

Working Paper 4

Some Way to Go: The European Employment Strategy Re-assessed

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This topic, perhaps more than any in papers for the Colloquium, gives the opportunity to pay real tribute to the work of Sally Ball, our very dear and much missed friend and colleague. Sally's central work was on the European Employment Strategy (EES), and the article which appeared in the 2001 *Industrial Law Journal*, after her death, was devoted to this concept. What I would like to do in this brief commentary, is to review her work, and reconsider in it the light of developments a year on. Have her conclusions, based on the *Joint Employment Report* of 2000, been born out in 2001? And how have new developments, particularly the addition of a wider range of prohibited grounds of discrimination, including race, disability, sexual orientation, religion and age; and the new flexibility directives, affected these conclusions?

I begin with a brief summary of her article. In creating more jobs, she asks in the article, does the EES neglect the objective of decent or better work? Does quantity of jobs necessarily imply quality, or is the latter sacrificed for the former? 'The Will but not the Way' was her verdict. The EES has always paid lip service to the need to ensure that both quantity and quality of work are created. But the extent to which this can be achieved is limited, both by conflicts with other goals of the EU, and by internal tensions. Thus any active labour market measures, particularly those underpinning the terms and conditions of workers, are inevitably restricted by monetary policies calling for spending restraints. Similarly, the commitment to training measures can conflict with competition law if training aids to specific firms are seen as a competitive advantage over other firms which have to bear their own training costs.

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Equally serious is the imbalance within the EES, favouring quantity over quality. Thus, Sally Ball argues, the Entrepreneurship Pillar promotes a deregulatory agenda, primarily concerned with reducing cost burdens for business. There is no monitoring of actual terms and conditions of employment. Low pay and poor job security associated with flexible work are not addressed. The emphasis on lifelong learning is not matched by employer obligations to provide security of employment. Drawing on the *Joint Employment Report 2000*, she shows that the new jobs do not necessarily benefit those traditionally excluded from the labour force – women, the young, the old, the disabled and the long term unemployed.

Having concluded that both the guidelines and the monitoring process are significantly more concerned with the quantity of employment created than with its quality, she asks how these concerns are to be met. Her major prescription is that the EU institutions should take responsibility for ensuring that the EES does not overshadow the more traditional agenda for the EU's social policy. She is in fact relatively optimistic about this, noting that the Commission currently considers its rights-based agenda to be just as important as its EES. Thus she does not believe that a policy-based goal oriented framework has come to replace employment rights. However, these developments are not in themselves sufficient. They should be accompanied by careful scrutiny of the EES policy prescriptions, to promote debate about the values with which they ought to be imbued.

So do the more recent developments reinforce her optimism or her concerns? Both are true. Her concerns are certainly highlighted in the *Joint Employment Report 2001* which makes it clear that the goal of raising quality of work has been given second place. It is still the case, and openly acknowledged in the 2001 *Joint Report*, that the policy mix remains tilted in favour of actions under the Employability Pillar, followed by the Entrepreneurship Pillar. Where National Action Plans refer to better quality jobs, the common focus is on measures to improve the labour supply, for example through links with lifelong learning. By contrast, the quality of employment itself is not given much

attention.¹ Thus, it concludes, ‘the objective of raising quality is taken up mainly in relation to labour supply, while quality in work is only considered in a limited way.’²

The tension between quality and quantity is particularly apparent within the Adaptability Pillar, which focuses largely on increasing the flexibility of the labour force. Here the social partners and governments are expressly called on to improve the level and quality of employment while at the same time enhancing the competitiveness of the European economy. Lip service is paid to the need to identify a ‘sound balance between flexibility and security’, and to ‘reconcile employees’ and enterprises’ needs’³. Nevertheless, the gains that have been made have been almost entirely on the flexibility side of the balance. The *Joint Report* notes a general trend towards flexible forms of work, facilitating the introduction and use of fixed-term contracts, temporary work and part-time work. Non-standard employment now represents 28.5% of all contracts (up from 28.1% in 1999) with as much as 46.8% in the Netherlands and 35.8 % in Spain. A third of all employed women are in part-time jobs (compared with 6% of all employed men).⁴ By contrast, there were very few initiatives specifically aimed at the improvement of the quality of work introduced under the Adaptability Pillar in 2001. The only exception to this is health and safety.⁵

Particularly disturbing is the fact that it is in the area in which there are explicit commitments to fairness, namely the Equal Opportunities Pillar, that action is reported to be relatively weak. Indeed, relatively little emphasis was given to equal opportunities compared to the other pillars, and even less in 2000 than the previous year. The lowest level of action on equal opportunities was taken in Member States where gender equality is weakest. Policies to encourage women not just to enter the labour market, but to stay in the labour market for longer were conspicuously absent. Despite the high profile given to the problem of the gender pay gap at the Stockholm Summit,⁶ few

¹ *Draft Joint Employment Report 2001* COM (2001) 438 final, p. 15.

² *Ibid*, p.5.

³ *Ibid*, p.31.

⁴ But for the third year in a row, more full time jobs (more than 2 million) than part-time jobs (around 1 million) were created – *Joint Report 2001*, p.33 box.

⁵ *Joint Report 2001*, p.34

⁶ Presidency Conclusions, Stockholm European Council, 23 and 24 March 2001, Bull EU-3/2001.

measures have been taken to reduce the gap. Even less attention was paid to one of the root causes of the gender pay gap, namely gender segregation. The labour market remains highly segregated, with men over-represented in agriculture, industry and financial services, and women in services such as healthcare, education and private households. The small decline in segregation in wholesale and retail sales, and financial intermediation was more than outweighed by the fact that employment in expanding high tech sectors tends to be gender biased with men accounting for almost two thirds of total employment. Nor was enough done to share the responsibility for children and older people, which remain the prime responsibility of women. The report notes that far too little attention was given to adequate care facilities, the reconciliation of work and family life, and lifelong learning. There are scarcely any new initiatives to promote women into decision-making positions.

The weakness of developments under the Equal Opportunities Pillar emphasises the imbalance in the Adaptability Pillar, since flexible working has largely been women's work. Thus although more full time jobs (more than 2 million) than part-time jobs (around 1 million) were created, most of the jobs taken up by women in 2000 were part-time. The Committee of the Regions in particular emphasises the need to safeguard against the risk that 'flexible' solutions can prove to be traps for women workers if flexibility results in the wages of some women being insufficient to live on and impact negatively on social security benefits. To avoid this danger, more attention needs to be paid to the promotion of policies to integrate work and family life.

Of perhaps most concern is the fact that a comprehensive approach on mainstreaming in respect of gender is lacking in most Member States. Although there were numerous measures to promote gender equality, these were isolated and tended to have little influence on the overall picture. Although some progress has been made on implementing gender mainstreaming, a comprehensive approach, including consultation with gender equality bodies, gender impact assessment procedures, information, training etc, is still lacking. Particularly disappointing is the fact that the social partners have not engaged actively with the issue. Perhaps most pressing is the need to ensure that the Adaptability Pillar is constrained by considerations of gender equality.

The other grounds of discrimination are even less well developed. The only one, in fact, apart from gender which is mentioned explicitly in the guidelines is age, where the strikingly low level of employment of older people (an EU average of only 37.7 per cent) has prompted encouragement of active ageing policies. However, the 2001 Report finds that a comprehensive approach towards active ageing policies is lacking in most Member States and measures taken remain limited in their scope and impact. Of the other grounds of discrimination there is very little action at all. Only half⁷ the Member States set national targets to increase the employment levels of disabled people and only Denmark and the Netherlands set targets for ethnic minorities.⁸

Also problematic is the absence of wholehearted participation of the social partners, and civil society more generally. While there is a trend towards greater co-operation, the Report concludes that contributions of social partners still lack visibility and concreteness both at European and at national level. The Report notes particularly that the contributions and involvement of social partners in respect of the Adaptability Pillar have been uneven.

The *Joint Employment Report* expresses particular concern that these problems will be aggravated in the current less favourable economic climate. It strongly recommends that actions taken should better take into account the objective of promoting quality in work, and insists that more forceful policies are needed to address the gender pay gap. More comprehensive approaches are also needed to promote the continued presence of older workers in the labour market. Finally, it notes, the contribution of social partners, which it regards as essential for success, needs to be better integrated into the process.

So is there any cause for optimism? Certainly, there have been some very positive developments, meeting some of the concerns Sally raises directly. These are found both within the guidelines themselves, and externally, with the creation of rights for workers. So far as the guidelines are concerned, the Stockholm European Council in March 2001 agreed expressly that regaining full employment not only involves focussing on more

⁷ France, Spain, Portugal, Germany, UK and Ireland – *Joint Report* p.25

jobs, but also on better jobs. To this end, common approaches should be defined for **maintaining and improving the quality of work**, which should be included as a general objective in the employment guidelines.⁹ The 2002 guidelines therefore stress that quality in work is an important objective of the EES, involving both the job characteristics and the wider labour market context. The recognition of the need to stress quality of work is re-emphasised through the addition of two new horizontal objectives. Thus, a new horizontal objective B addresses the concern that there is a distorted emphasis on the first two pillars. It therefore requires that policies across the four pillars contribute to maintaining and improving quality in work. The emphasis is on quality in work, not just in regard to the supply of labour. Thus, objective B explicitly includes among the list of areas for consideration in order to improve quality in work gender equality, health and safety at work, security work organisation and work life balance, worker involvement and non-discrimination. This contrasts with the 2001 guidelines, which merely add a sentence onto cross-cutting objective A suggesting that the aim of increasing the quality of jobs should also be taken into consideration. Similarly, new horizontal objective E stresses that Member States should set their priorities in a balanced manner, so as to respect the equal value of the guidelines. Within the guidelines themselves, quality of work is stressed in various places, including, for example in respect of developing a policy in respect of active ageing. Active ageing is in fact highlighted by the Stockholm Presidency conclusions setting the objective of raising the average EU employment rate of 55-64 year olds to 50% by 2010.

The commitment to improving quality in work certainly seems to exist. But can mere exhortations do the trick? Are these just policy aspirations without individualised rights, and therefore left in the hands of relatively unwilling governments to enforce? Sally Ball argued in her article that the EES should not overshadow the Commission's traditional approach, based on the creation of individual rights. Here too there has been an encouraging acceleration in the pace of introduction of social and employment

⁸ *Joint Employment Report 2001* p.6.

⁹ Council Decision of 18 February 2002 on guidelines for Member States' employment policies for the year 2002 (2002/177/EC), preamble para 5.

rights. Since the Social Chapter of the Treaty of Amsterdam introduced a proper legal basis for the introduction of such rights, we have had two flexibility directives, three equality directives, and two worker participation measures.¹⁰ We might still conclude, however, as Sally herself did, that this reflects the will but not the way.

The new measures on the face of it do address some of the imbalance or distortions in the EES. Thus it could be argued that flexibility directives make up for the imbalance in the adaptability measure, which as we have seen has stimulated more flexible work, but with little attention to the quality of work. However, while introducing a measure of welcome protection for flexible workers, these directives give little by way of substantive rights. Instead, their primary focus is on a right to equal treatment with a comparable non-flexible worker. If there is no comparable worker, or if the comparable worker is also subjected to poor quality conditions, the flexibility directives are of little assistance. This is a serious problem, particularly for part-time workers. Since most part-time workers are women, and we have seen that the labour market is highly segregated on gender lines, we are likely to find that many part-time workers are left without an appropriate comparator. Part of the problem here goes back to the limited jurisdiction on employment given in the EC Treaty itself, particularly the exclusion of pay from the jurisdiction of the EC.¹¹

The consultation directives, on their face, address at least in part, the concern in the *Joint Employment Report* that there was too little involvement by the social partners in various aspects of the EES, but particularly in respect of adaptability and equal opportunities, underpinned by the horizontal objective of quality. There is to be

¹⁰ **Flexibility:** Directive 97/81/EC on part-time work and Directive 99/70/EC on fixed-term work; **equality:** Directive 2002/73/EC of 23 September 2002 amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Directive on Race Equality) and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Framework Directive); **worker participation:** Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

¹¹ Article 137 EC.

mandatory consultation at national level on a wide range of topics, including significant changes in work organisation or contracts. But as usual, the directive depends on existing national structures of worker organisation. It is well known that collective organisation among non-standard workers is generally weak and difficult to achieve. Again, the exclusion from the EC Treaty of the basics of organisation, namely freedom of association and the right to strike, contribute to this problem. In addition, the limitation to undertakings with more than 50 employees excludes 97 per cent of all EU companies and 50 per cent of all EU employees.

It is noteworthy that attempts are made to link both of these new measures with the EES. Thus the explanatory memorandum of the proposal for the directive on temporary and agency workers refers in its very first paragraph to the need to reconcile flexibility and job security and create more and better jobs. The recommendation in the employment guidelines in favour of developing various flexible forms of employment is highlighted.¹² The memorandum also stresses that the benefits accruing from temporary work may be curtailed if there is poor social standing and job quality. Similarly, the consultation directive notes that the employment strategy requires that social dialogue be strengthened with a view to promoting change compatible with preserving the priority objective of employment.

However, there is a glaring absence of synchronicity in respect of the new discrimination directives. Despite the fact that Member States are now required to prevent labour market discrimination on a range of grounds, including religion, disability, sexual orientation and race, the Equal Opportunities Pillar still only covers gender. There are various important allusions to age, particular in respect of fostering an active ageing policy, but again no explicit commitment to equal opportunities in respect of age. The Committee of Regions in particular has recommended that the 2004 IGC studies whether the guidelines should include all the grounds of discrimination. Clearly, there should be no doubt about this. The two new directives are based on a very limited model of discrimination, and will only take off if they are integrated via a

¹² Document 502PC0149.

mainstreaming approach into employment policy more generally. In particular, the framework directive is limited to employment and vocational training. Real change will only happen if these issues are integrated more widely into EU policy making, particularly employment creation.

So where do we go from here? It is clearly crucial to place more emphasis on quality in work. This must be done not only by strengthening the guidelines themselves, but by creating a package of rights which underpin employment creation. Even more radically, there is a strong argument that the Treaty itself must be revised to include freedom of association, the right to strike and pay. These conclusions are given added force by the proclamation of the Charter on Fundamental Rights. While there has been some important recognition of the concerns raised by Sally Ball in her article, and the right gestures have been made to correct them, there is still some way to go before the way matches the will.