

The Economic Crisis and Employment*

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Introduction

In recent years, the labour market has undergone profound legislative, structural and social changes especially in the economic and production environment: on one hand, the technological revolution has led to profound changes in the organization of businesses, making work even more fungible in mechanical terms; on the other hand, the spread of the new economy and free movement of financial capitals - this latter migrating to non-European countries where labour is cheaper, thanks to a lack of legal protections and trade unions - have generated some competitive goods imports and consequently some social dumping thus damaging the employment set. Therefore, immigration¹ directly affects the performance of the labour market¹. Immigration has created a class of individuals who, stressed by their state of need, are ready to accept any work conditions, often being underpaid, and sometimes or in conjunction with, the phenomenon of so-called “*moonlighting*” (or undeclared job).

Faced with such pervasive changes, the evolutionary dynamics of the welfare state have progressively been put under pressure, in particular those policies traditionally related to the Ford model of social solidarity (based on mass production, large factories and full-time employment) together with the underlying logic of protectionism - defending jobs and workers' incomes.

Not surprisingly, as widely pointed out by other researchers, current employment protection no longer covers the needs of the working class (or at least that increasingly numerous class of workers on part-time or flexi-contracts like zero, 8 or 10 hours contracts). Furthermore, these forms of protection do not meet the demands of social protection which are gradually emerging in post-industrial society primarily related to the new class of marginalized citizens, the long-term unemployed or the unemployed.

The reason, though obvious, is because of the changing economic scenario: workers are now 'fungible goods' and, at the same time, they are less essential to the production process. Another cause is also attributable to employment policies which, although traditionally set out for the unconditional protection of the workplace, tend to be gradually downsized, in accord with European Union directives which aim at a new frontier of employability through a model commonly called 'flexicurity' which seems to be able to ensure employment security as well as the flexibility requirements of the employer/company.

The issue of flexicurity is often debated within EU countries (where it is not already implemented),

¹ Focusing on labour mobility through EU-Labour Force Survey data indicates a rebound in mobility flows (+21%) in more recent years (2012-13) compared to the previous period (2010-11), while the number of newcomers from third-countries went on falling (-16%). Trends in intra-EU mobility differ markedly across destination countries (increases in Nordic countries, Germany and Austria against decreases in France, Spain and Italy) as well across the origin countries, with the strongest rise recorded from southern Member States, and, to a lesser extent, from the EU-10 countries (countries that joined the EU in 2004). Recent migration and social security data for Germany (and the UK) confirm these trends. However, overall the increase in the number of southern citizens working in Germany remains limited compared to the unemployed population in those origin countries, confirming the rather limited role of adjustment through mobility among euro area countries: overall, flows have increased from the Baltic countries (+19%) and even more from southern countries (+39%). As a result southern movers made up 18% of the flows in 2009-13 compared to 11% in the previous years. This contrasts with substantial declines in the flows from Poland (-41%) and Romania (-33%). In 2009-2013 a substantial share (59%) of intra-EU movers originated in the EU-13 countries (those which joined the EU since 2004), though it is down from 66%. Data from the 'Eu Employment and Social Situation, Quarterly Review' supplement June 2014: <<http://ec.europa.eu/social/main.jsp?catId=737&langId=en&pubId=7712&furtherPubs=yes>>, 22nd march 2014.

with spasmodic and approximate regard to the 'legendary' reality of Northern Europe and focusing on Denmark as an example (despite its origin in the Netherlands). But in truth, 'flexicurity' should be adopted with adaptations. However, for those EU countries which did not adopt it before the economic crisis of 2008 when the economic trend was positive, it does not seem feasible now simply because there is no basis on which to build it: freedom of layoff *versus* the guarantee of income and new employment, subject to training².

On these premises, the following discourse can be divided into three hypothetical sections of analysis and investigation.

The first concerns a description of the economic crisis, its reasons and causes, and how it has affected the labour market in Europe. In this section, there will also be an analysis of the possible solutions deriving from the two branches which deal with employment issues: Economics and Labour Law. On the employment law front, the issues encountered in modern welfare states and their possible solutions have been investigated. The second section is entirely devoted to the crisis within these welfare systems and to proposals driven by doctrine to improve the current situation. The third section focuses entirely on EU employment policies. Within the European Union, there has been some convergence of employment and social policies since the nineties. The Luxembourg process, then renewed with the Lisbon strategy and finally with Europe 2020, went straight to the point of increasing the employment rate to such an extent that it highlighted this need in the guidelines of each strategy. In the EU, therefore, the common challenge is to gradually increase the employment rate while maintaining a high level of social cohesion without denying, at the same time, the free movement of workers within the euro-zone. Later in this article, there is a report on how European policies for employment are traditionally based on two approaches: one is the so-called proactive policies arising from the Luxembourg process, which constitute the cornerstone of the European strategy for employment; the other is the need for proactive policies to be retrofitted with a high degree of workers' protection in labour relations. The financial crisis has weighed heavily on EU strategies to deal with the considerable growth in unemployment rates and the consequent greater demand for income protection.

1. The role of the economic crisis in the labour market

Today, the most developed capitalist societies are going through an economic recession which is still progressing and whose extent is similar, if not in some ways more severe, to that of the Great Depression in 1929³.

As during the Great Depression, the current crisis is acting as a pathogen that lurks and strengthens itself within the structural weaknesses of economic systems⁴. For this reason, all governments

² A different view is expressed by Carinci F and M Miscione, 'Presentazione', in F Carinci and Miscione M (eds), *Commentario alla riforma Fornero* (IPSOA, Milano 2012) 7 ff.

³ This is the opinion of R Pessi in 'Lezioni di Diritto del Lavoro' (6th ed., Giappichelli, Torino, 2014), see also F R Pizzuti 'Rapporto sullo Stato Sociale 2010. La "Grande Crisi del 2008" e il Welfare State' (Academia Universa Press, Milan, 2009) 85.

⁴ M Sacconi in 'Presentazione' [2009] in Ministry of Labour, Health and Social Policies (ed) *Libro Bianco sul Futuro del Modello Sociale. La Vita Buona nella Società Attiva*, typed in <http://www.portalavoro.regione.lazio.it/portalavoro/Lazio2020/pdf/librobianco_Mdl.pdf>, 3rd April 2015. Sacconi explains that the crisis has become global because of the interconnection between national economies. Globalization has increased the wealth of economies and societies, expanding global trade, increasing export markets,

are called upon to make - both on the domestic and at international level - difficult choices that can no longer be postponed to correct these weaknesses⁵.

An economic collapse due to badly chosen policies presupposes, therefore, a number of preliminary considerations that must be understood not only as purely static statistical data, but rather, as something dynamic in constant evolution, which also involves other sectors besides the economy and the labour market, thus giving rise - in almost all the industrialized EU – to the debate on the issue of unemployment⁶.

The so-called 'Great Depression of 2008', initially manifested itself in the Stock Exchanges and banking system internationally which contributed to giving the impression that, initially, its nature was essentially financial. But later, perhaps by reflex, it also affected economic, social and political issues and it is in this area that its structural causes, its most worrisome effects, and its possible solution⁷ should be identified.

A particularly important date should be dwelt on that has radically changed the labour market and had a profound effect on employment: on April 15th, 1994, when the WTO (World Trade Organization) agreement on free world trade, which ended in 2001 was signed in Marrakech, and when China also became a member⁸. Since then, with the birth of free trade in an open world market which unified both supply and demand, production and consumption were due to converge on a global scale. For Europe, therefore, the WTO was a replica, on a global scale, of its 'historical adventure' relating to the integration of the internal European market (initiated with the Treaty of Paris in 1951 and later with the Treaty of Rome in 1957)⁹. It can easily be said, that there was a straight transition from the unified European market to the unified world market, perhaps without Europe being ready for this change, lacking the solid base and internal consolidation required for this step. It has already been argued that «... it was a folly to think that with the WTO, the open world market would have developed in a linear way, without creating enormous economic and social imbalances...»¹⁰. So, the main consequences have been that for some

multiplying the opportunities for financial investment, but at the same time, has demonstrated an extreme vulnerability to the occurrence of adverse shocks. The negative effects of this 'perverse' system have also been reported in Europe which is called on today to react to the consequences of the global crisis.

⁵ In J P Fitoussi, P Ginefra, R Masera, A Paci, G Roma and L Spaventa (eds), *'Fare i Conti con la Crisi'* (Il Mulino, Bologna, 2010).

⁶ J P Fitoussi, P Ginefra, R Masera, A Paci, G Roma and L Spaventa (eds), *'Fare i Conti con la Crisi'* (n 5) 32 and P. Lambertucci 'Globalizzazione e Diritto del Lavoro: Brevi Spunti di Riflessione' [2010] *Il Diritto del Mercato del Lavoro*, 27 ff.

⁷ On this point, F R Pizzuti *'Rapporto sullo Stato Sociale 2010. La "Grande Crisi del 2008" e il Welfare State'* (n 3) *passim*; F Galimberti, *'Sos Economia. Ovvero la Crisi Spiegata ai Comuni Mortali'* (Editore Laterza, Bari, 2009) 52 and A M Rinaldi, *'Il Fallimento dell'Euro'* (Piscopo srl, Roma, 2011) 15 ff.

⁸ G Tremonti *'La Paura e la Speranza. Europa: la Crisi Globale che si Avvicina e la Via per Superarla'* (Mondadori, Milan, 2008) 30. About the WTO see also G Balducci 'The Role of the European Union in China's Accession to the WTO' [2011] 2 *Il Politico* 101; A Tricarico and U Biggeri 'La Fine dell'era WTO? Conseguenze dell'Accordo di Hong Kong e Futuri Scenari Internazionali' [2006] 1 *Democrazia e Diritto* 97 and C Marcolungo and G Sanviti 'I Principi Fondamentali del WTO' [2003] 3 *Quarterly Journal of Public Law* 749. See also the criticism of M Di Sisto 'WTO, Il Funerale dello Sviluppo' [2008], 97 *AE. Altreconomia* 34.

⁹ For an historical reconstruction of the integration of the European internal market, see M Roccella and T Treu, *'Diritto del Lavoro della Comunità Europea'* (5th ed., Cedam, Padova, 2009) 25 and U Haltern 'Integration through law', in T Diez and A Wiener (eds) *European integration theory* (Oxford University Press, Oxford, 2003) 177.

¹⁰ See G Tremonti *'La Paura e la Speranza. Europa: la Crisi Globale che si Avvicina e la Via per Superarla'* (n 8) 32 according to which the cradle of poverty lies in the WTO. See also E N Luttwak, C Pelanda, G Tremonti *'Il Fantasma della Povertà: una Nuova Politica per Difendere il Benessere dei Cittadini'* (Mondadori, Milano, 1995) 85.

years, the West has been exporting wealth and importing poverty. Western wages compete with eastern ones, without the need for Eastern workers to immigrate and come to work in European factories. It is no longer necessary for a worker to move from one country to another, because Western capital - which directly or indirectly finances Eastern factories - is on the move while Westerners' wages tend to level down, towards Eastern ones, while the material and social standard of living remains Western¹¹.

In truth, we should dwell on another aspect connecting the economic crisis to the labour market: how the impact of the anti-crisis measures of individual Member States and the austerity measures adopted in recent years have imposed labour market reforms which favour deregulation and organizational instability within companies extending the retirement age and lowering wages, in detriment to the provisions of applicable law and collective bargaining, inevitably creating a feeling of extreme and growing insecurity¹² in large sections of the population.

The decisions then taken to halt and reverse the trend of public debt and protect euro-zone countries from speculative attacks, have claimed victims among some of those institutions that are more characteristic of a social market economy, as recalled by art. 3 of the EU Treaty, which marked the rise and success of the European Social Model (ESM)¹³.

This statement does not mean to say that the EU economic crisis is the only cause of unemployment. It is a fact that in post-industrial societies, job scarcity in a market is proportional to the demand for employment especially if work is conceived of in its most traditional sense of stable and full-time employment with a permanent contract, which is the model that predominates¹⁴. It may well be said, however, that the crisis has exacerbated unemployment to the point of involving all the EU countries. This is confirmed by unemployment data from April 2015 showing 11.1%, a fall compared to March 2015 of 11.2%, but more-or-less stable compared to April 2014. Under

¹¹ See G Tremonti, *'La Paura e la Speranza. Europa: la Crisi Globale che si Avvicina e la Via per Superarla'* (n 8) 47.

¹² This is the opinion of F Guarriello in 'Presentazione' (2013) 2 *Rivista Giuridica del lavoro e della previdenza sociale* 226. See also, A. Alesina, C Favero, F Giavazzi, *The Output Effect of Fiscal Consolidations*, in http://scholar.harvard.edu/files/alesina/files/output_effect_fiscal_consolidations_oct_2014.pdf, accessed 25th May 2015; A. Alesina, *The kindest cuts*, in http://www.city-journal.org/2012/22_4_spending-cuts.html, accessed 25th May 2015; R. Perotti 'The "Austerity Myth": Gain without Pain?' in A Alesina - F Giavizzi *'Fiscal Policy after the Financial Crisis'* (NBER, University of Chicago Press, 2013) 307 ff; C. Cottarelli - L Jaramillo *'Walking Hand in Hand: Fiscal Policy and Growth in Advanced Economies'* (IMF Working Paper International Monetary Fund, Washington, 2012,) n. 137 and A Garilli 'Occupazione e Diritto del Lavoro. Le Politiche del Lavoro del Governo Renzi' [2014] 226 *Centro Studi di Diritto del Lavoro Europeo* "Massimo D'Antona" <http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-IT/20141020-012413_garilli_n226-2014itpdf.pdf>, 4, accessed 25th May 2015.

¹³ Again see F Guarriello in 'Presentazione' (n. 12) *passim*. See also, S Giubboni 'Europe's Crisis-Law and the Welfare State: A Critique' [2015] 1 *European Labour Law Journal* 6. The Author's critical stance is that the new architecture of European economic governance accentuates the well-known asymmetries between supranational market forces and national welfare-state arrangements, by deeply transforming the constitutional functions of EU law. A double process of de-politicization and de-legalization takes place in an apparently contradictory but convergent manner at EU level, with dramatic implications for the viability of the so-called "European social model".

¹⁴ See F Liso, 'Il Problema della Riforma degli Ammortizzatori Sociali nell'Iniziativa del Governo' in P G Alleva, E Balletti, U Carabelli, A Di Stasi, N Forlani, F Liso and M Paci (eds), *"Tutela del Lavoro e Riforma degli Ammortizzatori Sociali"* (Giappichelli, Torino, 2002) 105 and A Di Stasi, 'Gli Ammortizzatori Sociali tra «il Cielo delle Idee» e le più Recenti Novità Legislative. Un'Introduzione' (2011) 2 *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 339.

25 unemployment is even more worrying at 20.7% in the Euro28 countries and 22.3% in the Euro19 countries¹⁵.

2. New terms for assessing unemployment in a labour market 'in crisis'

From closer analysis - regardless of how wide-spread unemployment is - the terms of its assessment have significantly changed¹⁶.

The assumptions about and the forms of unemployment have significantly changed in relation to the profound transformation affecting employment in all its manifestations [vague]. The increasing application of modern technologies to production means that human resources are destined to progressive dissolution, having become an extremely fungible product and, as such, easily substitutable. This has resulted, therefore, in a process of employment involution that tends to be irreversible¹⁷.

Besides the job shortage, the employment market is offering opportunities in a variety of alternatives to the full-time fixed-term contract, primarily because of increasing openness towards flexible contracts which have become a valuable tool for setting employment levels and implementing legislative action¹⁸.

The concept of work itself in the new world of increasingly scarce employment is changing and there is an increasing propensity not to settle for 'humble' jobs¹⁹.

¹⁵ Eurostat data: euroindicator no. 98/2015, 3 June 2015, <http://ec.europa.eu/eurostat/documents/2995521/6862104/3-03062015-BP-EN.pdf/efc97561-fad1-4e10-b6c1-e1c80e2bb582>, accessed 22 June 2015. For further details up to 2012 (including survey methods) see A Barbera 'Le dissimmetrie tra i tassi di disoccupazione convenzionali alternativi' [2012] 2 Diritto delle Relazioni Industriali 607. An unemployment rate which shows imperceptible improvements is hardly comforting. The number of persons employed increased by 0.1% in the euro area (EA19) and by 0.3% in the EU28 in the first quarter of 2015 compared with the previous quarter, according to national accounts estimates published by Eurostat, the statistical office of the European Union. In the fourth quarter of 2014, employment increased by 0.1% in the euro area and 0.2% in the EU28. These figures are seasonally adjusted. Compared with the same quarter of the previous year, employment increased by 0.8% in the euro area and by 1.1% in the EU28 in the first quarter of 2015 (after +0.9% and +1.1% respectively in the fourth quarter of 2014), see Eurostat news release euroindicator no. 106/2015, of June 16th, 2015, in <http://ec.europa.eu/eurostat/documents/2995521/6885626/2-16062015-AP-EN.pdf/23b54e8a-5bc3-4bc9-a3b0-3edf2bae4a87>, accessed 22 June 2015.

¹⁶ For a reasoned analysis at European level, albeit limited to over fifty, see D Zaccaria 'La Disoccupazione dei Lavoratori Ultracinquantenni in Europa: Fattori di Rischio e Probabilità di Uscita' [2012] 126 Sociologia del Lavoro 39.

¹⁷ On the irreversibility of the employment problem, see M Rodriguez-Piñero and B Ferrer, 'Per una Flexi-Security Virtuosa' (2008) 2 Lavoro e Diritto, 341.

¹⁸ In Italian law e.g. Law no. 61/2000 and subsequent amendments relating to part-time work; Legislative Decree no. 368/2001 and subsequent amendments and additions relating to fixed-term contracts; Legislative Decree no. 276/2003 and subsequent amendments and additions, relating to temporary jobs, job sharing and on-call jobs. For further information refer to B Contini and E Grand 'Lavoro «Usa e Getta», Disoccupazione e Inoccupazione. Novità Importanti dai Dati WHIP' [2012] 2 Politica Economica 135. For the social security matters, see, P Bozzao 'La tutela previdenziale del lavoro discontinuo' (Giappichelli, Torino, 2005); for the labour market, see, S Cassar 'Il sistema delle tutele del lavoro nell'appalto tra politiche del diritto e scelte organizzative' (Giappichelli, Torino, 2014).

¹⁹ Such as nurses, caretakers, plumbers, farmers and so on.

So, unemployment today should be seen in a completely new light²⁰. The traditional unemployment 'hiccup' surmountable by an alleged ease of access to employment²¹, has been transformed by the economic crisis, into a constant of socio-economic relations. At the macroeconomic level, today's unemployment tends to manifest itself as a 'physiological' manifestation of said socio-economic relations, but also in terms of 'physiognomy' it could well be said to have features that are structurally and socially different from the past. Previous full-time and fixed-term employment contracts as exclusive models of employment, envisaged the sole hypothesis of 'total' employment. In other words, the alternative was absolute: either employed or unemployed, *tertium non datur (the law of the excluded middle)*²². Today this view no longer applies. The spread of alternative employment forms to the full-time permanent contract, has led to various forms of unemployment too, specifically identifiable as the negative 'projection' of insufficient or precarious employment. There is also a kind of unemployment that can be simply 'partial' which consequently implies a transformation of the ad hoc protection tools tailored to it²³. In the end, it is no longer a transient and reversible situation of need, but a necessary condition directly related to the shortage of labour in the same post-industrial society and the affirmation of new types of contracts that are characterized by greater flexibility of use. It is natural, then, that in the current scenario, marked by a type of unemployment which tends to be 'structural', there is a significant category of the so-called 'not-employed' - alongside (and sometimes in place of) the traditional unemployed - those people who, considering the physiological shortage in labour demand, fail to get into the cycle of work which leads to long-term unemployment. In reality, laid-off employees are no longer able to qualify themselves professionally, perhaps because of age, or are 'intermittent' or 'underemployed' unemployed, those who, in the absence of stable and full-time employment, accept only occasional or part-time employment²⁴. This latter category is booming today, mainly because of progressive erosion of the fixed-term contract as the prevalent contractual model.

In other words, the characteristics of the unemployed model have changed. The unemployed are no longer those who were fired due to the economic downturn in production or as a breach of contract, but rather the new generation of unemployed are *a priori* excluded from the labour market, because they never managed to enter (not-employed) it, or because they could not re-enter (long-term unemployed) it, or because they were constrained by their need to work to accept odd and temporary jobs (intermittent or underemployed unemployed)²⁵.

²⁰ In this sense, see M La Rosa, C Dall'Agata, B. Giullari and P Grazioli, 'Nuova Cittadinanza, Nuovo Welfare, Disoccupazione e Politiche Attive del Lavoro', in E Bartocci (ed), *Le Incerte Prospettive dello Stato Sociale* (Donzelli, Roma, 1996). See also M La Rosa and T Kieselbach, *Disoccupazione Giovanile ed Esclusione Sociale. Un Approccio Interpretativo e Primi Elementi di Analisi* (Franco Angeli, Milano, 1999).

²¹ See R Pessi, *Valori e Regole Costituzionali* (Aracne editrice, Roma, 2009).

²² See V Borghi and M La Rosa 'Disoccupazione e Disoccupazione Giovanile: i Confini di un Problema', in M La Rosa and T Kieselbach *Disoccupazione Giovanile ed Esclusione Sociale. Un Approccio Interpretativo e Primi Elementi di Analisi* (n 20) 13.

²³ See the theory of F Liso, 'Il Problema della Riforma degli Ammortizzatori Sociali nell'Iniziativa del Governo', in P G Alleva, E Balletti, U Carabelli, A Di Stasi, N Forlani, F Liso and M Paci (eds), *Tutela del Lavoro e Riforma degli Ammortizzatori Sociali* (n 14).

²⁴ A Mastropasqua 'Gli Ammortizzatori Sociali nella Crisi: la Tenuta del Sistema' [2010] 2 Diritto delle Relazioni Industriali, 325.

²⁵ See, for some insights in this regard, the contribution of M Tiraboschi 'L'Evoluzione Normativa sugli Ammortizzatori Sociali tra Emergenza e Ricerca di una Logica di Sistema' [2010] 2 Diritto delle Relazioni Industriali, 331.

3. Emerging instances of social protection in the European framework of values

This new form of unemployment has given rise to the primary, progressive emergence of new demands and requirements of social protection²⁶. The important components are not so much the need for income support during the transitional job-loss phase, albeit to partially maintain a standard of living, but rather the increasing difficulty of re-employment which equates to the non-achievement of an acceptable standard of living. Beyond the obvious need for a structural increase in demand for employment, there should be a requirement for the use of welfare protections, even in promotional form²⁷.

It becomes, therefore, evident that there is a need to verify the role and cohesion of a system of protection against unemployment which no longer seems to respond to the needs of the labour market in part due to the anachronistic traditional perspective of 'full-time fixed employment'. Social protection, or better, the right to social protection during a phase of unemployment is a well-known and cardinal principle of European Union law²⁸.

The system of values on which the European constitution is based as illustrated by art. 2 UT, encourages the transition from a traditional economic setting to one based on human development²⁹. Within the overall framework as outlined, a key role of the EU depicted as the home of rights, freedoms and social protection is implemented by the external action of changes introduced by the Lisbon Treaty and then by Europe 2020 (discussed below) which impose trade policies with other countries in accordance with international standards in the field of human rights, and in particular, fundamental social rights. Considering that all Member States have the same core values, they should be united in their stand against unemployment. Furthermore, there should be a feasible system of protection against job shortages.

4. The binary 'labour-law economy' and its influences on employment. The partial relevance of Keynesian theory

The break-up or disintegration of the labour market is an opportunity to compare the binary 'labour-law economy' (especially the branch of macro-economics) and explore the compatibility of

²⁶ R Del Punta 'Il Diritto del Lavoro fra Due Secoli: dal Protocollo Giugni al Decreto Biagi', in P. Ichino (ed) *Il Diritto del Lavoro nell'Italia Repubblicana. Teorie e Vicende dei Giuslavoristi dalla Liberazione al Nuovo Secolo* (Giuffrè, Milano, 2008) 253. Both affirm that a proposal for an "an update of the method," should be required "tending towards greater equity (for the benefit of all employees and not, as well as all the socially weak citizens or not) and above all able to deal with the new 'dizzying complexity' (so as to reconstruct the relationship between the individual and the collective, between security and individual responsibility, between social values and economic efficiency)".

²⁷ This is the proposal of R Pessi, 'Valori e Regole Costituzionali' (n 21) 25. See also M.G. Garofalo in "Unità e Pluralità del Lavoro nel Sistema Costituzionale [2008] Diritto delle Relazioni Industriali 31 and T. Treu 'Lineamenti per una Riforma dello Stato Sociale' [1997] 1Rivista giuridica del lavoro e della previdenza sociale, 3.

²⁸ The doctrine on this point is quite unanimous, with no claim of being exhaustive. M Persiani 'La Previdenza Complementare' (Cedam, Padova, 2008) and F. Liso, 'Il Problema della Riforma degli Ammortizzatori Sociali nell'Iniziativa del Governo', in P.G. Allea, E Balletti, U Carabelli, A Di Stasi, N Forlani, F Liso and M Paci (eds), *Tutela del Lavoro e Riforma degli Ammortizzatori Sociali* (n 14).

²⁹ Referring to the employment problem, see S Deakin 'The Lisbon Treaty, the Viking and Laval Judgments and the Financial Crisis: in Search of New Foundations for Europe's 'Social Market Economy'' in N Bruun, K Lorcher and I Schomann (eds.), *The Lisbon Treaty and Social Europe* (Hart Oxford and Portland, Oregon, 2012) 20 ff.

how the work system functions with the efficiency of the economic system. This latter in particular would allow a redistribution of income among the parties, albeit in a balanced way, and take into account the ethical measures and social policies a State adopts in its domestic legislation³⁰.

In truth, this confrontation between labour law and economics is expected to create a constant dialectic, to understand the real effects of state regulatory choices and ensure their adequacy, or incongruity, for the purpose for which they were made³¹. Conversely, the complexity of the phenomena involved imposes, not only a strategic rationality between the two branches, but also a plural one, i.e. a strategy which is capable of directing actions, as per the teaching of Weber, who asserts that “the actions should pursue concurrent purposes (...) in order to satisfy them according to the principle of marginal utility”³².

On the great economic crisis and labour market issues, especially employment, one is reminded of the theory of an economist who modified the theoretical and practical approach of the economy and employment in the '30s: J.M. Keynes.

Historically, Keynesian theory arose as a critique to Say's Law and thus to classical economic theory, by which unemployment should be an almost necessary transitory moment in the pause for a new economic equilibrium³³. The basic problem, according to classical theory, was uncompetitive structure in the labour market. If wages were reduced sufficiently under competitive pressure from the unemployed, this would create a level that ensured equality between supply and demand, and the system would be able to absorb all the existing unemployment. According to Keynes, however, wage reduction was irrelevant - according to him, the degree of employment is determined by effective demand and not by wage issues. The Keynesian explanation of unemployment is essentially based on the inadequacy of global demand. This failure is made possible by the fact that not all of the income earned is then spent; only a part of it is spent, the other is saved, and so it exits from the economic circuit, which is why it does not change (as indeed stated by the classical scholars) in accordance with the changes in interest rate, nor does it depend on the amount of income saved³⁴.

Keynes main innovation on the functioning of the labour market, which also actualizes some parts of his thinking, concerns the concept of involuntary unemployment³⁵. According to Keynesian

³⁰ About this, see the insights of S Deakin, G Seegers and R Van Den Bergh (eds.) *'Law and Economics in The Labour Market'* (Elgar, Cheltenham, 1999) and S. Deakin and F Wilkinson *'Il Diritto del Lavoro e la Teoria Economica: una Rivisitazione'* [1999] *Diritto delle Relazioni Industriali* 587. See also – by the same authors – *'Rights vs. Efficiency? The Economic Case for Transnational Labour Standards'* (1994) 23 *IJL* 289.

³¹ About this point, in fact, R C Coase *'Impresa, Mercato e Diritto'* (Il Mulino, Bologna, 1995) 221, asserts that «there is no reason why, on occasion, the governmental regulation” on the labour market (ed.) ”should not lead to increases in the efficiency of the economic system».

³² M Weber *'Economia e Società, I, Teoria delle Categorie Sociologiche'* (Tullio Bagiotti, Franco Casabianca and Pietro Rossi trs, Torino, Edizioni Comunità, 1981).

³³ See the study of M Riggi *'New Keynesian models with labour market rigidities: a critical survey'* [2007] 102 *Università degli Studi di Roma 'La Sapienza' - Dipartimento di Economia Pubblica. Working Paper* 1.

³⁴ For a reconstruction of Keynesian theory, see M De Vroey and P Malgrange *'From keynesian revolution to the klein-goldberger model: Klein and the dynamization of keinesian theory'* [2012] 2 *History of Economic Ideas* 113; L Michelini *'Keynes o Marx? Sulle Origini e i Rimedi delle Crisi'* [2011] 105 *Studi Economici* 149 and F Vito *'Notes and Discussions - The Question of High Wages and a Proposal by J.M. Keynes'* [2011] 3-4 *Rivista internazionale di scienze sociali* 309. For the theory applied to labour law, see L Cavallaro *'Lavorare Meno per Lavorare Tutti: il Keynes dimenticato'* [2005] 1 *Rivista Italiana di Diritto del Lavoro* 27.

³⁵ See T Nakajima *'A Simple Model of Keynesian Unemployment'* [2010] 2 *Metroeconomica* 239.

thinking, unemployment is a phenomenon that arises from systemic operation across markets, and therefore it can't only be attributed to features of the labour market. In other words, as mentioned earlier, the labour market is not independent of other markets. Therefore, unemployment can't be solved simply by studying the offer and demand for labour, and in particular, that a reduction in wages may be appropriate for tackling the phenomenon (a principle rooted in classical studies and very much alive in some current theories). Keynes was keen to clarify that such a sensitive issue, could not be solved through generic labour policies or through austerity, but rather had to be found in targeted policies built in conjunction with economic policies supporting the project. It should not be underestimated in Keynesian analysis, how sensitive he was to the parties involved and the situations created by unemployment. Not surprisingly he often used 'unused working capacity' as an alternative to unemployment. The practical importance of these studies and their results was decisive for acceptance of Keynes general theory by the scientific community. When classical economic theory had to confront the serious phenomenon of recession, it was unable - within its complex interdependencies - to discriminate between what was important and what was not, and gave indications in the best of cases that were inconclusive and sometimes completely wrong. Keynes instead, was able to give precise, clear and extremely effective directions on what was necessary to do to set the economic system free from the bite of depression³⁶, along with the interventionist policies of Roosevelt.

The Keynesian lesson taught that the cycle in a monetary and financial economy is inherent to the system and that the State should intervene with appropriate policies to moderate the peaks and avoid the brunt of the negative phases of the cycle while at the same time pursuing policies aimed at reaching potential income which meant the full employment of productive resources. Yet this theory, which sees the State in the foreground, earned Keynes and his supporters, the criticism of being responsible for the continuous expansion of the role of the State, and this is why this theory is partially applicable today, given the poverty in which some States find themselves. Nowadays, one could easily say that government intervention, even if done in a thoughtful and targeted way to solve unemployment can't, by itself, control the phenomenon – as will be explained later. It certainly can be the arbiter of interventions which ought to be capable of balancing welfare systems to enable them to slow down the growth of distributive inequalities among the various economic sectors and modify not only at national level, the relationship between income and work, but also at European level, the distribution of income within each country. Government alone is now incapable of providing employment policies.

4.1. Possible remedies to unemployment resulting from the economic model. The Beveridge curve and the actualization of the Euro-zone

Albeit highly theoretical³⁷, one of the tools, to solve the problems of unemployment on the economic front, is the so-called Beveridge curve (named after the economist who inspired it)³⁸.

³⁶ See R E Backhouse and B W Bateman 'Keynes and the Welfare State' [2012] 1 History of Economic Thought and Policy 7.

³⁷ Despite the undoubted contribution to knowledge, the Beveridge curve has remained somewhat an abstract tool. Many countries are not yet equipped for statistics needed to reconstruct empirically the processes underlying the Beveridge curve. Added to this is also that the causes of the occurrence of the phenomenon of mismatch in the labour market are specific to country. See G Chirichiello 'Macroeconomia. Nozioni di Base, Approfondimenti ed Estensioni' (Giappichelli, Torino, 2014).

³⁸ On the Beveridge curve, see the study of C Di Giorgio 'Fluttuazioni Macro e Dinamica della Curva di Beveridge' [2008] 1 Economia, impresa e mercati finanziari 61.

It analyzes the dynamics of market flows using graphical tools, by explaining a fact identified from the labour market data. In advanced economies, including at the European level, there is the paradoxical and simultaneous existence of unemployment together with unmet labour demand (of firms, companies or enterprises). The Beveridge curve attempts to provide a solution on the assumption that among the mechanisms of the labour market, an essential component is allocating existing labour 'stock' among the various jobs available at any given moment. Its efficiency is called 'matching', which measures the ability to minimize the number of vacancies relative to the number of unemployed.

In other words, the efficiency of the labour market is measured by its ability to transform vacancies into new recruitments, by appropriately matching available jobs to those people seeking employment with those specific work features. In particular, the curve gradient indicates changes in the degree of efficiency of the matching process, and therefore that these shifts are related to long-term changes in the labour market, linked to mechanisms which match the needs of workers with those of the productive world. There are complicated sub-processes involved which are generated by the ease or difficulty of filling the vacancies with a greater or lesser job/skill set match, greater or lesser job location / worker location match and by more or less industrial sector origin/destination match. As a result, the more efficient the process, the greater the outflow from unemployment into vacancies³⁹.

A recent survey on the Beveridge curve applied to the euro-zone provides us with an important update on the data collected⁴⁰. It seems that the curve shifts such that a higher rate of unemployment is associated with a given level of vacancies and a significant change in the Beveridge curve slope, suggesting a change in the efficiency the vacancy/unemployment match. Both phenomena seem to confirm the persistence of structural problems in the euro area with peaks in some of its labour markets. In most Western countries, the labour market has structural characteristics which could be altered, particularly the amount of unemployment benefits and the high unemployment rate which affects people looking for their first job, a sizeable part of youth unemployment.

The curve also reveals other aspects of no small importance. It appears that the amount of unemployment benefits affects so-called permanent or long-term unemployment. It is certainly one of the State's responsibilities to provide subsidies to those who have lost their jobs for a certain period and within certain limits, to alleviate the discomfort of unemployment during the search for a new job. But policies highly subsidising unemployment, essentially hiding care interventions, firstly waste resources and secondly, even more seriously, use labour resources inefficiently, while increasing both the Beveridge curve mismatch and incentives for not seeking a new job.

³⁹ See the study of G Galeazzi 'La Probabilità di Accordo nella Curva di Beveridge, le Sue Determinazioni Strutturali ed il Ruolo del Grado di Protezione nell'Occupazione' [1993] *1 Economia Società e Istituzioni* 27.

⁴⁰ The survey in question was conducted by B Bonthuis – V Jarvis – J Vanhala 'What's Going on Behind the Euro Area Beveridge Curve(s)?' in BCE, Working Paper series, n. 1586, settembre 2013. See also B Bonthuis 'Constructing a Data Set on Labour Composition Change' The Conference Board Economics Program Working Paper Series, (2011), EPWP 1104.

So, as regards reducing youth unemployment through targeted interventions to prevent a phenomenon called hysteresis⁴¹ (a term borrowed from physics), Beveridge's theory teaches us that there are two appropriate strategies: i. the establishment of employment agencies particularly for young people and ii. a minimum wage for youth⁴². When an economy's history leads accumulated successive residues in the unemployment rate, it happens that interventions designed to combat purely cyclical unemployment prove ineffective due to the conversion of temporary unemployment into permanent unemployment due to hysteresis, and this can only be eradicated by structural reforms at the European level through EU directives. This would be the way to focus on the current rigidity of the labour market to overcome it and provide practical support to the theory proposed by the Beveridge curve.

4.2. Possible remedies to unemployment resulting from labour law. The origins of the welfare state as a means and tool to overcome unemployment

It is also possible from a different point of view to analyze the solutions implemented by the labour law to solve unemployment. Can the regulative setting of the labour law guarantee the right to employment or suitable protection to compensate for the loss of a job?

The State is entrusted by statute to manage active policies and income support policies when there is a job shortage. Over time, unemployment has been profoundly transformed relating to the 2008 crisis and other internal factors which sometimes compete with each other within Member States. This point deserves, albeit briefly, a historical reconstruction.

Succinctly, the welfare state is a form of State based on the principle of substantive equality, hence the aim of reducing social inequalities. In a wider sense, welfare state also indicates the regulatory system by which the State transforms social inequality into concrete actions⁴⁴.

There are basically two reasons that led to the birth and later development of the welfare state: firstly, it was meant to ensure all individuals a minimum level of subsistence to enable them to bear the costs of biological, social and cultural development. The second, responding to a need for social equity, consisted in the desire to redistribute the wealth produced by society in such a way as to ensure that all individuals could have the same basic opportunities⁴³. On the first point, the spread of industrial work and an increase in the amount of goods available on the market, led to a rise in stress for workers and their families occasioned both by the new rhythms of production and an increase in workplace accidents. Employees work conditions needed more guarantees

⁴¹ The hysteresis indicates that if the economy is subject to a negative shock that leads to an increase in the unemployment rate, when subsequently, as a result of the cycle, the same economy records a shock of opposite sign, positive, a remnant of the previous increase in unemployment remains in each turn of the cycle so that the inversion sign of the cycle fails to eliminate even if such inversion is quantitatively the same entity. For further information about hysteresis applied to unemployment, see C De Vincenti 'Disoccupazione, Customer Markets e Capacità Produttiva: un Modello di Isteresi di Lungo Periodo' [1995] 52 Quaderni di Economia del Lavoro 87.

⁴² Furthermore, such information also comes to us from the minutes of the 103th edition of the International Labour Conference held in Geneva from 28th May to 12th June 2014.

⁴³ About this see, M Vecchiarelli 'Stato Sociale, dalla Crisi al Rinnovamento' [XVII] Sistema Previdenza 46; A Talia 'Lo Stato Sociale tra Crisi e Riforme' [2010] 3/4 Diritto e Lavoro nelle Marche 273 and F Pizzuti 'Grande Crisi 2008: Politica Economica e Stato Sociale' [2009] 164 Inchiesta 64.

“through public intervention”⁴⁴. Incessant insecurity within society highlighted the need to establish actions to improve the living conditions of workers which gave rise to the development of ‘social security’⁴⁵. This took the form in the assumption by the whole State community of ensuring all citizens freedom from want so they could effectively enjoy their civil and political rights⁴⁶. Therefore national governments began to establish legal institutions to provide adequate protection. It is now essential to briefly analyze the origins and evolution of the classical model of the welfare state and the reasons for its crisis. Finally, a definition of the welfare state today will be re-defined, consistent with the role that it is called on to perform.

4.2.1. The various stages of the development of the welfare state

For a long time, scholars of social security divided Europe into four broad areas based on the means of being granted social security in the strict sense, compared to social action meant in a universal sense⁴⁷, that is attributable to the human being as such⁴⁸.

From northern to southern Europe, there are the Scandinavian countries, then the Anglo-Saxon ones and lastly the area of continental Europe and the countries of southern Europe. The four areas of Europe therefore lie along a *continuum*, whose extremes are two opposite models of social security: the universal one, called Beveridgian, and the social insurances one, known as Bismarckian⁴⁹. The latter is historically the first model developed. In fact, although the welfare state originated in England in the Poor Laws of Queen Elizabeth I, at the turn of the sixteenth and

⁴⁴ See G Prosperetti (ed) *‘Un Nuovo Welfare per la Società Post-Industriale’* (Giappichelli, Torino, 2008) 13.

⁴⁵ About the elaboration of this concept, see the study of U Prosperetti ‘Sulle Nozioni di Protezione Sociale e Sicurezza Sociale’ [1954] 1 Rivista Giuridica del Lavoro e della Previdenza Sociale 298.

⁴⁶ About this see P Bosi ‘Welfare’, in S Toso (ed), *Selettività o Universalismo? Il Dilemma delle Politiche Assistenziali* (Franco Angeli, Milano, 2000) 104.

⁴⁷ For an in-depth analysis, please refer to the study of R. M Titmuss ‘What is social policy?’, in R M Titmuss, B. Abel-Smith, and K. Titmuss (eds) *‘Social policy’* (Allen & Unwin, London, 1974) <<http://rszarf.ips.uw.edu.pl/welfare-state/titmuss.pdf>> , 29th March 2015; P Flora – A Heidenheimer ‘The Development of Welfare State in Europe and America’ (New Brunswick, US und London, UK: Transaction Books, 1981, 6th paperback reprint 2003) and C Ranci *‘Politica Sociale. Bisogni Sociali e Politiche di Welfare’* (Il Mulino, Bologna, 2004) and P Ferrario *‘Politica dei Servizi Sociali’* (6th ed, Carocci, Roma, 2009).

⁴⁸ In this regard, it has been observed as the amount of social security protection closely intended, that is to say addressed to those persons who are employed, is inversely proportional to the kind of universal protection, that is attributable to the human being as such. According to R Pessi *‘Lezioni di Diritto della Previdenza Sociale’* (8th ed., Cedam, Padova, 2014) 20, it seems that today there may be every reason to rethink the welfare system by assuming the transition from the actual system of employment inspiration to a model of universal inspiration.

⁴⁹ The first form of social insurance was introduced in Germany in 1883 on the initiative of Chancellor Bismarck (from what is commonly called the Bismarckian model) and involved state-run insurance, as well as compulsory insurance and contributory in-chief to employers, placing at the center of the protection the riskiness of their employment. Later, during the period between the two world wars, the theoretical elaborations on the study of the welfare state went beyond the Bismarckian concept of welfare, and practiced, gradually, the theory according to which the attention of the State was to focus on the need, as a new key through which to interpret the existential condition of individuals (this is called Beveridgian model, named after its theoretician). In England, the Beveridge Report of 1942 identified need as the main obstacle to the realization of the social security program. According to this approach the delivery, of benefits and services to all citizens who are in need is required as a burden of the community. (See F Santoro Passarelli ‘Rischio e Bisogno nella Previdenza Sociale’ [1948] 1 Rivista Italiana di Previdenza Sociale; D Benassi ‘“Father of the Welfare State”? Beveridge and the Emergence of the Welfare State’ [2010] 1 Sociologica 3 and G Prosperetti (ed) *‘Un Nuovo Welfare per la Società Post-Industriale’* (n 44) 11, according to whom “at the basis of any government intervention, there was the assumption that the condition of need was to be imminent to each individual as a person belonging to the community, regardless of social status or profession”). Accordingly, public intervention would have to alleviate the conditions of imminent need of each individual, on the assumption of his belonging to the community, regardless of income, social or vocational social status.

seventeenth centuries it was Chancellor Bismark in Germany who developed for the first time a complete model of social security, in which State intervention gradually replaced that of the Church, charity institutions and workers' mutual insurances. It was the institutional response to social crisis that the first industrialization inevitably created, fearing the emergence of revolutionary ideas among the working class because of inhumane working conditions in factories. Social security and social assistance, in fact, were created because of "the fear that poverty, deprived of every comfort and brought to exasperation, could lead to rebellion against the constituted order"⁵⁰.

Historically, therefore, the welfare state developed as a response to the emergence of contradictions within capitalist economies which were characterized on one hand by the destruction of agricultural civilization and family and village solidarity, and on the other hand by the emergence of the proletariat, urbanization and emigration. All these economic and socio-economic transformations generated new forms of poverty which, accompanied by a series of periodic economic recessions with high rates of unemployment, brought about the direct involvement of the State. It was the so-called "glorious three decades of the welfare state", a period in which nations completed their welfare state programs. During this period, social rights came to the fore and took on the same importance as the other two types of rights, namely civil and political, when people's expectations were motivated by their life expectancy. It is also the era, however, in which labour rights reached their highest degree of closure because economic growth and social progress remained 'closed' within the Nation-State⁵¹.

The European welfare systems - in the sixties and seventies of the 20th century - began to have a common set of problems associated with the growing dominance of Fordism⁵², mass production and mass consumption⁵³, combined with a new set of needs which led to an increase in transitions between the labour market and other sectors and spheres of life, such as, healthcare, education and employment⁵⁴.

During this period, a real mutation of the international economic order was witnessed, in which the traditional strategies of managing fiscal, monetary and employment policies, became increasingly ineffective, if not totally impractical⁵⁵.

⁵⁰ See M Persiani *'Diritto della Previdenza Sociale'* (20th ed., Cedam, Padova, 2012) 6.

⁵¹ See P Flora – A Heidenheimer *'The Development of Welfare State in Europe and America'* (n 47) 79.

⁵² The term "Fordism" was coined by Antonio Gramsci to describe a new way of conceiving the organization of production and industrial society and the simultaneous emergence of a new anthropological figure of national manufacturer, formed by the rationality of large modern enterprise, rationality that has the effect of a negative impact on the professionalism of the worker. Thus the figure of 'mass worker' comes up while the 'craftsman' is fading away See A Gramsci *'Quaderni dal Carcere (quaderno 22)'* (Einaudi, Torino, 2001).

⁵³ Especially after the Second World War, with the growth of wages, the workers began to be considered by entrepreneurs as consumers. Some goods and services were now enjoyed at mass level leading to the birth of the so-called "Consumer culture". See G Cross *'Tempo e Danaro. La Nascita della Cultura del Consumo'* (Il Mulino, Bologna, 1998).

⁵⁴ For the historical reconstruction see M Naldin *'Le Politiche Sociali in Europa. Trasformazioni dei Bisogni e Risposte di Policy'* (Carocci Editore, Roma, 2006) 68.

⁵⁵ The same opinion is expressed by A M Battisti *'Welfare e No Profit in Europa. Profili Comparati'* (Giappichelli, Torino, 2013) 9.

The dominant economic theories insisted on industrial policy as the main way to reach full employment⁵⁶. It seemed sufficient, to some European states, to regulate the labour market by imposing minimum wages or income-related support measures addressed to the non-employment of the person protected⁵⁷. In this way, welfare systems were geared towards a logic of working trusts, or systems that brought together the subjects of social rights with individuals from the working world⁵⁸. This new imprint of welfare, although finding short-term solutions to employment issues, in the long run only stanching problems without solving them. The result was that the system slowly defaulted increasing the indebtedness of those individual Member States.

4.2.2. The critical factors of the welfare models. Economic globalization and its effects on the labour market

The nature and causes of the crisis of recent years have had such a profound effect on the welfare system that the social policies of individual States⁵⁹ have had to be reconsidered. Data on employment and market flow reveal that what has substantially contributed to the crisis of the welfare models is globalization⁶⁰ in its broadest sense as a range of processes such as the internationalization of markets and goods, services and financial flow, quantitative growth and the diversification of multinational enterprises (including a growing number from emerging countries such as China, Brazil and, most recently, Columbia), as well as the acceleration of Foreign Direct Investment⁶¹. These processes have certainly produced new jobs and many significant opportunities to companies in terms of innovation and profit, but at the same time, they have reduced

⁵⁶ About the topic of the change of Government policies, please refer to the study of G Prosperetti 'Nuove Politiche per il Welfare State' (Giappichelli, Torino, 2013) 12.

⁵⁷ See G Prosperetti 'Relazione al Convegno "Assistenza e Previdenza. Costo del Lavoro e Solidarietà Sociale"', Roma LUMSA, 17th maggio 1996, typescript.

⁵⁸ It is commonly expressed this concept by the theorists of the labour law, in terms of the coincidence of the status of the citizen with the status of the worker. The status of worker allowed, in fact, the recognition - next to the existing civil and political rights, also the social rights, which were to be claimed. These were made of a range of different rights that were recognized at the worker (entitlement to benefits and to general mandatory insurance) and at the cohabiting dependents, which accessed the social benefits only because of the institutional mediation of the family, another important value on which was based the welfare system in European countries. See G L Tosato and L Bellodi 'Il Nuovo Diritto Europeo della Concorrenza. Aspetti Procedurali', (Giuffrè, Milano, 2004); M Paci 'Quali Prospettive per il Welfare?' [1990] 5 Assistenza Sociale 441; E Cataldi 'La Famiglia dell'Assicurato nel Sistema di Previdenza Sociale' [1962] Rivista Diritto del Lavoro, 277 and V Amendola 'La Posizione Soggettiva dei Familiari nei Sistemi Previdenziali' [1970] Previdenza Sociale, 1043. About the issue of the relationship between social rights and labour law also refers to C Offe 'Il Bisogno di Rifondazione dei Principi della Giustizia Sociale' [1989] 83-84 L'Inchiesta, 13; G G Balandi, 'Non Lavoro e Protezione Sociale' [1995] 1 Lavoro e Diritto, 9; S B Sgritta 'Società del Lavoro e Società dei Cittadini: un Difficile Rapporto' [1991] 2 Tutela, 25; A Baldassarre 'Diritti Sociali' Enciclopedia del Diritto (1989) 14 and L Menghini 'I diritti Sociali' [1998] Argomenti di Diritto del Lavoro, 1.

⁵⁹ I Colozzi 'Lealtà Defezione e Protesta: Tre Possibili Opzioni nella Crisi del Welfare State', in G Sarpellon (ed) 'Le Politiche Sociali fra Stato Mercato e Solidarietà' (Franco Angeli, Milano 1986) 241-260.

⁶⁰ See R Pessi 'Ordine Giuridico ed Economia di Mercato' (Cedam, Padova, 2010) 13, according to whom if we look at the present, the weakness of the supranational legal systems seems to make it impossible the attempt of a mixed regulation (albeit basic) of the global economy. Moreover, the same Author, says that the Great Depression of the third millennium has highlighted the limitations of the mechanism created at Bretton Woods in 1944.

⁶¹ See G Prosperetti (ed) 'Un Nuovo Welfare per la Società Post-Industriale' (n 44). On this point see also M Ferrera 'Dinamiche di Globalizzazione e Stato Sociale, un'Introduzione', in M Ferrera (ed) *Stato Sociale e Mercato mondiale. Il welfare State Sopravvivrà alla Globalizzazione dell'Economia?* (Edizioni della fondazione Giovanni Agnelli, Torino, 1993) 4, according to whom: « globalization can be further defined as a dynamic process consisting of a set of structural changes in the global political economy, changes that significantly alter the range of options open to national governments, commercial enterprises, social classes and individuals». See also, A M Battisti 'Welfare e No Profit in Europa. Profili Comparati' (n 55) 3.

the ability of national governments to maintain macroeconomic control by. Nowadays, the political and economic divide affects both the economic nationality of the companies and the effectiveness of traditional national economic policies. Globalization has thus given rise to a growing interdependency among States: what happens in one country has a significant impact on citizens, countries and communities, even very distant from each other, through a sort of domino effect that propagates from the source to the other states⁶²; therefore the well-being of a country is increasingly dependent on that of others with which its citizens maintain business relationships.

This has created a problem of no small magnitude, such as increasing unemployment in the countries where there is growing importation of unskilled labour from developing nations. And so, the more companies replace domestic workers with foreign ones, the more there is elasticity of demand for unskilled labour; this growth provokes consequences such as a rise in social costs and wider uncertainty about the cost of work⁶³. It follows that in the EU, companies prefer those countries where wages are lower and where the different laws on labour and social security provide greater opportunities. Thus, globalization has had a strong influence on the social sovereignty of the State, with a gradual erosion of national autonomy. So, globalization has challenged one of the traits that best characterizes the contemporary welfare state, namely the markedly national character of its processes and programming⁶⁴. The establishment of the European Common Market made it necessary to consider that lacking integrated and convergent policies, the social security systems of Member States could distort employment competition and pose a potential obstacle to the freedom of movement of workers in the European Community. The hypothesis then that such distortions of competition among European countries in a unified market can be generated by the effect of the different structures of social security is based, in large measure, on the idea of *social dumping*⁶⁵. According to this theory, economically emerging countries with lower public spending on social security contributions and consequently lower labour costs, become more competitive than those with more advanced social security systems⁶⁶. Welfare plays, thus, the role of a luxury item, accessible mainly to the wealthy countries, but which

⁶² The concept is expressed by U Draetta and N Parisi '*Elementi di Diritto dell'Unione Europea. Parte Speciale. Il Diritto Sostanziale*' (Giuffrè, Milano, 1999).

⁶³ The phenomenon can also be read on a larger scale. In fact, even European companies tend to take advantage of the opportunities arising from the difficulty of labour costs in general, and of social security benefits in particular. About this see L A Steinmeyer '*La Questione della Coerenza tra Agevolazioni Previdenziali e Legislazione Europea sulla Concorrenza*', in L Paganetto (ed) *La Protezione Sociale e il Mercato Unico Europeo* (Collana CEIS Tor Vergata, Roma, 1997) 88.

⁶⁴ See G Prosperetti (ed) '*Un Nuovo Welfare per la Società Post-Industriale*' (n 44) 13, according to which «globalization, exerting a conditioning action on the autonomy of the individual countries in the formulation of national economic and social policies, reduces States' ability to influence the economic and social fabric, in opposition to the Fordist era, until the point to create a crisis in the very concept of the nation-state as a sovereign territorial entity».

⁶⁵ The term "dumping" is also used in EU Treaty (art. 113) in relation to trade policy: in this specific context, dumping is defined as the supply of goods and services by a country at a lower price than that charged in the original one. The Art.100 of the Treaty also provides that the Council may issue guidelines for the approval of rules laid down by law, regulation or administrative action in those Member States, which can directly affect the establishment or functioning of the common market. The Council can not intervene only when it is involved in the functioning of the economic, but also with regard to any differences related to social security or working conditions. For further analysis, see M Roccella and T Treu '*Diritto del Lavoro della Comunità Europea*' (5th ed. Cedam, Padova, 2012) 174.

⁶⁶ M Roccella '*L'unione Europea fra Neoliberalismo e Dumping Sociale*' [2009] Insight, <<http://www.insightweb.it/web/node/110>> , accessed 29th April 2015, according to which, with all due respect to the rhetoric on the "European Social Model", the social dumping is already widely present in the integrated market of the European community. Who does not remember the discussion around the Bolkestein draft directive? It was, in fact, an attempt to establish as a general rule, the principle of the country of origin, which would

inevitably generates a cost for the production system, being financed primarily by businesses and workers, in relation to the remuneration of the latter⁶⁷. Not surprisingly it has been said that what was missing, and still is missing, it is also a 'globalization of risks'⁶⁸.

A further element of crisis in the welfare state is changing demographics. Longer life expectancy together with a significant reduction in births has caused a second demographic transition, and coupled with citizens' changing welfare expectations have all contributed in their own way to system crisis. To confirm this, in the White Paper of May 2009, it was noted that demography will be the most important factor of change in the coming decades. The birth rate trends, the change in life expectancy and migration flows will determine new political and economic balances and will determine the characteristics of future welfare⁶⁹. It is worthwhile emphasizing that technological progress, globalization and demographic trends which are leading to profound socio-economic changes which had been protected and guaranteed directly by the welfare institutions in the last century in Europe⁷⁰. Hence, several factors have combined to strongly accelerate rethinking and reforming the overall welfare system: significant slowdown in the rate of growth and its increasing unpredictability; diversification and shattering of the labour market in typologies of contract characterized by precariousness and instability, and the pressure of demographic trends combining both a drop in birth rate and an increase in life expectancy⁷¹ have made respecting generational pact⁷⁵ unlikely.

In other words, State boundaries as Nation have been redefined into an entity of supranational dimension which has led to new policies and a new identity of needs⁷². Hence, welfare has to be

have had the effect of legitimizing a conception of competition among firms based on the compression of wages and rights. The freedom of the transnational provision of services set out in the Treaty, to be truly effective, should have been freed from every kind of obstacle in particular from that represented by companies from countries where labour is low cost (those of Eastern Europe in the first place), the obligation to comply with the higher protective standard in other countries, where to move with their employees to perform a specific service provision. That attempt has not passed. The fact is that this attempt – openly rejected – is likely to be adopted silently, through the interpretation of another directive of 1996; this Directive, was approved at the time just to counter the risk of social dumping, acting on the recommendations of a famous judgment of the Court of Justice, which had argued that Community law does not preclude Member States from applying their legislation, or collective labour agreements concluded between the social partners to any person who is employed, even temporarily, within their territory, regardless of the country of establishment of the employer. The rules of the Directive were then interpreted as a whole in a balanced way by the Court. See on this regard the extensive case law, one above all the Case C-29/10 *Heiko Koelzsch v État du Grand-Duché de Luxembourg* [2011] ECI <<http://www.dplmodena.it/16-03-11CEGcausalavoro.htm>>, accessed 1st April 2015.

⁶⁷ See F R Pizzuti (ed) *'Rapporto sullo Stato Sociale 2013. "Crisi, Istituzioni, Beni Comuni e Welfare State"'* (Edizioni Simone, Napoli, 2013).

⁶⁸ That is, the onset of threats to the production context which by their nature are investing multiple countries (..) and thus need to be addressed collectively; on this issue, see M Ferrera 'Dinamiche di Globalizzazione e Stato Sociale, un'Introduzione', in M Ferrera (ed) *Stato Sociale e Mercato Mondiale. Il Welfare State Sopravvivrà alla Globalizzazione dell'Economia?* (n 61) *passim*.

⁶⁹ See M Sacconi, 'Presentazione' [2009] in Ministero del lavoro, della salute e delle politiche sociali (ed), *Libro Bianco sul Futuro del Modello Sociale, La Vita Buona nella Società Attiva* (n 4).

⁷⁰ It's interesting on this subject, the study of A Pessi 'Riflessioni sui Sistemi di Sicurezza Sociale', in *'Diritto del Lavoro. I Nuovi Problemi. L'Omaggio dell'Accademia a Mattia Persiani'* (Cedam, Padova, 2005) 1621 and T Treu 'Riforme o Destrutturazione del Welfare' [2002] 4 *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 535.

⁷¹ G Prosperetti *'Un Nuovo Welfare per la Società Post-Industriale'* (n 44), *passim*. He writes that «the aging of the population is a serious problem for European countries and is the result of two separate factors: the declining of birth rate and the lengthening of life expectancy due to advances made by medicine».

⁷² See M Ferrera 'Trent'Anni Dopo. Il Welfare State Europeo tra Crisi e Trasformazione' [2007] *Stato e Mercato*, 346; U Ascoli (ed) *'Il Welfare in Italia'* (Il Mulino, Bologna, 2011), 22; M Ferrera *'Il Welfare state in Italia. Sviluppo e crisi in prospettiva comparata'* (Il Mulino,

recalibrated⁷⁷, rethought⁷³, especially now that it has been exacerbated by a severe crisis. Welfare is required to protect the individual better from the social risks that threaten its security⁷⁴.

4.2.3. Poverty as a tool for verifying the policies of the welfare state. A new point of view

The problem of poverty in Europe, an issue which captured the attention of the Europe 2020⁷⁵ agenda, is the catalyst for analyzing employment from another point of view. The statistical indicator of poverty, apart from being the reference indicator in the open method of coordination (OMC) which will be described later, is the most sensitive indicator of national policies of redistribution and operation of welfare systems⁷⁶. Although the indicator of poverty depends on the level of aggregate income of a country, it also reflects the characteristics of economic growth and employment, noting the inequalities of income, and therefore, the poverty generated by market mechanisms. Compared to the traditional employment rate, this indicator allows us to capture situations of polarization both at the family and individual level concerning strong or weak participation (or non participation) in the labour market⁷⁷. This indicator, even in EU countries with well-developed social protection systems, has revealed high percentages of people at a high risk of poverty, suggesting at the same time, that the majority of European welfare systems, in their current form, cannot cope with the new social risks that have emerged in post-industrial societies. This does not seem to depend solely on the growing fiscal constraints that weigh on welfare systems, but it also depends on the internal constraints and difficulties in reform and modernization which have the serious consequences of social exclusion for those people and their families directly affected by exclusion from the labour market. Moreover, the data on the number of households substantially detached from the labour market - although not always in poverty - is indicative of various phenomena of social exclusion and dependency on benefits and subsidies (public or private). Hence, the human cost of these phenomena requires rethinking of the effectiveness of certain models of welfare, even in countries equipped with robust networks of welfare. And so, the euro-zone countries should clarify the issue of employment, and also look at equality and

Bologna, 1984) 17; I Colozzi, 'L'Evoluzione del Sistema Italiano di "Welfare State"', in *'Welfare State, Problemi e Alternative'*, (Giuffrè, Milano, 1985) 301 and A Nardi (ed) *'Politiche Sociali e Riforme in Europa'* (Ila Palma editore, Palermo 1988) 51-63.

⁷³ See R Pessi 'Ripensare il Welfare', Relazione svolta al Seminario della Fondazione Visentini "Solidarietà Generazionale tra Etica, Economia e Costituzione", Luiss Guido Carli, Roma 4th Luglio 2013, typescript. See also the considerations of A Vallebona 'Panem et Circenses: lo Stato Sociale della Decadenza' [2008] *Argomenti di Diritto del Lavoro*, 1049. According to Vallebona, the modern welfare state can be good or bad. It is good if it helps the best to emerge, regardless of the starting conditions, and also allows the latter to strive to meet the vital needs, opening up then, for an individual path of perfection of the person. It is bad if it turns to a service that induces unconditional passivity and moral disorientation.

⁷⁴ On the protection of the individual against social risks in the modern era, see P Costa 'Cittadinanza Sociale e Diritto del Lavoro nell'Italia Repubblicana' [2009] *1 Lavoro e Diritto*, 45.

⁷⁵ For insights, see § 5.3 *et seq.* Anyway, it should be here already point out that the Strategy Europe 2020 was immediately aware of the problem, to the point to be included in its program the reduction of the poverty rate of 25%, leading, in projection, more than 20 million people out the risk of poverty.

⁷⁶ Not surprisingly, in fact, social inclusion and the fight against poverty are central themes so that everyone can be an active part in society and in the economy; the social security systems should particularly meet the needs of groups most at risk of social exclusion, such as single-parent families, minorities, people with disabilities and the homeless. For cues, see, K Armstrong *'Governing social inclusion. Europeanization through policy coordination'* (Oxford University Press, Oxford, 2010) and R Haveman 'Reducing Poverty While Increasing Employment: a Primer on Alternative Strategies, and a Blueprint' in *The OECD Jobs Study Working Paper Series* (OECD, Paris, 1995).

⁷⁷ See A Carparelli and K Berti 'Europa 2020. Le Politiche Contro la Povertà e l'Esclusione Sociale nella Strategia Europea per il Prossimo Decennio' [2010] *4 Rivista delle Politiche Sociali*, 53-66.

poverty issues. When we talk about poverty, we tend erroneously to refer to being below a threshold, which may consider absolutely or relatively what is a reasonable lifestyle in a specific social context; but this concept also deserves extending to the lack of basic capabilities rather than solely as a lack of income⁷⁸. So, the measurement of inequality should not only consider income, but more broadly the ability to search for a job or a career, the freedom of association and action, and the right to participate in the decision-making process in economic and political fields. In other words, analysts should consider all those social rights that are the core of the Charter of Fundamental Rights of the European Union⁷⁹.

4.2.4. The outlook for a 'new' welfare

The idea of another welfare has long been voiced - if not alternative, at least subsidiary to the unsustainability of the old welfare state and its broken promises, in terms of unemployment and assistance to the most vulnerable. This leads to the need for a welfare system "of opportunities and responsibilities", which addresses the whole person- a new kind of welfare that will gradually replace the current model which is based predominantly on compensation. This welfare system should intervene in advance, giving a customized and differentiated offer related to actual needs and which knows how to encourage responsible behaviours and lifestyles useful to themselves and others⁸⁰. A cornerstone of this kind of welfare should be active welfare state which invests in citizens so that they become self-sufficient, autonomous, responsible, able to cope with risk situations and to respond as much as possible for themselves to their own needs⁸¹. It would be a welfare system that interprets 'active' mainly in terms of employment through the formula of *welfare to work*⁸² and *workfare*⁸³. This new concept of the welfare system should firstly develop so called *activation policies*, a mix of active and passive policies, aimed at supporting employment and entry into the labour market of all those people able to do a job, and who, for some reason,

⁷⁸ The concept is expressed by A Sen '*Lo Sviluppo è Libertà. Perché Non c'è Crescita Senza Democrazia*' (Gianni Rigamonti tr., Mondadori, Milano, 2001) 1. The same concept is taken up by B Hepple 'Diritto del Lavoro, Disuguaglianza e Commercio Globale' [2003] *Diritto delle Relazioni Industriali*, 27. The classical concept of labour law is too narrow, as it is limited to the relationship between employees and employers; it does not encompass the broader universe of unemployed, semi-employed, poor workers and small independent producers (in other words, those individuals who basically have no capabilities), existing in both the formal and informal economy.

⁷⁹ See M G Garofalo 'Unità e Pluralità del Diritto del Lavoro nel Sistema Costituzionale' [2008] *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 33-40.

⁸⁰ These considerations can be read in M Sacconi, 'Presentazione' [2009] in Ministero del lavoro, della salute e delle politiche sociali (ed), *Libro Bianco sul Futuro del Modello Sociale, La Vita Buona nella Società Attiva* (n 4).

⁸¹ See the study of M Colasanto 'Forza e Debolezza del Nuovo Welfare' [2010] 117 *Sociologia del Lavoro*, 29.

⁸² The term "welfare to work" sums up the big news of the transition from a welfare state to a state that promotes, as a strategic action to combat poverty and social exclusion, a welfare system based on job search and on increasing employment.

⁸³ The Workfare is an alternative model to the classic welfare state (purely welfare) that consists rather in active welfare policies aimed at avoiding the disincentive effects on labour supply that the classic welfare has usually produced, linking the treatment of social security to the performance of a work activity. About this see J C Barbier 'La Logica del Workfare in Europa e negli Stati Uniti: i Limiti delle Analisi Globali' [2003] 3-4 *Assistenza Sociale*, 290. He states: «the term derives from the combination of the words "work" and "welfare". These projects are mainly Americans (in fact the United States is gradually moving away from social welfare programs, paying instead its attention to the decentralization of powers and the link with the world of work, the first expected, to our knowledge, in Community Work Experience program, provided by the Family Support Act of 1998, although other programs of this kind had already appeared after the early seventies), which affect social assistance to the obligation to work for those who benefit from it». For some insights, even with economic surveys, see, M Samek Lodovici 'Le Esperienze di Workfare in Europa' [1998] 2 *Assistenza Sociale*.

are inactive or unemployed. Secondly, the new welfare should innovate the protection systems, redefining the relationship between work and welfare, and establishing a direct link between the perception of a grant and the reactivation of the protected individual in the labour market⁸⁴. This real change of course would entail, however, the need to reassess policies that promote and support access to lifelong learning for adults, not forgetting at the same time, investment policies aimed at the youth to combat the inheritance of disadvantage, and therefore able to develop a heterogeneous training system which provides output from a job "on different levels", or an eventual return to the labour market. It should provide pathways for developing so-called "master competences" that is the skill of "learning to learn". In general, the new welfare should help develop and privilege soft skills, pertaining to the person, his critical and reflective capacities, rather than manual skills and technical expertise. The paradigm of reference could therefore be that of a welfare of equal learning opportunities or briefly a *learnfare* (supplementary to that of welfare to work) where all are enabled to learn along the course of life, not only to find work, but also to acquire the resources needed to build a fully active citizenship⁸⁵. This latter is a 'trendy' model that emerges from comparing some EU countries' policies but unfortunately, due to a combination of factors, it is not fully implemented in the euro-zone.

4.2.5. The current doctrinal debate about a 'new' model of welfare: the welfare of the market and the welfare mix

On the wave of the welfare system crisis, solutions have been proposed to avoid the temptation of reconnecting to the liberalism of its origins and therefore, broadly speaking, to the theories of Von Hayek, surpassing the long tradition of solidarity. From the premise that the socio-political model of the market assumes profit maximization and cost minimization as evaluation criteria, not tolerating substantial equality and supporting rather moderate public and private charities, some commentators have proposed a 'third way', a welfare state established on the principle of "no rights without responsibilities"⁸⁶. This theory embodies the belief that the welfarist 'drift' has to be corrected. So, the State, should not provide services but promote and multiply employment opportunities by asking the individual to actively seek them out, and furthermore to penalise any inertia. In this way, the State becomes a "manufacturer of capabilities", and solidarity creates a tool for development of the human person, but also a tool to promote the economy and market⁸⁷. In a recent re-reading, this instrument has been proposed for those types of jobs that are conducted outside economic exchange. The advantage would be to make such marginal occupations (eg. volunteer work, artistic activities, etc.) less rarefied and although these jobs don't contribute to social security spending, they play a vital role in terms of civilization and the reconstruction of a balanced social fabric⁸⁸.

⁸⁴ See R Lodigiani 'Welfare Attivo. Apprendimento Continuo e Nuove Politiche del Lavoro in Europa' (Erickson, Gardolo, 2008) and M Colasanto and R Lodigiani 'Welfare Possibili. Tra Workfare e Learnfare' (Vita e Pensiero, Milano, 2008).

⁸⁵ On these general principles, see M Colasanto 'Forza e Debolezza del Nuovo Welfare' (n 81) and A Sen 'Lo Sviluppo è Libertà. Perché non c'è Crescita Senza Democrazia' (n 78) *passim*. See, also, S Giubboni 'European Citizenship, Labour Law and Social Rights in Times of Crisis' [2013] European Journal of Social Law 194.

⁸⁶ For this theory see, A Giddens 'Cogliere l'Occasione. La Sfida di un Mondo che Cambia' (Carocci, Roma, 2000).

⁸⁷ See A Sen 'Lo Sviluppo è Libertà. Perché non c'è Crescita Senza Democrazia' (n 78), *passim*.

⁸⁸ For further information on this point, see G Prosperetti (ed) 'Un Nuovo Welfare per la Società Post-Industriale' (n 44) 108.

Other reconstructive proposals do not consider the market, but the qualitative change and quantitative reduction of labour in post-industrial society. It has been acknowledged that in post-industrial society, labour has lost its connotation of unique paradigm. The citizen acquires a proper identity to be protected as such, and not merely as a worker. There is the prospect - in this circumstance which has become typical of the post-industrial society - of a new welfare system that reinvigorates the citizen who has lost confidence in the welfare state. Today's new welfare state should protect the individual not only against the lack of jobs, but also against the social risks that undermine its security⁸⁹.

However, one of the fundamental obstacles to implementing these principles, and which has always plagued the welfare state and its actions, is financing. This is confirmed by those cases of State bankruptcy resulting from the great economic depression of our time. Well, it seems that the historical hostility of the State against other parties and other institutions should be put aside in the belief that the State alone can be the only means of solidarity. So too should the spontaneous actions of some social groups that are closer and more sensitive to the needs of the individual and the community⁹⁰ be considered. In recent years, from this premise, the hypothesis of a sustainable welfare state has been consolidated, whose engine is the third sector (not State nor market), which is that complex world of social institutions (foundations, voluntary associations, etc.) including organizations that are neither exponential entities of the State nor operating according to the logic of the market⁹¹. This new idea of welfare state is supported by an in-depth economic- mathematical analysis that demonstrates how properly channelling the activities of the third sector can improve the quality of welfare benefits by reducing costs both in the area of health care and pensions⁹². By embracing this theory, nobody wants, to dismantle the welfare state but transform it and lighten it, using a welfare mix capable of resolving the crisis of the traditional model, distributing costs, assets and organization across the public sector and the creativity of its social groups. This new way of understanding welfare could fully rewrite the role of the State which would no longer be the only expression and means of realising social solidarity, but a centre for coordinating social formations which spontaneously bid to intercept the expectations and needs of the individual out of respect for their identity.

4.2.6. Some legislative proposals

Considering the above debate, some conclusions could be drawn with a critique on the future of the welfare state model in Italy and Europe.

⁸⁹ On the topic, see P Costa 'Cittadinanza Sociale e Diritto del Lavoro nell'Italia Repubblicana' (n 74) 47.

⁹⁰ See P Donati 'La Cultura della Cittadinanza oltre lo Stato' (Edizioni Lavoro, Roma, 1994); C Ranci 'Oltre il Welfare State, Terzo Settore, Nuove Solidarietà e Trasformazioni del Welfare' (Il Mulino, Bologna, 1999) and A M Battisti 'Welfare e No Profit in Europa. Profili Comparati' (n 55) 10.

⁹¹ See the writings of R Pessi 'Il Welfare Mix: Povertà ed Esclusione Sociale' in G Canavesi and I Di Spilimbergo (eds) 'Solidarietà Sussidiarietà Sicurezza Sociale' (EUM, Macerata, 2012), 51; F Pasuello 'Una Nuova Frontiera: il Terzo Settore' (Edizioni Lavoro, Roma, 1997); F Cafaggi (ed) 'Modelli di Governo, Riforma dello Stato Sociale e Ruolo del Terzo Settore' (Il Mulino, Bologna, 2002); C Ascoli and C Raci 'Il Welfare Mix in Europa' (Carocci, Roma, 2003) and P Donati and I Coluzzi (eds) 'Il Privato Sociale che Emerge. Realtà e Dilemmi' (Il Mulino, Bologna, 2004).

⁹² See F M Emanuela 'Il Terzo Pilastro. Il No Profit Motore del Nuovo Welfare' (ESI, Napoli, 2008) and A M Battisti 'Welfare e No Profit in Europa. Profili Comparati' (n 55) 11.

On the Italian side, the welfare state institutions should be strengthened well beyond the increased need for social security generated by the crisis and the growing number of individuals who have needed to be protected over the last three decades. So, the apparent shortcomings of social welfare itself, of education and vocational training, of safeguards for the minimum wage and family assistance, in particular women's, should be eliminated.⁹³ Social spending should be considered not simply as a cost and burden even more difficult to sustain as part of a public budget, particularly complicated by the effects of the crisis, but as a support to useful investments to sustain both short-term demand and long-term productivity and growth.

In the near future however, faced by the expected difficulty of recovering growth in the employment rate, the chronic unemployment, of the same individuals should be more or less assisted. This would produce economic, social and human costs which would be burdensome for the EU as well as not solving the problem.

From the analysis carried out so far, and in the light of the great crisis that Italy and Europe are going through, there is a great need to re-launch the welfare state in an appropriate manner. This would be the only way to get an equitable distribution of income, not only to stabilize the social equilibrium, but also to support demand and economic growth.

And so the road to recovery, essentially the road to the rewriting of the welfare state, could be negotiated between international organizations and Member States, and would eventually lead to a real exchange of reciprocal obligations. Negotiations would provide those States without welfare with a common minimum set of social rights, in exchange for technical assistance (aimed at involving local knowledge and stakeholder participation to determination which methods to follow). If the assumptions of how the welfare state works can't be made by means of contributions or taxes, they should be financed through a social fund backed by the international corporations involved (even authoritatively), and shared according to the social responsibilities of such territories as places of production or market.

5. European policies for employment. The Treaty of Lisbon and the need at the European level for active policies tailored to employment. The three phases of employment strategies and the approach to Europe 2020

5.1. The first stage: the Lisbon Strategy 2000-2010

Growing unemployment (especially youth), and the financial and budgeting difficulties of some European countries, particularly Italy, Spain, Greece and Portugal, have put a strain on the common currency and European Union governance on the issues of labour, welfare, fiscal policy and

⁹³ About the shortcomings (and proposals) of social safety network in the current period see, F R Pizzuti 'Rapporto sullo Stato Sociale 2010. La "Grande Crisi del 2008" ed il Welfare State' (n 3) 86; M Lai 'I Fondi Bilaterali di Solidarietà nella Riforma degli Ammortizzatori Sociali' [2013] 1 Nuove Tutele 87; L Ricciardi 'Nuovi Ammortizzatori Sociali: Transizione Difficile Verso Tutele più Eque' [2013] 1 Nuove Tutele 15; A Di Stasi 'I Progetti di Riforma degli Ammortizzatori Sociali tra le Esigenze di Bilancio ed Estensione delle Tutele' [2014] 213 Sistema Previdenza 35; S P Emiliani 'Ammortizzatori Sociali e Ridistribuzione delle Tutele' [2012] 3 Rivista del Diritto della Sicurezza Sociale 645; S Spattini 'Il Funzionamento degli Ammortizzatori Sociali in Tempo di Crisi: un Confronto Comparato' [2012] 3 Diritto delle Relazioni Industriali 660; M Barbieri 'Ragionando di Ammortizzatori Sociali: in Ricordo di Gianni Garofalo' [2012] 2 Rivista del Diritto della Sicurezza Sociale 307 and F Santoni 'Ammortizzatori Sociali in Deroga e Canale Bilaterale' [2010] 1-2 Il Diritto del Mercato del Lavoro 5.

the role of the European Central Bank (ECB)⁹⁴. Such a state of occupational and economic upheaval within individual Member States, has produced, at the European level, a raft of strategies that have not always gone as planned and continue to be under review and development.

In the late nineties, in terms of growth and jobs, Europe found itself in a situation of inferiority to the United States. Europe was certainly not ready to deal with a globalized market so in the absence of a unified strategy, it lost ground not only to the USA, but also to some Asian countries, such as Japan and China. To tackle this problem, European leaders sketched out the idea of focusing on research and technology to gain new competitive advantage in the global market. This innovative drive, together with maintaining and modernizing the European welfare state was a challenge in that historical moment.

This would have allowed Europe to ensure economic growth in the era of new economy and at the same time keeping the traditional European social model which was absorbing substantial public resources⁹⁵.

These challenges have materialized into facts, or better into actual strategies.

The Heads of State and Government (back then, it was 15 EU countries) agreed, on the occasion of the extraordinary meeting of the European Council in Lisbon in March 2000, on the new strategic priorities for the Union to strengthen employment, economic reform and social cohesion in the context of a knowledge-based economy. To be achieved by 2010, these priorities would have turned the euro-zone into an economic powerhouse based on the most competitive and dynamic knowledge in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion⁹⁶.

The focal points for achieving these policies were in three main areas.

⁹⁴ See, for example, in the Italian case, the message of August 5th, 2011 signed by the President of the ECB Trichet and his successor in charge Draghi, in which, among the requests of Berlusconi Government to ensure that the Italian situation could come back under control or at least refrained from plunging irretrievably, there was one in which it was wished to «adopt a thorough review of the rules governing the hiring and firing of employees by establishing a system of unemployment insurance and a set of active policies for the labour market that could facilitate the relocation of resources into the companies and in the most competitive sectors». For a deeper understanding of the document and its implications, see the script of C Pisani 'Una Ricetta della BCE per l'Occupazione: Regole Specifiche Aziendali' [2012] 1 Diritto delle Relazioni Industriali, 67. About the central role of the ECB, see, most recently, S Giubboni and A Lo Faro 'Crisi Finanziaria, Governance Economica Europea e Riforme Nazionali del Lavoro: Quali Connessioni?' in *Nuove Regole dopo la Legge n. 92 del 2012: Competizione Versus Garanzie?* (Giappichelli, Torino, 2013) 41 and M Niknejad 'European Union Towards the Banking Union, Single Supervisory Mechanism and Challenges on the Road Ahead' [2014] 7(1) European Journal of Legal Studies 93. Recently, see, P Chieco 'Crisi Economica, Vincoli Europei e Diritti Fondamentali dei Lavoratori', typed in <http://www.aidlass.it/documenti-1/Chieco-relazione-provvisoria-Aidlass.pdf>, accessed 29th June 2015.

⁹⁵ Please refer to M J Rodriguez 'Introduction: for a New European Strategy at the Turn of the Century' in M J Rodriguez (ed) *The New Knowledge Economy in Europe: A Strategy International Competitiveness and Social Cohesion* (Edward Elgard, Northampton, 2002) 1-27. See also J Rifkin *The European Cream. How Europe's Vision of the Future Is Quietly Eclipsing the American Cream* (Tarcher, New York, 2004) and D Archibugi, J Howells and J Michie *Innovation System in the Global Economy* (Cambridge University Press, Cambridge, 1999).

⁹⁶ Conclusions are draft in the final report of the European Council on 23rd and 24th March 2000. In general, the process of revising the economic and employment policy in Europe has had two further stages: the first in the Council of Nice in December 2000, with the approval of the social agenda which has the fundamental objective of achieving full employment, mobilizing all available employment potential and to strengthen social cohesion, facing even the issue of aging of the population; the second stage is that of the European Council in Gothenburg in June 2001, during which it was approved a strategy for sustainable development and added an environmental dimension to the Lisbon strategy for employment, economic reform and social cohesion.

The first, involving microeconomics, was aimed at establishing a society based on competition by improving policies in the field of information and, upon completion, by accelerating the reform process of structural policies to achieve a high level of competitiveness, at first in the whole market, but also and above all, in the external one.

The second, involving macro-economics, was aimed at supporting growth prospects in the medium-long term, by applying the microeconomics basis mentioned above.

The third was that of employment policies, with a view to modernizing the European social model, by investing in people and combating social exclusion.

A judicious mix of these policies and the application of the so-called open method of coordination (OMC), intended as a tool to disseminate best practices among Member States, would have allowed the EU to implement strategic objectives by assisting Member States to progressively develop their employment policies.

To understand the primary role of labour policies in the Lisbon Strategy (2000-2010), suffice the conclusions of the Presidency of the European Council in Lisbon which highlighted the specific employment targets for 2010. The overall employment rate for 2010 would have been 70%, the female employment rate 60% and the elderly employment rate 50%.

These goals converged, however, in the previous European Employment Strategy (EES)⁹⁷ adopted in 1997, following the inclusion of the chapter 'Employment' in the Treaty of Amsterdam. The EES took the form of a multilateral surveillance framework to encourage Member States to implement more effective policies to promote employment⁹⁸, introducing for the first time the aforementioned open method of coordination (OMC). The Lisbon goals in 2000, as well as those of the EES were covered financially by the main financial tool designed to promote employment and social cohesion, the European Social Fund (ESF)⁹⁹, managed by the various Member States through the Operational Programmes (OP).

⁹⁷ In November 1997, the European Council launched the so-called European Employment Strategy (EES), in which for the first time it was planned a European coordination in the field of employment policy. This decision anticipates a few months the ratification of the Treaty of Amsterdam, which includes in Article 117, the promotion of employment and the improvement of working and living conditions among the primary objectives of the European Union. It also provides for coordination actions at the supranational level and the possibility of adopting directives and regulations in this area at EU level, if approved by unanimity (Art.118). For a deeper knowledge, please refer to M Samek Lodovici and R Semenza 'Forme di lavoro non standard: le differenze nord e sud' [2001] 3 Quaderni di Rassegna Sindacale, 1, in which the authors explain how, within that meeting, it was contemplated the possibility of decisions by qualified majority only with regard to health, safety at work and working conditions; information and consultation of workers; equality of treatment and opportunities between women and men in the labour market and the integration of persons excluded from the labour market. It was necessary, however, unanimity in relation to social security and social protection of workers, protection against dismissal, collective bargaining and worker representation. However, from the social chapter of the Amsterdam Treaty issues related to pay, the right of association and to strike / lockout are excluded. See also F Origo and M Samek Lodovici 'The unemployment situation in Western Europe - An Overview' in F Nicolas and C Tingsabadh (eds) 'Unemployment in East Asia and Europe' (Irfri, Paris, 2003).

⁹⁸ The EES has always based its policy on four pillars: employability; entrepreneurship; adaptability and equal opportunities. For details on this topic, see, B Gazier 'La strategia europea per l'occupazione nella tempesta: il ripristino di una prospettiva a lungo termine' [2011] 1 Diritto delle Relazioni Industriali 59. The need of social dialogue within the EES, see F Guarriello 'Il Contributo del Dialogo Sociale alla Strategia Europea per l'Occupazione' [2004] 2 Lavoro e Diritto 351.

⁹⁹ Since its origin, the European Social Fund (ESF) has been a tool of support to promote employment and labour mobility. It is the oldest of the Structural Funds, established by the Treaty of Rome in 1957, in Articles. 123-127 (in particular the old article 123 provided

Considering the results of the objectives set by Lisbon 2000-2010, on the basis of the Kok Report¹⁰⁰, in March 2005 the European Council highlighted modest results compared to the expected performances of European countries given the fixed objectives. So, the EU decided it was essential to revive the strategy¹⁰¹, to re-orient priorities on growth and employment.

In particular, in the field of employment policy, the European Council welcomed European Commission's "Working together for growth and jobs - the re-launch of the Lisbon Strategy", adopted in February 2005, on the occasion of the intermediate revision of the strategy, from which it issued the need for a further revision¹⁰².

5.2. The second stage: the (failed) re-launch of Lisbon 2000

The re-launch of the strategy consisted of an active employment-oriented policy, aimed at making work economically attractive with measures to reconcile professional and family life, including

for the establishment of a Fund for the specific purposes of employment policies, to assign «the task of promoting within the Community the possibility of occupation and geographic or professional mobility of labouratories» The current Art.146 of the Treaty has confirmed the original goal, adding the one to facilitate the adaptation of workers «to industrial changes and to changes in production systems», emphasizing the privileged role of training and retraining to achieve the purposes of the Fund), and it is the main financial instrument of the European Union which is used to support employment in the Member States as well as to promote economic and social cohesion. The ESF, therefore, is one of the EU Structural Funds dedicated to improving social cohesion and economic welfare in all regions of the European Union. The Structural Funds are financial redistributive instruments to support cohesion in Europe by focusing their contributions on the less developed regions. The specific objective of the ESF budget, which is to support the creation of more and better jobs in the EU, is pursued by co-financing projects at national, regional and local levels aimed at increasing employment, quality of jobs and inclusiveness in the Member States and their regions labour market (about this, see M Tiraboschi 'L'Intreccio tra Politica di Coesione e Strategia di Lisbona: i Fondi Strutturali' [2007] Diritto delle Relazioni Industriali 290) Historically, although the 'main purpose for which the fund was established and designed was to pursue the increase in the employment rate, it has adjusted its focus over the years to meet the diverse challenges ahead. During its first years of life, in fact, it focused on labour migration within Europe and later went on to fight unemployment among the young and the low skilled. During the current period of funding, beside giving support to those who face particular difficulties in finding work, as women, youth, seniors, immigrants and the disabled, the ESF allocation helps businesses and workers to adapt to the change by supporting innovation in the workplace, lifelong learning and mobility of workers, through seven-year period cycle programming and through negotiation between the EU member states, the European Parliament and the European Commission. As for the administration of the Fund, it is entrusted to the Commission, assisted in this role by a committee in a tripartite composition, comprising the representatives of governments, trade union, workers and employers (ex art. 147 EC Treaty). In particular, according to art.104 of Regulation (EC) n. 1083/2006, the Committee «is composed by one government representative, one representative of the workers' organizations and one representative of the employers' organizations from each Member State» For further information on this issue, refer to M Roccella and T Treu, *'Diritto del Lavoro della Comunità Europea'* (n 9); M Barbera *'I Nuovi Confini del Diritto Sociale Comunitario'* (Promodis, Brescia, 2000); M Peruzzi *'L'Autonomia Negoziabile nel Dialogo Sociale Europeo'* (Il Mulino, Bologna, 2011); F Pocar and I Viarengo *'Diritto Comunitario del Lavoro'* (Cedam, Padova, 2001) 269 and M Napoli *'La Riforma del Fondo Sociale Europeo'* [2000] 4 Rivista Giuridica del Lavoro e della Previdenza Sociale, 899.

¹⁰⁰ According to S Sciarra *'L'Europa e il Lavoro. Solidarietà e conflitto in tempi di crisi'* (Laterza, Roma-Bari, 2013) 31, the Kok report must be referred to as one of the most important documents in the debate on employment policies. It states that the work should be a real option for all, and therefore should be ensured both to the aging population, and young job seekers. A great resource is made up of the training, especially for older workers and less skilled workers. It is also useful to weave efficiently the demand and supply of labour, anticipating the needs of companies that ask for specific skills. We must break the unproductive cycle of low investment in training, through a cost-sharing, with the involvement of the regional and local level. To read the full report, see: 'Jobs, jobs, jobs. Creating more employment in Europe', Report of the Task Force on Employment chaired by Wim Kok, november 2003, Office for official publications of the EC, Luxembourg 2004.

¹⁰¹ In the first five years of implementation, in fact, the Lisbon Strategy has not produced the desired results, because of the general stagnation of the international economy, and because the targets were probably too ambitious.

¹⁰² See COMM (2005) 24 Communication to the European Council - Spring "Working together for growth and jobs."

the improvement of childcare facilities and also prioritising equal opportunities, active aging strategies, social integration and transforming undeclared work into regular employment. The most important innovation of this 'second life' of the Lisbon Strategy set out to unite, through a process of integrated coordination, both economic policies and employment policies, which had hitherto remained separated¹⁰³.

Increasing employment levels has always been the most effective tool for generating economic growth and promoting economies to foster social integration, thus ensuring a margin of certainty for those unable to work and bridging the gap between gender employment levels. So, the need to promote a life-cycle approach to work was reconfirmed with the creation of new employment pathways for young people to tackle the problem of youth unemployment, and the consolidation of existing work conditions that promote active aging¹⁰⁴.

After all, EES had always given the euro-zone States the difficult task of promoting appropriate policies to achieve both advanced and competitive economy based on innovation and social cohesion, by imposing on those countries a series of social protection systems that could be both sustainable and efficient at the same time. So, to meet these two objectives, Brussels had always put more emphasis on employability and labour market protection through active policies. More than in any other field, there seems to prevail a European approach which is 'supplementary' to the issues of growth and quality employment, probably necessitated by the cohabitation of non-compliant patterns and usages among the various Member States, but which have sometimes merely summed the existing approaches and strategies. Overall, it seems that the common thread of these policies has been the Dutch model of flexicurity¹⁰⁵ which had always been cited

¹⁰³ See, COM (2005) 141 Orientamenti integrati per la crescita e l'occupazione (2005-2010). These guidelines were adopted after the guidelines proposed by the Commission through the document COM (2005) 24. In this circumstance it was strengthened the link between the EES and the Lisbon Strategy, where the first acts as a tool for implementation of the second. On the basis of triennial cycles of reviewing, the guidelines for employment are identified and integrated with economic ones flowing into the Integrated Guidelines for Growth and Jobs (IGGJ). These guidelines summarize, thus - in an effort to streamline and simplify - the constitutive elements of the Lisbon Strategy and the European Employment Strategy. In particular, out of the 24 of the existing guidelines, the first 6 are related to macro-economic policies to be pursued in the context of the constraints imposed by the monetary union and the Stability Pact; in a second group of ten, the microeconomic measures to promote competitiveness, innovation and sustainable use of resources; a third group of eight measures to promote full employment. These latter were defined in 2005 and re-elaborated in 2007, summed up in the guideline nr. 17, for implementing strategies aimed at achieving full employment, improving quality and productivity at work, and strengthening social and territorial cohesion; 18 guideline, to promote an approach to work based on the life cycle; 19 guideline, to create inclusive labour markets and make work more attractive and profitable for those who are looking for employment and for disadvantaged people and the inactive; 20 guideline, to improve the response to the needs of the labour market; 21 guideline, to promote flexibility combined with employment security and reduce labour market segmentation, having due regard to the role of the social partners; guideline 22, ensuring an evolution of labour costs and mechanisms for determining wage-employment; 23 guideline, to expand and improve investment in human capital orientation and finally 24, to adapt education and training systems to the new requirements in terms of skills. It seems appropriate to point out that each Member State had full freedom to set priorities in line with the situation in each country, regardless of the guidelines mentioned here.

¹⁰⁴ See P J Cardwell (ed) *EU External Relations Law and Policy in the Post-Lisbon Era* (The Hague, The Netherlands, 2012).

¹⁰⁵ The Flexicurity (or Flexicurity) aims to ensure that EU citizens can enjoy a high level of employment security, i.e. the possibility to easily find a job at every stage of one's working life and have good prospects for career development in a rapidly changing economic environment. The Flexicurity also wants to support both workers and employers in taking advantage of the opportunities that globalization presents to them. It then creates a situation in which security and flexibility can be mutually reinforcing. For some more details see, with no claim to be exhaustive: S Bekker '*Flexicurity : the Emergence of a European Concept*' (Intersentia, Cambridge, 2012); P Auer '*La Flexicurity nel Tempo della Crisi*' [2011] 1 *Diritto delle Relazioni Industriali* 37; L Zoppoli '*La Flexicurity dell'Unione Europea: Appunti per la Riforma del Mercato del Lavoro in Italia*' [2012] 141 *Centro Studi di Diritto del Lavoro Europeo* "Massimo

in the documents of European employment and economic planning, but had not yet been fully transposed by all Member States¹⁰⁶.

Subsequently, in 2008, there was a further re-introduction of the strategy, and so the process started all over again (without sorting out the expected results): new integrated guidelines, new national plans, new Community plans, new Community and subsequent national reports on the implementation of valid reforms (reports this time had to be presented only for the coming two years). In 2008, the European Council initiated a new cycle of the strategy (2008-2010) with a continuity of approach, both in the guidelines, and in the priority areas, but particularly emphasising the implementation of reformed policies¹⁰⁷. The Council defined four 'priority areas': energy, research, innovation and simplification/flexicurity. It then invited Member States to adopt coherent national policies, and the EU as a whole, to define common policies¹⁰⁸.

5.3. The third phase: from the Lisbon Strategy to the Europe 2020 model

While the Lisbon Strategy and its attempt to re-launch itself partly failed to achieve its objectives, basically as concerns methodology, it is worthwhile underlining that it is a first important step towards evolving social and economic integration which is hugely important considering the EU's place in the world and that such a model may become a global template.

The Lisbon Strategy is well worth being regarded not as a complete process, but an ongoing one, which is fundamental for future strategies, in particular for Europe 2020.

In fact, the Lisbon strategy, both chronologically and for its content and prospects, is followed by the 'Europe 2020' strategy. After all, it could not be otherwise, since Europe itself has changed: there is now the common market of Europe 28, Europe 19 concerning the common euro, EU 25

D'Antona", <http://www.pietroichino.it/wp-content/uploads/2012/03/zoppoli.pdf>, accessed 4th April 2015; P Auer and B Gazier 'Flexicurity as a Policy Agenda' [2008] 4 CESifo DICE Report, 3-8; P Auer and K Chatani 'Flexicurity: Still Going Strong or a Victim of the Crisis?', in K Townsend and A Wilkinson (eds.) *'Research Handbook on Work and Employment Relations'* (Edward Elgar, Cheltenham, 2010); J Moller 'The German Labour Market Response in the World Recession: De-Mystifying a Miracle' [2010] 42 *Zeitschrift für Arbeitsmarktforschung*, 325-336 and G Meardi 'Flexicurity meets State Traditions' [2011] *International Journal of Comparative Labour Law and Industrial Relations*, 256 ff. Sul concetto di flexicurity declinato in termini negativi, si vedano gli spunti di F Berton, M Richiardi and S Sacchi *'Flex-Insecurity. Perché in Italia la Flessibilità Diventa Precarietà'* (Il Mulino, Bologna, 2009).

¹⁰⁶ See COM (2007) 359, Towards Common Principles of Flexicurity: more and better jobs thanks to the flexibility and security, 27th June 2007. For an in depth analysis on European flexicurity, please refer to R Pedersini 'Flessibilità e Politiche del Lavoro in Europa tra Mercato e Regolazione Congiunta' [2009] Working Paper 06, Università di Milano, Dipartimento di Studi sociali e politici, <http://www.socpol.unimi.it/papers/2009-02-10_Roberto%20Pedersini.pdf>, accessed 3rd May 2015 and M Keune 'Flexicurity: a Contested Concept at the Core of European Labour Market Debate' [2008] 3-4 *Intereconomics*, 92-98.

¹⁰⁷ The European Council, at that meeting, stressed the need, after 2010, of an ongoing commitment at European level in favor of structural reforms, of sustainable development and of social cohesion in order to consolidate the progress achieved in the context of the renewed Lisbon strategy for growth and jobs. The European Council therefore invited the Commission, the Council and the national coordinators for the Lisbon Strategy to start reflecting on the future of the Lisbon Strategy post-2010.

¹⁰⁸ For example, Italy has identified a few years ago in its program of reform 2008-2010 some "priorities": stability of public finances; extending the area of free choice for citizens and businesses; incentives for scientific research and technological innovation; upgrading of the infrastructure both equipment and intangible assets; environmental protection; strengthening of the education and training of human capital and labour market policies (the latter are common principles of flexicurity). For the European admonition (specifically referring to youth unemployment), see, M Tiraboschi 'La Disoccupazione Giovanile in Tempo di Crisi: un Monito all'Europa (Continentale) per Rifondare il Diritto del Lavoro?' [2012] 2 *Diritto delle Relazioni Industriali* 414.

for the Fiscal Compact, EU 17 for the Member State Saving Fund, and again EU 25 of the Euro Plus Pact¹⁰⁹.

Proposed by the Commission in February 2010 and adopted by the European Council on June 17th, 2010, the new Strategy suggests a path out of the crisis and a vision of the near future that qualifies economic growth as smart, sustainable and inclusive growth¹¹⁰.

In a more and more holistic Europe, the goal of full employment, progress and social cohesion are priorities certainly being debated by EU legislators which have brought forth this new challenge.

Europe 2020 defined the economic and social framework for European action to achieve a sustainable future, with more jobs and a better life, and to demonstrate that Europe is capable of promoting smart, sustainable and inclusive growth to create new jobs and provide guidance to our societies.

The new strategy, in essence, is Europe's response to the economic crisis by applying the model already established by the Treaty of Lisbon, which aims to provide a new social market economy. President Barroso defined the Strategy as follows: "Europe 2020 is what we need to do today for tomorrow, to bring the EU economy onto the right path. The crisis has openly highlighted the fundamental issues and those unsustainable trends that we can no longer ignore. Europe has a growth deficit which is putting our future at risk. We need to deal decisively with our weaknesses and exploit our many strengths"¹¹¹.

On this basis, we are witnessing a real push for greater coordination of economic policies among Member States¹¹² to ensure stability and boost growth and employment.

¹⁰⁹ For an analysis of the new economic governance see: G L Tosato 'L'Integrazione Europea ai Tempi della Crisi dell'Euro' [2012] 3 Rivista di Diritto Internazionale, 681; A Viterbo and R Cisotta 'La Crisi del Debito Sovrano e gli Interventi dell'UE: dai Primi Strumenti Finanziari al Fiscal Compact' [2012] 2 Diritto dell'Unione Europea, 323; L S Rossi '«Fiscal Compact» e Trattato sul Meccanismo di Stabilità: Aspetti Istituzionali e Conseguenze dell'Integrazione Differenziata nell'UE' [2012] 2 Diritto dell'Unione Europea, 293; S Sciarra 'Common Places, New Places. The Labour Law Rhetoric of the Crisis' [2012] 92 Centro Studi di Diritto del Lavoro Europeo "Massimo D'Antona" <http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-INT/20120628-040115_sciarra_n92-2012intpdf.pdf>, accessed 3rd April 2015; S Giubboni 'Social Europe after the Lisbon Treaty. Some Sceptical Remarks' [2011] European Journal of Social Law 244; C Degryse 'The New European Economic Governance' [2012] 14 WP European trade union institute <<http://www.etui.org/Publications2/Working-Papers/The-new-European-economic-governance>>, accessed 3rd April 2015; J Habermas 'Nella spirale tecnocratica. Un'arringa per la solidarietà europea' (Laterza, Bari, 2013); G Allegri – G Bronzini 'Sogno europeo o incubo?' (Fazi Editore, Roma, 2014); S Giubboni – A Lo Faro - D Tega I diritti sociali alla prova della crisi [2004] 2 Giornale di Diritto del Lavoro e delle Relazioni Industriali 269 ff; C Kilpatrick and B De Witte 'A comparative framing of fundamental rights challenges to social crisis measures in the Eurozone' [2014] 1-2 European Journal of Social Law, and recently, F Guarriello 'Crisi economica, vincoli di bilancio e impatto sui diritti dei lavoratori in Europa', Lesson 30 march 2015, typed in <http://www.disp.uniroma1.it/node/7781>, accessed 29th June 2015.

¹¹⁰ See European Council, 2010 "Conclusions of the European Council of 17th June 2010, Euco13 / 10.

¹¹¹ See F Ludovisi 'Europa 2020: La Via d'Uscita Europea dalla Crisi' [2010] Focus Isfol

<<http://archivio.isfol.it/DocEditor/test/File/Europa%202020versione%20dicembre.pdf>>, accessed 4th April 2015.

¹¹² A practical example is the Stability and Growth Pact (SGP), which is embodied in an agreement signed by the member countries of the European Union concerning the control of their national budgetary policies, in order to keep the requirements of membership in the Economic and monetary Union (euro-zone). It refers to Articles. 99 and 104 of the Treaty of Rome establishing the European Economic Community (as amended by the Treaty of Maastricht and the Treaty of Lisbon) and is implemented through the strengthening of supervisory policies on the deficit and public debt, as well as through a particular type of infringement procedure, the Excessive Deficit Procedure (EDP), which is the main tool. As stated in the report published on the Commission website, in fact, «the Stability

These intentions are coordinated and verified (this time) through the so-called European Semester, a cycle of economic policy and EU budget coordination¹¹³. During these semesters, (the first with these new priorities began on November 23rd, 2011 promoted by the Commission), Member States are asked to provide detailed obligations on tax policies and plans for consolidating public debt. Member States should also not only simultaneously submit reports on national reform programs, stability and convergence programs, but also on ensuring solid funding for such programs. Ensuring good performance of the operational phase is also supported by strict controls, clear and measurable objectives (both at European and national level) and by careful monitoring, based on the above-mentioned method of coordination (OMC)¹¹⁴.

and Growth Pact (SGP) is the concrete EU response to concerns about the continuity of budgetary rigor in the Economic and Monetary Union (EMU). Signed in 1997, the PSC has strengthened the provisions on fiscal discipline in EMU referred to in Articles 99 and 104, and entered into force with the adoption of the euro, on 1st January 1999» Under the PSC, the Member States, which meet all of the so-called Maastricht criteria, have decided to adopt the Euro, must continue to comply in time those relating to the state budget, i.e., a deficit not exceeding 3% of GDP; a public debt below 60% of GDP (or at least, a public debt that tends to downturn). So we can say that the PSC has implemented the EDP, which specifically now consists of three phases: warning, recommendation and sanction. If the deficit of a member country comes close to the 3% of GDP, the European Commission proposes and the Council of European Ministers in the ECOFIN approves, an "early warning", which follows a real recommendation in case of exceeding the limit. If following the recommendation, the State concerned fails to take sufficient corrective measures of the stance of fiscal policy, it is subjected to a penalty which takes the form of an interest-bearing deposit, to be converted into a fine after two years of persistence of the excessive deficit. The amount of the penalty has a fixed component equal to 0.2% of GDP and a variable equal to 1/10 of the variance in the fiscal deficit from 3% threshold. However, it is expected a maximum to the total amount of the penalty which is equal to 0.5% of GDP. If, however, the State shall take timely corrective action, the procedure will be suspended until the deficit is brought below the 3% limit. If the same are revealed, however, inadequate, the procedure is repeated and the sanction imposed. The first Early Warning was proposed by the Commission and approved by the Ecofin in 2001 against Ireland. Italy has undergone a EDP in 2005, closed without sanctions in 2008 for the return of the deficit occurred within the parameters and the declining trend of public debt, see "ISTAT: L'Italia cresce poco, ma cala il deficit. Almunia: stop a procedura contro l'Italia" in *Corriere della Sera*, 29th February 2008. Many have highlighted the excessive rigidity of the Covenant and the need to apply it considering the full economic cycle and not a single financial statements, also taking into account the convoluted risks arising from the politics of the investments, too limited, that it involves. In the past, the then President of the Commission, Romano Prodi, called the deal "unworkable" because of its rigidity, although he deemed necessary to apply it on the basis of the Treaty and try to continue to perform it. Many critics argue, then, that the SGP would not promote neither growth nor stability, since so far it has been applied inconsistently, as shown, for example, by the fact that the Council has failed to apply sanctions contained in it against France and Germany, despite the conditions were satisfied. In fact, considering that, as established by the European Court of Justice in 2004, the EDP recalled by the Covenant is not mandatory, it is now clear how difficult it is to enforce the constraints of the SGP in respect of the "greats" of the Union that were the same promoters of it. Indeed, some countries recorded for years "excessive" deficits as defined in the Covenant, but nevertheless, in spite of warnings and recommendations received, have never seen applied any sanction. In March 2005, then, in response to growing concerns, the Ecofin decided to soften the rules to make it more flexible. The decision was recalled and reaffirmed by the Franco-German axe in 2008 to cope with the severe financial crisis that has affected markets and economies around the world following the American mortgage crisis of 2006. More instances of reform, in the sense of suspending the voting rights in countries that fail to meet its budgetary obligations, were expressed in particular by Germany, on the occasion of the aid allocated by the Euro-zone countries to the serious financial crisis in Greece in May 2010.

¹¹³ The European semester focuses on a period of six months (hence the name). During this semester the EU states align their economic policies and budgetary objectives and rules agreed at European level. It, in particular, aims to ensure "healthy" public finance; promote economic growth and, not least, to prevent excessive macroeconomic imbalances within the EU. See, for some insights on the European Semester, S Sciarra *'L'Europa e il Lavoro. Solidarietà e Conflitto in Tempi di Crisi'* (n 100) 12.

¹¹⁴ The OMC takes the form of a multi-lateral dialogue with the exchange of information between the various institutional actors from time to time involved in individual economic and social sectors; discussion on best practices; multi-lateral monitoring; the peer review meant as reciprocal pressure among peers; and, in some cases, rules and actions jointly coordinated between the state and the overstate level (see S Cafaro *'Il Metodo di Coordinamento Aperto'*, in S Cassese (ed) *'Dizionario di diritto pubblico'* (Giuffrè, Milano, 2006), vol. IV; J Scott and G De Burca *'Law and New Governance in the EU and US'* (Hart Publishing, Oxford- Portland, 2006); S Cafaro *'La Moc, l'Action Communautaire et le Role Politique du Conseil Europeen'* in G Vandersanden (ed) *'Mèlanges en Homage à J V Louis'*, Vol. II (Bruxelles edition, Bruxelles, 2003) 203-221) and P Chieco *'Crisi economica, vincoli europei e diritti fondamentali dei lavoratori'* (n 94) 53 ff. The OMC has suffered in recent years many stages of revision that made it dynamic and changing over time. Probably, it

And so, the Commission may, for example, encourage cooperation between Member States by facilitating coordination in all areas of social policy, such as employment, labour law and working conditions, training and further vocational training, social security, protection against accidents and occupational diseases, occupational hygiene, and the right of association and collective bargaining between employers and workers (in case these are missing or deficient). This process, according to the founding fathers of the new strategy, should make the OMC more functional in relation to the system of powers and competences expressed by the Treaty of Lisbon and the objectives (re-) established by Europe 2020.

The Commission may also provide political guidance and make recommendations to governments before national budgets are defined. This would allow Member States to coordinate their economic policies and benefit from common European economic strategies, while maintaining the ability to tailor policies to their national characteristics¹¹⁵.

It would seem appropriate to ask at this point, what is a long-term plan useful for, when the situation is constantly changing? Re-launching economic growth remains the immediate priority and the EU has already acted to stabilize the banking sector and stimulate economic activity. But we must also look beyond the current crisis. The EU is actually being pressured by its competitors and demographic change; to return merely to the pre-crisis situation would lead to further delays. The strategy was, therefore, to introduce those measures that would make the EU stronger and more competitive in the future¹¹⁶.

is precisely because of this peculiarity that has led the literature not to be unanimous in expressing opinions about the effectiveness of this method. During these years, however, it is possible to argue that the OMC has worked, becoming sometimes an essential element for achieving community integration (according to F Guarriello 'Le Lezioni Apprese dal Metodo Aperto di Coordinamento' in E Ales, M Barbera and F Guarriello (eds) *'Lavoro, Welfare e Democrazia Deliberativa'* (Giuffrè, Milano, 2010) 709-745. The OMC has become over the years a stable and essential element of European integration, not only because of the multiplication of the initial coordination processes applied to different areas, but also and above all as a result of the confluence of the integrated approach. Compared to analyzes that prioritize elements of discontinuity and differentiation, the observation of recent events has led to highlighting the elements of continuity that, despite the transformations, characterize dynamically the OMC as a method of progressive integration, making it an appropriate tool to advance European integration in the social field). Despite its progressive development over time and its application to new areas, it is possible to recognize in the open method of coordination a kind of continuity of characters that represent the leitmotif throughout all its stages. Among them, the main characters of continuity are the adaptability of the process and the sharing between the Union and the States of analysis tools, guidelines and objectives. So, despite the doubts brought to light in more than ten years of implementation, the OMC has proved to be a more effective method than its low degree of binding nature did suppose, and became, by virtue of its application in particularly sensitive sectors "the central tool of Eu policy making in the new millennium". For further details in this regard, see also M Telo' *'L'Europa Potenza Civile'* (Laterza, Bari, 2004), and G Caggiano 'Coordinamento Comunitario delle Politiche Nazionali per la Creazione del Modello Sociale Europeo' in *Studi in onore di Vincenzo Starace* (ESI, Napoli, 2008) vol. II, 909 ff and G Toggenburg 'Unity in Diversity; Searching for the Regional Dimension in the Context of Someway Foggy Constitutional Credo' in R Tognatti, M Dani and F Palermo (eds) *'An Ever More Complex Union'* (Nomos, Baden, 2004) 27 ff.

¹¹⁵ This setting may also help the EU to assess in proper time the national developments, so that they can be taken into account additional cycles of coordination. For example, every year the European Semester begins with the presentation of the Annual Growth. The latter consists in a report presented by the Commission in January of each year which evaluates the main economic challenges that the European Union is facing, recommending priority measures to be taken to address them. On the basis of this report, the European leaders give indications on possible solutions during the Spring Summit.

¹¹⁶ See M Decaro (ed) *'Dalla Strategia di Lisbona a Europa 2020'* (Collana Intangibili Fondazione Adriano Olivetti, Roma/Ivrea, 2011) http://www.fondazioneadrianolivetti.it/_images/pubblicazioni/collana/120111100032Strategia%20di%20Lisbona.pdf, accessed 4th May 2015.

To achieve that goal, greater transparency was also introduced to allow each country to observe and understand what others were doing so as to ensure moving in the same direction. So, based on testing and benchmarking, the Commission will prepare an annual report on the strategy, which highlights the progress made in achieving the objectives as well as any delays and short-ages, encouraging the exchange of best practices¹¹⁷.

6. The Europe 2020 agenda and the recurring reference to the Dutch model of flexicurity

The occupational objectives identified in the Europe 2020 Strategy soon proved - relating to the current economic crisis - unrealistic.

Therefore, both the Commission¹¹⁸ and the Council¹¹⁹ acknowledged that – to accomplish the purpose – EU Countries should adopt internal policies aimed at removing those barriers that constrain the most vulnerable to unemployment. So, a new program for the years 2014-2020 was launched supporting programs for the long-term unemployed and young people in search of employment. The program foresees - where desirable - funding only for those projects that identify well-defined priority objectives¹²⁰.

It would be natural at this point, to turn to the ESF on behalf of Member States to plan emergency measures, among which post-academia support for youth employment through internships and training accompanied by temporary incentives for recruitment.

Hence, Europe should engage a measure of flexicurity, which would serve as a guide in assigning resources virtuously and efficiently¹²¹.

In particular, it would be beneficial to adopt a combination of the four main measures related to flexicurity: the life-long training; active labour market policies; modern systems of social security; and, flexible working arrangements.

¹¹⁷ In terms of sanctions, the EU has also sought to push towards greater collaboration formulating a series of recommendations, through the Council of Europe, which, if not followed, thanks to the new powers conferred on the Commission by the Treaty of Lisbon, may generate warnings to the interested countries and, where appropriate, penalties.

¹¹⁸ See the Communication from the Commission's Annual Growth Survey for 2012, Com (2011) 815 final, 23 November 2011.

¹¹⁹ See the Conclusions of the European Council of 1st-2nd December 2011, Euco 139/1/11, Rev 1, January 25th, 2012.

¹²⁰ The Council is due to agree its opinion for submission to the European Council on this year's draft Country Specific Recommendations (CSRs) in the framework of the fourth European Semester within the Europe 2020 strategy.

The draft Recommendations are based on detailed analyses of each country's situation and provide guidance on how to boost growth, increase competitiveness and create jobs in 2014-2015. This year, for the first time, the Commission used the scoreboard of key employment and social indicators to draw attention in a number of draft Country Specific Recommendations to reforms needed to support job creation, fight unacceptably high levels of unemployment, strengthen the resilience of labour markets and address rising inequalities and poverty.

This year, the draft CSRs recognise that Member States are making substantial efforts to implement the Youth Guarantee, the key policy that all Member States have committed to implement to tackle youth unemployment. Nevertheless, delivering on the objectives of a Youth Guarantee requires strategic reforms to achieve more successful transitions from school to the labour market. This is reflected in the analyses of all EU Member States and the CSRs for 18 Member States - of which 8 specifically require more decisive action to implement of the Youth Guarantee. In tal senso si vedano gli approfondimenti di S Sciarra *'L'Europa e il Lavoro. Solidarietà e Conflitto in Tempi di Crisi'* (n 100) 27. For hints, however, of an economic character, see the considerations of P Pini *'Europe's Austerity Budget for 2014-2020. A Comment over an Anti-Keynesian Budget'* [2013] 3 *Economia Politica* 301.

¹²¹ *Contra*, F Carinci and M Miscione *'Presentazione'* (n 2) 7.

This now strongly recommended operating model, even at the institutional level by the Commission itself, strictly follows the Dutch model of flexicurity, the success of which has earned it a role in welfare, solid labour relations, the widespread distribution of collective bargaining and enlightened scholastic and post-scholastic education.

It would be desirable, as the Commission itself says, that all EU countries build an internal model of flexicurity, able to mimic the broad mix of the successful Dutch model¹²².

It would appear that these days the EU tends to give greater protection to income support policies for people without jobs irrespective of those without stability, to say flexible workers, or even worse, precarious ones. These two employment problems should instead be revised and symmetrically taken into account, prioritising neither one nor the other, to prevent the risk described in the Beveridge¹²³ curve by which focusing on policies of income support has the opposite effect on those people who perceive benefits¹²⁴.

7. The crisis of the Europe 2020 model. Some considerations of issues involved in the Europe 2020 Strategy

It should be wondered, after almost four years since the launch of the Europe 2020 agenda, how effective and how actually resonant the strategy has been.

Although 2020 has been and is an important milestone in the expectations and hopes for curing unemployment, the current situation unfortunately, shows that the results are anything but convincing.

The ambitious employment and social targets contained therein are in reality far from being realized¹²⁵.

Although it seems that the EU labour market is gradually recovering, for the first time since 2011 GDP, employment and household incomes are growing. However, long-term unemployment is

¹²² Always in the opposite direction, see, F Carinci and M Miscione 'Presentazione' (n 2) 7.

¹²³ The relationship between flexicurity and Beveridge has recently been developed by I A Katselidis 'From Beveridge to "Flexicurity": Old and Recent Labour Policies' [2014] 1 History of economic thought and policy 97.

¹²⁴ In this sense, also labour law studies have argued that welfare reform requires a different concept of social security, so it makes more sense to finance the "no work", as in the system of social safety benefits that cover the risk of unemployment when this is not due to a limited contingency, but has become a structural problem. See G Prosperetti 'Un Possibile Nuovo Welfare' [2013] 2-3 Il Diritto del Mercato del Lavoro 248.

¹²⁵ The data is reported by one of the last bulletin of the Commission, namely the European Commission - IP / 13/879 2nd October 2013 which highlights an increase in unemployment, a difference between the rate of unemployment among the southern – peripheral countries and the north of the euro-zone, and at the same time a great reduction in social spending compared to that of past recessions. This quarterly review underscores the fragility of the economic recovery and a persistent gap in EMU. Figures speak out: although a slight recovery state of the art, the employment situation is always in danger. The youth unemployment rate has indeed reached unprecedented levels - with an average of 23% for the EU as a whole, which reaches 63% in Greece; the rate of long-term unemployment has increased in most of the Member States and also reached a record level in the EU. Unemployment and structural imbalances have increased, both quantitative and qualitative, between the demand and supply of labour; the net loss of jobs has coincided with the rise of precarious employment; part-time jobs are increased, especially the involuntary part-time, although the share of fixed-term contracts in the EU has fallen, being a "victim" of the economic downturn.

still rising and the situation for low-income families has not improved¹²⁶.

This topic deserves investigating.

After the launch of the Lisbon Strategy in 2000, the EU finally provided a vast catalogue of social rights, the Charter of Fundamental Rights, at the time rewritten by the Treaty of Lisbon¹²⁷, thereby creating at least an unofficial compliance between economic Europe and social Europe. The debate now seems to have narrowed the issue of new economic governance and the ways to get out of the banking, monetary and debt crisis, losing sight of other aspects that do not deserve less importance¹²⁸.

The planning documents of the institutions reveal a sort of 'disinvestment' on social issues, while favouring topics like growth, competition, the market and, more generally, economic-financial governance¹²⁹. This trend had already been detected, albeit to a lesser extent, with the transition from the Lisbon 2000 strategy to the objectives outlined in the Communication about Europe 2020¹³⁰.

It thus appears that the catalogue of social rights, including employment policies, which over the years Europe had mastered, are now considered less valuable or can be relegated given the spreading crisis. To recover lost ground, however, and try to deliver, from the very beginning, the objectives of the Europe 2020 Strategy, the kinks should be straightened out: there should be more effective use of the OMC, the institutions need strengthening, there should be greater involvement of the European Parliament, more stringent procedures of surveillance, there should be more news about the euro zone and its unified voice at the international level, there should be a system for advertising- these are all measures that could allow Europe 2020 to respond to the challenges of the future, without forgetting the lessons from the past as well as those resulting, ultimately, from the dramatic crisis, both global and internal (see the case of Greece, Ireland, Portugal, etc.) in recent years. The experience of the first decade of the century has shown that

¹²⁶ The data is provided by the EU Employment and Social Situation - Quarterly Review - June 2014 (30/06/2014), in <<http://ec.europa.eu/social/main.jsp?catId=737&langId=en&pubId=7712>>, accessed 24th May 2015.

¹²⁷ About this see, A Alaimo 'Presente e Futuro del Modello Sociale Europeo. Lavoro, Investimenti Sociali e Politiche di Coesione' [2013] 2 Rivista Giuridica del Lavoro e della Previdenza Sociale, 253; S Giubboni 'I Diritti Sociali nell'Unione Europea dopo il Trattato di Lisbona: Paradossi, Rischi, Opportunità' in C Salvi (ed) 'Diritto Civile e Principi Costituzionali' (Giappichelli, Torino, 2012) 102; D Gottardi 'Tutela del Lavoro e della Concorrenza tra Imprese nell'Ordinamento dell'Unione Europea' [2010] Diritto delle Relazioni Industriali, 521; U Villani 'La Politica Sociale nel Trattato di Lisbona' [2012] 1 Rivista Giuridica del Lavoro e della Previdenza Sociale, 25.

¹²⁸ See J Habernas 'Questa Europa è in crisi' (Laterza, Roma-Bari, 2012) 34. Per il rapporto tra governance economica e governance sociale si veda lo scritto di L Pennacchi 'Governance Economica e Governance Sociale' [2012] 1 Rivista Giuridica del Lavoro e della Previdenza Sociale, 11.

¹²⁹ Refer to A Alaimo 'Presente e Futuro del Modello Sociale Europeo. Lavoro, Investimenti Sociali e Politiche di Coesione' (n 130) which states that the downsizing of the social dimension is presented as a feature of the second stage of the crisis, in which attention to the issues of financial stability, growth and competitiveness is gradually increased by the permanent state of crisis, as evidenced by the adoption of the Com (2010) 608 final 27th October 2010 «Towards a Single Market Act. For a highly competitive social market economy» - almost coeval with the launch of the new strategy, and specifically dedicated to a highly competitive Social Market Economy, and the subsequent Com (2012) 299 final. of 30th May 2012 «Action for stability, growth and jobs», prior to the twenty-seven country-specific recommendations adopted at the end of May 2012. To view the twenty-seven recommendations, see the website http://c.europa.eu/europa2020/making-it-happen/country-specific-recommendations7index_en.htm.

¹³⁰ See A Alaimo 'Da «Lisbona 2000» a «Europa 2020». Il «Modello Sociale Europeo» al Tempo della Crisi' [2012] 3 Rivista Italiana di Diritto del Lavoro, 219.

European action and the measures adopted undergo inevitable failures when they do not meet expected objectives and are not sufficiently coordinated with other national strategies¹³¹.

Conclusions and some proposals for change

It's well known that the transition from industrial to post-industrial society has gradually led to a corresponding transition from an economy of social safety to an economy of insecurity or, in the terms of this treatise, the transition from a society of employment to that of unemployment.

It is evident that the processes of globalization, flexibility and precariousness of the markets, as well as the phenomena of tightening competitive dynamics at national and international level, have led to new social risks which are difficult to measure- the consequence is the need for the legal systems to provide new and incisive answers to the emerging demands of existing social protection.

Accordingly, we must deal with reorganizing unemployment and labour market policies first in Europe and then nationally.¹³² It seems reasonable that there is no viable absolute solution but rather a range of solutions, all theoretically possible and all equally valid, which are able to ensure a reasonably balanced distribution of available resources and which are consistent with the ideals of inalienable solidarity, equity and the universality of welfare intervention.

Perhaps, through the issues above, a profile of openness can still be found in Europe 2020, a strategy which, replacing the historical agenda launched in Lisbon, offers smart, sustainable and inclusive growth; a strategy also for new social policies.

If the positive aspects of current European policies are valued, it seems that the answer is to evolve quickly towards a 'workafare' view or 'labour welfare'¹³³. The aim is to abandon the techniques of passive unemployment protection and economic support through a new promotional system of permanent employability, as a means of the acquisition-conservation of chance in the labour market¹³⁴.

The new protective system should, therefore, take on an active policy of employability. Through continuous training and the selection of opportunities, the new policies should ensure workers maintain stable relationships or at least the uninterrupted continuity of flexible jobs, facilitating not only the first employment, but also the persistence of active aging¹³⁵. This policy, however,

¹³¹ As reiterated in the document issued by the G8 at the summit of 27th June 2010 held in Toronto.

¹³² The world parliament of labour reached consensus on the need for a comprehensive employment policy framework and pro-active, employment-centered, inclusive growth strategies, both at global and national levels. Not surprisingly, Ryder, during the 103th International Conference of Labour declared that «a framework for the ILO to deliver its contribution to overcoming the defining scourge of our time - the crisis of mass unemployment». Delegates also agreed to promote "decent" work as an explicit goal of the United Nations-led post-2015 global development agenda.

¹³³ See G Prosperetti *'Nuove Politiche per il Welfare State'* (n 56) 22 and T Treu *'Un Possibile Nuovo Welfare State'* [2013] 2-3 *Il Diritto del Mercato del Lavoro* 256. He reports that in most European countries the welfare is still too "workable", though the health service has always been uncoupled from work.

¹³⁴ See D Garofolo *'Formazione e Lavoro tra Diritto e Contratto. L'occupabilità'* (Cacucci, Bari, 2004) 142, about the concept of employability as a pillar of the shares of the labour market underpinning the European Employment Strategy.

¹³⁵ About this see A Pessi *'Riflessioni sui Sistemi di Sicurezza Sociale'* in *'Diritto del lavoro. I nuovi problemi. L'omaggio dell'Accademia a Mattia Persiani'* (n 70) 1623.

should be conjugated (later) with an incisive social security system of guarantees, elaborated by each single State to secure an integrated network of services and economic performance to all potential workers, thus resulting in self-sufficiency both for the individual and families. The final result should mean substantial indifference both to periods of work and periods of unemployment in terms of pension protections. Consequently, this feasible new social protection system should expand the area of protected people to overcome a restricted vision of 'work' and invest more in individual industry to protect all those who, although willing to work, can't fit into the production system because of the objective conditions of the market¹³⁶.

At this point, a kind of 'enabling' welfare could be hypothesised, through a mechanism of 'circular subsidiarity' that would interact systematically – both at the planning stage and the actualization stage – between the State, the world of business world and associations to emphasize the participation of individuals in civil society, to "build a common ability for cultural planning"¹³⁷. All the actors involved could seemingly find themselves in a new order that requires such responsibilities as are often still lacking. In this way, the parties involved may be encouraged to develop the resources and skills needed to face up to risk and work precariousness to seize the opportunities offered by the community they live in and become co-authors of welfare policies relevant to their needs.

This means overthrowing the logic of passive subsidy which is typical of the industrial welfare models, in favour of an active welfare model oriented to solve or anticipate needs. Active welfare could even promote the ability of the individual to become independently responsible for his own well-being¹³⁸. This concept of welfare is in line with what has already been supported by European policies on this subject and some official documents of the OECD¹³⁹. When confronting these issues, active policies are needed which don't just temporarily provide a stopgap for need, but which aim at changing the conditions in which individuals relate.

On a practical level, as already revealed by some doctrines¹⁴⁰, in addition to enhancing welfare, a possible solution might be to create decentralized territorial networks which, can program and manage those plans through the dynamics of empowerment, delivering activation processes for

¹³⁶ P Bozzao 'Dal "Lavoro" alla "Labouriosità". Nuovi Ambiti della Protezione Sociale e Discontinuità Occupazionale' [2003] 2 Rivista di Diritto della Sicurezza Sociale, 594.

¹³⁷ See M Ceruti and T Treu (eds) '*Organizzare l'Altruismo, Globalizzazione e Welfare*' (Laterza, Roma – Bari, 2010). The concept of "enabling welfare" is often linked to polizie that aim to activate the single individual. The idea of "activation" comes from the dominant will in this last decade to reform the European Union's welfare state. The locution assumes an extended meaning and embraces all the present (and future) policies about social protection and labour market. These policies are inside the contemporary socio-political framework promoted by EOS and by the national guidelines of Member States. Through the activation of these policies, the worker would be both protected and gain the instruments to enter the labour market by organizing its own professional life (to learn more about this – even under a critical point of view, see J Barbier "Attivazione" [2005] 1 Rivista Politiche Sociali 260).

¹³⁸ See G Proia 'Il Welfare Negoziale' in G Canavesi and I Spilimbergo (eds) '*Solidarietà Sussidiarietà Sicurezza Sociale*' (Eum, Macerata, 2012) 92. According to Proia, we should give importance to the negotiating side of the modern welfare. One of the negative consequences of the Bureaucratization of the State is the de-responsibility of individuals, while we should recall that responsibility of the individuals is essential for the realization of a social policy. See also B Caponetti 'Il Welfare Aziendale per le Esigenze di Conciliazione Lavoro/Famiglia' [2013] 2 Nuove Tutele 99.

¹³⁹ See OECD Annual report 2005, in <<http://www.oecd.org/about/34711139.pdf>> accessed 9th May 2015.

¹⁴⁰ See G Proia Il Welfare negoziale, in G Canavesi and I Spilimbergo (eds) '*Solidarietà Sussidiarietà Sicurezza Sociale*', (n 138), *passim*.

people in difficulty, to fulfil themselves, freeing them from dependence on passive subsidies, while respecting the specificities of their geographic locations.

This process of rescaling may involve local government (suitably enhanced in skills, services and responsibility), and at the social level may involve private organizations, the third sector of volunteer networks and families, and also social partners¹⁴¹. This *modus operandi* may well be interpreted as a respectful 'declination', of the principle of subsidiarity that has and still characterizes many models of welfare but in a modern way and in factual terms. However, it could be a driving force for transitioning from the old welfare imprinted on a narrow government agenda towards a wider one based on a collective and multilevel involvement of governance¹⁴².

The theory thus outlined structurally modifies both the traditional objectives of social protection and its close relationship with labour policies. This seems to respect those policies which consider welfare as a way of overcoming those reparatory forms of mere financial compensation. Active welfare, together with employment policies, pursues the broadening of opportunities and the improvement of citizens' well-being¹⁴³.

In the opinion of the author, this method could open the way to a veritable model of welfare society that regenerates the now stagnant models of industrial welfare and is capable of generating inclusion, well-being and, above all, social cohesion¹⁴⁴.

¹⁴¹ See also Y Kazepov (ed.) 'Rescaling Social Policies: Towards Multilevel Governance' (Farnham, Ashgate, 2010).

¹⁴² About the usefulness of this change, see K Leichsenring 'I cambiamenti nei sistemi dei paesi del centro Europa', in *Il cambiamento dei sistemi di welfare: quali politiche e processi di governance*, Venezia 17th-18th May 2012, typed in <http://www.unive.it/media/allegato/School_SSPP/eventi/2012-13/Leichsenring_I_cambiamenti_nei_sistemi_del_centro_Europa.pdf>, accessed 2nd May 2015.

¹⁴³ See T Treu 'Politiche del Lavoro. Insegnamenti di un Decennio' (Il Mulino, Bologna, 2001) 171 and J F Handler 'Social Citizenship and Workfare in the United States and Western Europe: the paradox of inclusion' (Cambridge University Press, 2004) 90. According to these authors, the welfare should be reformed and the labour should be "re-commodified", that is to say newly inserted in a context of market. See, also, S Giubboni 'European Citizenship, Labour Law and Social Rights in Times of Crisis' (n 85).

¹⁴⁴ See A Ciarini 'Individualizzazione e Welfare: Dimensioni e processi' [2010] 2 *Rivista delle Politiche Sociali* 347. Ciarini says that this system could feed the individualism and weaken the National solidarity. In my opinion, this impasse could be overcome by keeping on a high level the National function of coordination, addressing and management, giving the proper importance to the actors that operate in the territory. The assumption at national level of adequate measures towards the indigent without damaging its personal dignity could ease the overcoming of that (cold), American logic of welfare activation. About this, see, P Sandulli 'Tutela Previdenziale e Assistenziale dei Lavoratori Atipici nell'Ordinamento Giuridico Italiano' [2003] *Lavoro e Diritto* 409 and by opposite M Wisemann 'USA. Workfare: Un sistema Complesso' [1999] 3-4 *Assistenza Sociale* 89. The American welfare activation has elaborated an unfair way to re-integrate an individual in the active society by obliging to accept any kind of job otherwise the loss of the subsidy. This way to "offer a job you can't deny" plays a hard role on the individual's responsibility. About this, see, V Borghi 'Il lavoro dell'attivazione: lo statuto sociale del legame tra welfare e lavoro nelle politiche di attivazione', in L Bifulco (ed.) 'Le politiche sociali. Temi e prospettive emergenti' (Roma, Carocci, 2005) 45.