II. Purpose and function

The coordinated strategy for employment envisaged in Article 145 TFEU is entwined with the objectives set out in Article 3 TEU where there is explicit reference to a 'highly competitive social market economy, aiming at full employment and social progress'.

Central to this Strategy is the identification and provision of effective measures aimed at supporting the qualification, education and flexibility of the workforce and the responsiveness of labour markets to economic change.

The EES was initially based on a ‘four-pillar’ structure, with employment guidelines centred on these pillars:

- Improving employability.
- Creating a new culture of entrepreneurship.
- Promoting and encouraging the adaptability of firms and their workers.
- Strengthening equal opportunities policies.

These were carefully selected areas as part of a supply-side strategy that aims at focusing on the structural problems of unemployment. Its main objectives were: higher employment participation, increasing active unemployment systems, the number of highly skilled workers and employment intensive growth indicators, helping maintain the lower-skilled workers in employment, striking a balance between flexibility and security, supporting and promoting the start-up of smaller companies and entrepreneurship and promoting gender equality. To a great extent they remain largely the same. What has changed is the emphasis placed on some objectives while others have gradually come to lose visibility and importance, equal opportunities being a case in point.

Reference to the objectives listed in Article 3 TEU illustrates the broad scope of application of the EES and the acknowledgment that tackling the problem of unemployment effectively also requires the attainment of other objectives of the EU.

Article 146 TFEU

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 145 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article 121(2).

2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 148.

I. Overview

This provision highlights two important aspects of the EES. First, it confirms that, while this is a “European” strategy for employment according to which the promotion of employment is a matter of common concern, Member States retain full regulatory control over employment policy at national level with the proviso that collective bargaining and social dialogue processes are also respected. At the same time, the provision is unequivocal in laying out an obligation for the Member States to adopt such em-
employment policies which contribute to the achievement of the objectives provided by Article 145 TFEU, in line with its sister economic coordination process as per Article 121(2) TFEU.

II. Purpose and function

The cross-sectoral and cross-policy nature of the EES illustrates the fact that the Strategy is conceived in a way that does not challenge the functioning of the Internal Market and EMU, as they remain the paramount objectives of the Union.

Para 1 of Article 146 TFEU clearly shows this interconnectedness between the Strategy and economic policies. When responding to the employment guidelines, Member States continue to operate under exactly the same legal and economic constraints of economic integration which limit their policy choices when they are acting individually. In practice, this means that if unemployment rises to high levels within the euro zone, the employment guidelines cannot recommend the European Central Bank (ECB) to lower interest rates; similarly if unemployment is high in a given Member State, the employment guidelines cannot recommend the Council to relax the strict rules of the Stability and Growth Pact (SGP), nor the Commission to relax competition or State aid rules; similarly employment guidelines cannot suggest increases in taxation on capital incomes, or controls on capital exchange to reduce cuts in social expenditure imposed by fiscal constraints. Despite these limitations, the EES covers a much larger number of social policy areas than have been addressed through traditional EU level social policy regulation.

Para 2 of Article 146 TFEU while preserving the autonomy of collective bargaining and social dialogue processes at national level raises employment as a matter of common concern thus imposing an obligation of cooperation and coordination for the Member States in accordance with Article 148 TFEU. In so doing the provision is referring, although not explicitly, to the iterative coordination process of the OMC on which the operation of the EES is based. What can be observed here is the importance of soft law and the novel way in which it is being used to generate a special duty to act for the Member States as well as the EU Institutions in order to effectively tackle unemployment. Arguably this duty also extends to the social partners as the provision makes reference to the ‘responsibilities of management and labour’ and also in consideration of the fact that the promotion of employment is a matter of common concern requiring a concerted effort.

Article 147 TFEU

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

2 Ibid.