

Active employment policy and vulnerable groups in a context of scarcity of employment opportunities

José Bascón Marín
University of Cordoba



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ENG Abstract. This work tries to show how certain social and economic processes have generated a new paradigm in which the scarcity of employment opportunities is its main characteristic. In this socioeconomic context, vulnerable groups are the most affected, having to be the employment policy, specifically, its active dimension, which provides the appropriate means to facilitate the incorporation into the labour market of people with greater difficulties, betting on the Labor intermediation and the role it assumes in the new Employment Law.

Keywords: active employment policy, vulnerable groups, job intermediation, job placement, employability.

Summary: 1. Introduction. 2. Methodology 3. The scarcity of employment opportunities in the current socio-economic context 4. The difficulties of labour market insertion presented by vulnerable groups. 4.1. Vulnerable groups. 4.2. Labour market barriers. 4.3. Labour market data with respect to vulnerable groups. 4.4. Final reflections. Spending on employment policy. 5. Labour intermediation as an effective tool for labour market insertion. 5.1. The role of labour intermediation. 5.2. The agents of labour mediation. 5.3. Novelties brought about by the new LE on labour mediation. 6. Conclusions. Bibliography.

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1. Introduction²

In today's modern societies, work is positioned as the main element that allows individuals to achieve both personal and professional fulfilment (to opt for economic, political and social opportunities), at the same time as it is the most direct route to social integration. Moreover, it is the key element on which a strong Welfare State, capable of offering the necessary protection to its members, must be based. However, the employment crisis that we have been suffering since the seventies of the last century has been reducing the protective capacity of the European Welfare States, and particularly the Spanish Welfare State, with the most affected being the members of vulnerable groups.

¹ University of Cordoba

ORCID: <https://orcid.org/0000-0002-1137-9234>

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2. Methodology

This study aims to corroborate the limited effectiveness of active employment policy measures in achieving the desired levels of labour market insertion for people in vulnerable groups. The research method we have used to carry out this work has been descriptive and document-based, with multiple sources, ranging from bibliographical documentation to regulatory provisions (employment laws and their modifications, incentives for recruitment, European directives against discrimination, etc.) or the use of different databases such as the National Statistics Institute (INE), Eurostat, the State Public Employment Service (SEPE), etc.

3. The scarcity of employment opportunities in the current socio-economic context

Post-modernity brought, hand in hand with globalisation and technology, a change in the production model in which the massive and rigid Fordist industrial organisation gave way to a new, lighter and more flexible company model capable of adapting more quickly to the contingencies of the economic, globally digitalised and highly competitive markets. However, this capacity to adapt does not come free of charge and requires, in the same way, the existence of a labour regulation with a high degree of permissibility, producing an important shift in the behaviour of Labour and Social Security Law towards the flexibilization of the rigidities with which the all-powerful, but extinct, Fordist company had been straitjacketed. Thus, modern companies tend to become lighter, and the labour force develops a greater number of mobilisations, which means that work becomes unstable and dispersed, virtual productive spaces develop, without borders and allowing, especially in service companies, that the company organisation is only able to define itself in a diffuse way.

This and other factors have led to the emergence of a new economic model that has been characterised by the destruction of the stable employment provided by the Fordist enterprise in favour of another type of employment that generates a greater burden of instability. Having said that, and given that the peculiarity of the labour market, as has been said so many times, lies in the nature of the product that is bought and sold, it is reasonable to think that the legal protection of the worker against the scruples that the labour market may show is essential to achieve a generalised common social good, not only in terms of working conditions but also in the field of employability and employment law, with the aim of achieving an increasingly cohesive society with a greater degree of social integration. This crisis of employment, which has been present since the 1970s, has become a characteristic of European society and, therefore, of Spanish society, with an immediate negative effect on vulnerable groups who end up being victims of situations of discrimination and inequality, being displaced to positions close to the social limits (Navarro and Costa, 2013: 63).

4. The difficulties of labour market insertion presented by vulnerable groups

4.1. Vulnerable groups.

There is a significant number of people who belong to a series of groups or collectives whose main characteristic is the special difficulties they have in accessing the world of work and whose rejection by the labour market has been a constant reality, becoming more severe at times when socio-economic circumstances have been more unfavourable. For a better study and analysis of the situations suffered by these people, both the State and the public authorities have traditionally included them in a series of groups clearly identifiable as "vulnerable groups" or "disadvantaged groups", which share certain characteristics and where the Employment Act (hereinafter, LE), in its latest regulations, has defined them as "priority" or "priority attention"³ when considering them as targets of active labour market policies. The "official" or "legal" materialization of these groups was as follows⁴: young people, women, people over 45, people with disabilities, the long-term

³ Art. 28 and 30 of Legislative Royal Decree 3/2015, of 23 October, approving the revised text of the Employment Act (BOE No. 255, of 24/10/2015) and arts. 50 and following, Law 3/2023, of 28 February, on Employment (BOE N. ° 51, of 01/03/2023) and which has repealed the previous one except for arts. 15 to 18 which will be repealed when the Spanish Employment Agency comes into operation [DD Única.1. a) of Law 3/2023, of 28 February].

⁴ The regulation of vulnerable groups until the recent entry into force of the new LE was as follows: art. 29 of Law 51/1980, of 8 October, Basic Employment Act, considered specific groups of workers with insertion difficulties, in an exhaustive manner, to be young people seeking their first job, women with family responsibilities, people over 45 years of age, people with disabilities and beneficiaries of unemployment benefits. Subsequently, Article 26.1 of Law 56/2003 considered young people, women, the long-term unemployed, the over-45s, people with disabilities and immigrants to be priority groups. Article 9 of RD-Law 3/2011 added a new Article 19 octies to Law 56/2003 which, from this point onwards, would regulate the priority groups and took advantage of the moment to introduce some modifications such as

unemployed, immigrants and people in situations of social exclusion.

However, the new LE has done something which at first sight might seem insignificant but which is going to be of great importance; and that is the fact of changing the name from "priority groups" or "vulnerable" to "priority attention groups" which allows for the inclusion of another series of groups "of special vulnerability" without prejudice to those others that may be determined within the framework of the National Employment System (art. 50 LE). In theory, and taking only the literal meaning of the phrase, it would seem that any group in need of urgent attention would be included, however, when analyzing the definition that art. 3 d) LE offers of "groups of priority attention" as those who present "special difficulties" for access and the maintenance of employment, as well as for the development of employability, we notice that the new concept does not change in any way the perception we had of "priority groups" or "vulnerable groups" and we therefore understand that the new groups do not fit this definition in view of the following consideration.

Selective employment policies are specific measures designed to ensure the employability that the labour market denies to those who have special difficulties in finding or keeping a job due to the intrinsic circumstances in which they are included in these groups, and which are, at the same time, the direct or indirect cause of their rejection from the labour market. Thus, people with disabilities must face the barriers that a society conceived and built by and for a "normalized" population has been putting in their way, making it difficult or preventing them from accessing the labour market (Bascón, 2021: 138). In processes of company restructuring, it is more than likely that the highest percentage of exits from the labour market will be made by older people, and it may also happen that these stays outside the labour market are prolonged in time due to the fact that the hiring of older people is not generally a policy followed by companies. For its side, the stagnation of prolonged unemployment situations will lead to the professional de-qualification of individuals, especially with regard to specific knowledge, insofar as it is lost more rapidly than general knowledge, which will result in a depreciation of the worker's intellectual capital (Hernanz and Jimeno, 2018: 45).

In Spain, the main economic drivers (tourism, commerce and construction) do not demand high professional qualifications, which means that young people who seek specialized, high-level training are forced to settle for precarious jobs with a low level of training requirements or to leave the country in order to find a job that matches their qualifications⁵. The socially excluded worker, for his or her part, is left without any weapon with which to fight for a place in an increasingly competitive, more specialized and scarce labour market.

In its explanatory memorandum, the new LE states the need to identify "in selective terms" the "primary care groups" in order to be able to offer "a sufficiently differentiated" and "effective" employment action. Under this slogan, the legislator increases the number of priority groups on the understanding that it does so to pursue this goal. However, we have to say that the new groups considered as primary care, first of all, do not present homogeneous characteristics related to the fact of not being employable.

Secondly, the circumstances that could make its members a collective do not, in principle, provide sufficient grounds for them to become a group that is difficult to employ. In other words, we did not find sufficient arguments why its members could not improve their employability through the ordinary channels established for the rest of the "normalized" workers. It is quite another thing if, during the process of labour market insertion, it is necessary to carry out personalized actions adapted to the needs of each individual, an issue that is relegated, as we shall see, to the scope of action of labour intermediation carried out through the public employment services and their collaborating entities and without prejudice, of course, to the fact that discriminatory actions may occur during the recruitment process or even during the employment relationship, for reasons of sex, sexual orientation, ethnicity, religion, etc., in which case it is ordinary anti-discrimination legislation that must act, in which case, it is the ordinary anti-discrimination legislation that must be applied.

These new groups are LGBTBI people, in particular transsexuals (it is not understood (nor explained), in principle, why transsexuals have special employability difficulties compared to the rest of the LGBTBI community), victims of terrorism, gypsies or people belonging to other ethnic or religious population groups (in these groups the characteristic that unites them and that could be a

emphasising young people with a training deficit, the introduction of a new group, that of people in a situation of social exclusion, and introduced a final clause that left the door open to the inclusion of new groups that could be determined by the National Employment System. Subsequently, the first section of Article 19 octies was again amended by Article 114.16 of RD-Law 8/2014 to introduce a new group, namely persons with family responsibilities.

⁵ The most visible consequences of this job insecurity for young people will materialise in 3 specific aspects: emigration processes (mostly university graduates), the appearance of feelings of generalised disappointment and frustration and loss of self-esteem and the limitation of young people's independence and the development of their personal projects, directly affecting the unfeasibility of maintaining the Welfare State.

barrier to employment would be their possible situation of social marginalization, not their ethnicity), beneficiaries of international protection and applicants for international protection (they would already be included in the group of immigrants), migrants (immigrants are already considered as a vulnerable group and do not have the same characteristics as returned migrants, so that their belonging to the same group is, in our opinion, a forced idea)⁶, people with limited intellectual capacity or people with autistic spectrum disorders (they would be included in the group of people with disabilities, but it is another matter if they are provided with adapted services during the labour integration process), victims of human trafficking (the barrier to employment is that they are in a situation of helplessness and social exclusion), women with low qualifications (there is no scientific argument why a woman with low qualifications cannot improve her employability through the ordinary mechanisms like any other unemployed person), women victims of gender-based violence (again, we see how the group of women in general disappears, so the legislator focuses on women with low qualifications and gender-based victims⁷), workers from restructuring sectors (as in previous cases, we do not see the need for special treatment, unless they belong to a vulnerable group such as, for example, people over 45 years of age, people with disabilities, etc.), as well as people whose guardianship and tutorship is or has been assumed by the Public Administrations, first-degree descendants of women victims of gender violence and adults with minors under 16 years of age or older dependents, especially if they constitute single-parent families headed by a mother⁸ and single-parent families headed by a father. On the other hand, people affected by drug addiction and other addictions would form a homogeneous group insofar as they would present a series of similar weaknesses (physical and mental health problems, loss of work habits, etc.) that would generate the barriers that would hinder their employability.

In this sense, we do not believe that it is a wise policy to creating (inventing) new vulnerable groups because the people who are intended to be their members, apart from sharing some characteristic in common (a necessary requirement to be considered a group), may have some kind of difficulty in finding employment. We must understand that it will be extremely difficult to design employment policy measures that suit all members of the group, precisely because there is no homogeneous profile of "non-employability", which will lead, almost undoubtedly, to reduce employment policy to actions dedicated to subsidizing the hiring of workers⁹, this measure does not, in any case, ensure its apparent purpose, since companies will hire the person who best suits the needs of the job, regardless of whether, once this requirement is met, they choose the cheapest option (if there is one), which is nothing less than a form of commodification of human resources.

4.2. Labour market barriers.

However, leaving aside the novelties that the new LE brings with respect to priority groups, we have already mentioned that one of the fundamental aspects of why their members are left out of the labour market is due to discriminatory decision-making based on the circumstances of the subjects. In other words, despite extensive national and international regulations that seek to prohibit and eliminate discriminatory actions, it is extremely complex for the private sector to completely avoid such situations¹⁰. This is because the capital-based society bases its success on the efficient development of the labour and goods and services markets, which means that the constitutional principle of non-discrimination (Art. 14 EC) collides head-on with the constitutional principle of freedom of enterprise, also enshrined in Art. 38 EC.

This will imply that, in order to achieve its own survival in the markets, the business entity must have the freedom to hire those elements that, in its criteria, respond in the best possible way to the achievement of this end, and must be able, at certain times, to dismiss or not hire those persons who do not respond to the needs demanded by the company. Furthermore, both ILO

⁶ In this sense, the legislator seems to have eliminated the group of immigrants and its members have been divided between the group of migrants, beneficiaries of international protection and applicants for international protection.

⁷ Nor do we find any reasonably coherent relationship between the fact of being a victim of any kind of violence, including gender-based violence, and the difficulty or impediment to accessing or remaining in the labour market, beyond the fact that other circumstances come into play that are unrelated to active employment policy.

⁸ From a legal point of view, the concept of single-parent family headed by a mother (monomarental), in addition to not being accepted by the Royal Spanish Academy, we understand that it adds absolutely nothing to the normative provision since the idea that it intends to contribute is already established by the concept of single parent.

⁹ See, as proof, RD-Law 1/2023, of 10 January, on urgent measures regarding incentives for labour recruitment and improvement of the social protection of artists (BOE No. 9, of 11/01/2023).

¹⁰ Art. 14 Spanish Constitution, arts. 4. 2 c) and 17 RD Legislative 2/2015, of 23 October, approving the revised text of the Workers' Statute Law, ILO Convention C-111 on Discrimination (Employment and Occupation), 1958; ILO Recommendation R-111 on Discrimination (Employment and Placement), 1958; ILO Declaration on Fundamental Principles and Rights at Work, 1998, dealing with discrimination in employment and occupation, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC L 180/22 of 19/07/2000), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJEC L 303/16 of 02/12/2000), among others

Convention C-111 (art. 1.2) and Directive 2000/78/EC/ (art. 4.1), in applying their respective clauses in defense of the prohibition of discrimination, admit that this right is not considered violated in situations where the non-recruitment of persons belonging to a vulnerable group is justified because the functions and performance of the job require certain personal characteristics that members of the groups they are trying to protect do not have. Therefore, in the private sphere, vulnerable groups may be excluded from certain jobs due to their personal circumstances. Being aware that it is ultimately up to the employer to make the final decision to dispense, at certain times, with the labour services provided by his employees or not to hire those who do not meet the company's expectations, employment policy must act in a " lively " manner, adopting conciliatory positions between both interests.

As we mentioned at the beginning, technology has become the instrument that makes the progress of any modern society possible, without which it is practically impossible to grow and develop economically.

However, the speed with which these technological advances are produced and the lack of adaptation to these changes on the part of states (Ojeda, 2001: 159) and society in general, generates a gap between economic reality and intellectual capital, the immediate consequence of which is the expulsion of workers from the labour markets or the expulsion of employers from the economic ones. In this sense, those individuals who belong to one of the so-called vulnerable groups will be more likely to be expendable due to the difficulties they may have in adapting to the new demands of the labour market (Vázquez, Toboso and Patricio, 2017: 60).

Another important aspect that is affecting the labour market is the progressive ageing of the population¹¹, especially in Western societies in general and in Spain in particular. In this sense, we start from the idea that there is a direct relationship between population ageing and the increase in the number of people in one of the so-called vulnerable groups. With increasing age, there is an increase in chronic degenerative pathologies (e.g. suffering an illness or accident that causes permanent physical, mental or sensory bodily dysfunction).

A direct consequence of the ageing of the population is the increase in the older working population, aged over 45, which increases the risk of prolonged unemployment due to the direct relationship between the two groups. The increase in the number of individuals in any of the groups considered disadvantaged directly increases the situations of risk of social exclusion and the situations of social exclusion itself.

4.3. Labour market data with respect to vulnerable groups.

Table 1. Activity rate, employment and unemployment rate of people with disabilities

Serie	2014	2015	2016	2017	2018	2019	2020	2021
Activity	33,6%	33,9%	35,2%	35,0%	34,5%	34,0%	34,3%	34,6%
Employment	22,6%	23,4%	25,1%	25,9%	25,8%	25,9%	26,7%	26,9%
Unemployment	32,7%	31,0%	28,6%	26,2%	25,2%	23,9%	22,2%	22,5%

Source: INE, State Database on People with Disabilities

If we look at the labour market data we can see that the participation of people with disabilities is excessively low, i.e. just over a third of the disabled population is considered active for work (average 34.39%), with only a quarter being employed (average 25.29%) and presenting a high unemployment rate (average 26.54%), although the year-on-year variation 2021-2014 shows a decrease of more than 10 percentage points, which seems to indicate the existence of a positive trend.

As a direct consequence of the ageing of the population, we observe a high activity rate among the population over 45 years of age (average 73.14%). Similarly, the number of employed workers in this age range is the highest average in the table with 8,952,900 people in employment. In this case, unemployment is remarkable, fluctuating in data similar to those of the middle-aged population. While it is true that the trend has been towards a progressive decrease in the number of employees, we must note the sensitivity of the group to crisis situations and its rise during 2020 and 2021, which confirms our thesis that in times of business restructuring it tends to be a disadvantaged group.

In Spain, the employment situation of our young people translates into high unemployment rates (average rate of 34.15%) and precarious working conditions (Santos and Muñoz, 2017: 237).

¹¹ Circumstance recognised in component 23 of the Recovery, Transformation and Resilience Plan.

Table 2. Activity rate, number of employment and unemployment rate according to age

Series	2017	2018	2019	2020	2021	2022
Activity rate						
From 16 to 29 years of age	51,62%	51,24%	51,04%	48,33%	50,36%	51,10%
From 30 to 44 years of age	89,56%	89,30%	89,17%	87,39%	88,87%	89,04%
From 45 to 64 years of age	71,20%	71,82%	72,85%	72,80%	74,62%	75,54%

Series	2017	2018	2019	2020	2021	2022
Number of employed						
From 16 to 29 years of age	2.547,2	2.662,3	2.740,4	2.478,4	2.656,1	2.891,4
From 30 to 44 years of age	7.973,0	7.961,5	7.914,0	7.444,2	7.460,9	7.439,3
From 45 to 64 years of age	8.128,4	8.512,6	8.913,6	9.035,0	9.376,1	9.751,7

Series	2017	2018	2019	2020	2021	2022
Number of unemployment ¹⁴						
From 16 to 29 years of age	37,70%	33,81%	31,39%	37,52%	34,90%	29,57%
From 30 to 44 years of age	14,99%	13,34%	12,29%	14,35%	13,05%	11,37%
From 45 to 64 years of age	15,15%	13,49%	12,33%	12,41%	12,63%	11,42%

Source: INE, Labour Force Survey (EPA)

It is also alarming that long-term unemployment accounts for almost half of total unemployment in Spain (46.10% on average). This means recognizing that national employment policy measures have little power to reintegrate people back into the labour market, not only

for members of vulnerable groups, but for people in general. It also follows that poor management of labour reintegration perpetuates the maintenance of a vulnerable group such as the long-term unemployed.

Table 3. Percentage weight of the long-term unemployed in relation to the total unemployed

Series	2022	2021	2020	2019	2018	2017
Totals	3.024,58	3.429,55	3.530,93	3.247,78	3.479,13	3.916,93
Long-term unemployment	1.359,80	1.634,80	1.343,70	1.439,70	1.705,50	2.060,00
Percent weight	44,96%	47,67%	38,06%	44,33%	49,02%	52,59%

Source: INE, Labour Force Survey (EPA)

Table 4. AROPE rate for selected groups (persons aged 16 years and over)

¹² Computation made in thousands of people.¹³ Computation made in thousands of people.¹⁴ People who have been looking for a job for 1 year or more

Groups	2008 Rate	2019 Rate	2021 Rate	2021 General Rate	
Unemployed people	42,1%	56,9%	58,6%	Spain 27,8%	EU 21,7%
Inactive people	35,6%	37,0%	40,3%		
People with primary education or less	32,8%	31,6%	38,4%		
People between 16 and 29 years old	22,8%	31,7%	31,2%		
People between 45 and 64 years old	21,8%	26,2%	28,7%		
People with disabilities	31,0%	32,5%	33,0%		

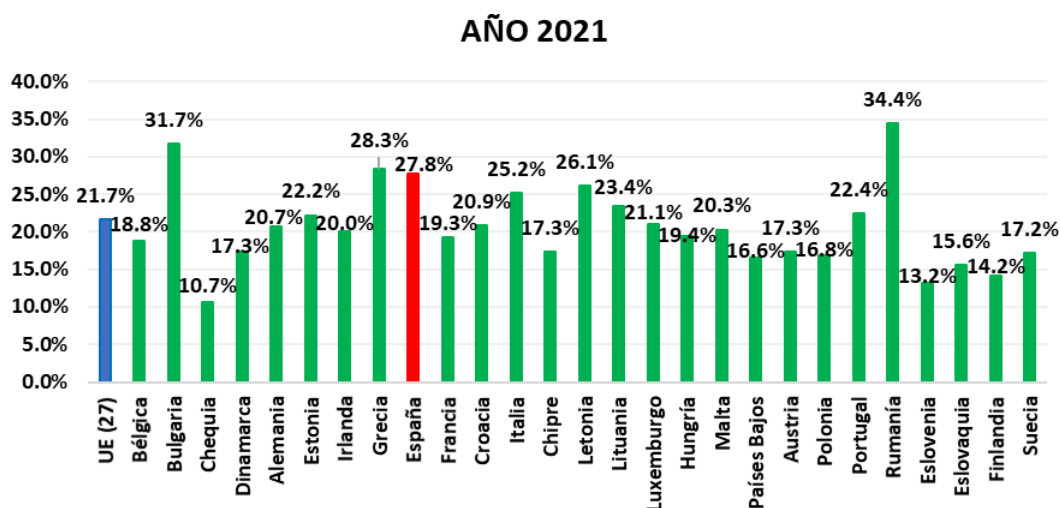
Source: INE, EAPAN Reports 2018, 2020 and Eurostat, Own Elaboration

One of the greatest dangers threatening Western societies today, and Spanish society in particular, is the "democratisation" of situations of social exclusion. Significant in this respect is the rate of AROPE¹⁵. The European population in general, and in particular the Spanish population and certain groups such as the unemployed, minimally educated people and people with disabilities, are very high.

4.4. Considerations on employment policy spending

After the analysis carried out, we must be aware that the measures that have been put in place to ensure the labour market integration of vulnerable or priority groups are not being sufficiently effective. Far from attempting to analyse each of the active employment policy measures designed in favour of the employability of individuals belonging to disadvantaged groups, which would be enough to produce another paper for that purpose alone, and being aware that any measure taken can always be improved, we should ask ourselves whether the measures taken in this regard have all been so disastrous that they have failed to achieve their purpose.

Graph 1. AROPE rate (GA 2030). European comparison



Source: Eurostat: Eurostat. Own elaboration.

Clearly not. Most of the measures have had and continue to have a clear objective: the labour market insertion and the improvement of the employability of their beneficiaries. We will therefore accept the need to improve certain aspects of the measures in force in the current regulatory framework, but we will also have to seek responses of a different nature.

The implementation of an effective active employment policy entails a sufficiently generous allocation of expenditure in the general budget to achieve the objectives set in an efficient manner. In Spain, however, it should be noted that, despite the fact that spending on employment policies over the last decade was one of the highest in the EU, the data show a negative correlation between the resources invested and the results obtained, which makes it possible to affirm that

¹⁵ Abbreviation for At Risk of Poverty and/or Exclusion (en riesgo de pobreza y/o exclusión)

Spanish employment policy, as an instrument of employability and labour market insertion, has been poorly designed or executed, or both possibilities at the same time. Data from the European Commission¹⁶ shows that Spain's spending on employment policies is higher than the average spending of EU member states. In the series shown in table 5, Spain's average investment has been 2.75% of national GDP, compared to 1.46% in the EU Member States. However, of this 2.75%, 74.6% of expenditure has been allocated to unemployment income support and maintenance policies (*Out-of-work income maintenance and support*)¹⁷, which is a gamble towards a model of curative measures (passive employment policy measures) rather than preventive measures (active employment policy measures). With these statistics, Spain was the third Member State that spent the most on employment policies, surpassed only by France (2.82%) and Denmark (3.19%). Even after the outbreak of the economic crisis in 2008, Spain made the largest investment in employment policies (rates close to 4%, years 2009-2013).

Therefore, we must assume that we find ourselves in a socio-economic context where employment shortages are a reality, where individuals belonging to vulnerable groups encounter innumerable barriers that hinder their employability and where an unbalanced model of financing employment policies has been used, where investment in passive employment policies has been much greater than that made in employment activation policies. This indicates that, apart from the various strategies, plans and programs put in place to ensure the employability of their beneficiaries, which in many cases have been no more than mere declarations of intent, the use of resources has lacked the necessary effectiveness.

5. Labour intermediation as an effective tool for labour market insertion

5.1. The role of labour intermediation

It should be borne in mind that the labour absorption capacity of a labour market will depend on the level of supply and demand for products and services in the economic markets in which it is inserted. Thus, markets in crisis, stagnant or with low demand for products and services, will generate few employment opportunities and, therefore, situations of job insecurity and instability, affecting the members of disadvantaged groups to a greater extent. Well, this seemingly obvious question should be borne in mind when we talk about active employment policy, as it will have to adapt to the prevailing economic scenario if it is to be effective¹⁸. Therefore, we cannot expect that, in contexts of employment shortages, the measures proposed by the public authorities should focus on establishing absolute worker protection provisions, as they will fail to bring about the desired effect of achieving an inclusive and non-precarious labour market, no matter how much of a tuitive character we want to invest labour law or, in this case, employment law with. In our view, employment policy should develop other instruments through which, in a hostile context, it should try to make the most of it.

Most of the proposals offered by the active employment policy try to favour the employability of the worker in order to achieve his or her labour insertion or professional improvement¹⁹. However, despite the laudable objective, these actions alone do not have the capacity to ensure that the objective is fully achieved; not even with those actions in which economic attractiveness is a priority, such as financial aid, subsidies, hiring bonuses, etc., given that, in the final analysis, the hiring of labour will depend on the business decision.

In this sense, we believe that "labour intermediation" is the real step to ensure and make effective all the investment made in improving the employability of individuals because it has sufficient capacity to materialise, effectively, the placement of unemployed people by offering the opportunity to generate spaces where both employers and workers will meet in a safe, effective and efficient way in order to satisfy their own interests, thus achieving the right match between supply and demand for employment. However, in order to achieve this goal, we must be aware that the conditions of security and efficiency that we propose in the meeting spaces must necessarily exist, otherwise it will be impossible for the positive effects of labour intermediation to be realised.

¹⁶ EUROPEAN COMMISSION. Available on the web: https://webgate.ec.europa.eu/empl/redisstat/databrowser/explore/all/imp?lang=en&subtheme=imp_expend&display=card&sort=category.

¹⁷ Total employment policy expenditure is made up of the following categories: a) *Labour market services*; b) *Training*; c) *Employment incentives*; d) *Supported employment and rehabilitation*; e) *Direct job creation*; f) *Start-up incentives*; g) *Out-of-work income maintenance and support*; h) *Early retirement*.

¹⁸ In this sense, both ILO Convention C-122, as well as art. 146 TFEU and art. 1 of the LE itself indicate that employment policy must take into account and be compatible with the economic guidelines and the country's own economic development.

¹⁹ See in this sense the definition of active employment policy offered by the LE in its art. 31: "set of services and programmes of guidance, intermediation, employment, on-the-job training... aimed at... improving the possibilities of access to decent employment...".

Without prejudice to other considerations that could be made and comparing the issue with previous regulations, art. 31 of the new LE reconsiders the concept of active employment policy and introduces, as a novelty, the contemplation of "labour intermediation" as one more of the services and programmes that will make up the active employment policy. In other words, labour intermediation has traditionally been considered as an element of employment policy on the same level as active and passive employment policy (Chapter I of Title III RD Legislative 3/2015). Since the entry into force of the new LE, labour mediation has formed part of the actions of the active employment policy, an issue which we undoubtedly consider more appropriate from a legal point of view, but which may have little impact on practical reality.

The concept of "labour intermediation" used in the new LE is the following: "a set of actions aimed at providing workers with a job suited to their characteristics and providing the employing entities with the most appropriate workers for their requirements and needs" (art. 40.1). Therefore, we have a two-way instrument that aims to meet the needs of both jobseekers and job-seeking enterprises. In reference to the previous regulations, the concept does not bring anything new, however, among the actions that can be implemented by the labour intermediation we have "the prospecting and recruitment of job offers", "matching job offers with job seekers for placement or outplacement", "selection for a job..." and "making available to the job seeker" with special attention to breaking down barriers that may stand in the way of integration of people from vulnerable groups (art. 40.2 LE). In addition to the above, both the outplacement activity for people affected by company restructuring processes (art. 40.3 LE) as well as the recruitment activity (art. 40.4 LE) actions that qualify as "specialised placement"²⁰ shall also be considered as labour intermediation.

However, despite the exhaustive catalogue of actions set out in sections 2, 3 and 4 of art. 40 LE, we believe that labour intermediation actions should not be limited to matching job offers with job applications, but should be integrated within the insertion itinerary itself, extending its proposals to other guidance and information actions related to the active search for employment (Aguilar, 2017: 69), training or even, in the case of vulnerable groups, support actions to try to break down those barriers that hinder or prevent the effective integration of individuals into the labour market. Moreover, when it concerns individuals belonging to particularly sensitive groups such as people with disabilities or in a situation of social exclusion, labour intermediation should not only monitor the process until the employment contract is signed, but also monitor or control the correct adaptation of the job to the worker's abilities and the adaptation of the worker to the job or, where appropriate, the implementation of reasonable adjustments in the case of people with disabilities.

5.2. The agents of labour intermediation

Until the 1990s, the activity of labour intermediation was carried out exclusively by the public employment services. By the middle of the decade, there was a regulatory and policy shift, partly triggered by the provisions of ILO Convention C-181 on private employment agencies. (1997)²¹. A new scenario is created where joint action between public bodies and private entities is allowed. In Spain, this new provision is embodied in Law 10/1994 of 19 May, which allowed private non-profit employment agencies to operate, in Law 35/2010 of 17 September, which allowed for-profit employment agencies to operate and in Law 3/2012 of 6 July 2012, which allowed temporary employment agencies to carry out labour intermediation activities²².

Thus, private employment agencies (PEA)²³ are entities that may be either public or private in nature, may be created on a profit or non-profit basis and whose main activity will be labour intermediation. They will also be able to develop their activity autonomously or by assuming a collaborative role with the public employment services of the Autonomous Communities (art. 2.1

²⁰ Traditionally, companies which, subjected to the legal and regulatory regime of employment agencies, are dedicated to the outplacement of surplus personnel in corporate restructuring processes, have traditionally been classified as specialised placement agencies [art. 2.2 RD 1796/2010, de 30 de diciembre, por el que se regulan las agencias de colocación (BOE N.º 318, de 31/12/2010)]. In other words, they are PEAs specialised in outplacement activity. The novelty raised by the new LE is the qualification of specialised placement of personnel selection activity, which does not clarify, moreover, whether it corresponds to actions carried out by the public employment services or to those carried out by the PEAs and, in any case, what the fact of being a specialised placement entail.

²¹ On the treatment of employment agencies in the ILO, in particular on ILO Convention C-96 and its evolution until Convention C-181, see BASCÓN MARÍN, J. (2019). "Fee-Charging Employment Agencies Convention (Revised) 1949 (No. 96)". International and Comparative Review of Industrial Relations and Employment Law. Vol. 7, special issue commemorating the ILO centenary.

²² This novelty, until then in the legislation on labour intermediation, was highlighted, in both legal texts, by article 1 which modified section 3 of article 16 of Legislative Royal Decree 1/1995, of 24 March, of the revised text of the Workers' Statute Law, articles 1 and 2.1 b) of Law 14/1994, of 1 June, which regulates temporary employment agencies and article 21.2 and DA2º of Law 56/2003, of 16 December, on employment.

²³ In other terms, both temporary employment agencies and outplacement agencies are also referred to.

RD 1796/2010²⁴).

The new LE provides that, for the purposes of the National Employment System²⁵, labour intermediation will be carried out only by public employment services, placement agencies and other services whose purpose is to place workers outside the country, and which must be determined by regulation (art. 41.1 LE). It should be noted that all intermediation activity must be governed by the constitutional principles of equal opportunities and non-discrimination and respect for the privacy and dignity of workers, particularly with regard to data processing (art. 42.8 LE), the latter being an even more difficult issue when dealing with disadvantaged groups, who are particularly sensitive in this respect. In this sense, and with regard to the most vulnerable groups, we must point out how unattractive it can be for those PEAs that seek to make a profit in their business activity to have as clients people who have real difficulties in finding employment, so we must insist on the importance of the provision of the service through a public body being of maximum relevance, without prejudice to private and autonomous activity. However, there is clear evidence that the implementation of labour intermediation by public employment services is not effective. The Spanish Employment Activation Strategy 2017-2020 reflected the ineffectiveness of the labour intermediation services and programs provided by the public employment services²⁶. While 70% of unemployed people used public employment services, only 1/3 of companies and professionals used them to carry out recruitment processes. It was also noted that only 60% of users were satisfied with the service provided. For its part, the Council of the EU, in its recommendations to the 2019 National Reform Program, pointed out the low effectiveness of Spanish employment services in this aspect²⁷.

The generalized discrediting among the population of the role of public employment services as placement centers corroborates the above analyses, a fact that should make us reconsider the true role of public employment services and the real application and implementation of labour intermediation programs. La mejora de los servicios públicos de empleo ha sido admitida y puesta de manifiesto por el componente 23 del Plan de Recuperación, Transformación y Resiliencia, sobre todo, en el aspecto tecnológico. Thus, it is reflected throughout the section C23. R11, dedicated to the digitalization of the SEPE for its modernization and efficiency. In this sense, it seems that from a functional point of view, document and data processing will be improved infinitely with the digitization of management. What is not clear is whether this digitization will ensure that the public employment services are equipped with the necessary instruments to carry out labour intermediation that guarantees, at least, orderly, logical, enabling processes that offer real job opportunities, and thus turn them into real job placement centers, especially when we are talking about vulnerable groups.

5.3. Novelties brought about by the new LE on labour mediation

Finally, in this last section we are going to deal with the novelties that the new LE incorporates with respect to intermediation with the aim of showing those improvements that can influence the labour market insertion of job seekers, particularly in the case of people who form part of vulnerable groups. In comparison with previous regulations, we must highlight the following aspects that the national legislator has seen fit to incorporate into the idea of labour intermediation in the new LE.

In the first place, as we have already mentioned, it defines in a clear and specific manner the actions inherent to labour mediation (art. 40.2, 3 y 4 LE). In this respect, the activity of personnel selection appears as a novelty and is considered, like outplacement activity, as a specialized placement. (art. 40.4 LE).

With regard to what could affect migrants, art. 41.1 c) LE warns that when those regulatory services established for workers outside our country are integrated as agents of intermediation, all necessary measures must be adopted to avoid abuse and fraudulent practice of migratory movements, i.e. that labour intermediation actions do not serve as a cover to procure illegal migratory movements.

It also brings up the novelty that those entities that collaborate with or promote active employment policy programs approved by the public employment services may participate in a complementary and coordinated manner in labour intermediation actions, without being considered as placement agencies and without having to be constituted as such (art. 41.2 LE).

²⁴ RD 1796/2010, of 30 December regulating employment agencies (BOE N.º 318, de 31/12/2010).

²⁵ The National Employment System is made up of the "set of structures, measures and actions" that implement and develop employment policy. This system is made up of the State Public Employment Service and the public employment services of the Autonomous Communities. In the new regulation, the Spanish Employment Agency appears instead of the State Public Employment Service (art.8.1 LE).

²⁶ RD 1032/2017, of 15 December (BOE N.º 305, de 16/12/2017).

²⁷ COUNCIL RECOMMENDATION on the 2019 National Reform Programme and delivering a Council opinion on the 2019 Stability Programme of Spain [COM (2019) 509 final, Brussels 05/06/2019].

Another issue that we believe will be of great importance is the fact that public employment services must overcome territorial imbalances in order to guarantee an efficient and quality labour intermediation service (art. 42.2 LE). In other words, territorial borders are demolished when it comes to recruiting job offers and demands with the aim of compensating for the imbalances that could be generated between territories. This is a very important issue because the point is to try to take advantage of all employment opportunities that are generated, no matter how far apart they may be.

On the other hand, it proposes strengthening the public resources of the National Employment System to facilitate labour intermediation, although it does not say how or to what extent, so we must await its subsequent regulatory development (art. 42.3 LE).

Public employment services will be able to redirect both supply and demand for employment to partner agencies. In the case of companies, the existence of the corresponding private agreement will be necessary, guaranteeing in the same way that the service will be free of charge for both companies and workers (art. 42.4 LE).

There is also a commitment to sign agreements for the implementation of programs included in the planning and coordination instruments of the employment policy that respond to specific needs (depopulation, productive transformations, etc.), or for the protection of certain groups with special needs, such as priority groups (art. 42.6 LE).

Until the entry into force of the new LE, the PEAs were required to provide the public employment services with information on their placement activities. From now on, a new power of the public employment services is also contemplated, which will be the evaluation of the quantitative and qualitative results of the labour intermediation activities carried out by the PEA (art. 42.7 LE). In fact, art. 46 LE establishes a mandate for regulatory development with the aim of regulating the corresponding indicators to measure the efficiency of the activity of the PEAs.

Finally, it is established that the specialized placement activity aimed at the professional reinsertion or outplacement of people affected by business restructuring processes may be carried out directly by the public employment services or by the placement agencies, and may be carried out at the initiative of the public employment services when circumstances make it advisable to do so (art. 44.1 y 2 LE), it being a prerogative of the development of the external outplacement plan to ensure, particularly, the return to the labour market of people whose employment contracts were terminated due to collective dismissal after reaching the age of 52, which is a positive action measure in favour of the group of people over 45 years of age

6. Conclusions

The employment crisis, which has a particularly serious effect on those people who form part of the groups considered and referred to as vulnerable and situated very close to the social margins, is becoming consolidated as the new economic paradigm that both citizens and public authorities must face in the 21st century.

In this context, employment policy in its active version must become one of the main instruments to generate the necessary job opportunities (through training, guidance, counselling, etc.) so that those people who are left out of the labour market can get back to work as soon as possible.

However, despite the importance of designing an active employment policy for vulnerable groups, when there are certain conditioning factors that demonstrate the lack of effectiveness of this policy, such as the lack of quality employment, the speed of technological development, the ageing of the population, the difficulty of avoiding situations of discrimination or the imbalance in funding between active and passive employment policies, we believe that labour intermediation should be positioned at the forefront of labour market integration strategies to consolidate the effort to prepare the workforce and to make this integration effective. In this sense, the role of the public employment services must be improved and reformed in order to become, together with their collaborating agencies, true "employment centres" where both companies and workers place their trust to meet their labour demands. This need to provide a public service makes even more sense when it comes to people with special difficulties in finding employment.

In this sense, it is desirable that labour intermediation be fully and effectively included as one more instrument of active employment policy in the implementation actions of the public employment services, together with the necessary economic, training and even organisational instruments to make the work of the intermediation agents efficient and without forgetting the necessary specialisation of these agents to face the difficulties presented by the placement of vulnerable groups.

The importance of generating effective intermediation will lie in making it possible for each person who wants and is able to work to find a job adapted to their characteristics and possibilities. In this sense, it seems that the new LE intends to give greater prominence to labour intermediation, at least on paper. Let us hope to see conclusive and positive results in real

practice.

7. Bibliography

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José Bascón Marín. Interim substitute lecturer. Department of Social Security Law. University of Cordoba. PhD in Social and Legal Sciences from the University of Cordoba. His main lines of research are currently linked to employment and social protection policies, especially part-time work. Since the 2017-2018 academic year, he has taught subjects belonging to the field of knowledge of Labour and Social Security Law. He is currently coordinator of the Degree in Labour Relations and Human Resources at the University of Cordoba.