and, in cases where an official agency is

[1] Ketscher (2006) refers in this connection that the work must be suitable to the individual under the aspects of his/her age, health, education etc.

[2] This paper follows the major Danish publications on labour law: A preliminary overview in German has been rendered by Dübeck (1996) and Hasselbalch (2005) and Nielsen (2003) have both written introductions in English.

dissolved, employees are entitled to apply for a transfer to another office or to continued remuneration for a duration of 3 years (*rådighedsløn*).

Apart from civil servants, the legislature soon dealt also with agricultural workers and seamen. Owing to the shift within the working world towards a society comprising ever more white-collar workers, the *Funktionærlov* of 1938 was to gain greater importance. This act provided protection to the hitherto – by comparison – sparsely organised group of private-sector employees.

Denmark's accession to the EU in 1973 called for extensive labour legislation aimed at specific problem areas, but nonetheless applicable to all workers. Noteworthy examples (taken from a long list of enactments) are: the Labour Protection Act, the Part-Time Work Act, the Act on Fixed-Term Contracts, the Holidays Act, the Sickness and Maternity Benefit Act, the legal regulations governing transfers of company ownership, or the Act on the Information and Hearing of Workers. Beyond that, labour law concepts are reflected in other fields of legislation, for instance in the wage privilege under bankruptcy law, in data protection legislation and many other regulations under administrative law, as well as in the broad legal field of social security, notably unemployment insurance and insurance against work injuries.

The continual growth in state legislation over the past 30 years has, time and again, led to situations in which component parts of labour law are "doubly" regulated. In such cases, the solution is not always simple, especially as EU legislation must be taken into account additionally and to an increasing degree.

4.2 The right to terminate employment

Due to its lack of a Dismissal Protection Act, Denmark takes an exceptional position not only among the Nordic countries, but also within Europe as a whole. The definition of the right to give notice of termination, similar to wage calculation or the scheduling of working hours, is regarded as a "central concern of collective agreements." Although Denmark signed the 1982 ILO Convention (No. 158) concerning the Termination of Employment at the Initiative of the Employer, it has so far failed to ratify this Convention because it did not want "to accept political responsibility for an area that is regarded predominantly as a matter of collectively agreed regulation." Nevertheless, the modalities of dismissal have been enacted for certain employee groups, notably for white-collar workers under the *Funktionærlov*, upon which numerous collective agreements have meanwhile also been modelled.

Fixed-term and project-related employment relationships are terminated without notice upon expiry of the time limit or completion of the project, respectively. The Fixed-Term Contract Act thereby prohibits abuse, say, in the form of successively renewed term contracts for the purpose of circumventing notice periods.

As a rule, however, employment contracts are concluded on a permanent basis and can only be terminated by way of notice. The letter of notice is not subject to any particular form, unless stipulated otherwise by collective agreement. It must be forwarded to the contracting party in a "clear and unambiguous" manner. Notice periods, on the on other hand, can be based on law or collective agreement; they may vary in length depending on the type and duration of employment (Table 20).

Table 20. Notice of termination

	Upon completion of probationary period	After 2 years' employment	After 5 years' employment	After 10 years' employment	Approx. labour market share (%)
Construction workers	3 days	3 days	5 days	5 days	10
Industrial and transport workers	28 days	1 month	2 months	3 months	40
White-collar workers	First 6 months: 1 month	After 6 months: 3 months	4 months	6 months	50

It is conspicuous that the notice periods for the two large groups of industrial workers and white-collar workers are very similar to those stated under § 622 BGB (German Civil Code), with the periods for white-collar workers even surpassing those under the BGB.

4.3 Types of dismissal and dismissal reasons

The termination or alteration of employment relationships by the employer, in principle, comes under the employer's decisional authority (*ledelsesret*) recognised by collective agreement, provided that the notice periods are observed.

Dismissal with the option of altered conditions of employment: Alterations to an employment relationship remain under the employer's decisional authority as long as they are not so fundamental as to require a termination of the existing contract. In the latter case, the employee then has the optional right either to accept the alteration or to have it treated as a dismissal with the relevant consequences.

In the light of workers' vital interest in maintaining their jobs, the employer's "freedom to give notice" (*afskedigelsesfrihed*) has progressively been restricted over a long period of time. This has primarily occurred through a review of the reasons stated for dismissal. Hence, one yardstick can be the general requirement that the dismissal grounds are "objective" (*saglig*) or "reasonable" (*rimelig*) – in other words, it must be examined whether a "cogent reason" for dismissal exists.

The definition of "cogent reason" has been the subject of numerous court rulings. To render just a few of the basic criteria, here some examples:

- Economic reasons such as rationalisation or restructuring measures are not deemed "cogent" if

  - measures less incisive than dismissal could have been found in the individual case
  - new staff is simultaneously hired
  - the seniority of the dismissed person, for example, is not sufficiently taken into account
- In the case of public-sector employees (who are not civil servants), the reasons must not violate the principles of administration, e.g. the proportionality principle
- Reasons inherent in the employee's personal conduct are deemed *saglig* only if that conduct was admonished prior to giving notice of dismissal
- A dismissal on the grounds of an employee's lacking skills is not justified if the employment relationship has already lasted for several years or if the employer failed to make any offer of on-the-job training
- Sickness can constitute a dismissal reason if there is evidence for the fact that, due to the sickness, the employee concerned will no longer be able to perform his or her work in the foreseeable future.

Another yardstick for reviewing dismissal reasons is that they must not violate existing enacted law. Here, a few keywords: freedom of association, equal treatment in terms of sex and ethnicity, equal wages for women and men, parental leave, care of close relations, candidature for municipal elections, working time, and mass dismissal. For instance, a dismissal based on the fact that the worker applied for parental leave or refused to work beyond the legally defined working hours would be denied on the law.

If employees fail to fulfil their contractual obligations for reasons that are not due to operational requirements, this constitutes a breach/non-fulfilment of the employment contract (*misligeholdelse*). Unlike the otherwise applicable provisions of private law, a special feature of labour law is that a "fundamental" breach of contractual obligations does not suffice as a reason; rather, such a breach of duty must be deemed "gross" (*grov*). The employer then has the right to

- Dismiss the worker without notice – extraordinary dismissal (*bortvisning*)
- Claim damages from the worker pursuant to Sect. 4 *Funktionærlov* (at least half the monthly wage)
- Deduct a corresponding amount from the worker's wage.

As to what kinds of misconduct constitute "gross" employee deviance, there is a wide-ranging casuistry.

Examples range from absence without leave to the incorrect statement of occupational qualification upon conclusion of contract, and from alcohol abuse during working hours to the unauthorised private use of IT equipment.

In each individual case, the particular circumstances must be assessed, for instance the employee's longstanding commitment, but also the type of activity performed. The rule is that the yardstick for a "gross" breach of contract is more lenient for blue-collar than for white-collar workers.

4.4 Legal consequences: Recourse to the courts

In cases of effective routine dismissal (i.e. statutory or contractual), the dismissed worker's wage, along with any bonus claims, continues to be paid, even if the worker has been released from duty. White-collar workers are legally entitled to paid leave for the purpose of seeking new employment. The *Funktionærlov* moreover provides that even white-collar workers who have been given due notice in a "lawful" manner have a claim to seniority-based severance pay (*fratraedelsesgodtgørelse*), amounting to a salary of 1 month (after 12 years), 2 months (after 15 years) or 3 months (after 18 years). Many collective agreements contain a similar regulation.

If the lawfulness of a dismissal is contested, the available options for legal recourse are not readily straightforward.

One path of recourse is to the courts of general jurisdiction, involving the following stages of appeal: local courts, regional courts and the Supreme Court. A division into court branches according to labour law, social law or administrative law does not exist. The local court (*Byret*) in principle has jurisdiction only over individual employment contracts or the interpretation of legislation concerning these. Hence, if a unionised worker institutes legal proceedings based on a breach of collective agreements, the local court will decline jurisdiction. If the competent court declares the dismissal to be of no effect, the dismissed worker is entitled to an individual assessment of damages. Judicial decision-making authority is disputed if both the general courts and the arbitration tribunals under labour law (see directly below) have jurisdiction.

If the legal action involves a question concerning relations between the social partners, the earlier mentioned *Labour Court* will have exclusive jurisdiction. Workers nevertheless have recourse to the general courts if their wage claims constitute the sole issue and the competent trade union fails to take appropriate action. If a matter in its entirety is subject to the jurisdiction of the arbitration tribunals under labour law, the Labour Court can refer the matter to these tribunals, unless the parties agree to have it adjudicated by this Court.

Depending on the dismissal grounds, recourse can be taken to a series of special industrial tribunals or quasi-judicial arbitral bodies, including the

- *Arbejdsmiljønævn*, in cases involving labour protection
- *Ligestillingsnævn*, for an infringement of the equality principle
- *Klagekomitéen for etnisk ligestilling*, in the event of unequal treatment on grounds of ethnicity.

The by far greatest practical significance in terms of labour law is, however, accorded to the arbitration courts (*faglig voldgift*). These are based on agreements between the social partners and also have jurisdiction in matters of dismissal. Thus, if no solution can be found in the course of "organisation-based" negotiations, a written complaint must be submitted within seven days to the *Afskedigelsesnævn* – the permanent arbitration court responsible for dismissals and established under

the LO/DA Basic Agreement pursuant to the HA dated 31 October 1973. The social partners also act as the cost units sponsoring this *Afskedigelsesnævn*, which as a quasi court of second instance has since been called upon to decide whether or not dismissals are justified on objective grounds. In cases of a violation of section 4(3) HA on the grounds of "unreasonable" dismissal of a unionised worker, the *Afskedigelsesnævn* has direct jurisdiction. The tribunal is composed of one representative from each side of industry along with a presiding judge appointed by the *Højesteret*. An appeal to the *Afskedigelsesnævn* has no suspensive effect. The arbitration procedure fundamentally adheres to the general rules of procedural law. The burden of proof, however, is regulated as follows: In the case of an exceptional dismissal, the employee must prove that notice was given, while the employer must prove that this was justified. In the case of a routine dismissal, the employee must prove that the grounds were not objective, while the employer is committed to the extensive clarification of the circumstances – which is regarded as a "shared burden of proof." Prior to the actual proceedings, the parties are heard in a preparatory meeting. The aim is to obtain a ruling as quickly as possible in the final oral proceedings. Matters coming under section 4(3) HA must be decided within the period of notice because the dismissal will be revoked (*underkendelse*) if it is declared ineffective. In such cases, the employment relationship is upheld without any changes. If one of the parties fails to appear, the case can be decided without it.

As a rule, if a dismissal is declared to be of no legal effect, a severance payment based on the duration of the employment relationship will be decided upon. Here again, the *Funktionærlov* provides a guideline: pursuant to section 2b, the amount of severance pay is equal to the salary accruing for half of the notice period if the employment relationship lasted for at least 1 year; employees over the age of 30 are entitled to 3 months' salary.

In most cases, the losing party is ordered to pay the costs of the proceedings; exceptions are possible, however.

5 The law of unemployment insurance

5.1 Membership – financing – organisation

In Denmark, there is no obligatory unemployment insurance. Only persons who are voluntary members of an unemployment fund (*arbejdsløshedskasse*, AK) are insured against a loss of earnings owing to unemployment. Non-members must rely on social assistance benefits awarded by the municipality if they lose their jobs. According to the law, an AK is

> "… an association of persons who have joined together for the sole purpose of providing economic assistance to each other in the event of unemployment, and for carrying out additional administrative duties conferred upon the fund by the legislature."

Traditionally, the AKs cooperate closely with the trade unions; however, there is also an AK for the self-employed. Membership must not be made to depend on the applicant's affiliation with a trade union, but the latter may require its members to join the corresponding AK. Among other criteria, membership is possible from the age of 18–63, and is preconditioned on a gainful activity in the sector represented by the AK as well as on residence in Denmark. Standard contribution amounts do not exist: depending on the insurant's age and employment status (e.g. recipient of early [partial] retirement benefit – *efterløn*), the annual amount ranges from 4.8 to 7 times the daily unemployment benefit (*dagpenge*) to be claimed by the insurant upon occurrence of the risk.

In a certain sense, employers also contribute to insurance financing since all employers are obliged by law to pay every dismissed employee who is an AK member the unemployment benefit for the first and second day of unemployment (*Dagpengegodtgørelse)*, unless the dismissal is "fundamentally" attributed to the employee. The insurant is not entitled to claim unemployment benefits for these two days.

As the state refunds "recognised" AKs their share of expenditure on *dagpenge* and *efterløn*, the AKs endeavour to obtain recognition. The prerequisites for recognition include, among others, the AK's functional delimitation, its membership of at least 10,000 persons and its fulfilment of state requirements concerning benefits. The law details not only these state-imposed duties, which range from the AK's payment of *dagpenge* and *efterløn* to its participation in activating measures, but also the provisions on efficient administration and contribution assessment, and the supervision of AKs by the *Arbejdsdirektorat*. This regulatory body comes under the organisational auspices of the employment ministry, and is responsible for the functional and legal supervision of the broad field of unemployment insurance and activation policy within the ministry's sphere of competence.

5.2 Benefit eligibility and entitlements

Chief among unemployment insurance benefits is the provision of income replacement upon loss of employment – in other words, the aforementioned unemployment benefit or *dagpenge*. It is granted to AK members who (simply put)

- Have become unemployed through no fault of their own
- Are capable of work
- Seek regular gainful employment.

Additional requirements include:

- One year of membership in a recognised AK
- Specific periods of employment within the preceding 3 years
- Registration as unemployed with the employment office
- Availability for the employment office's placement efforts

- No receipt of sickness benefit
- Cause of unemployment not due to strike or lockout.

Unemployed persons who participate in any measure of active employment policy receive during this period a so-called activation benefit (*aktiveringsydelse*), i.e. a cash benefit whose amount corresponds to the individual claim to *dagpenge*.

For young persons under the age of 25, the law provides "special regulations on the receipt of *dagpenge* or activation benefit." Unemployed members of this age group who are without occupational training are only entitled to 50% of the maximum rate of *dagpenge*. Young jobseekers who accept a training offer are eligible for 82% of the maximum rate. During the first 6 months of unemployment, this group of beneficiaries is allowed to attend university courses for up to 20 h per week while receiving 50% of the maximum *dagpenge* rate; they must, however, remain at the disposal of the employment office.

Dagpenge is not paid to persons who

- Without sufficient reason (*fyldestgørende grund*), refuse to accept a reasonable (*rimelig*) job offer from the employment office
- Without sufficient reason, stop working
- Have been dismissed on grounds fundamentally ascribed to their own actions
- Without sufficient reason, refuse to cooperate in measures of active employment policy
- Break off a training programme offered to them within this frame.

The duration of the sanction for loss of employment through one's own fault ranges from three weeks upon first occurrence to ten weeks in repeated cases.

The calculation of the individual benefit amount is based on the AK member's earnings during the previous 12 months of employment. It is set at 90% of earnings, subject to an upper limit of DKK 3,415 per week (as of 1 January 2007, EUR 1 equalled DKK 7,45). As average earnings have long exceeded this maximum, the 90% wage replacement rate applies only to the lower income bracket; on average, *dagpenge* replaces earnings at a rate of 63%. *Dagpenge* is computed for 5 days per week, but is paid out every 14 days, or for 4 or 5 weeks, respectively. The duration of the claim is 4 years and is split up into 1 year's receipt of *dagpenge* (*dagpengeperiode*) and 3 years' "receipt of benefit" (*ydelseperiode*), with the latter period referring to participation in paid activation measures. A prolongation of this timeframe by up to 2 years is possible for a number of reasons, including sickness and incapacitation, parental leave, care of close relatives, or terminal care.

An AK member who has completed the 55th year of age upon expiry of the claim and who will meet the requirements for receipt of *efterløn* upon reaching the age of 60 retains the right to *dagpenge* until this date. Persons who are already 60 when they become unemployed are entitled to *dagpenge* for a maximum of two and a half years; after 6 months of unemployment, they have both the right and the duty

to participate in activation measures. Persons who have already been unemployed for two and a half years before the age of 60 lose their right to *dagpenge* upon attainment of this age.

Upon expiry of the benefit period, a new claim to *dagpenge* can be acquired on the basis of 26 weeks of employment within 3 years.

5.3 Benefit conditionality

The foremost duty of the unemployed is to be available for job placement on the general employment market (*rådighed*) and to make a personal effort at finding work. If suitable employment is found, it must be taken up on the next day. A job is deemed "suitable" if in terms of working hours and employment conditions it can be regarded as usual within the scope of the insured's previous employment. If the contact arranged between a jobseeker and an employer does not lead to a new employment relationship, this must be reported to the AK, which will then review the insurant's subjective readiness to work. If necessary, a "job plan" is drawn up.

"The job plan describes the jobseeker's personal employment goal. The starting points are the jobseeker's personal wishes and qualifications from the perspective of labour market demands. The plan outlines the job offers which can contribute to goal achievement."

This job plan will then be the yardstick for assessing the insurant's readiness to work. If unemployment persists beyond 3 months, the range of work offered is extended. In such cases, also reasonable (*rimelig*) work can be considered "suitable." Henceforth, every job which the insurant "can perform" must be accepted, even if it is outside the range of his or her previous types of employment. In case of doubt about the insurant's readiness to work, the AK will arrange an examination. If these doubts cannot be clarified, insurants can be granted a term of up to 3 months to provide evidence of "contact to the job market" – that is, of their efforts to find work. A subsequent corroboration of the aforementioned doubts can entail a suspension of *dagpenge* payments until insurants are again prepared to demonstrate their readiness to work or to provide proof of more than 300 h of work within a 10-week period.

An insurant's personal conduct may justify the reproach that his or her unemployment is self-induced, thus giving rise to the aforementioned sanctions. This will generally be the case if the unemployed person terminated the employment relationship without "good cause" or declined a job offer.

The administrative provisions on the assessment of personal grounds are not always as clear as they are for the transport issue. Thus, an AK member can reasonably be expected to accept an up to 3-hour journey by public transport to the new workplace during the first 3 months of unemployment. Later, this commuting time can be extended to 4 h, unless the insurant lives in a region where even longer trips to work are customary. Job offers that demand excess commuting times can therefore be refused. Other accepted personal grounds include: the refusal to participate in the production of war material; the termination of an employment which

fails to comply with "general labour law principles;" or proof of the fact that the insurant was physically harmed by his or her spouse/partner for accepting a job that necessitated a change of residence.

As a rule, however, the most often contested ground is that the job offer is not "suitable" or, after 3 months' unemployment, not "reasonable." In such cases, these legal terms may have to be clarified judicially on an individual-case basis.

5.4 Legal recourse

Legal recourse to the general courts is preceded by an administrative procedure. Thus, decisions taken by the AK can be contested before the *Arbejdsdirektorat*. If no remedy can be found, a special "labour market appellate body," the *Arbejdsmarkedets Ankenævn*, composed of representatives of the administration and the social partners, can be applied to. In 2004, this body was removed from the organisational structure of the employment ministry and affiliated with the *Ankestyrelse*, whose secretariat it now jointly uses. This *Ankestyrelse* is the "judicial authority of ultimate resort" for administrative decisions taken in social affairs and employment. With over 250 public servants, it is the "the country's largest juridical workplace". In January 2007, a separate "Employment Board" (*Beskæftigelseudvalg*) was established for the handling of employment matters, including *dagpenge* and activation. In 2004, the *Arbejdsmarkedets Ankenævn* decided 518 cases concerning unemployment insurance, 14% of which led to a revision of the decision taken by the *Arbejdsdirektorat*.

According to the Danish constitution, the courts decide on the scope of power entrusted to administrative authorities. This means that following an administrative procedure, recourse to the general courts is open all the way up to the Supreme Court. These stages of appeal are used infrequently in practice, but are nevertheless resorted to from time to time, even in dealing with purportedly simple issues of unemployment insurance.

6 Activation measures

In principle, there is no distinction between active measures applied to recipients of different types of social security benefits. Initiatives to facilitate entry into the labour market for social assistance recipients, unemployment benefit recipients and sick benefit recipients are meant to be similar even though the unemployed belong in different systems depending on the unemployment insurance and the reasons for the lack of job.

In Denmark activation has encompassed a great variety of education and job training schemes for the unemployed. The most important schemes, which in principle could be combined in a number of different ways, are the following:

- In *private or public job training* the individual receives the minimum wage fixed by collective bargaining and the employer receives a wage subsidy. The minimum period of being employed by the same private employer is 6 months.
- *Education and training* could be anything from short advisory and introductory courses to several years of study at university level. In terms of attendance, the most important courses are introductory courses, labour market training courses, short vocational training, special labour market courses and day classes at high schools. Language courses for immigrants and refugees are also important. Participants in education and training generally receive an income equal to the benefits they received before starting the education.
- *Individual job training*, which is available only to non-insured unemployed on social assistance, consists to a large extent of so-called employment projects. Private employers, employers in the public sector, voluntary organisations, private house-holds, associations, etc. can establish such positions. The target group is the long-term unemployed who have difficulties in obtaining work on ordinary conditions.

In addition to these activation programmes, there are a number of other programmes which aim at helping people with disadvantages to get a job:

- *Rehabilitation* is for persons with a reduced working ability due to physical, psychological or social factors, who are expected to be able to regain complete or partial working ability by participating in a rehabilitation programme. The most common measure is some form of education or training, but it may also include subsidised employment. Rehabilitation is not compulsory for sickness benefit claimants, but the sickness benefits have a limited duration and, furthermore, participation in rehabilitation may be a condition for obtaining a disability pension.
- Another scheme called *flex job*s is for persons with permanently reduced working ability, who are not considered able to benefit (further) from rehabilitation. The aim is to provide permanent employment for persons with permanently reduced working ability. The wage is fixed according to collective bargaining, and the employer receives a wage subsidy that is set according to the degree of the reduced working ability of the person employed (50–67%). Flex jobs are open to the employed as well as the unemployed with a reduced working ability.
- *Sheltered employment* is permanent employment for persons who are receiving disability pension. A wage subsidy is given when persons are employed at ordinary workplaces according to this scheme. Sheltered employment may also be organised by the public sector, i.e. it takes place at special institutions where persons with mental disorders or handicaps are employed.

Though the measures for people on unemployment insurance and on social assistance in principle are similar, recipients in different insurance categories often receive different offers. Social assistance recipients often participate in individual unpaid job training in special projects for unemployed or in a firm, while people on employment insurance get public or private job training in subsidised jobs or ordinary education. Over the years since 1993, the use of different measures has

changed to some extent. In the last half of the 1990s, ordinary education was widely used for the insured unemployed. The popularity of this measure had several reasons: it is often difficult to find firms that are willing to employ people in subsidised jobs, education is a popular measure among the trade unions, and the unemployed find it more attractive than subsidised jobs. However, the use of this measure has decreased considerably since 2000 and is now used as frequently as job training. The number of unemployed in private or public job training has been quite stable over the years. Only very few social assistance recipients are offered education. Though it has been a political aim to use more private job training, the number of activated persons in this type of measure has declined since 1994 while the number in individual job training has increased. Yet, there has been some decline in the use of this measure after 2002.

6.1 The developments of activation policy 1979–2006

At the end of the 1970s, unemployment and in particular youth unemployment was high and stable compared to levels before the oil crisis started in 1973. Many persons suffered long-term unemployment and were about to exhaust their maximum benefit period of two and a half years and thus lose rights to unemployment insurance. Therefore, in 1978 the Social Democratic-Liberal Coalition Government fostered an employment plan that intended to reduce youth unemployment and prevent unemployed from losing benefits.

Looking back, two tracks can be identified in the employment plan: a citizen wage track and an activation track. The citizen wage track was built on the idea that a finite amount of work could be shared by the population. The redistribution of employment from senior to young people was in this belief the aim of the voluntary early exit benefits *(efterløn)* introduced in 1979.

The first part of the activation track, in fact the first activation programme, was the work offer scheme *(arbejdstilbud, ATB)*. In 1979 the scheme gave insured unemployed the right to a work offer, which was *de facto* job training because it was neither an offer of an ordinary job nor a training programme. The work offer paid normal wages, lasted for 9 months (7 months in the public sector) and re-qualified the person to another period on unemployment insurance benefits. As a result, some unemployed moved back and forth between unemployment benefits and work offers, the so-called benefit carousel.

During the 1980s nothing special happened with regard to activation. In 1985 an education offer *(uddannelsestilbud, UTB)* for long-term unemployed (those who had completed one work offer) was introduced that paid out benefits which were equal to unemployment insurance. In 1988 activation was moved to an earlier stage of unemployment in order to improve the effect of activation.

The perhaps most important element was mandatory activation of young unemployed on social assistance. To provide disincentives for young people to receive

social security rather than continue their education, the Youth Benefit *(ungdomsydelsen)* introduced in 1990 required persons on social assistance aged 18–19 to accept offers of employment, education or training made by municipalities. If the young people did not accept these offers, they would lose the right to social assistance. This was the first time in Denmark that benefit recipients became dependent on mandatory activation.

The big breakthrough for activation came with the labour market reform in 1994, which was part of a major reform package. The reform of the unemployment insurance scheme and the active labour market policy (ALMP) took place alongside the extended leave schemes and the improved early retirement possibilities for persons over 50 years, and a tax benefit reform. Just as in 1979, there were both elements of an activation track (unemployment insurance and ALMP) and a citizen wage track (leave schemes and early retirement).

The reform package also included elements of supply and demand side policies. The retreating of ALMP and the benefit system dealt with the supply side whereas the tax benefit reform was underfinanced in order to kick off the economy. The supply and demand side policies succeeded in terms of subsequent reductions of unemployment and improvements in the economy. No study has assessed to what extent the revised policies and the improved economy, respectively, have brought down unemployment.

The labour market reform was followed by annual adjustments in the 1990s. These adjustments were often agreed upon as part of the budget negotiations between political parties in Parliament. Therefore, the development of activation policies in the 1990s went through three phases: (1) the labour market reform I of 1994, (2) the labour market reform II of 1996 and (3) labour market reform III of 1999.

The labour market reform I of 1994 initiated the first phase of activation policy developments. The reform had five elements: stopping the benefit carousel, *de facto* shortening of unemployment benefit periods, right and obligation to activation, decentralisation of management and individual action plans.

Policies towards the unemployed changed their focus when the benefit carousel stopped. Participation in activation no longer qualified for new benefit periods. Only ordinary, non-subsidised work counts as qualifying or re-qualifying for unemployment benefits. The main objective was no longer to ensure that clients did not lose entitlement to unemployment insurance, but rather that clients were helped into ordinary work. Instead of helping people with provision of cash (unemployment benefits), the aim was that the persons should be able to provide for themselves by getting a job. Generally, this shift was characterised as a move from passive support to active support or from help to help-to-self-help.

Benefit periods were shortened. When participation in activation offers counted as renewed eligibility, the maximum benefit period was one and a half years, but in practice the period was virtually infinite because claimants could move back and forth between benefit and activation periods. When the carousel was stopped,

the new maximum benefit period of 7 years was therefore a *de facto* shortening of benefit periods.

The organisation of activation was to some extent decentralised. The management of active labour market policies was delegated to municipalities with regard to non-insured unemployed and to regional labour market councils with regard to insured unemployed. These regional councils consisted of the social partners, local authorities and doctors who prioritised measures and target groups according to regional needs.

The reform of 1994 was adjusted the year after to get unemployed, especially the young, more quickly back to work or to participate in activation offers. Availability criteria were tightened, and the right and obligation to full-time activation after 4 years of unemployment was introduced. Today, the right and obligation to activation is still an important mantra of Danish activation.

In 1998 the activation line was extended to social assistance claimants. The law on active social policy was very similar to the labour market reform, but at the beginning the intention was a bit different. Moreover, the activation line in social policy also encompassed a dialogue with firms about corporate social responsibility.

The unemployment rate decreased continuously, but long-term unemployment was quite persistent. In 1996 new initiatives to combat marginalisation were taken. In this second phase of the reform the activation period was shortened from 4 to 2 years, and the whole support period was decreased from 7 to 5 years. The work condition for entitlement to benefits from unemployment insurance funds was tightened from 26 weeks of ordinary work within 3 years to 52 weeks of ordinary work within 3 years. In 1998 a "Youth Package" was introduced cutting the duration of unemployment benefits for the young (under 25) unskilled unemployed down to 6 months. After 6 months young unemployed got a right to participate in education/training for 18 months with an income support half the rate of unemployment benefits. The extension of early retirement to unemployed over 50 established in 1994 was abolished, and the tax financed leave schemes were tightened reducing the benefits to participants in parental and sabbatical leave schemes.

Gradually, more focus was directed towards availability and flexibility in order to prevent lack of labour supply and bottlenecks on the labour market. Some of the most important changes in 1997 and 1998 were: limiting the duration of the benefit period before an unemployed is required to accept any reasonable work offer, extending demands for geographical mobility and adjustment of the rules for unemployed persons' use of vocational training.

In 1999 the general aim was to make an earlier effort to get the unemployed into jobs and use a more individualised approach. The focus was directed towards the weakest among the unemployed and the immigrants with insufficient proficiency in the Danish language and a high unemployment rate. The activation period for the unemployed was set to begin after 1 year of unemployment, and the total support period was reduced further from 5 to 4 years. Also, the vocational

training efforts towards the unemployed became more targeted. In addition, the early retirement scheme was changed in order to reduce incentives for early retirement and increase labour force participation among the 60–65 year-olds.

In 2000 a new active measure of "service jobs" in the public sector was introduced for unemployed over the age of 48 who had been in the active period for more than 6 months and for people on disability pension. This scheme has now been abolished.

The dominant idea in the 1990s was to continuously strengthen the qualifications and the availability of the unemployed (and employed) to meet the changing demands for labour, and measures could be said to serve two different sets of objectives and target groups:

1. Short-term unemployed are offered training and education to counter bottlenecks in the labour market and to improve the individuals' qualifications.
2. Long-term unemployed are offered broader and longer-term measures including measures to improve the individuals' well-being and self-perception.

The purpose of activation is not to distribute employment and unemployment by allowing people to opt out of the labour market, either temporarily or permanently. Instead, the belief is that various policies can contribute to lowering the structural rate of unemployment. The objective was not merely to reduce the economic costs of unemployment, but also to minimise the social costs of non-employment.

To sum up, policy development in the 1990s shortened maximum benefit periods, advanced the activation period and disrupted the benefit carousel. Activation schemes have been lengthened, the drawing up and following up on individual action plans have been strengthened, the scope of measures has been expanded, new schemes have been introduced and more efforts have been made to identify vulnerable groups and their needs. As a result, more people who were in an increasing number of different situations and had spells of unemployment earlier than before participated in activation measures for longer and longer periods (Table 21).

The November 2001 parliamentary elections paved the way for a shift of government. A coalition between the Liberals and the Conservatives took over the office from the Social Democratic-Social Liberal coalition. The new Government immediately passed a new revised Act on activation. The new Act preserved the idea of right and duty to activation, but put more emphasis on the control of availability and job guidance and mediation instead of activation. The political idea was to use instruments that would ensure "the shortest road to the labour market." Moreover, the new Government introduced a so-called introduction benefit that was significantly lower than ordinary social assistance benefits for immigrants, a ceiling on the total amount of benefits for social assistance recipients with more than 6 months of unemployment, repeated offers of activation for all unemployed and frequent job conversations with the local authority.

Table 21. Recent labour market reforms

1994 Labour market reform I
- Abolish re-entitlement to unemployment insurance through activation
- Maximum unemployment insurance benefit period limited to 9 years
- Stricter work availability demands with offer of suitable work after 12 months
- Individual action plans

1995 Service check of the Labour market reform I (Budget 95)
- Shortening of the maximum unemployment insurance benefit period to 7 years
- Stricter work availability criteria
- Adjustment of leave schemes
- Right and obligation to full-time activation in the whole active period

1996 Labour market reform II (Budget 96)
- Gradual shortening of maximum unemployment insurance benefit period to 5 years
- Right and obligation to full-time activation after 2 years
- Right and obligation to full-time activation after 6 months for young persons under 25 years of age
- Work record to become eligible for unemployment insurance doubled from 26 to 52 weeks of work, both within 3 years

1998 Labour market reform III (Budget 96)
- Shortening of maximum unemployment insurance benefit period to 4 years
- Stricter work availability demands with offer of suitable work after 3 months
- Earlier right and obligation to activation

1998 Law on active social policy
- Activation extended to social assistance claimants

2002 Labour market reform ("More in work")
- Abolition of the demand of 75% activation in the active period
- Minimum demand on activation is every 6 months
- Introduction of intensive contract schemes at a minimum of every 3 months

2004 Social assistance reform ("A new chance for everybody")
- Right and obligation to activation for social assistance claimants with other problems than unemployment who have received benefits for more than 12 months

2006 Welfare agreement (education, immigration and integration, labour market, retirement)
- Earlier right and obligation to activation, i.e. after 9 months
- Intensive activation after two and a half years on unemployment insurance
- Quick job counselling and availability tests every 3 months
- Elimination of special rules for elderly unemployed with regard to length of benefit period and participation in activation (but benefit period for persons aged 60+ years increased from two and a half years to 4 years)

In 2006 a new employment law put focus on the long-term unemployed. One of the most important initiatives was that the municipalities were requested to bring up again the cases in which the unemployed had not received an offer within the last 12 months. Another was that married couples on social assistance were to lose benefits for the one person with the least labour market attachment after 2 years with less than 300 h of employment. This is potentially the most significant benefit reduction in the period of new labour market policy in Denmark. The law was implemented in April 2007, and its consequences are not fully recognised yet.

6.2 Activation as a process: Implementation and governance

The idea behind the decentralisation in 1994 was to make the labour policy decision as close to the individual and the enterprises as possible, and by doing so to make sure the local labour market policy matched the local needs. The state drew up the economic framework and laid down the basic rules, and then the regional labour market councils prioritised the efforts locally (for driving forces behind the reform see Madsen and Pedersen 2003).

The new institutional setup of the labour market steering system strengthened the role of the social partners, especially on the regional level. The need for corporatism in the area of active labour market policy in Denmark is emphasised by the organisational structure of the unemployment protection system based on the Ghent model which gives great influence to unions in the development and daily running of the system.

The reform in 1994 included a significant decentralisation of competency and knowledge about the efforts directed at the unemployed. 14 regional labour market councils were established. The labour market organisations (employees and employers) held two thirds of the seats in these councils and the regional authorities (county and municipalities) held the rest. The regional labour market councils set up regional strategies: they made prioritisations and plans according to the specific regional needs and to the types of activation that should be offered in the specific regions (it is not possible for all regions to offer the whole range of active measures). The local employment offices (the public employment service) must follow the strategies set up by the regional councils. This meant that the role and function of the employment offices were fundamentally changed because they now followed guidelines based on issues current in the given context instead of just following automatic rules.

In 2007 a structural reform resulted in a reduction in the number of municipalities from 272 to 98. In each municipality employment services and local authorities at a joint job centre now carry out the servicing of both insured and non-insured unemployed. Moreover, from now on the regional labour market councils performed the functions of advisors and not as decision makers. Decisions on target groups and use of measures were now left to the authorities at the job centres.

From a governmental perspective Danish policy making in relation to the labour market has changed significantly since the end of the 1970s where the social partners' influence were mainly through their relationship with political parties. The first Act on Active Labour Market Policy in 1978 to rescue long-term unemployed from losing their benefits was initiated by the (unusual) Coalition Government of the Social-Democratic and the Liberal Parties, and no official negotiations with the social partners took place. However, the initiative had strong support from the trade unions and particularly from the unions for unskilled workers.

In the autumn of 1987, the Liberal Government approached the Social-Democratic Party to agree on changes in the labour market policies including the abolition of the benefit cuts for the very long-term unemployed introduced in 1985.

As part of this agreement between the Government and the Social Democrats, the unemployed persons' right to activation including education/training was improved. The LO (The Danish Federation of Trade Unions) had a direct influence on the design of the law through their close relationship with the Social Democratic Party while the DA (The Danish Employers' Confederation) did not seem to be officially involved.

The political process previous to the labour market reform in 1994 significantly changed the role of the social partners in designing and implementing the reforms. In 1991, when unemployment had been steadily rising for several years and the Liberal-Conservative Government had difficulties in creating new policy initiatives they could pass in parliament, they appointed a committee. This committee, named the Zeuthen committee after its chairman, was supposed to make suggestions for initiatives that could reduce the very high level of structural unemployment. Besides the independent chairman, the committee consisted of eight experts and a number of representatives from the labour market organisations. The result of the committee's work was a number of recommendations, among which the most important were: the decision on important questions about policy implementation was moved from the central to the regional level, the right to regain eligibility to unemployment benefits through activation was abolished, more focus on matching the needs for qualification among the unemployed with the needs for qualification in the firms, and introduction of a wider range of active measures.

As mentioned above, all these elements were included in the labour market reform of 1994/1995. Thus the Government succeeded in involving the social partners and the independent experts from the committee as well as the experts outside the committee, and the reform was accepted although some of the trade unions were sceptical. It seems likely that one of the roles of the social partners in this process was to mediate between different views and preferences within their own organisation. It also indicates that the social partners were able to agree on the important elements of the reform. In addition, the labour market reform included a new administrative practice. The social partners had considerable influence on this part of the reform negotiations, and they succeeded in achieving a common goal for the LO and the DA, i.e. to obtain a dominant role in the implementation of the labour market policy through the management system.

The adjustments of the labour market reform from 1994 to 2000 were not negotiated through tripartite discussions, but the social partners did have some influence. A committee of officials prepared the adjustments in 1995, and the governmental initiative was discussed with the social partners. Through these discussions the LO and the DA agreed to put stricter requirements on the unemployed to accept an activation offer in the exchange for more generosity in the type of offers. The adjustments in 1996 and the new "Youth Package" were purely governmental initiatives, and the social partners had influence mainly through their political party connections. Since the very significant tightening of the conditions for young unemployed created objections from some but not all of the unions, and the proposal

had fairly strong support in the media and among experts, the Social-Democratic led Government decided to maintain the proposal despite some union protests.

In 1998 the Government again planned significant changes. A committee of officials was appointed to do the preparatory work, and the social partners were invited to tripartite discussions. However, the social partners, who had a special need to leave their mark on the changes, asked for a break in the negotiations. During this break the partners reached an agreement about the duration of the period before activation and the level of activation. The Government was not at all enthusiastic about this agreement, but by means of lobbyism the two partners contributed to the passing of the bill in Parliament. Though the social partners seemed to be the stronger part in this case, the fact is that what they suggested and came to terms with was not very different from the adjustments the Government wanted to pass without the intervention of the social partners. In this case, the social partners' real benefit was to make themselves visible in the law-making process and to their members on the labour market.

Since the adjustment of the reform in 1998, the social partners have not had the same degree of influence on the making of labour market policies. One of the reasons is that the Government has not allowed them to play such a dominant role. Another reason is that the agreement between the social partners in 1998 caused internal conflict in the LO because the SID (The Unskilled Workers Union) did not approve of the agreement. This shows that it is not without consequences for the partners to make themselves a visible part of the negotiations in the policy-making process, since each of them represents a broad range of interests that are not always easy to unite.

7 Outcomes of activation

Danish researchers have carried out a number of studies of the outcome of activation. Some of them have tried to measure the effect of a given measure on the employment situation of the participants; others have tried to capture the attitude and behaviour of participants, firms or case workers involved in activation. The other types of effects are due to reactions from people in employment or people who are not at present available to the labour market. In the following we will summarise results from studies that examine the individual effects upon participants who actually or potentially are offered activation.

The individual effect of activation can be divided into three types (see Calmfors, 1994):

Effect on *search activity* when enrolled in workfare programmes
Effect on *skill investment*
A *welfare* effect due to positive or negative use of activation as a consumption good.

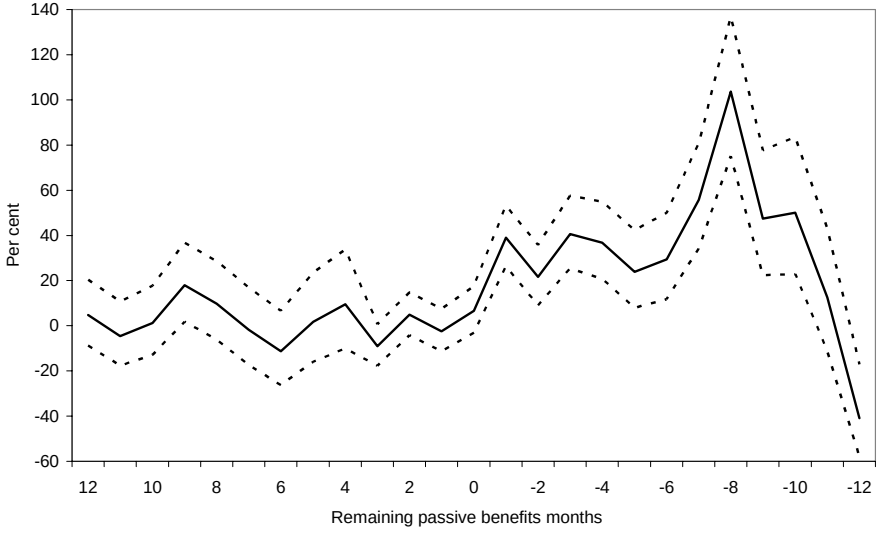
The following section summarises the present knowledge from empirical studies on the impact on search, skill upgrading and welfare from workfare.

7.1 The effect on search activity

The effect of activation on job search has been analysed by Geerdsen (2002) in a study concerning incentive effects in Denmark. Empirical data on search activity is usually collected as survey data from a certain period of time and is therefore not suitable for an analysis of change within a period. Instead, it is possible to measure the departure from unemployment by using register data on the duration of unemployment spells. The empirical approximation to change in search activity is therefore the probability of leaving unemployment as the duration of the spell increases and the individual approaches the start of the activation period.

For the insured unemployed the benefit period is divided in two: a passive period where the individual receives benefits without any activation obligations followed by an active period where activation is a counterclaim to receive benefits. As described in the sections above, the duration was reduced during the 1990s. Geerdsen (2002, 2006) uses this change in the system to estimate the effect on the recipients' probability of leaving unemployment.

Figure 14 illustrates the result of the analysis. Point 0 marks the start of the activation period and the point -12 is 12 months after the activation period has started. It is obvious that the probability of leaving the system is increasing during the first 8 months of the activation period from period 0 to period -8 where the curve reaches a peak. This profile of the curve is consistent with the way the activation system works in Denmark. Before being activated, the unemployed have to make an activation plan and wait for openings at education institutions or job



Source: Geerdsen (2002)

Fig. 14. The probability of leaving the unemployment benefit system.

training positions. Therefore, the obligation of activation is not really imminent in the start of the period.

The following drop in the curve can be explained by the fact that after a year many of the unemployed who do not wish to participate in activation have left the insurance system. The remaining individuals are participants in some sort of activation, and their search activity is even lower in the passive period than in the active period. The shape of the tail of the curve reflects this locking-in effect of activation.

Swedish studies of the effect on search activity have been carried out by using surveys among the unemployed. These studies also find a significant negative effect on job search during activation, thus confirming the locking-in effect found in the Danish study. It seems that no measures of the effect on job search before the activation period becomes impending are available from other Scandinavian countries.

In an analysis by Graversen et al. (2007) the motivation and locking-in effects are measured by a randomised experiment. The probability of leaving the transfer income system is compared for two groups of insured unemployed in two Danish job centre regions (*AF-regioner*). The first group of unemployed (the participant group) has participated in an experiment where they received an especially early action. The second group (the control group) received the general offers. The experiment is a so-called controlled experiment, which very rarely is available in Danish labour market research. The participant group received a letter saying they were chosen to participate in the especially early action. It turned out that more individuals in the participant group than in the control group got a job before the start of the action, but at the same time several individuals in the participant group had also started on sickness benefits. Furthermore, in this analysis a locking-in effect was also found for those who came far enough in the process to actually receive the especially early action.

Unemployed individuals who are not insured will receive social assistance and become eligible for activation by the municipality after a certain period of unemployment. The motivation effect of activation for social assistance recipients has been analysed by Graversen (2004), who looked at differences in the departure from social assistance in municipalities with different practices in the timing of activation. However, he found no significant relationship between the probability of leaving the system and the timing of municipal activation. One of the reasons for this lack of change in search activity could be that the unemployed on social assistance are less likely to get employed due to social and personal problems.

The search activity among long-term unemployed on social assistance has been examined in a survey reported in Bach (2002). The study shows that 34% believe that they cannot handle a job at all; about 20% believe that they could get a job but that it would take at least a month before they would be available to the labour market. Only 35% claim that they could accept a job immediately. Moreover, among the respondents who stated they were searching for a job, about one out of

four claimed that they "have done nothing" to get a job in the last month. The fact that the motivation effect is relatively low among the unemployed claiming social assistance benefits is also in correspondence with the fact that 80% say that they do nothing to avoid activation. Among the remaining 20%, 7% have found a job, 2% have started looking for a job, 1% has started education and 10% have avoided activation in other ways.

7.2 The effect on skill and search cost

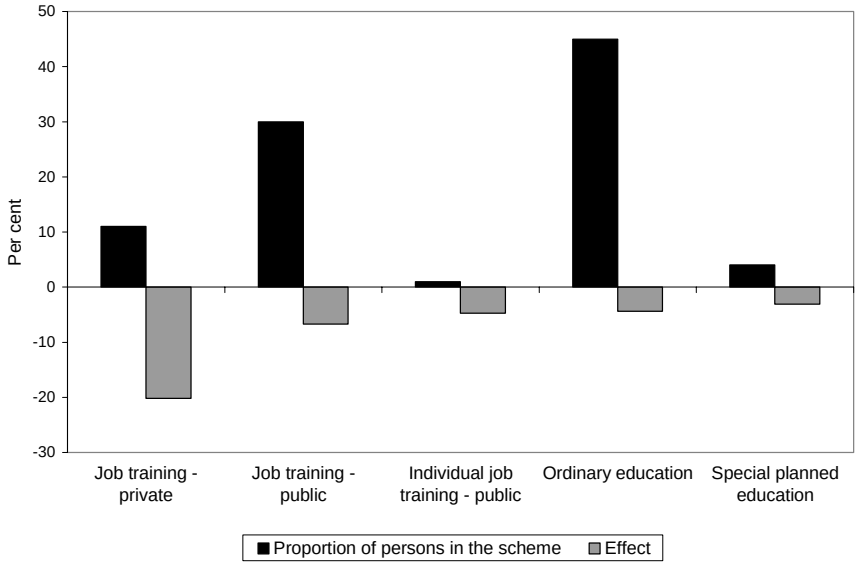
Change in skill and search cost can hardly be measured directly. Instead, changes in the transition rates from unemployment into employment can be studied. For at least two reasons it is not easy to get a correct estimate of the employment effect of activation. One reason is that it is very difficult to measure the isolated effect of activation due to lack of a usable control group. A part of the group that gets a job after activation would have found a job anyway. Another reason is that we do not have very good data on the exact extent of individual employment. To remedy these data problems, the effect of activation in recent Danish studies is estimated by the change in the degree to which a person in activation receives social security after the activation, i.e. unemployment benefits, social assistance benefits, sick benefits, rehabilitation benefits and parental leave benefits. In the Danish context, this will be a fairly correct way to measure the extent of employment since only very few adults are relying on financial support from their families. The degree to which a person is living on social security benefits within a year is measured on a scale from 0 to 100, where 0 indicates full employment and 100 indicates full public support.

The employment effect of activation has been analysed for different types of activation measures and separately for non-insured and insured unemployed in activation (Graversen and Weise 2001; Bach 2002).

Figure 15 illustrates the estimated employment effect of different activation measures towards social assistance claimants in municipal activation as well as the shares of unemployed in different measures.

Private job training has incomparably the largest direct employment effect. Individuals who participate in this type of activation will on average reduce their dependence on social security by 16 percentage points, which is equivalent to about 2 months a year. However, only one out of ten in activation participates in private job training, and the effects of other measures are significantly lower.

The most frequently applied measure is municipal employment projects. Participation in this type of programme reduces the dependence on social security by only three percentage points or about one fifth of the effect of private job training. Individual job training in public workplaces is another measure frequently used. This type of measure reduces the participants' dependence on social security by six percentage points, equivalent to 3 weeks a year.



Source: Graversen and Weise (2001)

Fig. 15. Effects of activation

In a study of rehabilitation, Filges et al. (2002) found that the effects of this measure are very small and may be even smaller than the effect of activation. This is quite surprising since rehabilitation is offered to persons who are expected to be able to regain working ability. However, a significant part of the group would probably have left the labour market if they were not offered rehabilitation.

In Denmark it has been the general belief that education saves people from unemployment. Therefore, it is a wonder why effects on using education in activation for the insured unemployed and the cash benefit recipients on the whole cannot be measured. One reason could be that it is difficult to measure the effect on education because the effect first shows up in the very long view and works very differently for different target groups. Another reason could be that the education received in an activation course is not designed and dosed well enough.

In a later analysis, however, Graversen (2004) calls into question the previously measured effect on private job training. The analysis shows very big variations in the effect for different individuals, and it is probably the strongest cash benefit recipients, who are able to find a job by themselves, that are offered private job training. The analysis was carried out as an advanced regression analysis, in which the employment effect for different types of individuals in different types of activation was compared. This is why the analysis cannot be compared with the above presented fixed-effect analysis.

Furthermore, an analysis by Bolvig et al. (2002) shows that not only the contents of the action but also the timing of the action is significant to the effect. Thus, the activation effect for men seems to be at its maximum when the activation takes place early in a cash benefit period, while for women the maximum effect is obtained when activation takes place later in the period. The evaluation of the activation experiment in two Danish job centre regions (*AF-regioner*), as mentioned above, documents the positive effects on the upgrading of skills by an especially early action (Graversen et al. 2007).

Finally, Graversen (2004) shows that the order in which the instruments of the activation are used is significant to the effect. Graversen makes use of a so-called duration model, where persons who have received an offer are compared with persons who have not received an offer yet. This analysis concludes that in cases where more than one offer has been given in an unemployment period, education must be offered before job training.

7.3 The welfare effects

The utility from participation in activation, i.e. *the consumption aspect* of workfare, is neither easy to define nor to measure correctly. It can be related to expectations of improved job opportunities or to the participation in activation schemes.

Although nobody has studied this effect directly, surveys among activated individuals provide information on the participants' attitudes towards activation and rehabilitation. In Danish surveys among unemployed on social assistance or unemployment insurance, the participants were asked to evaluate their personal benefits from activation (Arbejdsministeriet 2001; Bach 2001; Bach and Petersen 2007). The results are in general quite similar for the different target groups, but the subject is more exhaustively investigated for the unemployed on social assistance. For this group the personal benefit from activation is measured on a qualitative scale (high, fair, little and none) for the following six types of benefits:

- Improved qualifications for ordinary jobs
- Improved qualifications for education
- Improved qualifications for other types of activation
- Better everyday life
- Improved self-confidence
- Clarified future prospects.

In addition, the activated persons were asked if the programme in their opinion had a purpose at all.

The study finds that the participants in general evaluate quality of life and personal aspects of activation more highly than labour market oriented aspects (Arbejdsministeriet 2001; Bach 2002). A majority of the participants believes that activation leads to a better everyday life (70%) and to more self-confidence

(58%). About half of the participants believe that activation makes them better qualified for a job, but most consider this to be the case only "to some extent." In the same way, about half of the respondents believe that activation helps them to clarify future prospects. In general, the activated individuals show quite a positive attitude towards activation even though fewer than expected believe that activation brings them closer to the labour market. However, a significant minority (24%) have a really negative attitude. About half of these believe that activation does not provide any kind of qualifications and, correspondingly, about half of them are of the opinion that activation has no purpose at all.

The attitude towards activation could be expected to depend on the participants' position on the labour market after the activation period. An analysis of the survey data finds that people who get a job later are more likely to believe in the educational effect of activation, and people who are still in the social system are more likely to emphasise the soft personal aspects of activation, but there is no highly significant dependence on attitudes towards labour market positions.

The participants' perception of the purpose of activation depends to some degree on the type of activation offered. The variation among participants is largest for the purposes "qualifications for ordinary jobs" and "no qualifications at all."

Looking at the variation in the proportion of participants who believe that activation gives job qualifications, the study shows that about half of the participants in private job training think they get better job qualifications, while almost 80% in labour market training courses believe they get better job qualifications. Thirty percent in employment projects believe that activation provides better job qualification even though the employment effect for this group is very limited.

Among people in private job training, nearly one out of four believes that activation has no purpose. However, among participants in employment projects as many as 44% have the same attitude. Only very few in labour market training express such negative attitude towards activation.

7.4 Indirect labour market effects

The active labour market policy is designed to get unemployed into jobs, but the policy also shows a lot of effects upon the employed and non-employed outside the labour force and thus on the economy as a whole.

The indirect effects are difficult to measure, and there is a lack of research on the subject. No Danish empirical analyses show the connections between activation and the participation rate. The substitution effect has most thoroughly been analysed with Swedish data (Calmfors et al. 2001), but a quite new Danish study makes an attempt to clarify the phenomenon. Hussain and Rasmussen (2007) measure a substitution effect of 0.4. This means that the number of ordinary employees falls by 0.4 every time a person is employed in a wage subsidy scheme.

For methodological reasons, it has only been possible to show this substitution effect for firms with a reasonably constant level of production.

Finally, activation might cause positive and negative effects on the tax burden. If the net employment effect on activation is sufficiently high, it could cause a fall in the tax burden because the production output rises at the same time as the fall in the public expenditure on transfer incomes exceeds the expenditure on activation. However, it is not certain that activation results in a positive cost-benefit return. Using Danish data, Christensen (2002) has estimated the budget effect on different labour market programmes, finding positive budget effects on activation only in the private sector. Most of the programmes are estimated to be close to a neutral budget effect while, hardly surprising, programmes with negative employment effects have negative budget effects. The budget effect has also been examined in the analysis of the especially early action in two job centre regions (Graversen et al. 2007). In total, the experiment showed a positive budget effect.

8 Conclusion

The Danish labour market system has been through a long period of reforms. The reforms have been characterised by an increased degree of orientation towards labour market needs, decentralisation, the provision of a right and a duty to activation, earlier efforts to mobilise the unemployed persons, and a shortening of benefit periods.

The Danish reform strengthened the role of the social partners, especially at the regional level, increased the influence of the labour market organisations, and established decentralisation and a more flexible and responsive administration, which have formed the main instruments of the reform.

Generally, the reform process has been a success in terms of bringing down the unemployment rate. However, there are still challenges as a direct result of the reform attempts.

One challenge is to form a flexible system that is not too bureaucratic. While trying to make the system more flexible and decentralised, there has simultaneously been a tendency of making many rules on the central level. In addition, the central political level has had a need for control of the decentralised level, which also involves more bureaucratic procedures.

Furthermore, it is a serious problem that the reforms seem to have failed in targeting the labour market problems among those with the greatest difficulties in getting a job.

Danish evaluations find a significant motivation effect of activation. However, this effect only seems to work for the unemployed with sufficient labour market qualifications. Unemployed with few labour market qualifications could probably

only get a new chance on the labour market if they were offered activation that supplied them with the qualifications demanded by the firms.

The qualification effect on activation has until now proven to be very limited and only positive in private job training, which is rarely used for unemployed on social assistance.

Unemployment in Denmark has been steadily falling since the beginning of the 1990s, and today the group of the most disadvantaged in the labour market constitutes a considerable number of the total group of unemployed. Since it is very difficult to find effective activation offers for this group, it is an important challenge for Danish labour market policy to find measures that work. Although the reform process seems to have had a positive effect on unemployment in Denmark, there are still a large number of jobless who are supported by some kind of public transfer income.

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Activation Policies in Sweden: "Something Old, Something New, Something Borrowed and Something Blue"

P.A. Köhler, K.H. Thorén, and R. Ulmestig

1 Introduction

Sweden is part of the trend with a growing reliance on "activation policies" for unemployed individuals, but Sweden represents a different position in comparison with many other countries. The reason is a long tradition of "active labour market policies" (here ALMP) as a regular part of the Swedish welfare state (Esping-Andersen 1990; Junestav 2004). Sweden has had active labour market policies since the late 1940s (Cochrane et al. 2001). These policies focus both on a general development of the labour market and an improvement of the work force (Olofsson 1996). The overall goal with Swedish labour market policy is to achieve high economic expansion and low inflation (Regnér 2000). In addition, to the above goals, "full employment" has also been an important political ambition with the labour market policy system in order to maintain a generous welfare system.

Sweden is, in general, characterised as a universal and generous welfare state with many rights-based programmes (Esping-Andersen 1990). But Swedish labour market policy programmes have never been all about rights, and there are a number of different requirements and individual responsibilities, especially in terms of activity for the unemployed. This demand is emphasized in the Scandinavian, so-called, "*arbetslinjen*" or the "work-line" in English (sometimes termed the "employment strategy"). The work-line, which is an important element of the Swedish welfare system, emphasises work and/or activity in terms of re-training and skills-enhancement instead of passive income benefits alone. The work-line also stresses a strong work ethic in which one should be self-sufficient through a regular employment according to traditional social democratic ideology. These chief characteristics are deeply manifested in the Swedish welfare model and it was not questioned by the new centre-right government that was elected at the end of 2006. The current government, a coalition between four different centre-right parties, clearly indicated in the election campaign that they will carry on, and even call more attention to, the importance of both the work-line and labour market policy issues in order to reduce high unemployment levels. This is now seen in a number of proposed and enacted labour market policy changes.[1] The new reforms have significantly influenced the current debate about labour market policies and activation, but are still too novel to discuss in detail in this chapter.

[1] Reg. Prop 2006/07:15 En ny arbetslöshetsförsäkring ("A new unemployment insurance") and Reg. Prop. 2006/07:89 Ytterligare reformer inom arbetsmarknadspolitiken m.m ("More labour market policy reforms").

1.1 General labour laws[2] in Sweden

To understand a country's diverse measures of labour market policy, one must be familiar with its labour law framework within which such measures take effect. Enacted law and subordinate legislation is flanked by collective bargaining law governing the labour market parties. It is also necessary to clarify to what extent the constitution guarantees individual labour law positions and the right of labour market partners to conclude generally binding collective agreements.

1.1.1 The constitution

The constitution contains provisions that define the form of the activities entrusted to institutions of society and how they are implemented. Hence, the function of the constitution is to establish the rules governing political life, giving political decisions their legitimacy. The human rights listed in the constitution are understood as programmatic statements, which do not become individually enforceable rights until the legislature has implemented them by means of enacted law. The programmatic statement in section 2, sent. 2 of Chapter 1 can be interpreted as the "social state principle":

"The personal, economic and cultural welfare of the private person shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security."

The national social security system can be regarded as this objective's translation into the legal reality of the welfare state. Chapter 2, section 17 constitutes the freedom of association:

"A trade union or an employer or employers' association shall be entitled to take industrial action unless otherwise provided in an act of law or under an agreement."

Thus it follows that the constitution is not a directly applicable legal source of labour law.

1.1.2 No labour code

As a codification of labour law in the sense of a comprehensive labour code does not exist, a variety of legal sources must be taken into account. These include:

- Procedural laws and EU legislation
- Collective agreements at national, regional and local level

[2] The legal part of this report follows the major Swedish publications on labour law: Adlercreutz (2003), Björklund (2006), Brorsson and Gellner (2007), Bylund and Viklund (2006a, b), Eklund (2005), Iseskog (2004, 2005), Lunning and Toijer (2007), Peralta Prieto (2006), Redaktionen för BL Personal 2006, Sigeman 2006 and Åhnberg 2005.

- Individual employment contracts
- Case law and rules established by customary law.

Of particular interest to labour market policy are the Employment Protection Law (*lag 1997:238 om anställningsskydd*) (LAS), the Law on Unemployment Insurance (*lag 1997:239 om arbetslöshetsförsäkring*), and the Law on the Labour Market Policy Programme[3] (*lag 2000:625 om arbetsmarknadspolitiska program*).

Collective agreements are traditionally of great importance in Sweden. Under the so-called December Compromise of 1906, trade unions recognised the right of employers to freely determine operational procedure as well as engagements and dismissals. In return, employers accepted the trade unions as negotiating and contracting partners. The idea that decision-making authority within the enterprise rests primarily with the employer has characterised the Swedish working world until this day. The same holds true for the *Saltsjöbaden* Agreement of 1936. In the face of potential state interventions in labour market conflicts that posed a threat to the general public, the trade unions and employers sought to find a common solution. The ensuing agreement, large parts of which are still valid today, introduced provisions governing the negotiation regime, the performance of emergency work in the event of labour conflict, and the protection of non-involved third parties.

From the 1970s, especially the trade unions and the Social Democratic Party have pushed for a "democratisation" of the working world. That led to a series of enactments, including the aforementioned Employment Protection Law, but also the Codetermination Law and legal norms governing workplace design and, since the 1990s, a number of laws on the elimination of diverse forms of discrimination in working life. Because of Sweden's accession to the EU, many of these laws were subject to considerable amendments in the course of their adjustment to supranational law and the case law of the European Court of Justice.

Collective agreements can moreover serve as a guide in determining customary law. The rulings of the labour courts are likewise of central importance to practical dealings. To give only one example, the term "objective reason" in connection with dismissals pursuant to the LAS required numerous labour court judgments to establish its precise definition and make it practicable.

1.2 Dismissal protection law

1.2.1 Concepts of "employee"/"employment contract"

To understand protection against (unlawful) dismissal, it is first necessary to illuminate the concepts of employee and employment contract. Swedish labour law lacks a definition of the term "employee". Although the main law governing the

[3] Phased out 1 January 2008.

employment contract and its termination, the LAS, applies to employees (*arbetstagare*) along very general lines, it only circumscribes the term negatively. That is, the LAS does not apply to executive employees, employees who are family members of the employer, employees who work in the employer's household, and to employees in sheltered workplaces or the like. Also lacking is a legal definition of the term "contract of employment" (*anställningsavtal*). The LAS only states that there are two types of employment contract, namely permanent and fixed-term contracts. The permanent employment contract tends to be the rule, while the possibility of concluding term contracts is regulated as an exception. Accordingly, fixed-term employment contracts are allowed for the performance of particular kinds of work. In addition, they are permitted for internships and vacation jobs as well as e.g. temporary replacement work (*vikariat*). Term contracts are generally permitted for employees over the age of 67.

Employment contracts are not subject to any particular form. Mandatory requirements include, *inter alia*, a precise workplace description as well as the clarification whether the contract is fixed-term or permanent. Employees must also be informed of the collective agreements applicable to their contract. Moreover, employees with term contracts must be notified by the employer in writing if permanent jobs become available in the enterprise.

1.2.2 Termination of the employment relationship by the employer

The LAS is immediately applicable from the commencement of employment. The law distinguishes three cases of termination of employment by the employer: termination of a permanent contract for an objective reason (*uppsägning*); termination on grounds of the employee's "gross neglect of duty" (*avskedande*); and for term contracts, the "notification that the fixed-term employment will *not* be continued." The notification must generally be conveyed to the employee no later than 1 month before the end of the term.[4] Among other things, the notification must specify whether the employee enjoys a "preferential right" to re-employment (*företrädesrätt*).

A dismissal without a personal background must be "objectively justified." This already fails to be the case if the employee could be offered another post within the enterprise.

The most frequent "objective reason" for a routine dismissal in practice is "lack of work" (*arbetsbrist*). The decision on who is to be dismissed in the event of operational redundancies must be based on the so-called order of succession (*turordning*), which refers to the legally regulated order of employment contracts that is to be observed upon dismissal. The rule is "last hired – first fired" (i.e. last in – first out, LIFO).

[4] Special provisions apply to seasonal workers and short-term jobs.

A dismissal based on personal grounds attributed to the employee is possible only within 2 months from the employer's acknowledgement of these facts. Such grounds include breaches of contract by the employee, for instance unpunctuality, negligent execution of work, problems in the relations with colleagues, and the like. In each case, however, the particular circumstances of the employment relationship must be observed, for instance seniority, the employee's position in the enterprise, or whether the employee's misconduct was previously reprimanded (by a written warning).[5]

A dismissal on grounds of "gross neglect of duty" leads to the instant termination of the employment relationship upon the employee's receipt of the dismissal notice. Examples of gross neglect include acts of violence in the enterprise, drug and alcohol abuse during working hours, offences against workplace property, and the like. Here again, the employer must pronounce the dismissal within 2 months of acknowledgement of the misconduct.

Within the term of notice, the employee is entitled to full pay, including all supplements. If the employee is released from work during this time, the employer can set off salary liabilities against any earnings received by the dismissed employee in another employment. During this period, the employee may not be posted to another location if his/her potential re-employment is "not insignificantly" (*icke obetydligt*) worsened as a result. The employer must grant the employee leave of absence to call on the public Employment Service.

Employees who have been dismissed for operational redundancy enjoy a preferential right to re-employment if the enterprise in which they worked restores jobs. The precondition is an employment period of more than 12 months within the past 3 years or, in the case of seasonal workers, 6 months' employment within the past 2 years. If several employees have a right to re-employment, the "order of succession" will then again determine who is actually re-employed.

The LAS also stipulates a number of negotiation and information duties on the part of the employer prior to or upon giving notice of dismissal.[6]

In cases of dismissal on personal grounds or dismissal owing to gross neglect of duty, the employer should inform the employee in advance of the respective intention. In the former case, this is to occur two weeks in advance, and in the latter, at least one week in advance. If the employee is unionised, the employer should simultaneously notify the local trade union organisation with which the employee is affiliated. The employee and his/her union then have the right to discuss the matter with the employer. This discussion must, however, take place at the latest one week after the employee has been notified.

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[5] The burden of proof for the existence of such personal grounds lies with the employer.

[6] Whether the employer is obliged to negotiate before giving notice by reason of redundancy is regulated in reference to the Codetermination Law.

In disputes arising from the LAS, the law provides recourse to the Labour Court. This is a special court that has jurisdiction over all labour law disputes. It is composed of seven judges, of whom three are state-appointed jurists and two are delegated by each side of industry, respectively. The Labour Court has original and exclusive jurisdiction for unionised plaintiffs; they are represented by their unions before court. As the same applies to employers, the representatives of the collective bargaining parties almost always face each other in labour court practice. For non-unionised plaintiffs, the competent district court has original jurisdiction. Its judgments can, however, be submitted to the Labour Court for review, meaning the latter is always the court of last instance in labour matters.

In 2006, 393 complaints were filed with the Labour Court, 44 of which concerned disputes in connection with dismissal protection law.

2 Welfare Arrangements for Unemployed in Sweden

The Swedish welfare state offers a vast number of services and programmes in addition to different income benefit schemes for those who experience unemployment (Table 22).

Table 22. Financial support system for unemployed

Unemployment Insurance:	Insurance principle, income-based, paid by the unemployment insurance funds, governmentally subsidised
Activity support	Rights-based income support while participating in ALMP programmes, based on previous income, paid by the Social Insurance Office (Försäkringskassan), governmentally financed
Social assistance	Means-tested, municipal, local and professional discretionary practices, tax-financed at municipal levels. Paid by municipal social services

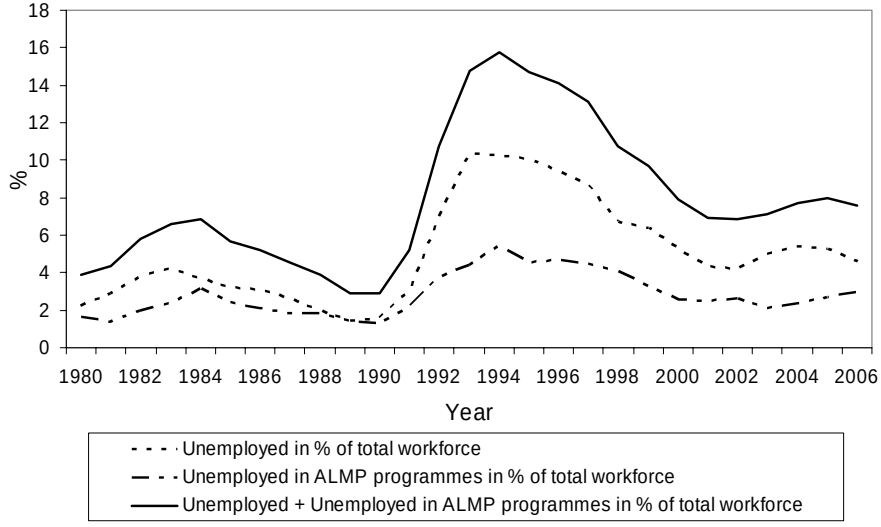
Unemployment insurance and social assistance are the two main income sources for the unemployed in Sweden. But if someone is participating in a labour market policy programme organised by the government, one is normally entitled to acti-vity support. People with disabilities are granted a disability allowance, but will also be entitled to activity support if they are participating in a labour market policy programme. People receiving sickness benefits during their sickness period are entitled to a rehabilitation allowance in case they are taking part in rehabilitative measures that will support them to re-enter the labour market.

The Swedish system of labour market policy programmes is often called “active labour market policy” (ALMP) due to its many active measures in the labour market sector. Most labour market policies in Sweden are governmental responsibilities and provide services to both individuals and employers. Beside the governmental labour market policy programmes, there is a growing field of “municipal activation policy programmes” (MAP). Municipal activation targets primarily unemployed social assistance recipients (Salonen and Ulmestig 2004). The division between

these two types of labour market programmes is often based on the different source of income benefit the individual is receiving.

2.1 From the economic crisis in the 1990s until today

It is difficult to analyse labour market policies in Sweden without mentioning the economic crisis during the 1990s, which had a significant impact on the policy development during the last decades. The crisis led to very high unemployment rates in a Swedish perspective, and labour market policy was put under considerable pressure. The figure below shows the increase of unemployed, participants in ALMP programmes plus the two groups together, which indicates the total percentage of unemployed individuals in Sweden between 1980 and 2002 (Fig. 16).



Source: AMS (2005)

Fig. 16. Unemployment rates and participants in ALMP programmes

Even if the share of the unemployed that participated in labour market policy programmes decreased during the first half of the 1990s, the figure shows the large amount of unemployed that participated in ALMP programmes. Between 1991 and 1995 Sweden spent more on active labour market policy in per cent of the GDP than most other countries (Calmfors et al. 2001). There was also a shift in the character of the programmes during the 1990s. The increase in unemployment rates was first met by a large expansion of programmes with a direction towards training but, as the crisis were deepened, the direction shifted towards subsided employment and practical job placements. This shift in programme content could be understood in respect to large expenditures for training programmes

that led to a problematic financial situation. The focus on training could not be maintained due to the high costs and the solution was to focus on subsidised employment and practical job placements, which was less expensive (Ulmestig 2007). The unemployed were kept active and these programmes made it possible, at the time, to remain entitled to unemployment insurance.

However, many labour market policies were altered without major shifts in the basic principles or changes in the law (Ulmestig 2007). But Salonen (2001) contends that implicit reforms were made and that these changes entailed signs of a re-commodification in which political support was given to a renewed emphasis on paid work and individual responsibilities (see for example Johansson and Hvinden 2007 for a detailed discussion of this development). For example, stricter entitlement conditions and lower benefit levels in the unemployment insurance (Sunesson et al. 1998). The economic situation in the early 1990s resulted also in a large increase of people in need of social assistance since the conditions for unemployment insurance were tightened. However, one legal change was made in an amendment to the Social Service Act (*Socialtjänstlagen*, here SSA)[7] in 1998 and municipalities were given greater opportunities to activate unemployed social assistance recipients. This reform legally approved an already ongoing development of municipal labour market programmes.

By 2007, Sweden had labour market policies that, in general, can be differentiated in two parts; a governmental/national system for those supported by unemployment insurance funds and other nationally-based income benefit systems and a municipal system for unemployed receiving social assistance by the municipal social services.[8] Unemployed without rights to unemployment insurance are often referred to means-tested social assistance provided at the local municipal level. Due to basic differences in the principles behind unemployment insurance and social assistance, the Swedish welfare system rests, in many aspects, on a dual structure in regards to social safety. For those with a stable relationship to the labour market experience high levels of social security through unemployment insurance in contrast to marginal segments of the population that enjoy much less social security (Lødemel 1997; Marklund and Svallfors 1987).

In 2006, according to IAF data, 553,000 people (6.1% of the population) received unemployment insurance for SEK 29.9 billion. 392,500 people received

[7] Socialtjänstlagen SFS 2000:453.

[8] Municipal social services are the local authority in each of Sweden's 290 municipalities. They are mainly responsible for social work services (e.g. child custody services, substance abuse services, mental health services) but they are also responsible for social assistance, which is the financial benefit scheme for those not entitled to support from other social security systems. Social assistance is considered the last form of financial support in Sweden.

social assistance [9] in 219,000 households in 2006, which is 4.3% of the population. The total amount of social assistance that was paid out the same year was SEK 8.7 billion (*Source*: Socialstyrelsen).

2.2 Unemployment insurance

Unemployment insurance (UI) was introduced in Sweden in 1934 according to the so-called Ghent system. Ever since, unemployment funds have been administered by the trade unions and subsidised by public funds. After a number of partial reforms, the Law on Unemployment Insurance *(lag 1997:238 om arbetslöshetsförsäkring)* and the Law on Unemployment Funds *(lag 1997:239 om arbetslöshetskassor)* entered into force in 1998. Accordingly, the unemployment funds were entrusted, among other things, with the administration of both basic and income-related protection. In 2001, the system was modified by additional provisions that turned it even more in the direction of a "readjustment insurance" providing security for a limited time between two employment relationships. With effect from January and March 2007, the new centre-right government has tightened the prerequisites governing insurance claims under the motto "an unemployment insurance for employment," thereby lowering benefits and raising contributions.

2.2.1 Benefit prerequisites

The unemployment insurance covers employees and self-employed persons. It consists of two parts: basic protection and insurance against loss of income. The right to the latter is acquired through voluntary membership of an unemployment fund. Basic protection is rendered to unemployed persons who are not members of an unemployment fund or who, though being members, do not yet fulfil benefit prerequisites. The benefit cannot be claimed before applicants have attained the age of 20. Insurance against loss of income requires at least 12 months' membership of a recognised unemployment fund. The right to apply for membership is granted to persons who in the space of five weeks have been employed within the ambit of an unemployment fund for at least four consecutive weeks, comprising at least 17 weekly working hours. To draw unemployment insurance benefits, the insured must submit a written application to the competent unemployment fund. In doing so, they must provide evidence of their previous employment, earnings, and the reasons for loss of work, etc.

Both types of benefit are conditional on jobseekers being

- Capable of working for the account of an employer for at least 3 h per day and an average of 17 h per week
- Prepared to accept a reasonable job offer from the unemployment fund

[9] Including all family members in that household (i.e. children)

- Rregistered as job applicant with the public Employment Service
- Willing to cooperate in drafting an individual action plan together with the Employment Service
- Personally active in seeking work, but so far unable to find a suitable job.

During the first hundred days of benefit receipt, jobseekers can limit their efforts to searching for suitable work in their line of occupation and in their accustomed environment. Jobseekers are not entitled to benefits if they are participating in training, are only temporarily without earnings, or are on unpaid leave. An offered job is regarded as reasonable if:

- It seems fitting in terms of the jobseeker's occupational qualifications and personal circumstances
- The working conditions conform to those of employees under a collective agreement or of employees who otherwise perform equivalent work
- It is not to be performed in a workplace involved in a lawful labour dispute
- The conditions of the offered workplace are in compliance with the statutory provisions governing safety and health at work.

Further benefit prerequisites include evidence of: at least 6 months of gainful employment, comprising at least 80 h per month, within a timeframe of 12 months directly preceding unemployment; or at least 480 h of gainful employment within a continuous time period of 6 calendar months, with at least 50 h performed in a single month (*arbetsvillkor*). The above timeframe can be extended in that certain periods are not taken into account, for instance due to severe illness, compulsory hospitalisation for drug abuse, military service, receipt of parental allowance, or participation in a labour market programme.

2.2.2 Benefit duration and amount

Insurance benefits are paid out in the form of daily allowances. There is a qualifying period of five days' unemployment within a space of 12 months. The benefit is granted for 300 days at the longest. After that, it can be prolonged for another 300 days if no job has been found and the Employment Service confirms that no offers are available under the labour market policy programme.

The daily allowance for basic protection is paid out as a base amount, irrespective of previous earnings. The amount is fixed by the government and is currently set at SEK 320 per day.

The income-related benefit is proportionate to previous earnings. Its ceiling is currently at SEK 680 per day. Hence, the unemployment fund pays out a maximum monthly amount of SEK 10,860 (after taxes). This means that anyone who earned more than SEK 18,700 per month before becoming unemployed has since received less than 80% of this income as an insurance benefit. Persons who were in full employment throughout the entire timeframe receive at least SEK 320 per

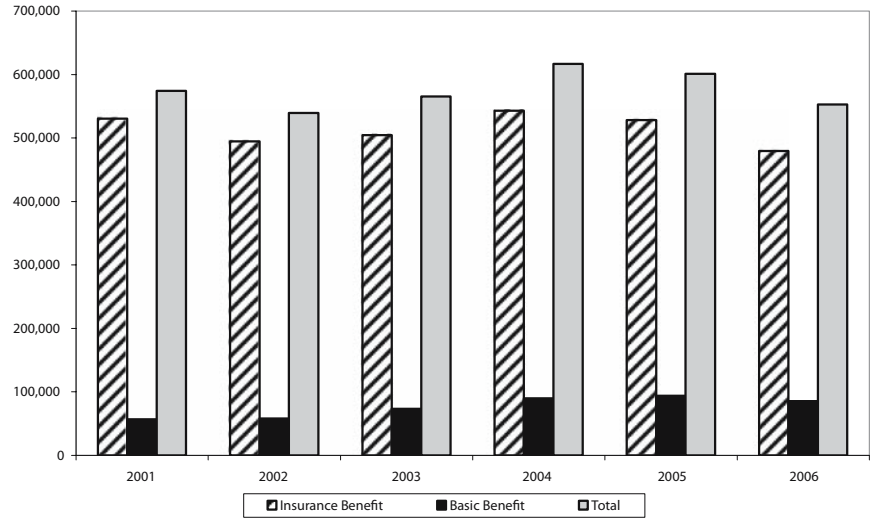
day. For part-time employees, this minimum amount is reduced in proportion to their working time. Apart from the upper and lower limits, the daily allowance is computed according to a percentage of the insured's daily earnings during normal working hours. In this context, a benefit curtailment has been introduced for the long-term unemployed since March 2007: during the first 200 days of unemployment, 80% of previous monthly earnings (calculated to a daily allowance) are paid out; from the 201st until the 300th day, this amount is reduced to 70%, and from the 301st day onwards, to 65%. In conjunction with the upper limit of SEK 680, this reduction has the effect that less than 70% are paid out from the 200th day for monthly earnings below SEK 21,371; for earnings above SEK 23,015, the rate is less than 65%. The claim is not scaled back to 65% if the insured must care for a child under the age of 18.

2.2.3 Organisation and financing

Unemployment insurance is administered by the registered unemployment funds pursuant to the provisions of the Law on Unemployment Funds. Accordingly, a fund is assigned a specific sphere of operation covering certain occupational categories or industrial sectors. At present, there are 36 unemployment funds, which are predominantly structured according to lines of occupation.

The eligible funds are registered with the supervisory authority, the so-called Swedish Unemployment Insurance Board (*Inspektionen för Arbetslöshetsförsäkringen*, here IAF) established in January 2004. The IAF is responsible for ensuring that the autonomous unemployment funds correctly comply with the benefit legislation and for coordinating job placement measures. This twofold supervisory function is aimed at achieving the equal treatment of jobseekers in comparable situations across the country. The IAF represents the Government in legal disputes concerning unemployment insurance; it is also in charge of processing the requests of unemployed persons who wish to retain their insurance benefits while seeking employment in other EU countries for a limited period.

Unemployment insurance is primarily financed by a government contribution via the "labour market levy" imposed on employers (*arbetsmarknadsavgift* under § 26 *Socialavgiftslag*; it is currently set at 4.45% of total payroll), as well as by the financial contributions of the unemployment funds. The membership fees charged by the funds cover the cost of their financial contribution and well as their administrative expenses. A fund's annual financial contribution amounts to 131% of its average payment of daily allowances multiplied by the number of its members. Here again, the IAF is responsible for calculating this contribution and charging it to the account of the respective fund. Of the about SEK 2.3 billion worth of insurance benefits paid out in 2005, roughly 13.5% were financed by the funds in this manner (Fig. 17).



Source: IAF

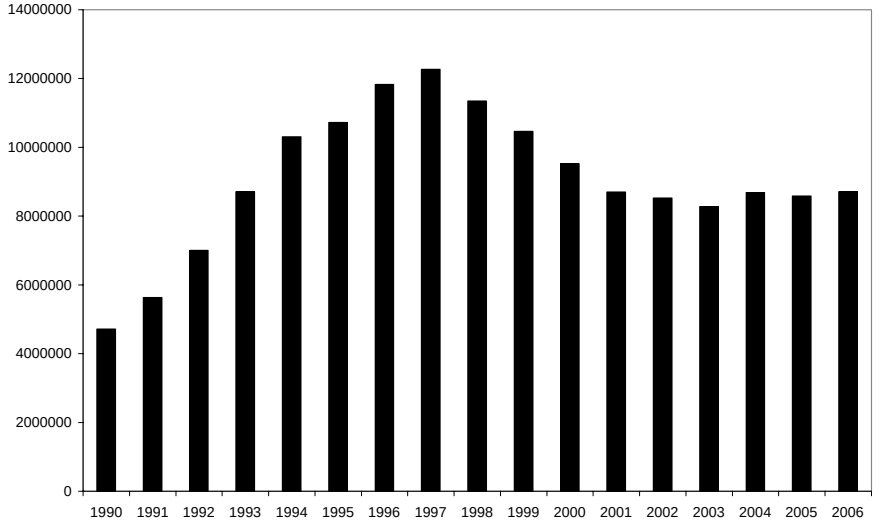
Fig. 17. Number of recipients of unemployment insurance

2.3 Social assistance as the last safety-net

Those individuals not covered by unemployment insurance or other public benefits can always apply for social assistance by the municipal social services, which is the last resort of financial support in Sweden. Social assistance is a means-tested income support and it is legally sanctioned by the Social Service Act. According to the introductory section 1 of Chapter 1 of the SSA, municipalities must ensure that needy persons can actively participate in social life. Given that the ability to earn a living through work and to take care of oneself is of great importance to the human right of self-determination, benefits rendered by the municipal social services are supposed to encourage the development of indigent persons, enabling them to live from their own resources.

Social assistance is a monthly benefit to secure a reasonable standard of living including food, rent, clothes, electricity etc. In 2007, the national norm for a single person is SEK 3,470 plus the cost of housing expenses, electricity, health care etc. Social assistance is provided by local social service offices and it is regularly social workers who administer the application. Applicants must go through an investigation regarding their financial and social situation, and all personal financial resources, like savings, cars, privately owned housing etc., must be utilised first in order to be entitled to social assistance. The right to apply for social assistance is regulated in SSA Section 4, § 1–5.

Although the municipal social service offices are not under any obligation nor directly empowered to provide work for the unemployed, they are indeed required under the SSA to cooperate with the competent authorities towards that end. According to Chapter 4, section 4 of the SSA, municipalities have the possibility of instructing social assistance beneficiaries to engage in practical training or other skill-enhancing activities. This regulation primarily applies to unemployed youths under 25, but can be extended to persons beyond that age, if necessary. And current research has demonstrated that a significant amount of all unemployed social assistance recipients participates in different types of labour market related measures (Salonen and Ulmestig 2004; Thorén 2005) (Fig. 18).



Source: Statistics Sweden

Fig. 18. Expenditures on social assistance in Sweden 1990–2006 (in billions)

2.4 Activity support

In addition to unemployment insurance benefits and social assistance, unemployed persons are entitled to "Activity Support" (*aktivitetsstöd*) while participating in any activity measure stipulated in the law on labour market policy programmes. The Ordinance on Activity Support[10] regulates benefit prerequisites and benefit amounts. For the first 200 days, the benefit equals a maximum of 80% of the daily earnings ascertained for the receipt of unemployment benefits. This rate is curtailed to 70% for the next 100 days, and is ultimately reduced to 65% by the 451st day. The benefit is paid out as a (taxable) daily allowance and is set off against

[10] Förordning 1996:1100 om aktivitetsstöd.

other claims, such as pensions or severance pay and it is rendered through the Social Insurance Office. Aside from these support payments during participation in labour market policy measures, the law also provides for the refund of specific expenses for, say, the cost of transport to a job interview, the purchase of special equipment, or occupational rehabilitation.

3 Labour market policy programmes

Labour market policies in Sweden are significantly influenced by the work-line and since the crisis of the 1930s, the work-line has come to mean that unemployed persons are first and foremost to be offered employment or at least assistance in finding work through labour market policy measures. Only if these efforts remain unsuccessful are monetary benefits to be granted. Hence, this term traditionally embodies supervisory and educational aspects, but also the aspect of legal entitlement to practical assistance beyond the mere payment of subsistence money. The right to the offer of a suitable job is the counterpart to the duty to cooperate in finding employment. Measures pursuant to the idea of the work-line aim at achieving long-term results. By obtaining the right work in the right place, the individual is supposed to become productive on behalf of society. A functioning work-line thus forms the "foundation of the welfare society."[11]

In 2005 there were approximately 123,000 participants per month in the governmental repertoire of ALMP programmes (AMS 2006). This is 2.7% of the total Swedish labour force and approximately one third of the unemployed.

The differing labour market policy measures adopted over the past decades have been subject to constant change. And this is still so today. Given that the centre-right government is now taking rapid steps to make its own mark in reforming the regulatory system of labour market policy, including organisational law, it is rather pointless to provide an in-depth description of the current legal situation in light of its limited validity. Hence, following a brief outline of the legislation applicable until the beginning 2007, the new government's draft bills will be presented.

3.1 Labour market policy legislation

The central piece of labour market policy legislation is the Law on the Labour Market Policy Programme (here LAP) dating from the year 2000,[12] supplemented by the extensive ordinance governing the programme.[13] The LAP declares the

[11] On the history of the concept, see Junestav (2004) and Fransson and Sundén (2004).

[12] Lag 2000:625 om arbetsmarknadspolitiska program, LAP.

[13] Förordning 2000:634 om arbetsmarknadspolitiska program, FAP.

programmatic aim of strengthening the prospects of the individual for obtaining and/or sustaining employment. Jobseekers are bound to the overall labour market policy programme by a "directive" stating that they are to be "offered participation in a programme." A service relationship in terms of civil law is not, however, established to that end. Whoever participates in a labour market policy programme is consequently regarded by law as not being an employee, which is why many acts of labour legislation, such as the LAS, do not apply within the framework of labour market policy programmes.

3.1.1 Organisation and legal protection of labour market policy programmes

The organisation of all labour market policy programmes is administered by the National Labour Market Administration (*Arbetsmarknadsverket)*, consisting of a central executive authority called the National Labour Market Board (*Arbetsmaknadsstyrelsen*, here AMS), which has the general task co-ordinate and organise governmental labour market policies. On the regional level, the regional Employment Services referred to as *länsarbetsnämnd* has an important role to implement labour market policies into practice. The most important regulatory instrument on behalf of these programmes is the Ordinance on Labour Market Policy Activities[14] (here FAV). As prime tasks, the FAV stipulates employment services, improvement of vocational training, and support on behalf of vulnerable groups on the labour market to prevent them from opting out altogether. Certain targets, on the other hand, reflect the traditional employment strategy of the work-line since all activities are supposed to reinforce individuals' prospects of finding work on their own or of maintaining their regular employment.

Job placement services are regionally coordinated and rendered by the approximately 300 local Employment Services (*Arbetsförmedlingen)* based at the local level in most municipalities. They are cost-free and aimed both at offering information and vacancies to jobseekers and at assisting employers in finding suitable applicants for the work available. Their services also entail a computerised job bank, in addition to all sorts of labour market policy programmes. Everybody is allowed to utilise the Employment Services irrespective of income source. The only requirement is to be register as being a "jobseeker" (*arbetssökande*).

3.1.2 Programme repertoire

During the last years, eight different programmes have been in practice (although the new government has proposed a number of changes of these programmes). These programmes will shortly be introduced here but with a special emphasis on the Activity Guarantee and the Youth Guarantee.

[14] Förordning 2000:628 om den arbetsmarknadspolitiska verksamheten, FAV.

Market-oriented vocational training is offered to unemployed persons for occupations on demand in the labour market. This programme was phased out in January 2007. Nevertheless, the training offer has been retained in the form of apprenticeships for young jobseekers under the age of 25 without secondary school qualifications. These apprenticeship places are arranged with private-sector employers.

Practical training short-term jobs are assigned to unemployed persons to enable them to keep in touch with the employment market. They are not, however, supposed to replace regular jobs.

Assistance in establishing self-employment is to provide income security in the early phases of a self-employed activity. It is granted to unemployed persons who meet the requirements of operating a business with sufficient profitability to become an independent occupational activity. The amount of assistance corresponds to the support rendered on behalf of the activity.

Youth assignments are individually adapted labour market policy activities offered by municipalities to youths under the age of 20, or also to young people between 20 and 25 years of age. The activities include practical and theoretical components and are aimed directly at initiating employment or vocational training.

Preparatory activities comprise special measures in terms of personal counselling and job placement. They also include Swedish language courses for immigrants or schooling for jobseekers under 50 with certain gaps in their education.

Projects in pursuit of labour market policy goals are joint activities undertaken by the local Employment Services and other labour market actors. They are based on a contractual agreement between the regional Employment Service and the project-related actors who can also come from the private sector. This measure was phased out on 1 January 2007.

3.1.3 The Youth Guarantee

The Youth Guarantee (*Ungdomsgarantin*, here YG) started in 1998 and was in general designed to target long-term unemployed youth at the age of 20-24 years, and in particular, social assistance recipients in this age group. The government made a statement that no youth should be unemployed more than 100 days. The target group is youth with limited possibilities to find work and those with low motivation to seek work or education (Angelin and Salonen 2000). In 2005 there were approximately 29,000 participants per month in the programme (AMS 2006). Participants' income support varies from UI, social assistance, activity support and other support schemes. The Youth Guarantee entails an introduction period while the unemployed is given guidance and training in seeking work at the Employment Service. Thereafter participants are required to participate in an ALMP activity, and sometimes in municipal activation programmes in which the Employment Service has purchased slots. The YG can also be organised in collaboration with

the municipalities but should then not be mistaken for a municipal activation programme, even if the unemployed can be in the same programmes.[15] The programme time is 1 year but after 3 months of unemployment a new period is demanded for those people that still experience unemployment. The YG was seen as a success by the former government and a forerunner to the Activity Guarantee.

3.1.4 The Activity Guarantee

The Activity Guarantee (*Aktivitetsgarantin*, here AG) started in 2000 and was presented as an extension of the Youth Guarantee. The target group was long-term unemployed or those expected to face long-term unemployment. In 2005 there were approximately 45,000 participants per month in the Activity Guarantee (AMS 2006). The AG stipulates that long-term unemployed, who often no longer qualify for UI, must participate in full-time activity, like job search, a regular ALMP programme or in education in order to receive financial support (i.e. activity support). The programme time is indefinite and a participant can only leave the AG in three ways: by finding a regular employment for at least 6 months, starting in a regular education or by leaving the work force. Participants are regularly divided into small groups of ten to 15 people and group activities are often organised by the local Employment Service. It is rather common that the Employment Service collaborates with activation programmes organised for social assistance recipients at the municipal level. The central guidelines for the AG are relatively vague and the design of the programmes has been worked out at the local levels (Forslund et al. 2004).

3.1.5 Common characteristic in the Youth and the Activity Guarantees

According to the Government Bill 1999/2000:98, should each participant in the YG and the AG have an individual action plan (*individuell handlingsplan*, here IAP) and an individual supervisor, who will help and support the individual to re-enter the labour market.[16] The IAP should specify the labour market needs of the individual and propose what type of support that person should be granted. The IAP should also be revised and updated after the completion of an activity or at least every 6 months. However, studies have indicated that the use of individual

[15] Since the mid-1990s municipalities can voluntarily take over the responsibility for young unemployed instead of the local Employment Service. This is made through two different programs; "municipal youth assignments" and the YG. Several municipalities utilized this opportunity and organises activities for youth instead of the local Employment Service (Angelin and Salonen 1999).

[16] All unemployed who are registered at the Employment Service should have an individual action plan (IAP). In 2004, the National Labour Market Board reports that as many as 81% have an IAP set up for them. However, it is unclear to what extent the individuals are familiar with them, if they are adequately updated, and if they are used in any practical sense (Johansson 2006).

action plans varies a lot for both the individual and at the Employment Service level (Johansson 2006).[17]

Furthermore, the YG and the AG has more shared characteristics in comparison with other ALMP programmes. The YG emphasise collaboration between the Employment Service and the municipals, which was rather a new arrangement when it was introduced in 1998. Both programmes have a clear individualised approach, with an emphasis on tailor-made solutions trough the IAPs. But these programmes also mark a changing balance between rights and duties for the individual, where the participation requirement in return for benefits became an important element. For example, individuals must "sign" the IAP on which demands on the individual can be specified, and if the unemployed do not fulfil the stipulated duties, the Employment Service staff can cut their benefits. The IAP often demands an activity and/or change in the behaviour of the unemployed, but only exceptionally do the IAPs stress duties on behalf of the Employment Service. Furthermore, participation in the UG and AG can never be a right for the unemployed, which makes the term "guarantee" rather limited on behalf of the individual.

3.1.6 Support for people with disabilities or reduced abilities to participate in the labour market

People with mental and/or physical disability have the right to a number of benefits and services in Sweden. The Social Insurance Office pays disability allowance (*handikappersättning*) in three different levels between SEK 14,000 and 28,000 per month depending on your need of assistance and how large your additional expenses are. To determine whether a person are entitled to disability allowance, the Social Insurance Office weighs together different help requirements and additional expenses that the individual might experience as a result of their disability.

There are three additional programmes that target unemployed individuals with reduced abilities to participate in the labour market, often caused by different functional disabilities (AMS 2006):

- Subsidised work (*lönebidragsanställning*) where the employers receive a financial subsidy when employing an individual with disabilities.
- Special support for introduction and follow-up (*Särskilt introduktions- och uppföljningsstöd*) where unemployed individuals with disabilities receive support in order to obtain or keep an employment.
- Sheltered Public Work (*Offentligt skyddat arbete*) is a programme that entails work rehabilitation and targets mainly unemployed with socio-medical problems (e.g. persons with substance abuse or mental health problems). Sheltered Public Work is a rather small programme with approximately 5,500 participants per month in comparison to subsidised work, which is

[17] The proposed "Job and Development Guarantee", entails program contents that are very similar to the YG and the AG.

almost ten times the size. In Sheltered Public Work participants have often a low ability to work regular hours and high absence is a common predicament.

Hence, people with disabilities are not excluded from labour market programmes if they are able to find a programme that fits their individual circumstances. Anyone who is taking part in a labour market programme, such as employment training, occupational rehabilitation, practical job experience, work at a computer centre, business start-up or development guarantee, should be able to get activity benefit support.

3.2 The development of municipal activation policy

There was a rising demand for social assistance after the recession in the 1990s (Svenska Kommunförbundet 1998). For many, it was an increasing concern that those without a prior attachment to the labour market were being referred to the municipal social assistance systems (Sunesson et al. 1998), others extolled the benefits and success of municipal activation measures (Carlsson and Rojas 2001; Zäll 2001).

When the Social Service Act was altered in 1998, it gave municipalities the right to require participation in job-search and other activation measures in return for income support. Municipalities were also allowed to sanction recipients if they failed to take part in such measures. Ulmestig (2007) describes the fast development of municipal activation programmes as a result of several complex push and pull factors between governmental entities and the municipalities. However, one factor that many municipalities point out is that social assistance recipients are not prioritised at the Employment Service. They are considered "not job ready" at the Employment Services and do not receive adequate support according to many municipal officials. On the other hand, Giertz (2006) finds that there is no large difference between social assistance recipients and other unemployed in terms of services given by the Employment Services.[18] Salonen and Ulmestig (2004) estimate the total number of municipal activation programmes to approximately 800 programmes with approximately 13,000 participants in 2002. There are no more recent studies. This means that 25% of all unemployed social assistance recipients are activated in the municipal activation system.

Giertz (2006) summarises the recent development in Swedish municipalities with regard to activation in five points:

- The manifested right for municipalities to demand activity among social assistance recipients.

[18] In SOU 2007:2 Giertz writes that 19% of social assistance recipients are participating in governmental ALMP programmes compared with 29% of those who receive UI.

- The development of municipal activation programmes.
- The duty for social assistance recipients to accept participation in activation programmes.
- Legal rights for the municipalities to sanction those recipients how do not comply with such rules.
- Unemployed youth on social assistance has functioned as a "test group" for the development of municipal activation policy and many new requirements have been tested in this group first.

Furthermore, there are no legal directions in the Social Service Act that stipulate if or how such programmes should be organised by the municipalities. Instead, municipalities are free to arrange these programmes according to their own circumstances. This provides a large local flexibility, but it also results in a very scattered system with a wide array of different types of measures, for different target groups, and with different programme content. Many programmes focus on basic job-search activities while others provide education and training services. In addition to the lack of programme coherency, many measures are arranged as short-term projects, which mean that there is little stability over time as well. It is also reasonable to believe that many programmes were both started and closed down throughout the recent years, which suggests significant institutional instability. But Salonen and Ulmestig (2004) describe the most common programme activities as the following:

- Job search activities
- Practical job placements
- Education
- Practical training.

3.3 "Active" programmes in Sweden: what do they entail?

In Sweden, the term activation is not really defined in the labour market policy terminology. But the reforms in the last decades entail clear signs of more "active" measures in the sense that unemployed citizens must to a higher degree take responsibility for their own employment and income situation. Different types of activation requirements in return for income support are becoming more and more common in addition to sanction practices. This development has not met much opposition, neither among political entities nor the general public.

There are, in particular, three types of measures that clearly demonstrate principles of increased individual obligations. These programmes reinforce the active profile with participation requirements of activation schemes and more emphasis on individual responsibilities (Johansson 2006).

1. The Youth Guarantee (phased out in 2007)[19]
2. The Activity Guarantee (phased out in 2007)[20]
3. Municipal activation programmes for social assistance recipients.

Another common characteristic between these programmes, in comparison with other labour market programmes, is the lack of time limits for programme participation. As long as you do not find another employment and are dependent upon public income support, you can be required to participate in the assigned activities.

In addition to the enabling notion of activation measures, with the goal to enhance individuals' possibilities to enter or re-enter the labour market and, eventually, combat social exclusion, activation must be scrutinised in different and more critical perspectives.[21] For example, Lødemel and Trickey (2000) claim that these policy reforms entail "an offer you can't refuse" in which people have no other

Table 23. Comparison between ALMP and MAP programmes

Characteristics	Governmental Labour Market Programmes (ALMP)	Municipal Activation Policy Programmes (MAP)
Responsible organisation	The National Labour Market Board (AMS) The Public Employment Services	No national authority Local municipalities social services Social assistance administration
Type of financial support	Rights-based support through. unemployment insurance or activity benefit support	Means-tested social assistance
Participation principle	Mainly voluntary	Often compulsory
Sanctions	Reduced or lost unemployment insurance or other forms of financial support (e.g. activity benefit support) [22]	Reduced or lost social assistance. Large variation in time before sanctions and varying levels of reductions depending on social worker's discretionary practices
Evaluation and follow-up	Large resources and measures to evaluate programme outcomes	Few systematic evaluations of programme outcomes

[19] The youth guarantee was phased out in 2007 and replaced in December 2007 with a program called "the Job guarantee for young people" according to the government bill "A job guarantee for young people" 2006/07:118.

[20] The activity guarantee was phased out earlier in 2007 and was replaced by the new program called "the job and education guarantee" for adults according to the government bill "Ytterligare reformer inom arbetsmarknadspolitiken m.m." 2006/07:89.

[21] For more analytical discussions about activation, see for example van Berkel and Hornemann-Möller (2002); Hvinden and Johansson (2007).

[22] Individuals who lose financial support through their unemployment insurance, activity benefit support etc. are always eligible to apply for social assistance as the last safety-net.

choice than to comply with the stipulated demands. There is also a significant amount of built-in control and moral functions in many activation policies. Although such discussion is not within the scope of this chapter, it must be kept in mind with regard to the current activation policy trend. In the Swedish context, the changing principles within labour market policy programmes can be demonstrated with the basic differences between the national system and the municipal system of activation policies (Table 23).

3.4 Current and proposed changes on labour market policy

In March and June 2007, the Government submitted two bills to Parliament, which have and will radically change the hitherto existing system of labour market policy. The one proposal is entitled "Further Reforms of Labour Market Policy", dated 15 March 2007,[23] the other "A Job Guarantee for Youths," dated 31 May 2007.[24]

With its first legislative proposal, the new Government planned to abolish the Activity Guarantee and replace it with a "Job and Development Guarantee" for those who have been outside the labour market for a long time. This proposal was enacted by the parliament and was put into practice in July 2007. The Government's legislative intent is based on the observation that despite robust economic growth, the labour market remains characterised by the long-term exclusion of certain unemployed groups. The overriding goal of both economic policy and labour market policy is seen in counteracting this exclusion. Long-term unemployment bears the inherent risk of discouraging jobseekers from continuing their efforts to seek work. At the same time, the manpower they offer loses market value because they cannot keep pace with the rapid development of new skills and competencies.

This new measure is meant to comprise individually tailored benefits aimed at returning unemployed persons to employment as swiftly as possible. All jobseekers who after 300 days of unemployment insurance benefit receipt have not qualified themselves for an additional insurance period by accepting a new job offer can be referred to the "Job and Development Guarantee." Parents with a child under the age of 18 can choose whether they wish to take part in one of these measures or receive unemployment insurance benefits for another 150 days. Furthermore, anyone who has drawn some kind of unemployment insurance benefit for at least 18 months can be instructed to participate in "Job and Development Guarantee" programmes. During this time, participants are entitled to benefits pursuant to activity support.

The same bill also contains several amendments concerning the unemployment insurance. Thus, for instance, it has abolished the general right of jobseekers to confine their search for suitable work during the first 100 days of unemployment

[23] Reg. Prop. 2006/07:89 Ytterligare reformer inom arbetsmarknadspolitiken, m. m.

[24] Reg. Prop. 2006/07:118 En jobbgaranti för ungdomar.

to their own occupational sphere and to locations in their proximity. Unemployment benefits are henceforth paid for 300 days at the longest. The exception applicable to parents of children under 18 has already been mentioned.

The legislative proposal of the "Job guarantee for young people," which took effect on 1 December 2007, seeks to cancel the municipal youth programmes and the Youth Guarantee, and to replace these with a uniform job guarantee for young people between the age of 16 and 24. Persons belonging to this age group will be covered by the job guarantee if they have been registered as jobseekers with the Employment Services for over 3 months. The measure commences by intensifying support to young jobseekers. This is to be achieved by combining suitable work with increased assignments to internships or vocational training. In justifying these measures, the government has also referred to a recent special survey (SOU 2007) whose findings show that greater demands on jobseekers induce them to find jobs faster. This proposal has not yet been accepted by the parliament, and the parties in opposition have proposed a refusal of the bill. One reason is that the government will decrease the overall budget for labour market policies while the opposition parties argue that there will not be sufficient resources for the job guarantee for young people.[25]

During participation in the new job guarantee, young jobseekers will be entitled to benefits equivalent to those of activity support. In addition, unemployed youths who have attained the age of 18 will be eligible for the "development benefit" (*utvecklingsersättning*). At the same time, the stepwise reduction of the monetary benefit is to occur at a faster pace than for older adults, the intent being to make it economically unattractive for young people to be registered as jobless under the unemployment insurance scheme. The benefit level is therefore to lie below that of students receiving study grants, for example. Here again, absence without good reason or lack of commitment will result in the sanctions known under the activity guarantee.

The measures to combat youth unemployment were flanked by the bill on the lowering of employers' social contributions on behalf of young employees.[26] From 1 July 2007, these employer contributions, except for old-age provision, have fallen by 7.5% for all employees between 18 and 25. This reduction has been raised to 11.1% from January 2008. Also, young entrepreneurs belonging to this age group must only pay the lowered rates for their own social contributions. In this way, the government wishes to encourage employers to hire more young people.

In contrast to many other countries, Sweden has no equivalent of tax reductions/credits like EITC in the US and the Working Tax Credit in the UK. However,

[25] Proposal 2006/07:A37-A39 (responses to Government Bill 2006/07:118 En jobbgaranti för ungdomar ("A job guarantee for young people").

[26] Reg. Prop 2006/07:84 Nedsättning av socialavgifter för personer som fyllt 18 men inte 25 år.

the new Government has made general promises about overall tax reductions for low income people.[27] Additionally, as Sweden has rather regulated minimum income levels through the processes of collective bargaining, even so-called low-paid jobs provide the employee with a decent income to make ends meet, albeit at a low level. This means that a debate about "working poor" is currently not taking place in Sweden.

4 Rights and obligations within activation measures in Sweden

As described above, Sweden exhibits a large repertoire of different kinds of activation programmes. The instruments to require, to control and to monitor participation in activation measures in very much dependent on the type of income support the participant receives.

4.1 Rights and obligations: instruments for monitoring

"Active" is one of the basic features for both unemployment insurance and social assistance. Both income schemes require that the beneficiaries are active in trying to become self-sufficient and that they must show that they are "active" in job search and willing to accept reasonable job offers. But how the unemployed are monitored and eventually sanctioned differs substantially between the two schemes. The unemployment insurance system has more legally defined requirements and consequences in case of failure to comply with the rules (below is a detailed description about the legal stipulations regarding reductions of the UI). Monitoring and sanctions within the social assistance system is much harder to follow and the discretionary practices are providing very different outcomes for the recipients (see Stranz 2007).

Jobseekers forfeit their right to benefits if they

- Have given up their employment relationship without good reason
- Have lost their employment owing to their own misconduct.

The daily allowance can be reduced by 25% for 40 days if jobseekers rejected a reasonable job offer without acceptable justification, or if their behaviour obviously prevented their engagement for the position offered. If such misconduct re-occurs for a second time during the benefit period, the daily allowance can be curtailed by 50% for another 40 days.

[27] In the election campaign 2006, the centre-right Alliance for Sweden said that all household should have an extra SEK 1000 left each month if they were to win the election.

For unemployment insurance, it is the staff members at the Employment Service who have the duty to monitor people's job search activity as they are responsible for reporting failures to comply with the rules (i.e. search activity and declining of job offers) to the unemployment insurance funds. But since each Employment Service is operating at the local level, there is reason to believe that there is a great variation in these practices. During the first 3 months of 2007, 3,300 people had their UI questioned according to IAF, and this is a 37% increase compared with the three first months of the previous year. Young recipients of UI are more likely to be questioned than older recipients, according to IAF. Exclusion from unemployment fund membership can be considered for jobseekers that make false statements in a wilful or grossly negligent manner upon applying for membership or benefits, respectively.

4.2 Rights and obligations within municipal activation programmes

The Social Service Act includes both rights and obligations on behalf of the individual. First, municipalities shall not grant social assistance unconditionally and without requirements on the individual. All social assistance recipients shall be "doing what he or she can" in order to support themselves (SSA 2000, p. 453, Section 4, § 1). Unemployed social assistance recipients are required to "be at the disposal of the labour market" and actively search for work and accept reasonable job offers. Second, obligations can also involve participation in ALMP programmes, MAP programmes, or language education for immigrants. For recipients under 25 years, the requirements are much more clearly stipulated in the Social Service Act and entail participation in work-related programmes for young people with the special aim of improving their possibilities to enter the regular labour market (SSA 2000, p. 453, Section 4, § 4).[28]

But according to the legislator, social assistance delivery and its related activation requirements is associated with a number of additional principles. These principles are that clients' self-determination should be respected and that individual preferences should be taken into account whenever possible. The activation requirements should also be appropriate for each individual in terms of individual needs and whether it can improve the individual's possibilities to enter the regular labour market. The legislator's intention is that the municipality should collaborate with the local Employment Service and other relevant authorities prior to referring a client to a municipal activation programme. Furthermore, the municipality has more responsibilities for young people in the sense that the activation requirement must follow an individual plan and has a stronger emphasis that the activity should be competence-enhancing for the individual.

[28] Reg. Prop 1996/1997:124 Ändringar i socialtjänstlagen ("Changes in the Social Service Act").

The Social Service Act generates a very complex and ambiguous situation regarding the intention and the meaning of municipal activation requirements. The legal situation is unclear for a number of reasons. First, few legal cases have, this far, clearly advised how the legislation should be interpreted in terms of the content of the activation requirement. Second, the fact that the Social Service Act is a "framework" law produces a vast array of interpretations of "who can be required" and what clients are "required to do." On one hand, it is a possibility for municipalities to require clients to participate in both ALMP programmes as well as municipal activation programmes. On the other hand, such requirements should be in line with clients' own preferences as well as improving the individual's labour market opportunities.

Municipalities are also allowed to reduce or withdraw the social assistance benefit in case of non-compliance with the rules of being available to the labour market and if clients refuse to participate in work related programmes. But there are no legal directions in when to sanction, how much, or for how long, and the practices are considerably different at the local level.

5 Governance and implementation of activation programmes

The governance of labour market/activation policy programmes is rather different between ALMP and MAP programmes. ALMP programmes are governed through a governmental and central authority, the National Labour Market Board (here AMS). Programmes at the municipal level have no such centralised authority. Instead, they are locally organised often with the municipal social services as the head organisers, who often collaborate with the local Employment Service, the local Social Insurance Office and other local actors in running the programmes. There is currently no national overseeing organisation or entity for MAP programmes.

5.1 A central organisation for ALMP programmes

AMS's (the National Labour Market Board) main responsibilities are to lead, coordinate, and develop the labour market policy (the ALMP system) in Sweden. It is mainly directed by the government through letters of regulation and the budget (Lundin 2004). AMS is constructed to quickly integrate and implement labour market policy in the entire country and to adjust policies in line with changes on the labour market. It is also AMS's responsibility to measure and report goal achievement to the government. The freedom to translate intentions and goals from the government gives AMS a powerful position in the field of Swedish labour market policy.

The implementation of ALMP programmes is often based upon discretionary practices at the local Employment Service. The staff at the Employment Services (*arbetsförmedlare*) consists of street-level bureaucrats in line with classic street-level bureaucracy theory (Lipsky 1980). They meet directly with the unemployed in their daily work and deliver labour market policy in its practical form. The staff concentrates on job matching and acts as brokers that need to match available job vacancies with suitable unemployed (Peralta Prieto 2006). Lundin (2004) describes that there is a contradiction in the work for the staff as they are supposed to both support the unemployed and in the same time uphold certain regulations, for example as a regulator of demands in the UI. Such double roles are common for the social workers responsible for social assistance and the municipal programmes, too. In regard to equal treatment, the right to similar services, and to what extent they engage their clients in programmes like the previous YG and the AG, studies have indicated that there are considerable variations between the offices. In some offices almost every unemployed that fits the requirements is activated in programmes, while in other offices there are none (Lundin 2005).

If the unemployed have serious personal and/or social problems or are conceived by the Employment Services staff to have serious problems, it is common that they are categorized as "not at the disposal of the labour market" or "not job ready," with the consequence that they are at risk not to be offered any, or at least limited, personal service (Mäkitalo 2002). Similar patterns are observed for unemployed that lack certain skills (e.g. language skills) or have skills for which there is limited demand. People that have not yet established themselves on the labour market, such as youth and immigrants, can also experience difficulties in getting adequate service at the Employment Services. Nevertheless, since there are few directions in the regulations in terms of who will get service and who will not, this leaves considerable room for professional discretion.

5.2 Local practices within municipal activation programmes

The implementation of activation programmes at the municipal level is very much an unknown field. Nevertheless, a couple of studies have examined the practices of activation programmes in Sweden (Ekström 2005; Hedblom 2004; Thorén 2005). Thorén (2005) studied the implementation practices in two municipalities with well developed activation programmes. She found that the municipal activation systems where characterised by high levels of municipal autonomy and marked with significant local and professional discretion. Social workers often performed eligibility determination, assigning individuals to work related activities, and monitored clients' compliance with high levels of discretion. Although professional discretion is valuable in assessing clients' different life situations and needs, the drawback is the risk of very unequal treatments depending on which social worker the clients are meeting with.

In Thorén (2005) municipalities referred most unemployed social assistance recipients to the local activation programme. Initially, under the MAP programme,

the client's employment situation was assessed by the staff. Individual job search was the most common activity, and the clients had access to the Internet and computer workstations on which they could perform job search and write applications and resumes. The studied programmes had contact with employers, recruiting companies, and training programmes, to which some clients were matched when it was possible or slots were available. However, the outflow to regular jobs was evidently not very common or at least not documented in a systematic way (Thorén 2005). It was very difficult to get a sense how many, if any, of the clients found employment through the programmes. Clients participated without any time limits; as long as they needed social assistance, they where required to participate (Fig. 19).

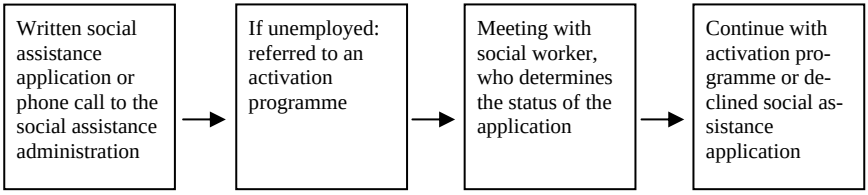


Fig. 19. The referral process to a MAP programme for social assistance recipients

According to programme documents, the main programme goals were to support social assistance recipients to enter the labour market or an education that will improve their possibilities to become self-supportive. Other programme goals were to encourage participants' individual development and a place where they could find support for their individual aim in life and to help them to an independent life.[29] Municipal programmes have often stated rather ambitious objectives for their programmes, but there is at the same time very little evaluation on how these programmes are fulfilling their own goals. Due to the large variation it is problematic to exemplify municipal activation programmes. However, below is an example from a municipal activation programme and its regular practices.

Unemployed social assistance recipients are required to attend "the Futurehouse" 48 h after their social assistance application has been approved. The Futurehouse collaborates with the local Employment Service and the local Social Insurance Offices. It also has contact with schools and employers in the local area. In addition to job search, participants can be involved in internal job-training activities, such

[29] One of the programmes stipulated in the annual report the following objectives for their participants: "All unemployed social assistance recipients in shall be offered a job or another work-related activity within five days. Provide clients with support that will improve their personal power. Give all clients a respectful treatment. Help the clients to find strategies to increase their healthy attendance in the society and the work place. Give the clients the help they are asking for (our translation) (Jobbcentrum Sydväst Annual Report 2003).

as carpentry, kitchen and cleaning duties, the computer lab programme, which was a regular programme within the ALMP system at the time for the study, and a work rehabilitation programme. Most immigrant clients participate in language education. Occasionally, the Futurehouse provides practical training with local employers. The Futurehouse has an ambitious plan to build a bank of practical training slots with companies in the local area but this idea was not very successful. It was difficult to find employers that were interested in the Futurehouse's clients, and the availability of practical training was very dependent on the general employment situation in the area. When the unemployment rate was low, employers made such slots available, but when the unemployment rate increased, it became difficult for the Futurehouse to regularly provide practical training for their clients. In addition to the work related activities, the Futurehouse provides "personal development courses" including presentation techniques, interview skills, and self-assessments.

5.3 Implementation difficulties

Although there is an ambition to provide enabling services to unemployed social assistance recipients, some studies of the implementation processes demonstrate several difficulties when executing municipal activation policy in practice. Thorén (2005) and Ekström (2005) point out a significant gap between official programme goals and the practical work.[30] Furthermore, Thorén finds that the programmes rarely provide tailor-made solutions; instead services are mainly the same for everybody, often independent job-search, with the minimum of programme responsibility. If participants fail to find a job, this is usually attributed to the individual's lack of motivation rather than to deficits of the programme. The referral process often occurs without individual assessments, despite clear directions in the Social Service Act that such assessments are fundamental for this type of interventions.

Another implementation problem, especially when the workload is high, is "creaming," i.e. the staff prioritises clients that are most likely to find jobs. The consequence is that clients with fewer chances to find an employment are left behind, despite their significant need of support in the job finding process.

It is almost impossible for participants to appeal or even question the activation requirement in the municipal system. Thorén's general conclusion is that these programmes are mainly about monitoring participants' entitlement for social assistance instead of preparing and enabling them for the labour market.

[30] Official goals are often expressed in terms of "individually tailored services" with the aim to "improve the individuals' personal possibilities" to enter the labour market.

6 Data and outcomes on activation policies

The governmental labour market policy system has a long tradition of examining results and effects of the different programmes and interventions. In general, the municipal activation system lacks systematic evaluations and follow-ups. It is very much an unknown field in terms of outcomes and effects. In this section we present some of the major findings from the ALMP system. For the MAP system, only a handful of studies have been done, most of which do not analyse programme effects. Nevertheless, we will present the most relevant findings in this field as well.

6.1 Results and effects of ALMP programmes

Many well developed datasets and administrative records provide great opportunities for labour market policy research in Sweden (Calmfors et al. 2001). For example, AMS has since 1991 registered all unemployed in a longitudinal dataset, and there are specific research institutes with the responsibility to analyse labour market policies (e.g. the Institute for Labour Market Policy Research) in addition to other researchers.

Calmfors et al. (2001) performed a meta-analysis of ALMP evaluations, and their main findings are presented here. Many of the studies in this analysis were carried out in the 1990s, when Sweden faced a severe recession, which probably has impacted on the programme outcomes that were observed.

6.1.1 Micro level studies of ALMP programmes

Micro level studies examine outcomes on the individual level for programme participants. In general, the effects are mixed and it is difficult to find significant positive effects on the micro level.

Job search activities: Research shows that job search activities are the most effective way for shortening unemployment spells, especially early in the unemployment period. On the other hand, there is an obvious relation between participation in ALMP programmes and low search activity (i.e. programme participants seem to search for job to a lower degree compared to unemployed persons who do not participate in a programme). This finding indicates that ALMP programmes create so-called lock-in effects. It could be explained with programme participants not having the same time for job search while participating in a programme and/or a wish to complete the programme before taking a new job.

Labour market training programmes: The evaluations indicate positive estimated effects on training programmes. The results also point to the fact that such effects were more positive in the 1980s when unemployment rates were lower. The results from the 1990s indicate more negative outcomes due to larger lock-in

effects. This can be explained with the difficulties to find areas in which there was a shortage of workers.

Subsidised employment: The knowledge about specific effects of subsidised employment is rather limited. However, evidence suggests that this type of measure is most effective if the employment situation is as similar to a regular job as possible. It is sometimes even more effective than job search activities. Some research indicates that it is most cost-effective if this type of subsidy is given to unemployed that are more "distant to the labour market." Calmfors et al. writes that self-employment schemes and recruitment subsidies are to be preferred in comparison to work experience schemes.

Employers' attitudes: Employers have a positive attitude towards participants in ALMP programmes, especially towards participants in labour market training programmes, and prefer applicants from programmes over unemployed that have not participated in any programme.

Effects of youth programmes: There are great variations between the studies that are included in Calmfors et al. (2001) to what extent youth programmes successfully support young unemployed to enter the labour market. In general, there are often few or even negative effects for different youth measures. In a more recent study, Forslund and Nordström-Skans (2006) find very mixed effects on youth programmes. However, they demonstrate that youth programmes organised at the municipal level were much less successful in comparison with regular ALMP programmes. They also contend that most positive effects on programme participation are found early in the unemployment period and that these are very short-term effects. They found very few long-term effects on programme participation for youth.

Effects of the Activity Guarantee: Hägglund (2002) studied programme effects for participants entering the programme in 2000. He finds positive effects for participants in finding subsidised employment compared to non-participants in the control group. But there are no effects between participants and non-participants in leaving the programme for a regular employment. The findings also suggest that participants who found a regular employment returned to unemployment to a higher degree compared to non-participants.

6.1.2 Macro level studies of ALMP programmes

There are much fewer macro level studies and the results for the labour market and the economy in general are rather mixed. Calmfors et al. (2001) implies, even if the results are somewhat varied, that ALMP has a negative effect on mobility through lock-in effects. They also suggest that there are clear tendencies of displacement effects for several ALMP programmes. For programmes that are "closer" to the labour market (i.e. more similar to a regular job situation), the displacement effects are greater compared to programmes that are more dissimilar to a regular job. For example, for different forms of employment subsidies, estimated displacement effects were between 39 and 84%. Generally, econometric studies suggest

displacement effects of over 60%. Macro studies on labour force participation and ALMP programmes are limited but Calmfors et al. are referencing three studies that all indicated positive effects for ALMP programmes on labour force participation.[31]

Calmfors et al. (2001) concludes that there is a "rather disappointing" overall picture from both micro- and macroeconomic studies on Swedish ALMP programmes. There are, however, more positive effects from the 1980s compared with the 1990s. Today, the unemployment rates and the numbers of participants are more equal with the situation during the 1980s, which implies that the effects from current programmes could be more positive than the effects estimated on programmes in the 1990s. But there have been significant changes on the labour market since the 1980s. For example, the demand for low skilled workers varies over time and makes it difficult to draw certain conclusions regarding the relationships between ALMP programmes and outcomes.

6.2 Research on municipal activation programmes

Only a handful of studies have examined the recent development of municipal activation programmes in Sweden. Among these studies even fewer have examined programme effects on the individual level. A major difficulty in examining any general results from these programmes can be explained by their local character. The lack of centralised directives or organisation makes it problematic to illustrate "typical" programme features. Despite this scattered system, Salonen and Ulmestig (2004) conducted the first, and only, overview of municipal activation programmes. They projected that there were around 800 activation programmes with around 13,000 participants in 2002, which is equivalent to 30,000 people per year. The administrative cost per client and month in these programmes could range from SEK 1,000 to 15,000, which illustrates a large financial variation as well. Salonen and Ulmestig (2004) argue that activation policy for social assistance recipients operates as a "second rate" labour market policy for those who do not qualify for unemployment insurance. In addition to this important overview, existing studies have examined issues like the recent policy changes, the implementation of municipal activation, and different forms of outcomes.

Whether activation programmes are effective in terms of increased work participation and higher incomes is still unclear. Giertz (2004) finds only modest effects employment and income for long-term social assistance recipients while examining activation programmes in Malmö. Hallsten et al. (2002) find that there was no difference in employment rates between the control group and the study group after the completion of an activation programme in Stockholm. Blomberg et al. (2006) measures social assistance expenditures in the different city-councils in

[31] According to Statistics Sweden (2007) Sweden has a total labour force participation of 80.6%; 78% for women and 83.1% for men.

Stockholm, concluding that there are no differences in the social assistance expenditures between city-councils with a strong focus on activation requirements compared to city-councils with less activation requirements. Milton (2006) does not find any positive effects on increased employment rates with strict job search requirements in Uppsala in the 1990s.

While the research on this field is still very limited, there is little evidence that municipal activation policy in Sweden has been a great success in terms of employment and/or increased income for the participants. Despite the lack of positive findings, its development is rarely questioned and it is still politically very popular. At the municipal level, there are no signs of holding back in the development of new programmes.

7 Concluding remarks on activation in Sweden

All processes in the society are complex in the sense that different welfare schemes and other institutional systems affect each other. In that respect, it is only possible to describe and analyse some of the major aspects of the activation development in Sweden. Those aspects are the continuity and (re)emphasis on active citizenship for the unemployed and the changes in governance with respect to the relation between government and municipal entities. We have also briefly discussed how the new conservative government has begun to reform and alter labour market policies in Sweden. The Swedish activation case may be summarised with the following metaphor, although without the coin: "Something Old, Something New, Something Borrowed and Something Blue (see title)".[32]

It is evident that labour market policies in Sweden now entail a stronger emphasis on the active citizenship (Hvinden and Johansson 2007). Stronger economic incentives through reduced levels of UI benefits, shortened benefit periods and increased entitlement conditions for UI demonstrate such changes. It is also clear that the current government will not shelter the unemployed with the same amount of security as before; instead, unemployed individuals are expected to take more responsibility and be more active in order to discontinue their unemployment. One argument in the political debate strongly emphasises a need for labour market policy reforms and an improvement of the general economic situation through more restrictive labour market policies. Others argue that such reforms create a distinction between different categories of unemployed. The current emphasis on active citizenship and less security affects those unemployed on the margins of the labour market more negatively compared to those with a more stable labour market situation. This is a pattern that is visible in many other welfare states (Hvinden et al. 2001; Hvinden and Johansson 2007). There are also clear distinctions between those unemployed that are eligible for unemployment insurance and those who are dependant on social

[32] An old "good luck saying" to brides at weddings.

assistance. Hvinden et al. (2001) means that beneficiaries in means-tested systems (e.g. social assistance) will be more exposed to sanctions if they do not comply with, often unspecified, rules compared to beneficiaries in more insurance and rights-based systems (e.g. unemployment insurance). Different categories of unemployed face different rights, obligations and even attitudes of policymakers (Lødemel and Trickey 2000).

But the "activation trend" has also created new opportunities for the unemployed. It has put social exclusion and marginalisation on the societal agenda (Geldorf 1999). Those in charge of these issues have started to do something for this group of people, instead of simply handing out cash benefits. The "activation trend" also implies that there are more than just economic factors that cause marginalisation.

Since the 1990s, there has been a change in the governance of labour market policy between the government and municipalities in (Ulmestig 2007). Traditionally, Sweden has had a centralistic model in which the state, through AMS, had a strong control over the Swedish labour market policy system. During the crisis years of the 1990s, this setup was altered and has now developed into two different organisational systems. On one hand, AMS was in need of less expensive programme slots to activate people, and many municipalities responded to this situation by organising the Youth Guarantee and the Activity Guarantee at the municipal level. In this form, municipalities execute governmental policy responsibilities, and the participants receive their financial benefits from the state. On the other hand, municipalities experienced that the Employment Service did not prioritise unemployed with social assistance and started to activate social assistance recipients in their own (local) activation schemes.

Already in the 1980s, the National Board for Health and Welfare (*Socialstyrelsen*) and the Supreme Administrative Court (*Regeringsrätten*) claimed that labour market programmes are not a municipal task. The Government Bill 1996/1997:124 also proposed that social assistance recipients should, at first, be offered participation in ALMP programmes before considering local municipal measures. However, this condition was definitively altered when the municipalities initiated programmes aimed at social assistance recipients. Eventually, the legislation was altered and municipalities also got the legal authority to activate social assistance recipients (Johansson 2001). The trend towards decentralisation of such responsibilities also gave rise to new bureaucratic conditions (Finn 2000). The great amount of local variation and discretion impacts the organisation of municipal activation programmes significantly. Consequently, individuals can be treated very differently depending upon the municipality in which they reside and not necessarily upon their employment needs.

Hence, municipal activation requirements started a new form of active measures in a Swedish labour market policy perspective. This trend seems to be maintained since the new Government's proposals entail, in general, increased individual responsibilities and obligations in order to combat unemployment. The new Job and Development Guarantee, which was put into practice very recently, is a clear example of this form of activation requirement policy. This programme

might alter the relationship between governmental and municipal programmes further, as it will, at least in theory, include all unemployed individuals. Depending on the allocation of resources to governmental programmes and implementation practices, both governmental and municipal activation programmes in Sweden might take yet another shape in the future.

List of abbreviations

Abbreviation	
AG	Activity Guarantee – Aktivitetsgarantin
ALMP	Active Labour Market Programmes – Arbetsmarknadspolitiska program
AMS	Arbetsmarknadsstyrelsen – National Labour Market Board
FAP	Förordning om arbetsmarknadspolitiska program – Ordinance on Labour Market Policy Programmes
FAV	Förordning om den arbetsmarknadspolitiska verksamheten – Ordinance on Labour Market Policy Activities
IAF	Inspektionen for arbetslöshetsförsäkringen: Swedish Board for Unemployment Insurance
IAP	Individual Action Plan – Individuell handlingsplan
LAS	Lag om anställningsskydd – Employment Protection Law
MAP	Municipal Activation Programmes – Kommunala aktiveringsprogram
Socialtjänstlagen	Social Service Act (SSA)
Socialstyrelsen	National Board of Health and Welfare
YG	Youth Guarantee – Ungdomsgarantin

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‘Employment First’: Activating the British Welfare State

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1 Introduction

Over the past decade there has been radical change in the British welfare state. The Government has introduced a new welfare contract where the 'rights and responsibilities' of working age adults receiving state benefits have been redefined to encourage, and increasingly require, their active participation in paid employment. This has involved a parallel 'activation' of entitlements and obligations and of the services delivered by welfare state institutions.

This chapter considers the new combinations of job search assistance, obligations and programmes; and 'make work pay' reforms, introduced in Great Britain (GB) since 1997[2]. It assesses evidence on the impacts of the strategy and the challenges faced as activation requirements are extended to workless lone parents and people with health problems and disabilities.

The British case merits attention for several reasons. Firstly, New Labour has sought explicitly to synthesise 'what works' from both neo-liberal and social democratic welfare traditions with some analysts discerning the emergence of an "Anglo-social welfare model, incorporating and reconciling economic performance and flexibility with equality and social justice" (Dixon and Pearce 2005).

Secondly, the persistent high levels of unemployment that characterised Britain in the 1980s and early 1990s have been replaced by low levels of unemployment and high levels of labour force participation. Credit for the success of the British strategy has been attributed to labour market flexibility and adept macro economic management. This chapter more narrowly considers the particular contribution made by activation and redistribution through the tax and benefit system.

2 The legal foundation and governance of the British welfare state

It is important to clarify some distinguishing characteristics of the British political, administrative and constitutional system that in part facilitated the early emergence of 'activation'.

In contrast to most European countries GB has no single constitutional document. The British constitution consists of laws, customs and conventions, drawn from both legal and non-legal sources and its common law has developed with an emphasis on remedies rather than rights.

[2] Job search activity obligations and the benefit, tax and tax credit system are uniform throughout the four countries that make up the UK. The remit of DWP and Jobcentre Plus, which are responsible for the implementation of activation, extends only across GB and not Northern Ireland which has a different administrative architecture.

British social security law is based on legislation consisting of Acts of Parliament and statutory instruments. Individual Acts typically give Ministers the power to introduce secondary legislation in the form of detailed regulations. These statutory instruments must be approved by Parliament but are not subject to the full process of Parliamentary debate and scrutiny applied to the initial primary legislation. Many detailed issues concerning job search requirements and social security entitlements are implemented and revised through such secondary legislation.

A second source of social security law derives from judicial decisions, made in this context principally by Social Security Commissioners who preside over appeal tribunals. These administrative tribunals were first created in 1911 to resolve disputes about benefit eligibility or sanctions independently from Ministers and outside the formal law courts. In the British social security (and the tax and tax credits) system there is a statutory right of appeal to a tribunal "against decisions on entitlement which turn on matters of fact, but no appeal against the use of discretion" (PAC 2006). Judicial decisions by Social Security Commissioners provide binding interpretations of the legislation and must subsequently be followed by tribunals and local 'decision makers' in JCP. Both reported and unreported decisions of Commissioners are important sources of guidance on the interpretation and application of legislation.

The governance of the British benefit system is also highly centralised. In the absence of a written constitution and fewer restraints on the executive, the Government has an enhanced capacity to redesign benefits, create organisations and mould institutions to meet its policy objectives. In contrast with other European countries the National Insurance (NI) system is controlled directly by the state, not the social partners, and there are no independent social insurance funds. The design and delivery of benefits for British citizens outside the insurance system is also largely centralised, and unlike many European systems local municipalities play a limited role in the delivery of benefits and employment programmes. Ministers and senior civil servants control the main levers of economic and employment policy. They also control implementation through central Government Departments and since the late 1980s their respective Executive Agencies.

3 The benefit system for working age people

In 1911 the British Government was the first to introduce a nationally regulated system of unemployment insurance jointly funded by workers and employers (Price 2000). This was intended to free important sections of the labour force from recourse to traditional Poor Law 'relief' and through local 'labour exchanges' facilitate the placement and filling of job vacancies. There was, however, concern about the impact that unemployment benefits would have on labour discipline leading to the parallel introduction of strict rules and procedures to deter people from leaving jobs and for testing their availability for work. The way in which benefit entitlements and obligations were subsequently institutionalised underpinned the

'resilience of liberal values' in the British system explaining the relative ease with which such values were to come to prominence again in the 1980s (King 1995).

3.1 Main cash benefits for people of working age

The structure of the British benefit system was first modernised following the Beveridge Report of 1942. This led to the introduction of a NI system made up mainly of employer and employee contributions paying flat-rate benefits, covering risks such as unemployment, invalidity from work and retirement. The system also contributed towards an, in principle, universal and free National Health Service. A residual means-tested National Assistance system was designed to provide for those who did not qualify for insurance benefits. Family allowances were introduced also to ensure, amongst other things, that the costs of rearing children would not discourage people from taking up low paid jobs. Finally, in this period Government accepted a responsibility to maintain full employment through Keynesian demand-oriented policies.

The British social security system has since been characterised by a two track system of benefits: one contributory scheme for the insured and a parallel means tested scheme for those who exhaust or never attain entitlement. Contributory insurance benefits cover the traditional risks of unemployment, sickness, pregnancy, invalidity, industrial injuries (i.e. accidents at work) and occupational disease, old age and death. Currently they include contribution-based Jobseeker's Allowance (JSA), Incapacity Benefit (IB), Maternity Allowance, Industrial Injuries Benefits, and Old Age Pension. Entitlement to each of these benefits depends upon satisfying the relevant tests governing payment of NI contributions.

Means-tested benefits are available to people whose income falls below a certain level, which varies according to their family circumstances. Entitlement also depends upon the level of the person's assets. Currently the most significant include Income Support (IS), income-based JSA, Housing Benefit (HB), Council Tax Benefit (CTB), Working Tax Credit (WTC) and Child Tax Credit (CTC). Legal entitlement depends on presence, and, in the case of some means-tested benefits, habitual residence. Other non-contributory benefits are designed for the risk of old age and death, and for specific categories of people who are not covered by the insurance system. They include Attendance Allowance, Disability Living Allowance and non-contributory retirement pensions.

The design of individual benefits and the determination of their eligibility rules are governed through detailed regulations. The level and duration of benefits are set annually by central Government and increases are based on price indexation rather than average earnings.

The box below gives a brief description of the main working age benefits in 2007.

Box 1. Cash benefits for workless people in Britain: 1997

Jobseekers Allowance: JSA is a benefit for unemployed people aged under state pension age and who are capable of, available for and actively seeking work of at least 40 h per week. It may be claimed by people working less than 16 h a week who are looking for full time work. There are two types of JSA. *Contribution-based JSA* is a flat-rate cash benefit paid for 6 months to individuals who have been employed and paid enough NI contributions in the preceding 2 years. There are different levels of cash payment for young people aged under 25 and an additional payment for a domestic partner. *Income-based JSA* is available for low income unemployed people and their families if they satisfy the same income and assets test applied to those who claim IS.

Income Support: An income-related cash benefit that can be claimed by people normally aged 18 and over who are not required to be actively seeking work and have insufficient income to meet their needs and savings below GBP 16,000. IS comprises a personal allowance for the claimant, partner and any children; premiums for families with children, people with disabilities, and carers; plus help with some housing costs such as mortgage interest payments. In February 2006, 2.13 million people received IS. Roughly 56% were disabled and 36% lone parents.

Incapacity Benefit: A contribution-based cash payment paid to people who are incapable of work who have paid, or been credited with, sufficient NI contributions. It may also be claimed by people who become incapable of work in their youth. An employed person is entitled to at least 'Statutory Sick Pay' for the first 28 weeks of their incapacity for work after which they may claim IB. Incapacity is assessed through an 'Own Occupation Test' and 'Personal Capability Assessment'. There are three levels of cash payment, increasing in value with time on benefit. Generally IB it is not affected by savings or other income. If someone has not paid enough NI contributions to qualify for IB they may, if eligible, claim IS and receive a disability premium.

Housing Benefit and Council Tax Benefit: HB was introduced in 1980 following deregulation of the housing market and removal of rent controls. Council Tax is a tax on domestic property values and the main source of revenue income for Local Authorities. Each dwelling is allocated to one of eight valuation bands, based on its capital value. Both HB and CTB are paid to qualifying low income people whether or not the claimant is available for or in full-time work and are administered and paid by 408 Local Authorities. The rules are, however, determined by central Government. HB and CTB are subject to the same detailed rules and payments vary by family size, income and savings. In 2006 just over four million people in GB were in receipt of HB and 5.8 million households received CTB.

National Insurance Credits: NI 'Credits' are awarded to people who are out of work and claiming benefits in order to maintain their eligibility for a state pension. A significant minority of people who receive no cash benefit are awarded NI Credits through the JSA and IB systems.

Other Benefits: There are other cash benefits paid to help with the mobility or care costs of disability, a 'Social Fund' for emergency payments, assistance with prescription and dental charges and, for children, school meals. Certain groups, such as the carers of disabled people, may be entitled to a specific cash benefit.

3.2 Trends in benefit expenditure

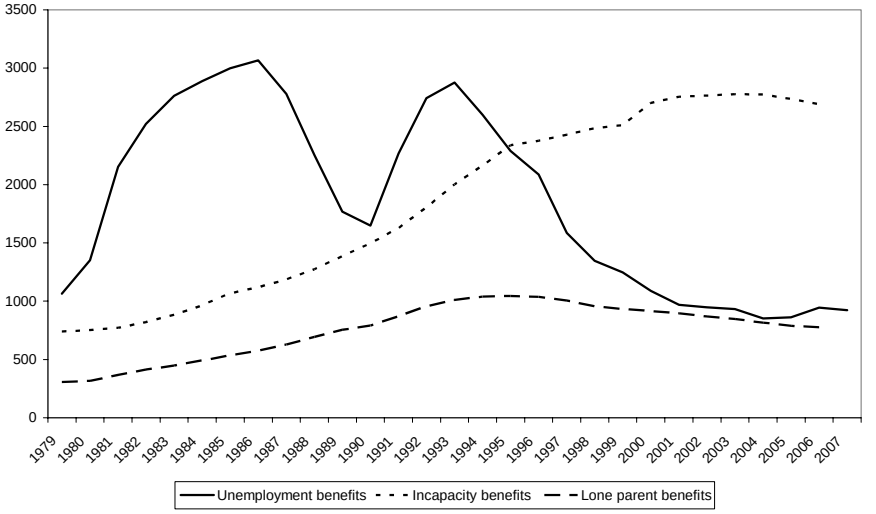
After 1945 social security spending increased almost continuously as a share of national income until the 1980s. This was due to an increase in the generosity of many state benefits as well as an increase in the numbers eligible to claim them. This trend accelerated when unemployment increased. For example the number of people claiming unemployment benefits increased from 340,000 in 1950 to over 1.6 million in 1980 (Phillips and Sibieta 2006).

The late 1980s saw the first substantial fall in social security spending due to falling unemployment and reforms, in particular the decision to increase benefits in line with prices, not earnings. The economic downturn in the early 1990s, however, saw the economy contract and unemployment rise to 2.9 million. This led to another increase in expenditure. Social security again fell as a share of GDP as the economy grew and unemployment fell. This trend changed in 2000 and the proportion of GDP allocated to social security expenditure has increased, mainly due to the generosity of benefits targeted at pensioners and families with children.

In 2005/2006, about GBP140.6 billion was spent on social security benefits in GB accounting for 26.9% of total government expenditure. Approximately 30 million people in the UK – over half the total population – receive income from at least one social security benefit. The largest group of beneficiaries are over state pension age but about a third of social security expenditure is claimed by people of working age.

JSA claimant unemployment fell significantly after 1993 but the number of people of working age receiving state benefits has remained high. Figure 20 shows the changing composition of the population of people on working age benefits since 1979. It illustrates the impact of two recessions alongside the gradual increase in those claiming benefits either because they were lone parents or, more significantly, because of disability or other health problems.

An important feature of change in the British benefit system has been the shift away from insurance-based contributory benefits. Contributory benefits now account for less than 55% of total benefit expenditure, compared to 70% in the 1960s; and income-related benefits have grown from 8% of overall expenditure in the 1960s to 31% in 2006/2007 (Tetteh 2007). In the British system the link between the amount contributed and benefit entitlement, which was once close, has now weakened.



Source: Presentation on ‘Repeat benefit claimants and long term unemployment’, Bill Wells, Chief Economist, Department for Work and Pensions, at the Welfare Reform: Challenges, Choices and International Insights, DWP International Conference, 26 March 2007, London.

Fig. 20. UK main working age benefit caseloads: 1979–2007

Table 24. Contribution and income-based JSA claimants (UK; in May; Thousands)

Year	1999	2000	2001	2002	2003	2004	2005
All with benefit – total	1 105.8 (100%)	976.2	854.5	828.0	835.8	738.0	768.5 (100%)
Contribution-based JSA only	158.2 (14%)	148.8	148.1	162.7	168.0	138.2	147.2 (19%)
Contribution-based JSA & Income-based JSA	27.1 (2%)	19.0	18.4	19.4	19.0	14.2	14.2 (2%)
Income-based JSA only payment	920.4 (83%)	808.4	688.1	645.9	648.8	585.6	607.1 (79%)
No benefit in payment[a]	118.7	95.0	94.4	91.1	92.0	82.1	76.4
Total	1 224.5	1071.2	948.9	919.2	927.8	820.1	844.9

[a]Some people continue to claim JSA after 6 months even though they are not qualified for income-based JSA in order to obtain NI ‘credits’

Source: Table 10.6, *Annual Abstract of Statistics: 2006 Edition*, National Statistics, Palgrave, Basingstoke

This trend has been most marked in unemployment benefits where the proportion receiving insurance-based contributory payments declined sharply in the 1980s, a trend that has continued under New Labour. Table 24 shows, however, a slight increase in the proportion receiving contribution-based JSA in 2005 reflecting an increase in short-term unemployment.

4 Activation policies

4.1 Benefit reform and activation under the Conservative Government

A new approach to 'activation' first emerged in the British benefit system in the mid-1980s. What became apparent at this time was that at each turn of the economic cycle long-term unemployment had been 'ratcheting' upwards. In the late 1960s, for example, the proportion of those unemployed for over a year averaged 17%, by the mid-1980s it increased to 40%. The 'risk' of unemployment had increased only slightly but it had become "a much more serious event because it takes so much longer, on average, to get back into work" (Nickell 1999). After the introduction of the Labour Force Survey (LFS) in 1984 it was found that the number of people receiving unemployment benefits exceeded those who said they were actively looking for work.

Critics pointed to the lax implementation of benefit conditionality and to institutional fragmentation. Individuals who claimed unemployment benefits did so at Unemployment Benefit Offices, where they were also required to 'sign on' fortnightly as available for work. These offices were controlled directly by the Department of Employment. By contrast, job matching took place at recently established 'high street' Jobcentres and these were controlled by a tripartite Manpower Services Commission (MSC) that was responsible for overall training and 'manpower policy'. It was argued that different organisational priorities meant that the management of the system had become "passive," job matching was not linked to receipt of benefit, and that the unemployed had "no responsibilities to counterbalance the right to benefit" (Wells 2001).

By the late 1980s, the Conservative Government had embarked on a series of reforms to the benefit system and to active labour market programmes. The objective was to improve the 'supply-side', by 'activating' the unemployed and getting them into available jobs as soon as possible rather than putting them 'on hold' in large scale employment and training programmes.

The 1989 Social Security Act introduced 'actively seeking work' regulations that required the unemployed to take at least two different steps each week to find employment. The unemployed lost the right to reject a job for not paying a 'recognised' rate of pay and sanctions for 'voluntary unemployment' increased. These changes complemented policies that deregulated wages and employment conditions in much of the British labour market and which culminated in 1993 in the abolition of all statutory minimum wage protection (except in agriculture).

The activation strategy was supplemented by implementation reforms. In 1987 the MSC was stripped of its role in delivering services directly to the unemployed and a new Employment Service Executive Agency was created with the task of integrating the previously separate networks of front line offices.

The Employment Service (ES) was 'steered' directly by Ministers through performance targets focused in particular on job placement, reducing fraud and the numbers claiming benefit, and the delivery of job search programmes. The ES was made responsible both for the administration of benefit payments *and* for job search advice, scrutiny and vacancy matching. It was responsible also for encouraging claimants to take advantage of 'in-work' social security benefits if they took low paid jobs.[3] These services were by 1989 delivered through a newly integrated national network of front line Jobcentres.

By the mid-1990s, unemployed people were subject to what was called the 'stricter' benefit regime. This consisted of an in-depth initial interview and fortnightly checks of job search activity throughout a claim. After 13 weeks the unemployed person was expected to expand the range of jobs they were willing to accept and after 26 weeks, the claimant had to attend their first in depth 'Restart' interview, thereafter repeated every 6 months. These regular administrative interventions were designed to reduce 'duration dependency', the "natural tendency for morale and job search to flag the longer a person is unemployed" (Wells 2001).

This process of activation culminated in the 1995 Jobseekers Act. Unemployed individuals were now required to enter a mandatory Jobseekers Agreement (JSAg) specifying the steps they intended to take to look for work. Front line officials were given a new discretionary power enabling them to issue a 'Jobseekers Direction' requiring an individual to look for work in a particular way, to take other steps to 'improve their employability' or to participate in job search programmes or training schemes. Table 25 contrasts some of the main differences between benefits for the unemployed before 1996 and after the introduction of JSA.

[3] The key in-work benefits included Housing and Council Tax Benefit (see Box 1) but there was also a significant expansion of Family Credit, which directly supplemented the wages of workers with dependent children and which by 1996 was being received by over 600,000 families, many of which were headed by lone parents (see Box 2).

Table 25. Significant differences between unemployment benefit and income support for the unemployed (pre 1996) and jobseekers allowance (since 1996)

	Unemployment benefit	Income support	JSA (contribution-based)	JSA (income-based)
Availability for work	Be available every day claimed	Be available for at least 24 h a week	Be available for at least 40 h work a week and after 13 weeks be willing to travel at least 90 min to work each way. [a]Certain groups e.g. carers or those with a physical or mental condition can restrict their availability to less than 40 h depending on personal circumstances	
Actively seeking work	Actively seeking work every week	Actively seeking work every week	Actively seek work every week by applying for jobs or improving employment prospects. Expected to take three different 'steps' to look for work each week. [b]Not entitled when behaviour stops them getting a job	
Jobseeker's agreement	Voluntary back to work plan	Voluntary back to work plan	Enter into and sign a Jobseeker's Agreement as a condition of benefit. The Agreement sets out the jobseeker's agreed availability, the steps the jobseeker intends to take to look for work, and the range of help available to find work	
Duration	6 days a week for up to 312 days	7 days a week; indefinite award	Weekly benefit up to a maximum of 182 days	Weekly benefit paid while circumstances remain unchanged
Labour market disallowances	Disallowed if fail to be available for/actively seeking work	Hardship payable if unavailable, both pending decision and if decision is adverse. No hardship payable if not actively seeking work	Disallowed if fail to be available for/actively seeking work/have not signed a satisfactory Jobseeker's Agreement	Access to reduced rate in case of hardship for people in prescribed vulnerable groups pending decision and following adverse decision. People not in prescribed groups have access from the third week only where doubt over entitlement to JSA; but no access where adverse decision reached
Sanctions	Disqualification for up to 26 weeks for leaving voluntarily, misconduct, refusal of employment and refusal of training. No UB payable pending decision on first two categories	IS automatically reduced by 40% of personal allowance both pending decision and following adverse decision on leaving voluntarily, misconduct and refusal of employment	Disqualification for up to 26 weeks for leaving voluntarily, misconduct, refusal of employment. Loss of benefit for 2 weeks (4 if repeated) for refusal of training scheme or employment programme, refusal to carry out Jobseeker's direction	Access to reduced rate only in case of hardship: but not during first 2 weeks of a standard sanction or throughout a New Deal sanction, except for people in prescribed vulnerable groups

[a]Increased from 1 h each way in 2004
[b]Increased from two steps in 2004
Source: Job Seeker's Allowance Quarterly Statistical Enquiry: February 2005, Annex 5, Department for Work and Pensions

4.2 New Labour's inheritance: Falling unemployment and increasing benefit dependency

By 1996/1997 the active benefit regime was contributing to a general decline in unemployment (Sweeney and McMahon 1998). The welfare state that New Labour inherited in 1997 was, however, under pressure. The reduction in unemployment masked the emergence of deep-seated problems. In particular, earnings inequality had increased and pay levels for the unskilled had fallen, leading to a substantial degree of in work poverty, particularly among families with young children. Inter-generational unemployment blighted many disadvantaged areas, and in one in five UK households nobody of working age had a job. By 1996 nearly a million lone parents, mainly women were dependent on state benefits.

Economic activity rates were static and had fallen for older men. Many of those who lost jobs in the waves of restructuring that took place in manufacturing and other sectors moved on to sickness and disability benefits, contributing to what was described as 'hidden unemployment' (Alcock et al. 2003). A number of 'push' and 'pull' factors were identified. 'Push factors' included the collapse in demand for unskilled labour, the role of the activation regime and the relative laxity of medical and eligibility tests. 'Pull factors' included the relative generosity of invalidity compared with unemployment benefits (Clasen et al. 2004). Other factors were also at work, especially an increase in qualifying mental health conditions.

What was common to both those claiming lone parent and disability benefits was that while the flow into these benefits was relatively steady, the average duration of such benefit claims increased. There were no work requirements for those on 'inactive' benefits and most who claimed them had little contact with employment-related services.

4.3 Activation under New Labour: A 'new contract for welfare'

In his first major domestic speech Prime Minister Blair stated that the "greatest challenge" for his "welfare to work" Government was "to refashion our institutions to bring the new workless class back into society and into useful work" (PM 1997). The Labour Government commenced a programme of radical change. The first steps involved the introduction of 'New Deal' employment programmes alongside a National Minimum Wage (NMW) and changes to the tax and benefit system to 'make work pay'. In 1998 the Government proposed a 'new contract for welfare'. The ambition was to rebuild the welfare system "around the principle of work for those who can and security for those who cannot" (DSS 1998). The ambition was to change "the whole culture of the benefit system" through introducing a "single gateway to work" where Personal Advisers (PAs) would help "people to become independent, rather than (lock) them into dependency".

The reform process has since sought to activate both individual claimants and the institutions delivering benefits and employment programmes. In 2001 a national Department of Work and Pensions (DWP) was created with Jobcentre Plus (JCP), an Executive Agency made responsible for integrating job search support and benefit payments for all working age people. The 1999 Welfare Reform and Pensions Act introduced mandatory 'Work Focused Interviews' (WFIs) for all working age claimants and Ministers have since extended the frequency with which certain groups have to attend them. In 2008 major changes will further 'activate' benefits for people with health problems or disabilities and job search obligations will be extended to lone parents who have not previously had to look for work until their youngest child was aged 16 years. From November the age of child rule will be reduced to 12 years falling to 7 years by 2010.

The following sections describe in more detail the key components of the 'active' welfare state constructed by New Labour. The sections consider in turn:

- The replacement rate of JSA and 'make work pay' reforms
- Activation requirements and sanctions
- Employment programmes and the New Deals
- The governance and delivery of the new system, especially the role of private and voluntary sector providers.

Finally the chapter assesses trends in unemployment and economic activity and considers the evidence available on the impacts of the reforms introduced.

4.3.1 'Making Work Pay': The National Miminum Wage and Working Tax Credits

The level of British benefits for the unemployed is low relative to previous earnings, a characteristic of a liberal welfare regime. The OECD summary measure of benefit entitlements shows the British wage replacement rate falling from 24 to 18% between 1979 and 1995 and declining to 16% in 2003, at which point it was amongst the lowest in Europe. By 2005 the level of JSA payment for a couple aged over 25 represented just over 17% of the average wage and that for a single person under 25 less than 11% (see Table 26).

The value of the main means-tested benefits relative to average earnings has, however, changed significantly. There has been an improvement in the position of larger families with children and for pensioners reflecting the Government's commitment to tackle child and pensioner poverty. By contrast unemployed single people and childless couples have experienced a 20% decline in the value of their benefit relative to average earnings since 1997 (Palmer et al. 2006). The Government argues that this change has sharpened work incentives and targeted extra income at those groups least able to improve their position through employment.

Table 26. Jobseeker's allowance (contribution-based) at April 2005 prices and as a percentage of average earnings (1997, 2001, 2005)

	Single person aged over 25			Couple aged over 25		
	Rate of JSA £pw	Real value of JSA at date of uprating £pw at April 2005 prices	Rate as a percentage of average earnings %age	Rate of JSA £pw	Real value of JSA at date of uprating £pw at April 2005 prices	Rate as a percentage of average earnings % age
April 1997	49.15	60.25	13.4	77.15	94.57	21.0
April 2001	53.05	58.72	11.8	83.25	92.15	18.5
April 2005	56.20	56.20	10.9	88.15	88.15	17.1

Source: The Abstract of Statistics for Benefits, National Insurance Contributions, and Indices of Prices and Earnings: 2005 Edition, National Statistics, London, 2006, Table 5.3

More positive work incentives have been introduced also to 'make work pay'. In 1998 the NMW Act established an independent statutory Low Pay Commission to make recommendations about the level and operation of a minimum wage. The legislation established a single national hourly rate to cover all mature workers, except the self employed. The only exception is younger people and trainees who can be paid a lower development rate.

The NMW has been increased annually since 1999 and, in the absence of adverse impacts on employment or inflation, the rate has been increased faster than average earnings since 2003 (see Table 27).

Table 27. National minimum hourly wage rates: 1999–2006

Date With effect from	Adult rate (for workers aged 22+)	Development rate (for workers aged 18–21)[a]	16–17 year oolds rate
1 April 1999	£3.60	£3.00	None
1 October 2000	£3.70	£3.20	None
1 October 2001	£4.10	£3.50	None
1 October 2002	£4.20	£3.60	None
1 October 2003	£4.50	£3.80	None
1 October 2004	£4.85	£4.10	£3.00
1 October 2005	£5.05	£4.25	£3.00
1 October 2006	£5.35	£4.45	£3.30

[a]The development rate can apply to workers aged 22 and above during their first 6 months in a new job with a new employer if they are receiving 'accredited training'
Source: http://www.lowpay.gov.uk/lowpay/index.shtml.

The NMW was introduced alongside other reforms. In 1999 there were reductions in income tax and NI contributions for low paid workers and the introduction of the Working Families Tax Credit (WFTC). Table 28 illustrates the ways in which WFTC was more generous than Family Credit, which it replaced.

Table 28. Main characteristics of family credit and working families

Family credit	Working families tax credit
Administered and assessed by the benefits Agency	Administered and assessed by the Inland Revenue
Claimed by woman in a couple	Claimed by man or woman according to couple's choice
Paid by direct debit to bank account or a BA order book (cashable at a Post Office)	Paid through wage packet by employer or direct from Inland Revenue
Main earner must be working 16 h per week or more	Main earner must be working 16 h per week or more
Extra credit for those working 30 h or more per week	Extra credit for those working 30 h or more per week
Withdrawn at the rate of 70 pence for each extra £1 over threshold	Withdrawn at the rate of 55 pence for each extra £1 over threshold
Paid over a 6 month period	Paid over a 6 month period
Started to be withdrawn once net income reached £79 per week	Started to be withdrawn once net income Reached £90 per week
One adult credit per household, plus age related credit for each child	One adult credit per household, plus age related credit for each child
Contained some help with childcare costs	More generous help with childcare costs
Capital over £8,000 disqualified from benefit; capital between £3,000 and £8,000, assumed investment income reduces benefit proportionately	Capital over £8,000 disqualified from benefit; capital between £3,000 and £8,000, assumed investment income reduces benefit proportionately

One consequence of the WFTC for co-habiting couples was that the payment largely went to the earner rather than the primary carer. This shift from 'purse' to 'wallet' raised important issues about the uneven distribution and control of household income (Goode et al. 1998). Subsequently, the Government decided to disentangle work incentive and child support elements and in 2003 introduced a separate Working Tax Credit (WTC) for low paid workers, paid direct to the employee, and a Child Tax Credit (CTC) paid direct to the main carer. WTC eligibility was extended to include single people and childless couples, although restricted to people aged over 25 (see Box 2).

WTC and CTC have integrated previously fragmented systems and increased levels of financial support but have proved administratively complex. Higher caseloads have drawn more people into the tax credit system of income testing (see later). In April 2006, approximately 1.88 million families were receiving WTC, 1.57 million of which also received CTC (Adam and Browne 2006).

From the Government's perspective, tax credits and the NMW complement each other. The NMW underpins in-work tax credits by ensuring a minimum rate of pay but does not respond to household needs or the income of other workers in the household. Tax credits provide support tailored to an individual household's

Box 2. Working tax credit and child tax credit

Working Tax Credit: Families with children, and workers with a disability, are eligible for WTC provided at least one adult works 16 or more hours per week. Workers with no children and no disability are only eligible if they are aged 25 or over and work at least 30 h per week. WTC is made up of a basic element, with an extra payment for couples and lone parents (i.e. for everyone except childless single people), as well as an additional payment for those working at least 30 h per week (30 h *in total* for couples). WTC includes supplementary payments for disability, severe disability and those over 50.

The childcare element of WTC is available to lone parents with a child under 16 years working 16 h or more per week and to couples where partners work for 16 h or more per week (or if one is incapacitated and thus unable to care for children). In 2006/2007 the childcare component provided 80% of eligible childcare expenditure of up to GBP 175 per week for families with one child or GBP 300 for families with two or more children (i.e. up to GBP 140 or GBP 240 per week respectively).

Child Tax Credit: CTC is a single integrated benefit paid on top of the non means-tested Child Benefit and directly to the main carer. CTC is made up of a number of elements: a family element, a baby element (for families with a child under the age of one), a child element, a disabled child additional element and a severely disabled child supplement. Entitlement to CTC does not depend on employment status, but does require that the claimant be responsible for at least one child under the age of 16 (or aged 16–18 and in full-time education).

CTC and WTC are subject to a single means test operating at the family level.

Source: Phillips and Sibieta (2006)

needs, for example, reflecting the number of children in a family. They also help parents balance work and family life by providing support to those working part-time.

The combination of a NMW with tax credits and other reforms has reduced the severity of the unemployment and poverty traps. Table 29 illustrates the impact of the Government's reforms on high 'effective marginal tax rates' (EMTRs) between 1998 and 2007. Table 30 illustrates real terms increase in what the Government describes as the 'Minimum Income Guarantee' between 1999 and 2007. These theoretical incentives are 'personalised' through software packages used by front line advisers that enable them to provide individualised 'better off in work calculations' for unemployed and other workless claimants.

It is important to note that the 'make work pay' strategy is complemented by other instruments. These include a diverse range of policies from practical assistance with the cost of making the transition from benefit payments to wages, through to the development of new services that facilitate employment. Perhaps

the most important is the 'National Childcare Strategy' that aims to increase the supply of affordable childcare.[4] There is also the combined effort of Government Departments to influence and, where necessary, regulate employer recruitment and personnel practices, including the implementation of anti-discrimination legislation and the right to request flexible working hours (Keter 2007).

Table 29. The effect of the Government's reforms on high marginal deduction rates

Marginal deduction rate (%)[a]	Before budget 1998	2007–2008 system of tax and benefits
Over 100	5,000	0
Over 90	130,000	45,000
Over 80	300,000	165,000
Over 70	740,000	205,000
Over 60	760,000	1,680,000

[a]Marginal deduction rates are for working heads of households in receipt of income-related benefits or tax credits where at least one person works weekly 16 h or more, and the head of the household is not a disabled person

Note: Figures are cumulative. Before Budget 1998 based on 1997–1998 estimated caseload and take-up rates; the 2007–2008 system of tax and benefits is based on 2004–2005 caseload and take-up rates

Source: A strong and strengthening economy: Investing in Britain's future, Pre Budget report 2006, Her Majesty's Treasury, Table 4.2, The Stationery Office, London

Table 30. Weekly minimum income guarantees 1999–2007

	April 1999	April 2007	Percentage increase in real terms (%)[a]
Family[b] with one child, full-time work	£182	£275	22
Family[b] with one child, part-time work	£136	£215	27
Single person, 25 or over, full-time work	£113	£178	27
Couple, no children, 25 or over, full-time work	£117	£211	45
Single disabled person in full-time work	£139	£222	29
Single disabled person in part-time work	£109	£163	20

Assumes single earner household, the prevailing rate of NMW and that the family receives the full entitlement of Family Credit/Disability Working Allowance or WTC/CTC

Full-time work is assumed to be 35 h. Part-time work is assumed to be 16 h

[a]RPI growth is taken from HM Treasury's economic forecasts

[b]Applies to lone parents and couples with children alike

Source: A strong and strengthening economy: Investing in Britain's future, Pre Budget report 2006, Her Majesty's Treasury, Table 4.1, The Stationery Office, London

[4] The number of registered child care places doubled between 1997 and 2006 to 1.28 million delivered by 95,000 registered providers. The Government's target is that by 2010 there is "a child care place for all children aged between three and 14, from 8AM to 6PM each day of the week, including school holidays" (Hutton 2007). There remain, however, significant problems with the affordability and accessibility of such child care provision (Harker 2006).

4.3.2 Activation requirements

New Labour has intensified the JSA regime. All JSA claimants are subject to regular administrative interactions, such as fortnightly job search reviews, that aim to encourage continuous job search, ensure that claimants meet JSA conditionality, and discourage fraud. Access to more intensive support increases in line with duration of unemployment culminating in eligibility for a New Deal programme. The tapered access to support reflects a balance between targeting support on those at risk of drifting into long-term unemployment while minimising deadweight costs. There is no profiling system but some groups do get early access to programmes, including ex-offenders, refugees, and some homeless people.

The Government has also extended conditionality to partners and spouses of the JSA unemployed with no childcare responsibilities. These 'joint claim' provisions apply to any partner born after 1957, who is now required to be available for full time work, meet regular job search obligations and, when eligible, enter a New Deal. This change aims to end the assumption of 'spouse dependency' in the system.

WFIs for non-JSA benefit claimants were introduced in 2001 and then developed into a flexible activation instrument targeted at lone parents and people on disability benefits. Attending a WFI is now a condition of receiving benefit. The PA has discretion to 'defer' the WFI and there are some limited exemptions for prescribed groups. At the WFI the claimant must be prepared to answer questions (if asked) about such matters as:

- Educational qualifications/vocational training
- Employment history and employment related skills
- Any current paid/unpaid employment
- Caring responsibilities
- Any medical condition which puts the person at a disadvantage in getting a job.

Since October 2005 most claimants who attend a WFI have been required to complete an action plan agreed with a PA that might include referral to an employment programme.

Legally the claimant does not as yet have to agree to take any action. It is attending and taking part in the interview, and agreeing an action plan, which is a requirement.

After the first WFI different groups are subject to different patterns of mandatory attendance. Lone parents, for example, have to attend a further mandatory WFI after 6 months. Those on IS for a year and whose youngest child is aged below eleven have to attend 6-monthly; those whose youngest child is aged eleven or over have to attend quarterly. In 2008 lone parents whose youngest child is over 12 years will transfer from IS to JSA and a modified pattern of job search requirements. By 2010 all those whose youngest child is aged over 7 years will be subject to these JSA requirements.

WFI attendance had been less intense for those on disability benefits but a new pattern of six mandatory WFIs for selected IB claimants was introduced with 'Pathways to Work' a new employment programme piloted in selected areas since 2003. In October 2008, IB will itself be replaced by a new 'Employment Support Allowance' (ESA). When claiming ESA, claimants will initially be placed on a 'holding benefit', paid at JSA rates, and, after medical assessment, those with 'more manageable conditions' will be paid extra only if they participate in WFIs and work related activities. A smaller group of those with more 'severe conditions' will receive higher rates of benefit immediately and, although required to attend a WFI, will only participate in other work-related activities on a voluntary basis. The Government has indicated that levels of conditionality for both ESA and existing IB claimants are likely to increase as evidence on impacts builds and as resources and delivery capacity allow.

4.3.3 Claims, appeals and sanctions

To make a claim for benefit, a working age applicant must call a 'First Contact Officer', based in a call centre. This official identifies the clients' personal circumstances, issues the appropriate benefit claim form and books an appointment with a PA (usually within three to four working days). All claimants must then attend a WFI with the PA whose task is to check documents, assess employability, identify barriers and provide employment assistance. They may match and submit the individual to vacancies available on the computerised 'Labour Market System'. Claimants are then subject to job search, activation and WFI requirements related to the benefit they are entitled to. This JCP 'customer experience' process has been designed to reinforce its employment first strategy by separating benefit advice from employment assistance (see Fig. 21).

Currently a person who fails to attend a WFI usually has five days in which to show 'good cause' for that failure or sanctions will be applied. The type of sanction depends on the stage of the claim. Failure to attend a WFI when a claim is first made means no benefit will be paid. For those with an existing claim the sanction will usually entail a benefit reduction of 20%.

JSA claimants are by contrast subject to a tougher sanction regime. In effect there are three types of sanctions:

- Varied length sanctions: JSA claimants lose benefit for up to 26 weeks if they leave or are dismissed or refuse a job without good cause. A JCP decision maker determines the length of the penalty but it usually lasts the full 26 weeks.
- Fixed-length sanctions: These are imposed if the claimant does not follow a Jobseekers Direction, fails to attend or leaves a mandatory programme without good cause. The claimant receives a two week sanction for a first offence, four weeks the second time they break the rules and 26 weeks for the third instance of non-compliance.

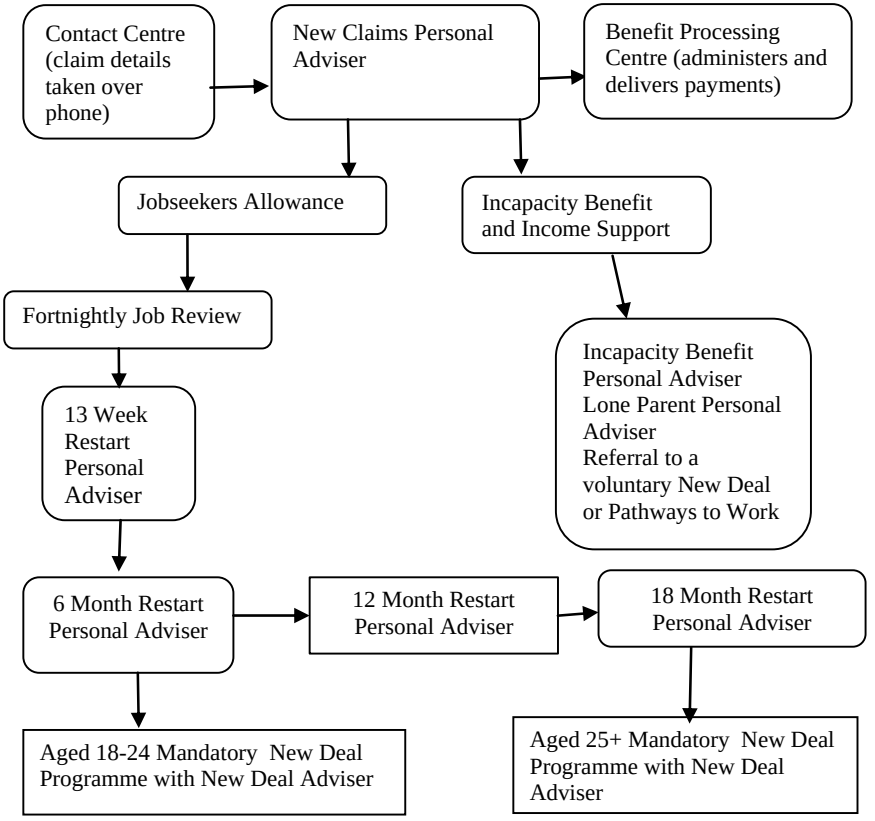


Fig. 21. Jobcentre plus active benefit regime 2007

- Disallowances: A 'disallowance' stops benefit being paid when there are entitlement doubts, for example, the claimant fails to attend an interview or is determined to be unavailable for or not actively seeking work.

There is a right of appeal against a decision that the claimant did not take part in an interview. The unemployed may also appeal on issues related to the reasonableness of a JSAg, whether the applicant is available for or actively seeking work, whether they have lost a job through misconduct or had 'good cause' for not participating in or leaving a programme.

Decisions about entitlement are made on behalf of the Secretary of State for Work and Pensions. All sanctions and benefit disallowances are decided by a specialist 'decision maker', not by the front line official involved in the case. A 'decision maker' has to reconsider any decision that a claimant wishes to dispute. If the claimant remains dissatisfied, they can appeal to an independent tribunal that has one, two or three members, depending on the case, with a minimum of one legally qualified. There is a strict limit for appealing, as a rule 1 month.

Claimants must provide certain information when they appeal and the DWP must explain in detail the reasons for its decisions. The Appeals Service, which administers the process, asks if the individual wants an oral hearing. If there is no oral hearing the tribunal makes its decision by considering the appeal form, any evidence or other information provided by the claimant to support the appeal, and the decision maker's submission. The decision notice includes a summary of the tribunal's reasons for its decision and information on the right to request a statement of reasons for the tribunal's decision. A full decision is needed if the claimant loses the appeal and wants to appeal to a Commissioner. If the appeal is won, the DWP must carry out the tribunal's decision.

The appeal tribunal decision carries a further right of appeal, but only on a point of law, to the Social Security and Child Support Commissioners. This route can be exercised by either the applicant or DWP if they disagree with the decision. There is a further right of appeal from the Commissioners to the Court of Appeal or the Court of Session, and then to the House of Lords and European Court. Between 200,000 and 250,000 appeals are handled every year, and some 6,500 of these go on to the Commissioners or higher appeals (NAO 2003). Separately from the decision making and appeals process, claimants may complain about the handling of the administrative aspects to the Parliamentary Commissioner for Administration (the Ombudsman) through their Member of Parliament.

Individuals with a low income might be able to get free legal advice and assistance including preparatory work for a hearing and subsequent appeals.

Evidence of the impact of sanctions on claimant behaviour is discussed later but it is important to note a significant number of sanctions are subsequently overturned through the above revision and appeal mechanisms. Only 46% of cases referred by PAs to a decision maker between 2000 and 2005 resulted in a sanction, of which a certain percentage are likely to have been overturned through further 'reconsiderations' or appeals (OECD 2006). One factor is that many JSA claimants are able to show subsequent good cause for leaving employment or for non-attendance at their appointments.

In practice most sanctions are softened by special payments paid if a claimant is able to show they or their family would suffer undue hardship.

4.3.4 New Deals and Pathways to Work

In 1997 the Government inherited a diverse range of employment programmes many of which continue to operate. Access to these programmes is organised through PAs and they are often combined with New Deal participation. The provision includes 'work first' job search support facilities, as in 'Programme Centres', and a range of specialised schemes for disabled people (from 'supported employment' to assistance with aids and adaptations to working environments). The most significant measure is 'Work Based Learning for Adults' (WBLA) in England

(Scotland and Wales have similar but separate programmes). 'WBLA' is targeted at those who have been claiming JSA for over 6 months or who are on other working age benefits. It offers basic skills, employability and occupational training for an average of 13 weeks. At any one point there are about 10,000 participants, and about 100,000 people go through the programme each year.

New Labour's primary programme innovation has, however, been the suite of 'New Deals' that have been at the forefront of its welfare to work strategy since 1997. Table 31 shows that expenditure on the New Deals grew rapidly and by 2001/2002 accounted for over half of all programme expenditure. Overall expenditure increased from GBP 584 million in 1997/1998 to GBP 1,063 million in 2004/2005 with the New Deals accounting for GBP 526 million of that total. It is important to note that over half of New Deal expenditure continues to be allocated to the programmes for the JSA unemployed.

The core principle of Labour's 'New Deal' for the unemployed is that individuals are 'guaranteed' intensive employment assistance after a particular duration of unemployment and at that point all JSA claimants must be placed in a job or participate in a full time employment activity (where they are no longer classified as unemployed). The only alternative to the New Deals for the unemployed has been in Employment Zones (EZs), which are primarily aimed at those aged over 25 and wholly delivered by private sector organisations (discussed later).

Between 1997 and 2001 the Government introduced a succession of other New Deal employment programmes aimed at lone parents, disabled people, unemployed people aged over 50, and partners. Participation in these programmes is voluntary.

The main characteristics of the New Deals are outlined in Box 3. The important innovation associated with the New Deals was the introduction of PAs. These front line workers, like case managers in other systems, are expected to develop an Action Plan, assess employability, provide job search assistance, and tackle employment barriers through referrals to an array of support programmes usually delivered by contracted providers. PAs have the task of weaving together available services and are expected to intervene more directly in the micro regulation of individual behaviour, encouraging or requiring claimants to search for jobs and/or engage in activities that improve employability.

In mid-2006 there were some 430,000 people participating in the various New Deals and EZs, reflecting the latest data then available. Table 32 shows also the number of 'starts' there have been on each programme since commencement and crudely the number of participants who have gained employment after leaving (these employment outcomes are discussed in more detail later).

The number of people who participate in the various New Deals and other employment at any one point in time varies significantly as does the intensity of the level of support they receive. While entry to the New Deals for the unemployed is

Table 31. Employment programme expenditure 1997/1998–2004/2005 (£ million)

Programme	1997/1998	1998/1999	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
NDYP	12	162	282	293	219	221	265	264
ND25 plus	–	17	71	42	140	166	189	169
NDDP	–	0	15	7	4	16	28	65
NDLP	–	1	12	14	9	18	20	24
ND50 plus[a]	–	–	1	45	82	82	42	3
NDfor partners	–	–	0	1	2	0	0	1
All new deal	12	180	381	402	456	503	544	526
As % of total	2%	30%	47%	44%	51%	55%	55%	49%
Work based learning for adults	382	264	264	275	168	123	142	193
Employment zones	–	1	1	72	96	94	84	75
Pathways to work	–	–	–	–	–	–	1	15
Other programmes for disabled people[b]	86	92	104	107	110	119	141	143
Other programmes[c]	104	59	56	54	68	76	98	111
Total	584	596	806	910	898	915	992	1,063

[a]The New Deal 50 plus Employment Credit was subsumed within the 50 plus element of the Working Tax Credit from 2003 to 2004

[b]Includes 'Workstep' (Supported Employment); Work Preparation (rehabilitation services); Access to Work which provides help with aids and adaptations; and some smaller specialised programmes

[c]Includes a diverse range of provision including, for example, Programme Centres (that provide help with job search); Action Teams and ethnic minority initiatives; specialist programmes for people with disabilities; and 'Rapid Response' services to assist after large scale redundancies

Notes: 1. Data comprises programme expenditure, allowance payments paid to New Deal participants and the New Deal 50 plus Employment Credit.

2. All figures are rounded to the nearest £ million; expenditure of less than £500,000 is shown as a zero

Source: Adapted from Hansard, col. 422W, 18 April 2006

guaranteed coverage of the two significant 'inactive' groups – lone parents and those on disability benefits – is far less extensive and engagement so far has been with those most inclined to participate.

Participants on employment programmes continue to be paid their existing benefits. A minority are paid allowances or receive wages and are therefore removed from the JSA unemployment count and if they return to JSA are classified as short-term unemployed. This has an impact on the official count of the JSA unemployed but is much less significant than the 'hidden unemployment' of large scale employment programmes in other European countries.

Box 3. New Deal Programmes and Pathways to Work

New Deal for Young People: Those aged between 18 and 24 years must enter the NDYP after receiving JSA for 6 months. Participation begins with an advisory 'Gateway' period that includes meetings every two weeks with a PA and early attendance at a two week full time compulsory job search course. The priority for the PA, reinforced in performance targets, is to place the unemployed person into an *unsubsidised* job. If the person is not able to get a job then they must participate in a full time programme, for up to 6 months, which can include private sector subsidised employment, temporary employment in community projects or full time education to improve basic skills. Most options involve some vocational training and there is a 'follow through' process of advice and support for those unemployed at the time they complete their option.

New Deal 25 Plus: ND25 plus is mandatory for those aged between 25 and 49 who have been claiming JSA for 18 of the last 21 months. It involves support from a PA and an initial Gateway period that can last for 16 weeks, and includes a period of compulsory full-time job search activity. This is followed by an 'Intensive Activity Period' (IAP) lasting for initially 13 weeks but which can be extended up to 26 weeks, including flexible packages of support which can combine work experience/placements, work focused training and help with motivation and soft skills. There is a period of 'follow-through' support if the participant returns to unemployment. JSA claimants aged over 50 must attend the initial interviews but have only been subject to the mandatory IAP since 2007.

Flexible New Deal: In 2009 existing New Deal and EZ provisions for the JSA unemployed will be replaced by the Flexible New Deal. JCP will be responsible for job search support in the first 12 months. All claimants will enter a Gateway process after 6 months involving more intense job search activity, skills assessment, and the support of a PA. After 12 months claimants will be referred to a contracted provider with whom they agree a personalised action plan. The claimant will have up to a year to work with the provider to find sustained employment or, as a minimum, to undertake a period of mandatory work related activity.

New Deal for Lone Parents: NDLP is a voluntary programme. A participant is allocated a specialist PA who constructs an agreed package of support, which can include training and financial help with formally registered childcare. The Government is piloting an enhanced package of support, known as 'NDLP Plus', in seven areas. This package combines an advance payment for job search (Work Search Premium), some direct assistance with childcare, a guaranteed clear gain from work (via a time limited cash 'In-Work Credit' and tax credits) and support in work (from an In-Work Emergencies Fund and In-Work Support). This approach may be extended to those lone parents required to transition to JSA at an earlier stage from 2008.

New Deal for Disabled People and Pathways to Work: NDDP has been delivered through a national network of contracted Job Brokers who had flexibility in how they provided assistance and were paid in part on the basis of how many participants they placed in sustained employment (of at least 13 weeks). NDDP is being replaced by 'Pathways to Work'. 'Pathways' provision has gradually been extended since 2003. It combines activation through WFIs and the requirement to complete an action plan with a specialist PA, who can make referrals to a range of options. This 'Choices' package includes a 'condition management programme' (CMPs), developed with the National Health Service, a 'Return to Work Credit' (a time limited wage supplement), as well as referrals to existing provision. CMPs are not curative but can involve rehabilitation support to enable an individual to return to work and manage health conditions, such as back pain, angina, or mental illness. In 2007/08 the programme is being extended nationally alongside the introduction of the new ESA.

Table 32. New Deals and Employment Zones: all starts and job entries from commencement of programme[a] and participants at May–August 2006[b] (000s)

	ND for young people	ND 25 plus	ND for lone parents	ND for disabled people	ND 50 plus	ND for partners	Employment zones
People starting	1,118.2	649.4	710.4	216.6	74.8	13.6	148.4
People getting a job	693.8	272.0	471.8	116.1	164.9	5.8	71.2
Actual participants	95.1	48.9	57.9	140.5	54.2	3.1	26.5

[a]Most New Deals commenced recruitment in 1998; those for disabled people and partners in 1999; and for over 50s in 2000. Full Employment Zones commenced recruitment in 2000
[b]Most recent monthly data on leavers and participants varied across programmes
Source: *Quarterly Statistics*, November 2006, Department for Work and Pensions, London

5 The governance of activation

The governance of welfare reform has changed. Departments have been restructured, JCP has been created, and the Treasury has acquired greater power to steer policy through 'Public Service Agreements' ('quasi-contracts' that set out Departmental policy objectives against which performance is assessed).[5] In delivery there has been a continuing transition from a traditional highly centralised

[5] PSAs substantially change the degree to which the Treasury is able to set not only the constraints for departments' policy making, as in the past, but also what policies are to be made. The policy objectives themselves, how policies are delivered, and how that delivery is to be measured are all now subject to Treasury approval and monitoring (Carmel and Papadopoulos 2003).

bureaucracy providing standard services to a more complex public-private network 'steered' by policy makers through performance targets and contracts.

DWP is the key organisation responsible for the benefit system and activation policies and is one of the few departments that still preside over England, Scotland and Wales. Ministers are supported by senior civil servants in the Working Age Directorate which is responsible for activation policy advice, evaluation and 'steering'. Programmes, services and benefits for working age people are delivered through JCP.

There is no formal role for the 'social partners' but a National Employment Panel (NEP), comprising 25 Chief Executives, 60% of whom were from large employers in the private sector, operated until 2007. The TUC nominated three representatives. Places on the NEP were 'personal' appointments and, according to its Chief Executive, its role was to act as 'an external group within the heart of Government' with a remit to "challenge, scrutinise and help develop welfare to work policies." In 2008 it is to be merged into new governance arrangements reflecting the Government's aim of integrating the employment assistance and skills training system.

5.1 Jobcentre Plus

JCP became operational in April 2002 and provides services and benefits for working age claimants. JCP has significant operational autonomy but is accountable to DWP Ministers. The Chief Executive of JCP is appointed on a 3-year contract renewable by mutual consent. There is an executive Board with seven full time Directors and three non-executive Directors. JCP is divided into nine English Regions plus offices for Wales and Scotland, which in turn are subdivided into 48 Districts.

JCP is 'steered' through a variety of 'Performance and Resource Agreement' targets agreed annually with the Secretary of State for Work and Pensions. These include job entry targets alongside targets that specify anticipated performance in paying benefits promptly and accurately, reducing fraud and error, helping employers fill vacancies and improving business efficiency and customer satisfaction. JCP is expected both to administer benefits efficiently and 'activate' claimants through an 'employment first' approach. Job outcomes are a primary measure of success. These job entry targets are weighted to clearly signal the priority attached to different groups with, for example, greater value given for getting a lone parent into a job and least value for helping someone already employed to move into a new job.

JCP is at the forefront of the modernisation of the British public sector. In 2002 JCP inherited a network of 1,500 offices and 90,000 ES and BA staff, who were primarily civil servants but with separate collective bargaining structures, agreements and appraisal systems. Staff numbers are planned to fall to just under 69,000 by 2008, a reduction of over 20%, at which point JCP will comprise 850 front line offices, 25 'contact call centres' and 77 Benefit Delivery Centres. Staff

reductions are intended to impact on administrative and 'back office' staff with efficiencies being secured through the extensive use of computerised systems, call centres, telephones and on line technologies. The overall 'roll out' investment programme in new offices and technologies has cost over GBP 2 billion.

A National Audit Office report estimated that in 2005/2006 JCP administered around GBP 22 billion in benefits to some 4.6 million people claiming a core working age benefit. About 16,000 new claims for benefit were made every day and some 4,000 people helped into employment (NAO 2006). The 9,300 PAs employed by JCP conducted 10.8 million WFIs, about 200,000 a week. PAs conducted about 28 interviews per week and had an average active caseload of 30–40 customers.

5.2 Partnerships, contracts and contestability

JCP works with a complex array of 'partnerships', both nationally and locally. These can be strategic or operational. The operational partnerships include contractual relationships with an extensive mixed economy of 'for profit' and 'not for profit' providers who deliver most employment programmes. In 2005/2006 around one third of welfare to work provision was delivered through more than one thousand contracts with such providers (HMT 2006). In 2005/2006 external providers delivered a total of 135,107 job entries, an increase of 25% from the previous year (JCP 2006).

Typically New Deal contracts last for 3 years and specify in some detail the nature of the provision to be made available. In 2006 significant changes were made with the introduction of 'prime contractors' and experimental price competition in New Deal programmes for the JSA unemployed. The prime contractor model increased the size of contracts and reduced the number of contractors. Prime contractors undertake three functions. They:

1. Provide directly a substantial proportion of the specified provision.
2. Subcontract a proportion of provision to other organisations.
3. Manage and monitor the performance and quality of sub contractors as well as their own performance.

A significant flexibility is that prime contractors are not required to follow public sector competitive tendering rules for work they subcontract.

In addition the DWP has implemented more formal experiments with private sector led providers where JCP has had to compete directly with external organisations. This has enabled DWP to 'benchmark' public sector performance and identify efficiencies or innovations that could be extended through public sector provision. The most radical of these experiments has been in EZs.

There are two types of EZ providers. Seven areas have 'single provider' zones where the contractor has a monopoly of provision. Six areas have 'multiple provider' zones in larger urban areas where several contractors deliver services. In

these 'multiple' zones providers are awarded a fixed market share and participants are randomly assigned to them. More recently participants have been able to choose their provider.

Both New Deals and EZs use front line advisers but zones have greater freedom to design their interventions due to the flexibilities given in their contracts. Zone contractors have incentives to place clients into sustained employment speedily but face a risk that if targets are not met the contractor will lose money. In total EZs service about 30,000 clients a year at an estimated cost for 2005/2006 of GBP 101 million.

There has been much debate about the merits of private contractors and their performance against the regular New Deals, and some evidence is considered later. Nevertheless the Government has decided that it will combine EZs and existing New Deals for the JSA unemployed in 2009. From that point unemployed people will be subject to a stricter JSA regime for 6 months and then enter a gateway phase of support for another 6 months delivered by JCP PAs. After a year they will transfer into the 'Flexible New Deal' that will be delivered by external providers paid through a system modelled on EZ contract principles (DWP 2007).

6 Outcomes of activation policies

The following sections consider trends in economic activity and unemployment and the changing characteristics of the JSA unemployed. They consider also the role of evaluation and evidence about the impacts of the different components of the activation regime.

6.1 'What Works': The role of evaluation

In the 1980s Conservative Governments placed increased emphasis on evaluation and it was in part the findings from studies in the 1990s that underpinned the primacy given to 'work first' job search programmes (for a review see Finn et al. 1998).

The commitment to evaluation was developed further in New Labour's approach to 'evidence based policy'. The New Deals, WFIs and other components of the welfare to work strategy have been subject to systematic evaluation, the results of which have informed policy making and implementation. Most of these evaluation reports and impact studies have been undertaken under contract by independent research institutions and, with regular monitoring data, are published on the DWP website.

It is important to note some limitations in this official evidence base. The research is generally undertaken in the early phases of programme and policy development. This means that initial impacts are rarely tested over a longer time frame

when wider conditions may have changed or after any 'innovation effect' may have dissipated. It is also the case that the programmes evaluated have been in a process of continuous change with many significant design reforms made in response to the evidence emerging from the evaluations.

British studies also have concentrated almost exclusively on the comparative effectiveness of policies in getting people off benefits and into employment. Far less is known about the wider impacts on other groups in the labour market or on local economies. Finally, nearly all British 'impact' studies use analytical matching techniques that compare administrative data drawn from matched areas, when a programme is piloted or from historical records when implementation is national[6]. Despite increased methodological expertise such findings are often contested and "few results can be regarded as definitive" (Bryson 2003).

6.2 Employment, unemployment and inactivity

At the end of 2006 there were just over 37.2 million people in the UK aged between 16 and state pension age (60 for women and 65 years for men). Table 33 illustrates the growth in economic activity with the number in ILO defined employment growing by over 1.8 million and the employment rate increasing to 74.4% between 1998 and 2006. Over the period the number out of work fell but ILO unemployment has recently increased. The population of the economically inactive – many of whom want to work but who do not meet the ILO definition of unemployment – increased numerically, but the overall growth in employment meant that the inactivity rate has continued to fall. It is important to stress that there are major variations in these trends with particular concentrations of working age benefit claimants in many cities and some localities. These variations pose particular challenges for implementing welfare to work programmes.

Table 33. Economic activity of working age people 16–59/64 (000s): 1998 and 2006

Year (Apr-June)	All	Total economically active (rate %)	Total in employment (rate %)	Unemployed (rate %)	Economically inactive (rate %)
1998	35,407	27,603 (78.0)	25,865 (73.0)	1,739 (6.3)	7.804 (22.0)
2006	37,252	29,319 (78.7)	27,699 (74.4)	1,620 (5.5)	7.934 (21.3)

Source: Table A.1, Labour Market Trends, Office for National Statistics, November 2006

[6] There has been Ministerial and Treasury interest in experimental random assignment studies but they have been little used in evaluating British welfare to work programmes. One exception is the evaluation of the 'Employment Retention and Advancement' pilot programmes that are testing approaches to delivering in-work support (Hoggart et al. 2006).

Table 34. JSA and ILO unemployment and rate, seasonally adjusted 1993–2006

	JSA claimant unemployed	JSA unemployment rate	ILO unemployed	ILO unemployment rate
1993	2876.6	9.7	2953	10.5
1996	2087.5	6.9	2344	8.3
1999	1248.1	4.1	1759	6.1
2002	946.6	3.1	1533	5.2
2005	861.8	2.7	1426	4.7
2006	944.1	3.0	1657	5.4

Source: Time Series Data, Office of National Statistics

An important difference with the early 1980s is that ILO unemployment now is consistently higher than JSA unemployment. This change reflects in part restrictions in benefit eligibility rules. The trend first emerged in the late 1980s but appears, from Table 34, to have increased again after the introduction of JSA in 1996. The gap with the JSA unemployment rate was just 0.8% in 1993 but increased to over 2% by 1999 and stood at 2.4% in 2006

6.3 Benefit durations, leavers and 'repeaters'

There is considerable turnover in the JSA population with around 2.5 million claims made for JSA in the latest available year (HMT 2006). Between 1997/1998 and 2004/2005 the administrative data on terminations shows that the number of JSA claims that ended with someone 'recorded' as entering work fell from over 1.1 million in 1997/1998, or 35% of 'known destinations', to 751,900 in 2004/2005, or 27% of 'known destinations' (Hansard 31 January 2006, col. 440W). The number recorded as returning to work significantly underestimates the movement into employment but it appears that as the number of people claiming JSA declined so too did the proportion who were leaving for a job.

A more detailed survey of a sample of benefit leavers in 2004 showed that the proportion of JSA clients returning to work of over 16 h a week was 50% and this was similar for most categories of benefit leavers apart from the sick and disabled claiming IS only. Table 35 contains more detail on the reasons why people ceased claiming benefit. Transitions onto other benefits accounted for a large proportion of sick and disabled terminations but only for 9% and 8% of lone parents and the JSA unemployed respectively. Another important factor for ceasing JSA claims was the 10% whose benefit was stopped or who were told they were no longer eligible, in many cases because of disallowances.

JSA benefit durations have fallen since 1998 (see Table 36). The total number of young people aged 18–24 claiming JSA for 6 months or more fell from nearly 109,000 in 1998 to 40,000 in 2004, and those who had claimed for over a year fell from 13,400 to 2,400. There has since been an increase and by 2006 58,400 had

claimed for over 6 months, of whom 10,800 had claimed for over a year in 2006.[7] What is noticeable is that the number of young people claiming JSA for less than 6 months in 2006 was 227,200, only 5,000 fewer than in 1998, despite an overall fall in the claimant count over the same period of around 16%.

Table 35. Why stopped receiving benefit, by benefit/client group 2004 (%)

	Sick and disabled IS and IB (%)	Sick and disabled IS only (%)	Sick and disabled IB only (%)	Lone parents (%)	JSA (%)
Returned to/started working 16 h or more	50	26	52	55	50
Returned to/started fulltime training/education 16 h or more	2	2	2	2	6
Moved onto another benefit for people who are out of work	19	33	18	9	8
Returned to/started working less than 16 h	3	2	3	1	2
Partner status changed/partner started claiming on their behalf	2	5	1	7	2
Began living with partner	1	3	1	16	1
Failed medical assessment	7	3	7	*	*
Told no longer eligible/benefit stopped	7	11	6	3	10
Retired	1	4	1	*	1
Went abroad/to prison /moved house	1	1	1	1	4
Temporary break from claim/problem with claim	2	2	2	1	6
Other	3	2	3	1	9
Not stated	2	3	2	3	1
Don't know	1	1	1	1	1
Total of Sample	6,636	341	6,295	7,245	1,301

Source: Coleman and Kennedy (2005) *Destination of benefit leavers 2004*, Department for Work and Pensions, Research Report No 244, Norwich, Her Majesty's Stationery Office, Table 3.1

[7] The fact that more young people were in receipt of JSA beyond a year has been caused by delivery problems, because just as the client group increased, provider capacity was disrupted during a protracted re-contracting process. There are also a limited number of exemptions allowed if local managers consider the claimant might be violent or disruptive if mandated to attend.

Table 36. JSA claimant unemployed age and duration (UK, seasonally adjusted)

	All JSA claimants					18–24 year old JSA claimants				
	All	Up to 6 months	Over 6 and up to 12 months	Over 12 months	Percentage over 12 months	All	Up to 6 months	Over 6 and up to 12 months	Over 12 months	Percentage over 12 months
1998	1338.4	730.5	242.3	365.7	27.3	339.1	232.3	61.5	45.4	13.3
2000	1080.9	654.0	183.6	243.4	22.5	261.5	215.3	40.0	6.3	2.4
2002	935.1	621.0	159.7	154.4	16.5	243.1	203.8	34.1	5.1	2.1
2004	845.6	562.0	148.6	135.0	16.0	235.8	195.8	33.8	6.2	2.6
2006	939.3	609.8	179.9	149.6	15.9	285.6	227.2	47.6	10.8	3.8

Source: National Statistics Office

Some of the short-term JSA claimants are NDYP leavers who do not find or keep work. Around 40% of NDYP participants who find work claim JSA again within a year. In May 2006 it was reported that 23% of NDYP participants were on the programme for a second time, 9% for a third time (Hansard 24 January 2007, col. 1871W). This pattern of recycling between benefits and programmes has been found in the other New Deals. For example, one evaluation reports that 29% of those who gained a job through NDLP returned to IS within a year (Evans 2003).

New Deal ‘recycling’ takes place in the context of a wider issue about ‘repeat claims’ for benefits. For JSA it seems that there is an increased concentration of unemployment amongst individuals who repeatedly claim benefit without finding sustained employment. In 2006 two thirds of all JSA claims, some 1.6 million were made by people who had claimed at least once before. It was estimated that a quarter of a million new JSA claimants had spent at least three-quarters of the previous 2 years claiming benefits. About 12% had spent 6 of the past 7 years on benefits (Hutton 2006).

A detailed survey of ‘repeaters’ who had made at least three claims for JSA gave an insight into why such recycling occurs (Carpenter 2006). The majority (72%) of respondents indicated that they had not been able to find ‘suitable’ work. The main problem was the type of work available rather than being able to find work at all. Many had been able to find work of some kind, as shown by the 67% who moved into work when their last JSA spell ended, and the 41% who were in work at the time of the survey. Most had no option but to leave their last job (for example because a temporary job ended, or because they were made redundant or sacked). Only 6% of respondents left their last job through choice. The evidence “consistently indicated an inability to find sustained employment rather than a choice to avoid it” (Carpenter 2006).

Many respondents reported personal barriers that made it more difficult to find and retain sustainable employment. One in five reported a serious health problem or disability and this increased to a quarter of those aged 50 or over. Overall, 23% had no qualifications and 17% had problems with literacy or numeracy. In addition, 8% reported problems with criminal records, 3% with drugs and alcohol, and

14% said there had been a time in the last year when they had no permanent place to live.

The analysis suggests that the JSA regime is successful in moving people into work, but for a significant group of repeaters it is less successful because it is failing to tackle "longer-term issues such as skills, employability and financial independence" (Carpenter 2006).

Another problem identified in a major Government review is that the 'work first' approach means that a significant cohort of JSA claimants have few transferable skills or qualifications and "become trapped in low paid, entry-level work." The review pointed out that "as the economy restructures in response to global economic changes, problems with employment retention (will) worsen, particularly for the low skilled" (HMT 2006). The issue of job retention and progression in work has now been identified as one of the key challenges facing the British activation system.

6.4 The impact of activation requirements

In 1986 the introduction of mandatory Restart interviews after each 6 months of unemployment appears to have reduced the number of claimants by 8.5%, and the introduction of JSA was estimated to have reduced the claimant count by between 100,000 and 200,000. The JSA reduction was due in part to tighter eligibility rules but the new regime had also, according to one Government evaluation, flushed out "significant numbers of employed and inactive claimants" (Sweeney and McMahon 1998).

An official evaluation, using statistically matched control groups, reported that Restart both increased the rate at which unemployed claimants left benefit and lowered the time they spent unemployed on leaving benefit (White and Lakey 1992). There appeared to be two effects, often distinguished as 'deterrent' and 'treatment' effects. Restart 'shook the tree' (the deterrent effect), with claimants more likely to leave benefit before they attended the interview. Restart also increased the rate at which claimants received job offers "either through initiation of contact with employers or through improvements in the search behaviour of the unemployed" (Dolton and O'Neill 1995). A subsequent analysis of the destinations of these Restart participants after 5 years reported that the "threat component associated with being called for an interview may account for the short-run effects of the programme, but the services provided at the interview itself, such as job search assistance, may be important determinants of the long-run effects" (Dolton and O'Neill 2002).

A subsequent 'before and after' official evaluation of JSA reported that its introduction raised exit rates from the claimant count after 1996 by between 21 and 28%, and over a longer time frame the new regime appeared to stimulate more active job search (Rayner et al. 2000).

An independent study, based on an analysis of LFS data, criticised the methodology employed in the official evaluation. Manning (2005) found that the introduction of JSA had a large impact on off-flow rates, reducing the claimant count by about 8%, but he questions whether it encouraged greater search activity. He suggests that in comparing the search activity of ostensibly matched groups both before and after the introduction of JSA, the earlier evaluation failed to compare like with like. JSA had been effective in 'weeding out' the inactive unemployed, but it was mistaken to assume that because those sampled after its introduction were more actively seeking work that this was anything more than a compositional effect. JSA claimants may have been more 'active' but many who had exited from benefit had not entered employment but had entered into inactivity or other unknown destinations.

This critique was given support in an econometric analysis of JSA benefit exits in Northern Ireland. McVicar (2006) took advantage of a 'natural experiment' that occurred when a 'Jobs and Benefit' regime was introduced for JSA participants over a 7 year period. He found that tougher monitoring significantly increased the outflow rate from claimant unemployment and reduced claim duration, albeit the "hazard rate for exits to employment display(ed) the smallest proportional increase of 19%". McVicar concludes that monitoring intensity "can affect the behaviour of unemployment benefit recipients independently of other reform measures" but that, as predicted by Manning's model, a significant group of those exiting will enter situations where their job search will be reduced.

The distinction between exits from benefit and those into employment has been made also in evaluations of WFIs. The initial experimental introduction of the interviews had little impact on exits, but when targeted at lone parents and delivered more effectively, they increased the rate at which claimants joined programmes and left benefits. The introduction of WFIs for lone parents, for example, increased participation in NDLP by approximately 15% and increased the proportion of people leaving IS by between one and two percentage points after a year (Knight and Thomas 2006). The impact of WFIs has more recently been assessed alongside the employment programmes with which they are associated. A longitudinal matched comparison evaluation found that the combined effect of both on lone parents started after a year and that after 18 months the benefit exit rate had increased by 4%, indicating that 11% more had exited than would have done so without the intervention (Knight et al. 2006). Initial evidence from the Pathway pilot areas reported that when compared with national rates around 8% more IB claimants left benefits and 9% more entered employment in the first 6 months of their claim (DWP 2006).

6.5 The impact of 'Make Work Pay'

The Low Pay Commission has sponsored a growing body of evidence on the NMW and much of this has found negligible impacts on employment levels, albeit there are problems for some small employers; the impacts on wage inflation have

been 'contained'; and it appears to have had little independent impact on productivity. The Commission estimates that over a million low paid workers have benefited from each increase in the NMW and that the prime beneficiaries have been women, part time workers, young people and some minority ethnic groups, typically employed in low paid sectors (such as hotels and restaurants) and in parts of the country where low pay has been prevalent. Detailed evidence and evaluations are published on the Low Pay Commission website.

It is difficult to disentangle the effects of the NMW, tax credits and the New Deals. One study of the impact of such policy changes on the lone parent employment rate, which had increased from 42% in 1992 to 56% in 2005, concluded that five points of that 14 point rise could be attributed to the policy reforms implemented between 1999 and 2002 (Gregg et al. 2006). An independent review, commissioned by DWP, suggests that by 2004/2005 the combination of increased financial support for children, the extension of child care facilities, 'making work pay', and the increase in lone parent and general employment rates had helped lift 700,000 children out of poverty (Harker 2006).

A group based at the Institute for Fiscal Studies (IFS) has undertaken several independent assessments of the impact of tax and benefit policies on financial incentives. The IFS group point to the complex impact policy change has on different family and individual circumstances (Adam et al. 2006). Incentives to work for lone parents have increased and changes to the withdrawal rate of tax credits and benefits mean that some very low-waged parents have seen the effective withdrawal of their in-work financial support fall from 70 to 37% (Brewer and Shephard 2004). This has led to a fall in the number of families facing very high effective marginal tax rates. A key problem, however, is that because tax credits have now been extended to people on higher wages they have also increased the number of families facing some sort of benefit or tax credit withdrawal as their income rises, "worsening their incentives to progress". As a result the number of those in work "facing an effective marginal tax rate of over 50%" has increased by almost 900,000. Another problem has been the significant disincentive to work now faced by the non-working partners of those in households where someone is already claiming a tax credit

Over a longer time frame the IFS group found that between 1979 and 2000 both incentives to work and incentives to progress once in work had strengthened but had "weakened on average since 2000" (Adam et al. 2006). Only part of these changes were the direct result of tax and benefit reforms. They reported that "changes in average wages, wage inequality, rent levels and working patterns within two-adult families" were also important explanatory factors. Paradoxically one reason for the decline in financial work incentives was the Government's commitment to reduce child poverty that has led it to increase levels of child benefits for those out of as well as those in work. This has 'blunted work incentives' and illustrates the complex trade-offs that confront policy makers.

6.6 The impact of the New Deals and Employment Zones

The benefit off-flow rates and employment impacts of each of the New Deals has been evaluated. As noted previously, most evaluations are undertaken in the early phases of programme implementation and each New Deal has been in a process of continuous change often involving significant design reforms.[8] This section concentrates on the evaluations of the New Deals for the unemployed and the EZ private sector model against which the ND 25 plus has been assessed.

Several major studies of NDYP were undertaken between 1998 and 2002. All reported positive impacts of moderate size from the overall programme – between five and nine percentage points reduction in welfare claiming (see Riley and Young 2001; Blundell 2001; White and Riley 2002). A macroeconomic evaluation found that long-term youth unemployment would have been almost twice as high without NDYP and it increased GDP by GBP 500 million a year (Riley and Young 2001).

One component of the NDYP effect has been from 'shaking the tree', as found in earlier evaluations of Restart and JSA. A significant minority of claimants withdraw their benefit claims on being invited to mandatory NDYP interviews and another group cease claiming rather than participate in the mandatory options phase.

Most positive NDYP impacts have been attributed in particular to the contribution made by advisers especially in those Jobcentres where PAs place a strong emphasis on 'work first' practices (NAO 2006; Hasluck and Green 2007). An analysis of performance variations in the NDYP found the greatest impact in those offices where PAs delivered closely-spaced repeat interviewing of jobseekers, a large number of interviews (reflecting persistent follow-up), use of sanctions to enforce the mandatory nature of the programme, high expenditure on external services for clients (interpreted as a means of freeing PAs to focus on more job-ready clients), and sparing usage of short courses that helped clients choose work experience or educational options (White 2004).

The impact of the 'options' phase has been less marked, partly because this group have more significant employment barriers. The wage subsidy element has produced quantifiable effects but the other options worked less well (Bonjour et al. 2001). There have since been changes in programme design, contracting and the approach of individual providers, many of whom point to impressive local results with a difficult to place client group. There has, however, been little evaluation of these claims.

There was much early concern about the destination of a third of the young people leaving NDYP who were recorded as entering 'unknown destinations'. A

[8] One exception was an impact analysis of the NDLP, which tracked the situation of matched participants for 48 months. It reported that NDLP participation raised the proportion off benefit compared with the control group by 20%, and the employment rate was 11% higher. The evaluation warned, however, that poor quality of the matching data might have impacted the results (Knight et al. 2006).

national follow-up survey found that of the sample contacted 56% had initially left the New Deal to enter employment and just over 5% reported that they left because of a sanction (O'Donnell 2001). Some had continued to 'sign on', others had been ill, and some had entered education or otherwise left the labour market. The response rate was just below 50%, but the researchers suggested there was no discernible evidence that the most disadvantaged were disproportionately represented among those who could not be contacted.

An evaluation of the ND25 plus reported that when it was redesigned to more closely mirror the NDYP there was an improvement in participants' job entry and off benefit rates (Hasluck 2002). More recent evaluations have matched EZ and ND25 plus participants in comparable unemployment areas. One study found that 20 months after becoming eligible for either programme 55% of EZ and 51% of New Deal participants were either in jobs or had been in them (Hales et al. 2003). The evaluations reported that EZs appear to secure somewhat better net impact results than the New Deal, albeit they are more expensive.

One significant finding from participant surveys was that in both EZ and New Deal areas many of the jobs that had been sustained for over 13 weeks 'had not lasted in the longer term'. Many jobs were temporary and were with small employers and offered low wages. The personal barriers of the clients, such as ill health, lack of skills and qualifications also contributed to the short duration of job tenure. The participant surveys found that those who were least likely to have entered employment, or to have retained it, were the 'harder to help' – those who had a history of unstable employment or characteristics such as a criminal record. Even "some 20 months after being eligible to participate, almost half the participants had spent no time in paid work."

These findings reinforced more critical assessments of the employment impact of the New Deals. Some critics suggest that the reduction in claimant unemployment simply reflected a stronger labour market, and they point out that wider youth unemployment, as measured by the LFS, is higher than the JSA claimant count would suggest (Field and White 2007). Others point out that many New Deal participants do not get jobs and a significant minority of those who get jobs do not retain them. The problems of placement and retention are most acute for people from minority ethnic groups, for those with the greatest individual barriers, and for those living in areas of highest unemployment. One analysis found that job entry rates in the older industrial cities and in inner city London were as low as 30%. This poor performance was attributed to the interplay between local labour market conditions, the characteristics of participants and the capacity of local delivery systems (Sunley et al. 2005).

Over the life of the New Deals, unemployment has fallen and those entering the programme have had more employment barriers than the first cohort of entrants. At the same time, the rapid growth of the labour market in the late 1990s has been followed by a less buoyant period with JSA unemployment increasing between 2005 and 2006. One consequence is that overall NDYP job entry rates have fallen, from 51% in 1998 to 34% in 2005 (Field and White 2007). Job entry rates for the

ND25 plus improved after programme redesign in 2001, to reach over 35% in 2004, but the job entry rate has since fallen below 30% (CESI 2007).

These job entry trends reinforced the pressure for a 'fresh start' for the New Deals for the JSA unemployed leading to the decision to merge its most effective features with those of EZs into the 'Flexible New Deal' from 2009 (DWP 2007).

6.7 Sanctions research

Ministers suggest that sanctions do "drive behaviour" (Hansard, col. 256W, 16 April 2007). Of those claiming JSA the majority comply with requirements. Only 14% are referred for a decision and only 4% actually have a sanction applied. There has been a significant change in the application of JSA sanctions between 2000 and 2006. The data reveal a marked fall in the number of varied length sanctions, which measure compliance with the JSA regime, in contrast with an increase in the number of disallowances (Bivand 2006).

About 80% of lone parents attend their WFI, and two thirds of those who do not attend subsequently attend, with 40,300, or 4.4% experiencing a sanction between April 2005 and March 2006 (Hansard, col. 784W, 19 April 2007). About 1% of IB claimants have been sanctioned for not attending a WFI in Pathways pilot areas. Most disputes about disability or lone parent benefits continue to concern entitlement issues, such as the interpretation of medical evidence or the living arrangements between 'partners'.

A 2005 study found that while adults are referred for sanctions more frequently, young people aged 18–24 experience proportionately more JSA and New Deal sanctions. Young people accounted for 72% of the 'fixed length' sanctions that relate largely to the requirements of Jobseekers Directions and the mandatory New Deals (Conway and Groves 2006). A systematic review found evidence that the sanctions regime is complex and difficult to understand, both for claimants and PAs, and that a significant minority of claimants claimed not to have been told about the possibility of sanctions (SSAC 2006). Studies suggested that those who are sanctioned "appear to be more disadvantaged than their peers". In general the evidence suggested that the possibility of sanctions has only a weak influence on JSA claimant behaviour, especially in terms of job search, but that the influence might be more significant for those who had experienced a sanction.

Evidence on the NDYP regime suggests that sanctions did bring about a greater level of compliance and an increase in job seeking activity. In one study interviewees in the 'follow through' phase reported that the threat of benefit sanctions was a motivating factor to comply with the requirements of the programme (O'Connor et al. 2000). The threat of reduced income, however temporary, acted as a disincentive for many to refuse an option or leave early. Nearly all those interviewed agreed with sanctions in principle but felt there were inconsistencies in their treatment and that the reasons for their behaviour were not always taken into account. Such views have been echoed in other case studies (Finn 2003).

The other main impact of sanctions is financial, with one quantitative study reporting that 68% of those sanctioned stated that they had experienced financial hardship as a consequence (SSAC 2006). The effect varies primarily depending on the extent to which those sanctioned had access to hardship funds or alternative forms of financial support. Sanctions had most impact on individuals who were themselves parents, those who were living alone without access to informal sources of support, or those who were dealing with difficult personal issues, such as debt, homelessness or drug dependency.

Studies of NDYP sanctions have interviewed those working with young people, especially PAs. Some of these were concerned that the threat of sanctions could result in young people embarking on option placements that were not appropriate for them or that they had little interest in pursuing, which was believed to be counterproductive. PAs were also critical about the processes involved. They reported that sanctioning processes were administratively complex and hard to implement. There was variation between PAs in the nature of decisions referred for adjudication in cases of non-compliance resulting in variation in the application of the rules. PAs generally thought sanctions were too blunt an instrument and there was some concern that for groups, such as those with chaotic lifestyles, such penalties might intensify social exclusion (Finn 2003).

6.8 Implementation research and the New Deals

The formative years of JCP have been characterised by front line administrative pressure and some delivery failures. The scale, complexity and pace of change has been intense with the roles and responsibilities of staff and their relationships with individual claimants being redefined through revised job descriptions, target regimes and changes in the structure of offices and the use of new technologies. In a major progress review the House of Commons Work and Pensions Select Committee reported that it had received evidence "that change planning has been poor, with management across the country struggling to try to keep up with, and solve problems caused by, the myriad of IT, staffing, process, telephony and financial programmes which are all underway at the same time" (W and PSC 2006). It is too early to assess the extent to which current problems with delivery and staff motivation reflect the pains of organisational transition or whether they point to more systemic problems, but they highlight the potential for 'implementation gaps' to emerge.

Many studies of the design and impacts of British 'welfare to work' reforms acknowledge the significance of implementation but few have examined how policy reforms are mediated through the local strategies and work cultures of front-line staff and their managers. Those studies undertaken consist of small scale surveys and qualitative case studies. They report the different ways in which PAs and other front line staff use administrative discretion to negotiate performance targets, categorise and service clients and impose sanctions (see, e.g., Blackmore 2001;

Wright 2003; Finn 2003; Rosenthal and Peccei 2004). It is at this level. these studies suggest, that the new 'social contract' may for some be experienced as pressure to cease claiming benefits, participate in inappropriate programmes, or take whatever low paid job is available.

6.9 The impact of activation policies on individual rights

The British tradition has been to avoid statements of principle in legislation as to the predominance of fundamental human rights. This phenomenon, which is not confined to the field of social security, makes it difficult to assess the extent to which human rights have been implemented in the British system of social security. There are no domestic constitutional standards by which to assess such compliance. For example, domestic law does not recognise a right to housing nor a right to work. Instead, the structure of the benefit system and social security provision has been driven primarily by legislative and administrative factors. The fact that the unwritten British constitution does not give priority to certain fundamental human rights means that such rights have not been an obstacle to the ongoing reforms of the social security system. European law has played only a relatively insignificant role in the evolution of British social security, with the notable exception of the equal treatment of men and women and directives that impact on working conditions.

The shift towards means-tested benefits has contributed significantly to increased complexity in the social security system. Means-tested benefits and their attendant legal structure are, by their nature, very elaborate because they must distinguish between diverse sets of personal circumstances and needs. Factors such as age, state of health, level of disability, family caring responsibilities, participation in education, part-time employment, etc., may all be considered relevant to the level of a claimant's financial needs, whereas income and other financial resources considered to be available to a household to meet their needs must also be carefully defined.

There are various discretion-based procedural judgments and decisions that officers are called upon to make, such as whether a person's reasons for failing to attend a job interview are legitimate and preclude withdrawal of benefit. Complexity presents difficulties both for those who administer social security and for persons who may seek to establish entitlement to one or more of the benefits, and it also hinders the process of claiming benefits. Often a considerable amount of information will need to be supplied by the claimant when making a claim.

Generally, the impact of institutional constraints for policy making is eminent. Constitutional barriers may impede reforms like in Germany, but they may also protect the rights of the individual. By contrast, the lack of vested interests in social security combined with the political and constitutional system enables relatively straightforward policy formulation and implementation in GB. Although the traditional concept of parliamentary sovereignty no longer corresponds to the complex

actual nature of the British constitution, questions about the protection of fundamental rights in courts have been debated in terms of rights versus parliamentary sovereignty.

In 1998 New Labour incorporated the fundamental rights contained in the European Convention on Human Rights (ECHR) into domestic law through the enactment of the Human Rights Act (HRA) in October 2000. Since then, there have been appeals for the International Covenant on Economic Social and Cultural Rights to be incorporated into British law. Though ECHR rights did not become genuine rights in English law, they were given domestic effect as laid down under the HRA by making it unlawful for a public authority to act in a way which is incompatible with ECHR. Public power will be constrained by courts and tribunals in circumstances where it impinges unjustifiably on those rights and whenever it falls short of principles of proportionality and non-discrimination. Following the HRA, all courts and tribunals must ensure that British primary and secondary legislation is compatible with the ECHR rights, and the legislation contains provisions which authorise a court to grant remedy if a proposed act by a public authority is unlawful. In essence, therefore, the HRA has created a new course of action, which can establish a claim for remedy, including damages against a public authority which has acted in breach of the ECHR rights.

Furthermore, the 'Joint Parliamentary Committee on Human Rights' is responsible for scrutinising all legislation for conformity with all human rights treaties to which GB is signatory, including the ECHR. State parties have been held liable for breach of a positive duty in Article 3 ECHR to provide conditions of human existence, which are consistent with fundamental human dignity. Courts may confront Government increasingly not only where the fundamental rights of individuals living at the margins of human existence are at stake, but also where fundamental freedoms which lie at the very heart of the ECHR are at issue. However, debate about the place for due reference and the manner in which the ECHR should be applied under the HRA is ongoing.

There is no legal principle in British law by which courts are prevented from intervening in politically sensitive disputes involving, for instance, issues of resource allocation. Lack of constitutional propriety, procedural limitations, or sensitivity to the problems of public authorities and administrators, however, have been used to justify or explain the refusal of courts to intervene in social welfare. In the past courts generally have paid only little attention to countervailing fundamental rights, particularly in disputes where the reasonableness of the exercise of discretionary powers is at issue. While socio-economic rights are for the most part protected only through legislation, the HRA has afforded opportunities to hold government to account for limitations or gaps in legislative protection. So far, however, there has been deference in the way in which courts have responded to their HRA obligations.

7 Conclusions and outlook

The Beveridge welfare state established in the 1940s came into crisis in the 1970s as its costs escalated and its design limitations were exposed. The Conservative era of neo-liberal reforms included dismantling core elements of the earlier system, a shift from insurance to means-tested benefits, institutional change, and deregulation of the labour market. When JSA was introduced in 1996, the benefit regime for jobseekers was characterised by reduced levels of out-of-work benefit, increased work tests, harsher sanctions and mandatory 'work first' employment programmes. As the economy recovered from the early 1990s, the number claiming JSA fell but with this legacy came increased levels of poverty, both in and out of work, and an expanding population of working age people claiming 'inactive' benefits, some of whom did so as a consequence of or as an alternative to engagement with the stricter benefit regime.

In 1997 New Labour came into power proclaiming its 'third way' for combining economic efficiency, labour market flexibility and social justice. For the Government work represented 'the best route out of poverty' and employment became the central feature of provision for people of working age. New Deal employment programmes and 'make work pay' policies were implemented swiftly; the JSA regime consolidated; and WFIs extended to all working age claimants. The focus of the British activation strategy has been on administrative reform and the redesign of front line interactions in order to 'activate' job search behaviour and assist with transitions into paid work. Labour market programmes play a much smaller role than in other European countries, but expenditure on the New Deals and related programmes has increased. Most of the programmes are now delivered by external contractors and there has been increased experimentation in the delivery of employment assistance, especially through the creation of EZs.

In 2007, 10 years after New Labour was first elected, the Government initiated a major consultative process about the next phase of its welfare reform strategy. This culminated in the publication of a 'White Paper' that outlined major reforms, including the extension of job search requirements to many lone parents and the introduction of the 'Flexible New Deal' for the JSA unemployed. Future programme provision for the unemployed is to be delivered through a new quasi market where a small number of competing private and voluntary sector providers will be responsible for intensive case management and for providing individual, tailored help for individuals to re-engage with the labour market. These providers will be offered long-term contracts and be paid according to sustained job outcomes. DWP has introduced internal reforms to develop its capacity to design and manage such contracts and the changes will be piloted in 2008. The main opposition parties have signalled support for such 'contracting out' and resistance to this 'direction of travel' is likely to come only from a relatively weak coalition of 'back bench' Labour MPs, public sector trade unions and welfare rights groups.

The evidence in this chapter suggests that the British combination of activation, New Deal programmes, 'make work pay', and personalised employment assistance, has contributed to reductions in long term unemployment and poverty reduction but problems remain.

Out-of-work benefit levels remain linked to price increases, and as wages have increased, the relative value of benefits to earnings for people without children has continued on the downward trend that New Labour inherited. This has increased financial work incentives for single claimants and many childless couples, but at the cost of relative increased poverty. The situation for families with children is far more complex. The combination of wider changes in wages and rent levels with increased child benefits for those both in and out of work alongside the introduction of the tax credit system mean that on average work incentives have weakened since 2000 (Adam et al. 2006). More than two million working adults in Britain now face EMTRs of over 50%. These trends illustrate the tension that exists between the Government's policy of providing more financial support directly to poor families and its ambition of getting them into work and, once in employment, to make progress and earn more. One response has been the introduction of targeted time-limited 'return to work credits' that supplement existing tax credits for those who are eligible. The other is to increase conditionality and provide enhanced employment services that will enable those in work to both retain jobs and improve their skills.

The second set of issues concern implementation. The 'welfare to work' delivery system has been under pressure and will now to have to adjust to further radical change. In the transition to a 'managed welfare market' there is in the short term likely to be disruption to providers and industrial relations conflict in JCP. This will be followed by a steep learning curve as DWP officials seek to steer the welfare to work system through contracts that aim to give greater flexibility and incentives to providers yet at the same time prevent the 'creaming' and 'parking' associated with the creation of such a quasi market in Australia (Considine 2005). At the same time the Government intends to implement the proposals of the 'Leitch' review of skills and training that recommended 'joining up' the 'employment first' system with employer-based training to improve the skills of those without work, improve retention and create pathways to better quality jobs (HMT 2006). This ambition is laudable but unlikely to be realised without significant change to the 'work first' priorities embedded in the activation regime and to the qualification-based targets that drive the learning and skills sector.

Finally, it is worth reflecting on the balance of 'rights and responsibilities' in the new British model of social citizenship. There has been a strong policy emphasis on individual's responsibility to support themselves and their family through employment, so that the right to welfare on the basis of need is balanced against their responsibility to work. British jobseekers now face one of the most demanding activation regimes in Europe, with elements of this approach being extended to lone parents and those with health conditions and disabilities, accompanied with new levels of administrative and bureaucratic discretion. In this context the checks

and balances that exist in national and European law may need reform to both reduce the arbitrary and unfair exercise of the authority of the state and ensure that new ‘active’ citizenship rights are more than rhetoric and that vulnerable people are not denied access to the financial support and services they need.

List of abbreviations

Abbreviation	
BA	Benefits Agency
CMP	Condition Management Programme
CTB	Council Tax Benefit
CTC	Child Tax Credit
DSS	Department of Social Security
DWP	Department of Work and Pensions
ECHR	European Convention of Human Rights
EMTR	Effective Marginal Tax Rate
ESA	Employment Support Allowance
ES	Employment Service
EZ	Employment Zone
GB	Great Britain
GDP	Gross Domestic Product
Hansard	Official Record of Parliamentary Proceedings, Written Answer from Minister
HB	Housing Benefit
HMT	Her Majesty's Treasury
HRA	Human Rights Act
IAP	Intensive Activity Period
IB	Incapacity Benefit
IFS	Institute for Fiscal Studies
IS	Income Support
JCP	Jobcentre Plus
JSA	Jobseekers Allowance
JSAg	Jobseekers Agreement
LFS	Labour Force Survey
MSC	Manpower Services Commission
NAO	National Audit Office
NDDP	New Deal for Disabled People
NDLP	New Deal for Lone Parents
NDPA	New Deal Personal Adviser
NDYP	New Deal for Young People
ND25 plus	
NEP	National Employment Panel
NI	National Insurance
NMW	National Minimum Wage
OECD	Organisation for Economic Cooperation and Development
ONS	Office for National Statistics
PA	Personal Adviser
SSAC	Social Security Advisory Committee
UK	United Kingdom
WBLA	Work Based Learning for Adults
WFI	Work Focused Interview
WFTC	Working Families Tax Credit
WTC	Working Tax Credit

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Activation from Income Support in the US

B. Quade, C.J. O'Leary, and O. Dupper

1 Introduction

There is good news from the United States. The labour market is at nearly full employment and the number of persons receiving social assistance has reached a historically low level. This favourable economic context supported the political will for enactment of the *Personal Responsibility and Work Opportunity Act of 1996* (PRWORA)[1] – signifying the "end of welfare as we know it."[2]

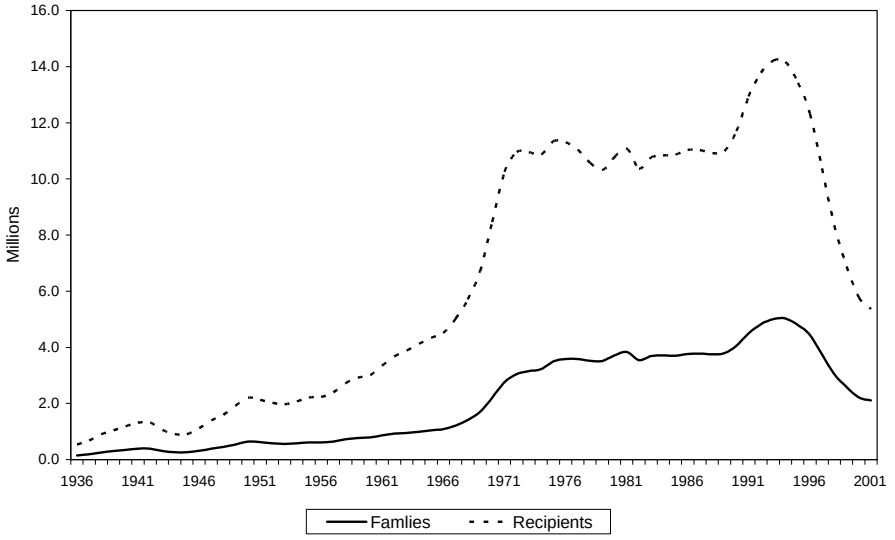
After decades of controversy over federal programmes for social assistance, the US Congress implemented a new activation concept, one containing a welfare-to-work or Work-First approach while allowing wide discretion among the states in policy implementation. The aim was to reduce welfare dependency by helping welfare recipients leave welfare for work through supportive services and work requirements. The ultimate ambition of the reform was to convert the system from a presumption of state responsibility to one of individual responsibility.[3] This posture regarding the government role for income security was implicit in other public programmes, and the 1996 welfare reforms replacing the Aid to Families with Dependent Children Program (AFDC) with the Temporary Assistance for Needy Families Program (TANF) brought social assistance into line with this principle.

Welfare caseloads in the US exceeded five million households in 1994, then rapidly declined by more than 50% by the end of 1999, falling below 2.4 million (Fig. 22). This precipitous drop in cases coincided with a booming economy, which resulted in rising labour demand with localised labour shortages in many areas. It also closely followed a change in public sentiment toward welfare recipients and a change in welfare policy. The PRWORA established TANF block grants to the states and imposed lifetime limits for benefit receipt, as well as work or job training requirements. Figure 23 shows the dramatic rise in employment rates among adult recipients of federal cash assistance.

[1] P.L. 104–193 = 42 USC 601.

[2] See William J. Clinton, acceptance speech to the Democratic National Convention of July 16, 1992 (Cimini 2002).

[3] The current Bush administration puts special emphasis on work, with employment an assumed prerequisite for self-sufficiency (White House 2002).



(*Source*: USDHHS, OFA Temporary Assistance for Needy Families – Separate State Program-Maintenance of Effort – Aid to Families with Dependant Children, Caseload Data)

Fig. 22. Cash assistance for needy families, 1936–2001

Source: HHS (2006), Appendix, Table 1.5 on page A–229

Fig. 23. Employment rates of adult federal cash assistance recipients, 1992–2003

1.1 Evolution of activation in policy

Public programmes providing income security to Americans originated with the Social Security Act of 1935 (SSA).[4] The SSA was the centrepiece of President Franklin D. Roosevelt's social policy initiative called the New Deal which sought to lift the country out of the Great Depression. Self-sufficiency was the implicit assumption in all provisions of the SSA, which established entitlements for persons in clearly defined categories who were considered to be incapable of providing for themselves. The core groups eligible for support were the aged, young survivor dependants of deceased workers, and disabled workers. Others that the Act provided for were the involuntarily unemployed and needy dependant children of single mothers. This paper investigates the principle of activation in American public programmes by providing income security. It does so by examining unemployment insurance (UI), cash assistance and in-kind benefits to the needy (beginning in 1935 with Aid to Dependent Children (ADC)), and tax incentives for employment. This examination includes consideration of original programme features to encourage self-sufficiency through work, as well as subsequent programme refinements with that aim.

In addition to providing positive re-employment incentives, US employment promotion law also plays an indirect role in encouraging recipients to actively seek work, by demanding self-responsibility through strict benefit eligibility rules and modest benefit levels[5] (so-called negative realisation of the concept of activation).[6] Given the decentralised nature of US employment promotion policy, each state may be called a "laboratory of democracy":[7] as the states have tried many variations of the activation concept in employment policy.

UI provisions included in the Social Security Act signed by Roosevelt on 14 August 1935 (P.L. 74–271.) were designed to compensate involuntary joblessness while promoting a return to work. Insurable unemployment is the consequence of unavoidable risk, and continued insurability of unemployment depends on continuous efforts at gaining re-employment. The emphasis on activation can be traced to the colonial era, when there was a general consensus that the (Protestant) work ethic should also apply to the (undeserved) poor – the unemployed in need who are able to work – and its enforcement might necessitate "activating measures."[8] The distinction between the deserving and undeserving poor that already

[4] The Social Security Act of 1935 was P.L. 74-271.

[5] State TANF programs provide very low benefit levels (Lazere and Tallent 2006).

[6] Self-responsibility is to be distinguished from legal responsibility and legal duties; self-responsibility means freedom from legal regulations (Weischedel 1972).

[7] New State Ice Co. v. Leibmann 285 U.S. 262, 311.

[8] Earlier this was ensured by workhouses and almshouses (Trattner 1979).

characterised the English Poor Law of 1601 (Quigley 1996) has had a strong influence on the activation concept in labour market policy in the United States.[9]

Activation of unemployment benefit recipients in the US is a concept "well advanced in years."[10] Earliest discussions on the design of UI in the US focused on the issue of the insurability of unemployment (Blaustein 1993). Compensable joblessness was (and is) restricted to involuntary unavoidable unemployment (initial and continuing). The term *moral hazard* is insurance jargon for a situation where the insured can control the risk of exposure to the hazard insured against. UI rules were set to reduce the problem of moral hazard. UI programmes included features intended to prevent unemployment (Commons 1922). These features included: definitions of involuntary unemployment, requirements for active job search, and benefit amounts and potential durations of benefits set below thresholds considered disincentives for actively seeking work.

It may also be said that the establishment of the federal-state UI system by the SSA amounted to activation of the states by the Federal Government to deal with the social problem of unemployment. When the original provisions of the SSA were being debated, it was unclear whether the US Supreme Court would accept that a federal power could establish a national UI system or whether such an action would be considered unconstitutional. Lawmakers anticipated the latter, thus developing a concept to enable States to establish separate state unemployment insurance programmes – the so-called Federal-State Partnership.

In modern US social assistance law, activation measures were first implemented when the traditional distinction between the deserving and the undeserving poor became increasingly unclear. The fading of the distinction can be attributed to two developments: first, the dramatically increased labour market participation of women, and, second, the extension of welfare benefits to needy families with unemployed fathers under federal law (ADC-Unemployed Fathers, P.L. 87–31). Six years later, the first Work Incentive Program (WIN) was incorporated into the renamed Aid for Families with Dependent Children Program (AFDC) by the *Public Welfare Amendments* of 1967.[11] In the view of many, this represented the birth of the US workfare state, less a conceptional paradigm than a real socio-demographic shift.[12] WIN provided the following incentives to work: Participants of initially voluntary WIN activities received an incentive payment of USD 30, while for every AFDC benefit recipient, 33 cents of each dollar earned in excess of USD 30

[9] For example see the Texas constitution's art. IX § 14, in which counties are empowered to establish "a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants".

[10] See Mittelstadt (2005), Janoski (1990) and O'Leary and Straits (2004).

[11] P.L. 90-248, made WIN participation mandatory for unemployed fathers.

[12] "ADC … was designated officially for non-employables," Mittelstadt (2005). Divorced and never-married women made up the majority of ADC beneficiaries.

would be disregarded as income.[13] Four years later, participation in a WIN programme became mandatory for all fathers in two-parent families and for mothers with children older than 6 years of age.[14]

In the mid-seventies an additional work-incentive measure was enacted: the Earned Income Tax Credit (EITC).[15] EITC became a permanent programme in 1978.[16] EITC functions as a wage supplement. It makes low-wage work more attractive to unemployed individuals and benefit recipients, while at the same time benefiting employers by subsidising employment in low-wage jobs.

In 1985 the first Welfare-to-Work programme (GAIN – Greater Avenues to Independence) was enacted in California. Under the terms of this programme, participants were required to work or to engage in work activities in return for welfare-cheques. Training, counselling and child-care services were provided by the state. This reciprocity of obligations became a principle of the new fast-evolving activation concept.

PRWORA was the first nationwide programme for activation of welfare recipients. PRWORA discontinued individual entitlement to welfare benefits and transformed AFDC, a federal matching grant programme, into TANF, a federal block grant programme, which gave wide discretion to the states.[17] Congress further limited the maximum cash benefit duration to 60 months (whether continuous or not) in a lifetime and required all benefit recipients who are able to work or who have received assistance for 24 months (whether continuous or not) to engage in work.[18] PRWORA contains a number of innovations, the most significant of which is the activation of both, the individual welfare recipient as well as the state legislators and administrative bodies that were required to develop their own activation concepts and measures within the federal framework. Thus, PRWORA not only requires individual work but also requires states to: (a) achieve work participation rates; b) offer specified supportive services (child care, transportation, and training); and c) to set strong incentives for TANF recipients to leave welfare.[19]

The permanent Food Stamp Program (FSP) was established in 1964 and has remained a federal entitlement for low income persons and families.[20] At the outset

[13] § 202(a) P.L. 90-248 – 81 Stat. 881; see also Patterson (2000).

[14] The so called Talmadge Amendments, P.L. 92-223, of December 28, 1971.

[15] Introduced by the Tax Reduction Act of 1975, P.L. 94-12.

[16] Revenue Act of 1978, P.L. 95-600.

[17] Entitlement to cash assistance was ended by 42 USC 601 (b).

[18] 42 USC 607 (e)(2) exempts single custodial parents of a child less than 6 years from the work requirement, when other suitable child care is not available.

[19] See for example, the case reduction credit against the state's work requirement rates; 42 USC 607 (a)(3)(A) in connection with 45 CFR 261.40.

[20] Food Stamp Act of 1964, P.L. 88-525. See Maney (1989) on the origins and evolution.

of the FSP, food stamps had to be purchased by eligible individuals; today Food Stamp recipients have to work or take part in a Workfare programme like TANF to qualify for their food stamp allotment. This activation policy is buttressed by the federal EITC and – where available – state EITCs.

1.2 Socio-economic context

In October 2006 the population of the United States reached 300 million. During the past 40 years the civilian labour force in the United States has doubled, to more than 151 million people (Table 37). In that time the labour force participation rate rose, eventually plateauing in the year 2000 at about two-thirds of the population aged 16 years and over. The rise in labour force participation was driven by increasing female participation offsetting declining male participation. Over the past 40 years the annual unemployment rate has fluctuated between 3.5 and 9.7%. Unemployment has averaged 5.5% over the period and stood at 4.6% in 2006, a value close to the minimum level regarded as consistent with general price stability.[21]

After stubbornly persisting for more than 20 years, high unemployment rates abated during the 1990s economic expansion. The share of unemployed who are long term – out of work for more than half a year – declined somewhat during the 1990s. However, the rate of long-term unemployment remained in double digits and rapidly returned to rates above 20% after the 2002 recession.

By gender, age, and educational attainment, in recent years the burden of unemployment has weighed more heavily on younger workers and on those with less than a completed secondary education (Table 38). In the last few years unemployment

Table 37. Trends in the unemployment rate and labor force, 1965–2004

Year	Civilian labor force (in thousands)	Labor force participation (%)			Unemployment rate total (16 and over)	Long-term unemployment rate (27 weeks or more)
		Total (16 and over)	Male (20 and over)	Female (20 and over)		
2006	151,428	66.2	75.9	60.5	4.6	17.6
2005	149,320	66.0	75.8	60.4	5.1	19.6
2000	142,583	67.1	76.7	60.6	4.0	11.4
1995	132,304	66.6	76.7	59.4	5.6	17.3
1990	125,840	66.5	78.2	58.0	5.6	10.0
1985	115,461	64.8	78.1	54.7	7.2	15.4
1980	106,940	63.8	79.4	51.3	7.1	10.7
1975	93,775	61.2	80.3	46.0	8.5	15.2
1970	82,771	60.4	82.6	43.3	4.9	5.8
1965	74,455	58.9	83.9	39.4	4.5	10.4

Source: USDOL, BLS, Labor Force Statistics from the Current Population Survey [Online]

[21] Layard and Calmfors (1987) argued the non-accelerating inflation rate of unemployment (NAIRU) was about 5%. More recently, Federal Reserve Chairman Greenspan suggested, by his actions, that the NAIRU was below 4.5% of the labour force.

Table 38. Trends in unemployment rates, 1975–2006

Year	Total (16+)	Gender (16+)		Age (average monthly)			Education (ages 25–64)			
		Male	Female	(16–24)	(25–54)	(55+)	<H.S.	H.S grad; no college	<Bachelor's	College grad
2006	4.6	4.6	4.6	10.5	3.8	3.0	6.8	4.3	3.6	2.0
2005	5.1	5.1	5.1	11.3	4.1	3.4	7.6	4.7	3.9	2.3
2000	4.0	3.9	4.1	9.3	3.1	2.6	7.9	3.8	3.0	1.5
1995	5.6	5.6	5.6	12.1	4.5	3.7	10.0	5.2	4.5	2.5
1990	5.6	5.7	5.5	11.2	4.6	3.3	9.6	4.9	3.7	1.9
1985	7.2	7.0	7.4	13.6	5.9	4.1	11.4	6.9	4.7	2.4
1980	7.1	6.9	7.4	13.9	5.5	3.3	8.4	5.1	4.3	1.9
1975	8.5	7.9	9.3	16.1	6.4	4.8	10.7	6.9	5.5	2.5

Source: Age data: USDOL, BLS; Labor force statistics and schooling data from the Current Population Survey (online)

rates by gender have converged, and they have fallen dramatically even for those with the lowest levels of educational attainment. However, while total unemployment rates have declined, the share of unemployed out of work for more than 6 months has remained stubbornly high. This latter phenomenon raises the importance of activation efforts from income support as the risk of dependency has increased for the most vulnerable in the labour market.

Workers 55 years of age and over have consistently had lower rates of unemployment. In most economic conditions a bachelor's degree is a reliable inoculation against unemployment, although the recent recession has exposed a significant share of white-collar workers to the risk of unemployment.

Unemployment insurance benefit payments constitute a measurable share of aggregate national income. Furthermore, UI dwarfs other federal employment and training programmes in the US. Benefit figures from 1970 to 2003 are reported in Table 39. The table also lists UI benefit payments and total expenditures on labour market programmes (including UI) as proportions of gross domestic product (GDP). Only in 1975 did spending on UI exceed 1% of GDP. In that year, three successive grants of extended UI benefits resulted in eligibility of up to 65 weeks for many claimants (Woodbury and Rubin 2003).

Spending on UI is typically in the range of 0.3 to 0.5% of GDP. Naturally the share is higher in recessions and lower in years of expanding employment. In 1999, near the end of the long expansion, UI benefit payments fell to 0.21% of GDP, but then quickly doubled to 0.41% of GDP during the recession year of 2002. Spending on employment programmes other than UI tends to average about 0.1% of GDP.[22]

[22] Employment policy spending as a percentage of GDP is quite modest in the United States compared to other member countries of the Organization for Economic Cooperation and Development (OECD). Among 22 OECD countries in 1992, only Japan had a lower share of GDP devoted to employment policy. In 1992 the Japanese unemployment rate

Table 39. Spending on UI and employment programmes in the US as a share of GDP, 1970–2003

Year	UI benefits paid (USD millions)	UI benefits paid as a percentage of US GDP	Spending on employment programmes other than UI (USD millions)	Spending on all employment programmes as a percentage of US GDP
2003	41,359	0.38	9,852	0.47
2002	42,130	0.41	9,787	0.50
2001	31,629	0.31	8,460	0.40
2000	20,715	0.21	7,971	0.29
1995	22,028	0.30	8,395	0.42
1990	18,374	0.32	6,429	0.43
1985	15,830	0.38	5,650	0.52
1980	18,503	0.68	10,896	1.08
1975	18,112	1.16	4,322	1.44
1970	4,158	0.41	1,737	0.58

Note: Benefits paid by UI programs (1970-2000 includes all regular, extended, federal, and emergency UI programs; 2001-2003 includes only regular UI benefits). Federal outlays for labor market programmes include job training, employment services, and other active measures

Source: USDOL (2006) and USOMB (2006)

The percentage of the population below the poverty line averaged around 14–15% and trended down during the economic expansion at the end of the twentieth century (Table 40). A similar pattern is observed for the percentage of the population receiving social assistance: that number averaged 6 or 7% but trended below 5% in the most recent years. These trends resulted from a combination of policy changes promoting activation of programme participants and improving labour market opportunities.

Table 40. Proportions of US population in poverty and receiving social assistance

Year	US population (thousands)	Percentage of population below the poverty line	Percentage of population receiving social assistance
2005	296,410	12.6	4.1
2000	282,194	11.3	4.6
1995	262,803	13.8	7.6
1990	249,465	13.5	6.6
1985	237,924	13.6	6.3
1981	229,466	14.0	6.6

Source: US Census Bureau. Population Estimates Program. Historical National Population Estimates [Online]; US Census Bureau. Historical Poverty Tables (Table 5, Per cent of people by ratio of income to poverty level [Online]); USDHHS (TANF–Separate State Program-Maintenance of Effort–AFDC, Caseload Data); SSA (2005)

was about one-quarter of the rate in the U.S. Nearly all other OECD countries spent 2% or more of GDP on employment policy (OECD 1994).

1.3 Activation target groups

Five groups are targeted for activation in US employment promotion law: (1) the unemployed, (2) low-income families, (3) employees, (4) employers, and (5) administrative entities responsible for carrying out employment policy. Within these five groups, further distinctions can be made: the group of the unemployed, for example, contains those unemployed compensated by UI (insured unemployed[23]) as well as beneficiaries of a welfare programme (e.g., TANF recipients) and those not receiving income support from any programme. Activation policy extends even to fathers of needy children who do not live together with their children in the same household; they are activated through child support enforcement efforts linked to TANF eligibility. Family policy is aimed at preventing out-of-wedlock and teenage pregnancy and encourages the establishment of family forming and stabilisation services.[24] Employers are encouraged through available tax credits to hire unemployed persons with employment barriers, while employees are encouraged though lifetime time limits on benefits to keep their jobs, even though these jobs may be poorly paid. Public administrative agencies are activated by requiring them to: (a) set up special benefit programmes and innovative activation measures; (b) administer these programmes on a success-oriented basis,[25] and (c) use available budgets to overcome welfare dependency.[26]

1.4 The US employment promotion system

Elements of activation can be found in several different programmes of the US employment promotion system. Activating labour market policy[27] is primarily realised through four programmes: (1) unemployment insurance (UI), (2) welfare, (3) workforce development programmes and (4) federal and state tax incentive programmes.[28]

The UI system in the US is a federal-state partnership[29] including regular UI benefits, a federal-state Extended Benefit Program, and state supplemental benefit

[23] Only 32% of all unemployed were beneficiaries of a state UI program in the second quarter of 2006 (USDOL 2006).

[24] See the purposes of PRWORA stated in 42 USC 601.

[25] Competitive advantages were discontinued by the Deficit Reduction Act of 2005, P.L. 109-171; WIA and the Food Stamp regulations still grant competitive incentives.

[26] PRWORA requires what is called "maintenance of effort" spending levels by the states; they must spend at least 75% of their 1994 AFDC share for TANF-related benefits, services or supportive services, on top of their federal TANF block grant.

[27] Janoski (1990) explains the distinction from active labour market policy.

[28] The flexibility of a labour market also depends on the social labour market institutions such as minimum wage, UI, social assistance, and tax incentives.

[29] For an overview of the federal-state partnership see USDOL (2007).

programmes.[30] The UI system also includes three special federal unemployment benefit programmes: (1) Trade Act programmes, (2) Temporary Extended Unemployment Compensation, and (3) Disaster Unemployment Assistance.

Federally funded programmes for social assistance include TANF[31] and Food Stamps. Under PRWORA federal grants to states finance time-limited social assistance benefits from TANF to needy "assistance units" with at least one dependant minor child. Eligibility for assistance requires active engagement in work-related activities.[32] Congress recently appropriated annual grants of more than USD 16.5 billion through the end of Fiscal Year (FY) 2008.[33] States can qualify for their TANF block grants by fulfilling the requirements of PRWORA.[34] Under the Food Stamp Act of 1977[35] needy households qualify for a food stamp allotment to purchase food staples. Participation in the Food Stamp Program requires some attachment to the labour market.

Workforce development is undertaken through the Workforce Investment Act of 1998 (WIA),[36] which replaced the Job Training Partnership Act and other federal job training laws. WIA represents the first significant attempt to retool the US system of workforce development programmes since the early 1980s. It establishes workforce investment systems – which create workforce services that seek to increase the employment, job retention, occupational skills, and earnings of participants. WIA services are provided through One-Stop Career Centers operating in local workforce investment areas. These services and their delivery system are intended to support the WIA goals of improving the quality of the workforce, reducing welfare dependency, and enhancing the productivity and competitiveness of the nation (see Title 1, Section 106).

There are two kinds of federal tax incentive programmes: tax incentives for low wage workers to boost or supplement their available income, and tax incentives for employers who hire individuals with certain barriers to employment. The most well-known and largest programme is directed toward workers and called the Earned Income Tax Credit, regulated in § 32 of the Internal Revenue Code (IRC) (26 USCA 32.). Nearly USD 31 billion was provided as EITC benefits in FY 2003.[37]

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[30] Currently 16 States grant additional benefits for UI exhaustees for up to 26 weeks. For example, New York has an additional training benefit program (USDOL 2008).

[31] TANF eligibility requires at least one dependent minor child in the household.

[32] PRWORA mentions 12 work activities like job-search and job-readiness assistance or on-the-job training; see 42 USC 607 (d) and 45 CFR 261.

[33] § 7101 of the Deficit Reduction Act of 2005.

[34] All states operate a TANF-program.

[35] P.L. 88-525; as codified in 7 USC 2011 as amended.

[36] P.L. 105-220; as codified in 29 USC 2011 as amended.

[37] U.S. House of Representatives, 2004.

2 Legal framework

2.1 Constitutional law

The US Constitution and the various state constitutions represent US constitutional law. Such law originally formed a dualism between the strictly limited federal government and the (subsidiary) sovereign state governments (especially by means of the states' police power).[38] This dualism was frayed by New Deal legislation and replaced by a *cooperative federalism* during the twentieth century (Sugarman 1996). State constitutions more frequently include "affirmative rights of citizens and affirmative duties for the government" than does the US Constitution (Rotunno 1996).

2.1.1 US Constitution

The US Constitution is silent regarding social welfare policy: there is neither an affirmative duty of the government to provide income security for citizens, nor a general espousal of welfare state principles.[39] The dominant judicial interpretation is that the US Constitution does not establish social entitlements (Currie 1986, for critics see Bandes 1990). The Constitution "does not provide judicial remedies for every social and economic ill" (*Lindsey v. Normet*, 405 US 56, 74).

In the 1936 decision *United States v. Butler*,[40] the US Supreme Court (SC) confirmed the federal power "to tax for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare" (297 US 1, 56, 64 ff.). Before this revolutionary decision, the constitutionality of a federal UI programme was in question. This may be one reason for the institutional design of the US UI system (namely a federal-state partnership) and the federal unemployment tax system.[41]

Welfare entitlements of US citizens are established by law thereby raising a rational expectation[42] to receive an expressly defined benefit.[43] Such entitlements are

[38] On state sovereignty see Zick (2005); on federal authority see May and Ides (2004).

[39] Jackson v. City of Joliet, 715 F.2d 1200, 1203 (7th Cir.), certiorari denied, 465 U.S. 1049 (1983); DeShaney v. Winnebago, 489 U.S. 189, 195 f. (1989). There is no constitutional right to welfare benefits (Dandridge v. Williams, 397 U.S. 471, 484). See Barber (2003).

[40] 297 U.S. 1, 56. See art. 8, § 1 of the U.S. Constitution.

[41] For the development-process of UI see Blaustein (1993).

[42] Objective eligibility requirements and benefit calculation rules can establish a legal entitlement. The concept of welfare entitlements refers to the protection of legally established expectations – it is a protection of confidence rather than a form of property.

[43] Board of Regents of State Colleges v. Roth, 408 U.S. 564.

a form of "*New Property*"[44] and are protected by the Due Process Clause in the US Constitution.[45] In the event that a benefit entitlement is disputed, payment of benefits must continue until a fair administrative hearing has taken place and the dispute is decided (397 US 254, 266). Regarding the TANF programme, § 601 (b) of PRWORA expressly rules out an individual entitlement.[46] Whether state laws can or do create a legal entitlement to TANF benefits is controversial.

2.1.2 State constitutions

Some state constitutions in the US foresee a duty of state government to actively design a welfare state[47] and contain express socio-political language.[48] It is therefore arguable that the return of legislative and administrative discretion to the states under the TANF programme and the Workforce Investment System will strengthen the legal position of the needy individual (compare Hershkoff 1999). However, to date no state court has recognised an individual constitutional right to subsistence-level guaranteed benefits or awarded such a right.[49]

For example Art. XVII, § 1 of the Constitution of New York provides as follows:

> "The aid, care and support of the needy are public concerns and shall be provided by the State and by each of its subdivisions, and in such manner and such means, as the legislature may from time to time determine."

Hence, the state government is obliged to provide care and support for the needy. As one court held, it "is not a matter of 'legislative grace'" but "a constitutional mandate."[50] However, in carrying out this constitutional duty, the state of New York is not required "always to meet in full measure all the needs of each recipient"[51] or the "legitimate need of every needy person […] Rather[,] the Legislator

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[44] Reich (1964), pp. 733–787; Goldberg v. Kelly 397 U.S. 254 (1970).

[45] See the 5th Amendment to the U.S. Constitution (pertaining to the federal government) and the 14th Amendment (pertaining to state governments).

[46] "This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part."

[47] See the state constitutions of Alabama, art. IV, § 88, Hawaii, art. IX, § 3, Idaho, art. X, § 1, Indiana, art. IX, § 3, Kansas, art. 7, § 4, Mississippi, art. 4, & 86, Montana, art XII, § 3(3), Nevada, art. 13, § 1, New York, art. 17, § 1, North Carolina, art. 11, § 4, Oklahoma, art. 17, § 3, South Carolina, art. XII, § 1, Texas, art 11, § 2, West Virginia, art. IX, § 2 und Wyoming, art. 7, § 18.

[48] Some examples will be given from the New York Constitution below.

[49] But see Katrina M. v. West Virginia Department of Health and Human Resources, 212 W.Va. 783 (2002; Justice Starcher concurring).

[50] Aliessa ex rel. Fayad v. Novello, 96 N.Y.2d 418, 428 citing from Tucker v. Toia, 43 N.Y.2d 1, 7. See also Lovelace v. Gross, 80 N.Y. 2d 419, 424 and Jiggets v. Grinker, 75 N.Y.2d 411, 416.

[51] Bernstein v. Toia, 43 N.Y.2d.

may determine who is 'needy' and allocate the public dollar accordingly" (96 N.Y.2d 418, 428). In doing so, the state shall have "wide discretion."[52] In particular, the state is allowed to require welfare recipients on pain of sanctions to participate in work activities,[53] but the state must hold on to its legal definition of need (43 N.Y.2d. 1, 8.) and has to comply with its constitutional duty "despite a purported claim of insufficient funds."[54] Nevertheless, art. XVII, § 1 does not provide an unconditional constitutional right to a certain amount of money (See 40 N.Y.S.2d 587, 590).

2.2 Federal framework legislation

For the most activating employment promotion programmes in the US, federal legislation (statutes and regulations) are in effect. These laws govern the working conditions such as the minimum wage, as well as the fundamental issues of Unemployment Compensation, the TANF programme and social services, and the US Workforce Investment System. The Food Stamp Program and the federal tax incentive programmes are almost solely ruled by federal laws.

2.2.1 Worker protections

Employment-at-Will Doctrine

Since the second half of the nineteenth century, the "employment at will" doctrine has been in place in all states of the United States. "Under that doctrine, employment for an indefinite term and not supported by independent consideration from the employee is presumed to be terminable at will, meaning the employee may be fired for any reason or for no reason."[55] In other words, employers can terminate employees not holding a written employment contract for good cause, bad cause, or no cause at all.[56] Despite some limited general exceptions from the employment-at-will doctrine[57] and an ongoing erosion of this doctrine in some states (state public policy exception, implied-contract exception, covenant-of-good-faith exception, Muhl 2001), the US labour market is quite flexible. Additionally, there is no compulsory severance payment required by employers dismissing workers.

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[52] 96 N.Y.2d 418, 428; Mark G. v. Sabol, 677 N.Y.S.2d 292.

[53] See Matter of Barie v. Lavine, 40 N.Y.S.2d 587 (1975), where a regulation was upheld that required welfare recipients to participate in a work referral program and sanctioned recipients for failures to comply by denying benefits for 30 days.

[54] Klostermann v. Cuomo, 61 N.Y.2d 525 (1984).

[55] Leslie v. St. Vincent New Hope Inc., 873 F.Supp. 1250, 1256 (S.D. Ind. 1995).

[56] See Muhl (2001), p. 3; also Ryan v. J.C. Penney Co., 627 F.2d, 836, 836 (7th Cir. 1980).

[57] An employee cannot be dismissed for exercising a statutory right or for refusing to violate a law for which an employee might be held individually responsible.

Minimum wage and overtime pay

The Fair Labor Standards Act (FLSA) of 1938[58] introduced some minimum standards for labour including the federal minimum wage, maximum hours, overtime pay, and absolute prohibition of child labour. In § 206 (a) (1) of the FLSA,[59] the federal minimum wage was raised from USD 5.15 to 5.85 per hour on 24 July 2007.[60] Most states have their own minimum wage laws in which the federal minimum wage rate, if higher, is adopted for the state. Thirty-one states as of 24 July 2007 had a higher minimum wage (such as New York, where the minimum wage rate is fixed at USD 7.15 per hour (NY Labor § 652 1)), and only four states had a lower wage rate than that specified by the FLSA[61] (see also Table 46 with state minimum wage levels as of 3 April 2006).

Mass layoffs

The Worker Adjustment and Retraining Notification Act of 1988[62] (WARN Act) introduced an important set of worker protections in the United States. WARN requires employers with more than 100 employees to provide notice 60 days in advance of a covered plant closing or a covered mass layoff to the affected workers, their representatives, the state's dislocated workers unit, and to the appropriate unit of local government. An employer failing to comply with the notification requirement must be made aware of a penalty, and can be asked for damages to cover any compensation to the affected employees because of the covered plant closing or mass layoff (e.g., UI benefits). Affected employees usually receive rapid response services (according to Sec. 101 (38) of the WIA) such as career counselling and job search assistance, from their local or state workforce investment system through the State Rapid Response Dislocated Worker Unit (usually located in the nearest One Stop Career Center) (USDOL 2003a and USDOL 2003b).

2.2.2 Unemployment compensation

Unemployment insurance

In the US, unemployment insurance (UI) is a joint federal-state programme that provides workers with temporary partial wage replacement in the event of involuntary job loss. The UI statute was enacted as part of the broader Social Security Act in response to the high levels of unemployment experienced during the Great

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[58] P.L. 75-718, 52 Stat. 1060; as amended in 29 USC 201. See also 29 CFR 500 regulations.

[59] As codified in 29 USC 201.

[60] The Fair Minimum Wage Act of 2007 (Title VIII, Subtitle A of P.L. 110-28) also sets the minimum wage to rise to USD 6.55 on 24 July 2008, and to USD 7.25 on 24 July 2009.

[61] See the geographical overview "Minimum Wage Laws in the States, July 24, 2007," available at the U.S. Department of Labor (USDOL) website.

[62] P.L. 100-379; 29 USC 2101; see also the regulations at 20 CFR 639.

Depression (Williams and Woo 1995). The US Department of Labor oversees the system, but each state administers its own programme. Because federal law defines the District of Columbia, Puerto Rico, and the Virgin Islands as states for the purposes of UI, there are 53 state programmes (US House of Representatives 2004).

The main objective of the programme is twofold: (1) to provide temporary and partial wage replacement to involuntary unemployed workers who were recently dismissed from employment; and (2) to help stabilise the economy during recessions (US House of Representatives 2004, 4–1). It is especially the first objective that distinguishes UI from welfare. Under the joint federal-state system, states are authorised to determine most eligibility standards, the amount of taxes to be collected, and the level of benefits to be paid, resulting in great variation from state to state (Williams and Woo 1995). Despite this flexibility, the three overarching themes (fault-based, non-needs-based, and short-term) characterise all state UI programmes in the United States.

The Federal Unemployment Tax Act of 1939 (P.L.76–379) (hereafter FUTA) and Titles III, IX, and XII of the Social Security Act of 1935 form the framework of the system. FUTA imposes certain mandates on states as a condition of their receipt of federal administrative funds and tax rebates. The two most important among them are a federally determined minimum wage base and the use of firm-level experience rating. FUTA imposes a 6.2% gross tax rate on the first USD 7,000 paid annually by covered employers to each employee. The 6.2 rate includes a 0.2 surcharge first implemented in 1977. Employers in states with programmes approved by the federal government and who have no delinquent federal loans may credit 5.4 percentage points against the 6.2% tax rate, making the minimum net federal unemployment tax rate 0.8 percentage points. Since all states have approved programmes, 0.8% is the effective federal tax rate (US House of Representatives 2004). At a rate of 0.8%, an employer in a state with the minimum base rate would pay an annual federal tax of USD 56 per employee who earned USD 7,000 or more (Lester 2001). In addition, each state must impose an experience-rated component of the tax, meaning that an individual employer's tax rate must vary directly with its history of UI benefit charges by laid off employees.[63] State tax rates vary significantly, but maximum rates range from 5.4% in several states (the lowest maximum rate permitted under federal law) to over 10% in three states.[64] By experience-rating the employers' contributions, the state activates employers in one of three ways depending on the provisions of a state's UI law: (1) employers get activated to prevent unemployment or to find an alternative to layoffs, such as a work sharing programme, if one is available in a state; (2) employers

[63] Under experience rating, the more UI paid to former employees, the higher the unemployment tax rate, up to a limit established by law. See Becker (1981).

[64] The three states are South Dakota (10.5%), Pennsylvania (10.59%) and Georgia (10.8%). See U.S. House of Representatives (2004), 4–29–4–30.

are not liable for benefit charges by voluntary quits or discharges for misconduct, so they are interested and entitled to receive information on initial claims of former employers and to deliver information about the reason of unemployment (moral hazard control), and (3) employers can get activated to pay voluntary contributions if state law allows them to minimise their contributions with the effect of securing the UI funds' solvency.

The federal tax rate of 0.8% finances administration of the system, half of the Federal-State Extended Benefits Program, and an account for state loans. The individual states finance their own programmes, as well as their half of the Federal-State Extended Benefits Program (US House of Representatives 2004, 4–1–4–2).

FUTA determines covered employment. FUTA also imposes certain requirements on state programmes, but, as mentioned earlier, the states generally determine individual qualification requirements, disqualification provisions, eligibility, weekly benefit amounts, duration of benefits, and the state tax structure used to finance all of the regular state benefits and half of the extended benefits.

The SSA also provides an administrative framework for UI. Title III authorises federal grants to the states for administration of state UC laws, title IX authorises the various components of the Federal Unemployment Trust Fund, and title XII authorises advances or loans to insolvent UC programmes (US House of Representatives 2004, 4–2).

For the Federal State Extended Benefits Program (FSEB), FUTA requires the states to administer an FSEB programme according to the Federal State Extended Unemployment Compensation Act of 1970 (P.L. 91–373.), but within the federal-state partnership, since the FSEBP is an insurance programme. Some eligibility requirements, the definition of suitability of work for some FSEB recipients (those whose prospects for obtaining work in their customary occupation within a reasonably short period of time are classified as being "not good"), and the sanction scheme are determined by federal law (see 20 CFR 615); in all other FSEB cases, state UI Law regulations are applicable.

Special unemployment compensation programmes

Because the federal government is more financially obligated for special unemployment compensation programmes, the federal laws governing these programmes are much more detailed: Temporary Extended Unemployment Compensation (TEUC) programmes are solely governed by federal legislation, but the federal government (specifically the US Department of Labor) entered into abstract administration agreements with the states. The Disaster Unemployment Assistance (DUA) is structured similarly: federal laws[65] govern the programme, but the States administer it on a contractual basis (as agreements between the states and the

[65] The DUA programme is regulated by 42 USC 5177 and 20 CFR 625.

USDOL) and are required to provide non reimbursable re-employment assistance services (42 USC 5177 (b) (1)). Finally, the Trade Act programmes, namely the Trade Readjustment Allowances, are also governed primarily by federal law.[66]

2.2.3 Welfare

Temporary Assistance for Needy Families

TANF is the main federal social assistance programme in the US, but not the largest.[67] TANF is a federal block-grant programme; states can qualify for a State Family Assistance Grant (SFAG) by transmitting a so-called TANF state plan to the US Department of Health and Human Services (DHHS).[68]

A state is entitled to a SFAG under 42 USC 603 (a) (1) (B) if that state's TANF state plan complies with federal law (42 USC 602). State plans must contain several certifications by a state's governor and an outline of the state's Family Assistance Program.

PRWORA enumerates detailed prohibitions and requirements for the use of SFAG money, as well as mandatory work requirements for participating states. Violations are sanctioned by the secretary of the US Department of Health and Human Services with percentage deductions of a state's annual SFAG for the immediately preceding fiscal year (see 42 USC 609). States could also qualify for performance bonuses until FY 2005.[69]

To illustrate the large volume of the federal provisions, we shall list some prohibitions and requirements for state TANF programmes. For example, states are not allowed to use their SFAG for benefit payments to individuals who have already received federally funded social welfare benefits for 60 months in their lifetime (TANF time limit);[70] no state shall make any payment from its SFAG to teen parents who do not live in an adult-supervised living environment; (42 USC 608 (a)(5)) no state is allowed to pay TANF benefits to individuals without a dependent child; (42 USC 608 (a)(1)) no state shall pay TANF benefits to individuals not participating in work activities although they are job-ready, nor shall it pay benefits for more than consecutive 24 months (42 USC 602 (a)(1)(A)(ii)).

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[66] Trade Act of 2002, P.L. 107-210; Trade Act of 1974 as amended 19 USC 2217-2331.

[67] In 2005, 1.9 million families (4.5 million persons) received TANF benefits, while 11.8 million households (25.7 million persons) collected food stamp benefits. In FY 2005 federal spending amounted to USD 16.5 million on TANF and USD 31.1 million on food stamps.

[68] 42 USC 602. Short versions of state TANF plans are published on the internet.

[69] Performance bonuses were paid to the top five states in several categories to motivate states to act innovatively.

[70] 42 USC 608 (a)(7); up to 20% of a state's cases can be exempted as hardship cases from this restriction on state discretion, 42 USC 608 (a)(7)(C).

Administrative costs are not allowed to exceed 15% of a state's TANF grant.[71] All states shall make an initial assessment of the job skills, prior work experience, and employability of each assistance recipient (called an Individual Responsibility Plan) within 30 days after the individual is determined to be eligible for assistance (42 USC 608(b)).

All states are required to meet the following work requirements: at least 50% of TANF families and 90% of families with two parents must participate in work activities (42 USC 607 (a)). States can acquire what is called a case reduction credit: that means percentage reductions in case numbers can be subtracted on a percentage point-for-point basis from the state's work requirement rates. Because most states had negative work participation rates, Congress changed the basis year for calculating the case reduction credit from 1995 to 2005 recently (§ 7102 (a) of P.L. 109–171).

PRWORA further expressly allows for certain sanctions. It also establishes Individual Development Accounts (IDA)[72] for individuals eligible for assistance, with the purpose of enabling the individual to accumulate funds for a qualified purpose.[73] An individual may only contribute to his or her IDA from earned income, and IDAs are not counted as assets.

Food Stamp Program

The Food Stamp Program is a Federal matching grant programme. States merely administer their own Food Stamp Program according to the provisions of federal law. Half of each state's administrative costs are typically reimbursed by the federal government.[74] The Food Stamp Act of 1977 (P.L. 88–525 = 7 USC 2011 ff.) has two objectives: (1) to strengthen the agricultural economy, and (2) to provide for improved levels of nutrition among low-income households through a cooperative federal-state programme of food assistance to be operated through normal channels of trade.[75] States are free to enlarge their Food Stamp Program of their own volition. The sole requirement for states to participate in the Food Stamp Program is that they do not collect any state or local sales taxes on the purchases of food

[71] 42 USC 604 (b)(1). In FY 2003 administrative costs amounted to 8% of total TANF expenditures throughout the U.S.; although Maine spent 19% of its 2003 TANF grant on administration and Nevada 15%.

[72] 42 USC 604 (h). For example, participants can invest their EITC income in an IDA.

[73] 42 USC 604 (h)(2)(A); qualified purposes include: (a) post-secondary education expenses; (b) first home purchase; and (c) business capitalization.

[74] 7 USC 2025 (a). States can qualify for performance bonuses based on four performance measures: (1) Payment accuracy; (2) Negative error rate; (3) Program access index; and (4) Application processing timeliness; see 7 CFR 275.24; Federal Register (2005).

[75] Preamble of P.L. 88-525; see also 7 USC 2011.

made with food stamp coupons (7 USC 2013 (a)). Work requirements are mandatory for physically and mentally fit individuals over the age of 15 and under the age of 60 who want to participate in the Food Stamp Program (7 USC 2015 (d)). States are allowed to operate a workfare programme for Food Stamp recipients (7 USC 2029 (a) (1)).

2.2.4 Workforce Investment System

With the Workforce Investment Act of 1998 (WIA) (P.L. 105–220), the Clinton administration completed its welfare reform.[76] WIA established a new demand-driven system employment and training system with decentralised decision making locally clustered in One-Stop Career Centers overseen by local Workforce Investment Boards. Nationwide the Workforce Investment System operates on a federal block-grant basis, providing for youth services and adult and dislocated workers services. Adult and dislocated workers services are delivered through One-Stops according to the multi-level access scheme of WIA. Core services like job search assistance and counselling are available universally to all job seekers; intensive services are provided for eligible dislocated workers who could not obtain a job through core services; and training services go to eligible dislocated workers who were not able to get a job through intensive services. WIA further facilitates personal development accounts as state wide or local pilot programmes, giving individuals the opportunity to spend a fixed dollar amount for buying job-related services such as training or re qualification on their own.

States qualify for WIA programme grants by submitting a WIA state plan in accordance with federal law.[77]

2.2.5 Tax incentive programmes

For employers

The Work Opportunity Tax Credit (WOTC) is granted to employers who hired a member of a targeted group (e.g., high-risk youth or young food stamp benefit recipients).[78] The maximum credit is USD 2,400 during the first year of employment, computed as 40% of wages paid, up to USD 6,000. Employers who hire a long-term family assistance recipient (a member of a family receiving assistance for more than 18 months) are eligible for an enhanced WOTC (the former welfare-to-work tax credit (WtW)) (§ 51A IRC). This credit grants up to USD 9,000 over

[76] We use this term even though WIA is not expressly labelled as a welfare reform law.

[77] For example, the New York state and Texas state WIA plans are available online.

[78] § 51 et seq. IRC; the age range for the food stamp category is 18 through 39.

2 years, computed as 40% of first year wages up to USD 10,000 and 50% of second-year wages up to USD 10,000. The enhanced WOTC programme was added by Congress in the 2006 reauthorisation.[79]

The WOTC is calculated as follows: (1) normal WOTC for new hires except long-term family assistance recipients: 25% for those employed at least 120 h (maximum credit USD 1,500); 40% for those employed at least 400 h (maximum credit USD 2,400). (2) WOTC for new hires of long-term family assistance recipients: first year: 25% for those employed at least 120 h the first year (maximum credit USD 2,500); 40% for those employed at least 400 h the first year (maximum credit USD 4,000): second year: 50% for those at least employed 400 h in the second year (maximum credit USD 5,000).

For low wage workers: Federal Earned Income Tax Credit

The federal Earned Income Tax Credit (EITC) is a refundable tax credit.[80] Under provisions for tax year 2006, single tax filers may qualify to receive a credit if they have earned incomes below annual levels of USD 12,120, 32,001, and 36,348 with zero, one, and more than one qualifying child respectively, and investment income of less than USD 2,800. These limits are called the break-even levels of earnings under the EITC. A summary of the parameters for the 2006 EITC is given for single filers in Table 41. The EITC is positive for earnings below the break-even level, and zero above the break even levels of earnings.

The potential refund is relatively low for claimants without qualifying children (USD 412). The highest EITC refunds are payable to tax filers with more than one qualifying child (USD 4,536). The EITC amounts to 7.65% for an eligible claimant with no qualifying child, 34% for eligible claimants with one qualifying child, or 40% for eligible claimants with two or more qualifying children, at the earnings level where the tax credit first reaches a plateau (USD 5,380 for childless single filers; USD 8,080 for single filers with one qualifying child; USD 11,340 for single filers with two or more qualifying children). For single filers in FY 2006, the EITC begins to phase out starting at earnings of USD 6,740 with no qualifying child, and at USD 14,810 with one or more qualifying children. The percentage rates of phase out are 7.65% for an eligible claimant with no qualifying child, 15.98% for eligible claimants with one qualifying child, and 21.06% for eligible claimants with two or more qualifying children. For married joint filers the break even earnings levels and the phase out amounts are USD 2,000 higher for each of the three categories.

[79] See H.R. 109-6111 (The Tax Relief and Health Care Act of 2006), later P.L. 109-432.

[80] 26 USC 32; for further information see Department of the Treasury, Internal Revenue Service (IRS) Publication 596–Earned Income Credit.

Table 41. 2006 Earned Income Tax Credit (EITC) parameters

Single filers	Earnings ($)				Credit rate (%)	
	Phase-in (maximum)	Maximum Credit	Phase-out (minimum)	Break even point	Before phase-out	During phase-out
Type of return						
Childless	5,380	412	6,740	12,120	7.65	7.65
1 child	8,080	2,747	14,810	32,001	34.00	15.98
2 or more children	11,340	4,536	14,810	36,348	40.00	21.06

For a single filer with two or more qualifying children in tax year 2006, Figs. 24 and 25 graphically depict the operation of the EITC. Figure 24 graphs the amount of the EITC against taxable earnings. The figure shows how the EITC supplements taxable earnings at a rate of 40.0% up to earnings of USD 11,340. As earnings increase beyond USD 11,340, the EITC is flat up to the phase-out earnings level of USD 14,810. As earnings continue to increase the EITC drops by 21.06% until the break even level of income is reached at USD 36,348. Figure 25 shows how total income changes due to the EITC as earnings rise. Up to earnings of USD 11,340 total income rises at an additional rate of 40% due to the EITC. For earnings above USD 14,810 the EITC declines by 21.06% and reaches zero when earnings reach USD 36,348.

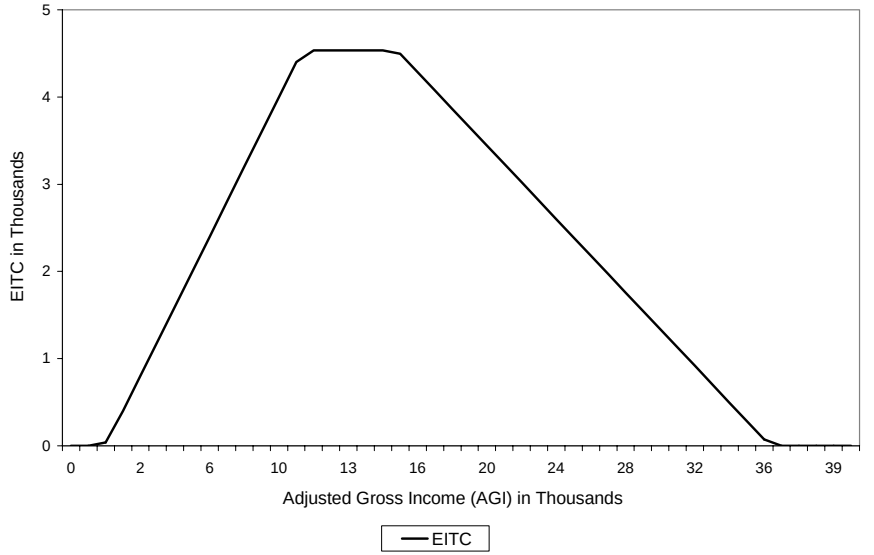

Fig. 24. EITC income to a single filer with two or more dependents, 2006

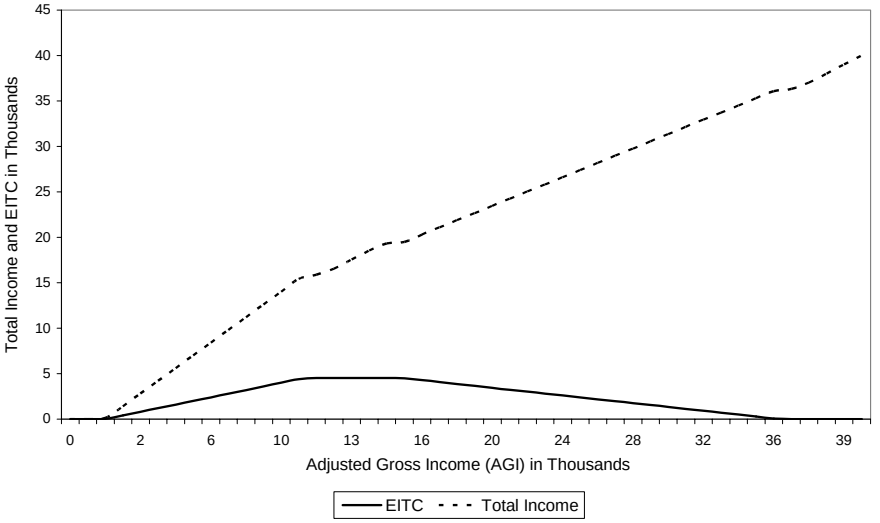

Fig. 25. EITC and total income to a single filer with two or more dependents, 2006

3 Activation in practice

The US activation concept is realised by legal means in two essential ways: by strictly limiting eligibility to only the intended group, and by continuing to encourage self-sufficiency by those in temporary receipt of income support. This chapter focuses on three elements of the US income security system: unemployment insurance, social assistance, and tax incentives.

3.1 Unemployment insurance

Unemployment insurance (UI) in the United States is social insurance. It encompasses a blend of principles drawn from private insurance and social welfare. It aims to prevent descent into poverty, not to insure against all wage loss. UI pays benefits to involuntarily unemployed job seekers with sufficient prior earnings who are actively engaged in re-employment efforts. The maximum potential duration of benefits is about half a year, and there is no secondary programme of cash assistance for labour force members who exhaust their UI entitlement. To assure that only insurable joblessness is compensated, there are strict rules governing job separation and continuing unemployment.

3.1.1 Initial and continuing eligibility for benefits

Initial eligibility for UI benefits requires that the circumstances of job separation were involuntary (non-monetary eligibility conditions) and that earnings in UI covered employment exceed a state specified minimum (monetary eligibility conditions). Rules requiring recent earnings to be at or above certain levels are a way to ensure sufficient prior labour force attachment in UI covered work.[81] Essentially these rules ensure that UI premiums have been paid before compensation is granted. States usually require at least USD 1,000 in earnings in a specified base period, with a higher level required for higher benefits. The base period is usually the first four of the most recent five completed calendar quarters. Quarterly earnings records are maintained for each employee in UI covered work. For each covered worker, total wages paid are reported quarterly by each separate employer.

Monetary eligibility can usually be determined at the time of benefit application. Non-monetary eligibility can be reviewed and disputed by the separating employer, who may assert that a worker left voluntarily or was dismissed for misconduct. Continuing eligibility requires a continuous status of able, available, and actively seeking work.

The conditions for UI-qualifying job separation were set to minimise insurance problems of moral hazard by ensuring that the separation was involuntary and primarily due to lack of work, not to controllable factors such as a quit, a collective bargaining dispute, or discharge for misconduct.82 Joblessness is compensable in all states for voluntary separations for good cause, which usually includes the following five reasons: (1) sexual harassment, (2) illness, (3) leaving to accept other work, (4) joining the armed forces, and (5) compulsory retirement (Nicholson 1997).

In most states, the basic eligibility rules therefore have the following components: first, an unemployed person usually must have worked recently for a covered employer for a specified period of time and earned a certain amount of wages. Second, the claimant must have become unemployed (or only partially employed) through no fault of their own. Third, a claimant who initially qualifies for benefits must demonstrate on a week-to-week basis that she is able and available for work and is actively seeking a job. State rules requiring job search by UI claimants are commonly called the UI work test.

Within the pool of unemployed persons, UI recipients are disproportionately older and disproportionately male (Vroman 1997). Workers who tend to be excluded on monetary eligibility grounds are new entrants to the workforce, people returning to the workforce after an extended absence, or workers whose labour

[81] In many states there is also a requirement that a certain number of hours must have been worked in the reference period, called the base year.

[82] The problem of moral hazard is present when the insured can affect the chance of experiencing the unfavourable outcome insured against.

force participation is low-wage, part-time, or intermittent (Lester 2001). The last of these exclusions has attracted extensive criticism and calls for reform.

Among the continuing eligibility conditions for receiving UI, claimants generally must be able and available for, as well as actively seeking suitable re-employment. While there is significant variation in job search requirements among states (the so-called work test), only minor variations exist in state laws setting forth the requirements concerning "ability to work" (US House of Representatives 2004). In practice, ability to work is demonstrated in most cases by the filing of a UI claim and registration for work at the One-Stop Centers. In contrast with earlier practice, when the ability to work could be assessed by an official during a face-to-face meeting, the proliferation of telephone and Internet claims has meant this kind of assessment is no longer possible (O'Leary 2006). The ability criterion relates to temporary illnesses and disabilities, and most states suspend eligibility if a worker becomes temporarily disabled from work (Lester 2001). Few states specify that a claimant must be mentally and physically able to work.

"Availability for work" means that a claimant must be ready, willing, and able to work. Claimants must register for work at the public employment service, and most state laws require that a claimant may not refuse an offer of, or referral to, "suitable work" (US House of Representatives 2004). At a minimum, FUTA requires all states to permit a claimant to refuse work with wages, hours, and other conditions that are substantially less favourable than those prevailing for similar work in the locality (Lester 2001). The usual criteria for suitable work include the degree of risk to the claimant's health, safety, and morals; the physical fitness and prior training, experience, and earnings of the person; the length of unemployment and prospects for securing local work in a customary occupation; and the distance of the available work from the claimant's residence (US House of Representatives 2004). As a general rule, as the length of unemployment increases, the claimant is required to accept a wider range of jobs.[83] Some state laws are explicitly more permissive in this regard, requiring claimants only to be available for work "in their usual occupation or work compatible with their prior training or experience" (Lester 2001).

Finally, there are rules that require an active search for work by the beneficiary.[84] Since the inception of the federal-state UI programme in the 1930s, there has been a focus on re-employment for beneficiaries. The work test is a central feature of re-employment efforts. Customarily, the work test has required both registration for job search with a state office of the Employment Service (ES) and job search contacts with potential employers during each week claimed for UI compensation. All states except Pennsylvania require, either by statute or by administrative rule, that claimants be seeking work or making a reasonable effort to

[83] As Lester (2001) writes, "as the number of weeks a claimant collects benefits rises, the wage of jobs the state deems 'suitable' for that worker falls" (p. 353).

[84] The next section is based on O'Leary (2004).

find work.[85] About 30% of states require a specific number of employer contacts per week,[86] while others require a search effort consistent with occupational norms (often termed "customary for the occupation," O'Leary 2004, 2006). The reason for moving away from a strict numerical requirement for the number of contacts between a claimant and a potential employer each week (even though that is one way in which state UI programmes can ensure a continuous search for work) is in part because employers do not want to receive a large number of insincere, repetitive, and burdensome applications submitted merely to satisfy the UI job requirement (O'Leary 2004). State practices for validation of required employer contacts also vary. Some states require job seekers to keep a written log of employer contacts, which must be submitted upon the request of the UI agency. Others require a written declaration on a signed form submitted to the agency (O'Leary 2006). A few states have Eligibility Review Programs (ERPs) in place which ensure a continuous search.[87] Such a programme sets a standard schedule for beneficiaries who are in continuous receipt of UI weekly benefits to visit the state employment security agency in person to have their efforts toward re-employment reviewed (O'Leary 2006).

Evaluations of the UI work test in South Carolina (Corson et al. 1985) and in Maryland (Klepinger et al. 1998) found that a stronger UI work test, achieved by requiring reporting of job search contacts and validation of contacts through cooperation between UI and the PES, leads to significantly shorter periods of compensated joblessness. This is evidence that an objective and verified job search requirement can be an important element of activation for UI beneficiaries.

A field experiment in Tacoma, Washington (Johnson and Klepinger 1991, 1994), found that eliminating both continued-claim filing and the work test leads to dramatically longer spells of compensated joblessness – providing further examples of the importance of UI and PES cooperation in requiring and monitoring job search activity (Johnson and Klepinger 1991, 1994). This study also evaluated the value of Job Search Assistance (JSA) for UI beneficiaries and found shorter unemployment durations for those referred to JSA. However, because in most cases UI benefit receipt ended just before JSA was scheduled, the authors speculated that the shorter durations resulted from an effort to avoid the hassle of JSA rather than as a result of the valuable content of JSA services.

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[85] Pennsylvania has no requirement that the claimant be actively seeking work. In ten states (Alaska, Arizona, Mississippi, Nebraska, Nevada, New York, Puerto Rico, South Dakota, Tennessee, and Texas) the requirement that the claimant be actively seeking work is by administrative rule, rather than by statute. See O'Leary (2006).

[86] For example, Arkansas requires between two and five, and Iowa requires two per week as long as the applicant is claiming benefits. Many states require a minimum of one a week. See O'Leary (2006).

[87] The eligibility review process was introduced in the 1970s to prevent and detect improper benefit payments.

Evidence from evaluations in Maryland, Washington, the District of Columbia, and Florida suggests that standardised UI eligibility reviews and JSA are relatively inexpensive to administer and can have a significant effect on reducing periods of compensated joblessness. They therefore tend to be cost-effective interventions, a result that supports WPRS and state-adopted ERPs (Klepinger et al. 1998; Johnson and Klepinger 1991; Decker et al. 2000).[88]

3.1.2 Benefit levels

UI benefits in the US are computed weekly and usually paid bi-weekly. The weekly benefit amount (WBA) varies directly with the level of prior earnings between lower and upper limits. Balancing social adequacy and work incentives, state laws provide that regular UI benefits will replace about one-half of prior wages between the maximum and minimum benefit. In 2003 the weekly benefit amount (WBA) averaged USD 262 across states. In recent years UI has replaced on average just over one-third of lost wages (Table 40, column 2). In 2003 the federal-state UI system disbursed over USD 41 billion in regular benefits (Table 39, column 1).

Having a wage-related benefit reinforces the concept that UI is an earned right, based on contributions required by law to be paid by the worker's employer as "insurance premiums" against the risk of unemployment. The wage-related benefit is neither intended to improve a prior low standard of living nor support a sumptuous one. The modest rate of wage replacement also serves as an element of activation by maintaining an incentive for return to work.

Minimums on the weekly benefit amount are set by states to relieve the administrative burden of processing weekly payments smaller than some reasonable amount. A normative reason for setting a minimum is based on benefit adequacy concerns. In most states, the minimum qualifying requirement is set in relation to the lowest income group for whom the programme is considered appropriate, and the minimum benefit is a by-product of that requirement.

Table 42 presents national data for years since 1970 on four UI features: benefit amounts, replacement rates, potential duration of benefit receipt, and actual observed duration of UI benefit receipt.

Research studies dating to Feldstein (1974) and Ehrenberg and Oaxaca (1976) suggest that UI payments slightly prolong unemployment spells. The average result among the many studies done is that a 10% increase in the replacement rate is estimated to prolong unemployment by about half a week (Decker 1997). While these negative impact estimates are indisputable, it is possible that prolonged job search is "productive" in that it improves the quality of job matches, which ultimately boosts worker productivity.

[88] States with established ERP programs have shorter durations of compensated unemployment.

Table 42. UI benefit amount, wage replacement rate, and duration 1970–2003

Year	Average WBA	Ratio of average WBA to average weekly wage	Average duration of UI potential	Average duration of UI actual
2005	267	0.346	23.7	15.3
2000	221	0.329	23.8	13.7
1995	187	0.355	24.0	14.7
1990	162	0.360	24.1	13.4
1985	128	0.353	24.1	14.2
1980	100	0.366	24.3	14.9
1975	70	0.371	24.3	15.7
1970	50	0.357	24.6	12.3

Note: Benefits paid in the unemployment insurance programmes (1965–2000 includes all regular and extended programmes, as well as programmes for ex-federal and ex-military, temporary/emergency enactments; 2001-2003 includes only taxable and reimbursable benefits paid) as a proportion of the GDP
Source: USDOL. *Unemployment Insurance Financial Data*, ET Handbook 394 [Online]

The impact of UI receipt on the quality of re-employment jobs has been assessed in several of the same studies, which looked at impacts on duration of UI receipt. These studies assess the quality of jobs by the wage rate paid. Ehrenberg and Oaxaca (1976) found that "a ten percentage point increase in the wage replacement rate increased the re-employment wage by 7% for men and 1.5% for women [...] however subsequent studies have failed to support this finding" (Decker 1997). The consensus estimate is zero effect. However, none of the studies to date have satisfactorily accounted for the many corollary activities that job seekers may pursue while receiving UI benefits. These include a more careful screening of job prospects and perhaps even additional job skill training.

3.1.3 Waiting period

In the United States a type of coinsurance exists in nearly all state UI programmes, in the form of a waiting period before compensation begins. Usually a 1-week waiting period is required. Such a waiting period reduces casual entry to the system and improves overall income security provided by the system. Benefit adequacy studies have shown that income replacement needs are low early in an unemployment spell and rise with the duration of the spell (O'Leary 1998). The coinsurance helps control system costs, thereby improving the financial soundness of the system and therefore the ability to provide for longer-term compensation.

3.1.4 Benefit duration

In the absence of severe economic conditions which trigger benefit payments of extended duration, the maximum entitled duration of regular UI benefits is 26 weeks

in all but two states.[89] Limiting the entitled duration of benefits is another element of activation principles in the UI system. Research suggests that longer entitled durations lead to longer periods of benefit receipt. Results from a dozen studies summarised by Woodbury and Rubin (1997) suggest that lengthening entitled duration by one week increases the duration of UI receipt by 1–2 days.

An area of excellent cooperation between the federal and state partners is that of extended UI benefits. The Extended Unemployment Compensation Act of 1970 created a permanent programme for extended UI benefits when unemployment rates exceed certain preset trigger levels.

According to the Federal State Extended Benefits Act (FSEBA) of 1970 (P.L. 91–373), extended benefits are paid for up to 13 additional weeks to so-called exhaustees – unemployed individuals who have exhausted their regular benefit entitlement under a state UI law – with a strong prior attachment to the labour force.[90] The extended benefit periods, in which FSEB are payable, are activated and inactivated by automatic triggers (20 CFR 615.12).

The activation principle in UI is modified by the FSEBA in two ways: a different suitability definition and sanction scheme is applied to some claimants. All states have to screen beneficiaries under their state UI law to identify who is supposed to exhaust his or her regular benefit entitlement. A claimant who is likely to get re-employed in his customary occupation within a reasonable period of time shall be certified "good;" claimants unlikely to get re-employed in their customary occupation within a reasonable period of time are certified as "not good." For individuals with "good" re-employment prospects, the state's regular UI-law provisions regarding work suitability and sanctions are applicable. For those individuals with re-employment prospects classified as "not good," a job's suitability is considered more broadly according to federal statute 20 CFR 615.8 (e)(5).

3.1.5 Targeted job search assistance

Evidence from the 1984–1985 New Jersey UI Re-employment Experiment suggests that JSA that is targeted at dislocated workers who are at risk of long-term unemployment could be a cost-effective intervention and that the treatment could be simple and structured (Corson et al. 1989). These results led directly to enactment of P.L. 103–152 establishing the Worker Profiling and Reemployment Services (WPRS) system. Statistical targeting of JSA to those at risk of long-term joblessness was also tested in the District of Columbia and Florida through field

[89] Massachusetts and Washington offer regular benefit up to 30 weeks. Woodbury and Rubin (1997) provide a review and critique of UI extended benefit programs.

[90] A claimant must in his UI base period: (1) have earned at least 1.5 times high quarter wages, or (2) have earned at least 40 times the most recent WBA, or (3) have 20 weeks of full-time insured employment as defined in state law; 20 CFR 615.4.

experiments and offered further support for the cost-effectiveness of targeted JSA (Decker et al. 2000).

P.L. 103–152 requires state employment security agencies to establish and utilise a system of profiling all new claimants for regular UI benefits. The purpose of profiling is to identify unemployment insurance claimants who are most likely to exhaust their regular benefits, so they may be provided re-employment services to make a faster transition to new employment. The Worker Profiling and Reemployment Services (WPRS) programme refines activation by targeting additional continuing eligibility requirements toward those at greatest risk of long-term unemployment. Those targeted are required to participate in additional re-employment services; failure to participate can result in a sanction which typically includes suspension of benefit entitlement.

Profiling entails a two-stage process. First, unemployment insurance recipients who are expecting recall or who are members of a union hall are dropped from the pool. These groups are excluded because they are not expected to undertake an active independent job search. Second, the remaining unemployment insurance recipients are ranked by their likelihood of exhausting regular unemployment insurance benefits. Beneficiaries are then referred to re-employment services in order of their ranking until the capacity of local agencies to serve them is exhausted.

The WPRS system gradually became operational in 1994 and 1995 but was not fully operational in all states until mid-1996. The data in Table 42 shows that the great majority of individuals who receive first payments under the UI programme are profiled, although the percentage has been declining over time. About 10–15% of the individuals profiled are referred to WPRS services. More individuals reported to services that were referred from 1996 through 2001, but this percentage has fallen to about 80% in recent years.

Most participants in the WPRS initially receive an orientation when they report to a local office; recently about 60% who report for services receive an orientation. Placement services are also highly prevalent, but they are declining in use from a high of 60–70% of those reporting to 30–40% more recently. Assessments have been provided to 35–45% of those reporting, and the percentage has been increasing, while counselling has decline to ten to 20%.

Among the most intensive services, the provision of job search workshops has increased recently but has remained between 25 and 45% of those reporting. Referrals to training have been declining steadily, from a high of 16% of referrals to WPRS down to about 8%.

Overall, there has been a decline in the provision of more intensive services (counselling, job search workshops, and referrals to training). The decline in training referrals could be related to funding availability or to changes in local policy. It should be recalled that the origins of WPRS stem from the success of the provision of assessment, counselling, and an intensive JSA, while the WPRS system now provides these services to a minority of WPRS participants.

The programme was well received by local areas during the economic expansion of the late 1990s. As can be seen in Table 43, the number reporting for WPRS services exceeded the number referred by the profiling process. With excess capacity, volunteers were admitted. Peak participation occurred in the recession year 2001.

An evaluation of the early response to WPRS was done by Dickinson et al. (1999). To estimate the impact of WPRS on claimants' UI receipt, these researchers tracked two outcome measures: weeks of UI benefits paid and dollars of UI benefits paid. WPRS generally reduced UI benefits received by claimants. In five of the six states for which estimates were possible – Connecticut, Illinois, Kentucky, Maine, and New Jersey – WPRS significantly reduced average weeks of UI benefits per claimant. The estimated UI reductions ranged from 0.21 of a week in Kentucky to nearly a full week in Maine. In four of the five states (the exception being Kentucky), WPRS also significantly reduced dollars of benefits received. The greatest reduction was USD 140 per claimant in New Jersey. In South Carolina, WPRS appears to have had no impact on UI receipt – claimants referred to WPRS services had approximately the same UI outcomes as did similar claimants not referred to services.

WPRS was also expected to help claimants return to work sooner, thereby increasing employment and earnings in the short run. Dickinson et al. (1999) found little evidence that WPRS increased the employment or earnings of referred claimants. The only significantly positive impacts on earnings occurred for some quarters in Maine and New Jersey, both states where WPRS significantly reduced UI receipt. However, a recent evaluation of WPRS in Kentucky, applying an experimental design, found that WPRS shortens UI duration by more than two weeks (Black et al. 2003).

Table 43. Worker profiling and re-employment services participation data, 1994–2004

Year	Received a first UI payment	Assigned a profiling score	Referred to services	Reported for services	Participated in orientation
1994	7,959,135	122,065	23,087	17,184	14,126
1995	8,035,229	4,061,731	456,533	453,005	283,508
1996	7,995,135	7,208,694	821,443	1,036,806	512,045
1997	7,341,903	6,985,048	745,870	990,041	474,891
1998	7,341,903	6,982,571	783,779	1,033,482	477,913
1999	6,967,840	6,483,514	803,401	990,737	447,032
2000	7,035,783	6,475,605	977,440	1,229,352	557,250
2001	9,868,193	8,952,312	1,154,743	1,499,364	666,610
2002	10,092,569	9,178,024	1,220,466	986,719	619,917
2003	9,935,108	8,238,485	1,147,448	919,450	595,564
2004	8,386,623	6,973,159	1,084,025	893,695	607,683

Source: Summary of monthly reports 5159 and 9048 by states to the Employment and Training Administration (ETA), US Department of Labor

3.1.6 Self-employment assistance

In several states UI beneficiaries can start their own business instead of searching for wage and salary employment.[91] While they establish their self-employment activity, they can receive self-employment assistance (SEA) payments in lieu of UI weekly benefits. To date, eleven states have enacted conforming state legislation.[92]

The SEA programme, like similar programmes in nearly 20 other OECD nations, has been very small.[93] In 1996, no state had as much as 0.5% of its regular UI recipients getting SEA payments. SEA participants are generally successful at starting their own business; about two-thirds do so. These participants differ dramatically from other UI claimants. They are older; less likely to be a minority (particularly Hispanic); more likely to be from professional, managerial, and technical occupations; have higher educational attainment; and are more likely to be dislocated workers (Vroman 1997).

When the US Department of Labor began the SEA experiments in Massachusetts and Washington in the 1980s, the over-representation of older workers was not expected. Participating states imagined that the programme would be particularly valuable for minorities and women. It did not turn out that way, either in the experiments or in the early programme operations.[94] Rather, older, permanently separated workers have found SEA to be a promising alternative, apparently because of their greater difficulty in finding wage and salary employment commensurate to the skills they acquired through years of employment.

3.1.7 Incentive approaches to activation

Because research suggested that payment of UI benefits can prolong spells of joblessness, in the 1980s positive re-employment incentives for activation were tested. Four re-employment bonus experiments were operated between 1984 and 1989 in the states of Illinois, New Jersey, Pennsylvania, and Washington (Robins and Spiegelman 2001). Each experiment involved random assignment of UI claimants to treatment and control groups. The experiments each offered different

[91] A temporary UI self-employment program was established in 1993 as part of the North American Free Trade Act (NAFTA). Federal legislation in 1998 permanently gave states the option of providing self-employment assistance with UI trust fund money.

[92] The 11 states are: California, Connecticut, Delaware, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, and Rhode Island. Among these, Connecticut, Minnesota, and Rhode Island have not yet implemented their programmes.

[93] Wandner (1992) provides an overview of the international experience. He also summarises the two U.S. experiments that predated the NAFTA authorising legislation.

[94] For more on the experiments, see Benus et al. (1994), for more on the programmes, see Vroman (1997).

levels of lump sum payments to workers who took new, full-time jobs within 6–12 weeks and stayed employed for at least 3–4 months.

The experiments found that bonus offers induced a statistically significant decline in the receipt of UI benefits. The results were largest in the Illinois experiment, which suggested a decline of more than one week. The results for Pennsylvania and Washington were uneven but much smaller. The results showed that the most generous bonuses – high bonus/long eligibility – had the greatest impact, but that overall the bonus offer was not found to be cost-effective. O'Leary et al. (2005) re-examined the bonus results from Pennsylvania and Washington by simulating targeting of the bonus offers. Their results suggested that bonus offers targeted by state WPRS models to those most likely to exhaust UI entitlements were more cost-effective. The single treatment design that emerged as the most promising for a targeted re-employment bonus is a low bonus amount with a long qualification period and a 4-month re-employment qualification period, targeted to the half of UI claimants most likely to exhaust their benefit entitlement. These estimates suggest that such a targeted bonus offer would yield appreciable net benefits to the UI trust fund if implemented as a permanent part of the UI programme.

A policy proposal based on the re-employment bonus experiments was introduced in the 108th Congress on 29 January 2003 as a legislative resolution to create personal re-employment accounts (PRAs) – H.R. 444 the Back to Work Incentive Act of 2003. Under H.R. 444, individuals who are deemed likely to exhaust their entitlement to UI benefits (as identified by state WPRS models) would be offered a PRA in the amount of USD 3,000 that could be used to purchase re-employment services, including training, or could be used as a re-employment bonus. PRA recipients who exhausted UI entitlements could also draw money from the account as extended unemployment compensation. Re-employment services could be purchased from public or private providers. Each re-employment service purchased would be drawn down against the USD 3,000 PRA. Workers would be eligible for a re-employment bonus if they became employed within 13 weeks of becoming unemployed. The amount available to pay the bonus would be USD 3,000 or the PRA balance if re-employment services were purchased. A re-employed worker would be immediately eligible for 60% of the bonus upon becoming re-employed. The remaining 40% would be payable if the worker retained the job for 6 months.

The US Department of Labor prepared for the enactment and implementation of the PRAs by funding research that analysed the results of the re-employment bonus experiments, the individual training account experiment and state administrative longitudinal data. This allowed researchers to better understand the likely outcome of the PRAs and how states could best implement them (Decker and Perez-Johnson 2004; O'Leary and Eberts 2004).

The USDOL initiated pilot programmes in seven States[95] to examine the workability of the PRA concept. The design implemented was aimed at motivating UI-benefit recipients to get re-employed soon. It provides targeted eligible individuals currently receiving UI benefits, and some UI exhaustees, with a special worker-managed account of up to USD 3,000 (the exact amount to be determined by the state) to purchase intensive re-employment, training and supportive services. Account recipients may choose to access and purchase intensive re-employment, training and supportive services through the One-Stop Career Center system, from private providers outside of the One-Stop system, or develop a re-employment strategy that combines services from both public and private providers. Allowable uses for account funds include: career counselling, occupational skills training, skills upgrading, child care, transportation expenses and financial literacy counselling. In return, PRA recipients must waive their right to benefits under WIA for 1 year. If a new UI claimant becomes re-employed by his/her 13th UI benefit payment, any cash remaining unspent in the account will be provided directly to the worker in cash as a re-employment bonus. The bonus will be paid to the individual in two instalments: 60% at employment and 40% after 6 months of job retention. Individuals who do not find employment by their 13th UI benefit payment will not be able to "cash out" their account but will continue to be able to purchase intensive re-employment, training and supportive services for up to 1 year from the effective date of the established account.[96] Early evidence from the demonstration sites suggests that PRA recipients will restrict spending on services to maximise the amount of a re-employment bonus. The majority of PRA spending was directed to supportive services in five of the seven states (Kirby 2006).

3.1.8 Employer incentives of the unemployment insurance benefit financing system

Experience rating of UI tax contributions is a feature unique to the United States.[97] With experience rating, an employer's UI tax rate moves directly with the UI claims experience. Proponents of experience rating claim that it encourages employers to dampen fluctuations in staffing levels. Since tax obligations rise for a firm as benefit charges increase, perfect experience rating would tend to stabilise staffing – perhaps in part by reducing new hires. However, because of tax minimums, maximums, non-charged benefits and other reasons, the systems do not operate

[95] Participating states are West Virginia (state-wide); Mississippi (Tunica and Harrison Counties); Florida (Calhoun, Holmes, Liberty, Jackson, Washington, Bay, Gulf, Franklin, Leon, Gadsden, Wakulla and Pinellas Counties); Idaho (Coeur d'Alene and Idaho Falls Counties); Montana (Cut Bank, Lewiston, Belgrade and Butte Counties); Texas; and Minnesota.

[96] Compare USDOL, Training and Employment Guidance Letter (TEGL) No. 5-04, available online.

[97] Other nations are seriously considering some form of experience rating for UI taxes. These nations include the Netherlands, Poland, and Spain.

perfectly (Tannenwald and O'Leary 1997). Benefit charges for some employers are subsidised, and this partly defeats employment stabilising effects.

Feldstein (1978) estimates that a large share of temporary layoffs results from imperfect experience rating of UI taxes. Topel (1984) finds that if experience rating did operate properly there could be a stabilising influence on employment; however, the tax system typically subsidises layoffs. Card and Levine (1994) find that the stabilising influence of experience rating changes pro-cyclically, and that associated UI tax subsidies explain as much as 50% of temporary layoff employment during recessions.

3.1.9 Special unemployment compensation programmes

The second pillar of the UC system is the unemployment assistance programmes. In this chapter we only examine one unemployment assistance programme, namely the Trade Readjustment Allowances Program.

Trade Act benefits

Unemployed workers, firms, and farmers adversely affected by foreign trade are entitled to benefits and services under the Trade Act of 2002.[98] Designation as being trade-impacted under the act is subject to approval by the Secretary of Labor of a petition claiming a mass layoff due to foreign trade displacements. These may include increased foreign imports or shifts of production plants to foreign countries that are parties to a free trade agreement with the US adversely affected workers must be covered by a successful group petition.

For adversely affected unemployed workers who exhaust their UI benefits,[99] the Trade Act provides the following services and benefits: job skill training, trade readjustment allowances (TRA), job search allowances, relocation allowances, health coverage tax credits, and wage subsidies for older displaced workers.

TRA is paid weekly at the same rate as regular UI benefits are provided under state laws. TRA is payable for up to 104 weeks beyond the entitled duration of regular UI provided the following conditions are met: that applicants have enrolled in Trade Adjustment Assistance (TAA) approved training, have completed training, or have received a waiver from having to complete the training requirement. Job search allowances reimburse up to 90% of reasonable job search expenses outside the local commuting area, up to a maximum of USD 1,250. Relocation allowances reimburse up to 90% of reasonable and necessary expenses incurred in transporting the worker, the worker's family and household effects, plus a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of

[98] TAA was originally introduced in 1974 and currently operates under rules set in 2002.

[99] An initial qualification under a state UI law is required, and the dislocated workers must have exhausted all regular and any available extended UI benefits.

USD 1,250. The Health Coverage Tax Credit is 65% of the premium for qualified health insurance plans. Dislocated workers older than 50 years of age may be eligible for Alternate Trade Adjustment Assistance (ATAA) benefits – a wage supplement of up to USD 10,000 for 2 years, if they get re-employed within 26 weeks in a job that pays less favourably than the previous one.

An evaluation of TAA-funded training was done before and after significant TAA reforms implemented in 1988. Decker and Corson (1995) found no evidence that TAA-funded training had a substantial positive impact on the earnings of TAA trainees. These results suggest that the main effect of Trade Act programmes is income replacement rather than improved labour market outcomes.

Disaster unemployment assistance

Another unemployment benefit programme is called Disaster Unemployment Assistance (DUA), which became of great importance recently, when Hurricane Katrina hit the Gulf Coast. Individuals unemployed as a consequence of a great disaster, as declared by the President of the United States, are eligible for DUA benefits for up to 52 weeks. The programme is administered by the USDOL and the state UI agencies on the basis of administrative contracts and financed solely by federal funds.

3.2 Federal social assistance

The US social assistance system is made up of the TANF programme, the Food Stamp Program, public housing programmes, energy assistance programmes and social services. In his recent survey of work incentives for leaving social assistance programmes in the US, Moffitt (2002) wrote the following:

> Interest in work incentives first arose in the 1960s, when case-loads in the Aid to Families with Dependent Children (AFDC) program rose dramatically, and Congress lowered the tax rate on earnings in the program to encourage work. Increased interest in encouraging work among welfare recipients gradually grew in the 1970s and 1980s, with a shift in focus toward work requirements rather than lowered tax rates. In the 1990s, major new policy developments occurred whose focus was on increasing work, including 1996 legislation introduction major new work requirements into the AFDC program as well as the expansion of the Earned Income Tax Credit (EITC), and earnings subsidy program. Increased interest in encouraging work simultaneously has occurred in disability programs and the Food Stamp program.

3.2.1 Temporary assistance to needy families

Because states have wide discretion in TANF policy, differences across states have emerged in legal and administrative practices regarding instruments for activation. These include things like time limits, work requirements, supportive services, financial work incentives, sanctions, and transition benefits. Researchers have predicted

the effects of these instruments on labor market outcomes (Moffitt and Pavetti 2000; Grogger and Karoly 2005). The experts suggest that time limits will reduce welfare use, welfare expenditures, and welfare benefit duration, while having minimal effects on employment. Grogger and Karoly (2005) predict positive effects of TANF time limits on labour supply and self sufficiency, while Moffitt and Pavetti (2000) offer no similar conjecture.

Earnings disregards have not been found to be a major financial incentive against either TANF receipt, or benefit duration. However, they do appear to have positive impacts on labor supply, earnings of welfare recipients, and working TANF participants' self sufficiency. Grogger and Karoly (2005) predict similar labour supply effects for work requirements, but work requirements have not been found to have a direct effect on participants' income in most cases.

Also, when strictly enforced, sanctions can contribute to case load reductions and savings in assistance payments. Sanctions force participants to work, so that labour supply should be rising while benefit duration is falling. However, sanctions have been found to negatively affect income and self-sufficiency of welfare households.

Supportive services, like child care, transportation, job training, and job counselling are likely to have different effects depending on the level and duration of such services. Short-term welfare expenditures will rise since supportive services are expensive, and there are not likely to be immediate effects on employment and earnings. Long term, however, supportive services should cause case load declines, reductions in benefit duration, and have positive effects on the labour market success and welfare families' self-sufficiency (Table 44).

Since these activation policies have normally been implemented by states as a group, empirical research must carefully separate out the affect of each separate intervention (Ochel 2004). Grogger and Karoly (2005) present a graphical analysis of these factors using the economic model of a utility maximising consumer-worker. In the following sub-sections we examine the legal and administrative means

Table 44. Prediction of TANF activation policy outcomes

Policies/ measures	Outcomes						
	Welfare caseload	Welfare payments	Employ-ment	Labour supply	Self sufficiency	Income	Benefit duration
Time limits	–	–	+(/–)	+	–/+	+/–	–
Financial work incentives	+	+(/–)	+	+/–	+	+(/–)	+
Work requirements	–	–	+	+	+	–/+	–
Sanctions	–	–	+	+	–	–	–
Assistance to work	–	+	+	+	+	+	–

Note: Compare Grogger and Karoly (2005), Table 3.1. Predicted effects of selected policy reforms on selected outcomes, p. 55 (modified and completed by the authors); see also Moffitt (2000) and Moffitt and Pavetti (2004), modified by the authors

means for implementing these interventions, their likely incentives on behaviour, and we offer conjecture about the likely behavioural response and budget consequence of each.

Time limits

Despite the federal 60 months life-time limit on TANF benefits, states may set shorter life-time limits and may choose to also impose intermittent time limits, which restrict welfare receipt to a certain maximum number of months in any given time frame. For example, Louisiana limits benefit receipt to a maximum of 24 months in any 5-year period, while the life-time limit is a total of 60 months benefit payments.

The federal PRWORA law governing state spending of TANF grants also sets work requirements for recipients of cash assistance. After 24 months of benefit receipt, work is required to maintain TANF eligibility. States may choose to set tougher standards, and the minimum required hours per week varies across states.

States have the flexibility to use funds from federal TANF grants to pay benefits to needy families for longer than the 60 months life-time limit. Such cases are called hardship cases. However, not more than 20% of the state's total TANF case load can be in the category of hardship cases. Without waivers, states cannot pay TANF for more than 60 months to more than 20% of their case load. If states achieve their maintenance of effort (MOE) funding level, they may pay state cash public assistance to more than 20% of their case load exceeding 60 months lifetime cash assistance from a Separate State Program (SSP). Such expenditures apply to the state MOE. During FY 2003 only 36,289 cases exceeding 60 months TANF benefits received additional payments. This amounted to only 1.8% of all open TANF cases active throughout the US[100]

Some TANF cases are exempt from federal and/or state time limits. These include child only cases – cases in which no adult is involved because of sanction or any other reason, and *inter alia* victims of domestic violence.[101] Table 45 gives an overview of time limits stipulated in state laws.

Time limits can have at least three effects. First, they stop welfare payments once recipients exhaust their benefits – "mechanical" effect (Grogger and Karoly 2005). Second, life-time limits, intermittent limits, and work trigger time limits can affect the behaviour of both current benefit recipients and potential benefit recipients (applicants) – needy families not yet receiving TANF benefits (Moffitt and Pavetti 2000). The threat of time limits may cause "consumers to reduce their

[100]Source: HHS, OFA. TANF – Federal Five-Year Time Limit – Fiscal Year 2003, Table 7.

[101]For further information on exemptions from federal life-time limit see 42 USC 608 (a)(7)(B), (C), and (D).

Table 45. Time limit policies in state TANF programmes

	Benefit termination limit in months		Work trigger limits	Percentage of open 60-months + cases of the total caseload (FY 2003)
	State life-time limit	Intermittent limit		
Alabama	60	–	Immediate	0.5
Alaska	60	–	24 months	3.4
Arizona	60	–	Immediate	0.0
Arkansas	24	–	Immediate	0.1
California	60	–	Immediate	0.0
Colorado	60	–	Ready to work or 24 months	1.0
Connecticut	21	–	Immediate	0.6
D.C.	48/36	–	Immediate	18.6
Delaware	36	–	Immediate	0.0
Florida	48	24 out of 60 or 36 out of 72	Immediate	0.5
Georgia	48	–	24 months	1.1
Guam	60	–	24 months	n.a.
Hawaii	60	–	24 months	0.0
Idaho	24[102]	–	Immediate	0.0
Illinois	60	–	Immediate	0.0
Indiana	24	–	Immediate	0.0
Iowa	60	–	Immediate	0.9
Kansas	60	–	Ready to work or 24 months	1.7
Kentucky	60	–	24 months	0.6
Louisiana	60	24 out of 60	24 months	1.4
Maine	60	–	Immediate	8.8
Maryland	60	–	Immediate	4.3
Massachusetts	No	24 out of 60	2 months	0.0
Michigan	No	–	Immediate	6.6
Minnesota	60	–	Immediate	4.4
Mississippi	60	–	Immediate	0.4
Missouri	60	–	24 months	1.9
Montana	60	–	Immediate	0.2
Nebraska	60	24 out of 48	Immediate	0.7
Nevada	60	24 followed by 12 months of disqualification	Immediate	0.3
New Hampshire	60	–	Immediate	2.1
New Jersey	60	–	Immediate	6.0

(Continued)

[102]Temporary Assistance for Families in Idaho (TAFI) cash benefits are provided to families up to the life-time limit of 24 months; but families who received TAFI cash benefits for 24 months usually qualify for Extended Cash Assistance (ECA) benefits, for up to 36 months; so the effective TANF life-time limit in Idaho is 60 months.

Table 45. *(Cont.)*

New Mexico	60	–	3 months	0.6
New York	No	–	Immediate	4.3
North Carolina	60	24 months followed by 36 months of disqualification	3 months	0.1
North Dakota	60	–	Immediate	0.2
Ohio	60	36 followed by 24 months of disqualification	Immediate	0.2
Oklahoma	60	–	Immediate	0.8
Oregon	No	24 out of 84	Immediate	0.0
Pennsylvania	60	–	Immediate	7.6
Puerto Rico	60	–	No later than 24 months	1.5
Rhode Island	60	–	24 months	21.0
South Carolina	60	24 out of 120	Immediate	0.0
South Dakota	60	–	Immediate	0.2
Tennessee	60	18 months followed by 3 months of disqualification	Immediate	0.0
Texas	60	12, 24 or 36 months followed by 60 months of disqualification	Immediate	0.0
Utah	36	–	Immediate	0.6
Vermont	No	–	No later than 18	0.0
Virginia	60	24 months followed by 24 months of disqualification	3 months	0.0
Virgin Islands	60	–	24	1.7
Washington	60	–	Immediate	4.5
West Virginia	60	–	Immediate	0.0
Wisconsin	60[103]	–	Immediate	0.4
Wyoming	60	–	Immediate	0.0

Source: HHS (2006), Table 12:10, pp. XII-114 ff., Rowe and Versteeg, (2005), pp. 130 ff.

welfare receipt before they reach time limit" (Grogger and Karoly 2005). The existence of time limits may encourage families to find alternative solutions to overcome financial crises before ever applying for TANF, or they may motivate job search before reaching a time limit. Thirdly, welfare agencies and federal and state lawmakers are forced to argue about cases closed because of time limits. This

[103]Additional to the 60 months lifetime limit, individuals are also subject to a 24 months time limit in each W-2 position.

is a form of activation to encourage lawmakers and policy makers to seek alternate solutions for providing income support to the most needy.

Since time limits on welfare use were first implemented in Florida's 1993 AFDC waiver programme – Family Transition Program (Rogers-Dillon 2004) – numerous studies have been done to quantify the contribution of time limits to welfare case load declines (Ochel 2004). The findings vary across studies. Observational studies of caseloads found no significant relationship between the stringency of time limits and welfare exits (CEA 1999; Ziliak et al. 2000; Hofferth et al. 2002). Meanwhile some random assignment studies and newer econometric studies have imputed caseload declines to the improving economy (Ziliak et al. 2000).[104] The current consensus estimate among researchers is that the somewhere between 15 and 30% of caseload reductions can be attributed to time limits (Bernstein and Greenberg 2002).

An interesting result of the study undertaken by Grogger (2004) is the role the youngest child's age plays in a needy family's decision to use welfare: needy families are more likely to hoard TANF months the younger the youngest child in the family (Ochel 2004). This outcome is attributable to the behavioural effect of TANF time limits.

The mechanical effect of time limits has been modest. In FY 2005 only one% of all TANF cases were closed due to federal time limits, and 0.9% were closed due to state time limits. However, the accuracy of caseload statistics is suspect. In the same year that 16.7% of all TANF cases were closed due to "failure to cooperate," 13.0% of all TANF cases were closed voluntarily by the participants, and 26.2% of all case closings were for "other" reasons.[105]

Benefits

Since the enactment of PRWORA, there has been a shift from ongoing cash benefits to supportive services. While in 1995 states spent the great majority of AFDC funds for cash assistance, by 2003 states disbursed only 45% of TANF funds for cash benefits. Also a significant number of states award lump sum "diversion payments" to eligible families to overcome short-term financial crises thereby averting welfare dependency.

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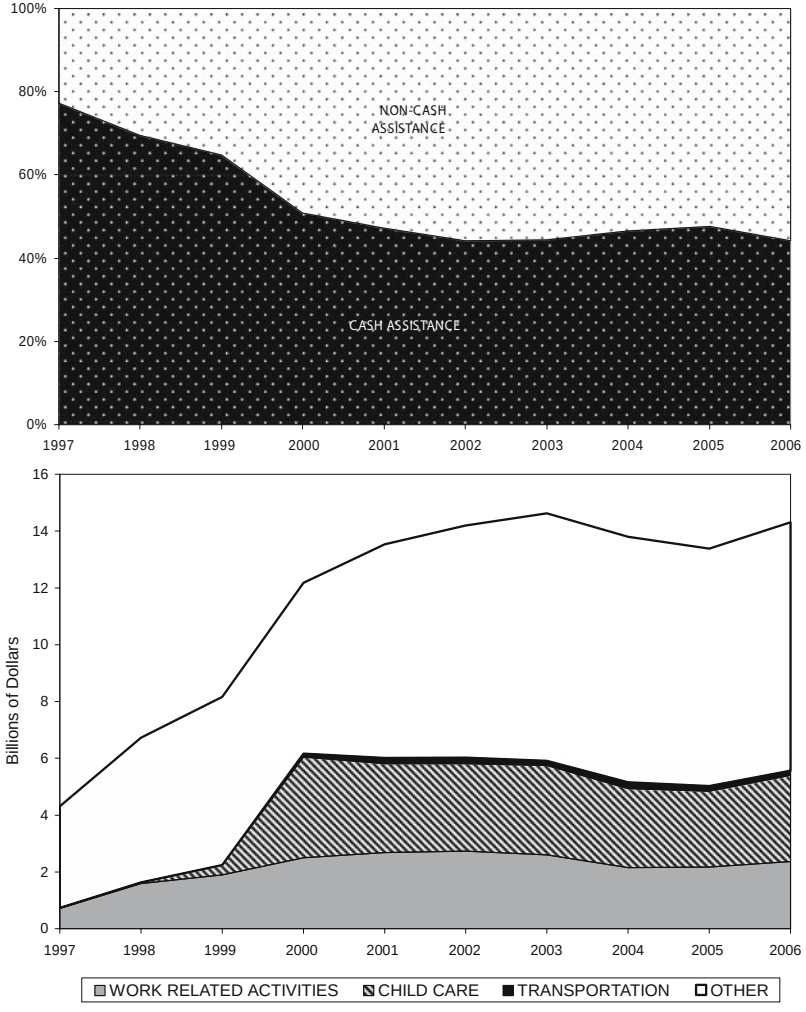
[104] Schexnayder et al. (2003); Schexnayder (2003); Grogger and Michalopoulos (2003); Grogger (2002, 2003, 2004); Swann (2005).

[105] Data Source: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance (2007), "Characteristics and Financial Circumstances of TANF Recipients–FY 2005," Table 46, TANF Closed Cases, Percent Distribution of TANF Closed Case Families By Reason for Closure, October 2004–September 2005.

Figure 26 illustrates three developments resulting from activation since the 1996 welfare reform. The top panel shows the relative decline in cash assistance as a share of total support provided. The bottom panel shows trends in non-cash assistance types combined: child care, plus transportation, plus work related activities. Additionally the figure shows: (1) stable budgets together with caseload declines enabled states to spend more money on supportive services, in fact financial resources even grew because of states' MOEs for state spending under PRWORA; (2) states developed innovative new policies, services, and programmes to help



Source: HHS (2006), Appendix, Table 2:4:b on page A–242, Table 2:4:c on page A–243 and Table 2:4:d on page A–244. *Data source*: HHS, TANF Financial Data

Fig. 26. Disposition of TANF funds

TANF recipients to become self-sufficient within programme time limits – this may be regarded as activation of law makers and welfare agencies; and (3) TANF leavers receive continued supportive services and transition benefits including Food Stamps and transitional Medicaid. However, within work-related expenditures the share of education and training only amounts to 14%.

TANF cash benefit levels are relatively low (Lazere and Tallent 2006). Table 46 shows the maximum monthly TANF cash benefits for a family of three, the hours of work required at the state minimum wage to generate earnings equivalent to the TANF benefit, the individual monthly work requirement in hours, the maximum monthly income permitting initial TANF cash benefit eligibility, and the maximum monthly income to maintain continuing eligibility for at least partial cash TANF benefits and/Op[r supportive services.

Table 46. Maximum benefits in state TANF programmes, their minimum wage work equivalent, and individual work requirement for families of three (one adult and two dependent children) with no income; maximum monthly income for eligibility and benefits

	Maximum monthly benefit[a]	State minimum wage[b]	Work equivalent in hours	Individual monthly work requirement in hours[a,c,d]	Maximum monthly income for eligibility in USD[a]	Maximum monthly income for benefits in USD[a]
Alabama	215	5.15	41.75	128	214	215
Alaska	923	7.15	129.09	120	1,245	1,246
Arizona	347	6.75	51.41	160	585	587
Arkansas	204	6.25	32.64	120	278	699
California	679	7.50	90.53	128	913	1,581
Colorado	356	6.85	51.97	88	510	779
Connecticut	543	7.65	70.98	CBC	834	1,220
D.C.	338	7.00	48.29	120	538	1,299
Delaware	379	6.65	56.99	CBC	427	1,602
Florida	303	6.67	45.43	120	392	807
Georgia	280	5.15	54.37	120	513	756
Hawaii	570	7.25	78.62	128	1,362	1,364
Idaho	309	5.15	60.00	120	635	637
Illinois	396	7.50	52.80	120	485	1,190
Indiana	288	5.15	55.92	CBC	591	1,948
Iowa	426	6.20	68.71	FTE	1,061	1,065
Kansas	403	2.65	78.25	120	492	805
Kentucky	262	5.15	50.87	120	973	974
Louisiana	240	No MWL[c]	46.60	120	359	1,260
Maine	485	7.00	69.29	120	1,022	1,023
Maryland	473	6.15	76.91	DWA	590	728
Massachusetts	633	7.5	84.40	80	722	1,047

(Continued)

Table 46 *(Continued)*

Michigan	459	7.15	64.20	160	773	774
Minnesota	532	5.25/6.15[c]	86.50	120	976	1,421
Mississippi	170	No MWL[c]	32.38	120	457	704
Missouri	292	6.50	44.92	120	558	1,148
Montana	507	4.00/6.15	82.44	120	858	589
Nebraska	364	5.15	70.68	120	692	694
Nevada	348	6.15	56.59	120	694	696
New Hampshire	600	5.15	116.50	120	749	1,200
New Jersey	424	7.15	59.30	140	635	848
New Mexico	389	5.15	75.53	136	901	1,037
New York	577	7.15	80.70	120	810	1,068
North Carolina	272	6.15	44.23	120	1,489	1,491
North Dakota	477	5.15	92.62	CBC	2,071	2,074
Ohio	373	6.85	54.45	80	979	996
Oklahoma	292	5.15/2.00[c]	56.70	120	704	705
Oregon	460	7.80	58.97	160	615	616
Pennsylvania	403	7.15	56.36	80	676	806
Rhode Island	554	7.40	74.86	120	1,277	1,279
South Carolina	204	No MWL[c]	39.61	120	577	1,070
South Dakota	483	5.15	93.79	120	675	695
Tennessee	185	No MWL[c]	35.92	160	979	980
Texas	213	5.15	41.36	120	401	1,959
Utah	451	5.15	87.57	CBC	550	668
Vermont	639	7.53	84.86	120	988	989
Virginia	320	5.15	62.14	120	411	600
Washington	546	7.93	68.85	120	1,091	1,092
West Virginia	453	5.85/6.55[c]	69.16	120	1,130	1,133
Wisconsin	673	6.50	103.54	160	1,401	1,403
Wyoming	340	5.15	66.02	120	539	540
States Avg	413	-	65.82	-	772	1,022

CBC: case-by-case, FTE: full-time employment, DWA: depends on work activity.
[a]As of June/ July 2003
[b]USDOL, Minimum Wage Laws in the States, April 3, 2006
[c]In states, where no minimum wage law (MW) has been enacted, and in states with a minimum wage lower than the federal minimum wage, the work equivalent is calculated by using the federal minimum wage of USD 5.15. In states where two different minimum wage levels apply, the higher amount is used for calculation.
[d]The monthly individual work requirement is calculated as follows: weekly individual work requirement × 4 (weeks)
Sources: HHS (2006), Table 12:2, p. XII-96 et seq.; Rowe/Versteeg (2005), Table III.B.2 on page 96ff

For TANF recipients subject to an employment requirement, in all states except Alaska cash benefits are lower than the income which would be produced by working the minimum required number of hours at the state minimum wage. However, a person who is working at the minimum wage plus the federal EITC, and where available SEITC, is much better off than a TANF recipient, especially because of transition benefits like Food Stamp and Medicaid health benefits.

Financial work incentives

Financial work incentives like income disregards or asset disregards and refundable tax credits are activation instruments affecting the decisions of most TANF programme participants in the US. These features are intended to encourage work effort, and employment and to promote self-sufficiency for TANF families.

(a) Earned income disregards

At the origin of federal social assistance in the form of Aid to Dependent Children (ADC), established by the Social Security Act of 1935, there was a 100% benefit reduction rate for family earnings. By 1967, when the programme was known as AFDC, a consensus had built within the policy community that the effective 100% tax on earnings was a disincentive to work and self-sufficiency for households. The 1967 amendments lowered the benefit reduction rate to 67% after a 30-dollar earnings disregard, a policy known as "$30 plus one-third." This policy for activation from AFDC was in place starting in 1969. Evaluation of this new benefit reduction policy by Levy (1979) found persuasive evidence that the drop in effective tax rates actually lowered labor supply within AFDC-eligible households.

To recover the lost work incentive, the 100% benefit reduction rule was returned to AFDC in 1981. Later investigation of the work incentive effects of these alternative benefit-reduction formulas was undertaken by Moffitt and Rangarajan (1991), who compare work and earnings behaviour by AFDC recipients before and after the benefit-reduction policy change. They find that neither lowering nor raising the implicit tax on earnings has much of an effect on earnings and work incentives. The largest incentive effects of changes in tax rates are at the break-even income level, and only a small share of the subject population is at that earnings level. Attempts to introduce work incentives to AFDC through changes in the earnings reduction rates were not successful.

Monthly earned income disregards for benefit computation range from 20% of all earned income in Nebraska to over 50% of all earnings in Pennsylvania, where the disregard is set at USD 225. Beyond the disregard, the most generous rate of benefit retention beyond the disregard is 50% in the California TANF Program called CalWORKs (California Work Opportunity and Responsibility to Kids).

(b) Asset exemptions

For TANF eligibility, states allow asset holdings in the range of USD 1,000–6,000 for initial eligibility and USD 1,000–10,000 for ongoing eligibility per TANF unit.

Typical asset holdings by TANF households are in the range of USD 2,000–3,000.[106] A significant number of states also allow participants to own real property such as a family home and one automobile per household (e.g. West Virginia) or all cars owned by a household (e.g. Arizona), independent of the market value of these assets. Some states, like California, apply the Food Stamp automobile ownership rule – exempting cars up to a fair market value of USD 4,650.

Because a car and a home are prerequisites for a family's self-sufficiency, and most job offers implicitly assume that an applicant can commute to work, states often abstain from setting further barriers to work by requiring the shedding of homes or automobiles for TANF eligibility. In this regard the states' assets disregard policies for homes and cars may have an activating effect on TANF recipients.

Today, 28 states have or plan to implement Individual Development Accounts (IDA). IDAs are a savings vehicle for TANF recipients. For example, they may save their EITC refund payments. Savings accumulated in IDAs can only be used for strictly defined purposes such as a business start-up, first home purchase, or higher education expenses for family members. When totalling assets for determining TANF eligibility, states disregard IDA balances, either up to a maximum amount (e.g. USD 3,000 in Wisconsin) or without a limit. Empirical research on the effects of IDAs has not yet been undertaken.

(c) State earned income tax programs and federal EITC

States can use MOE funds to provide refundable State Earned Income Tax Programs (SEITC). The federal EITC and SEITCs have strong positive effects on labour supply (Moffitt 2002), employment, family income and independence from TANF. All active SEITCs depend on federal EITC eligibility rules and grant a percentage add-on to the federal EITC earned in the tax year.

Work requirements and work activities

The aim of TANF work requirements is to enhance the prospect of self sufficiency through employment, either regular employment or participation in subsidised work activities. Work requirements may also have positive impacts on TANF families' income and self sufficiency, if they are paired with income disregards and supportive services leading to stable unsubsidised employment.

(a) States' work requirements

States are required to maintain PRWORA work participation rates of 90% among two-parent families and 50% over all beneficiary families. State work participation rates are figured only on adults in the assistance unit who are engaged in one or

[106] Units including an elderly person are exempt up to USD 3,000, all others up to USD 2,000.

more recognised work activities for at least 30 h per week in one parent families, 35 total hours when two parents are present, and 55 total hours in two parent families receiving federally funded child care assistance.[107]

(b) Work activities and work-related services

All states require TANF-participants either to work or to engage in work preparation activities such as job training or employability enhancement services.[108] In the past, states were free to define work activities as they deemed appropriate. However, since the 2005 TANF reauthorisation, the federal government has more strictly defined activities which can be counted as work activities under state TANF programmes (see 45 CFR 261). The reason for this federal policy change was the capriciousness with which states defined almost every activity as work, while many such activities did not have any employment or employment promotion content.

(c) Re-employment services

A pilot study was undertaken in 1996 to test new administrative tools intended to more effectively target re-employment services to Michigan TANF recipients (Eberts 2002). The aim was to improve the outcomes of Work First participants without changing the nature of the programme or significantly raising costs. Statistical techniques were developed to estimate the likelihood of employment based on participants' demographic and work history information found in administrative records. An employability score was computed for each customer and was then used to assign each participant to one of three different service providers. Each provider offered the same basic set of services but differed in the mix of services and in their approach to delivering services. The pilot used these differences to determine the best provider for each customer.

The pilot was designed by the W.E. Upjohn Institute for Employment Research and conducted at the Kalamazoo/St. Joseph Workforce Development Board (WDB),

[107] For single parents with a child under the age of six, the work requirement is 20 hours per week.

[108] 42 USC 607(d) specifies 12 work activities: (1) unsubsidised employment; (2) subsidised private sector employment; (3) subsidised public sector employment; (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available; (5) on-the-job training; (6) job search and job readiness assistance; (7) community service programmes; (8) vocational educational training (not to exceed 12 months with respect to any individual); (9) job skills training directly related to employment; (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalence; (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and (12) the provision of child care services to an individual who is participating in a community service programme.

which is administered by the Institute. The evaluation, which compared targeting services to random assignment of programme participants, provided evidence that statistical targeting to particular types of services can improve programme outcomes by placing more welfare recipients into jobs. It showed that the statistical assessment tool successfully distinguished among participants with respect to barriers to employment. It also found that referring participants to service providers according to their individualised statistical needs assessment (employability score) increased the overall effectiveness of the programme as measured by the programme goal of customers finding and retaining a job for 90 consecutive days.

As more welfare recipients are working regularly, it has become clear that finding a first job is only one step toward permanent attachment to the labour force. In recognition of this reality, states have spent increasing shares of their TANF and WtW funds on job retention and advancement. As part of this effort, the US Department of Health and Human Services (HHS) has sponsored a number of research projects dealing with job retention, including an analysis of what post-employment services are needed, and how to target these services to those most in need of them.

Rangarajan et al. (2002) examine the feasibility of taking welfare recipients who initially find jobs and targeting them for job retention services based on their personal and labour market characteristics. As with dislocated worker profiling, the goal of the study was to try to improve the efficiency of resource use, by targeting post-employment services to clients most in need, as measured by those welfare recipients who are most likely to have long periods without employment.

Using data from the National Longitudinal Survey for Youth, the study constructed a nationally representative sample of welfare recipients who found jobs during the panel period and analysed their employment experiences over the 5-year period after they entered the labour force. As with other profiling methods, the researchers used regression models to simulate the prediction of which sample members had negative employment outcomes during a 5-year period. The models relied on individual and labour market characteristics that would be available from administrative data from the welfare programme. The researchers were able to determine the weighted effect of each of these characteristics on employment. The study showed how WtW programmes could operationally target individuals for job retention services using administrative data on individual and labour force characteristics. Rangarajan et al. (2002) conclude that they have demonstrated how WtW programmes can use statistical methods to identify individuals who initially find jobs, but have the greatest risk of periods without employment, by identifying these individuals based on their characteristics and selecting those individuals with the greatest potential need for services.

The variables used to predict long periods without employment are as follows:

1. Age younger than 20 years when first applied for welfare
2. Employed less than half the time in year prior to job start
3. No high school diploma/GED
4. Presence of preschool child

5. Wage less than USD 8.00 an hour
6. No fringe benefits
7. No valid driver's license
8. Has health limitations.

The study finds that the characteristics most strongly related to spells without employment are (1) working without fringe benefits, and (2) having a health limitation. The result of this analysis again shows that a series of personal and labour market characteristics can be used to identify who should be referred to services – in this case post-employment services.

Sanctions

When discussing sanctions as an instrument of activation, two aspects of sanction policy should be considered. The sanctions prescribed by law under well defined circumstances, and the degree to which sanctions are actually enforced by programme staff and administrators. States may have very strong sanctions in their legal statutes; however, front-line staff may rarely impose such strong sanctions.

Most states have established a three-step sanction scheme like the following:

- FIRST Non-Compliance minimal sanction
- SECOND Non-Compliance or first gross violation a modest sanction
- THIRD Non-Compliance or second gross violation a severe sanction

Every month during FY 2003 more than 5% of all TANF cases throughout the US were sanctioned; usually food stamp eligibility is linked to TANF programme compliance, but most states do not sanction a TANF unit regarding the children's share in TANF and food stamp benefits.

Implementation

The method of implementing state TANF programmes has a great influence on the degree of success in promoting self-sufficiency by TANF families. As the discretion of front line staff has expanded, so has the responsibility for development and success of programme participants. At the same time expectations regarding front-line staff qualifications, communication abilities, and technical expertise have never been higher.

From a legal perspective, implementation is also a locus of increased risk in the new TANF welfare world of the US. Seldom are entitlements for TANF assistance fully defined by a caseworker during the first assessment. Further fact checking and verification is always required. TANF places increased importance on accurate assessments for the welfare of TANF households since the prospect of judicial relief is diminished for households because cash public assistance is no longer an entitlement in the US. The myriad consequences of TANF implementation is an important, but complex and arcane, area of law and economic research (Riccucci 2005).

Self-sufficiency among welfare leavers

Acs and Loprest (2004) survey and synthesise results from 18 TANF leaver studies done in 14 states using TANF leaver data ranging from 1996 to 2000. To assess the well-being of TANF leavers, Acs and Loprest look at work among TANF leavers, characteristics of TANF leavers who are not working, and the well-being of TANF leaver families. An attempt is made to control for differences in methodologies across the leaver studies when drawing conclusions from the set of studies. Acs and Loprest find that a majority (about 60%) of TANF leavers across the study sites engaged in work. When working, TANF leavers tend to earn above the federal minimum wage, but less than half of all working leavers receive a full set of employment-related benefits such as paid sick leave, health insurance, and paid vacations. During the year after leaving TANF, 70% had work at some time, 60% tend to be working in any single week, and only 40% have steady jobs throughout the year. About 20% of TANF leavers return to TANF within a year. Another 10% have no observable earnings but do not return to TANF. On average, leaver families have relatively low earnings, with 40–50% living below the official poverty level of income in the first year after leaving TANF. Well-being of leaver families is higher when at least one household member keeps a steady job. These outcomes were observed during the economic boom from the mid-1990s through the early years of the twenty-first century.

King and Mueser (2005) studied the impact of TANF on welfare caseloads and the labour market success of TANF leavers in six major metropolitan areas in the US.[109] To understand the whole picture, King and Mueser looked beyond TANF exit rates to impacts on long-term welfare recipients, new entrants to TANF, employment of TANF recipients, employment of TANF leavers, the characteristics of jobs held by those involved with TANF. They find that during the 1990s work increased substantially among TANF recipients, and also increased among TANF leavers. However, the kinds of jobs obtained by TANF recipients and leavers did not change much from earlier periods. Furthermore, job stability was low among those involved in work, and most jobs obtained did not provide wages and benefits adequate to assure self-sufficiency.

Legal design of "TANF relationships"

Legally the most important change introduced by welfare reform was the discontinuation of the federal welfare entitlement. While an individual was entitled to receive AFDC payments once the eligibility criteria were met, federal government and most states ruled out any entitlement to TANF benefits through the text of their laws.

[109]The metropolitan areas studied were: Atlanta, Baltimore, Chicago, Fort Lauderdale, Houston, and Kansas City.

According to the predominant opinion, states redesigned the legal relationship between the welfare agency and the benefit recipient by their state laws. Wisconsin, the welfare reform forerunner state, which anticipated welfare reform on the basis of federal waivers since the late-1980s, created a completely new model of legal relationship in its Wisconsin Works Program (W2): In Wisconsin needy families have to apply for a W2 position like a regular job applicant. Participants who get an available position enter something like an employment contract with the welfare agency. This "welfare employment" underlies the Fair Labor Standards, but does not qualify a W2 position holder to acquire an UC entitlement (compare Lynch 1998). All W2 positions,[110] which follow a career ladder idea, are limited to 24 months and are rewarded by a fixed monthly payment.[111]

Most states did not establish such a revolutionary new legal relationship in their TANF laws but make use of agreements and/or contracts and/or plans to codify or just define rights and duties (e.g. school attendance; mandatory immunisations; participation in self-sufficiency courses) of the TANF programme participants (even of the family or household members), possible sanctions and the welfare agencies duties individually.

3.2.2 Food Stamp Program

Needy households are entitled to receive food stamp allotments.[112] The eligibility standards are prescribed in the Food Stamp Act of 1977. An eligible household's financial resources must not exceed USD 2,000 or, if the household consists of or includes an elderly person (an individual 60 years of age or older), resources must not exceed USD 3,000 (7 CFR 273.8 (b)). One car worth up to a fair market value of USD 4,650 and vehicles used to produce income or necessary for transportation of a physically disabled household member, as well as fuel for heating and water for home use are excluded from the financial resources.[113] Significantly, this includes any earned income tax credits received by any member of the household for 12 months. In addition, a household's home is excluded (7 CFR 273.8 (e)(1)) from financial resources. The maximum allowable net income[114] is the Federal Poverty Line (FPL).[115] Households with no elderly persons must not have a gross

[110]Trial Job, Community Service Job (CSJ), and W-2 Transition.

[111]Subsidised Trial Jobs are rewarded by the participants' earned income; a full monthly CSJ benefit is USD 673; and a monthly W-2 transition job benefits amounts USD 628.

[112]The maximum monthly food stamp allotment, for example, is USD 426 for a household of three people. See USDA (2008).

[113]7 USC 5 (g)(2)(C). An alternative vehicle allowance can also be used by the states if the vehicle allowance standards the state agency uses to determine eligibility for TANF benefits would result in a lower attribution of resources. See 7 USC 5 (g)(2)(D).

[114]After the exclusions and deductions provided for in 7 USC 2014 (d) and (e).

[115]For a three-person family unit the annual FPL for 2006 was USD 16,600, and for a four-person family unit it was USD 20,000. For details, see U.S. Department of Health and

income of more than 130% of the FPL to be eligible for Food Stamp benefits. Physically and mentally fit individuals over the age of 15 and under the age of 60 are ineligible to participate in the Food Stamp Program, if they do not fulfil the work requirements in 7 USC 2015 (d)(1).[116] The requirements are that able-bodied individuals between the ages of 18 and 50 must either work or participate in a work programme for at least 20 h per week (7 CFR 273.24 (a)(1)) to be eligible for food stamp benefits. Otherwise they are eligible to receive food stamps for a maximum of 3 months in a 3 year period.

3.3 Tax incentive programmes

3.3.1 Activation through wage subsidies and wage supplements

Some incentives for employment activation have operated through the tax system in the US. This discussion adopts standard usage, whereby a *wage subsidy* means a payment directly to an employer, and a *wage supplement* means a payment directly to a worker. There is much less evidence about the latter, but results from trials of wage subsidies suggest they may be less effective than supplements provided directly to workers. The main appeal of the wage supplement is that it is unlikely to create the type of stigma that employers may attribute to workers for whom they receive wage subsidies. Despite evidence of this, wage subsidies have been popular policy in the US, perhaps because wage subsidies are one of the few labour demand enhancing instruments available to policy makers. We also show the popularity of wage supplements among households and their increasing importance in the American economy.

3.3.2 For employers

Background on wage subsidies

Among the four earliest trials of wage subsidies in the US, two operated as government programmes run through the tax system and two worked as voucher experiments. During the late 1970s and early 1980s, the New Jobs Tax Credit (NJTC) and the Targeted Jobs Tax Credit (TJTC) allowed employers to reduce tax payments by a fraction of the amount paid to workers hired under the programmes.

Human Services. 2006. Annual Update of the HHS Poverty Guidelines, F.R. 71, pp. 3848–3849.

[116]"(i) Refusing to register for employment; (ii) refusing to participate, without good cause, in an employment and training program to the extent required by the state agency; (iii) refusing, without good cause, to accept a job offer at a wage not less the federal or state minimum wage; (iv) refusing, without good cause, to cooperate with a state agency; (v) becoming unemployed voluntarily without good cause or (vi) failing to comply with a state food stamp workfare program according to 7 USC 2029."

Hamermesh and Rees (1984) say that NJTCs were taken for one-third of all the new jobs created during the period in which the credit was available, but Perloff and Wachter (1979) estimate that it resulted in just 3% more jobs than would have been created without the programme. The TJTC was intended to increase employment among certain targeted disadvantaged groups. Hollenbeck and Wilke (1991) find that the TJTC increased labour market success of "non-white male youth, but is stigmatizing for eligible individuals from other race/sex groups." This finding that a wage subsidy acts as a stigma carries through to the experimental studies.

A targeted wage subsidy was operated as a field experiment with random trials in 1980–1981 by the US Department of Labor in Dayton, Ohio. Burtless (1985) reported "the results show conclusively that workers known to be eligible for targeted wage subsidies were significantly less likely to find jobs than were otherwise identical workers whose eligibility for subsidies was not advertised" and "speculates that the vouchers had a stigmatizing effect and provided a screening device with which employers discriminated against economically disadvantaged workers."

Another experiment testing an intervention which amounted to a wage subsidy was not restricted to economically disadvantaged workers, but may have also stigmatised job seekers. Woodbury and Spiegelman (1987) report that for the Illinois Reemployment Bonus Experiment, cash bonuses paid directly to persons who gain re-employment have a powerful effect in reducing the duration of unemployment, whereas if a cash payment for hiring a job seeker is made to an employer, the effect is almost nil. Employers may be reluctant to hire workers who present a voucher for payment from the state because it signals that the worker may have unobservable characteristics that hinder his or her finding employment without a state subsidy.

Current wage subsidy programmes

Three federal wage subsidy programmes currently compensate employers for hiring new workers from targeted populations. The Work Opportunities Tax Credit (WOTC) operates through the tax system providing rebates at year end. The On-the-Job Training (OJT) programme pays cash subsidies to employers throughout the year.

The WWTC and WOTC are administered through the US Department of Labor with cooperation from the US Treasury, since the subsidy is paid out in the form of a tax credit. State and local agencies must also cooperate, since the programmes are targeted to the economically disadvantaged, the employment of whom is the responsibility of local One-Stop Career Centers established under the Work Investment Act (WIA).

Work opportunity tax credit

The Work Opportunity Tax Credit (WOTC), enacted in 1997, is the immediate successor of the long-standing Targeted Jobs Tax Credit, which served disadvantaged

job seekers from 1978 to 1994.[117] The WOTC provides tax credits to employers who hire eligible workers. The eligible group includes welfare[118] and Supplemental Security Income (SSI) recipients, those between the ages of 18 and 24 who are members of families receiving food stamps or living in empowerment or enterprise communities, vocational rehabilitation referrals, veterans receiving food stamps, and ex-felons who are members of low-income families.

All private-sector employers who hire a new worker from this eligible group are entitled to tax credits. However, the decision to apply for certification and to file for the tax credit is up to the discretion of the employer. The WOTC can reduce employers' federal tax liability by as much as USD 2,400 per new hire (USD 1,200 for each new summer youth hire).

Under the new enhanced WOTC (the former Welfare to Work Tax Credit) payments are available for up to 2 years, with a maximum of 40% of USD 10,000 in first-year wages and 50% of USD 10,000 in second-year wages – maximum of USD 9,000 per new hire. New hires who qualify for the programme are members of a family that has received TANF benefits for at least 18 months ending on the hiring date.

A US General Accounting Office (GAO 2001) survey found that the WOTC offset, on average, 47% of employers' costs of recruiting, hiring, and training certified workers.

The number of WOTC certifications rose steadily during the first 4 years of the programme. In 1997, 126,000 WOTC certifications were issued, and by 2005 the number had increased to more than 630,000. In 1999, businesses claimed approximately USD 200 million in tax credits under this programme.

On-the-job training

The On-the-job training (OJT) component of the Workforce Investment Act (WIA) offers another form of wage subsidy. Under this programme, employers receive a cash payment in exchange for providing training to qualified workers. This programme is a training programme, and it is not designed to provide direct incentives to hire workers. The basic philosophy of OJT is that for many occupations a trainee learns best by working in an actual work situation, using an employer's procedures and equipment according to the employer's requirements. However, it is expected at the end of the training that the employer will retain the participant

[117]The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170) was signed into law on 17 December 1999, reauthorising the WOTC/WtW tax credits for a 30-month period through 31 December 2001 (retroactive to the credits' expiration date of 30 June 1999).

[118]The person must be a member of a family that received Temporary Assistance for Needy Families (TANF) for a total of at least 9 of the 18 months before the date of hire.

for at least 6 months. It is further anticipated that because the employer has trained the participant according to the employer's procedures and with the employer's needs in mind, the trainee will become a long-term employee of that business.

The OJT programme, in one form or another, has been part of the federal training programmes since the Comprehensive Employment and Training Act (CETA) in 1974. However, under WIA much more emphasis has been placed on job search assistance than on training. Furthermore, within the training component, training has been financed through vouchers, called Individual Training Accounts (ITA). The vouchers give workers more discretion over the type of training they receive and who provides it. The reduction in the number of people referred to training under WIA, the change in the delivery of training, and perhaps the slow start in implementing the new WIA programmes in the local offices may account for the minimal usage of OJT.

OJT is targeted primarily at unemployed participants of WIA and welfare-to-work programmes. Employed workers can receive OJT if the local Workforce Development Board determines that the individual is not earning a self-sufficient wage. Unlike the WOTC, selection of OJT participants is determined by the local Workforce Development Board, not the employer. In fact, pre-selection by employers is strictly prohibited.

OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Unlike the WOTC, OJT is not an entitlement; rather, applications are reviewed and approved by the local WIA administration. Through the OJT contract, occupational training is provided for the WIA participant in exchange for a reimbursement of up to 50% of the wage rate to compensate for the employer's extraordinary costs. The reimbursement may be for a period of anywhere between 4 and 26 weeks, depending upon the skill level of the job and the proficiency level of the participant. An OJT contract cannot exceed the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration is given to the skill requirements of the occupation, the academic and occupational skill level of the participant, previous work experience, and the participant's individual employment plan. OJT funds may be used for classroom training, books, and tuition upon approval by the local WIA administration. A maximum of USD 5,000 can be paid to an employer for any one trainee. Training agreements may exceed this amount but must be reviewed and approved by the WIA administration.

The number of OJT participants has declined significantly since its peak usage during the early years of the Job Training Partnership Act (JTPA). During the 1980s, OJT participants accounted for 23% of the total participants in JTPA. This proportion fell to 15% during the early 1990s and has declined even further under WIA.

Background on wage supplements

Most programmes for the unemployed are either income-support or labour-supply enhancing; the wage subsidy is a labour-demand stimulus. Research suggests that, regardless of the form of delivery of the subsidy to employers, it has a stigmatising effect on workers. An obvious alternative is the wage supplement, which is paid directly to workers. New entrants to the labour market and those who recently left other jobs frequently pass up reasonable job offers because they overestimate their value to potential employers. That is, they set their reservation wages unrealistically high.[119] While both the new entrants and the job leavers may bring general skills, neither brings firm-specific skills needed in their new place of work.

A wage supplement programme where the payment is made directly to the worker during the initial period of employment – perhaps 1 or 2 years – may help shorten unemployment durations by inducing job searchers to lower their reservation wages. During the period of wage supplement, workers will gain job-specific skills, thereby increasing their value to the firm and qualifying them for any available wage increases. A wage supplement paid directly to the worker removes the state from employee-employer interactions and greatly reduces the chance of a stigma affecting an employer's hiring decision. Ideally, by the time the wage supplement expires, a worker's earnings will have risen within the firm. In the meantime, society has benefited from added production, government has gained added tax revenues, and the unemployment insurance system has saved benefit payments.

State-administered tax credit programmes

Many states have implemented wage subsidy programmes. Most have been targeted at the economically disadvantaged in an effort to get them off welfare and into jobs. The new welfare reform law gives state policymakers more discretion than before on the use of welfare funds, and many states have used all or part of an individual's welfare grant to subsidise a private employer as an incentive to hire that individual. In addition, states have established their own tax credit programmes to subsidise private employers who hire or employ the disadvantaged. According to the American Public Human Services Association (1998), 32 states have adopted some sort of programme that diverts welfare funds into wage subsidies for employers, and 15 states have enacted programmes to provide wage subsidies to private employers who hire the disadvantaged. Almost all programmes are small relative to the targeted population.

The largest two programmes are the Minnesota Employment and Economic Development programme (MEED) and the Oregon JOBS Plus programme. The MEED operated from 1983 to 1989 and at its peak spent USD 50 million per year and had 10,700 participants. Toward the end of the programme, over half of the

[119]The reservation wage is the minimum wage rate that a worker will accept to begin a new job.

placements were in the private sector. Relative to the size of its targeted population, this programme was one of the largest and most generous programmes for providing wage subsidies to employers, considerably surpassing the two current federal programmes. The MEED provided a wage subsidy that exceeded 80% of paid wages to disadvantaged workers for up to 6 months.

The Oregon JOBS Plus programme stems from a 1990 ballot measure that required the state to set up a work programme for welfare recipients in six counties. In 1996, the Oregon legislature expanded the programme state-wide. This programme offers wage subsidies to employers who hire welfare recipients, food stamp recipients, or UI recipients. The payments to employers are made in lieu of welfare payments or food stamps to individuals. As with the MEED programme, the subsidy amounts to 80% of wages for up to 6 months. Each employer is eligible to hire one participant, but JOBS Plus participants may not exceed 10% of the employer's workforce. The scale of the programme is more modest than MEED: currently, the programme has fewer than 4,000 participants.

An example of a state-initiated, tax-based wage subsidy is Wisconsin's Community Development Zone Program. Under this programme, certified employers residing within a designated community development zone can earn a tax credit against a Wisconsin income tax liability for each newly created full-time position. The tax credit is two-tiered and applies only to new hires who are Wisconsin residents. When hiring a Wisconsin resident who is not a member of a targeted group, employers can receive a tax credit of up to USD 6,000 for each newly created full-time (2,080 h per year) position. When hiring a Wisconsin resident who is a member of certain targeted populations, employers can claim a tax credit of up to USD 8,000 for each newly created full-time position. Individuals who are members of any one of 13 targeted groups are eligible. Most of the groups include the economically disadvantaged, including youth and Vietnam-era vets. Workers unemployed as a result of a plant closing or mass layoff are also included, regardless of income level.

3.3.3 For (social assistance recipients and) low wage workers: Earned Income Tax Credits

Around the same time that the "$30 plus one-third" rule was adopted by AFDC, a completely different approach to overhauling welfare policy was being evaluated through a series of field experiments. The New Jersey Negative Income Tax experiment began in 1968, and the Seattle and Denver Income Maintenance Experiments (SIME/DIME) began in 1970. Evidence from the New Jersey experiment suggested that a guaranteed annual income would have only minimal disincentives on labour supply, but there were problems with the experimental design involving current recipients of AFDC in New Jersey (Moffitt 1981). The SIME/DIME with a cleaner design produced more credible results, suggesting strong work disincentives of 9% for husbands and 18% for wives, but more disturbingly a dramatic rise in divorce (Keeley et al. 1978).

The problem of family dissolution shelved the negative income tax (NIT) idea for welfare reform until it re-emerged in a 1970 proposal by President Nixon for a pilot called the Family Assistance Program (FAP). The FAP, supported by Senator Daniel P. Moynihan of New York, proposed a negative income tax system guaranteeing an adequate minimum income to all American households (Moynihan 1973). Originally suggested by Milton Friedman (1962) in his classic *Capitalism and Freedom*, the negative income tax had great appeal for both liberals and conservatives because of its simplicity and universal application. Starting from a fixed guaranteed income, Americans would work themselves off dependency gaining extra income for every hour worked. The failing of the system, however, was that the government grant diminished as earnings approached the break-even level of income.

The EITC, signed into law in 1975 by President Gerald Ford, is simple and universal like the NIT but improved on its design by increasing work incentives. Instead of starting with a guaranteed annual income, the EITC rewards work by having the amount of the wage supplement continuing to increase right up to the break-even level of earnings.

From modest beginnings, the EITC has grown to be a major antipoverty programme in the US. In 1975 EITC payments of USD 1.3 billion were shared by 6.2 million American households. By 2004, there were 22.3 million EITC recipient households sharing over USD 40 billion (Table 47).

The purpose of the EITC is to operate as a wage supplement, raising low-wage earners' income above the federal poverty level, and to act as a strong work incentive to all (including potential) benefit recipients. The incentive's strength derives from the phase-out range of the EITC. In the "payment boost version," a part of an individual's federal EITC can be paid out in advance by the employer with the monthly paycheque (§ 3507 Internal Revenue Code). In return, the employer simply

Table 47. Data on EITC refunds, recipient families, and EITC tax returns, 1975–2004

Year	EITC refunds (millions)	Number of recipient families (thousands)	Average EITC refund	Total individual tax returns (millions)	EITC returns as a share of all returns
1975	$1,250	6,215	$201	82.2	0.076
1980	$1,986	6,954	$286	93.9	0.074
1985	$2,088	7,432	$281	101.7	0.073
1990	$7,512	12,555	$598	113.7	0.110
1995	$25,956	19,334	$1,343	118.2	0.164
2000	$32,296	19,277	$1,675	129.4	0.149
2004	$40,024	22,270	$1,797	132.2	0.168

Source: EITC Refunds and Recipient Families: Years: 1975–1989. Green Book 2004. US House Ways and Means Committee, Table13–14. Years: 1990–2004. IRS Statistics of Income. TaxStats – Table 4 Individual Income Tax Returns with Earned Income Credit

withholds other federal taxes. The rest of the individual's EITC or the complete credit must be claimed with a tax-return claim.

The EITC is a wage supplement paid directly to eligible low-income families. It is designed to help lift poor families out of poverty. Such programmes are typically the responsibility of the US Department of Health and Human Services; however, the EITC is administered solely by the US Treasury, since it is a tax credit obtained as part of the process of filing a tax return with the US Internal Revenue Service. Recipients may choose to receive EITC payments in one lump sum at tax refund time, or in regular fractional periodic payments throughout the year. The bulk of EITC recipients opt for the lump sum option.

The Earned Income Tax Credit (EITC) is the largest financial subsidy for work offered in the US. The purpose of the EITC is to provide a wage supplement for low-wage workers, to offset their payroll tax liability, and to encourage work. It is an entitlement programme that provides a tax credit directly to the taxpayers. The credit is refundable in that workers can receive the full amount to which they are entitled even if it exceeds their income tax liability. Workers apply directly to the Internal Revenue Service for the EITC and receive the credit as part of their tax refund. It is a wage subsidy in that only those who are working are eligible for the refund.

The programme started on a small scale in 1975 as part of a general tax cut. With a significant expansion in 1993, it has grown significantly during the 1990s. Credits have almost doubled during the last decade. As of 1999, 19 million tax returns claimed the EITC, totalling more than USD 31 billion in refunds. As a boost to low-wage workers, this amount surpasses the combined spending by the federal and state governments under the new welfare bill. Estimates indicate that the 1999 tax credit lifted 4.1 million people out of poverty.

For tax year 2007, families with two or more children filing a joint return receive a subsidy of 40 cents for every dollar earned up to USD 11,790, for a maximum credit of USD 4,716. The 2007 EITC remains at USD 4,716 until earnings reach USD 17,390 and then it declines by 21.06 cents for each additional dollar earned. Those earning more than USD 39,783 receive no tax credit from the EITC.[120] Since the subsidy is a tax credit, some families recover all their federal income tax withholdings and still receive an additional EITC payment.

Benefits have been greatly expanded since 1993. In addition, tax credits are pegged to increases in the Consumer Price Index. The benefits are somewhat less for families with fewer children, but even families without children receive benefits. Unlike the WOTC and the WWTC, which focus on new hires, the tax credit entitlement is available to anyone with positive earnings filing a tax return, regardless of whether or not that person is a new worker.

[120]From the Urban Institute-Brookings Institution Joint Tax Policy Center, information on the 2007 EITC.

Evaluations of the EITC find modest positive effects on the labour supply of single mothers. Several studies estimate that the EITC increases the number of single mothers in the labour force by between 170,000 and 405,000. One study attributes half of the substantial increase in employment rates among single mothers over the 1984–1996 period to the EITC (Meyer and Rosenbaum 2001). As a point of reference, the number of single mothers doubled between 1985 and 1996 from 1.1 million to 2.2 million. The labour supply of married men also increased, but by less than it did for single mothers. On the other hand, the EITC reduces the labour supply of married women – by 161,000 according to some estimates. Furthermore, the EITC appears to do little to encourage the non-working poor to enter the labour force and find employment.

Bartik (2001) concludes that the EITC has affected the labour supply decisions of only 5% of the 20 million households that have received EITC benefits. Consequently, the remaining 95% of the households view the EITC as a pure wage supplement. The take-up rate of the EITC is relatively high, particularly when compared with the firm-based wage subsidies. Eighty per cent of households who live at 100–150% of the poverty level receive EITC. The rate is lower for families with other levels of income. Forty per cent of households with income of less than 50% of poverty receive EITC, whereas no one with an income of 300% of poverty or greater receives the tax credit.

4 Conclusion

Activating measures are part of all US social benefit programmes for individuals able to work. The participation in work activities or an active effort to ensure re-employment (such as job search, counselling, or use of re-employment services) are preconditions for the receipt of most benefits. The concept of activation is realised in provisions regulating eligibility and benefit calculation, disqualifications, positive (incentives) and negative sanctions (penalties).

Finally, the concept is, in the end, translated into practice by administrative bodies in a variety of ways (Fig. 27).

The legal framework for activation in the US system can be viewed as a prism:

The laws translate principles of activation into actions on the labour market. A more-or-less uniform concept of an activating labour market policy impinges upon the legal framework. Some of the manifestations of the concept into legal provisions modify the existing legal framework, while others are limited by the pre-existing or prior legal framework. Finally, the concept is, in the end, translated into practice by administrative bodies in a variety of ways.

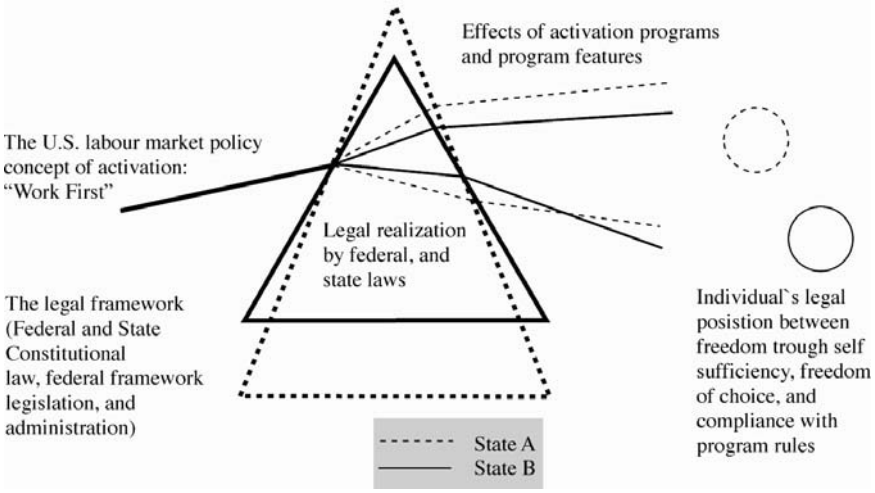


Fig. 27. The US concept of activation and its realisation in US employment promotion law

In the US, the differences among the states in realisation of the activation concept can be attributed to the different legal frameworks (state constitutions) and to the wide discretion granted to the states by federal law. The consequence of this is a creative diversity in activation measures. Evaluation provisions help to identify "best practice," which in turn enables the legislature to calibrate the activation concept and modify the legal framework. The concept of activation has the goal of motivating all of the actors in the US labour market to both make work possible and make work pay. Activation operates as a feedback loop (by ascribing positive and negative sanctions to unreasonable or ineffective performance).[121]

4.1 Effects of activation on the legal position of the individual

At first glance, the unemployed individual's legal position is weakened because of the implementation of the activation concept into laws governing social benefit programmes for the unemployed. In the first place, there is no legal entitlement to a benefit under PRWORA and, in the second, the expanded discretion granted to the states, counties, and even private for-profit organisations threatens the individual's right not to be discriminated against. Although UC activation measures help

[121]A benefit recipient gets feedback in the form of clear and fixed terms and conditions of the benefit receipt in advance – see for example the Personal Responsibility Agreement between TANF participants and the TANF agency and work, or activity, related incentives (such as the EITC, an income disregard, job retention services, transition benefits, and so on) making work pay.

to facilitate the fast re-employment of the individual, they have a weakening effect on the legal position of the individual, particularly in situations in which an individual is discharged because of alleged misconduct, leading to a withholding of benefits.

On closer examination, it is arguable that the risks to the individual's legal position are outweighed by the additional opportunities to end welfare dependency. If self-sufficiency has an intrinsic value and is a core element of human dignity, activation measures do enhance the individual's legal position. And in fact food stamp allotments, EITC refunds, and transitional Medicaid benefits support individuals in advancing themselves and their families. Nevertheless, because of wide state discretion, which allows some states such as Wisconsin to employ private, for-profit case managers, the individual's legal position can be at risk.

4.2 Economic effects of activation

American programmes for income security emerging from the Great Depression had as core themes economic self-sufficiency and the maintenance of individual dignity. During the course of the twentieth century, rules evolved for cash public assistance to the needy, temporary income support for the jobless, hiring incentives for employers, and employment incentives for workers.

The original welfare programme – Aid for Dependent Children – emerged at the start of this century as Temporary Assistance for Needy Families. The newer programme presents a diminished entitlement to lifetime income maintenance, but it operates in the richer policy context of a more fully elaborated social safety net that includes the Earned Income Tax Credit, Food Stamps, the Health Insurance Tax Credit, and the Child Care Tax Credit. Collectively these programmes improve the quality of life for nearly 20% of the US population. This is a huge increase from the 500,000 beneficiaries of ADC in the 1936 population of more than 130 million Americans. The TANF programme is being further buttressed by efforts to promote job retention and advancement for beneficiaries and recent TANF leavers.

The unemployment insurance system has served as a reliable system of income security to jobless workers for over 70 years. The strong federal partner has shepherded the states in a way that permits a wide array of programmes to evolve in harmony with political philosophies and with the differing industrial mixes of employment around the country. Re-employment of UI beneficiaries was an original programme theme and it remains a major emphasis. The pattern of joblessness increasingly involves permanent instead of temporary job separations. New initiatives promoting re-employment have been implemented and others are being field-tested as the federal-state UI programme continues to adapt to demands of the job market.

Some scholars have estimated that the presence of UI has a dampening effect on the aggregate economy. Perhaps the national unemployment rate could be a full percentage point lower in the absence of the UI system. However, others have estimated that the added time afforded by UI promotes productive job search, and

higher-quality job matches, and therefore a more efficient use of scarce resources and a higher level of aggregate economic activity and employment. The automatic stabilising influence of UI on the macro-economy is a force that cannot be underestimated. Injecting spending during economic declines and withdrawing spending during expansions, UI is an integral part of the modern American labour market.

From modest beginnings in 1975, the EITC has emerged as a powerful mechanism for promoting work effort and economic security. The extra income earned by EITC recipients steadily grows every year. It has reached an annual level exceeding USD 40 billion, thereby eclipsing disbursements from the Unemployment Trust Fund for UI benefits. The EITC operates as an earnings supplement, making payments directly to workers and thereby avoiding any possible stigma employers might attach to workers getting government support for employment.

Taken together, the full set of public programmes to support income security have improved the standard of living for Americans, and have done so in ways compatible with flexible and competitive labour markets.

List of abbreviations

Abbreviation	
ADC	Aid to Dependent Children
ADCUF	Aid to Dependent Children with an Unemployed Father
AFDC	Aid to Families with Dependent Children
ATAA	Alternate Trade Adjustment Assistance
CalWORKs	California Work Opportunity and Responsibility to Kids
CCH	Commerce Clearing House
CEA	Council of Economic Advisors
CFR	Code of Federal Regulations
DHHS	US Department of Health and Human Services
DIME	Denver Income Maintenance Experiment
DUA	Disaster Unemployment Assistance
EITC	Earned Income Tax Credit
ETA	Employment and Training Administration
FAP	Family Assistance Program
FLSA	Fair Labor Standards Act
FR	Federal Register
FSEB	Federal-State Extended Benefits Program
FSEBA	Federal-State Extended Benefits Act of 1970
FUTA	Federal Unemployment Tax Act
GAIN	Greater Avenues to Independence
GAO	General Accounting Office (now General Accountability Office)
GDP	Gross Domestic Product
GED	High School Graduate Equivalency Diploma
HHS	US Department of Health and Human Services
IDA	Individual Development Accounts
IRC	Internal Revenue Code
JSA	Job Search Assistance
MEED	Minnesota Employment and Economic Development program
MOE	Maintenance of Effort
NAFTA	North American Free Trade Act
NIT	Negative Income Tax
NJTC	New Jobs Tax Credit
NLS	National Longitudinal Survey
OECD	Organization for Economic Cooperation and Development
OFA	Office of Family Assistance in HHS
OJT	On-the-Job Training
OWS	Office of Workforce Security in the USDOL
PL	Public Law
PRWORA	Personal Responsibility and Work Opportunity Act of 1996
SC	US Supreme Court
SEA	Self Employment Assistance
SEITC	State Earned Income Tax Credit
SFAG	State Family Assistance Grant under TANF
SIME	Seattle Income Maintenance Experiment
SSA	Social Security Act of 1935
SSP	Separate State Program
TAA	Trade Adjustment Assistance

TANF	Temporary Assistance to Needy Families
TEUC	Temporary Extended Unemployment Compensation
TJTC	Targeted Jobs Tax Credit
TRA	Trade Readjustment Allowances
UC	Unemployment Compensation
UI	Unemployment Insurance
US	United States
USA	United States of America
USC	United States Code
USD	United States Dollar
USDOL	United States Department of Labor
W2	Wisconsin Works Program
WARN	Worker Adjustment and Retraining Notification Act of 1988
WDB	Workforce Development Board
WIA	Workforce Investment Act of 1998
WIN	Work Incentive Program
WOTC	Work Opportunity Tax Credit
WPRS	Worker Profiling and Reemployment Services
WtW	Welfare to Work

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Does Activation Work?

R. Konle-Seidl and W. Eichhorst

The question what activation effectively does can be answered in multiple ways depending on research interests and empirical scope. While for most research this need not be a reason for concern, it becomes a considerable problem when trying to assess the economic, societal and political success of activation, especially in comparative perspective – and in cases where activation reforms were passed in a time in which often ambiguous knowledge about the performance, the effectiveness but also on the downsides and problems of activation was already widely available. As evaluating whether and to what extent activation objectives can actually be achieved depends first and foremost on the policy objectives pursued with the shift towards activating labour market and social policies.

By applying a multi-faceted approach in this volume we tried to analyse the dimensions of activation from mainly three different perspectives:

From a legal point of view regarding implications for legal capacities and constraints (see the concluding chapter *"Activation from a Legal Point of View: Concluding Remarks"* by Reinhard and Kaufmann)

From an economic point of economic point by focusing on effectiveness and efficiency of reintegration policies trying to answer the core question of this volume: Does activation work in terms of bringing the jobless into work?

From a comparative welfare state perspective of view by asking: Is there a general or context-specific pattern of viable activation strategies?

The overall objective of this volume was to link the analytical descriptions of activation policies in eight countries to outcomes in real terms from three different perspectives:

1 Evidence on micro- and macroeconomic outcomes

From an economic viewpoint, the basic concern about activation policies can be summed up in the question "what works, for whom and at what costs?" The core questions are:

1. Does activation meet the objective of bringing jobless people from unemployment or inactivity into work?
2. Does a "work first" and workfare strategy reduce benefit dependency and enhance self-sufficiency of re-integrated people on a sustainable level?
3. Or are other instruments required to achieve the desired objectives of activation?
4. Are there differences across target groups?

To answer these questions, the information from the country chapters is complemented by available evidence from econometric evaluation studies.

1.1 Theoretical considerations

From an economic perspective both the compulsory and promoting elements of activation contribute to a strengthening of work incentives, return from employment relative to benefit receipt and – in the end – imply a behavioural change. In all countries, activation instruments such as integration contracts or activation programmes incorporate both demanding and enabling elements simultaneously.

Both types of measures aim at increasing the job search intensity of the unemployed. However, "support" and "compulsion" induce not the same effects on wage and employment concessions an unemployed is willing to make. The compulsory effect will directly increase the willingness to make concessions (e.g. by raising search and availability requirements or testing the motivation by offering unpleasant measures) while the supportive effect will most probably increase the human capital and search effectiveness and hence reduce the necessity of concessions by the unemployed. However, it is an empirical question which effect dominates.

Empirical research has focused on the behaviour of people in voluntary active labour market policy schemes as well as in mandatory activation programmes. In countries like Denmark participation in activation programmes is a legal precondition for remaining eligible for unemployment benefits or social assistance. In other countries, such as Germany, job search requirements or programme participation are part of integration contracts to be concluded between the unemployed benefit recipient and the caseworker. The benefit recipient is required to sign and fulfil the contract in order to avoid a reduction of benefits through a sanction. Integration agreements thus translate legal duties into a legally binding bilateral contract. They are part of the set of active labour market measures that are sometimes defined as "services and sanctions" and sometimes labelled as "workfare".

It is obvious that participation in activation programmes directly affects the "activated" unemployed. There is a considerable strand of micro-econometric research on the treatment effects of programme participation measured as individual re-employment effects. A key finding is that programme participation may crowd out ordinary job search. This so-called lock-in effect is detrimental to immediate re-integration. It can be offset by a potential post-programme effect to the extent that participation in the programme improves human capital and therefore job prospects after completion of the programme.

While "treatment effects" do not differ regardless of whether participation is voluntary or mandatory, there is an additional "threat" or "motivation effect" only when participation is mandatory. The threat of being required to participate in an activation programme motivates the unemployed to search more actively for a job, and hence this threat or motivation effect is conducive to accelerated job finding. However, the net effect on search intensity among those without a job is theoretically ambiguous: The potentially negative lock-in effect for the activated and the positive threat/motivation effect for the unemployed have to be analysed empirically to find out which effect dominates.

Judging the effects of activation programmes solely from the perspective of the treated person, however, may be a misleading indicator of the effects compulsory policies have on overall labour market performance. Work requirements and mandatory programme participation affect not only the fraction of unemployed in activation programmes but also the remaining groups of the labour force, namely the unemployed in general as well as the employed – and even the economically inactive members of the working age population. The employed may be affected indirectly as the out-of-work option becomes less attractive. Under very general assumptions, this implies that wage demands are moderated. Wage moderation is conducive to job creation and therefore in equilibrium increases the job finding rate. The wage effect is important for assessing the macro-effects of activation policies, not least for empirical evaluations of compulsory elements of activation policies.

Besley and Coate (1992) point to a further effect of workfare policies, the screening effect ("work test"). In a passive system with loose conditions for maintaining eligibility for benefits, some may claim benefits without being interested in finding a job, e.g. because they work in the shadow economy or because they pursue non-market activities. The work requirement stemming from activation policies means that it becomes less attractive for non-job seekers to claim benefits and, as a consequence, they may either leave the labour force or become genuine job seekers. The screening effect thus implies that transfers are better targeted to non-employed job seekers.

Finally, the effects of activation policies on unemployment should be seen relative to the resources spent on administration and programme activities. These resources have to be financed via taxes which, in turn, can result in distorting effects on the labour market. Hence, a reduction in unemployment – open and total – may be achieved at a too high cost. The country studies show that the use of compulsory elements in unemployment insurance and social policies implies that active labour market policies are used much more intensively and that additional resources have to be dedicated to programme activities.

1.2 Review of empirical results on individual effects

1.2.1 Lock-in and post-programme effects

Intensive economic research has contributed to a growing body of literature addressing the micro-economic effectiveness of different active labour market policy schemes. The treatment effects of participating in different schemes such as training programmes, subsidised employment or start-up grants on individual employment prospects show no or only moderate positive re-employment effects. Subsidised work and start-up grants are perceived as relatively effective at the individual level compared to publicly sponsored training. However, for (insured) unemployed as well as for unemployed social assistance recipients the average net re-integration

effects are rather modest across countries (Konle-Seidl 2005; Kluve 2006; Fromm and Sproß 2008).

Concerning the long run effects of different active labour market programmes based on strengthened human capital accumulation, there are only few evaluations on a micro data basis that follow individuals for a number of years after programme participation. One of these few studies on the long-term effects of government-sponsored training programmes in Germany has been undertaken by Lechner et al. (2004). In the longer run, they find that most training programmes seem to increase employment rates by about ten percentage points. In a recent investigation by the Danish Economic Council (2007), long-term effects of four different types of programmes are evaluated in terms of subsequent employment rates and wages. For several programmes both employment rates and wages are positively affected by participation e.g. in private job training rather than in education and public job training.

Another common finding in empirical evaluation studies is that programme effects are heterogeneous and that active labour market policies are only beneficial for certain groups. However, there are no general lessons and findings across countries in the sense that training measures are positive for low-skilled men or counselling and monitoring is detrimental for women above the age of 30. Recent findings in Denmark, for example, suggest that educational training exhibits positive employment effects for low-skilled unemployed but not for the highly educated. In contrast, Dutch studies found that for individuals with bad labour market prospects the job search strategy improves when being monitored (Danish Economic Council 2007; van den Berg and van der Klaauw 2006). A survey on long-term unemployed shows that the motivation or threat effect seems weaker for Danish social assistance recipients than for recipients of insurance benefits (Bach 2002). Among the former, 80% report doing nothing to avoid activation, while 7% found a job and 10% have avoided activation in other ways. These results, however, are based on survey data and not on a control group design. Furthermore there are not enough studies available to get robust results.

However, taking into account possible heterogeneous effects modifies the general outcomes of active labour market policies. A closer targeting of programmes is thus important to efficiently allocate unemployed workers to programmes and the individual worker to the right type of programme. In this line the re-designed and closer targeted re-training programmes in Germany after the Hartz reforms show clearly improved results (Eichhorst and Zimmermann 2008).

1.2.2 Effects of compulsory and supportive instruments

There is also a series of empirical studies that seek to identify the effects of compulsory and supportive elements of different kinds of activation programmes separately. Most of these studies examine the impact of search requirements, counselling, monitoring and sanctioning on the duration of unemployment benefit receipt.

The mere programme effects in mandatory activation programmes are limited – as reported above, the "threat effects" implied by the obligatory participation seem to have a greater impact. However, threat or motivation effects have been assessed only in few countries. In a very influential study, based on an experimental design, Black et al. (2003) found that the compulsory effect of US activation programmes reduce the average duration of unemployment insurance benefit receipt by about 2.2 weeks. Empirical evidence for Denmark confirms that threat effects exist and are quantitatively important. Rosholm and Svarer (2004) consider the threat effect and the locking-in/post-programme simultaneously. They find, especially for men, that the risk of being activated significantly increases the job finding rate. On average, the unemployment spell for men is reduced by approximately 10%.

Recently, the Danish Labour Market Authority implemented a controlled experiment in two Danish counties. The control group followed the going rules in the labour market whereas the treatment group was exposed to an intensified sequence of monitoring, counselling, job search assistance and mandatory programme participation. The evaluation of this experiment by Graversen and van Ours (2006) as well as by Rosholm (2007) found significantly higher job finding rates for the treatment group, which can be attributed to the fact that they had to attend more meetings and faced the risk of activation earlier during the unemployment spell than the control group.

The eligibility criteria include that the public employment service may ask the unemployed to accept a given employment opportunity or to actively seek for work as well as to participate in active labour market programmes. The country experiences have shown that there is a common trend towards strengthening the eligibility criteria in all countries under scrutiny. Moreover, the effectiveness of mandatory activation programme participation can possibly be enhanced via monitoring and sanctions of unemployed. It is likely that monitoring and sanctions have important threat effects.

Based on an experiment in the Netherlands, Gorter and Kalb (1996) analysed the effects of extended counselling and monitoring on the duration of unemployment and found that the effect of counselling and monitoring on the job finding hazard is modest. Also for the Netherlands, van den Berg and van der Klaauw (2006) investigated the effect of the regular counselling and monitoring on Dutch unemployment insurance recipients on the basis of a randomised experiment for less disadvantaged workers. They found that low-intensity job search assistance programmes have at best small effects while high-intensity job search assistance programmes may have a more positive effect on the exit rate to work. According to their findings, monitoring works best for individuals with bad labour market prospects whose job search strategy improves when being monitored.

Drawing on an experiment in the UK, Dolton and O'Neill (2002) examined the impact of a programme which combined monitoring and counselling: Contrary to the results in the Dutch studies, they found a significant positive effect in terms of an unemployment rate that is six percentage points lower for men after 5 years, but no substantial long-run effect for women. A cost-benefit analysis indicates that

monitoring and counselling are cost-effective means to reduce long-term unemployment. Furthermore, the authors elaborate that the compulsory element of monitoring might be responsible for the short-run effects whereas the treatment component of counselling may account for the long-run impact of the programme.

Crepón et al. (2005) studied the sole impact of counselling on unemployment duration with non-experimental data for France. They found a modest increase in the transition rate from unemployment to employment but a significant decrease more than six percentage points on unemployment recurrence for individuals with higher risk of unemployment. These results are in line with another impact study on counselling in France finding an increased exit rate from unemployment through through a higher job offer arrival rate because of counselling, especially for low-educated and low-skilled workers (Fougère et al. 2005).

Regarding the impact of job search requirements, Klepinger et al. (2002) reported findings from an experimental evaluation of alternative work-search requirements imposed on unemployment benefit recipients in Maryland. The non-monetary costs of imposing additional search requirements turned out to be important for the duration of benefit claims. Increasing the required weekly number of employer contacts indicating that employer contacts would be verified reduced the average duration of unemployment benefit spells with almost a week. Anderson (2001) found a significant impact of monitoring on unemployment insurance claim duration in three alternative US experiments, with the most stringent monitoring regime reducing average benefit duration by 10% compared to zero monitoring.

Sanctions are an important tool of compulsory activation. The use of sanctions has been intensified in recent years, especially in Denmark, Switzerland or the Netherlands as reported in the respective country chapters. On the basis of a large Danish register data set, Svarer (2007) recently analysed the question whether sanctions affect the transition rate from unemployment to employment. He found that the transition rates increased by more than 50% for both males and females as a consequence of sanctions. Similar results have been found for the Netherlands (Abbring et al. 2005) and Switzerland (Lalive et al. 2005). Van den Berg et al. (2004) also found significant effects of sanctions on hazard rates for social assistance recipients in Rotterdam.

The shortening of the benefit duration and tighter eligibility rules for claiming benefits have also been part of the shift to activation policies in several countries (e.g. the United Kingdom, Germany or Denmark). Empirical evidence on incentive effects of benefit levels, maximum duration and associated cuts shows that benefit generosity in terms of level and duration tends to reduce job search intensity and contributes to longer unemployment spells unless activation requirements are in place (see e.g. Lalive et al. 2005 as well as Bassanini and Duval 2006).

Regarding in-work benefits as a supportive activation instrument, studies have analysed the effects of tax credits in the United Kingdom and the United States where these types of policies are most important. While strong work incentives could be found for single parents, especially in the US, studies have also pointed

out that there may be negative effects on the labour supply of second earners in couple households. Due to the quantitative differences in the target groups, the effects of the British Working Tax Credit are less pronounced compared to the US Earned Income Tax Credit. Moreover, British out-of work benefits are higher than in the US, and work incentives countered by the parallel objective to reduce child poverty. This is the reason why the UK Child Tax Credit is not dependent upon employment as it is paid out to all needy families. One of the general lessons from the British example is that the fundamental trade-off between social policy and labour market objectives is not easy to solve (Brücker and Konle-Seidl 2007).

1.3 Evidence on macro-effects

1.3.1 Effects on employment and unemployment rates

Although activation policies have been designed to get unemployed into jobs, there are also effects on the employed as well as on non-employed outside the labour force – and thus on the economy as a whole. However, these macro-effects are difficult to measure. There is a lack of research on both the so-called indirect effects (substitution and dead-weight effects) of active labour market measures as well as effects on wages and on the overall employment and unemployment rate. The indirect effects of active labour market programmes have most thoroughly been analysed with Swedish data. Calmfors et al. (2001) found crowding-out effects of ALMP in the range of 60–70%. While especially wage subsidies often have positive individual re-employment effects, they turn out to be less favourable on a macro level if negative indirect effects such as substitution or displacement effects and deadweight losses are taken into account. Hence, what seems effective at the individual level can be much less effective and efficient from the aggregated perspective of the economy (Martin and Grubb 2001).

Including workfare requirements among the eligibility conditions for benefits implies that the outside option for employed workers becomes less attractive. Wage bargaining models predict that this will tend to lower wage demands, i.e. the mark-up of wages over benefits is reduced and this wage effect will, in turn, be conducive to employment. Economists expect this effect to be strongest in the lower end of the wage distribution. A necessary condition for this supply side effect to be present is that there is both a downward pressure on wage setting and an upward move in employment.

Assessing the wage effect in Denmark, Andersen and Svarer (2007) compared the ratio of wages in the lower end of the wage distribution to the absolute benefit maximum. During the 1980s there was an upward trend in this ratio despite a high level of unemployment. The upward trend was broken in the 1990s despite a significant decrease in unemployment. The authors conclude that the labour market reforms of the 1990s have had a direct effect on wage formation. Comparing employment in 1990 and 1996 they also find relatively more employment at the lower end of the income distribution in 1996 compared to 1990.

In several countries, such as Denmark, the Netherlands or the UK in the 1990s and – more recently – Germany, unemployment has been reduced dramatically. This reduction has been attributed in part to labour market reforms and especially to the described effects of activation. Although there is growing evidence that the NAIRU – the rate of unemployment consistent with a non-accelerating inflation – has fallen in countries such as Denmark as a result of a combination of different factors – among them are benefit reforms and active labour market policies – there is not yet any robust evidence on the impact of activation policy on the structural unemployment rate.

Hence, despite a lot of progress in evaluation research, there is still a lot of missing knowledge on the research agenda. Changes in skill and search cost can hardly be measured directly. The same applies to a correct estimate of the impact on the overall employment and structural unemployment rate. A significant part of the labour force at the lower end of the wage scale would probably have left the labour market if they were not offered activation. Hence, a probable "signalling effect" of activation on the employed and its impact on the overall employment rate is difficult to estimate as there are a lot of factors influencing the participation rate.

1.3.2 Effects on self-sufficiency

Concerning the objective of reducing welfare dependency by activation policies, there is already a substantial literature that has shown that welfare dependency today increases the risk of welfare dependency tomorrow (see e.g. Prowse 2005). The outcomes of activation programmes in many countries have indeed shown that compulsory and – to a minor extent – supportive instruments help unemployed get closer to employment and hence reduce the risk that they become long-term recipients of public support. This implies that the long-run benefits of workfare policies are potentially large if they succeed in minimising the number of unemployed being trapped in welfare dependency.

However, after more than a decade of experience with work-first and workfare approaches, there is also evidence that a work first policy runs the risk of low job retention. The high share of "repeaters" in the United Kingdom (see the chapter '*Employment First': Activating the British Welfare State* by Daniel Finn and Bernd Schulte) points at a rather low sustainability of workfare strategies. Hence, there may be a low-pay/low-skill trap that cannot be overcome by current work first practices but leads to repeated spells of full or partial benefit dependency. This fact points at potential limits of activation when it comes to the objective of stable employment for highly vulnerable groups.

A further policy dilemma related to activation policies is the screening paradox. To the extent that activation policy works, the consequence may be that those actually ending up in activation are the groups with severe problems in terms of meeting the requirements to obtain a job at given wage levels while the stronger groups have left the system. Hence, it may seem as if the activation policy does not work for program participants as they do not get jobs without further help or

public wage subsidies and workfare accomplishes nothing but punishing weak groups.

Another problem of activation policy is often mentioned especially by non-economists. With a binding distributional constraint, it is inevitable that labour demand falls short of labour supply, and hence it may seem pointless to focus so much on job search for these groups. This view, however, is problematic since even in the presence of unemployment, it does not follow that employment is invariant to changes on the supply side as higher job search intensity changes wage setting. Another dynamic aspect is that loose job search criteria may imply that labour supply eventually constrains demand in particular if human capital depreciates over time. Countries experiencing shortages of high and low skilled labour, such as Denmark or the Netherlands, are therefore forced to mobilise inactive working age people relying on incapacity, sickness, early retirement or social assistance benefits.

Another often neglected phenomenon related to activation policy can be observed when looking at the share of benefit claimants across time. In most countries the share of working age benefit claimants has remained more stable than the numbers in particular schemes. Whereas, for example, in Denmark the number of unemployed insurance claimants halved and the number of people receiving social assistance dropped by 60% between 1993 and 2005, the share of benefit claimants has remained quite stable over that period. This is due to an increasing share of working age people in receipt of either disability pensions or voluntary early retirement or leave schemes. About one out of four Danes of working age receives social security, social assistance or activation benefits at some given point in time. Hence, summing up the outcomes of activation on self-supporting, Peter Köhler, Jon Kvist and Lisbeth Pedersen, the authors of the Danish country chapter, conclude that measured in terms of total numbers of benefit recipients, the employment policies since the 1990s have not been particularly successful.

Based on OECD data, Table 48 gives an overview of the levels and structures of benefit receipt as a share of the working-age population (15–64-year-olds) as well as public net social expenditure in per cent of GDP in 2003 in the countries covered by this volume. What is interesting to see is the relatively similar share of working-age benefit recipients across countries. It varies only slightly around 20%. While, for example, unemployment benefits play a major role in Germany, sickness and disability benefits are more significant in all other countries under scrutiny, including the US. This points at the fact that partial activation in the sense that a strict “right and duty” policy is applied just in one scheme leads to a reshuffling of benefit recipients and therefore changes the structure of benefit claimants. Stronger activation in one benefit scheme (e.g. unemployment or welfare) increases pressure on benefit schemes with lower activation requirements that continue to offer an “escape route,” e.g. disability pensions, sickness or early retirement schemes (see, in particular, the chapter on the specific experience of the United Kingdom, Switzerland and Denmark, as well as Konle-Seidl and Lang 2006).

Table 48. Working-age claimants by type of benefit, 2003

	Total share of benefit recipients	Unemployment benefits	Social assistance and lone parents	Sickness and disability benefits	Public net social expenditure (2003)
	% of working-age population (15–64)	% of GDP			
Denmark	22.4	4.6	1.8	11.3	20.3
Germany	20.0	7.7	2.5	5.8	26.2
France	21.6	5.3	3.1	6.8	25.5
Netherlands	18.1	5.8	1.0	10.7	17.9
Sweden	21.4	3.2	2.3	14.7	24.3
Switzerland	n.a.				n.a.
UK	19.0	1.9	2.1	7.5	18.9
USA	n.a				17.3

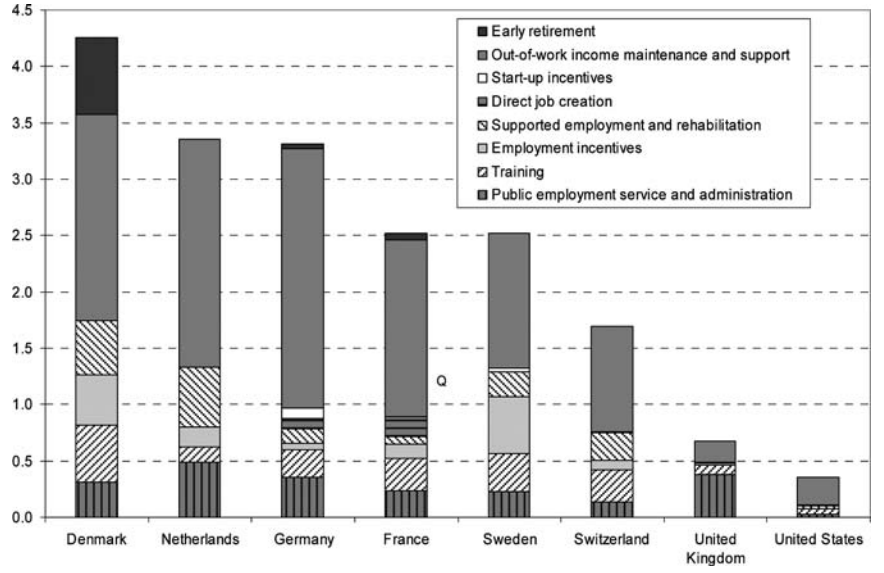
Source: OECD Social Expenditure (SOCX) database (2005); Database on benefit recipients; Carcillo and Grubb (2006); Appendix, Chart 2

Hence, the slight overall improvement of participation rates in OECD countries in the last two decades has not been accompanied by a reduction in the proportion of working-age individuals who receive non-employment benefits. Sharp falls in recipiency rates for unemployment benefits in Denmark, the United Kingdom or Sweden were accompanied by increases in recipiency rates for incapacity benefits. From 1980 to 2003 the share of the working age population receiving incapacity or disability benefits increased from 9.9 to 14.7% in Sweden and from 2.0 to 7.5 % in the United Kingdom. In the Netherlands, the main growth took place even earlier, in the 1970s. Carcillo and Grubb (2006) show that caseloads for incapacity or invalidity are now larger than those for unemployment or social assistance in most countries under review, with the exception of France and Germany.

Using the data presented here, it can be argued that faced with stricter unemployment benefit eligibility conditions or more forceful activation measures, those who cannot easily enter employment tend to claim non-employment benefits instead – thus generating a negative correlation between changes in unemployment and changes in non-employment benefits. On the other hand, it can be argued that when unemployment grows, dependency on welfare programmes is nourished by rising exclusion from the labour market. Conversely, when unemployment falls, public authorities are able to tighten gate keeping measures applying to non-employment benefits – thus generating a positive correlation between changes in unemployment and changes in non-employment benefits. However, there are studies on longitudinal data (1993–2003) showing that especially unemployed low-skilled men (50–64 years) in the UK left the labour force by claiming incapacity benefits (Clasen et al. 2004).

1.3.3 Budget effects and the balance of costs and benefits

Regarding the cost implications, activation policies are costly both in terms of administration and programme costs. Country evidence does not show major cuts in public expenditure if all benefit schemes, active labour market policies, administration expenses and additional tax measures are taken into account. Comparative data, however, show that resources spent on active and passive labour market policies in OECD countries is especially high in Denmark, the Netherlands and Germany (Fig. 28).



Source: OECD Employment Outlook 2007

Fig. 28. Public expenditure on active and passive labour market policies in percent of GDP, 2005

Only few attempts have been made at making a cost-benefit analysis of activation policies across countries. The overall conclusion in Denmark, drawn by the Danish Economic Council in 2007, is that the costs exceed the benefit by about EUR 6,800 per year per activated when including the lock-in, post-programme and motivation effects. Taking into account that increased employment improves public finances via both increased tax payments and reduced expenditures on transfers, Andersen and Svarer (2007) calculated a necessary employment increase of 3% in the Danish case. Although this has not been achieved, applying a "second best" view of the policy reforms in the 1990s, it can be said that the reforms contributed to relieving the pressure on public finances. The findings suggest that the shift in labour market policies have improved the cost-effectiveness ratio relative to past policies, but also that an issue of cost-effectiveness remains. However, a cost-benefit analysis in its standard form is not able to quantify other important issues

like the possible reduction of social costs of non-employment in terms of creating an inclusive society.

1.4 Summarising the empirical evidence

Summarising the available evidence, we can first see that there are quite robust findings across countries from microeconometric studies with regard to the short-term effectiveness of demanding elements such as mandatory participation in activation programmes, job-search monitoring or reducing maximum benefit duration. Evidence on net re-employment effects of (voluntary or mandatory) programme participation is less robust. Threat and screening effects seem to have an important impact on job-finding and benefit caseloads.

Furthermore, it seems that the compulsory element of activation might be responsible for the short-run effects whereas the treatment component of counselling and other supportive measures may account for the long-run impact of programmes. Evidence is less robust with regard to variations across particular target groups.

However, all reviewed studies fit into the strand of literature that suggests that the effectiveness of the activation programmes is driven more by the "stick" than by the "carrot" element – a general observation that, in turn, has contributed to the re-design of policy reforms in many countries.

Given displacement, substitution, deadweight, wage and fiscal effects, the macroeconomic effectiveness and efficiency of active labour market policy programmes as well as the sustainability of effects is less clear. In particular, some studies point at the fact that activating interventions based on the threat potential and demanding principle may help move benefit recipients to low-skill, low-pay and instable jobs so that they run the risk of continued partial reliance or repeated return to benefits.

There is no clear evidence that activation as such necessarily leads to lower overall benefit dependency and public expenditure. Activation, therefore, is neither cheap nor easy – and it may not be the silver bullet to ease fiscal pressures on the welfare state by increasing overall employment and reducing benefit expenditure.

However, we do not know what would have happened without activation. There may be indirect positive effects of activation on overall employment which are hard to identify. First, activation may have slowed down increases in benefit dependency. Second, activation as a credible threat tends to lower reservation wages not only of the unemployed but also of wider groups of the labour force, which can stimulate labour demand and facilitate faster matching on the labour market.

Activation policies are embedded in more encompassing labour market and social policy reforms. The interaction between activation instruments and other reform elements makes the identification and isolation of specific effects a difficult task. However, we can argue that some of the more general or universal findings from micro studies are mediated by the overall institutional framework of the labour

market – thus leading to some sort of "contingent convergence" of activation effects across countries.

Firstly, one can assume that activation benefits from a sufficiently flexible and dynamic labour market. An ample capacity of the labour market to generate labour demand, and in particular entry jobs, facilitates the labour market integration for activated people. However, there are different forms of flexibility. While integration into the labour market is the only long-term option in a system virtually without benefits (such as the US) and stimulated by in-work benefits that also have a social policy objectives, other countries induce some additional labour demand via targeted subsidies or segments of more flexible employment relationships. This goes beyond activation in terms of a narrow definition of demanding and enabling, but it helps achieve better labour market integration. On the other hand, activation itself may increase wage flexibility by inducing lower reservation wages. At the same time, it may result in wage moderation as the unemployed, but also the employed, face less attractive out-of-work options (see e.g. the current debate on low-wage jobs in Germany).

Secondly, the relative success of activation policies in social security schemes depends on the simultaneous or sequential closing of alternative escape routes so that reshuffling of non-employed from one benefit system to another is ruled out. It is counterproductive to maintain some benefit alternatives with low activation while implementing stricter activation in other schemes.

Thirdly, as more hard-to-place individuals, i.e. long-term unemployed or inactive low-skilled persons, are to be reintegrated into the labour market, the pressure towards wider wage dispersion will increase – and more low-pay or fragile jobs will result (see, in particular the experiences in the US and the UK) if the basic level of employability and skills is not sufficient to achieve higher wages and more stable jobs. Policy makers tend to stimulate labour demand and aim at stabilising jobs and earnings via wage subsidies or in-work benefits in this case. While training could be a better alternative, its effects on employability are not easily attainable in the short run.

Finally, the overall effectiveness of national activation policies and variations in performance are also due to the heterogeneity of the target groups and related objectives of activation. For example, the US welfare reform of 1996 mainly targeted the so-called welfare mothers. It set incentives to encourage the establishment of dual parent families and reduce the number of lone parents and teenage pregnancies. In contrast, German activation addresses foremost the unemployed and aims at lowering unemployment. In addition, we can observe a notable shift over time: While Denmark, the United Kingdom and the Netherlands first targeted the unemployed, they later included benefit recipients more generally (i.e. welfare and social assistance) and now extend to the inactive and disabled. The overarching goal in these countries now is to increase effective labour supply, while ending benefit receipt has become a secondary objective.

2 The welfare state perspective: Is there a "contingent convergence" of activation policies?

From the perspective of comparative welfare state research, the crucial question is whether there is a general and converging or a context-specific pattern of actual as well as potentially feasible activation strategies.

It is by now almost a commonplace among comparative analysts that activation, both as an idea and as a concrete set of policy rules and instruments, escapes easy classification, due to large national variations, different target groups, and the various systems of social security provision and labour market policy into which it is introduced. Nevertheless, there are different attempts to classify activation models. Most of them are anchored in well-known welfare state typologies, the most prominent one presented by Esping-Andersen (1990).

2.1 Different worlds of activation?

One of the first attempts at clustering national models of activation was put forward by Lødemel and Trickey in their seminal volume on the development of the balance of rights and duties in social assistance dating back to 2000. They saw two types of policy at work when trying to bring recipients of income support schemes back to work: An approach emphasising labour market attachment to be achieved (a) via a work first policy and (b) a human resource development approach. These two types of policies basically reflect the emphasis put on work first or workfare policies relative to training and skill formation.

A second attempt at developing a typology of activation regimes has been proposed by Barbier (2004). In many respects it mirrors the conceptual dualism of Lødemel and Trickey. Barbier distinguishes between a liberal regime of activation and a universalistic regime. The liberal model is associated with a liberal or residual welfare state basically providing minimum income protection and meagre insurance benefits at a rather low level where generally accepted values emphasise individualism and self-reliance of the individual. The universalistic activation regime, on the contrary, is associated with a universal welfare state and is perceived as a more balanced model for reconciling the demands of society and the demands of individuals. This implies more generous benefits and stronger emphasis on the provision of public services to further employability, i.e. active labour market policies that are in an appropriate relation with sanctioning practices. In contrast to the more punitive approach of the liberal regime, the universalistic approach is described as more reciprocal as it relies on a mutual engagement of the individual and the state. Given the stronger role of public policies, taxation and benefits, this model is seen as capable of achieving high employment without encountering the risk of significant low pay. As labour market integration starts from a higher level of benefits, there is hardly any need and room for in-work benefits.

Van Berkel and Hornemann Moller (2002) distinguish between three core dimensions of activation. Activation policies share the goal of ending benefit receipt. This is to be achieved through different elements which are present in all national activation strategies but with differing importance:

1. Activation policies set work incentives through defining a level of income protection and therefore a specific income out of work. Welfare-to-work policies emphasising this element are mostly found in the Anglo-Saxon setting with limited basic income schemes so that there is less need for specific activation measures as work incentives built into this regime are strong.
2. Activation policies are based on the principle of an appropriate balance of rights and duties, i.e. a work requirement, is introduced as a precondition for benefit receipt. Paternalistic activation approaches stressing this dimension are typically found in the continental European activation mainstream where potential negative work incentives stemming from more generous benefits are countered by strict work and job search requirements.
3. Active social policies are deemed necessary to provide citizens with the resources needed in order to achieve labour market and social integration. Active citizenship strategies of this kind are mostly found in Scandinavia.

More recently, Serrano Pascual (2007) proposed five ideal types of activation regimes that are inspired by Esping-Andersen's clustering exercise and implicitly mirror the existing activation typologies, but emphasise the status of citizens' different social rights and modes of 'managing the individual' in particular institutional activation regimes. Regarding the countries studied here, she sees the arrangement in the United Kingdom as the best example of an 'economic springboard' regime based on work incentives and demanding elements whereas the Netherlands, due to the predominant role of contracts, have many traits of a 'civic contractualism regime' and Sweden resembles the model of an 'autonomous citizens regime' that developed a full-blown infrastructure to support the individual on the move into the labour market. With its stress on the position of the individual, this typology goes less into the dimension of the overall activation framework, the outcomes and actual operation of activation policies.

These ideal types may be helpful tools to structure comparative analyses, but there is significant heterogeneity to be found in the empirical activation landscape. Therefore, one has to be aware of false and strongly simplified stereotypes. For example, the degree of de-commodification in the British welfare state is higher as the activation regime is applied to fewer benefit claimants than the current extent of activation in Germany after the Hartz reforms. Hence, the widely shared assumption of low benefit generosity in the United Kingdom is only true for unemployment insurance benefits but not for welfare or incapacity schemes, as Daniel Finn and Bernd Schulte show in this volume.

Whereas the US and the UK are quite close to the liberal pole, Denmark is often seen as the most universalistic activation regime in practice. However, the Danish activation strategy is quite far away from the Swedish one although both countries

belong to the same welfare state regime. Hence, there is heterogeneity not only between country clusters but also between countries in the same cluster.

Most other countries fit neither into the liberal nor the universalistic regime but are located somewhere in between. On the one hand, there are some "hybrid" countries that combine generous social benefits and more or less flexible labour markets, but do not fit into the universalistic and service-driven Scandinavian model such as Switzerland or the Netherlands. On the other hand, more typical conservative continental European welfare states such as France or Germany neither adopted a bold liberal activation approach nor a clear universalistic activation strategy, but operate in a different institutional context.

Furthermore, a static concept of 'frozen' European social models is at odds with the striking intensity and the comprehensive character of employment and social policy reforms in the majority of the member states of the European Union in recent decades (Hemerijck 2007). Welfare states are not 'static' and stable institutional settings but 'evolutionary' systems whose policy objectives, functions and institutions change over time, albeit slowly, due to obvious political interests and institutional obstacles.

Perhaps the most striking case of a silent change of the welfare state logic is Germany. As pointed out in the German country chapter "*Activation Policies in Germany: From Status Protection to Basic Income Support*" by Werner Eichhorst, Maria Grienberger-Zingerle and Regina Konle-Seidl, the Hartz IV law, which entered into force in January 2005, marks a critical juncture resulting in the departure from a conservative welfare state securing acquired standard of living and a move towards a more universal, Anglo-Saxon welfare state relying on means-tested welfare and securing basic needs.

Another example of an 'evolutionary' system is the Scandinavian "active society." The vision that a socially inclusive society in terms of (almost) everyone participating in the labour market, irrespective of gender, age, ethnicity, health, qualifications, family responsibilities etc. has already existed since the 1930s. The inclusive society entails that every resident is able to materialise his or her potential capacities. The idea of activation is thus deeply rooted in the normative foundation of the Scandinavian welfare state. Labour market participation is seen as salient to the individual's welfare and to the welfare of the collective by paying taxes. In order to achieve this, activation is perhaps the most important policy, as Peter Köhler, Jon Kvist and Lisbeth Pedersen point out in the chapter "*Making All Work: Modern Danish Labour Market Policies*".

The country studies united in this volume show a merger of US workfare ideas and more classical European active labour market policies. Active labour market policies and workfare were translated into something that differs from the practice in the US (see the indicative title of the Swedish country chapter by Peter Köhler, Katarina Thorén and Rickard Ulmestig: *Activation Policies in Sweden:* "*Something Old, Something New, Something Borrowed and Something Blue*"). This implies that activation is not only relief work meant to keep an eye on moral hazard among

claimants, but also an important step towards a more inclusive society by lifting qualifications: The intention of activation was to increase productivity and the mobility of the jobless while at the same time testing their availability, capability and willingness to work. We can observe major convergence in designing the set of rules and instruments. The New Deal programmes in the UK, the Dutch activation trajectories, current activation programmes in Denmark, but also "*Fördern und Fordern*" in Germany are all based on a fusion of mandatory, i.e. demanding, and enabling elements in the concrete activation measures. Hence, the widely received dichotomy developed by Lødemel and Trickey (human capital formation vs. workfare) is overridden in the concrete design of specific policies. Therefore, it is difficult to isolate compulsory and supportive elements of activation measures in empirical evaluation studies, e.g. the relative effect of counselling (supportive) and monitoring (compulsory).

The national experiences with activation policies compiled in this volume also shows that activation programmes effectively help screen the benefit recipients and differentiate between beneficiaries available for work and those not available ("shaking the tree"), but obviously they are insufficient tools for the labour market integration of weaker groups.

Convergence of activation with respect to the concrete set of rules and instruments is a "contingent" one – referring to a conceptualisation coined by Anton Hemerijck (2007). As a consequence, the observation of "contingent convergence" in activation policies implies the obsolescence of established typologies of activation styles.

2.2 Contingent convergence concerning the instruments of activation

When comparing the rules and instruments of activation we can observe, beyond national specific trajectories, significant convergence in terms of a stronger role of mandatory participation in activation programmes and stricter availability and entitlement rules. One of the most prominent examples certainly was the introduction of an "active period" in Denmark, which was gradually tightened (see the contribution by Peter Köhler, Jon Kvist and Lisbeth Pedersen in this volume). Hence, "work first" elements in terms of mandatory programme participation have become a core element of activation in systems with relatively generous benefit systems so that potential work disincentives could be countered. In many countries this also implied the "reawakening" of already existing provisions on benefit conditionality through formal restatement and actual application.

Mandatory activation is complemented by "make work pay" policies via significant in-work benefits in countries with lower regular unemployment benefits such as the UK and the US (see the study by Ockert Dupper, Christopher O'Leary and Benno Quade). However, in-work benefits have also been introduced in France (see the country chapter "*The French Strategy Against Unemployment:*

Innovative but Inconsistent" by Jean-Claude Barbier and Otto Kaufmann) and – more implicitly – in Germany's earnings disregard clauses in basic income support. In the US, in-work benefits are the major category of social spending and part of a work-based activation strategy, whereas countries with higher unemployment and social benefits rely more on mandatory participation and job search monitoring to control for moral hazard.

Integration contracts or agreements have become a widespread tool to enforce the tightening of eligibility and availability criteria so that benefit conditionality has become stricter over time (see e.g. the sequence of an ever stricter benefit regime in the United Kingdom). This holds particularly for welfare claimants and the long-term unemployed, for whom most countries now regard any generally accepted work as suitable.

Cuts in benefit levels and duration are not a universal feature of activation strategies, but there are some crucial cases, such as the shortening of the overall benefit period in Denmark or the abolition of the earnings-related unemployment assistance in Germany with Hartz IV supplemented with shorter unemployment insurance benefit duration for older workers as a prominent, but also highly contentious example. However, a recent study by the OECD (2007) highlighted the fact that a decade ago many countries started making it increasingly difficult to claim benefits, but now one in three OECD countries cut the level of benefits. Consequently, the level of net replacement rates across member states fell from 59% in 2001 to 55% in 2005. On the other hand, in some countries there are also phases of benefit expansion, e.g. in Switzerland or the Netherlands and – most recently – again in Germany. An important element of activation was the termination of re-qualification for insurance benefits via participation in active schemes ("carousel effects") and, related to that, a reduction in the maximum benefit period (see in particular the Danish, Swedish or the German experience). What we can also see is a growing tendency to restrict access to disability and early retirement schemes, and to make these "escape routes" less attractive.

Stricter eligibility and availability criteria come along with more intense monitoring and sanctioning, which is facilitated by a more individualised approach to case management. Although there is still a difference between less strict availability criteria for unemployment insurance (short-term unemployment) and welfare receipt (longer unemployment or inactivity), provisions referring to previous earnings or acquired human capital have been eroded in unemployment insurance over time. A notable example is Germany's gradual farewell to qualification safeguard clauses in unemployment insurance, as shown by Werner Eichhorst, Maria Grienberger-Zingerle and Regina Konle-Seidl.

Besides workfare elements of activation, case management also offers the opportunity to have more tailor-made individualised assistance to overcome barriers to labour market integration and gainful employment. The broad trend towards more individualised case management informed by profiling and personal interviews, however, is somewhat at odds with traditional target-group oriented active

labour market policies. What we can rather observe is a more individualised assignment to active measures and an integrated but more flexible repertoire for both unemployment insurance benefit recipients and welfare claimants. However, given the often dual responsibilities and legislative bases for both groups, there may be considerable differences both regarding the instruments available and the programmes actually used (see e.g. the situation in Denmark or Germany).

What we can see over time, however, is a gradual decline of participation and spending on expensive re-training programmes in those countries that used to have an elaborate system of publicly sponsored training (e.g. Germany or Sweden) whereas some training is now on the agenda in the British "New Deal" programmes. More recently, a new wave of subsidised work for the hard-to-place such as the "flex-jobs" in Denmark or new forms of what in principle amounts to permanent public job creation for the long-term unemployed in Germany can be observed.

Overall, notwithstanding individual countries' different trajectories in the elaboration of the policy toolset, an "activation gateway" emerges that is based on a growing role of demanding elements such as compulsory participation as well as stricter availability criteria and stronger enforcement or increased sanctioning with the duration of the out-of-work spell. This comes along with less emphasis on training and stronger reliance on either employer wage subsidies or in-work benefits, which in the case of persistent problems of access to employment lead to publicly funded employment opportunities. In some labour markets that were supposedly most regulated, activation has been complemented with additional reform elements increasing flexibility. The most explicit case is the German reform package that involved the expansion of temporary agency work, "mini jobs" and self-employment as ways to generate jobs for the activated. In a similar fashion, France relies heavily on subsidising employers who offer low-wage jobs and fixed-term subsidised employment contracts.

However, in terms of adequate treatment of jobseekers, several country chapters such as the one on Germany, but also the Swedish and the Danish one, point at downsides stemming from a two-tier model with unemployment insurance recipients on the one hand and (non-insured) welfare or social assistance beneficiaries on the other. The problem is that the availability and application of measures depends on the legal framework (insurance vs. assistance) and not on individual need and expected integration effects.

2.3 Contingent convergence across target groups of activation

As stated in the Danish country chapter, the general vision of activation is to encompass everyone. As the country studies compiled in this volume show, there is a broad tendency to expand the range of target groups subject to the principle of activation. At the same time, there are typical sequences of widening the scope of activation policies. In practice, young welfare claimants became the first to be

targeted by activation in Denmark and Sweden in the late 1970s. This was emphasised again with one of the first "new" activation policies in Denmark in 1990 and later steps such as the Swedish "youth guarantee." This is mirrored by the path of the UK with its early emphasis on the young, which was later expanded to other groups. At the very beginning of activation is the US role model (see the historical account by Ockert Dupper, Christopher O'Leary and Benno Quade in this volume).

In the 1990s, the insured unemployed became targets of activation, which was later extended to the non-insured and adult social assistance beneficiaries in a number of countries, e.g. Denmark as well as Switzerland (see the country chapter "*The Swiss Road to Activation: Legal Aspects, Implementation and Outcomes*" by Fabio Bertozzi, Giuliano Bonoli and Friso Ross). In a converging fashion, activation targeted minimum income or welfare recipients in France from the beginning (see the analysis by Jean-Claude Barbier and Otto Kaufmann), but did not so much address the recipients of unemployment insurance, which has been less incorporated into the activation paradigm in continental Europe. The same is basically true for Germany where, however, local activation and employment policies for welfare recipients before the Hartz reforms differed considerably across municipalities.

The number of persons in different types of potential and actual target groups has changed significantly over the years since 1990. In the Northern countries as well as in the United Kingdom, the Netherlands or Switzerland, there are nowadays fewer people living on traditional unemployment benefits and more people on other non-employed benefits such as disability or invalidity benefits, early retirement or sickness benefits whereas we can observe a more and more prominent role of basic income support in countries with a traditional reliance on social insurance provisions, such as Germany and France. Germany, however, is a country with little alternative escape routes. Hence, activating unemployment insurance and welfare recipients basically comprises a widely defined target group, which is to a considerable extent on disability benefits in other countries such as the Netherlands or the United Kingdom (Konle-Seidl and Lang 2006). Hence, activation policies move from combating open unemployment towards overcoming broader inactivity and non-employment.

As a consequence, these categories of benefit recipients have more recently moved into the focus of activation. In the past, disability or early retirement benefits have constituted socially accepted escape routes from the labour market, allowing for an allegedly smooth economic adjustment. As such, they were seen as "sacred cows" of the welfare state. Now they are more and more integrated in the overall activation regime. The Dutch case, analysed in-depth by Theo Koning, Markus Sichert, Els Sol and Harm van Lieshout, is an illustrative story in this respect. The country chapters clearly reveal a general trend from the short-term unemployed and persons with less severe labour market handicaps to more hard-to-place persons with longer records of benefit receipt, inactivity or more severe handicaps.

With hindsight, national activation policies aiming at integrating benefit recipients into the labour market have been expanding considerably both in scope, i.e. the range of target groups and benefit systems to be activated, and intensity in terms of demanding and enabling policy measures. Given that national activation policies are gradually developing to integrate an ever increasing share of working-age persons into the labour market, more and more exceptions for individual reasons or exemption clauses for specific target groups or benefit systems are being revoked. In that way, labour market and social integration will eventually cover more or less all working-age individuals. Creating a more inclusive labour market, however, implies a growing concern for marginalised groups with a greater distance from the labour market, who then require specific assistance to achieve sufficient employability. Credibly implementing appropriate measures for the hard-to-place is a major challenge for today's activation policies.

2.4 Contingent convergence in terms of governance

Despite different implementation strategies of activation policies in the legal system, the country chapters also show similar tendencies concerning the mode of operation of activation policies.

Despite country-specific and path-dependent variations in the administration and organisation of activation policies for different benefit claimant groups, we can observe considerable convergence of organisational and managerial forms. In most countries there have been steps towards co-ordinated decentralisation within the administration of activation in the insurance tier, but also in the relation between federal governments and the municipalities in countries with a longstanding communal responsibility for welfare claimants. These reforms have introduced new ways of steering and running public institutions and fundamentally reshaped relations between different actors.

At the heart of this general redefinition of relations between actors are the concepts of "management by objectives" and "steering by outcomes," which are the foundations for more contractual relationships not only between the individual and the state, but also between different levels of government and between public entities and private or privatised service providers. In the United Kingdom, the responsible ministry steers "JobCentrePlus" directly by means of Public Service Agreements. The local entities should achieve agreed objectives. The success is measured and valued according to the achievement of these objectives. The JobCentrePlus in turn manage the activation measures with external partners by means of contracts. Similar contractual arrangements between a central actor (principal) and regional or local public entities are to be found in most countries under scrutiny. The contractual relation between different levels of government is most advanced in Switzerland and represented by the block grant system in the US welfare system. Contractual relations also govern the relations between public and private actors. Involving private actors as service providers via contracting-out is most important and comprehensive in the US and the Netherlands, and to a lesser extent in the United

Kingdom (Employment Zones), Germany (e.g. training and placement vouchers), Denmark and France. Despite the fact that this dimension of activation governance is still characterised by some divergence across countries, we can observe converging trends.

Associated with contractual governance is a stronger emphasis on effectiveness and efficiency, performance targets, monitoring and fiscal incentives. This is more easily implemented within public employment service, most prominently and transparently within unemployment insurance in Switzerland, the Netherlands, but also in Germany. Less stringent governance and greater heterogeneity in activation approaches and implementation are still found in municipal activation of social assistance recipients in Sweden. However, in countries with a strong tradition of municipal welfare governance like Denmark, Germany, Switzerland or the Netherlands, a kind of "centralised decentralisation" has been implemented. There is room for manoeuvre at the local level implementing activation policies for welfare claimants, but local units have to comply with the general rules and goals set at the central level.

The management of Dutch municipal welfare activation policies, for example, relies on strong fiscal incentives to implement efficient policies – in accordance with the US model of block grants. The shift from rule-driven to agency-type organisations governed by performance targets is complemented by a reduction of direct political influence of some actors. In particular, we can observe a marked weakening of the role of the social partners and tripartite governance in the Netherlands or Germany, but also more recently in Denmark.

Another typical development in current activation policies is an increased effort to overcome long-standing institutional and administrative fragmentations between administrations responsible for insurance and assistance benefits as well as between active and passive measures which have to be delivered in a co-ordinated way in an activation environment. This has led to the creation of "one-stop shops" and single gateways with the British JobCentrePlus as a prime example. By merging different agencies and creating single points of contact ("guichet unique"), the French legislator also aims at improving the effectiveness of activation. Activation can only work if frictional loss is minimised. Thus, transparency indirectly contributes to an improvement of activation because it allows a reasonable implementation.

However, this integration is not complete in most countries. Dual responsibilities for insurance benefit and welfare recipients are still an issue in most countries, especially in those with a long-standing tradition of municipal social assistance or welfare policies. In Germany, the fragmented administrative structure (BA, ARGEs and opting municipalities) is highly problematic and probably not sustainable. In Switzerland, due to the concept of the social security system, there are extensive frictions between the respective branches of social security. These frictions result in shuffling funds from one system to another and interfere with the efficiency of activation measures. Hiding unemployment by transferring recipients into other branches of social security is a serious problem. This is particularly true

for the federal unemployment insurance and the invalidity insurance. There is a lack of sufficient coordination between the respective institutions. In addition, the tightening of the federal insurance law has resulted in an increase of cases and costs in social assistance and an increase of the so-called "working poor."

From an organisational view, welfare or social assistance still is a distinct second tier of activation, which may lead to a certain underrating of employability and benefits from supportive measures like training for this target groups (e.g. in Switzerland). This segmentation of beneficiaries works to the detriment of the most vulnerable groups. The major challenge here is to overcome this institutional barrier and ensure that demanding and enabling measures follow a need logic and not foremost an institutional logic (Konle-Seidl, 2008).

2.5 Contingent convergence in activation: Variations on a common theme

The evidence presented by the contributions to this volume points at a 'contingent convergence' of activation strategies and instruments over time and across countries. What we can see, in particular, is the emergence of a flexible and broadly similar repertoire of activation measures in all countries under scrutiny. Reform sequences, however, have been more protracted in some countries (e.g. Denmark) than in others where "big bang" reforms have been implemented during a political window of opportunity within a very short period of time (e.g. Hartz IV in Germany). This, in a way, can be explained by the capacities of national policy-making institutions to implement and modify activation policies. Core factors are the integration or fragmentation of decision-making and administrative responsibilities, but also the extent to which the shift towards activation can build upon the existing institutional legacy or implies a more or less fundamental break with the past. Economic and fiscal crisis has often been the major trigger for activation reform whereas cross-country diffusion of concepts and instruments and supranational discourse directed national policy-making via a contingent convergence.

There is less evidence on fundamentally different approaches to activation than in the past. The human capital oriented strategies are less pronounced in Scandinavian countries these days, and the work-first strategies of Anglo-Saxon countries are complemented by skills policies. Reform steps in Denmark over more than a decade, as well as most recently in Sweden, are using more workfare elements such as mandatory programme participation. Within the German activation strategy after the Hartz reforms, or after the Dutch 2004 welfare reform, demanding elements have become stronger so that growing emphasis is put on taking up paid work and enforcing individual responsibilities.

The countries compared in this volume now rather have more things in common than there is policy divergence. Established dualisms are not that clear any more. This is also the outcome of policy learning processes inspired by a cross-border diffusion of objectives, instruments and empirical results on different policy options.

The Anglo-Saxon and some Scandinavian countries were prominent early adopters of activation policies, but more recently the Continental European countries have embarked on a similar path. National variation is still present as similar concepts are implemented in a specific national policy environment.

Motivated by empirical evaluation results as well as by high spending for activation programmes and critical labour supply problems, a clear shift to work first activation can be observed. More liberal welfare states, in turn, are increasingly aware of the need to improve the skills levels of the unemployed or inactive workforce. According to the general objective not to fund unemployment but employment, the role of subsidised employment either via wage subsidies paid to the employer or in-work benefits in favour of low-wage earners has become more prominent over time. Subsidising low-wage jobs is perceived as a functional and readily available alternative to training, which generates beneficial effects only in the medium or long run. This problem becomes even more pronounced as the labour market integration of hard-to-place benefit recipients is on the agenda. While training may help achieve more sustainable employment for this group, current policy making still puts emphasis on complementary and targeted public employment opportunities or direct public job creation. Publicly sponsored training is overly restricted in the case of low-skilled and welfare recipients in Denmark and Germany.

However, more recent evidence shows that "work first" and subsidisation policies may not be sufficient to achieve sustainable labour market careers. This is why the United Kingdom now intensifies skills formation while maintaining the system of in-work benefits. In that respect, activation policies continue to be characterised by learning from past policies and a continuous development involving a redefinition of target groups and instruments. Activation is also marked by learning from policy failures or disappointments. The current discourse is more aware of the fact that the major challenge of activation is not necessarily the fastest integration into the labour market but identifying the best way to enter and remain in gainful employment and achieve some upward mobility.

3 Outlook: The future of activation

Since the early 1990s, activation has become a mainstream element of welfare state and labour market reforms. After more than a decade of policy formulation, implementation and recalibration, an interim overview as the one provided in this volume shows substantial "contingent convergence" of policy objectives, target groups, activation measures, governance models, but also findings from empirical research into the outcomes of activation. In the long run, and with reasonable simplification, one can argue that

1. Activation policies increasingly go beyond reducing unemployment towards mobilising additional labour supply of inactive members of the labour force; activation increasingly targets not only the unemployed and the recipients of welfare or social assistance, but also tackles benefit systems that used to be

important escape routes from the labour market such as early retirement, disability and sickness schemes so that fewer and fewer groups of the working-age population are exempted from availability for work

2. There is considerable convergence towards stronger emphasis of work first policies in countries with a long standing tradition of human capital oriented labour market policies while traditional workfare approaches are increasingly supplemented with training initiatives – and this is not only true with respect to the relative role of these measures but also regarding the design of activation trajectories which are characterised by the intimate linking of demanding and enabling elements
3. Furthermore, we observe increasingly convergent governance models based on management by objectives, contractual relationships and performance-based governments between levels of government but also between public and private entities
4. With regard to the outcomes of activation, there is growing evidence that work first policies help move people off benefits but are insufficient to achieve sustainable employment, in particular when it comes to activation and integration of inactive, long-term benefit recipients and the low-skilled; workfare and work first help counter moral hazard by benefit recipient relatively close to the labour market but are inappropriate for the labour market integration of more vulnerable groups; it is increasingly clear that a significant share of low-paid and temporary workers find it difficult to climb the job ladder and/or experience frequent spells out of work, even as others successfully move into stable and better paying jobs; hence, work first is a necessary, but not sufficient element of activation policies targeting the hard-to-place
5. Finally, there is growing awareness that activation is neither a panacea or a quick fix to inactivity and unemployment nor a measure to cut welfare state expenditure.

Much of this contingent convergence is best understood as a consequence of sequences of national policy learning, adjustment and recalibration inspired by and reacting to cross-border diffusion of policy objectives, instruments and governance models which is facilitated by international and supranational policy discourse. This also means that widely received typologies of activation policies distinguishing between work first and human capital strategies no longer hold. The added value of current activation policies lies just in the combination of both elements. Active labour market policies, modelled after the Swedish setup, were traditionally used in many countries to cope with sectoral shifts and business cycle variations by offering socially accepted temporary or permanent exit from the labour market and human capital adjustment. As a response to perceived downsides of this model, activation broke with the past and moved towards a US-style work first or workfare policy and intermediate policy combinations. More recently, a new emphasis is put on skills policies. This is partly a consequence of more than 10 years of experience with welfare-to-work policies in the UK and US, which point at a considerable risk that low pay and/or low job stability may lead to recurrent benefit receipt.

Creating a more inclusive labour market, therefore, implies a growing concern for marginalised groups with a greater distance from the labour market, who then require specific assistance to achieve sufficient employability. Designing and implementing appropriate measures for the hard-to-place is a major challenge for today's activation policies. Policies to further employability, however, have to be embedded in a consistent framework of rights and duties. Hence, training and assistances are necessary complements to work first measures as demanding policies do not suffice to stabilise labour market integration of the hard-to-place.

Activation policies have proven to be learning systems in the past. Hence, when moving towards an even more inclusive definition of activation, policy tools have to be adjusted and redefined in a flexible and appropriate way. Since activation policies in principle already rely on a combination of demanding elements and tailored assistance, they should build closer bridges with the education and vocational training system. In the medium and long run, activation policies will probably perform best if they adopt a wider perspective and take into account the need for basic skills acquisition and continuous training as a prerequisite for employability without encountering the risk of long-term benefit dependency or unstable low skill/low pay jobs. To the extent that human capital investments are strengthened, the need for subsidised employment and in-work benefit will be reduced.

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Activation from a Legal Point of View: Concluding Remarks

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Legislative and administrative changes introducing activation potentially affect several social and labour market policies and many of their dimensions: rules of eligibility and entitlements, behavioural conditions, sanctions, the range of activation measures available to the implementing agent, the organisation, competences and resources of local welfare offices and job centres, the distribution of competences between different levels of government, and, finally, the structure of funding.

In the following, the investigated countries are compared from the legal point of view. At first, on the basis of the country reports, the general legal framework in the investigated countries is addressed. After that, samples from several countries will exemplify certain peculiarities in the realm of legal implementation. Due to the very different design of activation in the countries under scrutiny, direct comparability is not always feasible but it is definitely possible to identify some common tendencies.

1 The legal framework

In international and supranational law and in most of the national legislations activation is not a genuine legal term. But law and especially employment policy rules influence the existence, the mode of operation and even the definition of activation.

1.1 The term "activation"

It is important to know that the term "activation" is used as a translation of several national terms, which covers various situations and measures in the field of labour market (see also below). Each term used in the different legal systems has its own legal and empiric signification. As has been pointed out, from a legal point of view, "activation" cannot be precisely defined (see Introduction), but it is possible to precisely describe the methods and fields of action of the activation measures as they exist in the different countries.

In Germany, France and Switzerland, the notion of activation is neither a legal nor a legally defined term. Dutch social law uses the term "activation" quite often, but there is no consistent legal definition either. In Sweden, state programmes in the field of labour law are often called "Active Labour Market Programs" because the measures aim to a great deal at the activation of unemployed. But the term is not used in law as a legal definition or an indefinite legal term. Under British law activation means a bundle of measures to bring the unemployed back into work. In the United States, the comprehension of the term activation does not only oblige the jobseekers and the needy to do everything to get work but activation addresses the states as well.

Nevertheless, in Germany the term appears sometimes in the explanatory memorandum of the bills, most prominently in the labour market reform laid down in the "Job Aqtiv" Act of 2003. The legislator's idea is that activation begins primarily with the individual's behaviour. The slogan "enabling and demanding" (*Fördern und Fordern*) describes the means for reintegration very well. Measures for activation range from labour market programmes to sanctions. In the second place, activation addresses the state, too, as the reform of the Federal Employment Agency demonstrates. The implementation of activation of the unemployed is a task mainly comprised and executed in social law. Indirectly, the Civil Code, the Law on Unfair Dismissal and the Constitution play a significant role.

The relevant norms of French law mention the term activation, but they do it in a completely different context (e.g. activation of financing). In France, a legal concept of activation does not exist either. In the 1980s and 1990s, the French state tried to find solutions for the challenge of mass unemployment. There is a multitude of activating measures in different fields of law that are not defined as such by the legislator.

In Denmark, activation of unemployed within the scope of labour market policy is the overall topic for a multitude of legal requirements and extra-legal activities. However, it is a central element of Danish labour market policy that the term "activation" has its own legal quality insofar as the unemployed is both entitled to activation but also has the duty to participate in activation programmes after a certain period of unemployment. Activation is not linked with an entitlement to a specific measure but at least to an activity within a bundle of measures. Thus, in this sense activation is a legal category.

In Sweden, the situation is similar. The terms used are "activation programmes" and "activating support."

Until the 1980s, in the Netherlands the function of unemployment insurance was seen as a safeguard against the loss of income. During the labour market reforms of the 1990s, this understanding changed towards an activation-related function of social security. The underlying philosophy emphasises the individual's self-responsibility. With regard to social insurance this self-responsibility results in entitlements and obligations in conjunction with activation and support. Dutch law distinguishes between "social activation" and "activation for work." In this context, social activation is the first step for activation for work. If necessary, it enables the unemployed to take up work at all.

In a comparative view activation thus is in reality a broad variety of concepts and of means, depending on the view of the legislator towards society. Moreover, activation is not only a matter of the law governing individual rights and entitlements, but also a matter of legal rules that regulate organisation. As the reforms in the US and Germany show, activation also addresses the state – the organisation of activation is a fundamental part of its realisation. However, these organisational matters (e.g. structure of authorities or agencies) are also subject to law, as the structure and processes of the authorities responsible for "activating" the jobless

determine the outcome of activation measures to a great extent and are executed through administrative law. In the end, activation must be supported by a suitable organisational structure to work properly, and thus any legal approach must also take procedural and structural matters into account.

1.2 Constitutional parameters

Where it exists, constitutional law governs the whole national law system; but international and supranational law may receive primacy (see Introduction). In all the countries compared, social rights are constitutionally recognised but not designed as individual entitlements. The constitutions set only programmatic guidelines that judges have to concretise and substantiate by case law.

The German Basic Law does not establish any individual entitlements to social benefits. It only determines that the Federal Republic is a liberal and social state under the rule of law. The principle of a social state does not by itself grant individual rights but instead obliges the state to provide a minimum protection of its citizens according to the paramount idea of human dignity. Within a very broad scope, it is the legislator's task to specify the entitlements. The fundamental rights in their function as defensive rights nevertheless play an important role when creating and implementing activation measures. The protection of freedom of occupational choice and the protection of property might be constitutional obstacles for the specific development of activation measures.

The constitution of the French republic indicates that France is a social republic. The preamble of 1946 has the same legal rank as the constitution. It is more precise, but does not go into details concerning specific prerequisites or the design of particular policies. The preamble stipulates "social security for everybody" and the right and obligation to take up work. This does not oblige the legislator or the state, respectively, to create or offer work places, but at least governmental institutions are liable to set the legislative framework for guaranteeing the chance to take up a remunerated activity. Legal rules below constitutional law play a major role for activation because they develop the particular rights and obligations within the constitutional framework. In addition, case law is of great importance for the setup of social security.

The Danish constitution makes a relatively precise statement in the field of labour market and social assistance concerning both employment and securing a minimum level of existence. In this country, it was also the legislator that passed the relevant rules even though collective bargaining influences labour law significantly. This has continued in legislation since the 1990s, when the labour market reforms started. The social partners participated several times in roundtable discussions during the political process. The legislator set a frame only, in particular in the reforms of the late 1990s. The task to fill out this frame shifted more and more to the regional administrative institutions. In this context, activation is the

co-action between legal rules that apply nationwide and bylaws or ordinances set by the regional labour market commissions.

The Swedish constitution makes a statement with regard to the labour market and social relief. But this is also only a programmatic postulate addressed at the legislator. The Swedish constitution does not grant any individual entitlement whatsoever. The legislator has to transform these programmatic ideas of the constitution into legal rules in order to establish entitlements and obligations. Similar to Danish labour law, this is mainly due to the pronounced role of collective bargaining.

The Dutch constitution postulates the creation of an economic and social order. This postulate is addressed at the legislator. Even norms that are regarded as individual entitlements are of practical relevance only if the legislator completely fails to fulfil this constitutional postulate.

In Switzerland, neither the applicable labour market rules nor the Federal Constitution nor the constitutions of the cantons mention the term activation. However, if activation is regarded as an accomplishment of integration that the state expects from its citizens in the scope of their self-responsibility, then we can find allusions to activation in the Federal Constitution, the constitutions of the cantons and the Unemployment and Insolvency Act.

Since in the United Kingdom – unlike most other European countries – a written constitution does not exist, scope and target groups as well as legal requirements for activation act in pursuance with legal norms of very different ranking. The superior rank lies with the Acts of Parliament, followed by the Human Rights Act and regulations of the ministers. Decisions of Social Security Commissioners and interpreting case law are of a certain importance. The British legislator is quite free in formulating and implementing activation policy in regulations because there is no constitutional review.

The Federal constitution of the United States does not tackle the issue of social security. Consequently, there are no individual constitutional rights in this field. But the constitution does not prevent the legislator from implementing social security programmes. More precise are the respective constitutions of some states that make statements concerning social protection. However, they always address the legislator and do not in any way grant individual entitlements.

1.3 Other sources of law

Besides constitutional law and within the boundaries it sets there are legal norms of lower rank, which are also categorised by a hierarchical order. Although legislation (and legal norms based on it) play an important role in all presented countries, there are differences in the importance of specific rule sets in the field of activation within the scope of national laws. In some countries legislation is the most important source of law for activation, whereas in other countries the contract law on the

basis of private or labour law is of greater importance for the realisation of activation in a general view.

In Germany, the Social Code Books II, III and XII are of particular importance because these rules regulate the entire relationship between citizen and state concerning social protection and thus activation, too. In addition, case law of the Federal Social Court and the Federal Constitutional Court are of great relevance as far as these courts interpret generally binding undefined legal notions (e.g. "reasonable cause"). Since all social benefit systems concerning activation grant individual entitlements, they are subject to judicial review.

In France, the implementation of activation of unemployed and needy persons is a task that is executed in various fields of law. This extends from civil and labour law, tax law and social security law to family allowances law. This means that in France activation is embodied in a very broad legal scope and framework.

The Dutch legislator has a broad scope of opportunities to fulfil its task. International law is of particular importance because in the Netherlands acts of parliament are bound to the constitutional law but courts cannot review their constitutionality. This is not true for the conformity of rules with EU law and other international statutes. In this case, courts can review the conformity of rules with these norms. The rights fixed in the European Declaration of Human Rights and the ILO Conventions play a particular role. They might work as an obstacle in the legislative process since courts have the power to check completely their observance. The most important sources of law with regard to activation are the Unemployment Insurance Law, the Work and Welfare Act and the Act on Employment and Income Depending on Work Capacity (WIA Act).

In Switzerland, apart from the Federal constitution and the constitutions of the cantons, the rules on unemployment and insolvency insurance and the respective regulations, the invalidity insurance and the case law of the Federal Insurance Court are of peculiar importance. In addition, activation plays a role in the measures based on social assistance law of the cantons. The influence of the cantons has formed to a great extent the law on social assistance.

In Sweden and Denmark, a homogeneous legislation in the sense of a Labour Code or Social Code does not exist. The relevant rules are distributed among procedural law, EU law, collective bargaining on national, regional and local level, individual labour contracts, case law and customary law. This way of creation of law rules – by collective bargaining – is a characteristic of these countries. Projects in pursuit of labour market policy goals are joint activities undertaken by the local employment agencies and other labour market actors.

According to the Personal Responsibility and Work Opportunity Act (PRWOA) of 1996, the US states are obliged to achieve the fixed quotas in labour participation, to provide for supporting means (e.g. day care for children) and to secure the interest of public administration in integrating benefit recipients by offering

adequate measures. In this sense, activation does not only focus on job seekers but also has a view on the state as partner. However, legal rules do not use or define the term activation. For this reason, the individual's legal positions and the activation measures are regulated by federal rules or rules on state level. Often the federal law sets the legislative framework that the states can or must complete with their own regulations. Important regulations are the Social Security Act (SSA) and the Personal Responsibility and Work Opportunity Act (PRWORA). The Temporary Assistance for Needy Families (TANF) and the Food Stamp Program (FSP) are meant for temporary intervention only. The Earned Income Tax Credit (EITC) for employees, the Work Opportunity Tax Credit (WOTC) for employers and the Federal Unemployment Tax Act (FUTA) follow a tax-related approach. Also worth mentioning are the Workforce Investment Act (WIA), the Unemployment Compensation (UC) and the Fair Labor Standards Act (FLSA). Concerning social assistance, it has to be observed that the rules do not grant an individual entitlement that can be claimed in court.

1.4 Enforcement of legal provisions and sanctions

Financial support in Sweden as well as in Denmark is only granted if all possibilities of re-integration into the labour market are exhausted. However, the job seeker has an entitlement on comprehensive help when searching a job. This "*quid pro quo*" doctrine is the core element of activation in both countries. In Denmark, the local job centre examines the unemployed person's readiness for work. If an unemployed person does not accept a reasonable work offer or if there are doubts on his or her readiness for work, the benefits may be suspended until the readiness for work is proven. Besides, in Sweden a positive incentive is set by means of a special benefit, the "activity support," which is additional cash benefit that a job seeker receives only if he or she participates in activating measures.

In line with the countries under scrutiny, German law knows individualisation of activation in the form of integration contracts. They are of practical relevance for job seekers who get tax funded social benefits. The obligation to work or to look for work is not enforceable. It is merely a moral duty. Nevertheless, despite the fact that the obligation is not enforceable, the person concerned has to bear the consequences (e.g. cancellation of benefits).

In France, the legislator has chosen two ways. First, the partners in the labour market make a contract with the jobseeker ("*contrat d'insertion*") that may under certain conditions result in increased benefits and that regulates in detail rights and obligations of the unemployed. Second, in France there is a trend to implement a totally new form of work contract that will bring about decisive changes in the termination of the employment relationship and will allow a kind of flexibility unknown until now. A new labour contract should be abolished by amicable arrangement between the employer and the employee. This measure is embedded

in contract law so that the individualisation is obvious. Thus it is evident that especially labour law is one of the most important aspects of employment policies.

In Great Britain, activation takes place through individual contracts with job-seekers where the rights and obligations are fixed. After a certain unemployment period the job seeker has to take part in a so-called New Deal programme. This means a mandatory participation in labour market programmes linked with an intense individual mentoring. Furthermore, in the local job centre an individual contact person is assigned who examines at regular intervals the readiness for work and the progress in work seeking through work-focused interviews.

In the Netherlands, flexible sanctions are one characteristic of individualisation. Other characteristics are the provision of supporting measures according to individual needs or the development of rights and obligations with regards to the needs of re-integration. However, there is no individual entitlement to integration in welfare as the municipalities can decide who will be activated.

In the United States, in the field of social assistance and unemployment insurance the beneficiary has a comprehensive obligation to participate in activating measures. In the first place, the legislator does not take the individual into account but the regulations of each single state. It is mandatory that a social assistance programme provide for such obligations. This is also an expression of the strict binding of the state to the objectives of activation; the state itself is the addressee.

The infringement of eligibility rules and activation requirements draws sanctioning in all countries. In Germany, sanctions play a role for activation both in the means-tested basic benefit system and in the unemployment insurance system. In the insurance system the benefit may be suspended completely for a certain period (off-time) whereas in the basic benefit system benefits may be reduced only for a maximum of 60%. However, for persons under age 25 a full suspension is possible.

In France sanctions play a role as means of activation both in the basic benefit system and in the insurance system. Sanctions range from partial or complete loss of benefits to deregistration of the unemployed. Sanctions are also part of the British “welfare to work” activation strategy. They are extremely complex and therefore not understandable for many unemployed. The caseworkers’ inconsistent practice of applying sanctions raises a lot of conflicts. In the Netherlands, sanctions are characterised by a special flexibility because the municipalities and local labour market partners themselves can stipulate general regulations on the one hand but can also react individually by imposing sanctions. In Switzerland sanctions are used in unemployment insurance and social assistance. Depending on the gravity of the misconduct, it is possible to reduce benefits for several days or indefinitely. By contrast, in the invalidity insurance cash benefits must not be reduced even if activation measures are refused. With respect to benefit reductions, the

principle of reasonable means according to international law (ILO) plays a particular role. In the United States, sanctions play a minor role in contrast to activating aspects and the strict controls of access and sojourn, although general law permits them.

1.5 Control of benefit access and sojourn time

In Sweden there is not a strict access control to benefit claim but a particularly strict control of sojourn time. Apart from reduction of benefits, the means is the reasonableness of work being offered. The modest protection of previous profession when choosing work opportunities was abandoned recently in favour of an "every work is reasonable" concept. Under previous law, the unemployed were allowed to restrict the search for work to their former profession and habitual surroundings for the first hundred days of unemployment.

In Denmark access to the system of unemployment benefits is only granted if unemployment had occurred through no fault of one's own. In addition, the "carousel effect" has been ceased. Formerly, new entitlements were acquired when participating in labour market programmes. Now, the restriction to regular work as the only activity to renew entitlements has the effect of an access control. The strict link to a participation in labour market measures after 2 years of drawing benefits at the latest is also a control of sojourn in the system.

In Germany, in the course of the labour market reforms the prerequisites for access to social security benefits became rather strict (e.g. restricted definition of reasonable work, reduction of benefits, shortening of eligible periods for acquiring an entitlement etc.). Cost reduction is not the only purpose. The reduction of the maximum entitlement period from 32 to 18 months followed the same idea. It should be an incentive for taking up work earlier and for achieving cost reduction. In general, a shift from a "status quo"-oriented insurance system towards an activating need-oriented basic protection can be observed.

In France, activation is achieved by means of a strict control of access to social security. Here, it has to be distinguished between non-contributory systems for the needy and contributory insurance systems, i.e. the insurances branches which attribute social benefits on the basis of former payment of social contributions. But job seekers who are not entitled to such social benefits may have access to activation measures with the objective to get a job, especially by special contracts, i.e. "contrats aidés."

Recently, according to the principle of flexibility or differentiation, the idea of activating requirements for access and entitlement in the field of unemployment insurance has been established in the Netherlands. Differentiated requirements for access and a graduated reduction of benefits shall urge the persons concerned to intensify their efforts to get into work. Differentiated graduations are also found in

the policies of reintegration and sanctions stipulated in local ordinances. The benefit is flexibly adjusted to behaviour according to the newly stipulated obligation to look for and take up any generally accepted work.

In Swiss unemployment insurance, the benefit rate was reduced from 80 to 70% of the insured income. In addition, the term "reasonable employment" was tightened. Adaptations also happened in social assistance law. Under certain conditions the replacement rate in force before 2005 may be granted. This is dependent on the participation in labour market programmes.

In the United States, the access control and the control of sojourn is very strict with regards to the unemployment insurance. Concerning social assistance benefits, the rule that benefits are paid up to a maximum of 60 months during the whole lifetime is even more rigorous. US activation addresses in a holistic manner all entities concerned, i.e. the job seekers and their families, the employers and, last but not least, the state itself. The high degree of indirect promotion (e.g. by minimum wages, premiums for jobs and tax reduction both for employers and employees) for low paid jobs is remarkable. US labour market policy often comprehends "financial incentives" as the better way for activation. The practice of sanctions underlines this idea.

To summarise we can say that in all countries activation addresses the individual, and his or her obligations in terms of self-responsible search for work are particularly emphasised. Regarding the question whether activation also addresses the state, the countries have found very different solutions. However, the concept of "mutual obligation" is a crucial question for the concept of activation and its success. It can be observed that the relevant rules for activation are distributed over a broad variety of legal norms. From a legal perspective, this lack of transparency also affects implementation. In general, the research shows that activation neither exists as a legal construct nor as a uniform strategy – a holistic concept comprising people in different personal and legal situations does not seem to be feasible anywhere.

2 The comparative view

The following explications concern essentially some aspects of application of the law rules. As already pointed out above, the specific national coverage of what is concerned by the sphere of activation and the specific national methods and application rules show that "activation" is a broad field.

2.1 The legal assessment of "activation"

In all countries activation is a new instrument. It does not follow the traditional pattern of granting cash benefits only. Cash benefits are clearly defined in prerequisites and amounts. This makes it very easy for lawyers to get along with it: They know

what to ask for. But the country reports show that there is nowhere a clear legal definition of the term activation. This makes it very difficult to qualify in legal terms what activation really means. It is understood that activation should bring the unemployed back into the labour market and that activation is the means to achieve this objective. The laws and regulations on activation offer a variety of activation measures and they differ from country to country. Some countries stress in-work benefits, i.e. the complementation of lower incomes with benefits (e.g. the UK and the US), others emphasise mandatory participation in qualification measures (e.g. Denmark and Germany) but in the meantime the differences between the models have partly vanished and a "contingent convergence" of activation policies can be observed (see in detail the chapter below). As a consequence, the differences in legal regulations diminish as well. Of course, the laws and regulations differ in details because legal traditions, competences and procedural specifications have to be observed. But the general legal guidelines are not so divergent. This is not astonishing as this development towards common principles can be observed in other fields of social security as well (e.g. old age pensions). This is true at least on the European level where the "Open Method of Coordination (OMC)" was implemented. The OMC has the purpose to compare social policies and the pertinent legal rules. The striking result is that there is not so much divergence between the legal systems as one might presume. Social security law is – in contrast to civil law – less dogmatic. Social security law, of which activation is a part, is a "technical" law meaning that it has a strong link to bureaucratic administration. Unlike civil law, it does not have such a long legal tradition and it aims at eliminating certain social problems, in the case of activation the reduction of unemployment. The possible legal solutions are restricted by political decisions and above all by financial means and thus not so manifold. So we can find a lot of common legal approaches concerning activation.

Lawyers usually think in the categories of rights and obligations. In general, rights and obligations are precisely defined and can be claimed or checked in court. From the legal point of view, it is not so interesting to know how and by what means a person is activated. Thus, the legal discussion on activation is by far not as intense as it is in the political or economic debate. If lawyers discuss activation at all, they concentrate on specific subjects, such as the reasonableness of sanctions, the minimum level of existence or the refusal of an entitlement. The main task for lawyers is to check the proper application of the law and the respective regulations. It is not the lawyers' task to find out whether an activating measure is efficient or not, but to control the administration and to safeguard the best interests of their clients. Strictly speaking, lawyers are successful if their clients get more money, achieve a further entitlement or can repel an imposed sanction. Reintegration into the labour market cannot be achieved by a lawyer with a legal claim in court.

As a result, it can be said that activation is not qualified as a precise legal term. It is a kind of a general programme that is to be realised via several legal instruments.

2.2 Constitutional constraints

In all countries, the constitution – as far as a constitution exists, which is not the case in the UK – does not prevent the legislator from implementing activation measures. The legislator has a broad scope of legislative options to make activation work. The crucial question is the minimum level of existence. It is common sense that this is not only to prevent people from starving but also to allow them a life in dignity. Thus, the legal discussion focuses on the question how this minimum existence level is to be defined and how much money should be given to the jobseekers. Even the question of the minimum level of existence is a political decision rather than a legal debate. Administration and courts have hardly any legal entitlement to change an amount fixed by the legislator. An example is Germany, where various lawsuits to raise the basic amount failed. Other countries, like the US, have no fixed minimum at all. The TANF is restricted to a maximum entitlement of 5 years during lifetime. If these 5 years are exhausted, people have to rely on basic food stamp programs etc. In the Netherlands, the constitution seems to have less impact on activation because legislation cannot be reviewed on grounds of constitutional issuers. In this case, international norms might influence the legal practice more than in other countries with a strong constitutional jurisdiction (e.g. Germany) since international and supranational norms have to be taken into account in any case before courts.

2.3 The complexity of legal norms

All countries show a complexity of legal norms concerning activation. The missing legal concept of activation makes it difficult for legal experts to find an underlying dogmatic structure, i.e. a system that explains how the different rules and regulations are linked to each other and how they fit in the general context of legislation. It is not always clear what the objective of activation really is and why a specific measure is implemented or repealed. In almost all countries, laws and regulations change frequently with respect to target groups and measures. Activation is regulated by a rather non-transparent conglomerate of legal norms on national, regional or local levels. As many less educated jobseekers are unfamiliar with bureaucratic processes, the complicated legal norms prevent them from knowing and claiming their rights. Since activation measures deeply intrude in the life of the jobseekers, who are generally not the better-offs in society, they should at least have a chance to exercise their legal rights. In some countries (e.g. UK and US), the unemployed seem to have only a limited possibility to achieve a review of the administrative procedure. In Germany, there is a relatively complex procedure to check administrative decisions. Under certain conditions, unemployed may claim for financial support (legal aid) to cover the costs, but this requires some additional paperwork beforehand.

Furthermore, activation is either regulated in social law or in administrative law. Both fields of law are in general not very popular among practicing barristers

since norms are very technical and complicated. Last but not least, and this is true for all countries, for a practicing barrister it is financially not very attractive – if not to say a financial loss – to defend the interests of an unemployed, even if they get legal aid from the state. Fees are low, payments insecure and the workload for a case is comparatively high. Often, jobseekers do not have the courage to see a lawyer even if they think that they have an entitlement to additional money or to a certain activation measure. Sometimes they feel that they are at the end of the line in society. Many of them do not fully understand the official papers and rely on their case manager at the job centre to tell them what to do next. Normally, unemployed are not the clientele to go to the courts unless if they can avoid it. It is true that in Germany, for instance, after the labour market reforms the number of cases before courts has increased dramatically but almost all of them deal with individual financial matters, i.e. wrong calculation of benefits, denial of certain benefits and the liquidation of funds and assets etc. Frequently, the unemployed file the lawsuit with the support of a self-help group or the trade union. However, this support does not only aim at defending the individual rights of the unemployed. For self-help groups and trade unions the claims are a tool to influence the political debate and to improve the legal situation of the jobseekers in general.

A new legal issue is the idea of a mutual relationship between the state or the respective institution and the jobseeker (e.g. Netherlands, UK, France, Germany). Up to now it is quite unclear how to legally qualify this form of cooperation. At first glance, it seems obvious that it could be a kind of contract between the institution and the jobseeker. Sometimes (e.g. France, Germany) it is explicitly defined as a contract. However, in legal terms a contract suggests that the partners have a choice with whom they negotiate and what the bargain is. Concerning activation, legal experts would argue that there is not much to bargain. If the jobseeker complies with the requirements, the relevant institution is obliged to offer an activation measure, e.g. vocational training. On the other hand, the jobseeker has to do everything to reintegrate into the labour market. The only issue to talk about is how to achieve this objective effectively. Many people regard activation predominantly a means to change the behaviour of the jobseeker. However, this concept and objective of activation might be a model in theoretical economic approach, but it is not very helpful for legal purposes. First of all, it should not be the role of social security and labour law to change the behaviour of people. The change of behaviour as a way to respect generally accepted rules is rather the task of penal law; sanctions are provided for administrative offences. The idea of changing peoples' behaviour should not be confounded with imposing sanctions in case of benefit abuse. In the past, it was always possible to sanction the often-quoted abuse of social benefits. This is not a new idea of activation. But even if one accepts that certain pressure on beneficiaries (e.g. by reducing benefits or tightening the controls) could persuade them to seek employment more intensively than before or to take up employment earlier, it is evident that this is only possible if adequate jobs exist at all. However, activation can itself influence the dynamics of the labour market. From a legal perspective, activation instruments and measures are only permitted if the

beneficiary has at least the chance to change his or her job situation after having been "activated."

Activation is always Janus-faced. Enforceable legal obligations must correspond with legal entitlements and a realistic possibility to reintegrate into the labour market. This makes it difficult to qualify in legal terms the activation agreements mentioned above as "contracts" since it is not the legal purpose of a contract to change a contracting party's behaviour but to provide an advantage for both sides.

From the legal point of view, it is quite new and unusual for both sides – the jobless and the agency – that in all countries activation does not only deal with unemployment but takes into account the jobseeker's entire situation, e.g. health problems, need for childcare etc. This holistic approach makes it difficult for legal experts to formulate precise rights and obligations that can be checked in court. The slogan "enabling and demanding" is striking and convincing. But in all countries there are indications that the legal duties are mostly on the jobseeker's side whereas the institutions have quite some leeway in fulfilling their obligations. For example, in theory the institution might be legally liable to support the jobseeker in finding a childcare facility (enabling) but in practice this support is not enforceable. On the other hand, sanctions, access control or control of sojourn time (demanding) are rather easy to handle. If these measures apply, jobseekers are always in a position to defend themselves, at worst in court. In addition, the vague formulation of norms concerning activation makes sanctions less foreseeable. The application of sanctions is often very contradictive and does not always seem to follow a consistent line. This was explicitly mentioned in the report on the UK but it might happen in other countries, too. From a legal perspective, precise legal norms and regulations are desirable.

This lack of balance between the two parties involved restricts the legal possibilities of the jobseeker. It is no mere coincidence that there is hardly any fundamental case law on activation. Few legal experts are interested or engaged in activation matters. To our knowledge, the present study is the first that tries to examine activation not only from the socio-economic perspective but also from the legal point of view. In all countries under study, activation is not a coherent legal concept but the outcome of a political decision to achieve some economic objectives, notably to reduce the rate of unemployment and benefit dependency. In the end, legal discussions and available court decisions deal with the level of cash benefits or the reasonableness of sanctions but not with the fundamental legal basis of activation.

2.4 Transfer to the regional and local level

On the whole, the country reports show a tendency to transfer competences to the regional or local levels. The organisation of activation then becomes a task of these local authorities, no matter if their structure is on the basis of public or private law. Nevertheless, legal rules are still binding for these authorities and they can only deviate if the law explicitly allows it. But the room to manoeuvre varies

across countries. Competences for activation issues can only be transferred if the means to handle them are decentralised as well. A formal competence is of no worth if the local agency cannot dispose of legally determined financial funds to realise activation measures.

2.5 Control and "ways out" of activation

Most countries have reduced benefits and costs. Controls of income and behaviour are tightened. Apart from Switzerland, where this is still an obvious problem, most countries have barred the "way out" into an early pension or invalidity pension. These measures are a further indicator that in current legal practice activation is not so much regarded as a bundle of legal rights for the jobseekers but as a bundle of legal obligations the unemployed has to fulfil. If activation is meant as a comprehensive policy to bring people back into work, it should emphasise not only the jobseeker's duties but also the state's legal responsibility to give as much support as possible. It is not the willing jobseeker's fault if he or she does not find a job; it is the inadequate economic policy that is unable to provide enough work. At the moment, from the legal point of view it sometimes appears that jobseekers are legally punished for a situation they are not responsible for. There is an obvious tendency away from a comprehensive understanding of activation towards a selective reduction of benefits and costs. In other words, the legal equilibrium of enabling and demanding, which is a key issue of activation, is in danger of being destabilised. It will be the future task of legislation and jurisprudence to rebalance this relationship by adjusting the legal norms adequately.

2.6 Outlook: The possible contribution of law for "activation" issues

As shown above, there is not yet a precise legal definition of the term "activation" in any of the surveyed countries. Nonetheless, a definition would be desirable as it would help to better describe and narrow down the aims of activation. This could clarify the legally allowed means to achieve the aim of activation. The question is whether an overall definition can be achieved at all. "Activation" has specific objectives, weight and importance in very different fields of law in the respective country. A definition of the term activation would only work in a very specific context.

However, the country reports have shown that there is much of a common idea of activation. In all the countries being chosen for this study "activation" – in its description meaning – is a result of action and cooperation of several labour market and social security/protection institutions and the jobseekers. This cooperation is regulated by a very broad complex of law, predominantly social and labour law. According to the legal situation in the various countries, family allowance law, fiscal law and even administrative law are among others, also involved.

The general objective of activation is to help jobseekers reintegrate into the labour market as soon as possible. This is in many cases not limited to an offer and may include legal obligations. Moreover, all countries have realised that granting cash benefits only is not the appropriate way to reduce unemployment rates. The holistic approach involving the living conditions of the unemployed and the idea of a mutual relationship between institution and jobseeker, which implies rights and obligations for both sides – whether in the form of a contract or another legal instrument – is also a common feature.

In the past, legal experts did not care very much about activation. This should change in future. It is obvious that there is no way back to the mere distribution of cash benefits. The more persons are involved or confronted with activation measures, the more urgent is the task to explain the underlying fundamental legal principles of activation. Up to now the discussion on activation has been dominated by politicians and economists. Now, as things have settled to a certain extent, it should be a worthwhile challenge for legal experts to elaborate a more systematic and consistent view on activation. In the preceding paragraphs we expressed the fear that there is a certain imbalance in activation issues which disfavours the jobseeker. But activation has much to do with participation in society and with social justice. Against the background of the common principles of activation discovered in this study, it should be the concern of legal practitioners and researchers to readjust the legal instruments and norms in order to further develop activation as a feasible means to achieve more social justice.

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