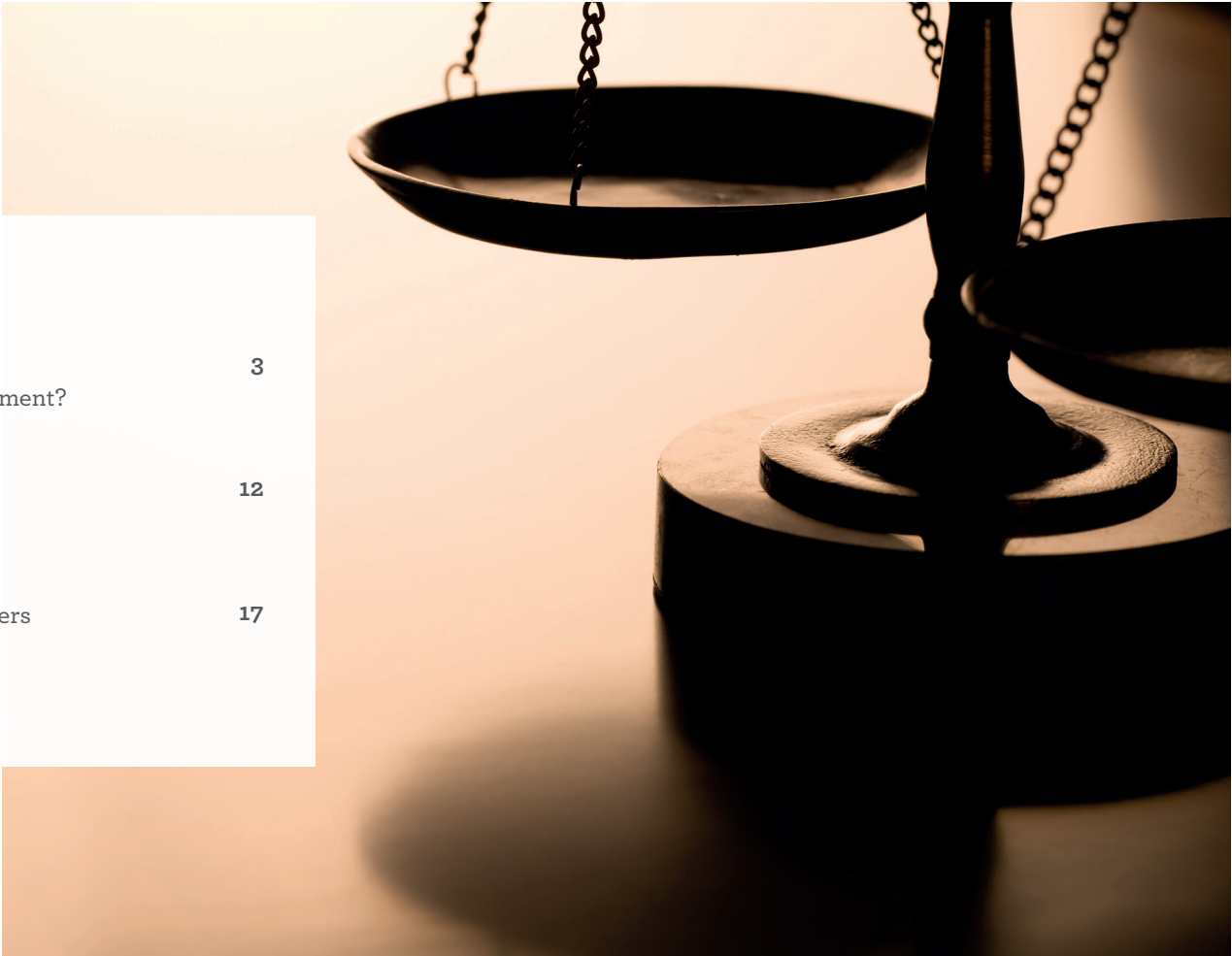




# **Report: new Employment Act: Active policies and public-private partnership**


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# Chapter I

## **The new Employment Act: A new era for employment?**



 new Employment Act has been recently published, Act 3/2023 dated 28 February, aimed primarily at reducing structural unemployment, especially youth unemployment, emphasising the necessary training of workers in accordance with the needs of the market, now undergoing a profound change.

Traditionally, Spain has a high unemployment rate (13.26% according to National Statistics Institute (INE) data for the first quarter of 2023) in relation to the rest of the countries around us, meaning that employment regulations are always looking for ways to reduce this percentage. Specifically, Act 3/2023 sets a target of a 50% reduction. However, any initiative to modify the public employment services inevitably runs up against the high number of unemployed who have to be attended to by a small number of professionals, which makes it difficult to achieve its goals.

A further goal of the Preamble of the Employment Act is the reduction of the gender gap. The figures show that the unemployment rate is higher for

women (15.13%) than for men (11.57%), and although they have been treated as a particularly protected group in all previous legislation, little progress has been made.

Youth unemployment is alarmingly high at around 30% for those under 25. It is not surprising that another of the regulation's goals is to provide this group with specific attention. In any case, it should be noted that the drastic reduction of birth rates, already a few decades ago, will probably solve the problem by itself, focusing on the over-50s working age group in a few years' time.

Against this background, the new Employment Act focuses on increasing employability, improving mediation as a cross-cutting goal, determining a service catalogue, and measuring and assessing active employment policies.



## 1. Employability as the basis of active employment policies

Employability is defined as the set of “transferable skills and qualifications that strengthen people’s ability to take advantage of the education and training opportunities open to them to find and secure decent work, advance in their careers and adapt to changing technology and labour market conditions”.

Of particular note in this definition is the reference to the achievement of decent work. The content of this concept, which has been coined by the ILO and underpinned by SDG 8, must therefore be considered. 8. It is about work that is free of discrimination, healthy, well paid and with adequate social protection.

But it is not only about finding and securing a job; employability is also about career progression. In other words, employment services should not only focus on people having a job, but also on finding a better one. This is again complicated, as the dedication to a high number of unemployed people will prevent this other function, which will become secondary.

Finally, it should be stressed that for a person to be employable, he or she needs to adapt to technology and to the conditions of the labour market. This is a major challenge for employment policies: the need for a dynamic adjustment of one’s own skills and those in demand in the labour market. In a changing world that creates new jobs to replace obsolete ones, within the framework of the so-called “fair” transition, it is necessary to work with individuals to adapt their skills to the demands, otherwise we will end up with an absurd situation where there will be a high rate of unemployed people and a high demand for workers who will not match.

Additionally, two issues need to be mentioned in this domain. Firstly, it is necessary to establish a catalogue of employability instruments to choose the most suitable ones to guide the individual actions to be implemented for each of the employable people. But it is also essential that the focus be placed on the basic skills, the transversal skills, which, together with the individual skills, must be offered to all of them. Specifically, it is a matter of en-



sureing that all people have oral and written communication skills, as well as the ability to use and make the most of digital and technological tools.

## **2. Intermediation: the necessary public-private partnership**

The basic elements of intermediation are the same as in the previous employment act, in fact, the same concept is maintained. Thus, it is defined as the set of actions aimed at providing workers with a job that is appropriate to their profile and at providing the employing organisations with the most suitable workers for their requirements and needs. In any case, public services must work to overcome territorial imbalances, to offer efficient and quality intermediation, respecting the principles of equality and the right to data protection.

These actions shall be carried out by the public employment services, which shall also include placement agencies; and any other service that may be determined by regulation for or with workers abroad.

Public-private partnership shall be carried out through the instruments of coordination or partnership agree-

ments that are entered into with placement agencies, for which public subsidies may be earmarked. Such partnership must be considered a necessary condition if the employability of working people is to be achieved in accordance with their specific circumstances in an ever-changing labour market. In fact, it is considered essential to sign agreements with agents specialised in the different groups to achieve these goals in a way that is more specific to the needs of each one of them.

A distinction is made between common intermediation activities and special placement actions. Among the former are the prospecting and attraction of job offers; contact between job offers and job seekers; selection for a job of people who may be suitable for it; and providing the job seeker with the necessary support in accordance with his or her personal, social or family circumstances.

Matching job vacancies and job applications in the labour market is one of the primary functions of the employment services, albeit with the difficulties that have already been highlighted under the heading of employability.

Among the specialised placement activities, the outplacement of workers or unemployed people affected by company restructuring processes is mentioned; and the

selection of personnel, even when the method of recruiting the right person for the job offered requires extending the search for the right candidate among workers who are not registered as job seekers. Once again, the shortage of employees in the services for the purpose of fulfilling these latter functions and their necessary dedication to those who are registered must be highlighted here.

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*Public services should work to overcome territorial imbalances, to offer effective and quality intermediation, respecting the principles of equality and the right to data protection.*

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### **3. The service catalogue for employed and employing individuals**

Act 3/2023 includes a catalogue of different services for jobseekers and employers and their corresponding commitments thereto. That is, their rights and duties. Without intending to be restrictive, the most important of these are listed here.

In any case, actions are also included from the territorial point of view, assuming the promotion of local economic development. The coordination of regional and local public services is considered to be very important to avoid duplicating actions and sharing functions.

On the other hand, in general, digital services are offered to ensure accessibility and non-discrimination in the use of technological tools, setting up ongoing attention through a virtual assistant and the establishment of an electronic system of individual user identification for people and companies using the services.







### 3.1. Services and commitments for job seekers

The services guaranteed for jobseekers include, among others, the following, which are distinguished by their individualisation and integration:

- Drafting of an individualised profile of the person to serve as the basis for the rest of the services provided.
- Individual and comprehensive tutoring and counselling during job transitions. It is positively considered that more attention is paid to certain moments in one's working life, such as the end of the education phase or the loss of a job. However, in accordance with the principle of eliminating gender gaps, special attention is also paid to maternity and caregiving periods, both for minors and the elderly.
- A suitable individualised itinerary or plan through the conclusion of an activity agreement with training actions and the identification of employment alternatives or entrepreneurship within a maximum period of one month, starting from the preparation of their profile. Although the goal is appropriate, the timeframe is unrealistic.

- Single customised employment file by means of an individualised profile, which includes the individual action plan, the activity agreement, tutoring and follow-up, training, job offers, contracts signed, working life and any benefits or economic incentives received during the process.

It is also very appropriate for the regulation to relate these services to the need for social protection for the worker during the job search process. In other words, the involvement of active employment policies with other passive policies. For successful intermediation, it is necessary for the individual involved to maintain a decent standard of living.

In addition to the obligations of the public services, at the other end of the spectrum are the commitments of the job seekers. Thus, cooperation is required in the preparation of the individual user profile; the development of activities to improve employability; compliance with training actions; the maintenance of an active attitude to improve employability; information on changes of address and other relevant circumstances; and the acceptance of suitable job offers. Obviously, without

the users' cooperation, it is impossible to develop the offered services. In any case, they are similar to those that have long been included in the regulations for the maintenance of unemployment benefits.

### 3.2. Services and commitments for employers

Likewise, a catalogue of guaranteed services is included for individuals, companies and other employer organisations, such as the management of job offers presented to the public employment services, information and advice on recruitment, identification of the company's needs, information and support on the processes of communication of recruitment and complementary legal procedures, support in outplacement processes, and information and advice on the promotion of offers within the EU through the EURES Network.

This part of business relations, together with the need for companies to understand the position of public services as a support instrument in recruitment, is the part that needs to be developed the most. It is only possible to offer jobs and match demand with supply if the latter is identified. This is why it is necessary to work on this aspect, if the first one, the achievement of employability of workers, is to work.

On the flipside, there are the commitments of the people, companies and other employer organisations that use the employment services. Active cooperation with the public employment services is mentioned in the planning of training activities; the communication of vacancies available therein; and improvement of the employability of workers. In any case, it is not clear to what extent companies are under the obligation to develop these commitments with the public employment services, a fundamental element in the functioning of the whole network of services offered to workers.

### 4. Commitment to measurement and assessment as a basis for the transformation of employment services

Act 3/2023 incorporates new measurement methods to analyse the performance of public services and the effects of guidance measures, identifying the groups with the greatest difficulties in the labour market. These values will be particularly useful for the determination of employment incentives.

To determine the employability rate, a description of the parameters to be considered is provided. Specifica-



lly, the incorporation of people into the labour market, the promotion of their employment status and acquisition of competences and skills, not just any, but those most in demand by the labour market, provided that they are appropriate to their professional profile, will be included.

The intermediation rate will be used to measure both the impact of the services provided to people in their transitions to employment and the effectiveness of the services provided to companies seeking to fill vacancies.

Finally, the coverage rate is the measure of unemployment protection level of people who are in this situation, identifying the proportion of protected people and unprotected groups.

Emphasis is also laid upon policy assessment on two complementary levels: ongoing and planned self-assessment, led by the National Employment System; and an additional, external and independent assessment. Its main priorities will be the measurement of the social and economic ROI of employment policy, and assessment and impact of effectiveness of the implemented measures.

Assessment results will be made public and regularly updated, including recommendations to be integrated into the decision-making process. In other words, lessons will be learnt to modify the provided services.



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## Chapter II

# Active employment policies in comparative law: key good practices

<sup>1</sup> Criticisms that the EU openly acknowledges: *EUROPEAN COMMISSION SWD(2012) 97 FINAL COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: "OPEN, DYNAMIC AND INCLUSIVE LABOUR MARKETS"*, Brussels, 2012. From this critical perspective, flexi-security has been defined as "the granting of minimum social protection rights in the wake of massive recourse to flexible employment relationships". FREEDLAND, M.; KOUNTOURIS, N.; PRASIL, J., «Royaume Unis. United Kingdom», en Laulom, S., Escande-Varniol, M. C., Mazuyer, E., Vielle, P. (eds.) *Quel droit social dans une europe en crise?*, Larcier, 2012, p. 33.

<sup>2</sup> The description below is taken from MADSEN, P. K., «How can it possibly fly? The paradox of Dynamic labour market in a Scandinavian Welfare State», *CARMA Research Paper*, N° 2, 2005. MADSEN, P. K., «Denmark», en *The labour market triangle: employment protection, unemployment compensation*, de Beer, P. y Schils, T., Edward Elgar, Cheltenham, United Kingdom, 2009. For more details, framing employment policies within the Danish flexi-security model and analysing the latest trends in its development. PÉREZ DEL PRADO, D., From flexi-security to "securing flexibility". Latest trends in the Danish model", *Industrial Relations: Critical Review of Theory and Practice*, 2, 2011, pp. 101-120.

<sup>3</sup> MADSEN, P. K., «Denmark», cit.

<sup>4</sup> MADSEN, P. K. "Distribution of responsibility for social security and labour market policy. Country Report: Denmark", Amsterdam Institute for Advanced Labour Studies, University of Amsterdam, Working Paper 07/51, 1996, p. 9.

**D**espite the criticisms of flexi-security, which portray it as the Trojan horse of the flexibilisation of industrial relations throughout the European continent (<sup>1</sup>), the EU is still committed to it as the key to combining the flexible labour markets that growing international competitiveness demands with the traditional welfare state that is the hallmark of the European social model. In the realm of employment policies, this concept has taken shape through the promotion and development of active policies, which is one of the three elements, together with the flexibility of the labour market and the generosity of its benefits, that distinguish the Danish flexi-security model (<sup>2</sup>).

The model has generally been labelled as one of "rights and obligations", with a special emphasis on this aspect. The unemployed person has the right to have an "individualised work plan" drawn up containing the set of activities which, according to his or her special characteristics, is best suited to his or her circumstances and thus most effectively enables him or her to return to the labour market. At the same time, in addition to this right, it is mandatory to take part in the programmes or

manifestations of the active employment policies that make up this right.

More specifically, the model is built on three basic foundations, the cornerstones of the so-called "golden triangle"<sup>3</sup>: a flexible labour market, generous social benefits typical of Nordic welfare states, and powerful active employment policies.

As for the first element, the flexibility of the Danish labour market, this is a distinctive feature of this Nordic country, which sets it apart from another major benchmark, Sweden. Indeed, since 1899, with the so-called "September Agreements", employers have been granted wide-ranging freedom to hire and fire their workers, while trade unions have been firmly enshrined as legitimate subjects for negotiating working conditions and wages on behalf of the workers (<sup>4</sup>).

Consequently, more than a hundred years ago, Denmark decided, via social dialogue, to establish a flexible labour market, thus placing it today, in terms of protection granted by its legal system to its workers, in line with liberal models such as that of the United Kingdom,

according to the OECD indicator on this subject <sup>(5)</sup>.

The second corner of the triangle is the generous benefits in the event of unemployment, typical of a Nordic country, that in conjunction with the previous vertex turn Denmark into a “hybrid” mid-way between the United Kingdom and Sweden <sup>(6)</sup>.

The Danish unemployment protection system is bi-faceted, at least so far, although in terms of its management the latest trends show a tendency towards uniformity. Thus, on one hand, there are those workers who have unemployment insurance, or insured workers; on the other hand, those who are uninsured or ineligible for insurance or benefit. Belonging to one or the other group determines not only the type of benefit received, social insurance in the first case and social assistance in the second, but also the type of public service that an active policy accompanying unemployment should offer <sup>(7)</sup>.

The last element that completes the triangle and the Danish flexi-security model cannot be understood without it is the one related to active employment poli-

cies, whose fundamental axis, in spite of repeated reforms, can be found at the beginning of the 1990s. In terms of implementation, we are faced with a decentralised system, until 2009, at regional level (which, due to the Danish demographic structure, is more similar to the Spanish local level) and local level.

Among these, Danish flexi-security stands out because it has fundamentally opted for training as the flagship policy. Not only does the system screen the unemployed population as a whole among those who can find a job faster and those who require more time, but for the latter it also offers differentiated opportunities based on qualification and re-qualification, so that they can adapt to the new market requirements or engage in other activities.

Given these traits, it can be argued that the core elements of the Employment Act 3/2023 could well be inspired by flexi-security or, at least, show quite remarkable similarities. In particular, the following could be noted:

<sup>5</sup> Specifically, the index for Denmark is 1.5, while for the UK it is 1.1. In general, continental countries are around 2.5. Source: OCDE, *Employment Outlook* 2004, cap. 2.

<sup>6</sup> MADSEN P. K., “Denmark” en de BEER, P. SCHILS, T. (eds.); *cit.*, p. 65

<sup>7</sup> We are dealing with private insurance financed by the insured and by the State, strongly linked to the trade unions. Social assistance is a form of assistance provided by the municipalities. This distinction also applied to the employment policies that accompanied an unemployment situation. For insured workers, these were provided by the state employment services, implemented at regional level. In the case of the latter, the municipalities themselves. The latest reforms have blurred this distinction, although this effect is only in terms of employment policies and not aid financing. We will return to this later.





Firstly, employability is at the centre. Employability is defined as a state in relation to employment marked by internal, personal and external supply and demand factors. On this basis, its maintenance and improvement is conceived as a right and a duty of job seekers (art.35). This is one of the main contributions of the Act, as it breaks with the general trend in previous decades, which consisted of precisely the opposite, emphasising

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the duties of the subject and controlling their compliance. It can therefore be said that, rather than a “right-duty”, we are faced with a genuine guiding principle, which forms the backbone of the Act as a whole and results in rights and duties, among which the educational ones stand out.

Secondly, commitment to training, as evidenced, among other issues, by the relation between employability and the basic skills referred to in art. 38. Under the new Employment Act, this takes on a central position, a very appropriate element in view of the general results of studies on the effectiveness of this active policy<sup>8</sup>.

Thirdly, the importance given to intermediation and forecasting. The former as an instrument to articulate the rest of the policies and the latter as a new policy to assess the needs of the market and of the employment system itself. The Danish model is precisely based on having powerful employment services, capable of providing high quality services, including those related to the connection between supply and demand. In addition to this, incorporating forecasting into the employment policies is good news, although it must be understood that this particular type of public policy transcends interme-

<sup>8</sup> BOERI, T.; VAN OURS, J., *The economics of imperfect labour markets*, Princeton University press., Princeton, New Jersey, 2008, cap. 12.

diation, as can also be seen from the very basis of the draft Act and international practice<sup>9</sup>. On the contrary, it is a transversal and complementary employment policy, becoming all the more important in the current digitalisation framework.

Finally, the failed attempt to decentralise employment policies at local level, albeit with a greater role for social agents. The territorial and institutional articulation of employment policies in Denmark is fundamentally based at local level. Although the Preliminary Draft Act strongly supported decentralisation, the final result has fallen far short of the initial momentum. Even so, the simple fact of pointing in that direction and the greater prominence that the Act grants to employment policies at local level is another of the areas that bring the new employment system closer to the Danish model.

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<sup>9</sup> See Note 52.

# Chapter III

## Public-private partnerships in employment matters



## Introduction: active labour market policies

Active labour market policies are those measures and programmes implemented by governments and public institutions aimed at fostering job creation, improving the employability of workers and facilitating labour transition. These policies are based on specific actions and strategies to promote labour market insertion, reduce unemployment and improve employment quality<sup>1</sup>.

Some of the most common active employment policies are as follows:

- Education and training: Education and training programmes to improve workers' skills and competences, adapting them to the needs of the labour market and promoting their employability.
- Subsidies and recruitment incentives: Measures such as contribution discounts, hiring bonuses, wage subsidies or temporary employment programmes that encourage hiring people who are unemployed or in disadvantaged employment situations.
- Support programmes for entrepreneurs: Providing advice, financing and training to encourage entrepreneurship and the creation of new businesses,

thus promoting job creation.

- Employment insertion programmes: Aimed at specific groups that face difficulties when accessing employment, such as young people, the long-term unemployed, people with disabilities, among others. These programmes offer support and guidance to facilitate their incorporation into the labour market<sup>2</sup>.

## Public-private partnerships

Public-private partnership refers to the cooperation and partnership between the public and private sectors to address common problems and challenges. Public-private partnerships in the employment field entail the joint participation of public and private stakeholders in the design and implementation of employment policies and programmes<sup>3</sup>.

Some forms of public-private partnerships in the employment domain are as follows:

<sup>1</sup> Monereo Pérez, José Luis. *Active employment policies: configuration and study of their legal and institutional regulation*. Lex Nova, 2016 and García Quiñones, Juan Carlos. *Active employment policies*. Editorial Tirant lo Blanch, 2022

<sup>2</sup> DEL-PINO, E. y RAMOS, J. A. 2016. "Unemployment protection policies in comparative perspective: towards remarketing and activation". pp. 293-316 in *Welfare states at a crossroads: social policies in comparative perspective*, edited by E. DEL PINO and M. J. RUBIO LARA. Madrid: Tecnos.

<sup>3</sup> Asempleo. *Public-Private Partnership in the labour market report: proven experiences and possibilities for Spain*. 2014 [https://asempleo.com/wp-content/uploads/servicio/informes/Informe\\_CPP.pdf](https://asempleo.com/wp-content/uploads/servicio/informes/Informe_CPP.pdf)

- Dialogue and consultation: Establishing spaces for dialogue and consultation between the public and private sectors to identify needs, share information and define joint strategies to promote employment and economic development.
- Co-investment and joint financing: Financial cooperation for employment-related programmes and projects, involving both the public and private sectors to provide financial resources for their implementation.
- Resource and knowledge sharing: Resource, data, experience and good practice sharing between public and private stakeholders to enhance employment policy and programme planning and implementation.
- Creation of strategic alliances: Partnerships between companies, business associations, non-profit organisations, educational institutions and governmental bodies to promote job creation, training and job placement.

Public-private partnerships for employment seek to leverage the knowledge, strengths, capacities and resources of both sectors to improve efficiency and more effectively address challenges and improve employment and economic development outcomes. Some forms of

public-private partnerships in this context include:

- Employment platforms and portals: Cooperation between public and private organisations can lead to the development of online platforms or job portals where employers post their job vacancies and workers can register their profiles and search for employment opportunities. These portals can be jointly managed, leveraging the resources and expertise of both sectors.
- Collaborative networks: Collaborative networking between private employment agencies and public employment services can facilitate the exchange of information, access to job opportunities and referral of candidates between the two organisations. This can improve the efficiency of intermediation and increase the chances of finding employment for job seekers.
- Joint support programmes: Public and private organisations can work together in the design and implementation of programmes to support labour intermediation, such as job fairs, recruitment events, training and job orientation programmes, among



others. These programmes can benefit from the resources and expertise of both sectors to maximise their impact.

- Data exchange and analysis: Public-private partnerships can enable the exchange of data relevant to labour intermediation, such as labour market information, hiring trends and skills needs. This can help tailor matching services to market demands and improve data-driven decision-making.

### Recent historical background

Despite the fact that our employment legislation dates back to early in the new Workers' Charter (Law 51/1980, dated October 8, 1980, Basic Employment Act), the development of regulations on public-private partnerships in this area in subsequent legislation<sup>4</sup> does not seem to have lived up to expectations, given the desired convergence of our legislation with the geographically closer examples in other EU countries.

In this regard, Spain has been governed for many years by a model marked by the state monopoly of intermediation, the exclusion of private initiative, the existence of a free public state employment service, the compul-

sory use of National Employment Institute (INEM) services and the centralisation of employment policies<sup>5</sup>.

At the beginning of the 1990s, and after the approval of Royal Decree Act 18/1993, a model change took place in our country, through the replacement of some of its fundamental elements, such as the clear role of public operators, the important limitations to private initiative, a progressive and strong territorial and functional decentralisation, and a limited regulation of employment-related services, which exclusively affected intermediation and the provision of workers by temporary employment agencies<sup>6</sup>.

The additional and definitive step towards a public-private partnership comparable to that found in other countries came in 2013, after the approval of the Spanish Strategy for Entrepreneurship and Youth Employment 2013-2016, which clearly foresees that private operators can take charge of job placements for certain collectives of workers. It is also worth mentioning the approval of Royal Act 4/2013, which has made an essential contribution by creating a framework for the legal articulation of this partnership.

<sup>4</sup> Royal Decree Act 18/1993, December 3, 1993, on urgent measures to promote employment; Act 56/2003, December 16, 2003, on Employment; Royal Decree Act 10/2010, June 16, 2010, on urgent measures to reform the labour market; Act 3/2012, July 6, 2012, on urgent measures to reform the labour market; and Royal Legislative Decree 3/2015, October 23, 2015, approving the revised text of the Employment Act.

<sup>5</sup> González-Posada Martínez, Elías. *Public services and private initiative in employment and placement*. Doc. Labor, núm. 124-Year 2021-Vol. III. pp. 11 to 26.

<sup>6</sup> Asempleo. *Public-Private Partnership in the labour market report: proven experiences and possibilities for Spain*. 2014 [https://asempleo.com/wp-content/uploads/servicio/informes/Informe\\_CPP.pdf](https://asempleo.com/wp-content/uploads/servicio/informes/Informe_CPP.pdf)

Nevertheless, and as specificities of the Spanish experience, it is worth mentioning the delay in Spain in establishing public-private partnership systems in the labour market, the time lag between the admission of private operators and the establishment of cooperation mechanisms with public operators, and the coincidence of this incipient partnership with the progressive de-centralisation of public employment services to the Autonomous Communities. Likewise, and within the difficulties for public-private partnerships under analysis, one should mention the negative perception that private operators have historically had in Spain<sup>7</sup>.

But it would be unfair not to mention some progress, albeit small, such as that achieved after Act 10/1994 opened up information, guidance and intermediation services to private agents, which led to non-profit employment agencies engaging in these activities. Likewise, recruitment agencies were redefined by Royal Decree Act 10/2010 as public or private for-profit or not-for-profit organisations, and Act 3/2012 incorporated an innovation whereby Temporary Employment Agencies adjust their activities to those established in their regulations, but may act as recruitment agencies if they conform to regulatory requirements. Finally, the revised text of the 2015 Employment Act (Royal Legislati-

ve Decree 3/2015), basically in line with Act 56/2003 on Employment, is an outstanding step towards a National Employment Service that is more adapted to employers and workers.

This latest regulation, Act 2023, is approved in compliance with the Recovery, Transformation and Resilience Plan, under Component 23, “new public policies for a dynamic, resilient and inclusive labour market”, addressing the existing demand for the necessary transformation of the activity of the National Employment Service.

The Employment Act of last March includes a new regulation of the intermediation activity. The introduction of two “specialised placement” activities into this concept is relevant: outplacement of people affected by business restructuring processes and personnel selection. A special mention should likewise be made of the Act’s efforts to develop the content of the planning and coordination instruments for employment policy (Articles 11 to 17), such as the Spanish Active Employment Support Strategy and its 7 core themes (Article 12), the Annual Plan for the Promotion of Decent Employment and its 6 core themes (Article 13) and the Integrated Public Information System of the Public Employment Services and its guiding criteria (Articles 14 and 15)..



<sup>7</sup> Rodríguez-Piñero, M. (2014). “An approach to public-private partnership in the Spanish labour market”. *Labour issues: Andalusian Journal of Labour and Social Welfare* (125): pp. 53-87



### Public-private partnerships and international labour law

There are many international conventions within the supra-EU law of the International Labour Organisation that include references to intermediation and the participation of private organisations<sup>8</sup>. However, and approaching EU regulation, the EU has lacked a general policy on private operators in the labour market. The “employment policy” contained in Title IX of the Treaty governing the Functioning of the EU, which serves as the basis for the European Employment Strategy (EES), does not include a general policy on these private operators<sup>9</sup>.

The beginning of this process took place with the well-known Klaus Höfner & Fritz Elser vs. Macrotron judgement dated April 23, 1991, analysing the public employment monopoly from the perspective of Competition Law, concluding that a public employment service acting under a monopoly regime excluding any private initiative, would commit an abuse of a dominant position that was incompatible with this regulation. Some time ago, the Court of Justice ruled that the placement activity constitutes a service within the meaning of the Founding Treaties, meaning that agencies providing it

are entitled to the freedom to provide services and the freedom of establishment<sup>10</sup>.

However, there has been an EU policy of harmonisation of national legislation on Temporary Employment Agencies:

- Directive 91/383, on safety and health in temporary work, covering the scope of its application to Temporary Employment Agencies, and referring exclusively to aspects related to the prevention of occupational risks for workers employed by them.
- Directive 96/71 on the temporary posting of workers in the framework of the transnational provision of services, covering also temporary agency workers, which applies to cases of workers posted by a Temporary Employment Agency to provide services temporarily in the territory of another Member State.
- Directive 2008/104/EC of the European Parliament and of the Council dated November 19, 2008, on Temporary Employment Agencies, directly and exclusively dealing with the latter, harmonising the national legislations that regulate them.

<sup>8</sup> Unemployment Convention, 1919 (No. 2); Fee-Charging Employment Agencies Convention, 1933 (No. 34); Employment Service Convention, 1948 (No. 88); Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96); Employment Policy Convention, 1964 (No. 122); Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); and Private Employment Agencies Convention, 1997 (No. 181).

<sup>9</sup> EUROFOUND. 2015. Delivering public services: A greater role for the private sector? An exploratory study in four countries. editado por Eurofund. Luxemburg: Publications Office of the European Union.

<sup>10</sup> Asempleo. *Public-Private Partnership in the labour market report: proven experiences and possibilities for Spain*. 2014 [https://asempleo.com/wp-content/uploads/servicio/informes/Informe\\_CPP.pdf](https://asempleo.com/wp-content/uploads/servicio/informes/Informe_CPP.pdf)

### New Act 3/2023, dated February 28, on employment: public-private partnerships and their inclusion in active employment policies and intermediation

It is important to highlight that labour intermediation is now included, in contrast to the previous regulation, among the instruments of active employment policy (art.31). Likewise, two specialised placement modalities are established (art.40). Firstly, job placement within the framework of corporate restructuring processes, itself the object of a broader definition: on the one hand, reaching unemployed persons and also affected workers; and on the other hand, both when the latter is agreed with the workers or their representatives within the framework of social plans or outplacement programmes, and when it is decided by the public employment services, either ex officio or at the request of the persons affected by industrial transitions or transformations in productive services.

Secondly, it is also a specialised activity of personnel selection, even when, in the absence of suitable profiles among the applicants of the public employment services, the search for a suitable candidate must be extended to workers who are not registered as such<sup>11</sup>.

Public-private partnerships in intermediation are another of the aspects subject to significant reform. The Act, firstly, establishes intermediation as a public service “regardless of the agent providing it (art. 42.1), and proceeds to regulate placement agencies in comparatively more detailed terms, which are now also subject to monitoring and assessment mechanisms. Secondly, “in order to facilitate intermediation”, it explicitly calls for a reinforcement of the public resources of the National Employment System, leading to a paradigm shift, determining the articulation of solvent and adequately sized public intermediation services, in turn complemented by an equally solid private initiative, within the framework of a public-private scheme that is therefore similar to that of other states in our vicinity that are more efficient in terms of placement. We are therefore awaiting the implementation of the proposals, largely at the mercy of a detailed regulatory development and also of the effective allocation of sufficient budgetary resources for the provision of material and human resources, which have been considerably eroded in recent years.

Regarding intermediation agents, article 32 of Royal Legislative Decree 3/2015, October 23, 2015, approving the revised text of the Employment Act, already included (a) public employment services, (b) placement agencies,



<sup>11</sup> Fernández Prol, Francisca. *Intermediation in the new Employment Act*. Briefs AEDTSS [https://www.aedtss.com/wp-content/uploads/2023/03/16\\_F-Fdez-Prol-Intermediacion.pdf](https://www.aedtss.com/wp-content/uploads/2023/03/16_F-Fdez-Prol-Intermediacion.pdf)



and (c) those other services determined by regulation for workers abroad. Article 41 of the new Employment Act 3/2023 includes (a) public employment services; (b) placement agencies, whether placement agencies themselves or agencies specialising in outplacement or personnel selection; and (c) such other services as may be determined by regulations for or with workers abroad. Appropriate measures shall be adopted to prevent any abuse and malpractice in migratory movements whose origin, destination or transit is located in the territory of the State, paying particular attention to underprivileged groups.

In relation to employment agencies, the regulation details that they can carry out intermediation activities in coordination with the public employment services or as collaborative bodies for public employment services through the articulation of the corresponding legal instrument for the provision of labour intermediation services, or, where appropriate, subject to the framework agreement for hiring services that facilitate the development of active employment policies, as set out in the 31st additional provision of Act 9/2017, November 8.

Notwithstanding the theoretical advances of the new employment act, one only has to look at the opinion

of the Economic and Social Council on the preliminary draft of the law<sup>12</sup>, we can see some of the main shortcomings and weaknesses of employment policies and their management, including an insufficient budget allocation, the lack of human and material resources and tools for effective intermediation, the high volume of funds earmarked for employment incentives, the lack of a customised approach in many actions and of attention to the needs and requirements of the productive fabric through the reinforcement of prospecting, the insufficient link between active and protection policies, the lack of an adequate connection with the education and training system, and of an appropriate structuring of public-private partnerships, the lack of coordination and collaboration between the SEPE and the regional SPE, together with the social services or with the multiplicity of cooperating organisations, the absence of a rigorous monitoring, control and assessment system.

Among the issues raised in the Preliminary Draft which, in the opinion of the ESC, require further clarification, it is worth highlighting, by way of illustration, the wording of Article 26 on cooperating private employment organisations regarding the nature of this cooperation.

<sup>12</sup> Economic and Social Council. *Opinion on the Preliminary Draft Employment Act*. 2022. <https://www.ces.es/documents/10180/5275470/Dico62022.pdf>

### Basis for public-private partnerships

One of the most repeated aspects when analysing areas for improvement in public employment services is related to their capacity and efficiency rates in labour market intermediation, i.e. how many people gain access to a job thanks to these public employment services<sup>13</sup>.

If we compare the different efficiency rates between public and private employment services, according to data from the Labour Force Survey (LFS) for 2022 on Labour Intermediation and Working Conditions, the number of employees hired through a Temporary Employment Agency (TEA) was 657,900 in 2022, which was 3.8% of the total, compared to 4.1% in 2021. This number is double that of public services, where only 319,400 employees (1.9% of the total) obtained employment through a public employment agency, compared to 2.0% in 2021<sup>14</sup>.

Our labour market situation from the point of view of resource efficiency and intermediation effectiveness is a matter of understanding how job vacancy indicators and unemployment rates combine. In this sense, the variable that measures vacancies to be filled -*job vacancy rate*- seems to indicate that, although it is true that in Spain there are tens of thousands of unfilled jobs in sec-

tors such as agriculture, transport, the hospitality sector, industry, construction, etc., and many professions linked to the digital or health sector - to give just a few examples - are no worse than in most EU Member States, this analysis cannot ignore the fact that our situation is much more complex and serious, given our high rates of unemployment in general, youth unemployment, long-term unemployment, or groups that neither study nor work, or are simply not active. This more complex analysis, and therefore the right one, is what is reflected in the so-called Beveridge Curve<sup>15</sup>.

Spain ended 2022 with an average of 5 vacancies for every 100 unemployed. I.e. approximately 21 unemployed compete for every vacancy offered in the year 2022.

The Beveridge curve is used to relate the job vacancy rate (JVR) to that of unemployment. The further to the right the data is, the higher the unemployment rate. At the same time, the higher the data, the higher the vacancy rate for that year.

Thus, we observe that from 2010 to 2013, the JVR is decreasing and, at the same time, unemployment is increasing. In 2014, the JVR continued to fall, but so did the unemployment rate, and a period continued until

<sup>13</sup> Avila, Zulum y Omar Rodriguez, Javier. *Public employment services: diagnostic tool and guide*. International Labour Organisation (ILO), 2021. [https://www.ilo.org/wcmsp5/groups/public/-ed\\_emp/documents/publication/wcms\\_829545.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_emp/documents/publication/wcms_829545.pdf)

<sup>14</sup> See MAQUEDA, A. 2016. "Public-private placement of the unemployed, more efficient than employment offices". *El País*. [06-09-2016] [http://economia.elpais.com/economia/2016/08/27/actualidad/1472331035\\_747571.html](http://economia.elpais.com/economia/2016/08/27/actualidad/1472331035_747571.html)

<sup>15</sup> European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Peters, M., Trends in PES: assessment report on PES capacity: 2022, Publications Office of the EU, 2023, <https://data.europa.eu/doi/10.2767/908915>



2019 when the JVR went up while the unemployment rate went down. In 2019 this favourable trend stagnated and in 2020 the unemployment rate rose again while the JVR declined. In 2021 this trend reverses again, the JVR increases to 0.7% and the unemployment rate decreases to 14.8%.

In the first quarter of 2023, the job vacancy rate (JVR)<sup>\*16</sup> in Spain was 0.9%. This rate is 1.9 % points below the average for the EU and almost 4 % points below the highest rate. It is only above Bulgaria's JVR, which it exceeds by 0.1 % points.

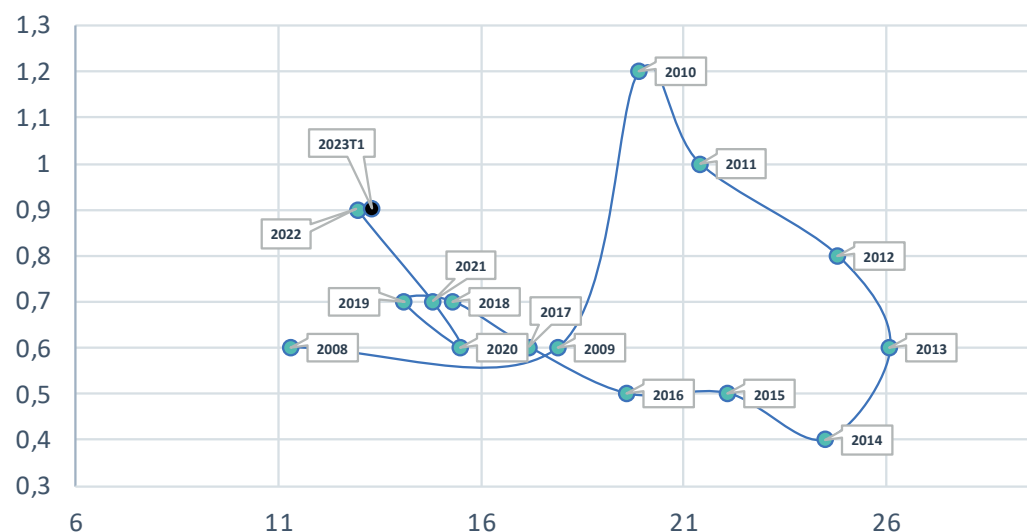
Specifically, in Spain there were 16,161,122 occupied jobs and 143,428 vacant jobs in the first quarter of 2023, resulting in a JVR of 0.9%.

We can also compare these vacancy and filled job vacancy numbers with other countries for the sake of perspective. For instance, Germany had 1,779,672 vacancies and 41,435,765 filled jobs in the first quarter of 2023, ranking its JVR fourth at 4.1%, 3.2 points behind the rate for Spain. Thus, we observe that there is a large difference in the number of job vacancies between the two countries.

However, we cannot understand the tensions between supply and demand in our labour market using only the JVR. It is normal for countries with low unemployment to have

higher vacancy rates. But in the case of Spain, the problem is more complex and we would dare to say almost unique in our surroundings, as we must understand how high levels of unemployment can be compatible with considerable tensions in vacancy coverage, which in recent quarters have increased in many business sectors.

### Beveridge curve 2008 - 2023T1



<sup>16</sup> \*According to the definition provided by Eurostat, a job vacancy is considered to be a newly created, vacant or about to become vacant paid position:

- a vacancy that an employer is taking active steps and is willing to take additional measures to find a suitable candidate outside the company in question; and
- the employer intends to fill either immediately or within a specified period of time.

The job vacancy rate, abbreviated as JVR, is calculated as follows:  $JVR = \text{No. of vacant positions} / (\text{No. of occupied positions} + \text{No. of vacant positions}) * 100$

A filled post means a paid post within the organisation which has been assigned to an employee.

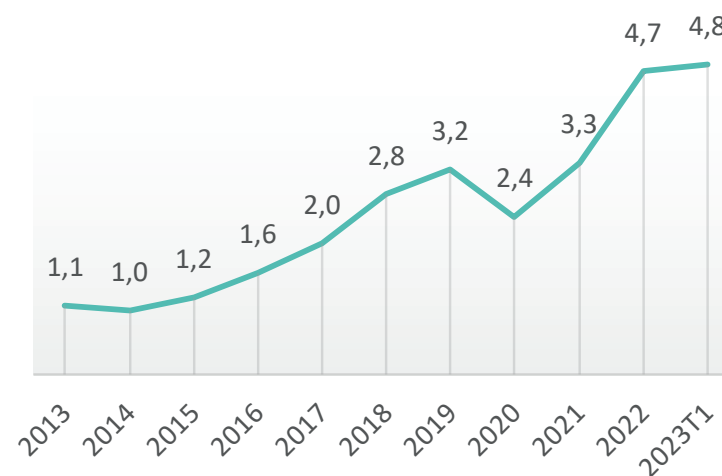
The Beveridge curve is used to relate the job vacancy rate (JVR) to that of unemployment. The further to the right the data is, the higher the unemployment rate. At the same time, the higher the data, the higher the vacancy rate for that year.

Thus, in Spain's case, we observe that from 2010 to 2013, the JVR is decreasing, and, at the same time, unemployment is increasing. In 2014, the JVR continued to fall, but so did the unemployment rate, and a period continued until 2019 when the JVR went up while the unemployment rate went down. In 2019 this favourable trend stagnated and in 2020 the unemployment rate rose again while the JVR declined. In 2021 this trend reverses again, the JVR increases to 0.7% and the unemployment rate decreases to 14.8%.

Focusing now on 2022, we observe a stagnation situation around 0.9% vacancy and 13% unemployment. It is worth noting that the JVR has not been this high since 2011 and, moreover, it did not share an unemployment rate of less than 13%, but rather 21.4%.

In the first quarter of 2023, this situation remains stagnant in terms of the number of vacancies, in addition to an unemployment rate of 13.3%.

**Average number of unfilled vacancies per 100 unemployed people**

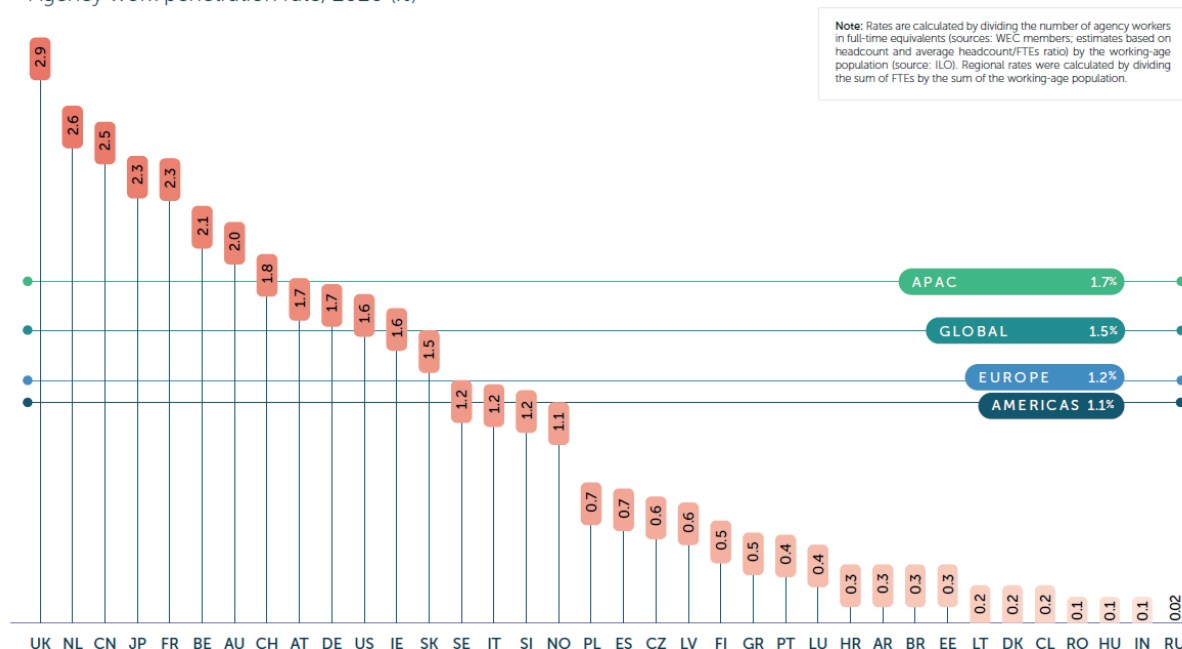


According to Spanish National Statistics Institute (INE) data, if we divide the number of vacancies in Spain by the number of unemployed, we observe in 2022 that there was an average of 5 vacancies for every 100 unemployed. In the first quarter of 2023 this figure is 0.1 % points higher than the average for 2022 with 3,127,800 unemployed.

The data suggest that labour markets are more efficient and effective where there is a higher degree of public-private partnerships and a higher level of participation of employment agencies and Temporary Employment Agencies, also having a positive impact on a lower rate of temporary employment, as this is concentrated and supervised by organisations that are professionally engaged in the management of temporary employment.

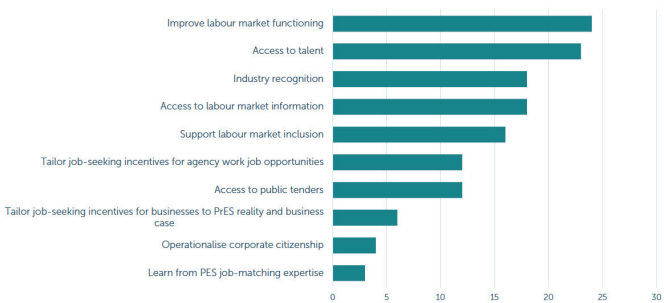
As can be seen in the following graph, the percentage of temporary employment agencies in Spain barely reaches 0.7%, a percentage that is more than double that of the main OECD economies, which range from 1.6% in the United States and Denmark to 2.9% in the UK.

Agency work penetration rate, 2020 (%)



The OECD itself conducted a sound policy analysis on the success factors of outsourcing public employment services to private stakeholders. This contains a good international comparison, as well as good policy recommendations. Indeed, it finds that two out of five OECD countries outsource (some part of) their activation/training policies to private providers through outcome-based payment schemes<sup>17</sup>.

Among the main opportunities for partnerships between Private Employment Services and Public Employment Services identified in this study are the improvement of labour market functioning, increased access to available talent, recognition of employment agency sector’s value in improving labour market functioning, access to more labour market information and training, and strengthening inclusiveness, among others<sup>18</sup>.



<sup>17</sup> Paying for results: Contracting out employment services through outcomebased payment schemes in OECD countries. OCDE. 2022.

<sup>18</sup> World Employment Confederation. Collaboration between Public and Private Employment Services. April 2021.



Likewise, the following could be summarised as recommendations on public-private partnerships<sup>19</sup>:

- A regulated public-private partnership model, with public control but avoiding bureaucracy.
- Clear and stable legal framework offering legal certainty and a high degree of transparency
- Strong, effective and efficient private sector, limited number of operators with proven resources and capacity.
- Two-pronged action: preventive and inclusive
- Mixed payment model: fixed per process plus variable per result
- Importance of including training in programmes
- Management of undesired effects (“parking and creaming”): monitoring, segmentation of programmes according to preventive or insertion goals.

These recommendations should be complemented by these other recommendations on public-private partnership policies, such as:

- Involucrar a los proveedores de servicios de empleo privados en el diseño y la gobernanza de las políticas de activación y capacitación para garantizar que las políticas permitan casos de negocios y escalamiento.

- Engaging private employment service providers in the design and governance of activation and training policies to ensure that policies enable business cases and scaling up.
- Fostering partnerships between public and private providers (at regional level) and ensuring a national platform for the exchange and deployment of effective partnerships.
- Establishing minimum quality standards for providers to support activation strategies and ensure transparency, accountability and assessment for all involved (including public) stakeholders.
- Shaping price tiering between different target groups; again to ensure a business model that can be scaled to reach large numbers of unemployed/inactive people in the target groups addressed.
- Encouraging the exchange of data between public and private employment services on labour supply and demand.



<sup>19</sup> Reflections on the public-private partnership framework in Spain in the employment domain. IESE and fundación élogos. 2012



### Best practices on public-private partnerships<sup>20</sup>

In contrast to quasi-market models such as the Australian model, it is still possible to find countries where the form of public-private partnership continues to follow traditional patterns, such as the Danish model. In contrast to models clearly based on competitive bidding processes between providers and the administration as the main authority (Australia, England, Holland), other countries seem to have developed mixed models or models that grant more weight to the voucher system, such as Germany, where competition and the factors of commodification have been transferred to the relationship between the client-consumer and the service providers. In overall terms, a positive assessment can be made of these experiences: it does seem that efficiency has been achieved, and in some countries an improvement has been detected in jobseeker satisfaction in relation to the service received<sup>21</sup>.

#### Netherlands

The Dutch model has gone through several stages, starting in its first phase up to 1980, when there was no pu-

blic-private partnerships and the organisations in both sectors coexisted and addressed the same target population. At that time START was created as a public organisation for temporary work and it functioned as a three-party institution representing employers' organisations, trade unions and the government itself. In a second phase between 1980 and 1990 there were several financial agreements set up to help the target groups, and private agencies started to participate as facilitators of these agreements. In a third phase between 1990 and 2008, private employment agencies increased their competences by providing outplacement support in times of collective redundancies and private mobility centres were established in cooperation with public employment services. In the final stage we are currently at, the government values private stakeholders as part of the solution, and they are involved in most of the solutions to labour market inefficiencies, and are represented in the Labour Market Advisory Council for the government.

#### United Kingdom

The UK public-private partnership allows the assessment of results (how many people placed, etc.), private organisations are accepted by the Ministry of Employ-

<sup>20</sup> European best practices in Public-Private Partnerships: COUNTRIES. Asempleo. 2017

<sup>21</sup> Asempleo. *Public-Private Partnership in the labour market report: proven experiences and possibilities for Spain*. 2014 [https://asempleo.com/wp-content/uploads/servicio/informes/Informe\\_CPP.pdf](https://asempleo.com/wp-content/uploads/servicio/informes/Informe_CPP.pdf)

ment, it has a sectoral approach and there is recognition regarding the important role of the agencies' work as a means of insertion in the labour market. One of the strengths of the model is that trust has been built up between the agents with the recognition of mutual benefits and there is a tendency towards specialisation of intermediation per sector<sup>22</sup>.

### Germany

In the case of Germany, the practice of candidate and job offer sharing between the private employment agency sector and the public services is in place, holding an annual meeting with the private employment services, meeting with the German public employment service to exchange views on the labour market and current trends (Erfahrungsaustausch Zeitarbeit), for this purpose there are two specific coordinators on agency work in the German public employment service in order to stabilise the two-party relationship and to meet the current labour market challenges<sup>23</sup>.

### France

Public-private partnerships between public and private employment services in France focus mainly on sharing job vacancies and providing joint market assessment services. Private employment services have been developing partnerships with the various public services in the territories, with a particular focus on training.

Private operators are usually selected on the basis of their expertise and according to a sustainable business model aiming to manage jobseekers more efficiently and effectively.

There is an elaborate partnership between industry and Adecco and Pole Emploi in several regions. And indeed, Adecco is a key strategic partner at national level in the reform of Pole Emploi in the new 'France Travail'<sup>24</sup>.



<sup>22</sup> Hirst A.; Tarling, R.; Lefaucheux, M.; Rowland, B.; McGregor, A.; Glass, A.; Trinh, T.; Simm, C.; Shaw, H. y Engineer, R. (2002). Qualitative Evaluation of Employment Zones: A Study of Local Delivery Agents and Area Case Studies, WAE 124, Department for Work and Pensions (DWP), Sheffield

<sup>23</sup> Finn, D., M. Knuth, O. Schweer y W. Somerville (2005). "Reinventing the Public Employment Service: The changing role of employment assistance in Britain and Germany". Anglo-German Foundation for the Study of Industrial Society. Working Paper.

<sup>24</sup> Crusson, L. (2011). "Le Contrat d'Autonomie: mise en œuvre par les opérateurs et profils des bénéficiaires". DARES ANALYSES, February, No. 013



<sup>25</sup> Fowkes, L. (2011). Rethinking Australia's Employment Services. The Whitlam Institute. University of Western Sydney.

<sup>26</sup> Finn, D. (2011). "Job Services Australia: design and implementation lessons for the British context". Department for Work and Pensions Research Report No. 752

### Belgium

An industry representative in Belgium usually participates (on behalf of the employers' organisations) in the three-party governance that governs the public employment services in Flanders, Brussels and Wallonia respectively.

### Denmark

The Danish model is more similar to the Dutch than to the Australian model insofar as there has traditionally also been a certain 'bifurcation' in the public subjects responsible for these services. Historically, these services have traditionally been provided either by the PES or by local authorities, depending on whether they are unemployment benefits or social assistance. Likewise, given the broad local self-government, tendering processes are much more decentralised than, for example, in Australia, and much closer to the Dutch model, we do not find a system that has outsourced the totality of placement services. Unlike Denmark, private providers do not provide substantially all of these services. Another distinctive feature of the Danish model is the strong involvement of trade unions and employers' organisations in the system, mainly through three-party local or regional councils.

### Australia

This process has been the gradual construction of a system that, although completely externalised, has introduced new public regulation to try to limit the possible defects derived from an exclusively market-based management, the high transaction costs and the problems of parking and creaming<sup>25</sup>.

There is, therefore, strong control and clear public governance of this quasi-market, based on a progressive improvement of these mechanisms in subsequent rounds of hiring, with undoubted singularities, especially in the selection of suppliers, which has even led some to argue that Australia has moved from a model based exclusively on tendering to another model of "preferred-provider" for the provision of these employment services<sup>26</sup>.

### Italy

A very good policy framework that enables HR service providers to support job seekers is in place in the Lombardy region. Part of this framework are transparent quality and accountability arrangements. PUBLIC providers



must also meet the same standards as private providers. Private stakeholders consistently deliver better results. Another success factor is the regular recalibration of quality standards in close cooperation with all the stakeholders (public and private) interested in participating in the PES tender<sup>27</sup>.

<sup>27</sup> Zimmermann, K.; P. Graziano; P. Aurich y V. Fierres (2014). "Local Worlds of Marketization. Employment Policies in Germany, Italy and the United Kingdom compared". *Social Policy & Administration*. 48 (2): 127-148



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The Adecco Group Institute is the study and dissemination centre of the Adecco Group. Its aim is to be a benchmark in Spanish society in terms of research and dissemination of knowledge related to 5 cornerstones such as employment and labour relations, health and prevention, diversity and inclusion, the future of work and technology, and talent and training.

The Adecco Group Institute is founded to become a common reference space thanks to the analysis of the labour market, offering quality content without forgetting one of the most important aspects of our daily lives: real time content, real time content on employment and the labour market, thus adapting to the new times and their immediacy. All this, accompanied by the experience and knowledge of a leading company in the Human Resources sector such as Adecco, present in the Spanish labour market for more than 35 years.

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