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Experimentalist Welfare Governance in the European Union

**Experimentalist governance and the legitimacy of the
European Social Fund in the Netherlands**

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Abstract

The social governance at the European Union is often seen as an answer to dealing with pressures to the European Welfare systems. At the same time, the EU tries to increase its legitimacy to act by introducing novel governance architectures in the areas that are often considered to be national competences. One of such EU tool to support national social policy changes is the European Social Fund (ESF), a co-financing instrument, which allows Member states to implement new (innovating) policies. The (changing) role of the ESF in influencing national level social policies is relatively unexplored. Much more needs to be known about to understand the legitimacy and construction of the European Social Policy. Building on extensive theoretical discussion by Fritz Scharpf (1970; 1997; 1999) and Vivienne Schmidt (2013), this paper contributes to the literature a much needed empirical account of the construction of the European Social policy in connection or interaction with the national level. Drawing on data on expert interviews of multilevel actors in the Netherlands, this paper makes a longitudinal analyses of how national actors perceive the input, throughput and output legitimacy in their usage of the ESF (2007-2013) in designing activation policies for the unemployed. The preliminary results for the Netherlands' suggest that the contradictory legitimization effects are found at the throughput legitimacy and that the EU still need to find ways to increase the input and output legitimacy of the ESF, in order to improve the legitimization of the EU action at the level of the member state.

Key words : experimentalist governance, European Social Fund, legitimacy, the Netherlands

1. Introduction

The legitimacy of the European Union (EU) has under heavy fire in the recent years. The rise of anti-EU sentiments, national protectionism and inability to find European solutions in the ever unfolding crises have led European Union to new era, where the permissive consensus of added value of the EU as creator of peace and prosperity no longer is taken as granted and where the conventional hierarchical governance and command-on-control by supranational actors gets increasingly difficult. The experimentalist governance at the EU is often seen to make a promise how to find solutions to the European Welfare systems' pressures. Furthermore, it is argued that its' emergence provides EU more legitimacy to act in the areas that are often considered to be national competences. It provides an alternative to the classic Community Method of EU policy-making, and as seen by Sabel and Zeitlin (2011: 17) to expected be "a response to strategic uncertainty" and way forward in a "situation where the parties face urgent problems, but know that their preferred problem-solving strategies fail, and therefore are willing to engage in joint, deliberative (potentially preference changing) investigation of possible solutions" (Sabel and Zeitlin 2011: 17; Sabel and Zeitlin 2010). The experimentalist governance aims at serving the means of inclusiveness and openness of the multi-level EU policy (making) and thereby contributing to the development of European polity in a more effective, efficient and democratic way. The archetypical example of the experimental governance at the EU level is the Open method of coordination (OMC). The OMC, formally institutionalized as part of EU governance by the Lisbon European Council of 2000, after successful implementation of this multi-level governance tool in mid-1980s in the economic policy and later in 1997 in the employment policy, provides institutional grounds for a deliberation-fostering, iterative cycle, from identifying problems and setting broad goals, local implementation, to reporting and peer review and revision of goals. Although most scholars have focused on analysing the OMC process and its outcomes to national policies, this paper will analyse another tool of European Union's social policy-making: the European Structural Funds (ESF) with respect to EU's potential in constructing legitimacy of Social Europe. ESF is a financial instrument via which the EU can directly influence social policy making at the national level. ESF is a co-financing instrument, which allows local governments and other local actors to implement new policies together with national governments and European Union. It's a real multilevel governance tool, deliberated between the EU and member states, but at the same time it is geographically closest to local policy actors and clients of the national welfare delivery. For this reason, the ESF is an

interesting study object to understand the legitimacy and construction of the European Social Policy. Furthermore, for empirical analysis, the ESF may be seen as a real experimental governmentalist laboratory: the founding is linked to the national aims (established at the OMC and European Semester), but at least in theory, it allows more room for experimental designs and trial and error mode learning than the other OMC instruments. This makes ESF an interesting object to study the experimental governance in the EU social policy governance, and in particular the legitimacy of this governance. In this paper we will analyse how national actors perceive the input, throughput and output legitimacy in their usage of the ESF (2007-2013) in designing activation policies for the unemployed. The data for this study comprises of expert interviews of multilevel actors in the Netherlands. Through this analysis, the paper contributes to the literature a much needed empirical account of the construction of the European Social policy in connection or interaction with the national level. It unravels the real-life experimentalist governance by analysing the construction of EU social policy at the national and local level and allows an analysis of legitimisation basis that Social Europe has in a member state. These insights will further develop the theoretical understanding of the legitimacy (crisis) at the EU level and to what extent the experimentalist governance is able to help mending it.

The structure of the paper is as follows. First, building on extensive theoretical discussion by Fritz Schapf (1997; 1999; 2001) and Vivienne Schmidt (2013, 2016), this paper discusses the normative legitimization process of input, output and throughput legitimacy in the European Union's Social policy. The second section of chapter 2 theorizes more the ESF in relation to the experimental governmentalist framework and develop working hypothesis for the empirical analysis to be tested. Chapter three discussed the research agenda for the study. Chapter 4 is the empirical analysis and chapter 5 provides the conclusion and discussion based on our findings.

2. Theory

Legitimacy is a fundament of any democratic governance. It refines and recognizes who have the authority and right to govern, but also sets the rules, procedures, norms and values the authority needs to respond to generate social integration. In its pure form, democracy implies the interaction between the people (demos) and power (kratos). In a sovereign nation state, this

means government by the people, of the people and for the people, as Lincoln famously stated in 1863. In the context the European Union, application of democracy is more contested. Scholars like Chevenal and Schimmelfenning (2013) reject the use of term of democracy in the context of the EU and suggest EU being a demoicracy, a polity with multiple demoi. Although the EU integration was evidently not a democratic project in its inception in the late 1950s, the growing fundamental problems of democratic governance (right to be participating in decision-making by all who are affected), have led, together with growing societal and economic concerns, EU to refine itself as a polity with democratic characteristics. Against this background, the unresolved steering problems and the EU's inability to take binding measures through the *acquis communautaire* have led to more imminent discussion of the legitimacy of the EU.

How legitimate is the EU and legitimate its ambitions to create 'Social Europe'. Building on the work by David Easton (1965), Fritz Scharpf (1970, 1999) has famously distinguished between two democratic legitimation processes in the EU: input and output legitimacy: whereas input legitimacy is judged with respect to the EU's responsiveness to citizen's concerns (as a result of participation by the people), output legitimacy is judged with respect to the effectiveness of the EU's policy outcomes for the people. For Scharpf (1999) input legitimacy refers to 'the participatory quality of the processes' leading to laws or policies as ensured by the input by (majoritarian) institutions of electoral representation (Scharpf 1999,p. 7-21). Although, others have argued that the EU lacks the majoritarian inputs like direct elections for important the EU bodies (Schmidt, 2013), active participation of people and their interests in the decision-making remains central for the improvement of democratic legitimation of the EU policies. Equally important is, according to Scharpf, for EU to find effective and efficient solutions. Output legitimacy is generally found the most important focus for the EU, given the problems in the majoritarian institutional input inherent in the EU governance architecture. Following Schmidt (2015) there is a trade-off between input and output legitimacy: if the performance of the EU is favorable for its citizens, public may not find it too problematic that they have been by-passed in the decision making. Similarly, sometimes bad (policy) results can be accepted if the public considered that its voice has been heard. Earlier Schmidt (2013) has suggested a third normative criteria for the democratic legitimacy, namely the throughput legitimacy, referring to the quality of the governance processes. Building on central concepts of the public administration literature, Schmidt is eminent on the importance of the throughput legitimacy. Without good governance (measured in terms of accountability,

transparency, responsiveness, inclusiveness) democratic legitimacy cannot be produced. For Schmidt (2013) throughput legitimacy is a precondition for better output performance, and a precondition for input processes. There is, according to Schmidt (2015), no trade off to throughput legitimacy; flaws or corruption in the governance process will lead to skewed input legitimacy and/or contamination of the output legitimacy. Neither does throughput legitimacy stand on its own, good governance without taking into account of public concerns and interests, or without consideration on the outcomes for public does not exist in the democratically legitimate governance.

Experimental governance through ESF & legitimacy

The EU as often portrayed as “a unique set of multi-level, non-hierarchical and regulatory institutions, and a hybrid mix of state and non-state actors” (Hix 1998, p. 39) provides ample examples to study different forms deliberative governance. The common conviction in the academic literature is that the experimentalist governance adds an important mode of governance in the EU, especially in the field of the social policies of the EU (Börzel, 2012; De Búrca, Keohane, & Sabel, 2014). The experimentalist governance architecture fosters multi-level decision-making structures in which private and public actors of the supranational, national, and subnational levels interact within highly complex networks to produce policy outcome. The legitimacy of this governance architecture can be evaluated by theorizing its values with regard to input, throughput and output of the governance.

Sabel and Zeitlin (2010, 2011) define the experimentalist governance as an emerging institutional architecture based on framework rule-making and revision through recursive review of implementation experience in different local contexts. These scholars (2010, 3) portray four key elements of the experimentalist governance linked in an iterative cycle. First, the establishment of framework goals and of measures for their achievement by combination of ‘central’ and ‘local’ units, in consultation with relevant civil society stakeholders; second, autonomy of lower-level units in the implementation of the framework goals; third, regularly reporting on performance and participation in peer review; and forth, periodical revision of framework goals, measures and, procedures. These key elements strongly resemble iterative cycle inherent in the Open Method of Coordination (OMC) (Heidenreich & Zeitlin, 2009; C.

Sabel & Zeitlin, 2008; Zeitlin, 2016; Zeitlin, Pochet, & Magnusson, 2005; Zeitlin & Vanhercke, 2014)(Zeitlin 2005), but are also identifiable in the ESF process (see also Gerven, Vanhercke, & Gürocak, 2014; Verschraegen, Vanhercke, & Verpoorten, 2011). The ESF funding is set for seven-year time period in negotiation between the member states and the European Commission. European Commission sets the ESF priorities (guidelines) for each programming period and in bilateral negotiations with the member states country specific Operational Programs (OP) are defined. The ESF funding is co-funding meaning that ESF funding is always accompanied by public or private funding. National authorities grant the projects applied and the projects are implemented by the local or regional actors (public, private, non-profit). The national authorities then monitor the progress and (reported) performance. At the new start of the programming period, the goals, measures and procedures are revised in line with iterative cycle inherent to the experimental governance architecture.

Sabel and Zeitlin (2010: 12) suggest that the experimentalist governance architecture should be seen at a vehicle of learning from diversity and in the polyarchic nature of the EU fostering input legitimacy. The “polyarchic distribution of power” (Sabel & Zeitlin 2010, 9) - central characteristic of the EG – allegedly leads to a *higher responsiveness of local concerns and interest* resulted by direct participation of the relevant actors in the policy-making. The stakeholders at the national and lower levels are represented throughout the ESF process, what in terms of the input legitimacy, being judged with respect to the EU’s responsiveness to citizen’s concerns as a result of participation by the people (Scharpf x), and in the context of polyarchic distribution of power, would suggest that no single actor has the capacity to impose his or her own preferred solution without taking into account the views of others. Based on this, we could assume that

H1 High input legitimacy of the ESF:

Through higher participation of the multi-level actors in the process, ESF has a high responsiveness of local concerns and interest, and therefore, ESF is likely to have a positive effect to input legitimacy

The bottom up learning inherent in ESF may also be favorable for output legitimacy. In daily practices, local actors face similar problems and in the EU induced (OMC) setting they can learn from each another’s efforts to solve them. Also based on the much decentralization

transformation is the expectation that local level actors are better able to find effective solutions for the local level problems. In case of ESF, this argument could certainly be true. Given that the co-funding by ESF is directed to meeting local needs and grass root projects, they should foster output legitimacy (being judged with respect to the effectiveness of the EU's policy outcomes for the people). In this sense, Sabel and Zeitlin (2010:12) argue that "experimentalism transforms diversity from an obstacle to integration into an asset for its advancement". Based on this insight, we can assume/hypothesise that

H2. High output legitimacy of the ESF

Through higher participation of the multi-level actors (especially local level actors), the ESF has high effectiveness of the EU's policy outcomes for the people, and therefore, ESF is likely to have a positive effect to output legitimacy

EG is suggested to open up new possibilities for democratization of decision making by promoting new forms of dynamic accountability based on peer review deliberations (Sabel & Zeitlin 2010, p. 8). By involving trans-governmental networks of actors to discuss the plans and scrutinize the decisions EG contributes to the transparency of the governance procedure. However, with bad procedural requirements, including lacking transparency and low participation by a broad range of (non-relevant) stakeholders (Sabel & Zeitlin 2010, pp. 18–21), EG contributes to, rather than alleviate, the EU's democratic deficit (cf. Smismans 2006, pp. 59–64). Without good governance measured in terms of accountability, transparency, inclusiveness and effectiveness of the governance process) democratic throughput legitimacy cannot be produced. Therefore we assume/hypothesise

H3. the throughput legitimacy of the ESF

Through collective collaboration of the various (multi-level) actors, the ESF has high transparency, accountability, inclusiveness and effectiveness of the governance process, and therefore ESF is likely to have a positive effect also to throughput legitimacy

The assumptions done above are theoretical. Empirical analysis is needed (Boerzel 2012: 382) to draw conclusions about the legitimacy of the experimental governance. In the next section we will establish our research agenda.

3. Methodology

The unit of analysis of the study is the ESF. In 2017 the ESF celebrated its 60th anniversary. Since its set up in 1957, it has been the main tool for EU to support human capital. And its' main focus is to support employment. During the financial crisis (2008 onwards), the ESF has been an important tool to mitigating the consequences of the economic crisis. This study covers the ESF period (2007-2013) and therefore covers large parts of the crisis years. For the Netherlands, the ESF period 2007-2013 was subdivided into three priorities and eventually six actions (Source: Operational programme). Action A aimed at increasing labour participation and distinguished two action lines, the first of which was increasing labour participation of people who have a significant distance to the labour market (specifically: (female) returners, unemployed aged over 55 and people who have a (partial) work incapacity). During the crisis the priority was added to fight youth unemployment (Action J). Actions A and J were predominantly open to municipalities. Priority focused on labour market inclusion of people who a very large distance to the labour market (Ex-offenders in Action B and school leavers from special education with learning deficiencies in Action C). Action C opened up funding mostly for schools, while Action B was meant for the Custodial Institutions Agency only (after handing in applications for funding). Priority three aimed at investing in human capital and increasing resilience (Schooling for low-skilled employees in Action D and Social Innovation in Action E).

The analysis takes a longitudinal perspective with interviews ranging from 2007 to 2014 and triangulating with document analysis, thus covering the period before the start as well as after the end of the ESF programme period. The total number of interviews is 25. In each interview from one to three persons were attending. All interviews were transcribed and made anonymized for the research purposes. The interviews were conducted with representatives of the various levels of stakeholders of the ESF: from state level respondents (ESF Agentschap, Ministry Social Affairs and Employment, Permanent representation of the Netherlands to EU);

European union Institutions (EP and DG EMPL, ETUC), to local levels (municipalities, the Dutch Custodial Institutions Agency) in the Netherlands, ranging from large to medium to small sized municipalities in the North, West, Mid and East part of the Netherlands); the full list of anonymized respondents are found at Appendix 1.

4. Analysis

Input legitimacy

The “polyarchic distribution of power” (Sabel & Zeitlin 2010, 9) inherent in the EG, and theoretically applicable to the ESF, suggests a higher responsiveness of local concerns and interests resulting from direct participation of the multi-level actors in the policy-making. Indeed, the priorities of ESF are developed based on the national challenges and the country-specific recommendations (CSRs). The national challenges are derived from SWOT analysis of the Dutch labour market (Strengths, Weaknesses, Opportunities, and Threats). Knowledge is derived from ex-ante evaluations and suggestions by external research institutes (e.g. in 2006).¹ Moreover, in the drafting stage of the OP the Agency SZW discusses the content with regional and local stakeholders, allowing them to give input (Min3). The interviewees of the Agency SZW (Min3) and the interviewee at EU level (DG3) mentioned their good working relationships, which facilitates discussion about ESF priorities. This is seen to allow for lobbying on ESF-priorities by the local level stakeholders (DG3). Furthermore, the bilateral negotiations between national actors and European Commission for the OPs at least theoretically provide ample room for national input. The findings from the research suggest however that this responsiveness to local concerns and interest is not optimal, and quite the contrary to this expectation, it has been considerably stretched in the last decades. The respondents (Min2 and Min3, DG2, EP, CEC) suggest that during the earlier rounds (1994-1999, 2000-2006) but also in the current round (2007-2014) the Dutch top civil servants around the negotiation table had clear intention to keep the ESF to allow as much freedom and flexibility to Dutch

¹ The ex-ante evaluation of 2006 included a reaction of the researchers on a draft Operational Programme (OP) (Research voor Beleid, 2006). The Ministry of Social Affairs and Employment gave a reaction to the opinion of the researchers (SZW, 2009:48). An indication of including at least one suggestion of the researchers was the argument to use schooling to improve inter-sectoral mobility of workers, which was added to the final version of the OP (SZW, 2009:33).

(municipalities) in their usage of funds and implementation of policies. There is namely a policy misfit between EC and the Netherlands: from 2007 onwards, the EC has increasingly promoted inclusion policies for selected groups of jobseekers and unemployed, but at the national level, then and now, the Dutch formulate generic policies that allow the decentralized local governments as much freedom as possible to design effective policies at the local level. Our interview reveals how the Commission strong-armed the Dutch in the negotiation for the programming period 2007-2014 and earmarked the ESF funds in Action A to improve labour participation to be used to specified groups and not to the broader groups of the Dutch preference. The respondents from the municipalities in the programming period 2007-2014 had diverse responses to this development: whereas some (often the larger and richer municipalities) were negative being hand-tied to invest in groups that have (too) long distance from the labour market (like housewives and those not receiving or not being entitled to social assistance) (MUN1, MUN5, MUN 11), others (often, but not always, the middle-sized and less rich municipalities) were more positive of this giving them resources and a political mandate to address problem groups otherwise unreachable by the national (and local) policy (MUN3) (see also van Gerven et al 2014). This was confirmed by our respondent at ministry/Agency (MIN3): Municipalities working with ESF-target groups were seen to be confused, since local policy (and the one-stop-shop) did not differentiate between groups of welfare recipients under the Participatory Act (MIN3). The interviews made at the end of the programming period, suggest however, that the preferences of national (ministry) and European level may have converged by 2014. The interviewees of the national Agency of Social Affairs and Employment (Min3) for example mentioned that on the one hand these priorities now fit the national labour market challenges at that time (potential labour supply shortage) as well as the relevant messages in the EU's country-specific recommendations. However, this uneasy fit between the generic policies at the national and local level versus the required targeting of funds to groups as defined by ESF was a dominant finding found at all levels of governance and over time (Min3, Mun1, Mun5, Mun10, Mun13). Another example of non-matching priorities is the case of the low-skilled employees. Whereas both the national level (Min3) and the EU-level (DG3) found that these low-skilled workers fall not within the scope of Social Inclusion, as these people already have a job, Min3 argues that within the target of increasing employability they did look at those who are the most vulnerable. However, when drafting the OP 2007-2013 the Commission suggested to lower the budget for Action D so that more money could be allocated to those who are really among the most vulnerable at the Dutch labour market (DG3; see also Metis, 2012).

To conclude, the findings confirm that ESF promotes higher participation of multilevel actors than the classic *Acquis Communautaire* would have allowed, but this does not always lead to a *higher responsiveness of local concerns and interest on its own right*. The EC clearly steers towards their priorities and leave not always freedom for member states to decide on the extent of these goals. In words of one of respondents at ministry (*Min2*): *'here [is] the occurrence of the power of EC. This is not something set out in the Treaty, but the commission has the last word here, and it is here where EC can use its power over the member states. It relates thus not so much to power over substance of the priorities, but rather the extent of priorities'* In the Dutch case the evident mismatch between EU priorities and national preferences considerably lowers the input legitimacy of the ESF instrument (see also van Gerven et al 2014). The responsiveness to local needs is strongly promoted by the ESF, since the substance of the project is left for local actors, but other factors, discussed next in throughput legitimacy, seriously endanger this.

Throughput legitimacy

Good governance in terms of accountability, transparency, responsiveness, inclusiveness is often considered a precondition to democratic legitimacy. Through this mechanism ESF is expected to foster throughput legitimacy. In our findings, the reality appears to be more complex. As argued above, targeting of ESF funds into certain groups, was considered negatively affecting the responsiveness of the financial instruments to local needs, and therefore also negatively affecting the throughput legitimacy and inclusiveness of the policies. The respondents told that it [targeting] reduces the options to municipalities to ask for ESF (*Mun1, Mun3, Mun5, Mun6, Mun7, Mun13*). It is generally the municipalities' interest to invest in welfare recipients that are potentially easier (and less costly) to be integrated to the labour market, as this decreases their expenditure on welfare benefits. Targeting to 55+ year olds, (former) housewives, was often not considered attractive to the municipalities who need to lower their costs (due to cutbacks and austerity measure by the state). Rather, the integration of these groups were seen considerably costly and difficult, since one needed first to find these people and then provide them costly tailor-made services. For example, for middle-sized municipality in the northern province of the Netherlands (*Mun13*) the narrow target group

meant withdrawing its ESF application for people aged over 55. Policy-makers had first submitted an ESF application for not to miss out on funding opportunities, but after adjustments in local political goals (namely abandoning the goal to support older unemployed, and focusing on those with a short labor market distance) they had to withdraw the ESF-application. Although the majority of respondents were against targeting of the ESF, few positive examples of this were also mentioned. For example, respondent from the middle sized municipality in the west (Mun11) noted that the additional including of the Action youth unemployment was a reason to start using ESF. Also, another municipality was able to try out innovative policies for 55+ due to the targeting of the ESF for this specific group (Mun1). Yet, the mismatch between EU and national local preferences and needs remained the major obstacle to responsiveness of the ESF usage in the Netherlands and an impediment for throughput legitimacy. Another prominent example of negative effect of ESF to throughput legitimacy was the EU induced target to youth unemployment from 2008 onwards. When crisis peaked and youth unemployment spiked, the Commission made it possible to reallocate ESF funds from Action A to youth unemployment (which became Action J). It matched the EU-level concerns and the Commission was pleased that the Netherlands created a separate Action line for youth (Rijksoverheid, 2012; Min3, DG3). However, this focus on youth unemployment neither matched the national challenges nor the CSRs, as the Netherlands had a relatively low youth unemployment compared to other EU countries.

First and foremost, the ESF-story is a story of administrative checks and balances and of a *constant struggle between efficiency and legitimization*. As van Gerven et al (2014) have shown earlier the strict transparency criteria in the Netherlands are directly related to the administration problems in the past. As a consequence of the 'ESF scandal' (Rekenkamer, 2000), the administration requirements were made considerably stringent and the ESF funds were allocated under the direct supervision of the ESF agency. The transparency and accountability are in this way synonym for the ESF in the Netherlands. In words by one the civil servant in a large municipalities in the west of the Netherlands (MUN2) 'ESF is not about effectiveness and efficiency, but about legitimacy'. ESF is seen as a system that is all about administrative justification. Indirect costs are high and the value added per EUR spend is not very large. Most of the municipalities (Mun1, Mun7, Mun8, Mun10) refer to the high financial risks involved when requesting ESF funds: if you turn out not to be eligible, or do not find all the receipts, you will need to pay the allocated money back (also Mun11). That this can have drastic effects is illustrated by a smaller municipality (Mun12) that developed a new project to

stimulate ethnic minority women who do not receive benefits, to flow into the labor market. In 2010 the Ministry of Social Affairs and Employment set the grant at EUR 124,528 for this municipality, however, the total amount transferred to the municipality for its ESF-efforts was only EUR 275.² Obviously this amount did not reflect the efforts the municipality put into the project. The administrative burden was mentioned by and large by all respondents from the municipalities (see also Verscharagen et al 2012, van Gerven et al 2014).

Especially finding potential participants in line with some of the ESF priorities is time-consuming, especially that of non-benefit receivers who are not part of the municipality database. At the same time, such activities are not eligible to ESF funding. The picture raising from the interviews is also that of an administration frenzy: targeting to certain groups resulted in municipalities having to hand in several ESF requests for each target group, instead of writing only one request (Mun10), increasing the administrative burden. Municipality (MUN11) that did also not have experience with ESF, mentioned that the set-up costs for the new programmes to fight youth unemployment were high, especially related to the short duration (12 months) as set by the funding criteria. It meant that relatively much time was devoted to setting up the project and getting started, and relatively little time to exploit the programme. The short duration is also mentioned in an evaluation (Research voor Beleid, 2010 compare p. 10 and 21).

The national level interviewees (Agency1, Agency2, MIN3) acknowledge the administrative burden, and attempt to make the administrative procedures simpler (see also Rijksoverheid, 2012: 3). In a letter to Dutch parliament (Ministry Social Affairs and Employment, 2014*) explains that administrative simplifications have been implemented in 2010, including standard deductions for some types of costs and a standard tariff for vocational training courses. For the programming period 2014-2020, further ideas were being developed to make administration as simple as possible. Agency SZW (Min3) started paying more attention to the earliest stages of proposal development in which they advise municipalities to keep their projects as simple as possible in order to have a less complex administrative demand later on. Moreover they started advocating for the continuity of a project, which makes using ESF simpler as well. Municipality (MUN11) said to see that improved guidance from the national level.

² Letter of Ministry of Social Affairs and Employment to Mun12, date 6 January 2012. Title "*definitief rapport van bevindingen 2009ESFN462*" [final report of findings].

As a result of the heavy administrative burden, only municipalities with much experience in dealing with ESF were able to make use of it (see also van Gerven et al 2014). Experience in administrative requirements was a precondition (all municipalities and the Custodial Institutions Agency). Municipalities said that due to its large size it could afford to allocate personnel to dealing with the ESF administrative requirements (Mun1, Mun2, Mun10, Mun12, Custodial Institutions Agency) but that this is impossible for small(er) municipalities to do. This is supported by smaller municipalities, or can be derived from less well functioning programmes (Mun3, Mun5, Mun6, Mun7, Mun8, Mun11, Mun12). It has been found earlier (Verschraegen et al 2012, van Gerven et al 2014) and confirmed also by the study that the actors involved at ESF at the national and local level have throughout the years learned to cope with the ESF administration. The highly strict administrative requirements mean that the most benefiting from ESF are the larger (and richer) cities and those that afford to have the administrative machinery to apply, implement, monitor and justify the policy. This delimits the ability of the municipalities to use but also to innovate with the ESF. Although the ESF should be ‘trigger money’ (Mun6) that allows municipalities to try out new policies, allow for experimenting and trial and error, the standard work procedure of the municipalities often is that they simply add extra participants to their already existing and running programmes once they know that they can make use of ESF. Later on, an administrative difference is made between people falling within the target group of ESF and those who do not. This indicates creative usage of the fund, but (hardly) no innovation with it.

In conclusion, the assumption of ESF being a EG architecture would foster higher transparency, accountability, inclusiveness and effectiveness of the governance process can both be confirmed and rejected. Yes, the accountability and transparency criteria are met (to the level of excellence) due to the strict administrative requirements applied in the ESF process. However, due to massive administrative burden the effectiveness and efficiency are not often achieved, neither is inclusiveness is achieved, since only municipalities with a large administrative machinery can make fruitful use of the funds. Also, with respect to responsiveness, the mismatch between national and EU goals hinder this.

Output Legitimacy

Most scholars argue that the EU achieves its legitimacy predominantly through its output. Sabel and Zeitlin (2010:12) argue that “experimentalism transforms diversity from an obstacle to integration into an asset for its advancement”. With regard to the effectiveness, the respondents are united in their understanding that the Dutch municipalities (that successfully make use of ESF) focus on generating volume effects. In other words, ESF is used to strengthen the national policies and it is basically money but just from another budget as our previous examples already show. The respondents see that the target groups that ESF is eligible for are difficult to reintegrate and therefore also policy outcomes are often ‘soft’ rather than ‘hard’. For these groups, soft outcomes can be “steps towards the labour market instead of job inclusion”. In the case of Custodial Institutions Agency, ESF projects do aim at integration into a job, however preventing recidivism is a key aim as well. Moreover, for projects at institutes for youth, where there are also people aged 15-17, it is a more sensible aim to get an education degree than to aim for job inclusion. Here, ESF seems to foster tailor-made, high quality trajectories. It allows for funding one-to-one coaching and guidance, with intensive guidance of detainees, giving space to participants to learn the full content of a job, including the more difficult or specific skills of a profession. Moreover, some municipalities mentioned that re-integration efforts to flow into jobs are not really effective if there are no jobs, e.g. in times of recession (Mun2, Mun10, Mun11). Moreover, there is hardly any long-term monitoring of people that flow out of an ESF-project and into a job. Much is unknown about how people fare some time after having obtained a job (Mun 11, Mun 13). Mun13 says that long-term job inclusion is not a realistic goal in times of scarcity of jobs and an increasingly flexible labour market. In 2003 sustainable employment was defined as employment for at least 18 months. By 2014 this definition was adjusted to six months of employment. Mun 2 mentions that it is hard to establish causal relationships between an ESF programme and job inflow, and this job inflow could take a while before it happens, and there might be a fall back into welfare after a while.

Several examples were given about the effectiveness of policies to target group of detainees and forensic detainees. Detainees are a difficult group to guide towards the labour market, since they face numerous obstacles in finding a job, once they have left detention. Often, they do not have sufficient education to support labour market integration and they are at risk of social exclusion. Respondent told us that the ESF is used to improve their labour market position. While being detained still, they get training and follow courses. After release, they get support to find a job or further education. This happens in cooperation with the municipality in which the ex-offender wants to settle down. The interviewee, who is the national

level coordinator of Action B, mentioned that overall 15 million EUR is allocated, of which in the particular project period little over 11 million was actually paid out as a subsidy.³ The respondent told us that in the past years, relevant institutes have been developing practices to provide after care for the first month after release. A positive result from ESF is also that participants who have been in such closely guided project have more knowledge about their options after release and this helps them to continue to follow a beneficial pathway, compared to those who have not been in such a project and have to start from scratch after their release (interviewee). Although respondents consider these as valuable outcomes, they admit that these are ‘soft’ outcomes. The effectiveness is often more difficult to be measured and often less convincing in national statistics. Metis (2012) review reveals indeed that there are no soft outcomes monitored in the Netherlands. This is confirmed by Agency SZW (Min3). Soft outcomes are also not part of the OP indicators and also not specified in ESF regulations. The Agency SZW interviewees (Min3) suggested that this could be different in the next ESF round, although respondents doubtful about how to measure soft outcomes. DG3 states that soft indicators could be relevant for social inclusion activities. The then upcoming regulations for the new ESF period would contain indicators, including soft indicators, which would be a novelty. However D3 expected that it would be difficult to measure these. Because ESF targets the most vulnerable groups, it is extra difficult to guide them back to work, as they generally have a large labour market distance (M10). Additional goals are very relevant, such as decreasing the distance to the labour market, increased well-being, increased independence. Mun 10 says that if well-being improves, also without inflow into a job, this is worth the investment and moreover fits the societal task municipalities have. One municipality reports positive side-effects, such as improved regional cooperation with stakeholders (Mun11).

Municipalities share also stories of successes. For example, ESF has been successfully used to bridge the gap in situation where responsibility is being transferred from one to the other organization, or where there is a shared responsibility was (Min3). For example, when detainees go from jail to live in a municipality, or school-leavers go from school to a job, or low-skilled workers are transferred from unemployment to training and schooling. This way, ESF enables that situations are bridge, or that things keep moving. Some of these examples

³ The underuse of often a problem with ESF. In this special case, much of the funds have been used. See also Ministry of Social Affairs and Employment (2014), Verleende subsidie ESF 2007-2013, Actie B [Granted subsidy ESF 2008-2013 Action B], last update 28 April 2014.

were seen as great success, but they too are often short-lived, and cease to exist after the ESF period is over, or the priorities of the ESF changed (Mun3)

Much of the effect of the ESF is seen in the preventative approach, especially for the transition from school/education to labour market entry. Action C for example aims at making pupils flow into a job, by preparing them better for the labour market (or to guide them to further education). Agency SZW (Min3) therefore says that this is an important target group. At that time (2014) about half of the youngsters leaving special education flow into benefits. The same line of reasoning of taking a preventative approach seemed to matter less for Action D, upskilling low-skilled employees.

In conclusion, the theory would suggest that through higher participation of the multi-level actors (especially local level actors), the ESF has high effectiveness of the EU's policy outcomes for the people. Our findings show that ESF is seen to have volume effects, supplementing the national policy. We also found that most the effects are considered soft, and are therefore difficult to be measured and weaker to be considered as a legitimization. Consequently, we can confirm that, ESF is likely to have a positive effect to output legitimacy, although this is weak. More should be done about measurement of the weak effects in order to improve the output legitimacy of the ESF.

5. Conclusion and discussion

Drawing on data on expert interviews of multilevel actors in the Netherlands, this paper made a longitudinal analyses of how national actors perceive the input, throughput and output legitimacy in their usage of the ESF (2007-2013) in designing activation policies for the unemployed. The results for the Netherlands' suggest that the contradictory legitimization effects are found at the throughput legitimacy and that the EU still need to find ways to increase the input and output legitimacy of the ESF, in order to improve the legitimization of the EU action at the level of the member state. The changes in administrative procedures have been an improvement to the throughput legitimacy. However, have these changes also questioned the legitimacy in terms of the inclusion of actors in the process, and the outcomes. For the Netherlands the changes have meant a weakening of the use of ESF as an preventative approach, especially the ability of low skilled workers to follow courses and thus keep their skills and

labour market position up-to-date. Moreover, the cases show that innovative (new) projects are much more difficult to get financed via ESF. This negative experience with ESF is for some a reason to no longer make use of ESF. Dutch municipalities mostly use ESF to co-finance already running programmes. If ESF is granted, then extra people can follow the project. Alternatively, ESF helps to bridging the gap between different actors in the field.

As an example of experimental governance, the study of ESF deepens our understanding about the multilevel construction of European Social Policy and its legitimation. The inclusion of multilevel actors in the process does not by default alleviate the legitimation crisis of the European Union. Input legitimacy remains limited as long as ESF responsiveness to local preferences and needs remains low. ESF process shows increasing signs of further technocratization and does not allow sufficient room for a political debate of the alternatives, that can be seen detrimental for both input and output legitimacy. The strong accountability of the ESF is a merit to throughput legitimacy but at the same time it decreases the inclusiveness and responsiveness of the funds.

List of respondents to be anonymised

reference	Function of respondent	Interview date
Agency 1	Director, Dutch ESF agency (2 respondents)	April 2010
Agency 2	Former director Dutch ESF agency	January 2010
DG 1	Policy officer, Detached from ministry	July 2007
DG 2	Deputy head of Unit Employment analysis	Aug 2009
CEC	Policy officers, European Commission DGV	February 2010
DG 3	DG EMPL Commission	April 2014
EP	EP/ detached from the ministry	Aug 2007
ETUC	Director	June 2007
Min1	Policy advisors international affairs and social economic affairs (2 respondents)	June 2007
Min2	Senior policy advisor,	September 2007

Min3	Ministry Social Affairs and Employment & Dutch ESF Agency (3 respondents)	October 2014
Perm	Policy advisor section social affairs and employment Permanent representation of the Netherlands to EU	
MUN1	Senior policy advisor in a large municipality in the west	January 2010
MUN 2	Senior policy advisors (2 respondents in a large municipality in the west	February 2010 November 2014
MUN3	Senior policy advisor, senior subsidy advisor, subsidy advisor (3 respondents) in a middle sized municipality in the east	June 2010
MUN4	Policy advisor in a middle sized municipality in the west	June 2013
Mun5	Senior subsidy employee in a middle sized municipality in the east	July 2011

Mun6	Senior subsidy employee in a middle sized municipality in the east	July 2011
Mun7	team leader work and income in in a small sized municipality in the east	July 2011
Mun8	Policy advisor policy and projects in a middle sized municipality in the east	July 2011
MUN 9	Policy advisor in a middle sized municipality in the mid/south	June 2013
MUN10	Policy advisor in a large sized municipality in the west	November 2014
MUN11	Policy advisor in a middle sized municipality in the west	September 2014
MUN12	Policy advisor in a middle/small sized municipality in the mid	2014
MUN13	Policy advisor in a middle sized municipality in the north	October 2014
Custodial Institutions Agency		2014

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