

Incoherent Strategies – Fragmented Outcomes: Raising Women’s Employment Rate in Germany

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Abstract

Policies focusing on the transition between housework or care and paid employment are inextricably connected with equal employment policies. Since the creation of the European Employment Strategy (EES) political attention has moved from equal opportunity policies at the EU level to ‘social investment’ policies which underline the need to develop or maintain human capital rather than enhancing equality and justice. In this context, employment policies are meant to focus on ‘activation’, i.e. an increase in labour market participation. But to what extent are the two objectives of gender equality and increasing labour market participation of women reconcilable in practice?

This article discusses the implications of the EES for a conservative gender and employment regime and uses Germany as a case study. The hypothesis of this article is that the German labour market reforms introduced since Lisbon rather contribute to a further ‘fragmentation’ of the German gender regime than to a gradual transition towards a new clear-cut, more equality oriented gender regime. The in-depth analysis of German labour market policies will demonstrate in what terms the most recent employment policy reforms include contradictory and ambiguous incentives regarding the access and quality of women’s employment and reproduce and enhance inferior patterns of labour market participation. Also, it will be argued that the EU policy regime is itself inconsistent and incoherent, especially since the emergence of the activation paradigm.

1 Introduction

Most European citizens who provide care work in private households are women, and hence women’s labour supply is necessarily constrained. Consequently, policies focusing on the transition between housework or care and paid employment are inextricably connected with equal employment policies though not identi-

cal as they obey different priorities. In the mid-nineties, women's employment had become a key issue to the enhancement of the effectiveness and economic productivity of European welfare states (Esping-Andersen 1999; Esping-Andersen, Gallie et al. 2001; Esping-Andersen 2002), and the European Employment Strategy (EES) institutionalised a political crossroad for equal employment policies¹ in Europe. However, since then, political support for equal opportunity policies at the EU level has evidently decreased. European social and employment policies have by and by been re-formulated in terms of 'social investment' which underlines the need to develop or maintain human capital rather than enhancing equality and justice (Jenson 2008). This underlying new logic is translated to employment policies in terms of 'activation' policies whose most relevant objective is to increase labour market participation. In principle, the political efforts have shifted from the enhancement of gender equality in employment to the increase of employment levels of women.² But to what extent are these two objectives reconcilable *in practice*?

The EES represents for the EU member states a dominating normative and political reference for domestic employment policy making. Of course, due to the lack of 'hard' instruments in the field of employment, the 'activation paradigm' has been transferred in fairly different ways to the national levels (Heidenreich/Bischoff 2008). Nevertheless, conceptual problems are likely to arise in the implementation of these two objectives on national level in a more or less pronounced form. Germany appears to be a particularly interesting example as the German gender regime on the one hand rather hampers the development of women's paid employment and gender equality. On the other hand, EU policies are considered as a crucial impetus for the development of equal employment policies (MacRae 2006). So, what implications does the EU employment strategy have when implemented in a conservative gender and employment regime like Germany? The hypothesis of this article is that the German

¹ Angelika von Wahl suggests using this term for policies aiming at gender equality in the labour market (Wahl 2005).

² We assume that the fact that in activation strategies priority is put on re-employment in general affects the underlying patterns of social citizenship, or, more precisely, the citizens' autonomy. This aspect has been analysed in more depth in a collection of country case studies in Betzelt/ Bothfeld 2011.

labour market reforms introduced since Lisbon rather contribute to a further ‘fragmentation’ of the German gender regime than to a gradual transition towards a new clear-cut, more equality oriented gender regime. While doing little to change the basic principles and patterns of the implicit gender bias of the German employment regime, the ‘path’ of promoting traditionally female employment patterns and tolerating existing labour market segmentation has been largely continued. Overall, the underlying norms and incentives within the German gender regime are not fully coherent and sometimes even incompatible. The following in-depth analysis of German labour market policies will demonstrate in what terms the most recent employment policy reforms include contradictory and ambiguous incentives regarding the access and quality of women’s employment and reproduce and enhance inferior patterns of labour market participation. A full recognition of non-standard employment trajectories and a compensation for career breaks, in particular due to care responsibilities within the family, still stand out to be implemented.

In the following section we outline the elements of the EU Employment Strategy and argue that the EU policy regime is itself inconsistent and incoherent, especially since the emergence of the activation paradigm. The third section is dedicated to the investigation of gendered patterns in the three main domains of labour market policy, i.e. the regulation of the employment contract, the income maintenance schemes, and active labour promotion measures, including their effectiveness regarding labour market transitions. Finally, we draw some conclusions on the impact of the Lisbon strategy on the gender regime in a conservative welfare state.

2 The ambiguity of the Lisbon strategy

The gendered division of labour is due to a multitude of different policies and regulations and underlying cultural norms. Instead of considering single policies separately, we need to take the inter-relatedness of institutional devices and policy programmes into account. We will therefore outline the concept of a gender regime (2.1) which enables us to understand the logic of the EES (2.2), and, more specifically, the dilemmas of activation policies for women’s employment (2.3).

2.1 Gender regimes as an analytical framework

The ‘institutional school’ of employment policy research has pointed to the interrelatedness of policies and the need for coordination in order to avoid inconsistent incentives (Schmid 1994; Bosch, Rubery et al. 2007). This perspective suggests taking account of a bundle of measures simultaneously in policy analysis as well as in policy making and to design policies with regard to the coordination with other programmes and instruments. Institutional gender research in political science still enlarges this perspective, pointing to the societal context in which policy regimes are embedded (for an overview see Betzelt 2007). They define a gender regime as a “*formal and informal organisation of political organisation according to the gender divide which embraces institutions, organisations as well as norms and discourses and which regulates the gender relations, the access of women to positions of power as well as the perceptions and stereotypes about men’s and women’s roles in society*” (Rosenberger/Sauer 2004: 259, transl. by the authors).

Unlike the concept of policy regime the gender regime perspective is not limited to the analysis of sets of institutional rules in terms of coordination and consistency. Moreover it points to underlying normative patterns which are reflected in the political discourse, in institutional regulation but also in social practices. Institutionalists would confirm that changes do not always cover all elements of a gender regime at the same time – processes of change are therefore considered as incremental processes of shift, drift or layering of policy logics (Streeck/Thelen 2005). But undoubtedly, policy reforms in general aim at increasing societal integration, or decreasing social tensions, as ideally, policy-making responds to politically articulated functional or normative needs. Consequently, we assume that policies correlate with a societal ideational structure (or a paradigm, Hall 1993) which includes normative as well as technical knowledge about policies. At the same time policy reforms should, in the ideal case, attain a better fit in terms of responding to or supporting new social practices. Related to employment policies, the idea that every adult individual should be in paid employment would be reflected in a consistent and coherent set of policy measures, e.g. lower barriers for the access to paid employment, the offer of special support programmes etc. Ideally, they would correspond to an

increased employment orientation of people (= women) and to their preferences.

In contrast to such a 'harmonic' picture, we consider a policy regime as 'fragmented' if increasing inconsistency or even contradiction between policy incentives occurs due to a lack of instrumental coordination. In the normative dimension a policy regime is fragmented, if the underlying norms of a policy conflict with given patterns of social behaviour and practices, e.g. women's employment preferences; here fragmentation denominates incoherence (Bothfeld 2008). We assume the EES to be highly fragmented in technical as well as in normative terms and that this in turn contributes to the fragmentation of domestic policy regimes.

2.2 The ambiguity of the EU employment strategy

Regulation on equal opportunity in a narrow sense (i.e. equal pay) has existed in the EU since the Treaty of Rome (Art. 119, now Art. 157 Treaty on the Functioning of the EU - TFEU). Gender equality in employment is often considered as one pillar of the European Social Model although its implementation has been inert for many years and the elaboration of binding law was largely due to the jurisdiction of the European Court of Justice. Today, the value of gender equality is mentioned in the preamble of the Treaty on European Union (TEU) and the Unions' responsibility to promote gender equality is stated in Art. 3 TEU. Accordingly, the EU's equal opportunity policy has broadened, covering all sectors of economic and social life (Wahl 2005).

(a) The EU Employment Strategy

The Treaty of Amsterdam and the European employment strategy with the Council's agreement on employment objectives (raising women's employment rate to 60%) have been the crucial landmarks in European equal employment policies. The promotion of gender equality in the labour market constituted one of four pillars (together with employability, entrepreneurship and adaptability) in the original strategy set up in 1998; this objective was newly underlined by formulating additional guidelines on gender mainstreaming and equal pay in 1999 (EGGSIE 2008). After the first four year period however the EES was changed, and the equality objective was removed as such. In 2005, the

EES fundamentally changed its character: In the light of weak economic growth, the employment policy objectives were combined with macro and micro economic objectives. Employment objectives were formulated as eight new employment guidelines which no longer comprised gender equality as a specific guideline (ibid.). Since 2005 gender issues have been solely indirectly addressed in terms of a high level of women's employment, the quality of employment (guideline 17), the 'life cycle approach' to employment policies (guideline 18) or the general reduction of labour market segmentation (guideline 20). Overall, the guidelines as of 2008 rather address supply-side oriented measures like education or training or the support of re-integration into the labour market. Apparently the visibility of gender equality has continued to decline over the years (EGGSIE 2008; Jenson 2008); equal opportunities issues being increasingly addressed in the Council's 'Road maps' to gender equality (EGGSIE 2008). However, outside the prominent field of employment policies, we can identify three more policy fields that are relevant to women's employment.

(b) Employment regulation

The concept of flexicurity which combined labour market flexibility by de-regulation with the enhancement of social protection has been a normative reference for EU policies since the beginning of the last decade (Wilthagen 1998). Generally, it seems that in several fields, e.g. the regulation of part-time work or working hours has attained a decent level of regulation, including antidiscrimination of atypical workers. However, adequate social security provisions for atypical workers and therefore a pro-active approach has not been achieved. For example, there was the directive on part-time work that installed the principle of equal treatment but did not introduce compensatory rules regarding social protection, and the increase of marginal employment is largely tolerated without addressing the deficit of social security of this form of employment. The working-time directive states maximum limits of hours but does not address minimum standards for the provision of social protection. In general, European labour law mainly refers to the regulation of the typically male, full-time "standard" worker, and ignores the spread of "atypical" forms of employment. Of course, this is due to the character of EU policy making and the principle of subsidiarity which prohib-

its the EU to intervene into national social policy regimes. Nevertheless, social security issues (like pension systems) are treated within the process of the Open Method of Coordination (OMC) or have become subject of official EU experts' reports (EGLER 2010). At the present, the European Parliament has published a report on women in precarious employment, in which all the problems connected with atypical employment are addressed, and it has called all European institutions to take action and revisit regulation and policies in this field (European Parliament 2010). The maternity and parental leave directives are at the boundaries between social and labour law and might represent examples for the development of a more integrating flexicurity strategy as they stipulate (dismissal) protection as well as the maintenance of social security entitlements during the career breaks due to child raising (CEU 2010).

(c) Reconciliation policies

The reconciliation of work and family life was one out of four basic principles of the EU's equal opportunity policy in 1999 (EGGSIE 2008). The formal agreement on the Barcelona targets in 2002 required that member states developed childcare services in order to attain a coverage rate of 33% for children younger than three years and 90% for children of pre-school age by 2010. And still today, the access to affordable childcare as well as a stronger involvement of fathers are recognised as a major determinant for women's employment (European Commission 2010). The activities of the EU in this sector have, with the help of the OMC, activated the member states significantly to develop services, which has set Germany in particular under high pressure with regard to expanding public childcare for infants. So reconciliation policies have been relatively successful regarding the impact on domestic policies (Jacquot, Ledoux et al. 2010). Nevertheless, the reconciliation strategy appears one-sided as it prioritises strictly parallel patterns of reconciliation and abstains from developing alternative options (Leon 2009). This strategy of defamilisation has been criticised by feminist researchers as it underrates the complexity of gender relations, reducing the necessity to care to its economic dimension (Lewis 2004; Leitner/Lessenich 2007). Moreover, the impact of long periods of part-time work or career breaks on social security provision are hardly addressed although carers face significant disadvantages

especially in social insurance schemes. And additionally, persons with caring responsibilities would need special support by re-integration policies – an aspect which figured among the principles of the original EES objectives but was removed in 2001 (EGGSIE 2008). These aspects may well be addressed in the parental leave directive but they leave the basic principles of social security provision untouched. Although the field of reconciliation policies has become very dynamic, e.g. the still debated introduction of father's months, reconciliation policy lacks consistence as long as the development of care services is hardly complemented with the revision of our employment-centred social security schemes.

(d) Policies concerning the governance of equal employment

The legal framework concerning gender equality in employment is relatively well developed as the most recent directive of 2006 now establishes a broad approach in the fight against gender discrimination, including e.g. equal treatment in social security and healthcare (Schiek 2010). The incremental development of the body of primary and secondary law regarding equal employment had been driven by the EU case law, clarifying the application of the equality principle in practice. Beside the legal regulation, the EU is provided with a bundle of procedural mechanisms that allow for policy intervention in the field of equal employment policies. In 1997, the principle of gender mainstreaming was integrated into the Treaty of Amsterdam and, today, the TFEU includes the gender mainstreaming principle in Art. 10 TFEU. In 1996, the EU Commission defined gender mainstreaming (GM) as follows:

"Gender mainstreaming involves not restricting efforts to promote equality to the implementation of specific measures to help women, but mobilising all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage their possible effects on the respective situation of men and women (gender perspective). This means systematically examining measures and policies and taking into account such possible effects when defining and implementing them" (European Commission 1996, quoted in EGGSIE 2008).

Within the EES were, for the first time, formulated precise indicators in order to measure the progress in the support of women's

employment, and National Action Plans (from 2005 three-annual National Reform Plans) were prescribed to monitor the member states' activities in this field. The European expert group EGGSIE however has pointed to a lack of concretion and translation into precise policy measures. Experts confirm that employment policies have only very selectively been revised according to the enhancement of employment equality (EGGSIE 2008).

The need to observe the development of gender equality is reflected in a substantial reporting system, embracing the annual statistical report on "Equality of men and women in the European Union", the Commission's annual report to the European Parliament as well as in the establishment of independent networks of experts giving regular specific reports. Finally, the European Institute for Gender Equality (EIGE) – today based in Vilnius – was established in 2007 and provides additional expertise and counselling. The problem is, however, that these 'procedural' measures provide information or benchmarks but do not provide binding regulation. Also the application of the GM principle depends on political voluntarism. This appears insofar as incoherent, as gender equality is considered as one of the pillars of the EU Social Model (European Commission 2010). The Treaty of Lisbon, enacted in the end of 2009, does not bring about far-reaching changes as the EU competences have not been extended in terms of gender equality (EGLER 2010). However, it provides a substantial basis for the further development of gender equality law, especially because the EU Parliament has been attributed the right to take decisions in this field (Ellis 2010). Obviously, the Parliament will get engaged in the support of equal employment policies, as the most recent communication concerning women in marginal work addresses all the problems of women's employment which are not covered by the policy fields (European Parliament 2010).

Without any doubt, EU activities have supported feminists' concerns regarding women's paid employment and have contributed to the gradual change of the conservative gender regime, especially in Germany (MacRae 2006). Moreover, the Lisbon strategy has obviously been successful in terms of enhancing women's access to employment over the last decade and accelerating the development of childcare facilities (European Commission 2009). Nevertheless, the EU objectives regarding *gender equality* have not been translated into a consistent and coherent

framework from which could be derived a univocal orientation for domestic employment policy design. On the contrary, the activation paradigm, which reflects the idea of the adult worker, exacerbates the conflict between the new objectives and given more traditional gender regimes.

2.3 The activation dilemma

The activation policy reforms of the past decade represent the transmission belt for the EU employment policy objectives into domestic employment policies (Jenson 2008; Pfister 2008). Above all, activation policies aim at increasing labour market participation for all citizens of working age, which could have become an important leverage especially for ‘conservative’ welfare states characterised by a strong gendered labour division. But what is wrong with activation if we consider paid employment as a relevant aspect of gender equality? We assume three potential dilemmas which may hamper the transition to a more egalitarian gender regime.

(a) The “paternalism” dilemma: constraining individual choice

Activation policies are per se ‘paternalistic’ in the sense that they prescribe one specific model of living and social participation understood as full-time paid employment for all adult members of society, irrespective of their caring responsibilities or individual preferences. Of course, activation policies may represent a leverage for setting traditional labour division under pressure by constraining ‘private’ negotiations within a couple as the requirement that every adult should be in paid employment is made explicit and – at least in the incident of unemployment or neediness – subject of sanctions in case of offence. But it therewith ignores that even with regard to gender equality employment is no one-fits-all solution. On the contrary, feminist scholars caution about transferring the standard male employment pattern to all individuals which is an implicit idea in the concept of de-familisation of care work (Esping-Andersen 1999; Esping-Andersen 2009).

But how can choices be granted in the light of paternalistic intrusion into the private lives of people? And, to what extent should the State intervene into parents’ choices of how to organise their care obligations? Critiques on the de-familisation ap-

proach argue that parents (mothers) might prefer to stay with their kids, and that structures of dependence were multifold and cannot be reduced to economic dependence, so that pushing parents into paid employment does not necessarily represent an adequate solution (Leitner/Lessenich 2007). As the feminist care debate has pointed out, the total de-familisation and commodification of care is both an unrealistic and a not at all desirable utopia, as it would not contribute to overcome the inherent androcentrism in the constitution of our welfare systems (Fraser 1997). The problem is that activation policies principally change underlying normative patterns of policies but, at least in Germany, they do not primarily obey to the logic of emancipation and empowerment of the individual but they basically assume that paid work is always and in any case better than being outside the labour market. An emancipatory activation policy strategy would not only offer a chance for labour market integration to every adult (according to the dual earner model), irrespective of their life situation (e.g. of lone parents) but they would provide for alternative options (e.g. training and education) and attenuate the instruments of sanctions, introduce participation procedures, reinforce labour market regulation, extend social security rules and service provision and therewith provide an institutional framework in order to avoid the pitfalls of the universalised obligation to work. The paternalism dilemma would be resolved if the basic assumption about the individuals' preferences would be more optimistic concerning their commitment to basic values of solidarity and to the willingness to re-integrate into paid work.

(b) The implementation dilemma³: Activation has multifold policy implications, entailing costs and the need of coordination

The universalisation of the Adult Worker norm to all citizens has many political implications that are costly in a broader sense: First, the notion of bringing all adults capable of working into the labour market entails a wide range of (costly) “enabling” services

³ There would be a lot more to say in respect to implementation dilemmas of activation, especially with regard to the trade-off between tailor-made services to increase the individual employability of jobless people on the one hand, which quite naturally entail much discretionary decision-making of the front-line agency staff that often allows for gender-stereotypical practices of counseling and job-placement. And yet on the other hand, the bureaucratic standardisation of such services and practices might help to avoid the risk of arbitrary and discriminating practices but instead poses the risk of inadequate services that are not targeted to individual needs. We cannot dwell on these tensions here but refer to relevant authors (van Berkel 2011; van Berkel et al. 2011).

to increase individual employability (e.g. further training, job search support, counselling etc.) and to remove obstacles that hinder people in taking up a job, especially sufficient and affordable public services for childcare and care for the frail elderly. To provide for such service infrastructure poses a considerable fiscal burden on welfare states. Hence, policy makers often address this dilemma by emphasizing the negative incentives against claiming social benefits, without establishing the actually needed service infrastructure (Knijn/van Berkel 2003) for the Dutch example). This type of activation results in high pressure on the addressees of activation without providing the necessary support to improve the individual's situation.

Related to this dilemma is, second, the need to coordinate the activation strategy with other policy fields in order to achieve a consistent institutional framework that sets uniform – and not contradictory – incentives, and avoids inconsistent normative and legal structures. This means that it is not sufficient to implement activation policies within the field of labour market policy without considering other policy fields, especially those related to the family/private households. For instance, in the advent of demographic change it is necessary to account for the growing needs of elderly care, which to great parts are met by informal (unpaid) caring work within the family which is difficult to reconcile with full-time employment (Eurostat 2009). Moreover, especially in conservative welfare states there are many other long-standing institutionalised regulations that favour or support the male breadwinner model, for instance income tax-splitting, maintenance obligations of married couples, or the existence of cost-free social health insurance of a breadwinners' family members. The German case study reveals that the implementation of activation strategies solely in the field of labour market policy without considering the surrounding institutional setting in other fields results in significant legal inconsistencies that often entail severe consequences for the affected groups. In short, activation strategies are complex and costly. To resolve the implementation dilemma requires investments in diverse personal and household-related services infrastructures and coordination between different policy sectors. The biased emphasis on the constraining character of activation policies has quite the reverse effects of decreasing rather than increasing the individuals' autonomy.

(c) The structural dilemma of supply-side oriented activation

Like the EES on the whole, activation policies are largely supply-side oriented and neglect structural labour market problems. If we consider that unemployment is rather due to structural problems, e.g. a lack of domestic demand than to individual behaviour of the unemployed, activation policies may in tight labour markets unfold undesirable social and economic effects. On the individual level, they increase the pressure on job-seekers and therewith promote the feeling of stress and insecurity which maybe counterproductive from a ‘social investment’ point of view. On the macro level, they contribute to undermining existing employment standards by ‘indirect deregulation’, i.e. formulating a minimalist definition of ‘suitable’ jobs, lowering the reservation wage and reinforcing the pressure on existing employment standards or even the wage-setting system. Serious effects detrimental to both the individual as well as to the economy at large are likely to result from gradually de-skilling of the workforce if the unemployed are obliged to accept a job well below their skills level. On the contrary, in order to protect employment standards from erosion and to maintain and develop a high level of human capital in periods of tight labour markets, the maintenance of decent employment standards is an essential prerequisite for a sustainable employment policy. The levelling of wages and employment stability undermines the overall goal of activation, namely to achieve economic independence via gainful employment for all citizens. Discontinuous employment and a devaluation of human capital rather represent costs than (social) investment returns. In this respect, this structural problem could also be named as a “job quality dilemma” of activation, which is also reflected by a growing (gendered) labour market segmentation.

To summarise: In the European Employment Strategy the employment policy objectives have continuously been narrowed down to the objective to intensify the use of human capital. Consequently, the ‘social investment strategy’ considers women’s rising participation rates as a tool, and not as an objective in terms of equality (Jenson 2008). The resulting strategy of activation entails potential dilemmas which are highly relevant for gender equality. These dilemmas become particularly pronounced in conservative welfare states as we will demonstrate in the following section.

3 Activation policies in Germany

In this section, we will point out how the explained shortcomings of the EES are reflected on national level in the case of a conservative welfare and gender regime, exemplified by the German type of activation strategies. We will argue that the described dilemmas generally inherent to activation policies in this case are ‘solved’ in a way that has particularly problematic effects from a gender perspective. These outcomes are rooted in the traditional conservative bias in German social and employment policy, interpreting the roles of men and women differently, with men as the main breadwinner and women merely as providers of supplementary income (Holst/Maier 1998). Our study is based on secondary analyses of empirical literature and some own empirical data, and covers the three fields of labour market regulation (3.1), income maintenance for the risks of unemployment and neediness (3.2), and active employment promotion policies (3.3).

3.1 The regulation of non-standard employment

The de-regulation policies introduced in Germany by the “Hartz-Reforms” I-IV in accordance with the EES are closely related to the above described “job quality” dilemma. The deregulation strategy was intended to create a bridging effect, especially for the long-term unemployed and low-skilled workers returning to the job market (Jann/Schmid 2004). The main instruments were new provisions for marginal employment (2003), the deregulation of temporary work via employment agencies and the facilitation of part-time employment and fixed-term contracts (*Teilzeit- und Befristungsgesetz*, 2001; third *Hartz-Gesetz*, 2004). Moreover, more stringent rules on what job-centres consider to be ‘acceptable’ job offers were introduced in both the unemployment insurance scheme of the Social Code III (SGB III) and the means-tested unemployment benefit scheme of Social Code II (SGB II, in effect since 2005). At the same time, the coverage by collective agreements decreased, which enhanced the development of low-paid jobs (Kalina/Weinkopf 2008: 452).

(a) Marginal and low-wage employment

Above all, it is female workers who are affected most by the development of atypical and marginal employment relations. In

2006 more than one fifth (22.2%) or over 6.5 million employees were working for below-average wages, with (relatively) little difference between east and west.⁴ Of these, more than two thirds (68.1%) were women. The expansion of low-wage employment affects increasingly also men whose share of low-waged workers doubled between 1995 to 2006, and higher-educated workers, notwithstanding the fact that younger workers (under 25), low-skilled workers, foreigners and ‘atypically employed persons’ are still by far the most seriously affected (Brehmer/Seifert 2008; Kalina/Weinkopf 2008)

The so-called marginal or ‘mini-jobs’ fall almost totally (91.7%; Kalina/Weinkopf 2008: 456) under the low-wage threshold, which can be explained by the abolition of the 15-hour limit (2003), that led to increasing working hours, with a ceiling of 400 euros of monthly earnings. Moreover, employers cut the net earnings by shifting their part of social insurance contributions onto the employees (who are exempt from paying contributions) (Bäcker 2007). Since the introduction of new rules, there has been an enormous increase in the spread of ‘mini-jobs’: Since 2003 the number of workers completely dependent on these jobs has risen to some 750,000, or by 18%, to a total of 4.88 million (June 2007). That makes this group bigger than the number of people in regular part-time employment (4.77 million) (Statistik der Bundesagentur für Arbeit 2008). Here, too, the vast majority is female (67% in 2009), and whereas female ‘mini-jobbers’ remain there for the most part of their working lives, hence never establishing social security entitlements, men take up such jobs especially at the start of their working careers (Bothfeld 2005).

Recent longitudinal studies reveal that the bridging function of low-wage jobs (not only in marginal employment) into ‘regular’ employment mostly does not hold true: 80% of male and 90% of female low-waged workers remain in this segment also six years later (Schank, Schnabel et al. 2008: 5).

⁴ The low-wage threshold is defined according to the OECD standard as two thirds of the median hourly wage; 2006 in West Germany this amounted to 9.61 euros, in the eastern part to 6.81 euros (Kalina/Weinkopf 2008: 451; this source is used also for following figures).

(b) Institutionalised discrimination of part-time employment

As on the EU level, no consequent gender mainstreaming strategy was implemented in German employment policies, despite the respective Social Code III (SGB III) prescribes the target of equal gender opportunities according to the EES, which should contribute to a 'high level of employment' also among women (60% goal of Lisbon). Yet the fundamental construction of labour market policy in Germany did not change: The criteria for defining gainful employment and job search are still strongly oriented to permanent full-time employment and tend to discriminate against people looking for part-time work or being already part-time employed. This poses both the "job quality" dilemma of activation (working hours being related to wages and social security) as well as the issue of restricted personal choices when searching for a job (setting ambiguous incentives, especially for women).

Part-time employment is gradually becoming the rule for working women in Germany; 45.4% of women worked part-time in 2008 (2003: 40.8%).⁵ Nevertheless, the respective social regulations contained in the Social Code, SGB III und SGB II, remain contradictory and unsatisfactory. To put it in a nutshell: Part-time employment was politically promoted on the one hand as an employment form that offers much flexibility and productivity gains to employers, but the lower level of social security compared to full-time work still remained unchanged. The various disadvantages entailed with part-time work are still on the side of the individual.

Firstly, the unemployment benefit due to part-time workers is not enough to live on, which is not only due to the replacement rate of 60-67% (either for parents or persons without children) and the resulting low amount. Rather, what discriminates against part-timers is the fact that previous earnings from full-time employment only serve as the basis for calculating benefits when a new full-time job is also being actively sought. The unemployment benefit is calculated according to the number of hours the sought-after part-time work entails, thus breaking with the basic principle according to which benefits are calculated on the basis

⁵ In the case of male employment, the part-time quota rose relatively even faster, from 6.1% in 2003 to 9.4% in 2008 (Europäische Kommission 2009: 30).

of previous earnings and contributions (Nullmeier/Vobruba 1994).

Secondly, although part-time workers can register as job-seekers and therewith become eligible for benefits, this only applies if their part-time employment is not in excess of 15 hours per week. If, for instance, someone works 20 hours but searches for a job with longer hours they can register as a job-seeker but remain ineligible for benefits. The quota of 'involuntary' part-time workers is especially high in the eastern part of Germany (in 2009, according to the Federal Agency for Statistics, 64%, and 23% for Germany as a whole).

Thirdly, in contrast to these regulations, part-time employment is now treated as being a regular option for gainful employment. Hence, a person capable of working for 15 hours a week is regarded as being fully fit for the labour market. Moreover, people looking for work have to accept part-time jobs or low-paid work when it is offered to them, without any bottom wage-level or protection of skills-levels. This is true for the dominating means-tested basic assistance scheme applying to the majority of the unemployed (SGB II), whereas in the insurance scheme of SGB III the former income level is still protected degressively within the first six months. As both 'mini-jobs' and short-term, non-waged work opportunities now also constitute 'acceptable' employment substitution effects in the area of regular gainful employment are observed, at the cost mainly of jobs for women, especially in the social sector (Bäcker 2007), which increases existing labour market segmentation.

3.2 Gendered access conditions to unemployment benefits

Structural inequalities continue to be institutionalised in the income maintenance schemes. The German activation path was essentially characterized by the levelling of social security due to the restricted access to the previously typical Bismarckian status-securing standard scheme of unemployment insurance. The now predominant means-tested scheme of the basic job-seeker assistance disadvantages in particular women as it emphasizes family subsidiarity. The outcomes of the German activation strategy provide a typical example of a lack of gender mainstreaming policies and reveal moreover inconsistencies due to a lack of political coordination.

(a) *“Benefit equity” in unemployment insurance?*

Gender inequalities in the job quality directly translate into inequalities in respect to social security: Less than half of all working women (45.8%) have access to systems of contributions-based insurance for old age and against unemployment as compared to 54.1% men (June 2009). Of these ‘regularly’ employed women, over a third are working part-time (34.6%); in the case of men it is only 5.8%. There are accordant differences in entitlements for unemployment benefits. Consequently, the share of persons with entitlements to unemployment insurance benefits is accordingly low.

In 2009, only about a quarter of all unemployed persons in Germany were recipients of unemployment insurance benefits, of whom the proportion of unemployed women (24.3%) was considerably smaller than for men (30.8%). This overall low share of insurance benefits recipients, especially among women, is a systematic consequence of the rules governing eligibility, which underwent a further tightening in 2004 (“Hartz III-reform”). The reference period was shortened from three to two years, within which claimants must have been in work subject to compulsory social insurance contributions for a minimum of twelve months. This disadvantages mainly ‘atypical’ workers with discontinuous employment careers, who are predominantly female.

Even when an unemployed person is entitled to benefits, these are often not paid right up to the end of the period of unemployment: The entitlement ends after 12 months (except for unemployed over 50 years), but about a third (33.4%) of all women and a quarter of all men (26.5%) remain unemployed for longer than this. In 2009 the overall average duration of unemployment was 62.3 weeks for women, but 51.9 weeks for men (Bundesagentur für Arbeit 2010). Hence, a growing share of the unemployed has to rely on the basic job-seeker assistance pursuant to SGB II (2009: 70% men, 75% women of all registered unemployed).

The amount of insurance benefit paid is calculated on the basis of the last gross wage paid before becoming unemployed. We already indicated that there is a break of this rule in the case of people seeking a part-time job when the basis for benefit calculation is the volume of the employment the person is searching for, and not the previous wage obtained maybe in a full-time job. This disadvantages mainly women, especially when registering

as unemployed following a period of parental leave after which 80% do seek part-time work (Bundesministerium für Familie 2008: 25).

Ultimately, part-time wages and low-paid jobs have a negative effect on the amount of unemployment benefit paid. As the gender pay gap is stable at 23%, female recipients of unemployment benefit receive considerably less unemployment money, i.e. 643 €, compared to 874 € for men (Bundesagentur für Arbeit 2009).

(b) “Needs equity” in the system of basic assistance?

The paradigm shift towards activation in Germany entailed the transformation into a two-tier social security system of income maintenance for unemployed and needy people by merging the former social assistance (*Sozialhilfe*) and unemployment assistance (*Arbeitslosenhilfe* - ALHi) into the new means-tested basic job-seeker assistance of ‘Unemployment Benefit II (UB II)’ (*Grundsicherung für Arbeitsuchende* or *Arbeitslosengeld II*), regulated in Social Code II (SGB II) since 2005. Eligibility and benefits are now completely subject to the situation of the whole private household. Consequently, the principle of individualisation that previously determined the structure of unemployment assistance (ALHi) has been abandoned. Although prior to the new rules the amount of unemployment assistance also was needs-based, it still represented an *individual* legal entitlement. The amount of the new basic assistance is approximately the same as the previous social assistance, but now it is a flat rate.

A crucial point in this benefit scheme is the new construct of the “community of needs” (*Bedarfsgemeinschaft*) in social law, by means of which the mutual obligations within a household were extended. If a couple has been living together for at least a year it is now automatically assumed that they share mutual obligations. Compared with the previous system of unemployment assistance, the extension of mutual obligations is due to the new rule decreeing that the income and assets of spouses or unmarried cohabitants are *completely* taken into account. Previously there was a deductible in the amount of a person’s fictive entitlement to unemployment assistance (53-57%, of previous net income). As a consequence of the gender-specific inequality of earnings, this increased accountability of income has a negative impact on women, especially those cohabiting with a partner. Compared

with the situation under the rules of unemployment assistance, twice as many women as men were no longer eligible for grants (Becker 2009). Accordingly, there is a disproportionately high percentage of women (West: 55%, East: 65%; overall: 59%, in 2008) among the unemployed who receive *no benefit at all*, which translated into a total of 364,000 unemployed non-beneficiaries. This group makes up for 40% of all registered unemployed under the SC III (Statistik der Bundesagentur für Arbeit 2009). Especially for women, the new emphasis on family subsidiarity in SGB II leads to a revival of the traditional breadwinner model and increased economic dependency on other family members. This refers to the ‘paternalism dilemma’ of activation as the new rules encroach upon the individual autonomy of people.

However, one of the characteristics of implementing activation strategies in Germany’s conservative welfare state is the inconsistency of rules and implicit norms that can be interpreted as a lack of political coordination. Contrary to the revival of the breadwinner model in terms of means-testing rules, the work obligations within a household have been extended according to the adult worker norm. The construct of the ‘community of needs’ means that all the employed persons in a household must dedicate all their labour power to supplying the economic requirements of the entire household. When, for example, the husband or partner of a woman who was previously merely earning supplementary income becomes unemployed and in need of basic assistance, the obligation to seek full-time employment shifts to his wife. This legal obligation has been criticized as a form of authoritative “emancipation from above” because it leaves the privileges accruing to the ‘male breadwinner model’ contained in other social and income-tax law untouched (Knuth 2006). This is true although the implementation of this rule is left to the discretion of the front-line agency staff (IAQ et al. 2009).

Legal inconsistencies furthermore exist with the law governing maintenance obligations. This is because the SGB II introduces obligations not only with regard to ‘step children’ living in the household (up to an age of 25), but also between unmarried partners. Both are unknown in the maintenance law according to the Civil Code. A situation of complete dependency on a partner’s good will therefore arises when a person’s need for basic assis-

tance is not recognised due to their partner's income being taken into account.

The loss of individual social security status for non-beneficiaries also comprises their health insurance cover. Although they are registered as unemployed, they are completely excluded from the system of social protection. This is particularly problematic for unmarried persons, who make up about a fifth of all unemployed non-beneficiaries.⁶ In the absence of a partner or relatives who are prepared to pay their health insurance contributions they are completely without health insurance cover.

3.3 Gender-biased active labour promotion measures

In this policy field two main questions arise: First, whether institutional regulations and implementation practices imply universal or selective *access conditions* to employment promotion schemes, especially regarding family carers. Second, whether and how *gender equality objectives* are implemented. The first question mainly relates to the costly "implementation dilemma" of activation whereas the second refers to the "paternalism dilemma".

(a) Are the access conditions to labour promotion programmes equal for men and women?

Generally speaking, eligibility for labour market support measures is determined more by the administrative logics within the two systems SGB III and SGB II rather than by the concrete individual needs of unemployed men and women. Moreover, in both areas of law the granting of participation in employment promotion measures is left entirely to the discretion of the front line staff. However, they must adhere to the centrally prescribed lines of action targeted at cost-effectiveness and quick labour market insertion as primary objectives, and entailing accordant client-segmentation procedures (Hielscher/Ochs 2009: 23). Subsequent to this internal differentiation, it is unlikely that funds will be expended on "clients" whose chances of fast-track integration are not so high. Furthermore, with the 'Hartz reforms' the profile of labour market policy was changed to mainly short-term

⁶ On the basis of own analyses with the German Socio-Economic Panel (GSOEP) in 2008 (Betzelt/Rust 2010; Betzelt/Schmidt 2010).

measures, and the volume of funding for ALMP has been drastically reduced in recent years (Oschmiansky/Ebach 2009: 91).

These mechanisms have a systematic negative impact on the support afforded to specific groups, like unemployed non-beneficiaries, single mothers, and unskilled persons. The predominantly female group of non-beneficiaries, administered as 'not needy' persons under SGB III, is *per se* excluded from all integrating schemes of the SGB II, e.g. socially stabilising measures like support with childcare. At least formally they have access to most of the employment promoting instruments of SGB III, albeit on a discretionary basis. Though there are no official statistics on the participation of non-beneficiaries in ALMP, the few findings available from qualitative studies indicate that this group is unlikely to be included in such measures (Hielscher/Ochs 2009: 148), but that often a stricter *activation* of unemployed non-beneficiaries is exercised (e.g. demanded job applications, geographical mobility, hours of work, cf. Grimm 2009). Since January 2009 the Federal Agency can even impose sanctions against non-beneficiaries in case of non-cooperation, such as a three-month suspension of services. This 'cheap' strategy of statistical clean-up is likely to be largely responsible for the bisection of the number of non-beneficiaries since 2005 (from around 800,000 to less than 400,000 in 2008). As our own longitudinal analyses reveal, their chances of finding jobs are quite slim, so it may be assumed that many of them join the ranks of the silent reserve. Although they are on average well qualified and strongly motivated, more than half (56%) of unemployed non-beneficiaries who were unemployed in 2007 were still without jobs in 2008, and only 23% found either part-time or full-time employment; another 15% had to be content with 'mini-jobs' (Betzelt/Schmidt 2010).

The access to activation schemes is moreover restricted for family carers of infants, practically mothers. In legal terms, unemployed UB II recipients are exempted from working obligations if they have to care for their own or their partners' children younger than three years. By definition, they do not even count as unemployed and therefore are practically excluded from ALMP instruments. This rule is probably one of the most influential reasons for the much less frequent activation of mothers than fathers, as it is mostly applied in a gender stereotypical way. Especially in West Germany mothers are very often not offered

any integration services at all (IAQ et al. 2009: 259). Those groups excluded from activation measures are typically female, low-skilled and constrained in the type of job they can do due to child caring responsibilities (Jaehrling 2009: 134). This finding can be partly explained by the control logic of cost-efficiency, which stands in the way of unemployed persons with numerous “placement obstacles”. Qualitative studies have revealed that in the broad discretionary latitude of agency staff gender-specific stereotypes win through (Bartelheimer/Henke 2009).

Single parents, over 90% of them female and one-third dependent on social transfers, neither participate more often in ALMP measures than the average UB II recipients nor do they get more assistance in finding appropriate childcare (Schwarzkopf 2009). Hence, given their limited labour market availability and the typically insufficient female wages, it is not surprising that single parents have the longest duration of benefit dependency among all household types of UB II recipients (Lietzmann 2009).

(b) How to achieve higher gender equality in labour promotion programs?

Notwithstanding these indications of selective access conditions, Germany is one of the few countries that has introduced *equal opportunities targets and instruments* such as gender target quota in their activation policies whereby women are to be promoted according to the percentage of female unemployed and the extent to which they are affected by unemployment. Specific measures were introduced for women re-entering the workforce, including the collection of gender-specific data on persons receiving support, and the creation of positions for representatives for equal job opportunities in the employment agencies.

However, the implementation and controlling of these targets is quite insufficient, particularly in the SGB II scheme, where no further regulations or procedures are stipulated. Authorised persons in charge of gender mainstreaming within the insurance system are not competent for the clientele of SGB II. Therefore, the large majority of local employment agencies of SGB II have not installed such gender mainstreaming personnel (IAQ et al. 2009). Nor have any other instruments of gender mainstreaming been implemented, for example guidelines or gender trainings for the front line staff. Evaluation results reveal that the directors of lo-

cal employment offices see the gender equality target as being of only subordinate relevance, the majority being quite content with the achieved level. This is in accordance to the low rank of the equal opportunity target in the implementation agreement between the Federal Employment Agency and the Ministry of Labour, whereas the reduction of passive services and fast-track integration in the labour market are high on the agenda.

In response to public criticism, by January 2011 the Federal Agency is to set up positions for equal opportunity officers in the SGB II regime, too. This will represent a first step towards the institutional anchoring of the equal opportunities goals. Notwithstanding, the remaining structural obstacles will continue to prevent their effective implementation.

The gender target quotas have not been met for years, at least not in West Germany, and the gap between targets and reality has even grown in the last years. In 2008, the target ratio for the whole of Germany in the SGB III scheme fell short by 8.4 percentage points (SGB II: -5.7) which reflects the low level of support for unemployed non-beneficiaries, who account for 40% of the unemployed in this area. Moreover, specific 'enabling' programmes for target groups disadvantaged on the labour market, like women returners, single parents, low-skilled or migrant women have been abolished with the Hartz reforms. These groups recognised as being particularly in need of support, are represented far below average in integration programmes. On the whole, German labour market policy has given up its target group approach. However, these rather "dry" figures give no indication of the *quality* of the support afforded, e.g. whether measures can be attended part-time, or the availability of child-care.

One important indicator to measure the effectiveness and quality of active labour promotion is, of course, the transition rate to the labour market. We can only briefly draw on this issue here (Betzelt/Bothfeld 2011). The data reveal that existing gendered employment patterns have not changed towards higher equity, but that they are actively reproduced in the job placement practices of the jobcentres. After having attended ALMP measures within the insurance scheme, the female integration quota moving into 'regular' jobs was 50.4%; for men it was 61.0% (Statistik der Bundesagentur für Arbeit 2008). Exiting from the means-tested SGB II regime, women mostly take up a 'mini-job' –

which is seen by the front line staff as a 'suitable' form of labour market integration for women – or are relegated to economic inactivity and unemployment, above all when they live in a two-person 'community of needs' (IAQ et al. 2009: 182ff, 214). Men mostly move into temporary agency work, leading to greater instability of employment and lower pay, and subsequently to permanent shifts in the administrative status of the entire household in respect to its recognized neediness. Consequently, the entrance into gainful employment for more than 50% of women in SGB II means to remain dependent on supplementary benefits, whereas the large majority of men earn living wages.

4 Conclusions

We have argued in this article that the implementation of the Lisbon Employment Strategy into German labour market policies has resulted in a fragmentation of the traditionally conservative gender regime in this country. Our starting point was the assumption that activation strategies as such come along with certain potential dilemmas which we have named the 'paternalism dilemma' constraining individual choice, the 'implementation dilemma' of multifold policy implications affording high fiscal costs and political coordination, and the 'structural dilemma' of this supply-side oriented approach that might exacerbate the general standards of job quality and increase (gendered) labour market segmentation.

In conservative welfare states like Germany, we argued, these activation dilemmas work out in growing inconsistencies and incoherence between existing institutional structures and long-standing cultural norms on the one hand, and the newly implemented universal adult worker norm on the other. Reformulated in terms of our three dilemmas we argue:

(a) The 'paternalism dilemma' is by no means resolved as we have seen an even growing incoherence of policy goals with regard to favouring different family models at the same time. Rather than 'opening' the traditional male breadwinner model by removing substantial disincentives to women's paid work (tax-splitting-system; limited adjustments of social security schemes), and offering additional options and support (e.g. returners programs; training measures; childcare), several mechanisms in the

introduced basic job-seeker assistance scheme (UB II) actually strengthen the traditional model: foremost through the construct of the 'community of needs' that overstretches family subsidiarity and leads to the complete exclusion of many women from social security, as well as the exemption of (practically) women caring for infants from all kinds of activation. Inconsistent though is the paternalistic introduction of the dual-earner model selectively for needy households, which can be enforced by the job-centres.

(b) The 'implementation dilemma' of activation being a costly and complex strategy has been illustrated with the brief analysis of the labour promotion measures which has underlined the narrowing of the profile of instruments and the overall cuts in expenditure for active labour market policies. This actually contradicts the notion of 'activation' as a 'social investment' strategy and has, of course, to be seen in the light of tight public budgets that constrain the offer of high quality 'enabling' services and programmes. The new public management techniques which put in the fore the cost-efficiency and economy of investment, measured solely by short-termed quantitative success indicators, tend to hamper more complex re-integration processes, especially for those groups facing diverse impediments to labour market participation.

(c) The 'structural dilemma' of supply-sided activation is even exacerbated regarding gendered labour market segmentation as the promotion of atypical and low-paid employment have been explicit goals of the reform. The deregulation of labour law as well as the re-definition of suitable work increases the pressure on male as well as female citizens to take up any job, and largely ignores care responsibilities except for infants and only with respect to mothers and not fathers. Hence, the deregulation and deepening segregation of the labour market makes a stable family income much less likely today for increasing parts of the population, and creates rather than reduces social risks of these households, especially when children are present.

Germany is not the only country where the outcomes of activation strategies are to be seen rather critically from a gender perspective. The case of France as another conservative welfare state reveals similar outcomes, though activation here emphasizes a 'making work pay' strategy which however also reinforces gender inequalities, while active labour market policies rather ce-

ment existing gendered labour market segmentation (Letablier, Eydoux et al. 2011). In 'sub-protective' Southern European welfare states (Italy, Spain) the flexibilisation of labour markets as the prominent national 'activation' strategy entails highly precarious jobs with very low social security which affects mostly young people and women (Graziano 2011; Perez 2011). The case is different in the still most egalitarian Scandinavian welfare states where both the idea of 'activation' and the dual-earner model have a longstanding tradition, which however is meanwhile challenged by the growing diversity of the population, resulting in the case of Denmark in rather harsh forms of activation with inferior social security for vulnerable groups like immigrant women (Breidahl 2011).

The principles of the European employment strategy allow – as we have seen – for different interpretations as it has remained silent on the quality of work, on the introduction of more binding gender equality objectives and by narrowing labour promotion to education and training alone, although the need for more 'traditional' social policy instruments which aim at stabilising employment (regulation by labour law, short time work and others) has become obvious in periods of economic crisis.

The member states will in the future continue to translate EU law and recommendations into national policies. Hence, it is even more important to continue with the development of decent standards of employment and social security and to revitalise the objective of gender equality and strengthen the social dimension of economic policy making, more than it has been the case within the last decade.

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